

**NORTH FORK NOOKSACK RIVER
BOYD REACH RESTORATION PROJECT**

REQUEST FOR BIDS

Request for Bid Proposals

The Nooksack Tribe Natural Resources Department (Contracting Agency) is soliciting for Proposals for the construction of the North Fork Nooksack River Boyd Reach Restoration Project (Boyd Project), an engineered log jam (ELJ) habitat restoration project. Notice is hereby given that sealed proposals for the Boyd Restoration Project will be received at the offices of the Nooksack Tribe Natural Resource Department located at 5016 Deming Road or mailed to P.O. Box 157, Deming, WA 98244, until **4 PM, June 10th, 2026**. Bidders will be notified of the selected bid within 10 working days after bid opening. Proposals received after the submittal date will not be considered. Electronic bids will also be accepted via email to Eric Stover (estover@nooksack-nsn.gov) in the form of a PDF file(s) including scanned copies of the required Bid Forms. Original signed copies must be produced before award of Contract.

Project Purpose

The purpose of the reach-scale project is to restore upstream migration, holding, spawning and rearing habitat for North/Middle Fork Nooksack Early Chinook, which is considered essential for recovery of the ESA-listed Puget Sound Chinook ESU. Limiting habitat conditions in the North Fork are: (1) reduced lateral migration to allow transient river bars and incipient forest islands along the margins of the historic migration area to stabilize immature floodplain vegetation to reach a size (50-years) where it can produce functional wood to the channel; (2) increased pool habitat throughout the reach; (3) improved low flow connectivity of side channels; and (4) increased stable spawning habitat of the reach, especially in side channel areas.

Funding

Funding is provided by the Washington State Recreation and Conservation Office (RCO), the NOAA Pacific Coastal Salmon Recovery Fund, the EPA Northwest Indian Fisheries Commission and Puget Sound Tribal capacity. Since federal funding is associated with this project, the Contract will be subject to the requirements of the Federal Davis-Bacon and Related Acts (DBRA) and the Build America, Buy America Act (BABA).

Location & Access

The Boyd Restoration Project is located in Whatcom County on the North Fork Nooksack River east of the town of Glacier between river mile (RM) 62.1 and 62.5. The Project will be accessed from US Forest Service properties via access routes as shown on the Contract Plans. The Contractor will be required to comply with the conditions of any agreements with USFS as described in the Special Provisions.

Project Summary

Work includes installing temporary bridges and crossings for access, clearing work areas of vegetation, isolating work areas from the river and other wetted areas, constructing up to 18 ELJ structures, and other work as shown on the Contract Plans or described in the Special Provisions.

Project Materials

The Contracting Agency will supply a majority of the materials for the Boyd Project including most logs and wood material, chain, chain binders, connecting links, shackles, and manila rope per the Special Provisions. The Contractor will be responsible for supplying the water management materials, and any other additional materials needed for the project. All heavy equipment operating below the Ordinary High-Water Mark (OHWM) must use biodegradable fuels and hydraulic fluids.

Project Permits and Timeline

Notice to Proceed (NTP) for the Boyd Project will be contingent on securing the required final permits, approvals, and licenses necessary to construct the Project as described in the Special Provisions. All permit approvals are expected to be received by late June or early July. The Contracting Agency anticipates issuing the NTP immediately upon receipt of all permits and the Contractor is expected to mobilize and start work immediately. The working days (construction schedule), are anticipated to be from mid-June through September, depending on weather and flow conditions.

In-Water Work

The Boyd Restoration Project has timing restrictions based on regulatory permit conditions and fish presence and timing in the North Fork Nooksack River. It is anticipated that the HPA in-water work window will be from July 15th, 2026 to August 15th, 2026, with the ability to leave in-water isolation areas installed until September 30th, 2026, so long as they have been installed by August 15th, 2026. Work prior to July 15th, 2026 shall be limited to access road development, placement of temporary access bridges, preparation for and staging of construction materials in designated areas, and construction engineered log jams where excavation remains wholly in the dry. Work after September 30th, 2026 shall be limited to work above OHWM like removing materials and equipment from the site. The overall project shall be physically completed by September 30th, 2026.

The Contractor shall coordinate all temporary water diversion activities requiring fish handling activities with the Contracting Agency who will be responsible for all fish handling activities including the installation of any temporary fish block nets, seining, electro-fishing, and fish rescue for all temporary water diversions. The Contracting Agency staff will also be on-site for the duration of construction to ensure compliance with environmental regulations and permit conditions, including water quality monitoring.

NOTICE TO BIDDERS

Contract Documents, including Contract Plans and Specifications may be obtained via the WCR Plan Center or the Builders Exchange of Washington (BXWA) Plan Center. Any Addendums to the Contract documents will also be posted with these Plan Centers before the bid closing date. Hard copies of Contract Documents, including Contract Plans and Specifications may also be obtained at the Nooksack Tribe office upon request with at least 24 hours' notice. Please contact Eric Stover at (360) 592-5140 ext. 3141 to arrange for distribution of Contract Documents.

Bidders on this work will be required to comply with Executive Order 12549 and 12689 ("Debarment and Suspension"), and all applicable state and local laws and regulations.

No proposal will be accepted from a Contractor who is not licensed in accordance with the laws of this State to perform the work herein described. The Tribe reserves the right to reject any or all bids pursuant to applicable Tribal, State or Federal law; to award a Contract for less than all the work if funds now available are insufficient for completion of the total project; to delay award of Contract pending any and all permit approvals to complete the project, to waive any informalities or irregularities therein; and/or to award the bid to the lowest responsible bidder.

Contract award will be based on lowest responsible bid total for the highest order preference within available funds for the project, record of permit compliance, Contractor availability, Contractor qualifications, record of past performance, financial and technical resources or accessibility to other necessary resources, experience working in sensitive aquatic environments, and applicable tribal law, including the Nooksack Indian Tribe Accounting Policies and Procedures Manual (available upon request).

The Contracting Agency reserves the right to accept the proposal of the successful bidder, to reject any or all bids, republish the call for bids, revise or cancel the work to be performed, or do the work otherwise, if the best interest of the Contracting Agency is served thereby. The Contracting Agency also reserves the right to postpone the selection of the winning bidder for thirty (30) calendar days after bid opening, except that upon mutual consent of the apparent responsible bidder and the Tribe, the 30-calendar day limit may be extended to allow approval of the bid award. The Contract is subject to approval of the Nooksack Tribal Council. There will not be a public bid opening for this project.

SUPPLEMENTAL INSTRUCTIONS TO BIDDERS

PREPARATION OF PROPOSAL

Please include in your submittal (See also Special Provisions):

- Experience of company and employees that will perform work on the project
- Equipment availability and condition
- Qualifications of all subcontractors
- Native subcontractor and worker elements, if applicable
- All related bid forms in the Bid Form section
- Bid Deposit
- Bid total costs on Bid Form Provided

PRE-BID SITE VISIT

A mandatory proposal pre-bid site visit will be held on Wednesday June 3rd, 2026 at 9:30am for potential bidders and representatives of potential bidders. A maximum of two people may attend the site visit on behalf of the potential bidders. To be considered a responsive bidder all potential bidders and representatives of potential bidders must attend the entire mandatory pre-bid site visit. Roll-call will be taken at the beginning and end of the mandatory pre-bid site visit to verify full attendance. Bidders and representatives of potential bidders whom do not attend the entire mandatory pre-bid site visit will be considered unresponsive. **Some latent site conditions may be encountered that may affect the cost of the work, but must be accounted for in the bid. Site visit participants should anticipate spending at least 2 hours of walking in areas with uneven terrain and, depending on**

river flows, across the North Fork Nooksack River. Chest or hip waders are highly recommended for a portion of the site visit and water boots are recommended at minimum for the entire site visit.

PRECONSTRUCTION CONFERENCE

The successful bidder, before commencement of work, shall attend a preconstruction conference with the Engineer and Contracting Agency staff.

BID FORMS

BIDDING CHECKLIST

Bidders must bid on all bid items contained in the Proposal. The omission or deletion of any bid item will be considered non-responsive and shall be cause for rejection of the bid.

Please check to make sure you have accomplished the following:

Is Bid Deposit enclosed with your bid?

Is the amount of the Bid Deposit at least five (5) percent of the total amount of the bid?

Has the proposal been properly signed?

Have you bid on ALL ITEMS?

Have you completed Statement of Bidder's Qualifications?

Have you certified receipt of addenda, if applicable?

Have you included the Non-Collusion Declaration?

Have you completed the Subcontractor List?

STATEMENT OF BIDDER'S QUALIFICATIONS

Name of Contractor _____

Address _____

Phone Number _____ Email _____

Washington State Department of Labor and Industries Workmen's Compensation Account Number:

Washington State Department of Licenses Contractor's Registration Number _____

_____ Expiration Date _____

Number of years the contractor has been engaged in the construction business under the present firm name indicated _____

Gross dollar amount of work under contract _____

Gross dollar amount of contracts not completed _____

Type of work generally performed by contractor _____

List of five projects of a similar nature which have been completed by the Contractor within the last 10 years and the gross dollar amount of each project. An attachment with the relevant information may be substituted for this table.

Project Name	Agency	Contact & Phone Number	Year Completed	Contract Amount

North Fork Nooksack Boyd Reach Restoration Project
Request for Bids and Bid Forms

List of major pieces of equipment and their condition that will be provided by the Contractor and that will be available and required for use on this project:

Bank References _____

Have you changed bonding companies within the last three years? _____

If so, why? (Optional) _____

Have you ever sued or been sued by the client on any public works contract for a special district, municipality, county, Tribal, or state government? _____

Who? _____

For What Reason? _____

Disposition of case, if settled _____

Name of Superintendent to be used on the project and how long with your company _____

Bidder

By _____

Title

North Fork Nooksack Boyd Reach Restoration Project
Request for Bids and Bid Forms

BID DEPOSIT BOND FORM

Herewith find deposit in the form of a certified check, cashier's check, or cash in the amount of \$ _____ which is not less than five percent (5%) of the total bid.

Sign Here: _____

BID DEPOSIT (BOND FORM)

Know all men by these presents, that we _____ as Principal and _____ as Surety, are held and firmly bound unto the Nooksack Indian Tribe, Washington, as obligee in the penal sum of _____ dollars, for the payment of which the principal and the surety binds themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.

The condition of the obligation is such that if the obligee shall make any award to the principal for _____, according to the terms of the proposal or bid made by the principal therefore, and the principal shall duly make and enter into a contract with the obligee in accordance with the terms of said proposal or bid award and shall give bond for faithful performance thereof, with surety or sureties approved by the obligee; or if the principal shall, in case of failure to do so, pay and forfeit to the obligee the penal amount of the deposit specified in the call for bids, then this obligation shall be null and void; otherwise it shall be and remain in full force and effect and the surety shall forthwith pay and forfeit to the obligee, as penalty and liquidated damages the amount of this bond.

Signed, sealed and dated this _____ day of _____, 20_____.

Principal _____

Surety _____

Return of deposit in the amount of \$ _____

Date _____

By _____

PROPOSAL

Contractor: _____

City: _____, Washington

Date: _____, 20____

Nooksack Indian Tribe
Attn: Nooksack Tribe Natural Resources Department
P.O. Box 157
5016 Deming Road
Deming, WA 98244

Pursuant to and in compliance with your invitation for bids and all other documents relating thereto, the undersigned bidder, having familiarized himself with the terms of the contract, the local conditions affecting the performance of the contract, the cost of the work at the place where the work is to be done, proposes and agrees to perform, within the time stipulated, the contract, if this project is accepted, including all its component parts and everything required to be performed, and to provide and furnish any and all labor, materials, tools, expendable equipment, an all utility and transportation services necessary to perform the contract, complete, in a workmanlike manner, of all the work covered by the contract in connection with Nooksack Indian Tribe's project, designated as Nooksack Tribe - NF Nooksack Boyd Reach Restoration Project all as required by and in strict conformance with the specifications, Contract Plans and the standard plans for the following unit prices.

BID FORM ATTACHMENT

ARTICLE 1 - BID RECIPIENT

1.01 This Bid is submitted to:

*Nooksack Indian Tribe
Natural Resources Department
Attn: Eric Stover
P.O. Box 157 (mailing address) or
5016 Deming Rd. (physical address)
Deming, WA 98244
(360) 592-5140 ext. 3141
estover@nooksack-nsn.gov*

The Nooksack Tribe is herein referred to as the "Contracting Agency".

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with The Contracting Agency in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the time indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2 - BIDDER'S ACKNOWLEDGEMENTS

2.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid Security. This Bid will remain subject to formal notice of selection of the Winning Bidder and Tribal Council approval of any contract. This Bid shall remain valid for at least sixty (60) days after the Bid Closing, or for such longer period of time that Bidder may agree in writing upon request of The Contracting Agency.

ARTICLE 3 - BIDDER'S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

3.01.1 Bidder has examined and carefully studied the Bidding Documents, other related data identified in the Bidding Documents, and the following Addenda, receipt of which is hereby acknowledged (if applicable):

<u>Addendum</u> <u>No.</u>	<u>Date:</u>
_____	_____
_____	_____
_____	_____

3.01.2 Bidder has visited the job site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress and performance of the Work.

3.01.3 Bidder is familiar with and is satisfied as to all Federal, State and local laws and regulations that may affect cost, progress and performance of the Work.

3.01.4 Bidder has carefully studied all bid attachments and appendices.

3.01.5 Bidder has obtained and carefully studied (or accepts the consequences for not doing so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and underground facilities) at or contiguous to the site which may affect cost, progress or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences and procedures of construction expressly required by the Bidding Documents to be employed by Bidder, and safety precautions and programs incident thereto.

- 3.01.6 Bidder does not consider that any further examinations, investigations, explorations, tests, studies or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents.
- 3.01.7 Bidder has correlated the information known to Bidder, information and observations from visits to the site, reports and Contract Plans identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies and data with the Bidding Documents.
- 3.01.8 Bidder is aware of the general nature of work to be performed by The Contracting Agency and others at the site that relates to the Work as indicated in the Bidding Documents.
- 3.01.9 Bidder has given the Contracting Agency written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Engineer is acceptable to Bidder.
- 3.01.10 The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
- 3.01.11 Bidder will submit written evidence of its authority to do business in the State of Washington, where the project is located, not later than the date of its execution of the Agreement.
- 3.01.12 Bidder will obtain a business license from the Nooksack Indian Tribe no later than the date of its execution of the Agreement. An application form can be obtained from the Nooksack Indian Tribe Administration Building located at 5176 Deming Rd., Deming, WA 98244.

ARTICLE 4 - FURTHER REPRESENTATIONS

4.01 Bidder further represents that:

- 4.01.1 This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation;
- 4.01.2 Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham bid;
- 4.01.3 Bidder has not solicited or induced any individual or entity to refrain from bidding;
- 4.01.4 Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over the Contracting Agency.

ARTICLE 5 - BID SCHEDULE

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following unit prices:

5.01.1 Quantities are not guaranteed. Final Payment will be based upon actual quantity of work performed. The Contracting Agency reserves the right to reduce the scope of work without invalidating the bid if funds now available are insufficient for completion of the total project.

5.02 The Contracting Agency reserves the right to award a portion, or all work to the Bidder based on comparison of price and qualifications with those of other bidders.

ARTICLE 6 - TIME OF COMPLETION

6.01 Bidder agrees that the Work will be substantially completed and ready for final payment in accordance with Section 1-08 of the Standard Specifications and Special Provisions or within the number of calendar days indicated in the Agreement.

6.02 Liquidated damages will be assessed in accordance with WSDOT Standard Specification Section 1-08.9.

ARTICLE 7 - ATTACHMENTS TO THIS BID

7.01 The following documents are made a condition of this Bid and shall be submitted with the Bid:

7.01.1 Required Bid Deposit in the amount of five percent (5%) of the total bid

7.01.2 List of similar projects completed as specified in Section 1-02 of these Standard Specifications and Special Provisions

7.01.3 List of subcontractors and suppliers exceeding 5%

BID FORM – Boyd Reach Restoration Project

BID ITEM NO.	BID ITEM	SECTION	QTY	UNIT	UNIT PRICE (\$)	BID AMOUNT (\$)
1	MOBILIZATION	2-01 (ST)	1	LS		
2	TEMPORARY WORK ACCESS	2-05 (SP)	1	LS		
3	EROSION CONTROL AND WATER POLLUTION PREVENTION	8-01 (ST)	1	LS		
4	WOOD SORTING AND STAGING	8-26 (SP)	1	LS		
5	FURNISHING RACKING LOGS	8-26 (SP)	5,000	EA		
6	TYPE 1 ELJ INSTALLATION	8-26 (SP)	5	EA		
7	TYPE 2 ELJ INSTALLATION	8-26 (SP)	13	EA		
8	ADDITIONAL GRADING, WOOD PLACEMENTS, AND CLEANUP	8-26 (SP)	1	EST	25,000	
9	TEMPORARY WATER MANAGEMENT	8-31 (SP)	1	LS		
10	TWM ADAPTIVE MANAGEMENT	8-31 (SP)	1	EST	25,000	
Base Bid Amount						\$
Total Additive Bid						\$

Table 1. Additive Bid Items. ST= Standard Specification, 2026; SP=Project-specific Special Provision

BID ITEM NO.	BID ITEM	SECTION	QTY	UNIT	UNIT PRICE (\$)	BID AMOUNT (\$)
A1	TIMBER PILE DRIVING	8-26 (SP)	100	EA		
A2	WOOD HAUL FROM SECONDARY STOCKPILE	8-26 (SP)	1	EST	18,000	
Alternate Bid Amount						\$
Total Alternate Bid						\$

CONTRACTOR SIGNATURE _____ **DATE** _____

BIDS for the work identified in this Contract shall be for complete construction of all items included in the Plans and Specifications. Bids will not be considered responsive unless all bid amounts listed above are complete and identified.

A “NO BID” or “\$0” bid entered in the total bid summary above will result in disqualification of the bid.

For the purposes of awarding this Contract, the Contract will be awarded to the lowest responsive Bidder meeting the qualification criteria set forth in this Invitation to Bid and the Special Provisions.

The Contracting Agency reserves the right to award the Contract amount based on any or all of the bid items listed to restrict the Contract amount to the funds available, and to reject any or all bids for any reason whatsoever and waive formalities as the interest of the Contracting Agency may require.

ADDITIONAL INFORMATION REQUIRED AT BID

List of subcontractors: List below the name, address and Contractor's or business license number of each subcontractor, equipment or materials supplier who will provide labor, equipment or supplies on the project for which the subcontractor or supplier will be paid an amount exceeding five percent (5%) of the Contractor's base bid. For each subcontractor/ supplier listed, also describe the kind of work, equipment or materials the subcontractor/ supplier will provide. (Use an additional sheet, if necessary.)

Kind of Work/ Supplies	% of Work/ Supplies	Name, Address, Phone	License No.

NONCOLLUSION CERTIFICATE

STATE _____

COUNTY _____

The undersigned, being duly sworn, deposes and says that the person, firm, association, co-partnership or corporation herein named, has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in the preparation and submission of a proposal to the Nooksack Indian Tribe for consideration in the award of a Contract on the improvement described as follows:

Project Title: Boyd Reach Restoration Project

CORPORATE SEAL:

(Name of Firm)

By:

(Authorized Signature)

Title

:

Sworn to before me this ___ day of, _____.

Notary Public

pd: 3/12/93

End of Noncollusion Certificate

CONTRACT FORMS

EXAMPLE CONTRACT

This Agreement, made, between _____ hereinafter called “Contractor”, and The Nooksack Indian Tribe, hereinafter called “Tribe”, witnesseth:

I. EFFECTIVE DATE AND SCOPE OF WORK

1. **Effective Dates.** This Agreement shall become effective as of the date of execution by Tribe, and shall continue until _____, unless terminated in accordance with the provisions in Section 18 of this agreement. Time is of the essence.
2. **Project Covered.** Tribe hereby engages Contractor to provide the following services, hereinafter called the “Project”:

[X] Contract Plans and Project Special Provisions Attached

3. **Method of Performing Services.** Contractor will determine the method, details and means of performing the above-described services in compliance with the terms of this Agreement. Contractor shall provide all services in accordance with applicable local, tribal, state, federal laws, and the terms and conditions of this Agreement.
4. **No Training or Instructions.** Tribe enters into this Agreement based on Contractor's demonstrated ability to perform the type of services that it believes, and that Contractor has represented, are needed to accomplish the Project. Consequently, Tribe does not contemplate providing Contractor with any training or instructions with respect to the Project.
5. **Employment of Assistants.** Contractor may, at Contractor’s own expense, employ such assistants, as Contractor deems necessary to perform the services required of Contractor by this Agreement. Tribe may not control, direct, or supervise Contractor's assistants or employees in the performance of those services. Contractor assumes full and sole responsibility for the payment of all compensation and expenses of unemployment insurance, Social Security, disability insurance and other applicable withholdings pursuant to applicable tribal, federal, or state law. Contractor agrees to provide proof of workers' compensation insurance for assistants he or she engages. Contractor is responsible for acts or omissions of employees, sub-contractors and other persons performing portions of work under the contract for the Contractor. Contractor agrees to hold Tribe harmless against any and all liabilities attributable to the obligations imposed on Contractor under this Section. Contractor shall employ no employee of the Nooksack Indian Tribe.
6. **Representations.** Contractor represents and warrants that:
 - (a) Contractor has no obligations, legal or otherwise, inconsistent with the terms of this Agreement or with Contractor’s undertaking this relationship with Tribe;
 - (b) The performance of the services called for by this Agreement do not and will not violate any applicable law, rule or regulation, or any proprietary or other right of any third party; and,

(c) Contractor has not entered into or will not enter into any agreement (whether oral or written) in conflict with this Agreement.

7. **Labor, Tools and Equipment.** Contractor shall furnish all labor, equipment, supervision, transportation, supplies, and incidentals required to perform services under this Agreement. Contractor is not required to purchase or rent any tools, equipment, or services from Tribe.

II. INSURANCE AND INDEMNIFICATION

8. **Insurance.** Contractor, prior to commencing work, shall provide at his/her own cost the following:

See Insurance Addendum

Copy attached.

9. **Indemnification Agreement.** Contractor agrees to protect, defend, indemnify and hold harmless the Nooksack Indian Tribe, Tribal Council, and its officers, employees and agents free from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liability of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceeding or causes of action of every kind and character in connection with, or arising directly or indirectly out of this Agreement and/or the performance hereof. Without limiting the generality of the foregoing, any and all such claims, etc., relating to personal injury, death, damage to property, defects in materials or workmanship, actual or alleged infringement of any patent, trademark, copyright (or application for any therefore) or of any other tangible or intangible statute, ordinance, administrative order, rule or regulation, or decree of any court, shall be included in the indemnity hereunder. Contractor further agrees to investigate, handle, respond to, provide defense for and defend any such claims, etc., at his sole expense and agrees to bear all other costs and expenses related hereto, even if it (claims, etc.) is groundless, false or fraudulent.

Contractor hereby specifically and expressly waives any immunity under Industrial Insurance, Title 51 RCW and acknowledges that this waiver was mutually negotiated by the parties herein. In the event of litigation between the parties to enforce the rights under this paragraph, reasonable attorney's fees shall be allowed to the substantially prevailing party.

III. PAYMENT AND REPORTING

10. **Amount of payment.** Unless different payment terms are agreed upon, all payments are made net 30 days of date of invoice per Nooksack Indian Tribe Accounting Policies. Upon satisfactory completion of the Project and in consideration for the services to be performed by Contractor, Tribe agrees to pay Contractor: \$_____
11. **Taxpayer Identification Number.** Prior to commencing the Project, Contractor must provide Tribe with a valid Employer Identification Number (EIN) from the IRS or in the absence of an

EIN, a social security number. Contractor must complete and submit a duly executed Form W-9 or Form W-8BEN, if applicable.

Copy attached.

- 12. Business License Requirement.** Prior to commencing the Project, and prior to any payment being made hereunder, Contractor must obtain a Business License from the Nooksack Indian Tribe unless otherwise exempt. An application form can be obtained from the Nooksack Indian Tribe Administration Building located at 5176 Deming Rd., Deming, WA 98244 or at www.nooksacktribe.org.

Copy attached.

In the event the Contractor does not have a business license at the time the Tribe processes the first payment pursuant to this Agreement, Contractor specifically authorizes and agrees that the Tribe may withhold the first one hundred dollars (\$100.00) due hereunder for payment of the full annual licensing fee.

- 13. Tax Reporting and Filing.** Contractor acknowledges and agrees that he or she shall be responsible (as a self-employed individual) for filing all tax returns, tax declarations, and tax schedules, and for the payment of all taxes required, when due, with respect to any and all compensation earned by Contractor under this Agreement. Tribe will not withhold any employment taxes from compensation it pays Contractor. Rather, Tribe will report the amount it pays Contractor on IRS Form 1099, to the extent required to do so under applicable Internal Revenue Code provisions and state or local law. Contractor is not Tribe's employee, and Contractor is responsible for paying all required state, local and federal taxes.

- 14. Expenses.** Contractor shall be responsible for all costs and expenses incidental to the performance of services to Tribe, including but not limited to; all costs of equipment provided by Contractor, all fees, fines, licenses, bonds or taxes required of or imposed against Contractor and all other of Contractor's costs of doing business. Tribe shall not be responsible for expenses incurred by Contractor in performing services for Tribe.

IV. INDEPENDENT CONTRACTOR STATUS

- 15. Independent Contractor.** It is the express intent of the parties that Contractor is an independent contractor and not an employee, agent, joint venturer or partner of Tribe. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between Tribe and Contractor or any employee or agent of Contractor. All work product developed by Contractor shall be deemed owned and assigned to Tribe. This Agreement is not authority for Contractor to act for Tribe as its agent or make commitments for Tribe. Contractor retains the discretion in performing the tasks assigned within the scope of work specified. Both parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor shall retain the right to perform services for others during the term of this Agreement so long as the performance of these services does not interfere with the completion of the Project.

16. No Benefits. None of the benefits, if any, that are provided by Tribe to its employees shall be available to Contractor (or his employees, if any, which for purposes of this paragraph shall be included in the term "Contractor"). Contractor's exclusion from benefit programs maintained by Tribe is a material term of the terms of compensation negotiated by the Parties, and is not premised on Contractor's status as a non-employee with respect to Tribe. To the extent that Contractor may become eligible for any benefit programs maintained by Tribe (regardless of the timing of or reason for eligibility), Contractor hereby waives the right to participate in these programs. Contractor's waiver is not conditioned on any representation or assumption concerning Contractor's status under the common law test. Contractor agrees that, consistent with an independent contractor status, Contractor will not apply for any government-sponsored benefits that are intended to apply to employees, including, but not limited to, unemployment benefits.

17. Contractor's Business Activities.

- (a) Contractor is an independent contractor and may engage in other business activities at the same time service is provided to Tribe.
- (b) Contractor shall not during the term of this Agreement solicit Tribe's employees or accounts on behalf of Contractor or another entity.
- (c) Contractor shall devote such time, attention, and energy to the business and affairs of Tribe as requested by Tribe, and in any event no less that the amount of time required to do a satisfactory completion of the required Project.

V. TERMINATION AND NOTICE

18. Termination of Agreement. This Agreement may be terminated prior to the date listed in Section 1 for any of the following reasons.

- (a) **Default or Material Breach.** Either party may terminate this Agreement immediately upon a default or Material Breach by the other party of any term or condition, if such breach continues uncured for thirty (30) days following written notification from the non-breaching party. For the purposes of this Section, a Material Breach of this Agreement shall include, but not be limited to the following: failure to provide services as specified in Section 2, failure to maintain required insurance coverage as specified in Section 8, or failure to complete project within the time specified in Section 1.
- (b) **Failure to Make Agreed-Upon Payments.** In the event the Tribe fails to pay Contractor all or any part of the compensation set forth in Section 10 of this Agreement, Contractor may terminate this Agreement if such failure is not remedied by Tribe within thirty (30) days of receipt of written notice from Contractor of the breach.
- (c) **For Convenience.** The Tribe, by written notice, may terminate this Agreement, in whole, or in part, when it is in Tribe's best interest. If this Agreement is terminated, Tribe shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

19. Notices. Any notice provided for or concerning this Agreement shall be in writing and be deemed sufficiently given when sent by certified or registered mail to the respective address as set forth in this section:

If to Contractor:

If to Tribe:

Nooksack Indian Tribe
Attn: Eric Stover
5048 Mt. Baker Hwy
P. O. Box 157
Deming, WA 98244
Phone: (360) 592-5140 ext. 3141

And to:

Office of Tribal Attorney
P.O. Box 63
Deming, WA 98264
Phone: (360) 592-4158
Fax: (360) 592-2227

VI. GENERAL

20. Confidential Information. Contractor agrees that all confidential documents, work product and information (including but not limited to this Agreement and any information or documents related to this Agreement or the performance of services hereunder) received or otherwise obtained from the Tribe pursuant to this Agreement will be received in strict confidence and will be used only for the purposes of performing under this Agreement. Except with respect to a request with a regulatory agency, Contractor will not disclose any such information to any third party without obtaining the prior written consent of the Tribe, and Contractor will disclose such information only to such of its officers, employees, and agents that have a need to know such information for the purposes contemplated by this Agreement. Further, Contractor shall not publish, advertise or otherwise use for any promotional purpose, any image of the Project or associated with the Project obtained while fulfilling the terms of this Agreement, without the prior written consent of the Tribe.

21. Assignment. The rights of each party under this Agreement are personal to that party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other party.

- 22. No Third Party Beneficiaries.** This Agreement is made solely and specifically for the benefit of the parties hereto and their permitted successors and assigns. No other person shall have any rights, interests, claims, or benefits hereunder.
- 23. Cooperation of Tribe.** Tribe agrees to comply with all reasonable requests of Contractor (and provide access to all documents) reasonably necessary to the performance of Contractor's duties under this Agreement.
- 24. Drug and Alcohol Policy.** Contractor and his or her employees are expected to be free from the effects of drug or alcohol use or abuse while performing services required pursuant to this Agreement or otherwise conducting business for or in the name of Tribe or a Tribal entity.
- 25. Certification Regarding Debarment.** The Contractor certifies, by execution of this Agreement, that neither he or she, nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. The Contractor further certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by the Washington State Labor and Industries.

SAM LIST VERIFICATION ATTACHED

L&I VERIFICATION ATTACHED

- 26. Sovereign Immunity Not Waived.** Nothing in this Agreement shall be deemed or construed to be a waiver of the sovereign immunity of the Nooksack Indian Tribe, its officials, its entities, or employees acting within their official or individual capacities.
- 27. Governing Law.** This Agreement shall be governed by, construed, and enforced in accordance with the laws of the Nooksack Indian Tribe. The parties hereto agree that all actions and proceedings relating directly or indirectly hereto shall be litigated in the Tribal Court of the Nooksack Indian Tribe, and the parties expressly consent to the jurisdiction of the Tribal Court of the Nooksack Indian Tribe and to venue therein and consent to service of process in any such action or proceeding by certified registered mail of the summons and complaint therein directed to the parties at their respective addresses set forth in this Agreement. By agreeing to this venue, the Tribe does not waive its sovereign immunity, or its right to raise sovereign immunity as a defense.
- 28. Waivers.** The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and condition, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

29. Captions, Construction, Drafting Ambiguities. The titles to the sections of this Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement.

30. Independent Counsel. Contractor acknowledges that they have had the opportunity to consult legal counsel in regard to this Agreement. Contractor has read and understands this Agreement and is fully aware of its legal effect and that Contractor has entered into it freely and voluntarily and based on Contractor's own judgment, and not on any representations or promises other than those contained in this Agreement.

31. Coordination of Agreement Documents, Plans, Special Provisions, Specifications, and Addenda. The complete Agreement includes the following parts (select example contract addenda included as Appendix H of this Bid Set Document):

1. Agreement,
2. Addenda 1: Insurance Addendum (Construction – Non NAHSDA),
3. Addenda 2: (The Bid Set Contract Documents as listed in order of precedence below)
 - 3a. Proposal Form,
 - 3b. Special Provisions,
 - 3c. Contract Plans,
 - 3d. Amendments to the Standard Specifications,
 - 3e. Standard Specifications,
 - 3f. Contracting Agency's Standard Plans or Details (if any),
4. Design Plans
5. WSDOT Standard Plans for Road, Bridge, and Municipal Construction (2026),
6. Landowner Agreements with Contracting Agency,
7. Standard T&C (Construction – Non NAHSDA)
8. Debarment Certification,
9. Davis Bacon & Related Requirements – (Construction – DBRA)
10. Byrd Anti-Lobbying Certification (\$100,000.00),
11. Project Specific Permits,
12. Drug-free Workplace Requirements.

32. These parts complement each other in describing a complete work. Any requirement in one part binds as if stated in all parts. The Contractor shall provide any work or materials clearly implied in the Agreement even if the Agreement does not mention it specifically.

Any inconsistency in the parts of the Agreement shall be resolved by following this order of precedence (e.g., 1 presiding over 2, 3, 4, 5, 6 and 7; 2 presiding over 3, 4, 5, 6 and 7; and so forth):

On the Contract Plans, Working Drawings, and Standard Plans, figured dimensions shall take precedence over scaled dimensions. This order of precedence shall not apply when work is required by one part of the Agreement but omitted from another part or parts of the Agreement. The work is required in one part must be furnished even if not mentioned in other parts of the Agreement. If any part of the Agreement requires work that does not

include a description for how the work is to be performed, the work shall be performed in accordance with standard trade practice(s). For purposes of the Agreement, a standard trade practice is one having such regularity of observance in the trade as to justify an expectation that it will be observed by the Contractor in doing the work.

- 33. Property Damage.** Any damage to property resulting from work of Contractor described in this agreement shall be repaired/replaced by Contractor at Contractors expense. Repair and replacement shall be to pre-damaged condition or better and subject to Tribe and land Contracting Agency approval.
- 34. Tribal, state, and federal laws.** The Contractor shall strictly comply with all tribal, local, state, and federal laws, ordinances and regulations applicable to and governing this project, and shall procure or comply with all necessary governmental licenses and permits, which are to be displayed, as appropriate, and be presented on demand of the Tribe for inspection and copying.
- 35. Funding.** The Tribe's obligation under this contract and the effective date of this contract are expressly contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Tribe for any payment may arise for performance under this contract until funds are made available to the Tribe for performance and until the Contractor receives notice of availability, to be confirmed in writing by the appropriate Tribal official.
- 36. Entire Agreement of the Parties.** This Agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect to the rendering of services by Contractor for Tribe, and contains all the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein.
- 37. Further Assurances.** Contractor, at the request of the Tribe, shall execute all documents and take all other actions necessary to carry out the provisions and purposes of this Agreement. This shall specifically include execution of any amendment, addenda, or further assurances necessary to comply with federal law or regulation.
- 38. Amendment.** This Agreement may not be amended, modified, rescinded, or assigned without the prior written consent of both parties.
- 39. Severability.** If any provision of this Agreement is unenforceable for any reason, it shall be stricken from this Agreement but shall not affect the intention of the parties or any other provision of this Agreement.
- 40. Counterparts.** This Agreement may be executed in any number of counterparts with the same effect as if the parties hereto had signed the same document. Facsimile or electronic counterparts of this Agreement shall suffice as originals for all purposes.

The Parties have duly executed this Agreement as of the date first written above.

CONTRACTOR

NOOKSACK INDIAN TRIBE

By (PrintName): _____

By(PrintName): _____

Signature: _____

Signature: _____

Title: _____

Title: _____

Date: _____

Date: _____

SSI# **or** **EIN#:**

Date: _____

PERFORMANCE BOND

To

Nooksack Indian Tribe

KNOW ALL MEN BY THESE PRESENTS, That we _____

_____ the Contractor named in the Agreement hereinafter referred to as PRINCIPAL, and _____ as SURETY, are jointly and severally held and firmly bound to the Nooksack Indian Tribe, hereinafter referred to as Tribe named in said Agreement, _____ Project , for the penal sum of, _____ DOLLARS

(\$ _____), which amount is not less than 100% of the total bid amount, lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, assigns, administrators and successors jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH , that Whereas, the Principal entered into a contract for such construction work with the Tribe, dated the _____ day of _____, 20__..

NOW, THEREFORE, if the Principal shall well, truly and faithfully Perform all of the provisions and fulfill all of the undertakings, covenants, terms, conditions and agreements of said contract during the Period of the original contract and any extensions thereof that may be granted by the Owner, with or without notices to the surety; and during the life of any guaranty required under the contract; and shall also well and truly Perform and fulfill all of the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said contract that may hereafter be made; notice of which modifications to the surety being hereby waived, shall indemnify and save harmless owner from all cost and damage by reason of the principal's default of failure to do so, and shall pay the State of Washington sales and use taxes (if applicable), and amounts due said state pursuant to Titles 50 and 51 of the Revised Code of Washington then this obligation to be void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the above bonded parties have executed this instrument under their separate seals this _____ day of _____, 20__ , the name and corporate seal of each corporate party hereto affixed, and these presents duly signed by its undersigned representatives pursuant to authority of its governing body.

Corporate Seal:

PRINCIPAL

ATTEST: (If Corporation)

By: _____

Title: _____

SURETY

Corporate Seal:

By: _____

Title: _____

PAYMENT BOND

to
Nooksack Indian Tribe

KNOW ALL MEN BY THESE PRESENTS, That we _____
_____ the Contractor named in the
Contract hereinafter referred to as PRINCIPAL,
and _____ as SURETY, are jointly and severally held and
firmly bound to the Nooksack Indian Tribe, hereinafter referred to Tribe named in said
_____ Project , for the penal sum of _____
_____ DOLLARS
(\$ _____), which amount is not less than 100% of the total bid amount,
lawful money of the United States, for the payment of which sum well and truly to be made, we
bind ourselves, our heirs, assigns, administrators and successors jointly and severally, firmly by
these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that Whereas, the Principal entered
into contract with Tribe for such construction work, dated the ____ day of _____, 20 ____.

NOW, THEREFORE, the condition of this obligation is such, that if the above-bounded
Principal, his/her or its heirs, executors, administrators, successors or assigns, shall promptly
make payment to all Persons, firms, subcontractors, and corporations furnishing materials for or
Performing labor in the prosecution of the work provided for in such contract, and any
authorized extension or modification thereof, including all amounts due for materials, lubricants,
oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in
connection with the construction of such work, and all insurance premiums on said work, and for
all labor, Performed in such work whether by subcontractor or otherwise, then this obligation
shall be void; otherwise it shall be and remain in full force and effect.

IN WITNESS WHEREOF, the above bonded parties have executed this instrument under their
separate seals this ____ day of _____, 20 ____, the name and corporate seal of each
corporate party hereto affixed, and these presents duly signed by its undersigned representatives
pursuant to authority of its governing body.

Corporate Seal:

PRINCIPAL

ATTEST: (If Corporation)

By: _____

Title: _____

Corporate Seal:

SURETY

By: _____

Title: _____

SPECIFICATIONS AND CONDITIONS

NOOKSACK INDIAN TRIBE SPECIAL PROVISIONS

The following Nooksack Indian Tribe Special Provisions to the Standard Specification are made a part of this contract.

Contract Administration

The contracting agency is the Nooksack Indian Tribe – Natural Resources Department. The designated agent for contracting is:

Eric Stover, Email: estover@nooksack-nsn.gov/ Tel. (360) 592-5140 ext. 3141
5048 Mt. Baker Hwy, P.O. Box 157, Deming, WA 98244

The designated agent shall have authority to make all decisions related to the administration and execution of the contract. The agent will make decisions on issues related to execution of the contract and the work, including any value engineering, change orders, safety requirements, quality control, and special inspections.

Project Working Hours

Working hours are Per Special Provision 1-08.0(2).

Standard Specifications

The work for this project shall be accomplished in accordance with the Standard Specifications for Road, Bridge, and Municipal Construction, 2026 edition, as issued by the Washington State Department of Transportation (WSDOT) and Special Provisions made up of WSDOT's General Special Provisions, APWA General Special Provisions, Nooksack Special Provisions and project related special provisions.

Equal Opportunity

It is the policy of Nooksack Indian Tribe to ensure that no person seeking employment by the Tribe shall be appointed, promoted, demoted, or removed, in any way favored or discriminated against.

Indian Preference is not a violation of the equal opportunity clause and 41 CFR 60-1.5(a)7 provides as follows:

Work on or near Indian reservations — It shall not be a violation of the equal opportunity clause for a construction or non-construction Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation. The use of the word *near* includes all that area where a person seeking employment could reasonably be expected to commute to and from in the course of a work day. Contractors or Subcontractors extending

such a preference shall not, however, discriminate among Indians on the basis of religion, sex, or tribal affiliation, and the use of such a preference shall not excuse a Contractor from complying with the other requirements as contained in the August 25, 1981 Department of Labor, Office of Federal Contract Compliance Programs, Government Contractors Affirmative Actions Requirements.

Liquidated Damages

Liquidated damages will be assessed in accordance with WSDOT Standard Specification Section 1-08.9.

Inadvertent Discovery Plan for Archaeological Materials

Should intact cultural/archaeological resources be encountered during excavation and construction the contractor shall follow the established provisions for the professional archaeological treatment of cultural materials located in Appendix, (Inadvertent Discovery Plan for Archeological Materials) of these Contract Documents.

Health & Safety Plan

The contractor's plan shall include requirements of the Federal Occupational Safety & Health Act of 1970 (OSHA) all amendments and all other applicable health regulations including those of the State of Washington. The Contractor shall be fully responsible for the safety and health of all on-site workers.

Spill Prevention, Control, and Countermeasures Plan

As part of the contract, the contractor shall prepare and implement a spill Prevention, Control and Countermeasures Plan (SPCC Plan) Per WSDOT Standard Specification section 1-07.15(1). For the purposes of the SPCC Plan, the contractor shall assume that there are no preexisting sources of contamination at the project site.

Prevailing Wages

The contractor shall ensure that all employee compensation meets the requirements of both the State of Washington and Federal prevailing wage. Pay shall be the higher of the two wage rates. However, the contractor shall file monthly Wage Certification Summary reports with their draw requests to certify that prevailing wages are being paid.

Taxes

All Washington State taxes are preempted and do not apply to this project because the project is a treaty fishery activity being exercised by the Nooksack Indian Tribe. WAC 458-20-192(6)(b).

END OF NOOKSACK INDIAN TRIBE SUPPLEMENTAL PROVISIONS

SPECIAL PROVISIONS TO THE STANDARD SPECIFICATIONS

INTRODUCTION TO THE SPECIAL PROVISIONS

(July 8, 2024 APWA GSP, Option B) Modified

The work on this project shall be accomplished in accordance with the *Standard Specifications for Road, Bridge and Municipal Construction*, 2026 edition, as issued by the Washington State Department of Transportation (WSDOT) and the American Public Works Association (APWA), Washington State Chapter (hereafter “Standard Specifications”). The Standard Specifications, as modified or supplemented by these Special Provisions, and other documents provided by the Nooksack Tribe, or other applicable laws and policies, all of which are made a part of the Contract Documents, shall govern all of the Work.

These Special Provisions are made up of both General Special Provisions (GSPs) from various sources, which may have project-specific fill-ins; and project-specific Special Provisions. Each Provision either supplements, modifies, or replaces the comparable Standard Specification, or is a new Provision. The deletion, amendment, alteration, or addition to any subsection or portion of the Standard Specifications is meant to pertain only to that particular portion of the section, and in no way should it be interpreted that the balance of the section does not apply.

The GSPs are labeled under the headers of each GSP, with the effective date of the GSP and its source. For example:

(March 8, 2013 APWA GSP)
(April 1, 2013) for WSDOT GSPs, only use date
(May 1, 2013 §§§§ GSP) Agency Special Provision

Project specific special provisions are labeled without a date as such:

*(*****)*

Also incorporated into the Contract Documents by reference are:

- *Manual on Uniform Traffic Control Devices for Streets and Highways*, currently adopted edition, with Washington State modifications, if any
- *Standard Plans for Road, Bridge and Municipal Construction*, WSDOT Manual M21-01, current edition

Contractor shall obtain copies of these publications, at Contractor’s own expense.

*(*****)*

In the event there is a conflict between the Standard Specifications and contract documents or applicable Nooksack Indian Tribe laws or policies, the contract documents or Nooksack Tribal laws and policies shall govern.

Division 1 General Requirements

Description of Work

(March 13, 1995)

This contract provides for the improvement of *** the North Fork Nooksack River, in the Boyd Reach. The work includes, but is not limited to: Temporary traffic control as needed for mobilization and demobilization; temporary improvements of existing access routes within the project area; Clearing, grubbing, and salvage of material for use in Engineered Log Jam (ELJ) construction; ELJ construction including excavation, pile driving, and placement of specified materials; Mobilization and demobilization of temporary bridges as required to access required areas of the North Fork Nooksack River; Dewatering and fish protection in construction areas within and immediately adjacent to the active channel, and other work, all in accordance with the Contract Plans, these Contract Provisions, and the Standard Specifications.

1-01 Definitions and Terms

1-01.3 Definitions

This Section is supplemented with the following:

(*****)

The following substitution of words shall prevail in the Standard Specifications and these Special Provisions:

Wherever the word “State” is used, it shall mean NOOKSACK INDIAN TRIBE.

Wherever the words “Contracting Agency” are used they shall mean THE NOOKSACK INDIAN TRIBE, and/or the NOOKSACK NATURAL RESOURCES DEPARTMENT (as applicable).

Wherever the words “Department, Department of Transportation” are used, they shall mean THE NOOKSACK INDIAN TRIBE NATURAL RESOURCES DEPARTMENT.

Wherever the words “Commission, Washington State Transportation Commission” are used, they shall mean the NOOKSACK TRIBAL COUNCIL.

Wherever the words “Secretary, Secretary of Transportation” are used, they shall mean the NOOKSACK TRIBAL CHAIRPERSON.

Wherever the words “State Treasurer” are used, they shall mean Tribe Accountant.

Wherever the words “State Auditor” are used, they shall mean Tribe Auditor.

Wherever the words “Motor Vehicle Fund” are used, they shall mean Tribe Project Fund.

Wherever the words “Thurston County” are used, they shall mean Whatcom County.

Wherever reference is made bid opening and public reading of proposals, this shall be understood to mean opening of the bids in a location of the Tribe’s choosing. Nothing in the Bid Documents shall be interpreted as meaning that the Tribe will publicly read proposals.

Wherever, in the Contract, the specifications and other Contract documents, the following words and terms or pronouns in place of them are used, the meaning will be construed as follows:

Board, Board of Directors

The elective body having authority over Tribe matters as provided by law.

Owner Representative, Department, Public Works Department

The agent of the Board of Directors for the Tribe for the administration of project work; the GENERAL MANAGER.

County Road Engineer

Shall mean the same as the Design Engineer.

Engineer

Shall mean the same as the Design Engineer.

Laboratory

The laboratory designated by the Design Engineer.

Item of Work

For the purpose of this project, an item of work shall be considered a unit of work. Payment will be made for actual work performed at Unit Contract Price for completed units of work.

Contract Documents

See definition for “Contract”.

Contract Time

The period of time established by the terms and conditions of the contract within which the work must be physically completed.

Dates

- **Bid Opening Date** - the date on which the Contracting Agency opens the bids.
- **Award Date** - the date of the formal decision of the Contracting Agency to accept the lowest responsible and responsive bidder for the work.
- **Contract Execution Date** - the date the Contracting Agency officially binds the agency to the contract.
- **Notice to Proceed Date** - the date stated in the Notice to Proceed on which the contract time begins.
- **Substantial Completion Date** - the day the Contracting Officer determines the Contracting Agency has full and unrestricted use and benefit of the facilities, both from the operational and safety standpoint, and only minor incidental work, replacement of temporary substitute facilities, or correction or repair remains for the physical completion of the total contract.
- **Physical Completion Date** - the day all of the work is physically completed on the project. All documentation required by the contract and required by law does not necessarily need to be furnished by the Contractor by this date.
- **Completion Date** - the day all the work specified in the contract is completed and all the obligations of the Contractor under the contract are fulfilled by the Contractor. All documentation required by the contract and required by law must be furnished by the Contractor before establishment of this date.
- **Final Acceptance Date** - the date on which the Contracting Agency accepts the work as complete.

Drawings

All references to “Drawings” in the Standard Specifications, Amendments, or these Special Provisions shall be revised to read “Plans”.

Notice of Award

The written notice from the Contracting Agency to the successful bidder signifying the Contracting Agency’s acceptance of the bid.

Notice to Proceed

The written notice from the Contracting Agency or Contracting Officer to the Contractor authorizing and directing the Contractor to proceed with the work and establishing the date on which the contract time begins.

Traffic

Both vehicular and non-vehicular traffic, such as pedestrians, bicyclists, wheelchairs, and equestrian traffic.

Design Engineer

Refers to the firm and Engineer of Record and Licensed Geologist responsible for preparation of the Plans and these Special Provisions. The Design Engineer will support the Tribe and its representatives throughout construction. The Design Engineer does not have any direct contractual authority over the Contractor. Any time a standard specification or special provision requires approval, direction, or review by the Engineer, this shall mean that the Design Engineer will make a determination for the issue at hand and relay the finding(s) to the Tribe or Contracting Officer for implementation. The Contracting Officer will direct the Contractor to implement the Engineers recommendations, based on their best professional judgement since that is Engineers area of expertise.

1-02 BID PROCEDURES AND CONDITIONS

1-02.1 Prequalification of Bidders

Supplement this section with the following:

(*****)

The bid evaluation will include bid amount, review of record of permit compliance, Contractor availability, Contractor qualifications, record of past performance, financial and technical resources or accessibility to other necessary resources, experience working in sensitive aquatic environments, and applicable tribal law, including the Nooksack Indian Tribe Accounting Policies and Procedures Manual (available upon request).

The Tribe reserves the right to award the Contract amount based on any or all of the bid items listed, to restrict the Contract amount to the funds available, and to reject any or all bids for any reason whatsoever and waive formalities as the interest of the Tribe may require.

1-02.2 Plans and Specifications

This section is revised to read:

Any prospective bidder desiring an explanation or interpretation of the solicitation, Contract Plans, specifications, etc., must submit a request in writing to the Contracting Agency five (5) calendar days before the bid due date. The written request for information shall be by e-mail. E-mails for requests for information shall be sent to estover@nooksack-nsn.gov. Oral explanations or instructions given before the award of a Contract will not be binding. Any information given to a prospective bidder concerning a solicitation will be furnished promptly to all other prospective bidders by addendum to the solicitation, if that information is necessary in submitting bids or if the lack of it would be prejudicial to other prospective bidders.

Contract documents (Contract and Bid Forms) for project bidding purposes can be obtained from the Tribe. Please contact Eric Stover at 360-592-5140 ext. 3141 (office) or 360-303-7691 (mobile) or email to estover@nooksack-nsn.gov to arrange for distribution to obtain electronic or hard copies of the Contract documents.

1-02.4 Examination of Plans, Specifications, and Site of Work

This section is supplemented with the following:

(*****)

To be considered a responsive bidder, all potential bidders and representatives of potential bidders must attend a mandatory pre-bid site visit. Roll-call will be taken at the beginning and end of the mandatory pre-bid site visit to verify full attendance. Bidders and representatives of potential bidders whom do not attend the entire mandatory pre-bid site visit will be considered unresponsive. A mandatory Pre-Bid site walk through with representatives from the Contracting Agency and Engineer will be held on Wednesday, June 3rd, 2026 at 9:30 AM at the Project Site, a maximum of 2 people may attend on behalf of potential bidders. The Contracting Agency will disregard any bid submitted from a Prime Contractor that did not have a representative attend the Pre-Bid site walk through as documented by the prime contractor signing in and out. Some latent site conditions may be encountered that may affect the cost of the work, but must be accounted for in the bid. Pre-bid site visit instructions are included in this invitation to bid and are attached as Appendix B.

1-02.6 Preparation of Proposal

Section 1-02.6 is supplemented with the following:

(*****)

Cumulative Alternates Bidding

The Bid Proposal for this Contract requires the Bidder to bid cumulative Alternates as part of the bid. As such the Bidder is required to submit a Base Bid and a bid for each of the Alternate(s).

Bid Proposal

The Bid Proposal includes the following:

1. Base Bid

The Base Bid shall include constructing all items included in the Proposal *except* those items contained in the Alternate(s).

2. Alternate(s)

a. Alternate A1

Based on driving rather than excavating timber piles to embedment depths shown on the Plans.

The Bid items for Alternate A1 are as listed in the Bid Proposal.

Bidding Procedures

To be considered responsive the Bidder shall submit a price on each and every Bid item included in the Base Bid and all Alternate(s.)

The successful Bidder will be the Bidder submitting the lowest responsible Bid for the highest order Preference that is within the amount of available funds for the project. The bidders record of permit compliance, Contractor availability, Contractor qualifications, record of past performance, financial and technical resources or accessibility to other necessary resources, experience working in sensitive aquatic environments, and applicable tribal law including the Nooksack Indian Tribe Accounting Policies and Procedures Manual (available upon request) will also be considered. The Contracting Agency reserves the right to accept the proposal of the successful bidder, to reject any or all bids, republish the call for bids, revise or cancel the work to be performed, or do the work otherwise, if the best interest of the Contracting Agency is served thereby. The following are listed in order from highest to lowest Preference:

1. Preference 1: Lowest total for Base Bid plus Alternate A1.
3. Preference 2: Lowest total for Base Bid.

The Contracting Agency may, at their discretion, award a Contract for the Base Bid, without any additional Alternates, in the event that all Bids exceed the available funds announced. In any case, the award will be subject to the requirements of Section 1-03.

1-02.9 Delivery of Proposal

This section is revised to read:

No oral or telephonic bids or modifications will be considered.

The completed Bid Proposal Forms and any other documents required in accordance with the Special Provisions shall be mailed or hand-delivered to the office of Nooksack Natural Resources Department at P.O. Box 157 (mailing) or 5016 Deming Road (physical), Deming, WA 98244. Each proposal shall be sealed and submitted in an envelope, with the name of the project and Contractor on the outside.

Electronic proposals will be also accepted via email to Eric Stover (estover@nooksack-nsn.gov) in the form of a PDF file or files including scanned copies of the original signed non-collusion certificate and Bid Deposit. Original signed copies must be produced prior to award of Contract.

Bid proposals shall be submitted at the designated location prior to the date and time for receipt of bid proposals as indicated in the "Invitation to Bid", or

such revised date as may be specified by an addendum. Any part of the bid proposal or bid modification received after the time specified will not be considered and the bid will be returned to the bidder unopened.

1-02.12 Public Opening of Proposals

This section is revised to read:

There will not be a public bid opening. After the Contracting Agency Bid Opening, Plan Centers and Bidders will be notified of the selected bidder within 10 working days after the bid closure via phone, email and/or postal mail. Total Bid amounts received may or may not be announced with the bid award announcement.

1-03 AWARD AND EXECUTION OF CONTRACT

1-03.1 Consideration of Bids

This section is revised to read:

Bid proposals will be received at the time and place indicated in the “Invitation to Bid” or in an addendum, unless the Contracting Agency has withdrawn the request for bids. In the event of any discrepancies, the amount shown in words shall have precedence, an item’s unit price shall have precedence over the item extended unit price, and the arithmetic sum of the extended unit and lump sum prices shall have precedence over 1 the total amount of bid. Any alteration or erasure shall be initialed by the Bidder for the proposal to be considered.

It is the intent of the Contracting Agency to award a Contract to the Bidder based on cost and other factors identified in Section 1-02.1, the Nooksack Tribe’s Procurement Policy and provided the bid proposal has been submitted in accordance with the requirements of these contract documents and permits are obtained.

The right is reserved by the Contracting Agency to waive informalities in the bidding, reject any or all Bids, republish the Request for Bids, revise or cancel the Work, or require the Work to be done in another way if the best interest of the Contracting Agency is served.

1-03.2 Award of Contract

This section is revised to read:

Contract award and execution will be contingent upon final permit approval and Nooksack Tribal Council approval. If final permit approval is not obtained for

the outstanding permits that are pending final approval at the time of the project advertisement, the Tribe may delay or terminate the award of the Contract.

Normally, Contract Award or Bid rejection will occur within 15 calendar days after Bid opening. If the selected Bidder and the Contracting Agency agree, this deadline may be extended. If they cannot agree on an extension by the 15 calendar day deadline, the Contracting Agency reserves the right to Award the Contract to another Bidder or reject all Bids. The Contracting Agency will notify the successful Bidder of the Contract Award in writing and via email and/or phone call. Bidders will be notified of the selected bid within 10 working days after the closing date at the latest.

1-03.3 Execution of Contract

This section is revised to read:

The successful Bidder shall execute and return the signed Contracting Agency prepared Contract, a current W-9 form, insurance certifications as required by Section 1-07.18 and 1-07.18(2), and a satisfactory Contract Bond as required by law and Section 1-03.4 within **ten (10) calendar days** after bid award.

If the apparent successful Bidder fails to sign all Contractual documents or provide the Contract Bond and insurance as required or return the documents within ten (10) days after receipt of the Contract, the Contracting Agency may terminate the Bid award. Contract is subject to the approval of the Nooksack Tribal Council.

If the Bidder experiences circumstances beyond their control that prevents return of the Contract documents within 10 calendar days after the Award date, the Contracting Agency may extend the deadline for return of the documents, provided the Contracting Agency deems the circumstances warrant it.

1-03.4 Contract Bond

Item 1 of this section is revised to read:

1. Be on a standard surety provided form.

1-03.7 Judicial Review

(*****)

The section is replaced with the following:

Any decisions made by the Contracting Agency regarding the award and execution of the Contract or Bid rejection shall be conclusive and final. There shall be no judicial review of the decision.

1-04 SCOPE OF THE WORK

1-04.2 Coordination of Contract Documents, Plans, Special Provisions, Specifications, and Addenda

(December 30, 2022 APWA GSP)

This section is supplemented with the following:

All references to RCWs are used and viewed as an established baseline for the contract to follow in order to maintain acceptable construction practices but should not be interpreted as a waiver from the Nooksack Indian Tribe's sovereignty.

Revise the second paragraph to read:

Any inconsistency in the parts of the contract shall be resolved by following this order of precedence (e.g., 1 presiding over 2, 2 over 3, 3 over 4, and so forth):

1. Agreement,
2. Insurance Addendum (Construction – Non NAHSDA),
3. The Bid Set Contract Documents as listed in order of precedence below:
 - 3a. Proposal Form,
 - 3b. Supplemental Provisions,
 - 3c. Special Provisions,
 - 3d. Contract Plans,
 - 3e. Amendments to the Standard Specifications,
 - 3f. Standard Specifications,
4. Design Plans
5. WSDOT Standard Plans for Road, Bridge, and Municipal Construction,
6. Landowner Agreements with Contracting Agency,
7. Standard T&C (Construction – Non NAHSDA)
8. Debarment Certification,
9. Davis Bacon & Related Requirements – (Construction – DBRA)
10. Byrd Anti-Lobbying Certification (\$100,000.00),
11. Project Specific Permits,
12. Drug-free Workplace Requirements.

1-04.4 Changes

This section is supplemented with the following:

(*****)

If the Contracting Agency desires to order a change in the Work, it may request a written Change Order proposal from Contractor.

Due to the short and critical duration of these types of projects, Contractor shall submit a Change Order proposal within 48 hours of the request from the Contracting Agency, or within such other period as mutually agreed.

Contractor's Change Order proposal shall be for full compensation for implementing the proposed change in the Work, including any adjustment in the Contract Sum or Contract Time, and including compensation for all delays in connection with such change in the work and for any expense or inconvenience, disruption of schedule, or loss of efficiency or productivity occasioned by the change in Work.

Upon receipt of the Change Order proposal, or a request for equitable adjustment in the Contract Sum or Contract Time, Contracting Agency may accept or reject the proposal, request further documentation, or negotiate acceptable terms with the Contractor.

Pending agreement on the terms of the Change Order, the Contracting Agency may direct Contractor to proceed immediately with the Change Order Work. Contractor shall not proceed with any change in the Work until it has obtained the Contracting Agency's written approval. All Work done pursuant to any the Contracting Agency-directed change in the Work shall be executed in accordance with the Contract Documents.

If the Contracting Agency and Contractor reach agreement on the terms of any change in the Work, including any adjustment in the Contract Sum or Contract Time, such agreement shall be incorporated in a Change Order. The Change Order shall constitute full payment and final settlement of all claims for time and for direct, indirect and consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity, related to any Work either covered or affected by the Change Order, or related to the events giving rise to the request for equitable adjustment.

A request for an equitable adjustment in the Contract Sum shall be based on written notice delivered to the Contracting Agency within 48 hours of the occurrence of the event giving rise to the request. For purposes of this part,

“occurrence” means when Contractor knew, or in its diligent prosecution of the Work should have known, of the event giving rise to the request. If the Contractor believes it is entitled to an adjustment in the Contract Sum, Contractor shall immediately notify the Contracting Agency and begin to keep and maintain complete, accurate and specific daily records. Contractor shall give the Contracting Agency access to any such records.

Contractor shall not be entitled to any adjustment in the Contract Sum for any occurrence of events or costs that occurred more than 48 hours before Contractor’s written notice to the Contracting Agency. The written notice shall set forth, at a minimum, a description of:

- a. The event giving rise to the request for an equitable adjustment in the Contract Sum;
- b. The nature of the impacts to Contractor and Subcontractors, if any; and,
- c. To the extent possible, the amount of the adjustment in Contract Sum requested.

Failure to properly give such written notice shall, to the extent the Contracting Agency’s interests are prejudiced, constitute a waiver of Contractor’s right to an equitable adjustment.

When the request for compensation relates to a delay or other change in Contract Time, Contractor shall demonstrate the impact on the critical path of the schedule attributable to the change of Work or event(s) giving rise to the request for equitable adjustment. Contractor shall be responsible for showing clearly on the Progress Schedule that the change or event:

- a. Had specific impact on the critical path and, except in case of concurrent delay, was the sole cause of such impact; and
- b. Could not have been avoided by re-sequencing of the Work or other reasonable alternatives.

1-04.5(1)A4 Board Member Ongoing Responsibilities

Revise the first sentence of the fourth paragraph to read:

The Board shall comply with the terms of the Contract and enforce such terms consistent with the laws of the Nooksack Indian Tribe.

1-04.5(1)A5 Establishment of the Board

Revise the fourth paragraph to read:

The Contracting Agency, the Contractor, and the Board shall execute the Three-Party Agreement not later than the first Board meeting using a modified WSDOT Form 134-091 replacing Article XII with the following language:

XII. DISPUTES REGARDING THIS THREE-PARTY AGREEMENT

- A. Claims among the parties arising out of this agreement that cannot be resolved by negotiation and mutual concurrence and actions to enforce any right or obligation under this Agreement shall be initiated in the Nooksack Tribal Court.
- B. All questions shall be resolved by application of the laws of the Nooksack Indian Tribe.
- C. The DRB members hereby consent to the personal jurisdiction of the Nooksack Tribal Court.

1-04.5(1)A8 Standard Procedure for Consideration of Disputes

Revise the fourth sentence of the fifth paragraph of the section entitled Board Hearings to read:

The Contract shall be interpreted and construed in accordance with the laws of the Nooksack Indian Tribe.

Revise the third paragraph of the section entitled Acceptance of Board Recommendations to read:

In the event the Board’s recommendations do not lead to resolution of the dispute, the Board’s recommendation consisting solely of the Board’s written report and all written minority reports, along with the Board’s written clarifications and written responses to request for reconsideration, if any, will be admissible in any subsequent dispute resolution proceedings including, but not limited to litigation/arbitration. The use in any subsequent dispute resolution proceeding shall be subject to all applicable rules regarding the admissibility of evidence and neither party will have waived any objections, whether raised or not, to any evidence reviewed by the Board because they participated in the non-binding Dispute Review Board.

1-04.6 Variation in Estimated Quantities

(December 30, 2022 APWA GSP, Option B)

Revise the first paragraph to read:

Payment to the Contractor will be made only for the actual quantities of Work performed and accepted in conformance with the Contract. When the accepted quantity of Work performed under a unit item varies from the original Proposal quantity, payment will be at the unit Contract price for all Work unless the total accepted quantity of the Contract item, adjusted to exclude added or deleted amounts included in change orders accepted by both parties, increases or decreases by more than 25 percent from the original Proposal quantity, and if the total extended bid price for that item at time of award is equal to or greater than 10 percent of the total contract price at time of award.

1-04.11 Final Clean-up

This section is supplemented with the following:

(***)**

The Contractor shall place any surplus Contracting Agency-supplied woody material at ELJ locations, on gravel bars or access roads, and/or as directed by the Contracting Officer or Engineer.

1-05 CONTROL OF WORK

1-05.7 Removal of Defective and Unauthorized Work

(October 1, 2005 APWA GSP)

Supplement this section with the following:

If the Contractor fails to remedy defective or unauthorized work within the time specified in a written notice from the Contracting Agency or Engineer, or fails to perform any part of the work required by the Contract Documents, the Contracting Agency or Engineer may correct and remedy such work as may be identified in the written notice, with Contracting Agency forces or by such other means as the Contracting Agency may deem necessary.

If the Contractor fails to comply with a written order to remedy what the Contracting Agency or Engineer determines to be an emergency situation, the Contracting Agency or Engineer may have the defective and unauthorized work corrected immediately, have the rejected work removed and replaced, or have work the Contractor refuses to perform completed by using Contracting Agency or other forces. An emergency situation is any situation when, in the opinion of the Contracting Agency or Engineer, a delay in its remedy could be potentially unsafe, or might cause serious risk of loss or damage to the public.

Direct or indirect costs incurred by the Contracting Agency attributable to correcting and remedying defective or unauthorized work, or work the Contractor failed or refused to perform, shall be paid by the Contractor. Payment will be deducted by the Contracting Agency or Engineer from monies due, or to become due, the Contractor. Such direct and indirect costs shall include in particular, but without limitation, compensation for additional professional services required, and costs for repair and replacement of work of others destroyed or damaged by correction, removal, or replacement of the Contractor's unauthorized work.

No adjustment in contract time or compensation will be allowed because of the delay in the performance of the work attributable to the exercise of the Contracting Agency's rights provided by this Section.

The rights exercised under the provisions of this section shall not diminish the Contracting Agency's right to pursue any other avenue for additional remedy or damages with respect to the Contractor's failure to perform the work as required.

1-05.9 Equipment

Section 1-05.9 is supplemented with the following:

(*****)

If any equipment required for completion of a task listed on the critical path of the schedule, as defined in Section 1-08.3(2)A, should break down, it shall be repaired or replaced with equipment of similar capabilities within two working days. The Contractor shall have no claim for additional payment or for extension of time due to repair or replacement of any equipment.

1-05.14 Cooperation With Other Contractors

Section 1-05.14 is supplemented with the following:

(*****)

(March 13, 1995 *APWA GSP*)

Other Contracts or Other Work

It is anticipated that the following work adjacent to or within the limits of this project will be performed by others during the course of this project and will require coordination of the work:

*** Tree Salvage Work for Use within ELJs as part of FR37 Road Relocation Project***

1-05.15 Method of Serving Notices

Revise the second paragraph to read:

All correspondence from the Contractor constituting any notification, notice of protest, notice of dispute, or other correspondence constituting notification required to be furnished under the Contract, must be in paper format, hand delivered or sent via mail delivery service to the Contracting Agency's office. Electronic copies such as e-mails or electronically delivered copies of correspondence will not constitute such notice and will not comply with the requirements of the Contract.

Supplement this section with the following:

(*****)

Notices. Any notice provided for or concerning this Agreement shall be in writing and be deemed sufficiently given when sent by certified or registered mail to the respective address as set forth in this section:

If to Contractor:

If to Tribe:

Nooksack Indian Tribe
Attn: Eric Stover

5048 Mt. Baker Hwy
P. O. Box 157
Deming, WA 98244
Phone: (360) 592-5140 ext. 3141
And to:

Office of Tribal Attorney
P.O. Box 63
Deming, WA 98264
Phone: (360) 592-4158
Fax: (360) 592-2227

Add the following new section:

(*****)

1-05.16 Water and Power (New Section)

(October 1, 2005 APWA GSP)

The Contractor shall make necessary arrangements and shall bear the costs for power and water necessary for the performance of the work unless the contract includes power and water as a pay item.

1-05.17 Oral Agreements (New Section)

Add the following new section:

(*****)

No oral agreement or conversation with any officer, agent, or employee of the Contracting Agency, either before or after execution of the contract, shall affect or modify any of the terms or obligations contained in any of the documents comprising the contract. Such oral agreement or conversation shall be considered as unofficial information and in no way binding upon the Contracting Agency, unless subsequently put in writing and signed by the Contracting Agency.

1-06 CONTROL OF MATERIAL

1-06.1 Approval of Materials Prior to Use

Add the following new section:

(*****)

1-06.1(5) Select Submittals / Approvals

This list is provided for the convenience of the Contractor and may not be complete. Refer to the text of the Special Provisions and Standard Specifications for a complete description of Contract submittal requirements.

NAME	SPEC. SECTION
Temporary Work Access Plan	2-05.3(1)
Temporary Bridge Drawings	2-05.3(1)
Clearing and Work Access Limits	2-05.3(2)
Temporary Erosion and Sediment Control Plan	8-01.3(1)A1
Environmentally Acceptable Hydraulic Fluid	8-01.3(1)C6
ELJ Construction Plan	8-26.3(2)A
Proposed Pile Driving System	8-26.3(2)H
Notice of TWM Plan Implementation Meeting	8-31.3(1)B
Water Management Plan	8-31.3(2)A
Request for Fish and Aquatic Species Exclusion	8-31.3(6)

1-06.7(3) Review Schedule

Shop drawings and submittals will be reviewed as promptly as possible and transmitted to the Contractor no later than 7 working days after receipt by the Contracting Agency or Engineer. The Contractor shall revise and resubmit previously rejected submittals as necessary to obtain approval. Delays caused by the need for resubmittal shall not be a basis for an extension of contract time or delay damages. Submittals will be returned to the Contractor in electronic format after review.

1-06.7(4) Substitutions

Any product or construction method that does not meet these specifications will be considered a substitution. Substitutions must be approved prior to installation or use on this project, as specified below.

1-06.7(4)A After Contract Execution

Within 5 working days after the date of the Notice of Award of Contract, the Contracting Agency will consider formal requests from the Contractor for substitution of products in place of those specified. Contractor shall submit requests for substitution electronically in PDF format. Data shall include the necessary change in construction methods, including a detailed description of proposed method and related drawings illustrating methods. An itemized comparison of proposed substitution with product or method shall be provided.

In making a request for substitution, Contractor represents that it has personally investigated the proposed product or method and has determined that it is equal or superior to, in all respects, the product specified. All substitutions shall be reviewed and approved by the Contracting Agency prior to incorporation into the project. Upon review and acceptance by the Contracting Agency, Contractor shall coordinate installation of accepted substitutions into the work, making changes that may be required for work to be completed. Contractor waives all claims for additional costs related to substitutions that consequently become apparent.

1-06.7(4)B Equivalent Materials

Mention of equipment or materials by brand name and/or model number is occasionally made to establish a basis of quality for certain items of material, equipment, or processes. Such mention is intended to include products of other manufacturers that will meet the design standards of the product mentioned.

If the Contractor desires to use products other than those specified under this “or approved equivalent” provision, Contractor shall obtain the approval of the Contracting Agency or Engineer before entering an order therefore. All substitutions or products to be used under the “or approved equivalent” provision shall be reviewed and approved by the Contracting Agency prior to incorporation into the project.

Wherever mention is made of a specific manufacturer, such mentions shall be treated as if the phrase “or approved equivalent” appears thereafter whether or not in fact it does. The terms “or equal” and/or “or approved equivalent” shall be considered synonymous. Cost of all work under this section shall be included in the lump sum contract bid item of “Mobilization”.

1-07 LEGAL RELATIONS AND RESPONSIBILITIES TO THE PUBLIC

1-07.1 Laws to be Observed

**Section 1-07.1 is supplemented with the following:
(*****)**

The Contractor shall defend, indemnify and hold the Owner, its officers, directors, employees, and agents harmless from any and all claims, injuries, damages, losses, or suits, including attorney fees, arising out of or resulting from the acts, errors or omissions of the Contractor in performance of this Agreement, except for injuries and damages caused by the sole negligence of the Owner. In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the Owner, its officers, directors, employees, and agents, the Contractor’s liability, including the duty and cost to defend, hereunder shall be only to the extent of the Contractor’s negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor’s waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.

1-07.2 State Taxes

Delete this section, including its sub-sections, in its entirety and replace it with the following:

1-07.2 Tribal and State Taxes

(*****)

Washington State Sales Tax will not be collected or paid for work performed on this project. The work on this project is a treaty based fishing activity exercised by the Nooksack Indian Tribe and all state taxes are preempted. See RCW 458-20-192(6)(b).

1-07.16(4) Archaeological and Historical Objects

Section 1-07.16(4) is supplemented with the following:

(*****)

The Contractor shall comply with the Native American Graves Protection and Repatriation Act, 25 USC 3001 et. seq., 43 CFR 10, and Title 36 of the Nooksack Tribal Code (Cultural Resources Protection and Management Code). The Contractor shall comply with the “Inadvertent Discovery Plan for Archaeological Materials”, found in the appendix.

If earth disturbing activities during project construction uncover cultural materials (i.e. structural remains, historic artifacts, or prehistoric artifacts), all work shall cease and the Cultural Resources Management Office (CRMO) shall be notified immediately. The Contractor shall comply with the “Inadvertent Discovery Plan for Archaeological Materials”, found in the appendix.

1-07.16(4)A Inadvertent Discovery of Human Skeletal Remains

Section 1-07.16(4)A is supplemented with the following:

If earth disturbing activities during any area of the project uncover human remains, all work shall cease immediately in accordance with the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) and state statues RCW 27.44. The area around the discovery shall be secured and the Nooksack Indian Tribe’s CRMO and County Coroner shall be notified immediately.

1-07.26 Personal Liability of Public Officers

Section 1-07.26 is revised to read:

(*****)

Neither the Nooksack Indian Tribe, the Contracting Agency, the Owner, the Engineer, nor any of their officers, employees, agents or consultants shall be personally liable for any acts or failure to act in connection with the Contract, it being understood that in such matters they are acting solely as agents of the Nooksack Indian Tribe.

Add new section 1-07.29

1-07.29 Sovereign Immunity

Nothing in the Contract or Standard Specifications, or any other document referenced in an agreement between the Contractor and Contracting Agency, shall be construed or implied as a waiver of the sovereign immunity of the Nooksack Indian Tribe, the Nooksack Tribal Council, any subdivision, instrumentality, wholly owned entity, or affiliate of the Tribe or any of their respective officers, employees, or agents acting within the scope of their authority unless a waiver is explicitly stated and duly approved.

1-08.9 Liquidated Damages

Section 1-08.9 is revised to read:

The Contractor shall recognize that time is of the essence and that the project will incur additional costs if the Work is not completed within the time, plus any extensions thereof, allowed in accordance with the Contract. The Contracting Agency and the Contractor shall also recognize the inconvenience, expense, and difficulties involved in a legal proceeding to prove the additional project cost if the Work is not completed within the time allowed in the Contract and within the short window of time allowed for performance of time to complete the Work in accordance with Washington law. Further, the Contracting Agency and the Contractor recognize that the Contracting Agency is providing resources in support of project construction (labor, materials, and equipment); these resources are limited and as such, must be managed according to a detailed schedule. Accordingly, the Contracting Agency and the Contractor agree that as liquidated damages for delay, and not as a penalty, the Contractor shall:

1. Pay the Contracting Agency \$2,500 for each day during the in-water work window that delays in Work occur due to equipment malfunction or repair. Given the short time window available to complete the Work, the Contractor shall ensure that equipment, staff, and materials required to complete the Work and replacements or contingency measures thereof are in-place and deployed as quickly as possible.
2. Pay the Contracting Agency \$2,500 for each day beyond the permitted in-water work window ending date (August 15th, 2026 for installation of isolation measures and September 1st, 2026 for completion of in-water work) that in-water work is performed as well as for each day beyond the Physical Completion Date September 20, 2026 that the Contractor (or another party) requires to achieve physical completion of the Work. For the purposes of this section, in-water work is considered work within the wetted perimeter of any stream channel aside from removal of temporary bridges.
3. Pay the Contracting Agency \$250 for each day beyond the first workday of the week for which a Weekly Look-Ahead Schedule is not provided and discussed with the Contracting Agency or Engineer, up to a maximum of \$1,500 per week. The count of days-late shall reset at the start of a new week.
4. To authorize the Contracting Agency to deduct these liquidated damages from any money or sums due or owing to the Contractor. The Contractor further agrees that in the alternative, the Contracting Agency may seek actual damages for the Contractor's breach, which sum may be proved and fixed by the Tribal Court.

1-09 PROSECUTION AND PROGRESS

1-08.10(4) Payment for Termination for Public Convenience

Replace second paragraph with the following

If the Contracting Agency and the Contractor cannot agree as to the proper amount of payment, then the matter will be resolved as outlined in Section 1-09.13 except that, if the termination occurs because of the issuance of a restraining order as provided in Section 1-08.10(2), the matter will be resolved through litigation as described in Section 1-09.13(4).

1-09 MEASUREMENT AND PAYMENT

1-09.6 Force Account

Section 1-09.6 is supplemented with the following:

(*****)

No Force Account work shall be performed until written direction is provided by the Contracting Agency to the Contractor describing the work to be performed. The Contractor shall then, in writing, provide a list of labor and equipment, and an estimated time to complete the work, prior to engaging in any Force Account work. The Contracting Agency or Engineer must be on site to observe any Force Account work to be eligible for payment.

1-09.11(3) Time Limitation and Jurisdiction

(*****)

Replace with the following:

For the convenience of the parties to the Contract it is mutually agreed by the parties that all claims brought through the claims process described in Section 1-09.13 which the Contractor has against the Contracting Agency arising from the Contract shall be brought within 180 calendar days from the date of final acceptance (Section 1-05.12) of the Contract by the Contracting Agency. It is further agreed that all claims or causes of action shall be brought in the Nooksack Tribal Court. The parties understand and agree that the Contractor's failure to bring a claim within the time period provided, shall be a complete bar to any such claims. It is further mutually agreed by the parties that when claims which the Contractor asserts against the Contracting Agency arising from the Contract are filed with the Contracting Agency, the Contractor shall permit the Contracting Agency to have timely access to all records deemed necessary by the Contracting Agency to assist in evaluating the claims or action.

1-09.13 Claims Resolution

1-09.13(1)A General

1-09.13(1) Conditions Precedent to Binding Arbitration or Litigation

Replace the section header with the following:

1-09.13(1) Conditions Precedent to Litigation.

Replace Section 1-09.13(1)(A) with the following:
(*****)

Prior to seeking claims resolution through litigation, the Contractor shall proceed in accordance with Sections 1-04.5 and 1-09.11. The provisions of Sections 1-04.5 and 1-09.11 must be complied with as a full condition precedent to the Contractors' right to seek claim resolution through litigation.

Any claims or causes of action which the Contract has against the Contracting Agency arising from the Contract shall be resolved, as prescribed herein through litigation.

1-09.13(1)B Time Limitation

Replace Section 1-09.13(1)(B) with the following:

For the convenience of the parties to the Contract, it is mutually agreed by the parties that any litigation shall be initiated within 180 calendar days from the "acceptance date" described in 1-05.12, Final Acceptance. The parties understand and agree that the Contractor's failure to initiate litigation within the time period provided shall be a complete bar to any such claims or causes of action.

1-09.13(2) Mediation

Replace paragraph two with the following:

The mediation shall be conducted in Whatcom County within the State of Washington at a time and place mutually agreeable.

Replace paragraph three with the following:

The Contractor agrees that the participation in a mediation does not in any way waive the requirement that litigation proceedings must commence within 180 calendar days of final acceptance of the Contract, the same as other claims or cause of action as provided in Section 1-09.11(3).

1-09.13(3)A Arbitration General

Delete this section.

1-09.13(3)(B) Procedure to Initiate Arbitration

Delete this section

1-09.13(3)C Limitations on Arbitration Related to Physical Completion

Delete this section:

1-09.13(4) Venue for Litigation

Litigation shall be brought in the Nooksack Tribal Court. It is mutually agreed by the parties that when litigation occurs, the Contractor shall permit the Contracting Agency to have timely access to all records deemed necessary by the Contracting Agency to assist in evaluating the claims or action. This Section 1-09.13(4) shall not constitute or imply a waiver of the Contracting Agency's sovereign immunity.

END OF DIVISION 1

**Division 2
Temporary Features**

Insert the following new section:

(*****)

2-05 Temporary Work Access

2-05.1 Description

The Contractor shall construct, maintain, decommission, remove, and cleanup temporary access roads, temporary stream crossings, and materials staging areas on the project site. The Temporary Work Access and Staging Area Plan and Temporary Stream Crossing Details in the plans are examples and shall be modified by the Contractor as part of their Temporary Work Access and Stream Crossing Plan submittal.

2-05.2 Materials

Maintenance Rock

9-03.9(4)

2-05.2(3) Hogfuel

Hogfuel shall be a mix of any native species of untreated shredded wood bark, sawdust, planer shavings, and/or wood chunks produced by a chipper or mill. The material shall be coarse. Hogfuel shall be free of dirt, weeds, invasive vegetation, rocks, metal, plastics, paper, and other debris.

2-05.2(4) Temporary Bridges

The Contractor shall be responsible for designing and installing temporary bridges. Temporary bridges shall support all necessary equipment required to complete the Work shown. The temporary bridge system may utilize approach ramps constructed from native borrow material on-site from locations approved by the Contracting Agency. Wood supplied by Contracting Agency or procured for ELJ construction shall not be used for bridges or stream crossings. Treated wood shall not be used on temporary stream crossings or in locations in contact with or directly over water.

Review the HPA for the project for additional requirements.

2-05.3 Construction Requirements

2-05.3(1) Temporary Work Access and Stream Crossing Plan

The Contractor shall submit Type 2 Working Drawings to the Contracting Agency that shows the location and details of all the contractor's proposed access roads, staging areas, and stream crossings. Details shall include:

1. Location of equipment storage, maintenance, and refueling areas.
2. Location and type of spill-response kits.
3. Location, width, clearing limits, and surfacing of all temporary access roads
4. Location, span, and vertical clearance (from channel bed to girder) of all stream crossings
5. Type and dimensions of all bridge components including abutments and foundation, structural span members, deck, and wearing course material.
6. Schedule for installation, operation and maintenance, and removal of each segment of access road and individual stream crossing.

2-05.3(2) Temporary Access Roads and Staging Areas

Once the Contractor's Temporary Work Access and Stream Crossing Plan has been approved by the Contracting Agency, the Contractor shall implement their plan with the following requirements.

Prior to installing access routes or staging areas, the Contractor shall stake or flag all proposed access route centerlines, clearing limits, stream crossing locations, and staging areas for the Contracting Agency to review. The Contractor shall provide a minimum of 3 working days for the Contracting Agency to review the stakes.

Utilities have not been located by the Contracting Agency. The Contractor is responsible for locating utilities in the project area prior to ground disturbing activities and taking appropriate actions to protect any utilities identified per Section 1-07.16 and 1-07.17.

Refueling or storage or mixing of potentially environmentally harmful fluids shall not occur within 300 feet of the ordinary high-water line, or as otherwise listed in the applicable permits and Contracting Agency's direction. Equipment staging and refueling area shall be identified on the Temporary Work Access and Stream Crossing Plan submittal per 2-05.3(1).

When planning for and installing temporary access routes, the Contractor shall:

1. Not establish temporary access routes on slopes where grade, soil, or other features suggest a likelihood of erosion or failure.
2. When grading is required to descend slopes, excavate roads at no steeper than 10%, unless steeper is approved by the Contracting Agency, and provide shaping and surfacing to maintain a stable access road for the duration of the Work.
3. Use existing or previously commissioned roadways whenever possible.
4. Use dry unvegetated gravel bars and avoid vegetated surfaces whenever possible.
5. When soft or unsuitable driving surfaces are encountered, replace driving surfaces with suitable aggregate sourced from on-site areas approved by the Contracting Agency.
6. Leave standing any trees or native growth indicated by the Contracting Agency.

7. Protect, by fencing, if necessary, all trees or native growth from any damage caused by construction operations.
8. When felling trees approved for clearing by the Contracting Agency, tip trees with rootwads in-tact.
9. Stockpile all tipped trees and for use within ELJs. Tipped trees shall be placed within ELJs as racking as directed by the Contracting Agency and incidental to ELJ installation work.
10. Clear and grub invasive vegetation, if encountered within approved clearing limits, and stockpile separately. The Contracting Agency will specify how to dispose of any invasive vegetation.

2-05.3(3) Temporary Stream Crossings

Stream crossings shall cross channels at right angles whenever feasible and not increase velocity to the threshold of eroding and scouring of the streambed or bank material. The low chord of any temporary bridge shall have a minimum of 1 foot of freeboard above the maximum water surface elevation expected during the time that the temporary bridge is in place. Establishing abutments within actively flowing channels shall be completed in accordance project permits for in-water work.

2-05.3(4) Removal and Decommissioning

All access routes below ordinary high water shall be decommissioned and all temporary bridges or stream crossings removed before the end of the in-water work window unless otherwise approved by the Contracting Agency and in compliance with project permits.

All imported bridge materials shall be removed from the site. Bridge approaches and channel banks shall be regraded to pre-project conditions.

For temporary access routes and staging areas in unimproved areas, remove any materials used to construct the access routes, including surplus soils, stabilization materials, flagging, stakes, geotextile, oil, chemicals, plaster, concrete, and debris from the construction site. Remove and dispose of all deleterious material. De-compact access roads and stockpile areas in unimproved areas by scarifying soils to a depth of 12-inches.

2-05.4 Measurement

The lump sum Bid item “Temporary Work Access” shall not be measured.

2-05.5 Payment

Payment will be made for the following Bid item when it is included in the Proposal:

“Temporary Work Access”, lump sum.

The unit lump sum Contract price for “Temporary Work Access” shall be full payment for developing submittal(s), creating, maintaining, decommissioning, and cleanup of all temporary access routes, stream crossings, and staging areas including procuring, placing, and maintaining bridges, aggregate surfaces, or other treatments and best management practices used to maintain construction access to work areas.

Progress payments for the lump sum item “Temporary Work Access” will be made as follows:

1. Five percent of the Bid amount will be paid following completion of the Temporary Work Access and Stream Crossing Plan including resolution of all Contracting Agency review comments.
2. Seventy-five percent of the Bid amount will be paid proportionately per ELJ completed upon completion of that ELJ using the formula:

Payment per ELJ completed = $0.75 * \text{Bid Amount} / \text{number of ELJs requiring Temporary Work Access}$. If the quantity of ELJs is adjusted from that which was bid on (reduced or increased), the Bid Amount will be adjusted based on the unit cost value for each ELJ. For example, a \$100,000 Lump Sum Bid Amount for a bid quantity of ten ELJs results in a unit cost value of \$10,000 per ELJ. If only eight ELJs are constructed, the Bid Amount is adjusted to \$80,000 and then used in the formula listed in Lines 23 and 24 for Payment per ELJ completed.

3. The remaining twenty percent of the Bid amount will be paid upon removal of all Temporary Work Access and Stream Crossings and site rehabilitation.

Division 8

8-26 Vacant

Replace Section 8-26 with the following:

(*****)

8-26 ELJ Construction

8-26.1 Description

Work under this item includes furnishing racking logs and providing all labor, tools, and equipment necessary to sort and stage timber materials provided by the Contracting Agency from an adjacent timber clearing project on USFS land. This work also includes all labor, tools, and equipment to install ELJs as shown in the Plans using wood provided by the Contracting Agency.

8-26.2 Materials

8-26.2(1) Wood for Engineered Logjam Construction

8-26.2(1)A Rootwads for Engineered Logjam Construction

Rootwads will be provided by the Contracting Agency under a separate contract associated with the adjacent FR37 road construction project on USFS lands.

A separate contractor will tip and buck trees within the adjacent project’s clearing limits and create stockpiles of salvaged trees at locations shown on the Plans. Trees will be sorted approximately by the size classes below:

Table 2. Approximate quantity and size class of salvaged trees cleared by others for use within ELJs.

DBH Class	Available Quantity	Preferred Length (ft)	Min. Length (ft)	Potential Use in ELJ
12-18"	31	90	60	Large racking
19-24"	98	90	60	Rootwad posts
25-31"	102	90	60	Rootwad posts or intermediate key members
32-40"	76	90	60	Large key member
41-48"	18	90	60	Key member in ELJ or ‘unanchored’ placement adjacent to ELJs

This Contract requires the Contractor to coordinate with the Contracting Agency, and potentially with the USFS’s road contractor, to move stockpiles of salvaged trees into log decks located near ELJ sites organized by DBH classes specified in Table 1 and the ELJ material schedule.

8-26.2(1)B Racking

The Contractor shall furnish racking logs for ELJ construction and stage the materials near ELJ sites. Logs furnished for racking material shall be individual logs with or without rootwads. A minimum of 70% of the total number of pieces furnished shall be from coniferous tree species and have diameters that vary between 6 and 12 inches such that no more than 50 percent of the total number of racking pieces falls below 9 inches. Diameter shall be measured at the butt end.

Racking used to construct tight racking bundles shall be the length specified for the bundle ± 2 feet. Racking logs used for tight racking bundles shall not have rootwads. Racking placed as loose racking shall be the length specified on the plans ± 5 feet with at least 50 percent of the material being the specified length or longer.

8-26.2(1)C Slash

Slash generated by others during tree salvage operations shall be moved and stockpiled at ELJ sites for incorporation into ELJs.

Slash consists of vegetative debris including, but not limited to, small trees, blasted or pushed-out stumps, chunks, broken tops, limbs, branches, brush, or saplings of native tree species.

8-26.2(1)D Rootwad Posts

Rootwad posts will be provided by the Contracting Agency and shall be selectively sorted by the Contractor with Contracting Agency oversight. Rootwad Posts shall be preferentially selected from Douglas-fir with a minimum DBH of 19-inches and a maximum of 31-inches. The Contracting Agency will specify which trees shall be selected for rootwad posts. Rootwads used for rootwad posts shall also be preferentially selected when they have rootwad diameters of no less than 6 feet. Taproots and minor roots which measure less than 3 inches in diameter may be trimmed from the outside of the rootwad to meet the minimum rootwad fan diameter to facilitate installation of buried posts. All trimming of rootwads must be approved by the Contracting Agency or Engineer.

8-26.2(1)E Timber Pile

Timber Piles will be provided by the Contracting Agency and shall be selectively sorted by the Contractor with Contracting Agency oversight. Timber piles shall be preferentially selected from Douglas-fir with a minimum butt diameter of 18-inches and a maximum of 20-inches. The Contracting Agency will specify which trees shall be selected for timber piles. It is preferred that the Timber Piles be cut from the ends of selected rootwad posts. Trees and bucked logs proposed for timber piles shall be relatively straight, free of sweeps and curves, knots, rot, and variations that could make more difficult or subject the pile to damage while driving.

8-26.2(2) Mechanical Connections for Engineered Logjams

8-26.2(2)A Chain and Connection Hardware

The Contracting Agency will provide all chain and connection hardware. Chain will be 1/2-inch diameter carbon steel with a minimum working load limit of 11,000 lbs. Fasteners will be a combination of pin-bolt shackles and ratchet-binders with removable handles.

8-26.2(2)B Manila Rope

The Contracting Agency will provide manilla rope for racking bundles. Manila rope supplied for assembling racking bundles will be a minimum of 1-inch diameter with a minimum breaking strength of 8,000 lbs.

8-26.3 Construction Requirements

8-26.3(1) Wood Sorting and Staging

This Contract requires the Contractor to coordinate with the Contracting Agency, and potentially with the USFS's road contractor, to move stockpiles of salvaged trees into log decks located near ELJ sites organized by DBH classes specified in Table 1 and the ELJ material schedule. All log decks shall be easily accessible from at least two sides by heavy equipment to facilitate picking and handling logs within the project area. A portion of the salvaged trees requiring handling likely weigh more than 20,000 lbs.

Two primary tree salvage stockpile areas are shown on the Plans. The primary stockpile is adjacent to the in-water work area along FR37, and the secondary stockpile is approximately 2.5-miles west of the project site. The quantity of trees staged at the secondary stockpile will not be realized until the other contractor's work is underway. If hauling is required from the secondary stockpile, that work will be paid by Force Account.

At all times when logs are being handled, loaded, unloaded, and placed, the Contractor shall exercise care to minimize damage to logs and rootwads. All logs with rootwads shall be handled by grasping the bole of the log; transporting or lifting logs with rootwads by grabbing the rootwads with an excavator bucket or similar equipment shall not be allowed. Similarly, full trees, treetops, and logs with branches shall be handled in a manner that minimizes damage to branches. A log shovel with an articulating grapple hook or excavator bucket with an articulating bucket is highly recommended, but not required, for handling and placing logs. If salvaged trees weigh more than can be safely operated with a heavy-lift forestry machine (e.g., +/-100,000 lbs. gross weight and +/-300 HP), trees may be bucked to shorter lengths to reach a manageable weight. Bucking may only occur with Contracting Agency approval.

When required to be transported via truck, wood material with branches shall not be overloaded or compressed. This may increase the total number of trips required to transport wood material with branches. The Contractor shall plan on these additional measures, and all costs associated with these measures shall be incidental to other Bid items.

At the Contractor Agency's discretion, logs, rootwads, and wood material damaged during transport and handling by the Contractor shall be replaced at the Contractor's expense.

Wood shall not be staged in areas prone to flooding during the period in which it will be stored.

8-26.3(2) ELJ Structure Installation

The Contractor may elect to construct ELJs in any sequence provided the arrangement of the finished structure matches that shown on the Plans or as directed by the Contracting

Agency or Engineer and that piles and posts are installed at the locations and depths specified in the Plans.

Construction of ELJ structures is subject to in-water work window requirements and shall occur while the temporary stream diversion is fully active or approved dewatering methods are in place, as needed.

8-26.3(2)A Instream Construction Plan

The Contractor shall submit an Instream Construction Plan in accordance with the requirements of a Type 2 Working Drawing and these Specifications.

The Instream Construction Plan shall provide the following information in the following order:

1. Schedule and Sequence
 - a. Provide a sequence of Work, dates, and durations for when the following will occur in accordance with the in-water work window in the Special Provisions:
 - i. Site preparation at each ELJ site
 - ii. Timber pile driving or post installation
 - iii. Temporary Water Management (submit a TWM Plan per Section 8-31)
 - iv. Excavation
 - v. Log placement and structure assembly
 - vi. Finished grading
 - vii. Removal of TWM, access roads, and restoring the site to natural contour.
 - b. The Contractor shall coordinate with the Contracting Agency regarding anticipated scheduling of construction with updates to the anticipated schedule provided to the Contracting Agency on a weekly basis.
2. Construction Methods
 - a. List all machinery and the purpose of each piece of machinery used.
 - b. Describe the number of crews and the sequencing construction. Describe how many ELJs will be constructed at once and what activities (e.g., excavation, pile driving, log placement) will be occurring simultaneously.
 - c. Ensure that a Pile Driving Plan is submitted per Section 8-26.3(2)H.

8-26.3(2)B Stakeout

The ELJ Structure stakeout points shown on the Plans will be staked by the Contracting Agency or Engineer. The Engineer will specify the channel reference elevation and provide an elevation hub at each ELJ site, or provide a hub that can reference multiple ELJ sites. The Engineer will specify the structure bottom elevation after the channel reference elevation is established. The Engineer will scribe the structure bottom elevation

on the stakes set at each stakeout point. Stakeout point locations for each ELJ site are shown on the Plans.

The Contractor shall stake clearing and excavation limits, and pile/post locations based on the reference points staked by the Engineer, and shall be verified and may be adjusted by the Contracting Agency or Engineer.

8-26.3(2)C ELJ Site Preparation

The area available at each ELJ location for heavy equipment to place ELJ elements is limited, and the Contractor shall consider this when determining appropriate equipment to perform the Work.

The Contractor shall clearly mark with stakes, flagging, or paint all clearing limits and excavation limits at each ELJ site for review and approval by the Contracting Agency or Engineer. The Contractor may clear vegetation within and adjacent to Work limits as approved by the Contracting Agency or Engineer. The Contractor shall make every effort to minimize vegetation disturbance and any material cleared as part of construction process shall be placed in front or within the structure as racking or slash material.

Natural logjams shall be avoided if possible. Any natural logjams or wood debris in Work areas shall be relocated with care to not destroy them. Wood debris and any natural logjams that are relocated are to be either reconstructed following completion of ELJs or incorporated into the ELJs as directed by the Contracting Agency or Engineer and incidental to other bid items.

8-26.3(2)D ELJ Excavation and Wood Placement

The Contractor shall perform any excavation necessary to install the ELJ to the depth or elevations shown on the Plans. This includes excavating of the structure footprint to the structure bottom elevation including any additional trenching or grading required to create a safe working area. Excavation will occur below groundwater and require dewatering for wood placement, which will be paid separately.

The Contractor shall determine the necessary side slopes, benching, or shoring of excavation walls to prevent collapsing of excavation walls and to allow dewatering, timber pile driving, log and post placement, and mechanical connections. Excavated material shall be temporarily staged adjacent to the ELJ Work area and be protected from erosion or entrainment by streamflow.

When shown on the Plans, the Contractor shall excavate a scour pool associated with the ELJ. Scour pool dimensions shown on the Plans are approximate and are subject to modification as directed by the Contracting Agency or Engineer based on topography and river conditions at each ELJ site.

Wood placement for ELJ construction shall match the orientation shown in the Plans. Log pitch, orientation, and proximity to other components of the ELJ shall be as shown in the Plans. Logs shall be placed such that they contact piles or posts specified for mechanical connections. The Contracting Agency or Engineer may adjust how the logs thread between specific piles or posts based on inconsistent timber sizes, deviation in the horizontal location of piles or posts, or to accommodate specific site conditions such as steep cut banks or otherwise. Logs where no mechanical connections are required can vary slightly in their alignment, orientation and spacing as approved by the Contracting Agency or Engineer.

Rootwad ends shall extend into the scour pool to the dimensions shown in the Plans. The purpose of the rootwads is to provide structural matter to weave, thread, and interlock the racking between and within. Racking logs shall be placed in an irregular, interlocking, and random matter and be pinned between rootwads and piles and posts when possible. The racking shall be constructed as a continuous face from the structure bottom elevation up to the specified top elevation and extend into the pool outside of the piles and posts the minimum width shown in the plans.

Stockpiled material shall be backfilled following placement of logs, racking material, and slash at the layers specified in the Plans. Backfilled material shall be placed in lifts of not more than 24 inches and compacted with the bucket of an excavator or similar means to a firm and unyielding condition.

8-26.3(2)E Racking Bundle Assembly

The Contractor shall assemble racking bundles for use in constructing ELJs as shown in the Plans. The recommended approach for constructing bundles is to first construct a frame with internal dimensions matching these required dimensions and then stacking racking material within the frame. Racking logs in the racking bundle shall lie parallel with one another and shall be packed tightly. Once logs for a bundle are placed, the bundle shall be secured with manila rope so that no slack can be detected when manual tension is applied. Bundles shall be secured before transport and shall not be damaged during transport to the ELJ location. Other means and methods of constructing racking bundles are acceptable provided they match the required dimensions shown on the Plans and are secured by readily biodegradable materials. If the Contractor elects to utilize wire clips to secure manila rope, the Contractor shall furnish all required wire rope clips at no cost to the Contracting Agency.

8-26.3(2)F Chain Lashings

The Contractor shall install mechanical connections, including chain lashings and connections, as shown on the Plans. The Work area shall be dry when connections are made so that the Contracting Agency or Engineer can inspect the connection. Logs where connections are made shall contact the vertical members and/or horizontal members as shown.

A completed connection shall have no visible slack or sagging of connected members. All loops and wraps shall be neatly dressed, tight, and square to the connected logs and piles being connected with the lashing. The lashing shall be tight enough that no slack can be detected when manual tension is applied to any portion of the lashing. Remaining tails on lashings shall be removed. Completed connections that do not meet these requirements shall be corrected at no additional cost to the Contracting Agency.

The tag end of the chain shall be temporarily secured to a log or pile as appropriate to hold it in place and allow for manual tension to be applied while the loops, wraps, and crosses of the chain lashing are established. The chain shall be tensioned to the maximum amount achievable by using a ratcheting chain binder or other approved approach, and shall prevent any movement or rotation of both logs secured in the chain lashing.

8-26.3(2)G Rootwad Posts

Rootwad posts shall be installed to the design depths at the locations specified on the Plans. Rootwad posts shall be installed within 2 feet horizontally of specified locations. The Contractor shall excavate below the structure bottom elevation to set the rootwad posts at the design elevation. Use of trench box or other similar shoring means may be required based on soil and groundwater conditions at the time of construction. Excavation for rootwad posts will occur below the groundwater level. Dewatering for rootwad post installation is not required, as long as the depths can be met and readily verified.

The Contractor shall verify the post bottom elevation by levelling off an established elevation hub to the embedment mark on the post. The embedment depth on the Plans is relative to the structure bottom elevation and is measured from the top of the rootwad fan. Backfill around the posts following rootwad placement in 2-foot lifts and bucket tamp each lift. Following the assembly of ELJ and after each mechanical connection is made, the rootwad post tops shall be sawcut as shown on the Plans.

8-26.3(2)H Timber Pile Driving

The Contractor shall prepare timber piles from the Contracting Agency-provided trees. The Contractor will select trees for use as piles based on the material requirements, and the Engineer or Contracting Agency will review and approve the trees for use as pile. The Contractor shall buck the pile to length, limb, and shape the tip and butt for driving. The tip may be pointed to assist with pile advancement, and the butt end may be shaped to fit the pile driving system follower.

The Contractor shall provide either an impact or vibratory pile driving system capable of achieving a minimum of 5-feet of embedment into gravely to bouldery substrate to reach the minimum tip embedment depth shown in the Plans. No geotechnical investigation has been performed, though no pile capacity testing is required.

If vibratory pile driving is proposed by the Contractor, and pile refusal is met before the minimum embedment depth, the Contractor shall provide a steel pipe (shell or H-pile) to

spud the pile holes prior to driving the timber pile. The Engineer will specify when spudding shall be utilized by the Contractor. Spudding with steel pile is incidental to Timber Pile driving.

Prior to mobilizing pile driving equipment to the site, the Contractor shall submit a Pile Driving Plan to the Engineer. The Contractor is solely responsible for examining the site and determining one or more pile driving approaches which are suitable for use and capable of driving piles at the locations, depths, and batter angles shown on the Plans while meeting all requirements of the project permits.

Piles shall be embedded the total and minimum embedment depth shown in the Plans. The Contractor may elect to drive the full pile embedment depth shown in the Plans, or excavate the maximum allowable depth and then drive the minimum allowable depth to reach the total embedment depth. The Engineer will determine if refusal is met prior to reaching the minimum driven embedment depth. Driving refusal will depend on the driving system chosen and be determined by the Engineer upon review of the Contractor's pile driving plan.

The horizontal tolerance for each timber pile after driving shall be within two feet of the Plan location. Piles driven outside of two feet of the Plan location shall be marked and the Engineer shall be notified immediately to assess function and determine if remaining piles within the structure require adjustment to allow placement of logs. Misaligned piles may be pushed or pulled laterally as directed by the Engineer to achieve the specified alignment. Piles shall be plumb, unless designated as batter piles, to within 2 percent the total length of the pile unless approved by the Engineer.

8-26.3(2)I Cleanup

Excess backfill material shall be placed on the backside of ELJs or spread as directed by the Contracting Agency or Engineer. The top elevation of fill placed behind ELJs shall not exceed the height shown on the Plans. Side slopes and grade transitions shall be graded at a smooth taper and slopes steeper than 2 horizontal to 1 vertical shall not be left in place.

Disturbed areas around the ELJ construction sites shall be bladed to remove machinery tracks and artificial mounds of material and shall be restored per the criteria for access roads in Section 2-05.3(3). The channel bed surface shall be returned to the pre-project elevation immediately outside of any ELJ structure. Any temporary working pads, platforms, or trenches shall be regraded to the pre-project contours.

8-26.3(3) Additional Grading, Wood Placements, and Cleanup Work

The Contracting Agency or Engineer may direct additional work such as: placing extra salvaged trees across gravel bars, side channels, ELJ pool or backfill areas, existing forested margin areas or eroding banks, in small arrangements or entangled and adjacent to completed ELJs; minor excavation to trench and bury portions of salvaged trees with rootwads within the floodplain, channel, or gravel bar surfaces; re-configuring natural logjams; minor

grading and shaping of bars or natural channels to create flow paths; or spreading of slash or timber debris across proposed planting areas (by others). The Contracting Agency or Engineer will prepare written direction for proposed Force Account activities prior to commencing of Work. The Contractor shall review and provide an estimate for the labor and equipment time necessary to complete the work. Upon agreement, the Work shall commence with oversight from the Contracting Agency or Engineer.

8-26.4 Measurement

No measurement will be made for the lump sum item “Wood Sorting and Staging”.

Racking logs will be measured per each log delivered to the site and accepted by the Contracting Agency.

Type 1 and 2 ELJs will be measured per each installed.

Driven timber piles will be measured per each driven to the design depth.

8-26.5 Payment

Payment will be made for the following Bid items when included in the Proposal:

“Wood Sorting and Staging”, by lump sum.

The lump sum contract price paid for “Wood Sorting and Staging” will include full compensation for furnishing all labor, tools, and equipment for coordinating with the Contracting Agency and their other contractors, inventorying salvaged tree stockpiles, sorting, loading, hauling, unloading, and staging wood that has been cleared by others into organized stockpiles by ELJ sites for use in ELJ construction. The lump sum cost shall remain unchanged for sorting within 10% of the tree quantities listed in the 8-26.2(1)A. If the quantity of ELJs is adjusted from that which was bid on (reduced or increased), the Bid Amount will be adjusted based on the unit cost value for each ELJ requiring wood sorting and staging. For example, a \$100,000 Lump Sum Bid Amount for a bid quantity of ten ELJs results in a unit cost value of \$10,000 per ELJ. If only eight ELJs are constructed, the Lump Sum Bid Amount is adjusted to \$80,000.

“Furnishing Racking Wood”, per each.

The unit contract price paid for “Furnishing Racking Wood” will include full compensation for furnishing, delivering, and staging racking logs at the project site into organized stockpiles by ELJ sites for use in ELJ construction.

“Type ___ ELJ Installation”, per each.

The unit contract price paid for “Type ___ ELJ Installation” will include full compensation for furnishing all labor, materials, tools, equipment and incidentals for completing all Work required for installation of the structure as described in the Plans, and these Special

Provisions which may include, but is not limited to the following: hauling, and temporary staging of wood; hauling, and placement of any additional necessary materials as shown on the project Plans, ELJ site preparation, ELJ excavation and backfill, excavation for rootwad posts and timber piles, placement of logs, placement of racking material, final grading for a smooth transition, installation of all mechanical connections as shown on the Plans, and other Work that may be needed. Excavation to reach the structure bottom elevation, and to install piles and posts, is incidental to ELJ installation Bid items. If the contractor contests the average excavation quantities provided in the Bid plans, the Contractor shall provide survey notes and takeoff calculations for the Engineer and Contracting Agency to review and discuss if any change order is warranted. Excavation quantities that exceed the average listed value at any given ELJ site are not grounds for change order. If total excavation quantities estimated for the project exceed 10% from that estimated on the Bid plans, a change order may be negotiated. No payment shall be made until the Contracting Agency or Engineer has reviewed and approved a completed ELJ structure. Any deficiencies noted shall be the responsibility of the Contractor and payment will not be released until the noted deficiencies are addressed to the satisfaction of the Contracting Agency or Engineer.

“Timber Pile Driving” (Alternate Bid Item), per each.

The unit contract price paid for “Timber Pile Driving” will include full compensation for furnishing all labor, tools, and equipment to drive Contracting Agency-provided timber piles in the locations and to the depths shown on the Plans for ELJ structures. Payment also includes work for bucking, limbing, and otherwise preparing timber piles for driving from Contracting Agency-provided trees. Payment will only be made for timber piles driven to depths with an approved vibratory or impact pile driver. The price paid includes driving up to the total pile embedment depth and no additional payment will be made if the Contractor elects to drive more pile length than the minimum shown in the Plans. If a vibratory pile driving system is proposed by the Contractor, the unit contract price also includes providing steel pile to spud pile holes before driving timber pile. Excavation and placing of vertical logs does not constitute payment for Timber Pile Driving.

“Additional Grading, Wood Placements, and Cleanup”, by Force Account per 1-09.6. To provide a common Proposal for all Bidders, the Contracting Agency has entered an amount in the Proposal to become a part of the Contractor’s total Bid.

“Wood Haul from Secondary Stockpile” (Alternate Bid Item), by Force Account per 1-09.6. To provide a common Proposal for all Bidders, the Contracting Agency has entered an amount in the Proposal to become a part of the Contractor’s total Bid.

8-31 Temporary Stream Diversion

Section 8-31 is renamed:

(*****)

8-31 Temporary Water Management

8-31.1 Description

This section is supplemented with the following:

(*****)

This work includes full stream diversion, local site isolation, and dewatering in-stream or upland work areas (including groundwater), environmental compliance, and other Work as detailed in these Specifications in accordance with project Permit requirements.

All references in this section to “TSD” or “temporary stream diversion” are replaced with “TWM” and “temporary water management”.

8-31.2 Materials

This section is supplemented with the following:

(*****)

8-31.2(1) Plastic Sheeting

Plastic sheeting used in construction of cofferdams or other site isolation measures shall have a minimum thickness of 10-mil and shall be wide enough to allow secure anchoring to the channel bed on the inner and outer sides of the cofferdam.

8-31.2(2) Bulk Bags

Bulk bags used to construct coffer dams shall be polypropylene woven fabrics with fully open tops, flat bottoms, four loops for lifting, minimum weight capacity of 2 tons, and a 5:1 minimum safety factor.

8-31.2(3) Cofferdam Gravel

Gravel used to fill bulk bags shall be rounded alluvial material collected on site (borrow).

8-31.3 Construction Requirements

8-31.3(1) General

8-31.3(1)A General TWM Requirements

This section is supplemented with the following:

(*****)

All requirements pertaining to diversion dams in the original section shall also apply to cofferdams.

Temporary work area isolation involves using cofferdams or turbidity curtain to temporarily isolate a localized work area from active flow without rerouting the entire channel. A temporary work area isolation shall consist of a barrier to prevent surface water from entering the Work area and to prevent untreated turbid construction water from exiting the Work area. Temporary work area isolations will require some degree of dewatering. The Contractor may elect to perform some of the work in the wet, such as when installing posts or piles below the structure bottom elevation if approved by the Contracting Agency or Engineer, and the Contractor can demonstrate that doing so will not negatively affect the quality of the Work. If the area is dewatered, pumps may be shut down and water allowed to pool in work areas outside of working hours, provided that doing so does not damage the work and turbid waters do not enter wetlands or waterbodies.

Diversion dams and cofferdams shall be constructed using bulk bags. Bulk bags can be filled to their maximum capacity. Bulk bags do not require secure closure if they securely hold the material with which they have been filled without being tied shut. If bags are filled with borrowed stream gravel, on site gravel collection locations must be approved in advance by the Contracting Agency or Engineer and shall be outside of the wetted channel. Upon removal of the stream isolation, gravels shall be returned to the locations from which they were collected and the area regraded to pre-project conditions. Imported pea gravel shall be removed from site. Bags may not be cut in place, and no materials shall be dumped in the waterbody. When approved or necessary to support fish salvage efforts, bulk bag flow deflectors or temporary diversion dams shall also be deployed to redirect river forces, with prior approval of Contracting Agency.

8-31.3(1)A1 Minimum Stream Flows

(*****)

This section is deleted.

3(2)B8-31.3(1)F TWM Plan Implementation Meeting

The first sentence of this section is deleted and replaced with the following:

(*****)

Temporary water management shall be implemented only during the approved in-water work window. A single implementation meeting shall be held to cover all aspects of on-site water management.

8-31.3(2) Temporary Water Management Plan

8-31.3(2)B Plan Requirements

This section is supplemented with the following:

(*****)

1. Descriptions and Locations of each Temporary Water Diversion
 - c. Illustrate the locations of all dewatering sumps, discharge lines, and outfall areas.
2. Schedule and Sequence
 - x. Relocation sequence of the temporary water diversion to accommodate the work (if needed).
3. Calculations and Materials
 - g. (The second and third sentences of item 3g are deleted.)

8-31.3(3) Fish Block Net Installation and Fish and Aquatic Species Exclusion

This section is deleted and replaced with the following:

(*****)

The Contracting Agency will be responsible for all fish and aquatic species removal including the installation of any temporary fish block nets, seining, electro-fishing, and fish rescue for all temporary water diversions and work area isolations. The Contractor shall make these areas safe and accessible to Contracting Agency staff. In-water work within these areas cannot commence until the Contracting Agency has completed fish exclusion from the designated areas.

The Contractor shall coordinate all temporary water diversion and work area isolation activities requiring fish and aquatic species removal with the Contracting Agency. The Contractor shall closely coordinate installation, adaptive management, and removal of all temporary diversions, bypasses, and isolated work areas with the Contracting Agency.

For all temporary diversions and bypasses, the Contractor shall closely monitor surface waters potentially impacted by Contractor actions; no unintentional dewatering of ponded or actively flowing surface waters outside of an area where fish and aquatic species removal has occurred will be allowed. Any such dewatering that occurs shall be addressed immediately at no additional cost to the Contracting Agency.

Cofferdam installation shall be closely coordinated with the Contracting Agency to facilitate efficient removal of fish and aquatic species. The Contractor shall anticipate installation of diversion dams and cofferdams for individual isolations be completed in a stepwise fashion. For individual isolations, the Contractor shall leave a single bulk-bag width open during the initial installation. The Contracting Agency will then sweep the isolation with seine nets to remove as many fish and aquatic species as possible. The Contractor shall then close the isolation completely following this initial sweep.

Installation of temporary diversion dams may require a similar stepwise implementation and close coordination with the Contracting Agency to maintain surface water until fish and aquatic species removal can be completed. The Contractor shall anticipate this close coordination and shall make appropriate equipment and staff available to fully complete temporary diversion dams and isolations at no additional cost to the Contracting Agency.

The Contractor shall notify the Contracting Agency a minimum of two working days before the start of each cofferdam installation. The Contractor shall provide a minimum of two working days for the Contracting Agency to complete fish and aquatic species removal for work area isolations encompassing individual ELJs. For larger, more complex, or more involved water diversion and isolation activities the Contractor shall provide a minimum of four working days for the Contracting Agency to complete fish and aquatic species removal.

No Work within wetted channels will be allowed prior to installation of fish block nets (where needed) and/or completion of fish and aquatic species removal has been completed unless such activities comply with project permits.

8-31.3(4) Dewatering Work Areas

This section is supplemented with the following:

(*****)

When shown on the Plans, the Contractor shall design, install, operate, maintain, and remove a construction dewatering system. The construction dewatering system shall be used to remove water from work areas including precipitation, surface water trapped within or entering the work area, and seepage when the excavations are expected to extend below groundwater. The system shall be capable of handling anticipated seasonal groundwater variations and storm events. The system shall provide for a reasonably dry work area free of standing water that impedes construction.

8-31.3(4)A Disposal of Dewatering Water

(*****)

Disposal of dewatering water shall be in accordance with the CSWGP, if applicable, and water quality standards in WAC 173-201A. Turbid dewatering water encountered onsite may need to pass through BMPs to reduce sedimentation prior to discharge. Turbid dewatering water disposal options may include sheet flow dispersion and infiltration within vegetation onsite, transport in a vehicle for off-site legal disposal, or use of a sedimentation bag or tank that discharges to a ditch, swale, or field for small volumes of localized dewatering.

Turbid water may be pumped to a discharge location proposed by the Contractor and approved by the Contracting Agency, which may be either a contained vegetated upland area with infiltration capacity, a constructed containment pond to allow retention of turbid

water and clean discharge, or the use of filter bags, settling tanks, or other BMPs. All BMPs shall be described in the Contractor's TWM plan per special provision 8-31.3(2)B and applicable sections of the TESC plan per 8-01.3(1)A. Scour protection shall be provided at all outfalls to prevent erosion.

If containment basins are utilized, the Contractor shall size the excavated basin to have capacity for the anticipated discharge volume of dewatering water. The containment basin shall be restored to pre-project conditions following the completion of work. The area shall be backfilled and bladed to remove machinery tracks and artificial mounds of material. The ground surface shall be returned to the pre-project elevation immediately outside of the excavation footprint.

Additional clearing of riparian vegetation or creation of temporary access roads to route dewatering pipes is not allowed. Pipes may be laid by hand through existing riparian forest, with the approval of the Contracting Agency or Engineer.

8-31.5 Payment

This section is supplemented with the following:

(*****)

Payment will be made for the following Bid items included in the proposal:

“Temporary Water Management”, lump sum.

The lump sum Contract price for “Temporary Water Management” shall be full payment to perform the Work as specified.

Progress payments for the lump sum item “Temporary Water Management” will be made as follows:

1. Ten percent of the Bid amount will be paid following completion of the TWM Plan including resolution of all Contracting Agency review comments.
2. The remaining ninety percent of the Bid amount will be paid proportionately per ELJ completed upon completion of that ELJ using the formula:

Payment per ELJ completed = $0.90 * \text{Bid Amount} / \text{number of ELJs}$ requiring isolation. If the quantity of ELJs is adjusted from that which was bid on (reduced or increased), the Bid Amount will be adjusted based on the unit cost value for each ELJ. For example, a \$100,000 Lump Sum Bid Amount for a bid quantity of ten ELJs results in a unit cost value of \$10,000 per ELJ. If only eight ELJs are constructed, the Bid Amount is adjusted to \$80,000 and then used in the formula listed in Lines 28 and 29 for Payment per ELJ completed.

“TWM Adaptive Management”, by Force Account per 1-09.6. To provide a common Proposal for all Bidders, the Contracting Agency has entered an amount in the Proposal to become a part of the Contractor’s total Bid.