

## THE TULALIP TRIBES

### DRAFT DESIGN CONTRACT

#### Contractor

### PARTIAL CULTURAL RESOURCES ASSESSMENT FOR THE REPLACEMENT OF THE SEQUALITCHEW CREEK BERM AND CULVERT SYSTEM

This agreement is entered into this \_\_\_ day of \_\_\_\_\_ 2024, between the Tulalip Tribes of Washington hereinafter referred to as TULALIP and **CONTRACTOR, ADDRESS**, hereinafter referred to as CONTRACTOR. TULALIP and CONTRACTOR hereby agree that the CONTRACTOR shall provide specific services to TULALIP for a specific period of time and for a specific amount as stated herein.

1. The period of time for this agreement shall commence upon execution of this contract and shall be completed by September 21, 2024 with the end of the CONTRACTOR's Services. The schedule of deliverables and milestone dates are attached hereto as Exhibit A – Design/Outreach Schedule. It is understood and agreed that all Work shall be completed within the established time for Contract Completion, and that each applicable portion of the Work shall be completed upon the respective milestone completion date(s), unless the CONTRACTOR timely requests and the Tulalip Tribes grants an extension of time in accordance with the Contract Documents.
2. Project Name: PARTIAL CULTURAL RESOURCES ASSESSMENT FOR THE REPLACEMENT OF THE SEQUALITCHEW CREEK BERM AND CULVERT SYSTEM
3. Location: 6406 Marine Drive Tulalip, WA 98271
4. Compensation for services under this agreement shall not to exceed \$ \_\_\_\_\_, this includes reimbursable expenses as noted in the Schedule of Costs and Detailed Cost Estimate attached hereto and incorporated herein as **Exhibit C –Proposal**.
5. TULALIP's representative authorized to implement the terms and conditions of this agreement is designated as Coumou as contracting coordinator and Natasha Coumou as contracting officer for purposes of this agreement.
6. Services to be provided under this agreement are those specified in the attached **Exhibit B – Statement of Work and Exhibit C – Proposal**. Exhibits B and C are incorporated by reference as if fully set forth herein.
- 7.a. TULALIP shall make payment to the CONTRACTOR no later than thirty (30) days after TULALIP's accounting department begins processing CONTRACTOR'S invoice. Such processing shall begin after CONTRACTOR presents the invoices and deliverables to TULALIP's authorized representative and the authorized representative submits the invoice with their approval to Tulalip's accounting department. Payment by TULALIP does not constitute a waiver of any claims by TULALIP against CONTRACTOR concerning or arising out of this agreement. Acceptance of final payment by CONTRACTOR constitutes a waiver of all claims by CONTRACTOR.
- 7.b. The CONTRACTOR agrees to maintain for inspection by TULALIP for three years after final payment all books, records, documents, and other evidence pertaining to the costs and expenses of this agreement, hereinafter collectively called, "records", to the extent and in such detail as will properly reflect all net costs, direct and indirect, of labor, materials, supplies, and services, and other costs of whatever nature for which reimbursement is claimed under the provisions of this agreement.
8. Any and all reports, data, findings or other materials or deliverables under this agreement shall become the property of and remain under the sole proprietorship of TULALIP. CONTRACTOR will keep all information learned under this agreement confidential and will not release any such information, either orally or in writing, to parties other than TULALIP, its agents, contractors or employees without the express written permission of TULALIP.

9. Use of Documents. The Drawings, Specifications and other documents prepared by CONTRACTOR or CONTRACTOR's sub consultants for this Project are intended for use solely with respect to this Project. TULALIP shall be permitted to retain copies, including reproducible copies and originally stamped copies of CONTRACTOR's Drawings, Specifications and other documents for information, and reference in connection with TULALIP's performance of the Project. TULALIP shall not use CONTRACTOR's Drawings, Specifications or other documents for other projects, provided that it is expressly understood and agreed that TULALIP shall have the right to utilize CONTRACTOR's Drawings, Specifications and other documents to expand the Project, correct any deficiencies, make any renovations or repairs to the Project, or use for future project design. Original drawings, sketches, renderings, models, other reproducible drawings prepared under this Agreement, surveys, reports, photographs, construction phase documentation prepared by CONTRACTOR, copies of all correspondence and papers received or issued by CONTRACTOR and all equipment or publications authorized by TULALIP for purchase shall be delivered to TULALIP upon request.
10. TULALIP and CONTRACTOR each binds themselves and their partners, agents, assigns, successors and legal representatives of such other party to this agreement and to the partners, successors and legal representatives of such other party with respect to all terms and conditions of this agreement.
11. Neither TULALIP nor CONTRACTOR shall delegate, assign, sublet or transfer their duties or interest in this agreement without the written consent of the other party. Any such assignment, sublet, delegation or transfer shall be subject to the same terms and conditions as this agreement.
12. This agreement, including its referenced attachments, represents the entire and complete agreement between the parties and supersedes all prior negotiations, representations, or agreements either written or oral and may be amended or modified only in writing signed by both parties. Nothing whatsoever in this agreement constitutes or shall be construed as a waiver of TULALIP's sovereign immunity. This agreement shall not be valid unless each and every TULALIP signature designated below is affixed.
13. The contract documents includes the following, which are incorporated by reference as if fully set forth herein (not in order of precedence), on which the agreement between TULALIP and CONTRACTOR is based, in accordance with which the work is to be done, are as follows:
  - a. This agreement, together with such supplementary agreements and conditions as are attached hereto;
  - b. Exhibit A – Design/Outreach Schedule;
  - c. Exhibit B – Statement of Work;
  - d. Exhibit C – Proposal
  - e. Exhibit D – Request For Proposals
  - f. Exhibit E – Bid Package
  - g. The Tulalip Code, Chapter 9.05 – TERO Code.
14. Services under this agreement are provided by CONTRACTOR acting in a consulting or personal services capacity and not as a TULALIP employee. CONTRACTOR is not entitled to any payments not expressly stated herein for any fringe benefit whatsoever. CONTRACTOR acknowledges that CONTRACTOR is responsible for all applicable federal and state taxes, unemployment and labor and industries coverage. CONTRACTOR certifies that CONTRACTOR: (a) possesses all of the skills and tools necessary to perform services; (b) will establish their own specific hours for performing services; and (c) will determine their own location for performing services.
15. In the event payment for services under this agreement is made from federal or state funds, CONTRACTOR shall abide by all applicable federal and state laws and regulations governing such funds which laws and regulations are hereby incorporated by reference. Any rights of the CONTRACTOR are subject to the limitations on and availability of such funds to TULALIP. The CONTRACTOR shall, whether or not federal or state funds are involved, without additional expense to TULALIP, comply with all applicable laws and obtain all required licenses and permits necessary to execute the provisions of this agreement. When working on the Tulalip Indian Reservation, CONTRACTOR shall comply with all Tribal laws. CONTRACTOR shall indemnify and hold TULALIP harmless from any and all costs, liabilities, or obligations by reason of the failure of CONTRACTOR or his or her employees, agents, subcontractors or assigns to comply with any applicable law.
16. CONTRACTOR shall not discriminate against any employee or applicant for employment on the basis of race, color, religion, age, sex, national origin, or handicap, with regard to employment "upgrading, demotion, transfer, recruitment, advertising, layoff, termination, rates of pay, or other forms of compensation and selection for training. During the performance of this contract, CONTRACTOR agrees to comply with all federal and state nondiscrimination laws, regulations and policies. Notwithstanding the foregoing, the CONTRACTOR shall provide preference in employment and subcontracting in accordance with The Tulalip Code, Chapter 9.05 – TERO Code as it now exists or may be hereafter amended.

17. CONTRACTOR shall indemnify and hold harmless TULALIP, its employees and agents against all applicable loss, damage, liability, claims, lawsuits demands, or costs to the extent arising out of CONTRACTOR'S negligence in connection with this agreement. CONTRACTOR shall reimburse TULALIP all costs reasonably incurred to defend TULALIP against such claims through attorneys of TULALIP's choice.  
  
CONTRACTOR agrees that TULALIP may bring an action against CONTRACTOR to enforce this indemnity obligation in either Tulalip Tribal Court or Thurston County Superior Court.
18. CONTRACTOR shall promptly notify TULALIP of any litigation arising from or affecting its operations under this agreement, including any bankruptcy or insolvency proceedings of CONTRACTOR or of its assignees or subcontractors. The CONTRACTOR shall not assign its rights under this agreement without first obtaining TULALIP's written approval.
19. The CONTRACTOR shall not be entitled to any interest on any amount found due and owing hereunder, whether before or after judgment, but shall, at most, only be entitled to the amount specified in section three.
20. The negotiation and execution of this agreement shall be deemed by the parties to have occurred within the exterior boundaries of the Tulalip Indian Reservation and any interpretation thereof shall be in accordance with the laws of the Tulalip Tribes of Washington.
21. TULALIP may terminate this agreement on ten days written notice and in such case CONTRACTOR shall only be entitled to payment for work performed prior to receipt of said notice. Additionally, TULALIP may immediately suspend operations under this agreement by written notice of any breach. Suspension shall continue until TULALIP's authorized representative certifies in writing that the breach is remedied. If CONTRACTOR is still in breach after seven days from the notice of suspension, TULALIP may, without further notice, terminate all rights of CONTRACTOR under this agreement. Upon early termination CONTRACTOR shall deliver to TULALIP all drawings and work product paid for by Tulalip prior to termination.
22. Any failure by TULALIP to suspend or terminate this agreement in case of breach shall not waive CONTRACTOR'S duty to perform strictly in accordance with this agreement. Failure by CONTRACTOR to perform on its part any duty, term or condition herein shall constitute a breach.
23. Notices. Whenever any provision of this Agreement requires the giving of any notice, such notice shall be deemed to have been validly given if given in writing and delivered personally to the individual or to a member of the entity for whom the notice is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address of such individual or entity known to the giver of the notice. The effective date of any and all notices, regardless of the method of delivery, shall be the date of receipt. Any notice required to be given by this Agreement may be given by facsimile transmission, provided the original signed notice is delivered pursuant to this paragraph 23.
24. The failure of TULALIP to assert any claim or right at any time under this agreement shall not waive its right to assert any claim or right at a later time.
25. TULALIP's authorized representative shall be allowed to observe any work done by the CONTRACTOR which is covered by this agreement.
26. Time. Time is of the essence to the Agreement and all obligations thereunder. When any period of time is referred to in the Agreement by days, it shall be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday, Sunday or a legal holiday, such day will be omitted from the computation and such period shall be deemed to end on the next succeeding day which is not a Saturday, Sunday or legal holiday.
27. Insurance. CONTRACTOR shall insure and shall require each of its consultants to insure against the following risks to the extent stated:
  - 27.a. Commercial General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) products and completed operations and Two Million Dollars (\$2,000,000) per project general aggregate. Such insurance shall name The Tulalip Tribes and the State of Washington as a primary and non-contributory additional insured using ISO CG 2010 11/85 edition or equivalent and shall provide Tulalip Tribes of Washington with certificates of insurance including additional insured endorsements for all required insurances under this Agreement written on an occurrence basis. The consultants shall maintain a similar policy of insurance covering as insured each consultant. The Tulalip Tribes and the State of Washington (providing funding for the Project) shall be specifically named as additional insured on policies.
  - 27.b. Commercial Automobile Liability Insurance providing bodily injury and property damage liability coverage in an amount not less than One Million Dollars (\$1,000,000) per accident including coverage for hired and non-owned automobiles and shall add The Tulalip Tribes as an additional insured.

- 27.c. CONTRACTOR shall maintain Umbrella Liability in excess of Commercial General Liability, Commercial Automobile Liability and Employers Liability with minimum limits of Two Million Dollars (\$2,000,000) per occurrence and general aggregate.
- 27.d. Workers' Compensation or Labor and Industry with Statutory Benefits and Employers' Liability (WA Stop Gap) with \$1,000,000 each accident, \$1,000,000 Policy Limit and \$1,000,000 each employee.
- 27.e. CONTRACTOR's Professional Liability insurance covering legal liability caused by errors and omissions arising out of performance and professional services in connection with the project and covering as insured CONTRACTOR with \$2,000,000.00 limit of liability, and consultants with an amount of liability approved by The Tulalip Tribes in each case. If the agreed coverage proves not to be available for any reasons, CONTRACTOR shall obtain approval from The Tulalip Tribes for a revised amount as appropriate. If such insurance is maintained on a per claims basis, the policy shall include an "extended reporting period" endorsement pursuant to paragraph 28.c.3. All coverage shall be retroactive to the earlier of the date of this Agreement or the commencement of CONTRACTOR's services in relation to the project. The professional liability policies shall include the indemnity as set forth by paragraph 17.
- 27.f. Each party hereby waives all rights against each and any of their respective consultants, subcontractors, and sub-subcontractors, agents and employees, for damages caused by perils to the extent covered by the proceeds of the insurance provided in paragraphs 27.a through 27.e, except such rights as they may have to the insurance proceeds. The CONTRACTOR shall require similar waivers from its subcontractors. CONTRACTOR further agrees to waive its immunity under RCW Title 51 with regard to the above indemnity obligations and acknowledges that this waiver has been specifically negotiated.
- 28. Insurance Policy Requirements.
  - 28.a. All required insurance shall be maintained with responsible insurance carriers qualified to do business in Washington State with a current A.M. Best rating of A- VIII or better. As soon as practicable on execution of this Agreement and before commencing any performance under this Agreement, CONTRACTOR shall provide, and shall cause each consultant to provide, with The Tulalip Tribes, Certificates of Insurance, bearing notations or accompanied by other evidence satisfactory to The Tulalip Tribes of the payment of premiums. Subsequently, certification of premium payment and certificates of insurance evidencing policy renewal shall be deposited with The Tulalip Tribes not less than 14 days before the expiration dates of the expiring policies. The Tulalip Tribes of Washington reserves the right to request a certified copy of CONTRACTOR and/or its consultants, insurance policies meeting the requirements.
  - 28.b. Riders providing substantially as follows shall be made a part of the insurance policies described above in this Agreement:
    - 1. Notice of accident shall be given by CONTRACTOR to the insurance company as required under the terms of this policy, or notice of claim shall be given by The Tulalip Tribes to the insurance company as required under the terms of the policy. Notice to the insurance company by either party shall be deemed sufficient notice under the policy.
  - 28.c. The insurance policies described above in this Agreement shall be kept in force for the periods specified below:
    - 1. Commercial General Liability Insurance shall be kept in force until formal written acceptance of the work by CONTRACTOR and TULALIP.
    - 2. Workers' Compensation and Employers' Liability Insurance shall be kept in force until formal written acceptance of the Work by CONTRACTOR and TULALIP.
    - 3. CONTRACTOR's Professional Liability Insurance shall be kept in force for six years following substantial completion.
- 29. Venue. The sole and exclusive jurisdiction for any litigation arising from or related to this agreement shall be in the Tulalip Tribal Court, except as otherwise provided in Section 17.

**IN WITNESS WHEREOF**, the parties have executed this agreement at the Tulalip Indian Reservation as of the day and year first above written.

**Attest:**

<b>Contractor:</b>	<b>Tulalip Tribes Contracting Officer:</b>	<b>Tulalip Tribes (BOD):</b>
<b>Signature</b>	<b>Signature</b>	<b>Signature</b>
<b>Title</b>	<b>Title</b>	<b>Title</b>

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**Date**

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**Date**

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**Date**

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**Exhibit A****Design/Outreach Schedule**

<b>Milestone</b>	<b>Target Date</b>	<b>Comments/Description</b>
Project Management	June 30, 2025	Monthly project management reports and invoices.
Area of Potential Effects Delineation		Based on project design plans, the contractor will consult with the Nisqually Indian Tribe, BNSF, and the lead federal agency to determine the area of potential effects.
Research and Logistics		Prepare for human remains detection and ground-penetrating radar surveys.
Human Remains Detection Survey and Ground-Penetrating Radar Survey		Conduct surveys.
Project/Contract End Date	June 30, 2025	No work conducted after this period is eligible for payment.