

- MUCKLESHOOT INDIAN TRIBE -
 CONTRACT SERVICES AGREEMENT NO. _____

I. This Agreement is entered into on 01/15/2016, between the Muckleshoot Indian Tribe, 39015 172nd Ave., S.E., Auburn, WA, 98092, hereinafter referred to as MUCKLESHOOT and Port of Seattle hereinafter referred to as CONTRACTOR. MUCKLESHOOT and CONTRACTOR hereby agree that the CONTRACTOR shall provide specific services to MUCKLESHOOT for a specific period of time and for a specific amount as stated herein.

II. The period of time for this Agreement shall begin on 01/15/2016 and shall end 06/30/2016. Time is of the essence for performance by CONTRACTOR.

III. Compensation for services under this Agreement shall be on a fixed-fee basis cost plus basis hourly fee basis not to exceed \$202,160.00 inclusive of all materials, travel and other costs.

IV. MUCKLESHOOT's representative authorized to implement the terms and conditions of this Agreement is designated as Glen St. Amant. CONTRACTOR's authorized representative is Geo. Blomberg.

V. Services and deliverables to be provided under this Agreement are those specified as follows: (Services must be described to allow for quantitative and qualitative measurement and, if applicable, specific deliverables or products. Specify payment rates for services involving cost plus arrangements. Proposals, scopes of work or services descriptions may be attached.)

DESCRIPTION OF SERVICE(S)/DELIVERABLE(S)	TARGET/DUE DATE(S)
If marked, <input checked="" type="checkbox"/> Proposal/Scope of Work is attached (list attachments by title and date) CONTRACTOR will enhance and improve estuarine aquatic area resource values in former marine industrial aquatic area and shoreline in the Duwamish River as noted in the attached "Scope of Work #1 TFD 2542 Duwamish River Estuary Improvements" dated 21 January 2016".	See attached SOW

VI. All invoices require a detailed summary of services provided and shall be submitted monthly at time of receipt of deliverable or other frequency _____.

VII. If marked, Ten percent (10%) of the total Agreement amount shall be withheld pending receipt of a final progress report or deliverable.

MUCKLESHOOT:

 Authorized Representative

Isabel Tinoco

Print name

Approved Budget: TFD# 2542-7530

 Tribal Comptroller

CONTRACTOR:

Lindsay Pulsifer
 Signature of CONTRACTOR's representative

LINDSAY PULSIFER

Print Name

PO Box 1209

Contractor's address

SEATTLE, WA 98111

Telephone 206.787.3576 S.S. or IRS#: _____

The STANDARD TERMS AND CONDITIONS FOR THE MUCKLESHOOT CONTRACT SERVICES AGREEMENT and any proposal identified above shall be attached to this signature page and incorporated by reference to constitute the entire Agreement between the parties. If the amount in Paragraph III is \$25,000 or over, this Agreement shall not be valid or enforceable without the required signatures above and the signatures of (1) Tribal Chairperson or Vice Chairperson; (2) Tribal Finance Officer; and (3) if applicable, the Tribal Operations Manager listed below:

 Tribal Finance Officer

 Tribal Operations Manager (if applicable)

 Tribal Chairperson/Vice Chairperson

Adopted Per Res. No. 09-089 Effective 04/20/09 - Supersedes And Replaces All Previous Formats

TERMS AND CONDITIONS FOR THE MUCKLESHOOT CONTRACT SERVICES AGREEMENT

1. **PAYMENT TERMS.** MUCKLESHOOT shall make payment to the CONTRACTOR no later than thirty (30) days after MUCKLESHOOT's accounting department begins processing CONTRACTOR's invoice. Such processing shall begin after CONTRACTOR presents the invoices and deliverables to MUCKLESHOOT's authorized representative and the authorized representative submits written approval to the accounting department for payment based on an inspection of the work. Any payment may be withheld on account of (1) defective work not remedied, (2) claims filed by third parties, (3) failure of the Contractor to pay all wages, suppliers or subcontractors; or (4) to execute a right of setoff for sums owed to MUCKLESHOOT. Payment by MUCKLESHOOT does not constitute a waiver of any claims by MUCKLESHOOT against CONTRACTOR concerning or arising out of this Agreement. Acceptance of final payment by CONTRACTOR constitutes a waiver of all claims by CONTRACTOR.
2. **RIGHT TO AUDIT.** The CONTRACTOR agrees to maintain for inspection by MUCKLESHOOT 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.
3. **OWNERSHIP OF DELIVERABLES.** 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 MUCKLESHOOT. Material created by CONTRACTOR and paid for by MUCKLESHOOT shall be owned by MUCKLESHOOT, and shall be a "work for hire" as defined by the United States Copyright Act of 1976. This material includes, but is not limited to, plans, drawings, documents, computer programs, pamphlets, reports, studies, video production, audio reproduction, surveys, and materials in any other medium. CONTRACTOR for itself and any artists engaged by CONTRACTOR to perform work under this Agreement, specifically waives any all rights granted pursuant to the Visual Artists' Rights Act of 1990. Material that CONTRACTOR uses to perform the Agreement but is not created for or paid for by MUCKLESHOOT is not owned by MUCKLESHOOT, however, CONTRACTOR shall arrange for MUCKLESHOOT to have a perpetual license to this material for MUCKLESHOOT's internal purposes at no charge to MUCKLESHOOT.
4. ~~**CONFIDENTIALITY.** 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 MUCKLESHOOT, its agents, contractors or employees without the express written permission of MUCKLESHOOT.~~
5. **SUCCESSORS IN INTEREST.** MUCKLESHOOT and CONTRACTOR each bind 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.
6. **NONASSIGNABILITY.** Neither MUCKLESHOOT 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.
7. **INDEPENDENT CONTRACTOR.** Services under this Agreement are provided by CONTRACTOR acting in a consulting or personal services capacity as an independent contractor and not as a MUCKLESHOOT employee. CONTRACTOR certifies that CONTRACTOR: (a) possesses all of the skills and tools necessary to perform services; (b) will establish CONTRACTOR's own specific hours for performing services; and (c) will control the means and methods for carrying out this Agreement. CONTRACTOR is not entitled to any payments not expressly stated herein for any fringe benefit, including but not limited to, paid holidays, retirement plan benefits, life and health insurance plan benefits, subsidized cafeterias, company cars, stock options, and expense accounts. CONTRACTOR acknowledges that CONTRACTOR is responsible for all applicable taxes, unemployment and workers compensation or equivalent coverage.
8. **SUBCONTRACTORS.** Unless MUCKLESHOOT requires prior approval of subcontractors, CONTRACTOR may, in its discretion, engage subcontractors to perform work under this Agreement, provided that CONTRACTOR shall fully pay said subcontractors, and, in all instances, CONTRACTOR

shall remain responsible for the proper completion of the work under this Agreement. CONTRACTOR shall not allow any subcontractors to begin work under its subcontract until CONTRACTOR is satisfied that the subcontractor has broad form general liability insurance and worker's compensation coverage. Any subcontractor shall be bound by the terms of this Agreement. To the extent that any subcontractor fails to satisfy its obligation to defend and indemnify MUCKLESHOOT as detailed in Section 12 of this Agreement, the CONTRACTOR shall protect, defend, indemnify and hold harmless MUCKLESHOOT, its employees and agents from any and all costs, claims, judgments, and/or awards or damages arising out of, or in any way resulting from, the negligent act or omissions of the CONTRACTOR'S subcontractor, its employees and/or agents in connection with or in support of this Agreement.

9. **COMPLIANCE.** 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 MUCKLESHOOT. The CONTRACTOR shall, whether or not federal or state funds are involved, without additional expense to MUCKLESHOOT, comply with all applicable laws and obtain all required licenses and permits necessary to execute the provisions of this Agreement. CONTRACTOR shall file all required returns and notices. When working on the Muckleshoot Indian Reservation, CONTRACTOR shall comply with all Tribal laws. Before commencing work, CONTRACTOR shall obtain all required Tribal licenses and permits. CONTRACTOR shall indemnify and hold MUCKLESHOOT 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.
10. **NONDISCRIMINATION.** 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.
11. ~~**TRIBAL PREFERENCE.** Notwithstanding the provisions of paragraph 10, CONTRACTOR shall, to the full extent permitted by law, provide preference in employment and subcontracting, in the following order, to enrolled members of MUCKLESHOOT, other Indians and members of the MUCKLESHOOT community as well as enterprises or businesses wholly owned by MUCKLESHOOT or its members.~~
12. **INDEMNIFICATION.** CONTRACTOR shall defend, indemnify and hold harmless MUCKLESHOOT, its employees and its agents for all loss, damage, liability, claims, lawsuits demands, or costs arising out of any strict liability, negligent or wrongful act or omission of the CONTRACTOR related to or arising out of the implementation of this Agreement. CONTRACTOR shall reimburse MUCKLESHOOT for all costs reasonably incurred to defend MUCKLESHOOT against such claims through attorneys of MUCKLESHOOT's choice. CONTRACTOR waives, as respects to MUCKLESHOOT only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW as well as any similar coverage required for this work by applicable federal or other state's state law.
13. **DUTY TO NOTIFY MUCKLESHOOT.** CONTRACTOR shall notify MUCKLESHOOT within ten (10) days 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.
14. **INTEREST.** 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 on the first page of this Agreement.
15. **APPLICABLE LAW.** The negotiation and execution of this Agreement shall be deemed by the parties to have occurred within the Muckleshoot Indian Reservation and any interpretation thereof shall be in accordance with the laws of the Muckleshoot Indian Tribe. In the absence of applicable Muckleshoot Tribal law, then the parties shall apply federal law or Washington State law in that order.
16. **REMEDY FOR BREACH BY CONTRACTOR.** Failure by CONTRACTOR to perform on its part any duty, term or condition herein shall constitute a breach. MUCKLESHOOT's authorized representative shall be allowed to observe any work performed by the CONTRACTOR which is covered by this Agreement. MUCKLESHOOT may immediately suspend operation under this Agreement by written notice of any breach. Suspension shall continue until MUCKLESHOOT'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, MUCKLESHOOT may, without further notice, terminate all rights of CONTRACTOR under

this Agreement. MUCKLESHOOT's payment obligation, if any, shall be limited to payment of any work properly completed up to the time of suspension or termination. CONTRACTOR may suspend work, upon seven (7) days written notice to MUCKLESHOOT in the event that MUCKLESHOOT improperly withholds any periodic or installment payment due under this Agreement.

17. **NO WAIVER.** Any failure by MUCKLESHOOT to suspend or terminate this Agreement in case of breach shall not waive CONTRACTOR's duty to perform strictly in accordance with this Agreement. The failure of MUCKLESHOOT 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.
18. **NOTICE.** Any notice sent under the terms of this Agreement may either be sent by personally giving a copy thereof to CONTRACTOR or its agents, employer or contractors or mailing a copy to the address set forth in this Agreement.
19. **ACCEPTANCE.** No payment made to CONTRACTOR pursuant to the terms of this Agreement shall be construed as acceptance of any work or material not in accordance with this Agreement.
20. **REPRESENTATIONS AND WARRANTIES.** CONTRACTOR represents that it is (1) able to furnish the plan, tools, materials, supplies, equipment and labor required to complete the work, (2) CONTRACTOR is authorized to do business in the State of Washington and is properly licensed by all necessary governmental and public authorities having jurisdiction over the CONTRACTOR, and the work, and (3) CONTRACTOR's execution, delivery and performance of the Agreement are within CONTRACTOR's powers and have been duly authorized. All work shall be performed by individuals duly licensed and authorized by law to perform said work. CONTRACTOR warrants that it has sufficient experience and competence to perform the work and services authorized under this Agreement and that all such work and services shall be completed in a professional and workmanship like manner and in compliance with industry standards. CONTRACTOR further warrants that their work shall be accomplished in a reasonable and prudent manner in accordance with the standards of the applicable profession in the State of Washington.
21. **INSURANCE.** CONTRACTOR warrants that it is adequately insured for injury to its employees and others incurring loss or injury as a result of the acts of CONTRACTOR, its employees, its agents or its subcontractors. CONTRACTOR agrees to keep in force during its acts under this Agreement a comprehensive ISO-compliant general liability insurance policy with a minimum limit of \$1,000,000, and minimum carrier rating of AM Best A-VII. If CONTRACTOR is providing professional services, CONTRACTOR shall carry professional liability insurance in an amount appropriate for like professionals in the Seattle metropolitan area. Contractor's policies shall be primary and non-contributory with any similar insurance maintained by Muckleshoot. Prior to beginning the work, CONTRACTOR shall provide a certificate of insurance to MUCKLESHOOT demonstrating that CONTRACTOR has the insurance described. CONTRACTOR shall require insurer to notify MUCKLESHOOT forty-five (45) days prior to cancellation of said policy. Unless waived in writing by MUCKLESHOOT, CONTRACTOR shall name MUCKLESHOOT as an additional insured. CONTRACTOR shall also maintain in full force and effect worker's compensation coverage for CONTRACTOR and its agents, employees, and staff that the CONTRACTOR may employ, and provide proof to MUCKLESHOOT of such coverage; or proof that such worker's compensation insurance is not required under the circumstances.
22. **DISPUTE RESOLUTION.** If any dispute arises under this Agreement, the parties shall negotiate in good faith to resolve such dispute. If the parties cannot resolve such dispute themselves, then either party may submit this dispute to arbitration by an arbitrator approved by both parties. Such arbitration, including the selection of the arbitrator, shall be in accordance with the then current rules of the American Arbitration Association, unless the parties agree otherwise. Notice of a demand for arbitration will be filed in writing with the other Party to this Agreement. The award rendered by the arbitrator shall be final and binding and judgment may be entered upon said award in accordance with the laws of the MUCKLESHOOT Indian Tribe, the State of Washington or the United States of America.
23. **LIMITED WAIVER OF SOVEREIGN IMMUNITY.** Except as specifically provided in this Paragraph 23, the Agreement with MUCKLESHOOT does not and shall not waive, limit or modify its sovereign immunity from any lawsuit. MUCKLESHOOT does, however, expressly waive, in a limited manner, its sovereign immunity from suit for the limited purpose of permitting CONTRACTOR to bring a lawsuit to compel arbitration or enforce an arbitration award, in the United States District Court for the Western District of Washington, the Court of Appeals for the Ninth Circuit and the United States Supreme Court, or, if the federal court declines to assert jurisdiction or venue, in the Courts of the State of Washington, except that such waiver as to any claim for money damages or monetary payments is limited to the

amount owed under the Agreement, but in no event any greater than the total Agreement amount. This limited waiver of sovereign immunity is solely for the benefit of CONTRACTOR, and MUCKLESHOOT, by granting this limited waiver of sovereign immunity to CONTRACTOR, does not otherwise waive its sovereign immunity as to anyone other than CONTRACTOR.

24. **INTEGRATION CLAUSE.** 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. It may be amended or modified only in writing signed by both parties. Any apparent inconsistencies between the attachments shall be construed in favor of these Terms and Conditions. This Agreement shall not be valid unless each and every MUCKLESHOOT signature required herein is affixed and CONTRACTOR has initialed each page evidencing acceptance of all terms of this Agreement.

Scope of Work #1 TFD 2542
 Duwamish River Estuary Improvements
 Dated 21 January 2016

CONTRACTOR will enhance and improve 1.3 acres of shallow sub-tidal, inter-tidal, and shoreline area, estuarine aquatic area resource values, to include removing physical impediments to migratory salmon and resident fish and wildlife and improving estuarine habitat functions and quality, in former marine industrial aquatic area and shoreline at the Port of Seattle, Terminal 105 located at River Mile 0.6 of the Duwamish River per Attachments 1 Terminal 105, Derelict piling and debris removal project, JARPA, 12.11.14 and attachment 2 Port of Seattle, SEPA Exemption, 12.15.15.

CONTRACTOR will conduct the following activities:

Task	Activity	Deliverable	Schedule
1	Piling and debris removal:	Extract/removal up to 250 derelict creosote piling and inter-tidal/shallow sub-tidal debris	January/February 2016
2	Clean sand cover	Place clean sand material, matching adjacent substrate areas, into void spaces and irregular surfaces created due to piling and debris removal will	Clean sand cover-- February 2016
3*	Bank-line stabilization	install stabilizing native riparian vegetation and anchored large-woody-debris in upper bank-line location using remaining Grant funds	April-June 2016.

CONTRACTOR will conduct bank-line stabilization work described in Task 3, based on available remaining funds once Tasks 1 and 2 have been completed. If no funds remain after conducting Tasks 1 and 2, Task 3 will not be required.

CONTRACTOR will be responsible to obtain all necessary permits required for the work conducted.

CONTRACTOR will provide MUCKLESHOOT with copies of all permits obtained for work conducted.

Muckleshoot's Technical Representative for this project is Glen St. Amant.

All invoices must be received by Muckleshoot Finance Department no later than July 15, 2016.