

# **CONTRACT TO PERFORM GOVERNMENTAL ACTIVITIES**

**Between  
THURSTON COUNTY**

**And  
THE NISQUALLY INDIAN TRIBE**

**THIS CONTRACT** is entered into in duplicate originals pursuant to RCW 39.34.080 between THURSTON COUNTY, hereinafter "County," and The Nisqually Indian Tribe, hereinafter "Tribe."

WHEREAS, it is to the mutual advantage of the County and the Tribe to cooperate in the State Route 510 Corridor Study between Yelm Highway and Reservation Road by conducting a traffic study in order to consider the transportation planning needs of the County and the Tribe and in order to make the most efficient use of their powers to provide services and facilities needed by the citizens residing within their respective jurisdictions; and

WHEREAS, RCW 39.34.080 authorizes a public agency to contract with another public agency to perform any governmental activity that each public agency is authorized by law to perform, provided that such contract shall be authorized by the governing body of each party to the contract;

NOW, THEREFORE, in consideration of the mutual promises and covenants recited herein, or attached and incorporated and made a part hereof, it is mutually agreed by the parties as follows:

## **I. PURPOSE**

The purpose of this Contract is to permit the parties to make the most efficient use of their resources by enabling them to cooperate in the performance of a traffic study along the State Route 510 Corridor between Yelm Highway and Reservation Road.

## **II. SCOPE OF SERVICES**

The Tribe shall perform a traffic study according to the "draft" scope of work identified in Exhibit A, attached hereto and incorporated herein by reference. The traffic study will be conducted by a professional engineer licensed and registered in the State of Washington under contract with the Tribe. The Tribe and County will cooperate on the selection of the professional engineer to conduct the traffic study and selection will be by consensus. The Tribe will also coordinate the traffic study with the Washington State Department of Transportation and Thurston Regional Planning Council. The scope of work will be finalized after the Tribe, County and selected professional engineer complete the kickoff meeting as identified in Exhibit A with the Washington State Department of Transportation and Thurston Regional Planning Council.

## **III. DURATION**

The terms and performance of this Contract shall commence after the approval by the governing body of each party and following the filing of this Contract in accordance with RCW

39.34.040. This Contract shall terminate upon completion of its purpose unless terminated sooner as provided herein.

**IV. RESPONSIBILITY OF THE COUNTY**

The County shall:

- 1.) Provide engineering oversight of the development of the traffic study;
- 2.) Provide drafting of maps, figures or diagrams needed for traffic study or presentations;
- 3.) Allow the Tribe or the selected professional engineer to use a County computer software for the preparation of the traffic study. The software to be provided includes, HCS+, Synchro, and aaSidra;
- 4.) Print necessary documents produced by the traffic study;
- 5.) Collect traffic counts and other traffic data needed for the traffic study; and
- 6.) File this Contract in accordance with RCW 39.34.040.

**V. RESPONSIBILITY OF THE TRIBE**

The Tribe shall:

- 1.) Contract with a professional engineer who is licensed and registered in the State of Washington to conduct the traffic study described in Exhibit A;
- 2.) Pay for all costs and expenses related to the professional engineer under contract with the Tribe to perform the traffic study;
- 3.) Return the County computer software in the same condition as it was when received by the Tribe. All County computer software shall be removed from the Tribe's or its agent's computer at the conclusion of the study. The Tribe shall be responsible for the proper care and security of the software until returned to the County, and any damage while in the possession of the Tribe or the selected professional engineer will be the responsibility of the Tribe; and
- 4.) The Tribe shall provide in writing the contact information for the professional engineer selected to complete the traffic study.

**VI. ADMINISTRATION**

The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of this Contract and for coordinating and monitoring performance under this Contract. In the event such representatives are changed, the party making the change shall notify the other party.

The County's representative shall be Scott Davis, 9605 Tilley Road SW, Olympia, WA 98512, 360-709-3034, [davissa@co.thurston.wa.us](mailto:davissa@co.thurston.wa.us).

The Tribe's representative shall be Jim Longley, 4820 She-Nah-Num Dr SE, Olympia WA 98513-9199, 360-456-5221 x1178, [Longley.jim@nisqually-nsn.gov](mailto:Longley.jim@nisqually-nsn.gov).

Wherever written notice is required under this Contract, such notice shall be provided to the representatives designated above.

**VII. RELATIONSHIP OF THE PARTIES**

The employees or agents of each party who are engaged in the performance of this Contract shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party. This Contract is for the benefit of the parties, and no third party beneficiary relationship is intended. No separate legal entity is created by this Contract and no joint organization is established. No common budget is to be established and no personal or real property is to be jointly acquired or held.

**VIII. INDEMNIFICATION AND HOLD HARMLESS**

Each party agrees to indemnify and hold harmless the other party, its elected and appointed officers, officials, employees, and agents solely for third party claims relating to bodily injury, sickness or death, or real or personal property damage or destruction and loss of use thereof, including costs and attorneys fees in defense thereof, caused by or arising out of the negligence of either party in the performance of this Contract. In the event of concurrent negligence of the parties, each party's obligations hereunder shall apply only to the extent of fault attributable to that party, its elected and appointed officers, officials, employees, and agents. Nothing herein shall require the County or the Tribe to indemnify or hold harmless the other or its elected and appointed officers, officials, employees, and/or agents from any claims arising from that party's sole negligence or that of its elected and appointed officers, officials, employees, and/or agents. The terms of this section shall survive the expiration or termination of this Contract and completion of the services set out under this Contract.

**IX. INSURANCE**

The Tribe shall maintain Commercial General Liability or equivalent for bodily injury, personal injury and property damage, subject to limits of not less than \$1,000,000 per loss. The general aggregate limit shall apply separately to this Contract and be no less than \$2,000,000.

The Tribe shall furnish Thurston County with properly executed certificate of insurance or a signed policy endorsement which shall clearly evidence all insurance required in this section prior to commencement of services. The certificate will, at a minimum, list limits of liability and coverage. The certificate will provide that the underlying insurance contract will not be canceled or allowed to expire except on thirty (30) days prior written notice to Thurston County.

Certificates of Insurance shall show the Certificate Holder as Thurston County and include c/o the Office or Department issuing this Contract. The address of the Certificate Holder shall be shown as the current address of the Office or Department.

Written notice of cancellation or change shall be mailed to Thurston County at the following address:

Attn: Risk Analyst  
Human Resources  
2000 Lakeridge Drive S.W.  
Olympia, Washington 98502

**X. RECORDS RETENTION AND AUDIT**

During the progress of the services and for a period not less than six (6) years from the expiration or termination of this Contract, the records and accounts pertaining to the services and accounting therefore are to be kept available for inspection and audit by either party and/or the Federal Government and copies of all records, accounts, documents, or other data pertaining to the services will be furnished upon request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claim, or audit finding has been resolved even though such litigation, claim, or audit continues past the 6-year retention period.

**XI. TERMINATION**

Either party may terminate this Contract upon thirty (30) days prior written notice to the other party. If this Contract is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Contract prior to the effective date of termination. The indemnification and hold harmless provisions of this Contract shall survive termination of the Contract.

**XII. LEGAL RELATIONS**

No liability shall attach to the parties by reason of entering into this Contract except as expressly provided herein.

**XIII. CHANGES, MODIFICATIONS, AND AMENDMENTS**

The Contract may be changed, modified, amended or waived only by written agreement executed by the parties hereto.

**XIV. GOVERNANCE**

This Contract is entered into pursuant to and under the authority granted by the laws of the State of Washington. The provisions of this Contract shall be construed to conform to those laws, and shall be governed by those laws as to interpretation and performance. Any action at law, suit in equity, or judicial proceeding arising out of this Contract shall be instituted and maintained only in a court of competent jurisdiction in Thurston County, Washington.

**XV. WAIVER OF SOVEREIGN IMMUNITY**

Pursuant to the above paragraph XIV., the Tribe expressly grants a limited waiver of sovereign immunity and consents to the personal jurisdiction of the Superior Court of the State of Washington solely for the purposes of bringing suit in Thurston County for claims, disputes, proceedings or actions in any way arising under or relating to this Contract which includes third party claims. This limited consent to suit extends to section VIII., Indemnification and Hold Harmless. The Tribe's governing body shall execute a formal Resolution of Limited Waiver of Sovereign Immunity.

**XVI. SEVERABILITY**

If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Contract, and to this end the provisions of this Contract are declared to be severable.

**XVII. WAIVER**

A failure by either party to exercise its rights under this Contract shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Contract unless stated to be such in a writing signed by an authorized representative of the party.

**XVIII. ENTIRE CONTRACT**

This Contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed this 22 day of February, 2011.

The Nisqually Indian Tribe

  
\_\_\_\_\_  
Signature

Authorized Representative  
RICHARD A. WELLS  
TRIBAL ADMINISTRATOR

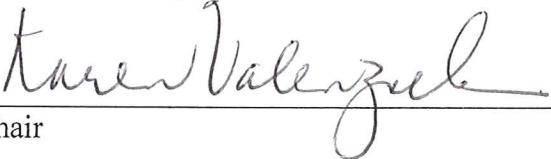
Printed Name

\_\_\_\_\_  
Title

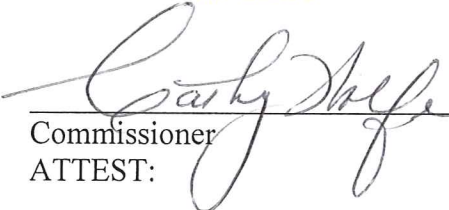
Approved as to Form:

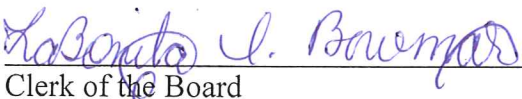
\_\_\_\_\_  
Tribal Attorney

Board of County Commissioners  
Thurston County

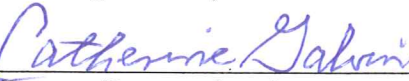
  
\_\_\_\_\_  
Chair

Excused Absence  
\_\_\_\_\_  
Vice-Chair Romero

  
\_\_\_\_\_  
Commissioner  
ATTEST:

  
\_\_\_\_\_  
Clerk of the Board

Approved as to Form:  
Jon Tunheim  
Prosecuting Attorney

By:   
\_\_\_\_\_  
Deputy Prosecuting Attorney