

WASHINGTON STATE  
DEPARTMENT OF TRANSPORTATION

ENVIRONMENTAL RESOURCES SITE EVALUATION AND EXPERTISE REPORTS AGREEMENT AGREED UPON AMOUNT		ORGANIZATION AND ADDRESS: Stillaguamish Tribe of Indians 3110 Smokey Point Drive P.O. Box 277 Arlington, WA 98223
AGREEMENT NUMBER	MAXIMUM AMOUNT PAYABLE:	PROJECT TITLE AND DESCRIPTION OF WORK:
GCA 5765	<u>\$4,064,465.26</u>	<b>SR 532 Corridor Improvements – Wetland Mitigation</b> The performance of site monitoring in accordance with assigned tasks.

THIS AGREEMENT is made and entered into between the Washington State Department of Transportation, hereinafter the "WSDOT", and the Stillaguamish Tribe hereinafter the "STILLAGUAMISH TRIBE", collectively "PARTIES" and individually "PARTY".

WHEREAS, the WSDOT has planned the SR 532 Corridor Improvements -- Camano Island to I-5 -- Design/Build, hereinafter the PROJECT, and

WHEREAS, the STILLAGUAMISH TRIBE is planning a wetland restoration project within tribal property located at 236<sup>th</sup> Street (Pilchuck Park), as shown in the Parcel Map, Exhibit E, and its Legal Description in Exhibit D, hereinafter the STILLAGUAMISH PROJECT and

WHEREAS, as a result of WSDOT's PROJECT and to satisfy regulatory requirements for impacts to wetlands under Section 404 of the Clean Water Act the WSDOT wishes to contribute to the STILLAGUAMISH PROJECT those required wetland mitigation funds equal to or less than those that would have been expended on the WSDOT's project, and

WHEREAS, The STILLAGUAMISH TRIBE will be responsible for obtaining all necessary permits and approvals, including those for cultural resources and

WHEREAS, the Stillaguamish Tribal Council has, by Tribal Board of Directors Resolution, attached hereto as Exhibit "A" and by this reference made a part of this AGREEMENT, authorized the Stillaguamish Tribal Chairman to sign this AGREEMENT and any and all documents necessary to its implementation, and

NOW, THEREFORE, by virtue of RCW 39.34 and in consideration of the terms, conditions, covenants, and performances contained herein, or attached and incorporated and made a part hereof, IT IS MUTUALLY AGREED AS FOLLOWS:

**1. Purpose**

- 1.1 The WSDOT, in cooperation from the STILLAGUAMISH TRIBE, has prepared a consultant Scope of Work which is described in Exhibit "B", attached hereto and by this reference made a part of this AGREEMENT, and
- 1.2 The purpose of this AGREEMENT is to set forth the mutual obligations, rights and responsibilities of the WSDOT and the STILLAGUAMISH TRIBE with respect to the activities to be performed in accordance with the consultant Scope of Work described in Exhibit "B".

## 2. STILLAGUAMISH TRIBE Responsibilities

- 2.1 The STILLAGUAMISH TRIBE will act as the manager of the PROJECT, including administration of the consultant contract, and managing the STILLAGUAMISH PROJECT budget.
- 2.2 The STILLAGUAMISH TRIBE will be responsible to complete all items with its deliverables on time as described in Scope of Work, Exhibit "B".

## 3. WSDOT Responsibilities

- 3.1 The WSDOT agrees to participate in the STILLAGUAMISH PROJECT by providing funding, review and comment on the site development plan, and post construction monitoring of the site.
- 3.2 The WSDOT agrees to pay the STILLAGUAMISH TRIBE the agreed upon amount of Four Million, Sixty Four Thousand, Four Hundred Sixty Five Dollars and Twenty Six Cents (\$4,064,465.26) over a ten (10) year period.

## 4. Payment

- 4.1 WSDOT agrees to pay the STILLAGUAMISH TRIBE for the work completed on no less than a monthly percent complete basis, utilizing the agreed upon amount breakdown described in Exhibit C, documented and billed to WSDOT. A detailed breakdown is in Exhibit "C", attached hereto and by this reference made a part of this Agreement. Provided, that upon execution of this Agreement there shall be an initial payment by WSDOT to the STILLAGUAMISH TRIBE for advance work performed and costs expended by the Tribe on this project prior to and immediately after commencement of the Agreement.
- 4.2 Payment of submitted monthly progress reports will be contingent upon WSDOT verification that the work being billed for has been satisfactorily completed and is within the scope of work required to progress to the timely development of the wetland area. An interdisciplinary inspection team consisting of WSDOT and STILLAGUAMISH TRIBE environmental specialists will be convened to verify satisfactory completion of work.
- 4.3 The STILLAGAMISH TRIBE shall submit monthly progress reports to the WSDOT detailing the Scope of Work performed during the billing period as described in Exhibit B. The WSDOT shall pay the STILLAGUAMISH TRIBE the agreed upon monthly progress amount, as shown at the end of Exhibit C, within 30 days from receipt of monthly progress reports from the STILLAGUAMISH TRIBE.
- 4.4 The STILLAGUAMISH TRIBE will send all progress reports to the following address:

NWR Department of Transportation  
Mr. Robyn Boyd MS 82-139  
PO Box 330310  
Seattle, WA 98133-9710  
[BoydRL@wsdot.wa.gov](mailto:BoydRL@wsdot.wa.gov)

## 5. Inspection of Work

- 5.1 The WSDOT will at all times be accorded proper facilities for review and inspection of the work hereunder and will at all reasonable times have access to the premises, and to all data, notes, records, correspondence, instructions, and memoranda of every description pertaining to the work hereunder. The purpose of the inspections is to verify that the work is being performed in accordance with the

Scope of Work in Exhibit B, and is progressing towards the intended completion of the project in a timely manner.

## 6. Employment

- 6.1 The STILLAGUAMISH TRIBE warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the STILLAGUAMISH TRIBE, to solicit or secure this AGREEMENT, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the STILLAGUAMISH TRIBE, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this AGREEMENT. For breach or violation of this warrant, the WSDOT shall have the right to annul this AGREEMENT, without liability, or, at its discretion, to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
- 6.2 Any and all employees or independent contractors of the STILLAGUAMISH TRIBE engaged in the performance of any work or services required of the STILLAGUAMISH TRIBE under this AGREEMENT, shall not be considered employees of the WSDOT.

## 7. Non-Discrimination

- 7.1 The STILLAGUAMISH TRIBE agrees not to discriminate against any client, employee, or applicant for employment or for services because of race, creed, color, national origin, marital status, sex, age, or handicap except for a bona fide occupational qualification with regard to, but not limited to the following: employment upgrading, demotion or transfer; recruitment or any recruitment advertising; layoff or termination; rate of pay or other forms of compensation; selection for training; rendition of services. The STILLAGUAMISH TRIBE understands and agrees that if it violates this non-discrimination provision, this AGREEMENT may be terminated by the WSDOT through the Agreement Manager located in Vancouver Washington now or in the future, unless a showing is made satisfactory to the WSDOT that discriminatory practices have terminated and that recurrence of such action is unlikely. Provided, however, that the terms and provisions of this section shall not be construed to prevent the STILLAGUAMISH TRIBE from giving Indian Preference as permitted by Federal law.
- 7.2 During the performance of this contract, the STILLAGUAMISH TRIBE, for itself, its assignees and successors in interest agrees as follows:

7.2.1 Compliance with regulations: The STILLAGUAMISH TRIBE shall comply with the regulations relative to nondiscrimination in the same manner as in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21 (hereinafter referred to as the Regulations) as they may be amended from time to time, which are herein incorporated by reference and made a part of this AGREEMENT.

7.2.2 Nondiscrimination: With regard to work it performs under this AGREEMENT, and all executed Task Orders, the STILLAGUAMISH TRIBE shall not discriminate on the grounds of race, creed, color, sex, age, marital status, national origin, or handicap, except for a bona fide occupational qualification in the selection and retention of Tribal Consultants, and the procurements of materials and leases of equipment. The STILLAGUAMISH TRIBE shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the AGREEMENT, and any executed Task Order, covers a program set forth in Appendix 11 of the Regulations.

7.2.3 Information and Reports: The STILLAGUAMISH TRIBE shall provide all information and reports required by the Regulations, or directive issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information related solely to the work completed under this AGREEMENT, and its facilities as may be pertinent to ascertain compliance with such Regulations or directives. Where any information required of the STILLAGUAMISH TRIBE is in the exclusive possession of another who fails or refuses to furnish this information, the STILLAGUAMISH TRIBE shall so certify to the WSDOT, as appropriate, and shall set forth what efforts it has made to obtain the information.

7.2.4 Sanctions for Noncompliance: In the event of the STILLAGUAMISH TRIBE's noncompliance with the nondiscrimination provisions of this contract, the WSDOT shall impose such contract sanctions which it may determine to be appropriate, including, but not limited to:

- a. Withholding of payments to the STILLAGUAMISH TRIBE under the AGREEMENT until compliance, and/or
- b. Cancellation, termination, or suspension of the AGREEMENT, in whole or in part.

7.2.5 Incorporation of Provisions: The STILLAGUAMISH TRIBE shall include the provisions of paragraphs 7.2.1 through 7.2.4 above in every subcontract. The STILLAGUAMISH TRIBE shall take such action with respect to any subcontractor or procurement as is determined necessary, after consultation between the STILLAGUAMISH TRIBE Board of Directors and its legal counsel, for any violation of the terms of this Section. The WSDOT may take such actions as it deems necessary to make sure the STILLAGUAMISH TRIBE is enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the STILLAGUAMISH TRIBE becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the STILLAGUAMISH TRIBE may request the WSDOT to enter into such litigation to protect the interest of the WSDOT, and, in addition, the STILLAGUAMISH TRIBE may request the United States to enter into such litigation to protect the interests of the United States.

## 8. Legal Relations

- 8.1 STILLAGUAMISH TRIBE shall comply with all applicable laws to the work to be done under this AGREEMENT.
- 8.2 The STILLAGUAMISH TRIBE shall indemnify and hold the State, its agencies, officers, employees and agents, both individually and in their representative capacities, harmless from and shall defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages or costs of whatever kind or nature against the State arising in whole or in part from the STILLAGUAMISH TRIBE's, its employees or agents engaged in work under this AGREEMENT, negligence or the STILLAGUAMISH TRIBE's breach of any of its obligations under this AGREEMENT; provided, however, that if such claims are caused by or result from the concurrent negligence of (a) the STILLAGUAMISH TRIBE, its employees or agents engaged in work under this AGREEMENT and (b) the State, its agencies, officers, employees and/or agents, this indemnity provision shall be valid and enforceable only to the extent of the negligence of STILLAGUAMISH TRIBE, its employees or agents engaged in work under this AGREEMENT; and provided further that nothing herein shall require STILLAGUAMISH TRIBE to hold harmless or defend the State, its agencies, officers, employees and/or agents from any claims arising from the sole negligence of the State, its agencies, officers, employees and/or agents.
- 8.3 STILLAGUAMISH TRIBE's relation to the State shall be at all times as an independent contractor.

- 8.4 STILLAGUAMISH TRIBE agrees to waive its immunity under Title 51 RCW (Industrial Insurance) only to the extent required to indemnify, defend and save harmless the State, its agencies, officers, employees and/or agents for the work performed under this AGREEMENT.
- 8.5 These indemnifications and waivers shall survive any termination of this AGREEMENT.

### 9. Remedies Cumulative

- 9.1 All remedies provided in this AGREEMENT are distinct and cumulative to any other right or remedy under this document or afforded by law or equity, and may be exercised independently, concurrently, or successively therewith.

### 10. Agreement Amendment

- 10.1 Either PARTY may request changes to the provisions contained in this AGREEMENT. Such changes shall be effective only when mutually agreed upon and incorporated by written supplement to this AGREEMENT. No variation or alteration of the terms of this AGREEMENT shall be valid unless made in writing and signed by authorized representatives of the PARTIES hereto.

### 11. Termination of Agreement

- 11.1 The right is reserved by the PARTIES to terminate this AGREEMENT at any time upon thirty (30) days written notice, by certified mail, to the designated representative of the other PARTY. The designated representatives for the PARTIES are as follows:

STILLAGUAMISH TRIBE: Manager  
Stillaguamish Tribe  
3110 Smokey Point Drive  
Arlington, WA 98223

WSDOT: Agreement Manager  
WSDOT/ Robyn Boyd  
P.O. Box 330310, MS 139  
Seattle, WA 98133

- 11.2 In the event this AGREEMENT is terminated by the WSDOT through the WSDOT Agreement Manager located in Seattle Washington other than for default on the part of the STILLAGUAMISH TRIBE, a final payment shall be made to the STILLAGUAMISH TRIBE which, when added to any payments previously made, shall total the prorated amount based on the effective termination date and the payment schedule included at the end of Exhibit C, for the work completed prior to the effective termination date.
- 11.3 No payment shall be made for any work completed after ten days following receipt by the STILLAGUAMISH TRIBE of the notice of termination. If the accumulated payment made to the STILLAGUAMISH TRIBE prior to notice of termination exceeds the total amount that would be due when computed as set forth herein above, then no final payment shall be due and the STILLAGUAMISH TRIBE shall immediately reimburse the WSDOT for any excess paid.
- 11.4 If the services of the STILLAGUAMISH TRIBE are terminated by the WSDOT through the WSDOT Agreement Manager located in Seattle, Washington for default on the part of the STILLAGUAMISH TRIBE, the above formula for payment shall not apply. In such an event, the amount to be paid shall be determined by the WSDOT with consideration given to the actual costs incurred by the STILLAGUAMISH TRIBE in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the WSDOT at the time of termination; the cost to the WSDOT to employ another firm to complete the work required and the time which may be required to do so, and other factors which affect the value to the WSDOT of the work performed at the time of termination.

Under no circumstances shall payment made under this subsection exceed the amount which would have been made using the formula set forth in the previous paragraph.

- 11.5 If it is determined for any reason that the STILLAGUAMISH TRIBE was not in default or that the failure to perform was not the result of STILLAGUAMISH TRIBE, its employees or Tribal Consultant(s) negligence, the termination shall be deemed to be a termination for the convenience of the WSDOT in accordance with the provisions of this AGREEMENT.
- 11.6 Payment for any part of the work by the WSDOT shall not constitute a waiver by the WSDOT of any remedies of any type it may have against the STILLAGUAMISH TRIBE for any breach of this AGREEMENT by the STILLAGUAMISH TRIBE, or for failure of the STILLAGUAMISH TRIBE to perform work required of it by the WSDOT. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any further act or omission by the STILLAGUAMISH TRIBE.

## **12. No Obligations to Third Parties**

- 12.1 No Agreement between the STILLAGUAMISH TRIBE and non-employees engaged under Section 11.4 shall create any obligation or liability of the WSDOT with regard to this AGREEMENT without the WSDOT's specific written consent and notwithstanding its concurrence in, or approval of, the award of any such Agreement or sub-Agreement or the solicitation thereof. The STILLAGUAMISH TRIBE hereby agrees to include this provision in all Agreements it enters into for work by any non-employee Tribal members.
- 12.2 This Agreement does not create any rights in favor of the general public or other third party to bring any claim or action against the STILLAGUAMISH TRIBE, its' officers, directors or employees.

## **13. No Waiver of WSDOT's Rights**

- 13.1 Neither the acceptance by the WSDOT nor any payment for the whole or any part of the work, nor any extension of time, nor any possession taken by the WSDOT shall operate as a waiver of any portion of the AGREEMENT or any power herein reserved or any right to damages herein provided, or bar recovery of any money wrongfully or erroneously paid to the STILLAGUAMISH TRIBE. A waiver of any breach of the AGREEMENT shall not be held as a waiver of any other or subsequent breach.

## **14. Records Retention**

- 14.1 The STILLAGUAMISH TRIBE shall maintain and retain, for a period of three years after the work has been completed, all cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records. If any litigation, claim, or audit has been started before the expiration of the three-year period, the records will be retained until all litigation, claims, or audit findings involving the records have been resolved. The three-year retention period starts when the STILLAGUAMISH TRIBE receives final payment under the terms of this AGREEMENT. These records shall be made available for inspection or audit to WSDOT or its authorized representative and/or any relevant United States government agency or its representative at the Tribe's administrative offices.

## **15. Dispute Resolution Process**

- 15.1 In the event that a dispute arises under this AGREEMENT which can not be resolved between the PARTIES, the dispute shall be settled in the following manner: Each PARTY to this AGREEMENT shall appoint a member to a dispute board. The members so appointed shall jointly appoint a third

member to the dispute board who is not employed by or affiliated with either of the PARTIES to this AGREEMENT. The dispute board shall evaluate the facts, contract terms, and applicable statutes and rules and make a determination of the dispute. The determination of the dispute board shall be final and binding on the PARTIES hereto.

- 15.2 Any costs associated with appointing the third member to the dispute board shall be shared equally between the two PARTIES.

#### **16. Limited Waiver of Sovereign Immunity and Venue**

A. The STILLAGUAMISH TRIBE OF INDIANS expressly reserves all of its inherent sovereign rights as a federally recognized Indian tribe, include sovereign immunity from suit in any state, federal or tribal court without the Tribe's consent. By entering into this Agreement, the Tribe hereby grants a limited waiver of sovereign immunity to the STATE only, subject to and conditioned on the following:

a) This limited waiver of immunity is to be strictly construed and limited to enforcement of the express terms of this Agreement and to any dispute that might arise under the express terms of this Agreement between the Parties. This limited waiver of immunity shall not extend to interpretation of the Treaty of Point Elliott, 12 Stat. 927, or the rights reserved by the Tribe under that Treaty. This waiver of immunity is solely for the benefit of the WSDOT and shall not extend to or be used for or to the benefit of any other person or entity of any kind or description whatsoever, including any successor or assign of the WSDOT. The STILLAGUAMISH TRIBE does not waive its immunity with respect to any action brought by, or on behalf of, any other entity or person.

b) To the extent that jurisdiction obtains, this limited waiver of immunity shall be deemed a consent to jurisdiction only of the Washington State Superior Court, Thurston County, Washington.

c) This limited waiver of immunity in favor of the WSDOT shall commence and become effective as of the effective date of this Agreement and shall remain in effect until the ending date as set forth in Subsection 17.1 or in case of early termination, the termination date of this Agreement. Notwithstanding any applicable statute of limitations or other law, upon expiration of the above contract term or early termination, this limited waiver of immunity shall be deemed withdrawn without further action by the Tribe or notice to the STATE.

d) Nothing contained in this Agreement shall be deemed a consent to levy any judgment, lien or attachment upon any assets, property or interest of the Tribe except as specifically identified elsewhere in this Agreement. The WSDOT'S proportional share of funds advanced to the STILLAGUAMISH TRIBE, if any, which have not been expended prior to termination of this Agreement shall be repaid to the STATE within thirty (30) days of receipt of a written notice to the STILLAGUAMISH TRIBE detailing such overpayment.

e) Nothing in this Agreement, nor any activity of the STILLAGUAMISH TRIBE, shall implicate or in any involve the trust assets or credit of the STILLAGUAMISH TRIBE or any of its members.

#### **17. Duration and Termination**

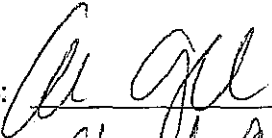
- 17.1 This AGREEMENT shall become effective upon execution by the PARTIES and shall remain in effect until 12/31/2017 unless terminated earlier as provided herein. (RG: This date matched the end date in the payment schedule.)

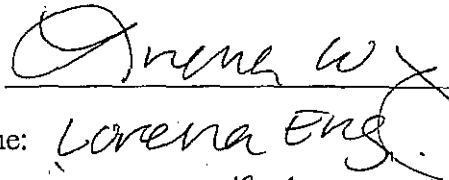
17.2 Either PARTY may terminate this AGREEMENT upon thirty (30) days prior written notification to the other PARTY. If this AGREEMENT is so terminated, the PARTIES shall be liable only for performance rendered or costs incurred in accordance with the terms of this AGREEMENT prior to the effective date of termination, including all non cancelable obligations.

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT as of the date last written below.

STILLAGUAMISH TRIBE

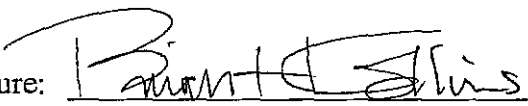
WASHINGTON STATE DEPARTMENT OF  
TRANSPORTATION

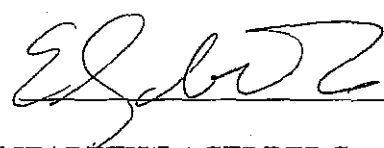
Signature:   
Printed name: Edward Goodridge  
Title: Executive Director  
Date Signed: 9/16/08

Signature:   
Printed name: Lorena Eng  
Title: Regional Administrator  
Date Signed: 9/17/08

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Signature:   
Name (print): BRIAN H. COLLINS  
Tribal Attorney  
Date Signed: 9-17-08

Signature:   
Name: ELIZABETH LAGERBERG  
Assistant Attorney General  
Date Signed: 9-16-08

**WSDOT AGREEMENT GCA 5765  
EXHIBIT B**

**Abbreviations:**

<u>Tribe</u>	<u>Stillaguamish Tribe of Indians</u>
<u>WSDOT</u>	<u>Washington State Department of Transportation</u>
<u>IDT</u>	<u>Interdisciplinary Team</u>
	<u>(Stillaguamish representatives:----- WSDOT representatives:</u> <u>Mitigation Biologist, Permit Coordinator, Landscape Architect, Hydraulics Engineer, or</u> <u>subsets thereof)</u>
<u>STA</u>	<u>Seal of Testing Assurance Program, US Composting Council</u>
<u>LA</u>	<u>Landscape Architect</u>
<u>MB</u>	<u>Mitigation Biologist</u>
<u>PC</u>	<u>Permit Coordinator</u>

**SCOPE of WORK**

1. The STILLAGUAMISH TRIBE shall participate in an interdisciplinary team (IDT) consisting of WSDOT and STILLAGUAMISH TRIBE technical staff to oversee site development. This team shall participate in regularly scheduled meetings until all construction activities completed. This meeting may or may not be coincident with the plant establishment site inspections. The STILLAGUAMISH TRIBE will be responsible to complete this work and payment is incidental to the work elements provided in Exhibit C.

Deliverable – Meeting minutes.

Schedule – Duration of the project

2. The STILLAGUAMISH TRIBE shall review the plans with WSDOT. All members of the IDT shall be in agreement of the desired outcome of the plans prior to the start of each phase of work. The STILLAGUAMISH TRIBE will be responsible to complete this work and payment is incidental to the work elements provided in Exhibit C.

Schedule – September 2008

**3. Project Management and Coordination**

The STILLAGUAMISH TRIBE shall perform all project management tasks, including planning and scheduling meetings, scheduling staff resources, managing contracts, monitoring work progress and performance, overseeing construction, and monitoring budget expenditures and schedules. The STILLAGUAMISH TRIBE shall submit monthly progress reports detailing the work accomplished and the estimated percentage of completion for each Item listed in Exhibit C. The percentage of completion report shall be accompanied by a billing for the percentage of work completed during that period. The STILLAGUAMISH TRIBE will be responsible to complete this work and payment is incidental to the work elements provided in Exhibit C.

The STILLAGUAMISH TRIBE shall prepare As-built plans for delivery to WSDOT. The STILLAGUAMISH TRIBE will be responsible to complete this work and payment is included is incidental to the work elements provided in Exhibit C.

Deliverables: -Project management records. Monthly Progress Reports (includes monthly billings).

Schedule – Ongoing during project.

**4. Prepare Archaeological Report.**

The STILLAGUAMISH TRIBE shall consult with WSDOT NW Region Archeology and Cultural Resources staff, Washington State Historic Preservation Offices and the Bureau of Indian Affairs, as necessary to produce and complete an Archeological Report. The STILLAGUAMISH TRIBE will be responsible to complete this work.

Deliverable - Archaeological Report  
Schedule- September 2008

#### 5. Site Clean Up

The STILLAGUAMISH TRIBE shall remove buried or unburied man made materials as encountered during construction and dispose of materials off-site. Provided, that this paragraph shall not apply to archaeological resources, funerary objects, items of cultural patrimony or other objects of cultural significance to the Tribe.

Schedule -- September 2008

6. The STILLAGUAMISH TRIBE shall cause a restrictive covenant or similar restriction to be placed on deed to protect the property from development in perpetuity.

Schedule -- November 2009

7. The STILLAGUAMISH TRIBE shall perform property management and site security. The STILLAGUAMISH TRIBE will be responsible to complete this work and payment is incidental to the work elements provided in Exhibit C.

Schedule -- On going during project.

8. The STILLAGUAMISH TRIBE shall install erosion control measures.

Schedule- On going during project

9. The STILLAGUAMISH TRIBE shall perform all construction activities necessary to complete this project as shown in Exhibit B; including excavation, grading, installation of the haul road, weed control, application of compost, planting, mulching, plant establishment, and other items as needed.. At key points during the project, the IDT shall be , convened to advise and to approve final grades. The LA or IDT will inspect the compost, seeding, planting and mulching as to meeting the intent of the project plans. The STILLAGUAMISH TRIBE shall convene the IDT to approve completion of the construction phase of the work.

Schedule- On going during project

10. The STILLAGUAMISH TRIBE shall maintain traffic control and traffic safety management as needed. The STILLAGUAMISH TRIBE will be responsible to complete this work and payment is incidental to the work elements provided in Exhibit C.

Schedule- On going during project

11. The STILLAGUAMISH TRIBE shall perform all necessary weed control to insure that all planting areas are free of weeds and/or undesirable vegetation at the time of planting. Weed control shall include selective clearing and grubbing (removal of invasive or undesirable vegetation in buffer areas) prior to seeding and planting. Weed control shall also include herbicide weed control on any areas excavated to less than 1', as

identified on the plans, minimum of two weeks prior to excavation. The STILLAGUAMISH TRIBE shall convene the LA or IDT to review and approve weed control.

Schedule- On going during project

12. The STILLAGUAMISH TRIBE shall submit STA approved compost supplier and WSDOT LA shall approve compost prior to delivery. The STILLAGUAMISH TRIBE shall apply 3" depth of fine compost after grading operations to all exposed soils and meet with the LA to approve application.

Schedule - September-October, 2008

13. The STILLAGUAMISH TRIBE shall convene IDT Team to evaluate hydrology and ground elevations prior to planting wetland restoration areas. The IDT Team shall approve final grades and finalize the planting plan based on conditions. The STILLAGUAMISH TRIBE will be responsible to complete this work and payment is incidental to the work elements provided in Exhibit C.

Schedule - Spring, 2009

14. The STILLAGUAMISH TRIBE shall submit for approval to IDT specified native seed mix composition and proportion prior to delivery. The STILLAGUAMISH TRIBE shall apply native seed mix and seek concurrence from the LA regarding application timing and methods.

Schedule - Spring, 2009

15. The STILLAGUAMISH TRIBE shall procure plants as identified on the planting plan and coordinate with LA for approval of plants.

Schedule - November 2008-November 2009

16. The STILLAGUAMISH TRIBE shall schedule planting crew and plant the site per the planting plan. The Tribe shall coordinate with LA to approve planting methods. All planting areas shall be weed free at the time of planting.

Schedule - November 2008-November 2009

The STILLAGUAMISH TRIBE shall convene IDT to approve final planting. Final planting shall include all plants and plant spacing as identified on the planting plan.

Schedule - November 2009

#### 17. Monitoring

WSDOT will provide monitoring crew and conduct monitoring activities. Monitoring is required for 10 years or until the site has met the Standards of Success as written in the Wetland Mitigation Plan document. Formal reports will be submitted in years 1, 3, 5, 7, and 10 as part of this agreement. WSDOT will prepare interim and final monitoring reports, which report if the site is meeting the performance measures as defined in the Final Wetland Mitigation Plan. The STILLAGUAMISH TRIBE will be responsible to complete this work and payment is incidental to the work elements provided in Exhibit C.

#### 18. Plant Establishment

The STILLIGUAMISH TRIBE shall perform all plant establishment activities required to meet the performance as measured by WSDOT Monitoring. Plant establishment activities shall consist of caring for all plants, including but not limited to; plant replacement, weed control, watering, litter control, plant protection tubes and/or any work necessary to maintain plant health and site development. The STILLIGUAMISH TRIBE shall coordinate with the LA to review plant establishment activities monthly. The STILLIGUAMISH TRIBE shall perform adaptive management activities on the site to respond to the recommendations of the IDT or based on the Monitoring Reports.

Schedule – On going for Ten Years after plant installation.

SR 532 Corridor Improvements - Wetland Mitigation  
 AGREEMENT NUMBER - GCA 5765  
 Stillaguamish Tribe Agreement  
 Exhibit C

Scope of Work Item	Unit	Description	Item Total including Overhead and Mobilization (See note 1)	Scope of Work Total Cost
1,2,3,6,7,10,13,17		<b>Overhead and Mobilization</b>		<b>\$0.00</b>
		This item is incidental to each major construction item listed below and consists of; creation of an IDT Team to measure and monitor site development through construction, plan development, project management, cause a restrictive covenant to be placed on deed to protect site from development in perpetuity, perform property management and site security, provide traffic control and traffic safety management as needed, meet with IDT team regarding final site grading, finalize planting plan, and monitor site until the site has met the Standards of Success as written in the Wetland Mitigation Plan.		
4		<b>Prepare Archaeological Report</b>		<b>\$13,500.00</b>
	L.S.	Prepare Archaeological Report (106 Study)	\$13,500.00	
5		<b>Site Clean up</b>		<b>\$47,250.00</b>
	L.S.	Clearing and Grubbing	\$29,700.00	
	L.S.	Removal of man-made Material, Buried or Unburied, except this requirement will not apply to archaeological resources, funerary objects, items of cultural patrimony and other objects of cultural significance to the Tribe	\$6,750.00	
	L.S.	Abandonment of Piezometers	\$10,800.00	
8		<b>Erosion Control</b>		<b>\$149,498.43</b>
	L.S.	Crushed Surfacing Base Course	\$1,350.00	
	L.S.	Stablized Construction Entrance	\$5,128.11	
	L.S.	Street Cleaning	\$21,520.32	
	L.S.	Erosion/Water Pollution Control	\$121,500.00	
9		<b>Construct Mitigation Site</b>		<b>\$938,587.50</b>
	L.S.	Hog Fuel Road	\$27,000.00	
	L.S.	Mitigation Excavation Including Haul	\$533,250.00	
	L.S.	Mitigation Excavation	\$123,187.50	
	L.S.	Landscape Grading Adjustment	\$106,650.00	
	L.S.	Brush Pile, Raptor Perch, Logs w/ Rootwad	\$121,500.00	

	L.S.	Surveying and GPS	\$27,000.00	
11		<b>Selective Clearing, Grubbing and pruning</b>		<b>\$44,550.00</b>
	L.S.	Selective Clearing, Grubbing and Pruning	\$44,550.00	
		<b>Compost Procurement and Composting</b>		<b>\$626,163.75</b>
12	L.S.	Fine Compost	\$490,050.00	
	L.S.	Bark, Wood Chip Mulch or Arborist Chips	\$136,113.75	
14		<b>Seed Procurement and Seeding</b>		<b>\$186,807.60</b>
	L.S.	Wet Native Seeding and Mulching	\$167,508.00	
	L.S.	Dry Native Seeding and Mulching	\$19,299.60	
15,16		<b>Plant Procurement and Planting</b>		<b>\$728,107.97</b>
	L.S.	Planting 1 Gallon Container	\$621,347.27	
	L.S.	Planting, Live Stakes	\$106,760.70	
18		<b>Plant Establishment Years 2 to 10</b>		<b>\$1,330,000.00</b>
	L.S.	Plant Establishment- - 2nd year	\$270,000.00	
	L.S.	Plant Establishment - 3rd year	\$270,000.00	
	L.S.	Plant Establishment - 4th year	\$126,400.00	
	L.S.	Plant Establishment - 5th year	\$126,400.00	
	L.S.	Plant Establishment - 6th year	\$126,400.00	
	L.S.	Plant Establishment -7th year	\$110,600.00	
	L.S.	Plant Establishment - 8th year	\$110,600.00	
	L.S.	Plant Establishment - 9th year	\$94,800.00	
	L.S.	Plant Establishment -10th year	\$94,800.00	
		<b>Total Contract Price</b>		<b>\$4,064,465.26</b>

Note 1 - This column consists of the bid item cost plus overhead and mobilization from the Exhibit "C" -quantity backup data

**SR 532 Corridor Improvements – Wetland Mitigation  
 AGREEMENT NUMBER - GCA 5765  
 Stillaguamish Tribe Agreement  
 Exhibit C- Quantity Backup Data**

STD. ITEM NO.	UNIT	ITEM	TOTAL QUANTITY	Cost Per Unit	TOTAL ITEM COST (\$)	(Note 1) LUMP SUM COST (\$)	ASSUMPTIONS
		<b>PREPARATION</b>					
	S.Y.	HOG FUEL HAUL ROAD	2,500	8.00	20,000.00	27,000.00	access to both north and south end of site
0025	ACRE	CLEARING AND GRUBBING	11	2,000.00	22,000.00	29,700.00	estimation of 11 acres of removing minimum of 12" sod, 10 acres of no clearing and grubbing and/or sod removal, herbicide weed control only
	ACRE	SELECTIVE CLEARING, GRUBBING, AND PRUNING	11	3,000.00	33,000.00	44,550.00	estimation of 11 acres of clearing of noxious and undesirable species, spot applications herbicide weed control
	EST	REMOVAL OF MAN-MADE MATERIAL, BURIED OR UNBURIED (See Exhibit B)	1	5,000.00	5,000.00	6,750.00	
		<b>GRADING</b>					
	C.Y.	MITIGATION EXCAVATION INCL. HAUL	79,000	5.00	395,000.00	533,250.00	material hauled off site
	C.Y.	MITIGATION EXCAVATION / LANDSCAPE GRADING	18,250	5.00	91,250.00	123,187.50	material used on site as fill
7115	EST	ADJUSTMENT			79,000.00	106,650.00	fine grading first or second year
		<b>DRAINAGE</b>					
	TON	CRUSHED SURFACING BASE COURSE			1,000.00	1,350.00	at entrance, after construction completed
		<b>EROSION CONTROL AND PLANTING</b>					
6468	S.Y.	STABILIZED CONSTRUCTION ENTRANCE	195	19.48	3,798.60	5,128.11	
6470	HR	STREET CLEANING	166	96.03	15,940.98	21,520.32	
	EST	EROSION/WATER POLLUTION CONTROL			90,000.00	121,500.00	to include any TESC necessary (to include silt fence, compost sock or berm, wattle, straw bales)
	ACRE	WET NATIVE SEEDING AND MULCHING	24	5,280.00	124,080.00	167,508.00	all areas except riparian buffer/225' from Pilchuck Creek to be applied before Oct 1, seed specifications to be provided by WSDOT (assumes some areas will be seeded more than once over construction)

							period)
	ACRE	DRY NATIVE SEEDING AND MULCHING	8	1,787.00	14,296.00	19,299.60	riparian buffer or 225' from Pilchuck Creek, to be applied before Oct 1, seed specifications to be provided by WSDOT (assumes some areas will be seeded more than once over construction period)
6447	C.Y.	FINE COMPOST	12,100	30.00	363,000.00	490,050.00	apply STA pre-approved compost, 3" depth to all exposed soil, for entire site
	C.Y.	BARK, WOOD CHIP MULCH OR ARBORIST CHIPS	4,033	25.00	100,825.00	136,113.75	Apply bark, wood chip mulch or arborist chips, 3" depth to all areas (after compost application) outside of flood limits or areas identified by ID Team (excluding emergent plantings)
	EAC H	PLANTING, 1 GAL CONTAINER.	59,312	7.76	460,257.24	621,347.27	estimated 28.83 acres, planting at 4' on center, planting plan to be provided by WSDOT (some areas to be seed only)
	EAC H	PLANTING, LIVE STAKES	19,771	4.00	79,082.00	106,760.70	estimated 28.83 acres, 25% of material to be live stake (some areas to be seed only)
	EST	BRUSH PILE, RAPTOR PERCH, LOGS W/ ROOTWAD - LWD	200	7.00	90,000.00	121,500.00	
	L.S.	ABANDONMENT OF PIEZOMETERS	9		8,000.00	10,800.00	9 to be removed, 2 piezos to remain in place
	EST	SURVEYING & GPS			20,000.00	27,000.00	
	LS	Archaeological Report -106 STUDY			10,000.00	13,500.00	
6606	EST	PLANT ESTABLISHMENT - SECOND YEAR			200,000.00	270,000.00	
6608	EST	PLANT ESTABLISHMENT - THIRD YEAR			200,000.00	270,000.00	
6608	EST	PLANT ESTABLISHMENT - FOURTH YEAR			93,629.63	126,400.00	
6608	EST	PLANT ESTABLISHMENT - FIFTH YEAR			93,629.63	126,400.00	
6608	EST	PLANT ESTABLISHMENT - SIXTH YEAR			93,629.63	126,400.00	
6608	EST	PLANT ESTABLISHMENT - SEVENTH YEAR			81,925.93	110,600.00	
6608	EST	PLANT ESTABLISHMENT - EIGHTH YEAR			81,925.93	110,600.00	
6608	EST	PLANT ESTABLISHMENT - NINTH YEAR			70,222.22	94,800.00	
6608	EST	PLANT ESTABLISHMENT - TENTH YEAR			70,222.22	94,800.00	

		SUBTOTAL			3,010,715.01	4,064,465.26
		OVERHEAD & MOBILIZATION	35%		1,053,750.25	0.00
		TOTAL (Tribe)			4,064,465.26	4,064,465.26

<u>Year</u>		Approximate Yearly Payment to the TRIBE (\$)	<u>Accumulative</u>	<u>Start Month</u>	<u>Finish Month</u>	<u>No. Of Months</u>	Approximate Monthly Payment to the TRIBE (\$)
2008	1st	1,746,420.18	1,746,420.18	Aug	Dec	5	349,284
2009	2nd	1,258,045.07	3,004,465.26	Jan	Dec	12	104,837
2010	3rd	270,000.00	3,274,465.26	Jan	Dec	12	22,500
2011	4th	126,400.00	3,400,865.26	Jan	Dec	12	10,533
2012	5th	126,400.00	3,527,265.26	Jan	Dec	12	10,533
2013	6th	126,400.00	3,653,665.26	Jan	Dec	12	10,533
2014	7th	110,600.00	3,764,265.26	Jan	Dec	12	9,217
2015	8th	110,600.00	3,874,865.26	Jan	Dec	12	9,217
2016	9th	94,800.00	3,969,665.26	Jan	Dec	12	7,900
2017	10th	94,800.00	4,064,465.26	Jan	Dec	12	7,900
		<u>4,064,465.26</u>					

Note 1 - This lump sum cost includes required mobilization and overhead costs distributed over the required items of work. The overhead and mobilization costs covers all of the scope of work elements in items 1, 2,3,6,7,10,13, and 17

EXHIBIT D - LEGAL DESCRIPTION

Parcel Number 32053100300300

Parcel Legal Description

SEC 31 TWP 32 RGE 05 PTN GOVT LOTS 3 & 4 LYG ELY OF FDL DAF:

COM SW COR SW1/4 TH S89\*21 05E ALG S LN THOF DIST OF 88.42FT TO TPB; TH N15\*10 28E DIST OF 2722.77FT TAP N LN SD GOVT LOT 3 WH BEARS N89\*05 08E DIST OF 851.41FT FR NW COR THOF & TERM DESC LN EXC RD R/W PER DEEDS REC AFN 535044, 569607 & 1095435 ALSO BY SNC DECREE PER SCC 106412 ALSO EXC ANY PTN LYG WHN PUBLIC R/W AKA EXH C OF BLA04-115580 REC AFN 200407300003 \* *ALG 9/14/08*

Parcel Number 32053100300100

Parcel Legal Description

SEC 31 TWP 32 RGE 05 TH PTN NE1/4 SW1/4 LY W OF SR 5 \* *LOS 9/16/08*

Parcel Number 32053100300200

Parcel Legal Description

SEC 31 TWP 32 RGE 05 PTN GOVT LOTS 3 & 4 LYG WLY OF FDL DAF:

COM SW COR SW1/4 TH S89\*21 05E ALG S LN THOF DIST OF 88.42FT TO TPB; TH N15\*10 28E DIST OF 2722.77FT TAP N LN SD GOVT LOT 3 WH BEARS N89\*05 08E DIST OF 851.41FT FR NW COR THOF & TERM DESC LN EXC RD R/W PER DEEDS REC AFN 535044, 569607 & 1095435 ALSO BY SNC DECREE PER SCC 106412 ALSO EXC ANY PTN LYG WHN PUBLIC R/W AKA EXH D OF BLA04-115580 REC AFN 200407300003 \* *ALG 9/14/08*

\* THE ENTIRE MITIGATION PROJECT AREA IS SITUATED NORTH OF PILCHUCK CREEK.

*ALG 9/16/08*

EXHIBIT E - PARCEL MAP

