

WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION

ENVIRONMENTAL RESOURCES SITE EVALUATION AGREEMENT ACTUAL COST		ORGANIZATION AND ADDRESS: Snoqualmie Tribe PO Box 969 Snoqualmie, WA 98014
AGREEMENT NUMBER GCA 5832	MAXIMUM AMOUNT PAYABLE: \$3,000	PROJECT TITLE AND DESCRIPTION OF WORK: I-405 Corridor Program Improvements The performance of archaeological 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 Snoqualmie Tribe hereinafter the "SNOQUALMIE TRIBE", collectively "PARTIES" and individually "PARTY".

WHEREAS, individual project elements within the I-405 Corridor Program may result in unforeseen adverse effects on cultural resources which may require data recovery; and

WHEREAS, the Federal and State governments and the SNOQUALMIE TRIBE have an interest in the conservation, preservation, and protection of the State's and SNOQUALMIE TRIBE's archaeological and cultural resources; and

WHEREAS, WSDOT may desire to have the SNOQUALMIE TRIBE perform, and the SNOQUALMIE TRIBE may desire to perform, site monitoring and assistance with the identification of archaeological and cultural resources of significance to the SNOQUALMIE TRIBE; and

WHEREAS, WSDOT's I-405, SR 520 to I-5 Improvement Project (Project) will have an adverse effect on the precontact archaeological site recorded with the Washington State Department of Archaeology and Historic Preservation (DAHP) as 45KI757 (Site 45KI757), the vicinity of which has been historically used by the SNOQUALMIE TRIBE; and

WHEREAS, the PARTIES have agreed to conduct data recovery (RECOVERY) at Site 45KI757 with the assistance of the SNOQUALMIE TRIBE; and

WHEREAS, the PARTIES desire to enter into this AGREEMENT under which WSDOT, at its discretion, may assign specific tasks to SNOQUALMIE TRIBE necessary to ensure the conservation, preservation, and protection of sensitive archaeological and cultural resources or to obtain necessary archaeological and cultural resource information; and

WHEREAS, the Snoqualmie Tribal Council has, by Tribal Council Resolution, attached hereto as Exhibit "A" and by this reference made a part of this AGREEMENT, authorized the SNOQUALMIE TRIBAL Cultural Resources Director to administer and Chairman to sign this AGREEMENT and any and all documents necessary to its implementation;

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:

Section 1 Scope of Work

1.1 The work of the SNOQUALMIE TRIBE shall be monitoring of archaeological excavation activities at Site 45KI757, preparation of daily field notes, and production of a short Monitoring Report (1 – 2 pages). A complete set of original daily notes and the Monitoring Report shall be submitted to WSDOT as either hard copy or as email.

1.1.1 Conduct monitoring of on-site activities relating to archaeological data collection during ground disturbing activities for the RECOVERY. Assist WSDOT and its consultants with site reconnaissance, excavation as able, and in identification and interpretation of artifacts, constructed features, and spatial relationships.

1.1.2 Conduct other work related to identification and protection of sensitive archaeological remains as determined by the WSDOT for compliance with Federal, State, and Local laws and regulations.

1.1.3 The SNOQUALMIE TRIBE will have complete responsibility for the employment and supervision of all Tribal employees and/or other Tribal member used in completing the assigned work. If the SNOQUALMIE TRIBE does not have an employee with the skills required to perform a designated task it may arrange for Tribal members to perform the work under this AGREEMENT subject to the SNOQUALMIE TRIBE's standard procedures for obtaining services. All Tribal members retained by the SNOQUALMIE TRIBE and their associated fee rates and costs must be approved by the WSDOT prior to starting work. The fee rates and costs shall be limited to those referred to in Section 7, Payment. The SNOQUALMIE TRIBE shall not charge WSDOT any mark-up or profit on non-employees rates or costs. Only Tribal employees and Tribal members retained as described here may be used to perform the work.

1.2 This AGREEMENT is effective upon execution by both PARTIES and will remain in effect until December 31, 2008, unless otherwise supplemented or terminated

Section 2 Site Safety

2.1 The work of the SNOQUALMIE TRIBE shall be conducted in a safe manner and avoid unnecessary safety risks. Personal protective equipment, including a Class II safety vest, hardhat and sturdy, over-the-ankle footwear, shall be required. Tribal members and/or employees shall coordinate with the WSDOT regarding daily site access. As access from the roadway can be dangerous and parking will be limited, carpooling is encouraged.

Section 3 Payment

- 3.1 Payment to the SNOQUALMIE TRIBE will be on a cost reimbursement basis for actual direct costs incurred. The SNOQUALMIE TRIBE shall only be allowed to apply its overhead rate to direct salary costs incurred by Tribal employees. Non-employee costs are to be passed on to WSDOT at actual costs. No overhead charges may be applied to non-employee costs.
- 3.2 Direct costs may include the following:
- 3.2.1 Actual salaries and wages paid, based on the SNOQUALMIE TRIBE's current pay rates for SNOQUALMIE TRIBE personnel directly employed to perform the work. The WSDOT shall pay the salaries and wages as supported by documented pay scale for each such employee.
- 3.2.2 Actual SNOQUALMIE TRIBE employee's benefits. SNOQUALMIE TRIBE will provide a copy of its certified payroll to the WSDOT Agreement Manager for each SNOQUALMIE TRIBE employee assigned to the work.
- 3.2.3 Invoiced costs without markup for materials, equipment, and supplies used in performing the work.
- 3.2.4 Mileage or bus fare reimbursement for ground transportation directly connected with the work at current rates for state employees as specified in the latest edition of the Washington State Department of Transportation Accounting Manual and revisions thereto.
- 3.2.5 Paid leave to employees will not be reimbursed.
- 3.2.6 Costs without markup for work performed by non-employees. Such costs must be supported by invoices detailing hours worked and the documented rates charged by each non-employee.
- 3.2.7 The maximum amount payable to the SNOQUALMIE TRIBE shall not exceed three thousand dollars (\$3,000.00).
- 3.2.8 The SNOQUALMIE TRIBE will make the initial payments of all costs incurred in conducting archaeological and cultural services or recovery. The SNOQUALMIE TRIBE's costs will be reimbursed by the WSDOT, when approved in writing by the WSDOT. Reimbursement will not be made for any costs not clearly supported by the SNOQUALMIE TRIBE's records. WSDOT will not pay for any markup or overhead costs added to a non-employee's rate or fee. Each statement of charges and expenses will include AGREEMENT number, project number, and the day, month, and year costs were incurred. Statements will also show the date that the short Monitoring Report was sent to the WSDOT, or, on extended projects, the anticipated transmittal date.

Section 4
Inspection of Work

- 4.1 The WSDOT will at all reasonable times have access to all data, notes, records, correspondence, instructions, and memoranda of every description pertaining to the work hereunder except that information that is confidential under Federal or State laws.

Section 5
Ownership of Data and Artifacts

- 5.1 It is understood that all data, materials and potential artifacts discovered or gathered while performing the work will be the property of the State of Washington as determined by applicable law.

Section 6
Equipment and Instrumentation

- 6.1 It is mutually agreed by the PARTIES that apparatus and equipment, including small tools, that are purchased with funds provided by the WSDOT shall become the property of the WSDOT and shall be used only in connection with the work. Purchases of apparatus and equipment in excess of \$100.00 will be at the discretion and approval of the WSDOT Agreement Manager. Upon completion of the work, apparatus and equipment authorized for purchase shall be returned to WSDOT.

Section 7
Publication

- 7.1 All work performed will be considered confidential and exempt from public disclosure to the extent authorized by federal and state law. This includes all information, data, materials, records and reports prepared in connection with or related to any work.

Section 8
Employment

- 8.1 The SNOQUALMIE TRIBE warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the SNOQUALMIE 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 SNOQUALMIE 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.

- 8.2 Any and all employees of the SNOQUALMIE TRIBE engaged in the performance of any work or services required of the SNOQUALMIE TRIBE under this AGREEMENT shall be considered employees of the SNOQUALMIE TRIBE only and not of the WSDOT. Any and all claims that may arise on behalf of said employee, while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the SNOQUALMIE TRIBE's employees, while so engaged, shall be the sole obligation and responsibility of the SNOQUALMIE TRIBE.

Section 9 Non-Discrimination

- 9.1 The SNOQUALMIE 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 SNOQUALMIE TRIBE understands and agrees that if it violates this non-discrimination provision, this AGREEMENT may be terminated by the WSDOT 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 SNOQUALMIE TRIBE from giving Indian Preference as permitted by Federal law.
- 9.2 During the performance of this contract, the SNOQUALMIE TRIBE, for itself, its assignees and successors in interest agrees as follows:
- 9.2.1 Compliance with regulations: The SNOQUALMIE 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.
- 9.2.2 Nondiscrimination: With regard to work it performs under this AGREEMENT, the SNOQUALMIE 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 SNOQUALMIE 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 covers a program set forth in Appendix 11 of the Regulations.
- 9.2.3 Procurement of Materials and Equipment: In all solicitations the SNOQUALMIE TRIBE makes for the procurements of materials or leases of equipment, each potential Tribal Supplier shall be notified by the SNOQUALMIE TRIBE of the SNOQUALMIE TRIBE's obligation under this contract to comply with the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, marital status, and handicap.

9.2.4 Information and Reports: The SNOQUALMIE 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 determined by the WSDOT to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of the SNOQUALMIE TRIBE is in the exclusive possession of another who fails or refuses to furnish this information, the SNOQUALMIE TRIBE shall so certify to the WSDOT or Federal Highway Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.

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

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

Section 10 Amendment

- 10.1 This AGREEMENT may be amended by written supplement to this agreement. Any supplemental agreement shall be mutually agreed upon in writing prior to undertaking any work or incurring any costs covered by such agreement. Changes made under this AGREEMENT shall be made in writing and signed by the WSDOT and by an authorized SNOQUALMIE TRIBE official.

Section 11 Legal Relations

- 11.1 SNOQUALMIE TRIBE shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement. This Agreement shall be interpreted and construed in accordance with the laws of Washington.
- 11.2 SNOQUALMIE TRIBE shall indemnify and hold the State, its agencies, officers, employees and agents, both individually and in their representative capacities, harmless from and shall process and 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 SNOQUALMIE TRIBE, its members and/or employees negligence or SNOQUALMIE 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) SNOQUALMIE TRIBE, its members, and/or employees, 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 SNOQUALMIE TRIBE, its members and/or employees, and provided further that nothing herein shall

require SNOQUALMIE 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.

- 11.3 SNOQUALMIE TRIBE's relation to the State shall be at all times as an independent contractor.
- 11.4 SNOQUALMIE TRIBE waives its immunity under Title 51 RCW to the extent required to indemnify, defend and save harmless the State, its agencies, officers, employees and/or agents.
- 11.5 This indemnification shall survive any termination of this Agreement.

**Section 12
Remedies Cumulative**

- 12.1 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.

**Section 13
Termination of Agreement**

- 13.1 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:

Snoqualmie Tribe: Ray Mullen
Cultural Resources Director
Snoqualmie Tribe
PO Box 969
Snoqualmie, WA 98065

WSDOT: Kim Henry
I-405 Project Director
I-405 Project Office
600 108th Ave NE, Suite 405
Bellevue, WA 98004

- 13.2 In the event this AGREEMENT is terminated by the WSDOT other than for default on the part of the SNOQUALMIE TRIBE, a final payment shall be made to the SNOQUALMIE TRIBE which, when added to any payments previously made, shall total the actual costs of the work completed at the time of termination.
- 13.3 No payment shall be made for any work completed after ten days following receipt by the SNOQUALMIE TRIBE of the notice of termination. If the accumulated payment made to the SNOQUALMIE 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 SNOQUALMIE TRIBE shall immediately reimburse the WSDOT for any excess paid.
- 13.4 If the services of the SNOQUALMIE TRIBE are terminated by the WSDOT for default on the part of the SNOQUALMIE 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 SNOQUALMIE 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; 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.

- 13.5 If it is determined for any reason that the SNOQUALMIE TRIBE was not in default or that the failure to perform was not the result of SNOQUALMIE TRIBE or its employees, the termination shall be deemed to be a termination for the convenience of the WSDOT in accordance with the provisions of this AGREEMENT.
- 13.6 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 SNOQUALMIE TRIBE for any breach of this AGREEMENT by the SNOQUALMIE TRIBE, or for failure of the SNOQUALMIE 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 SNOQUALMIE TRIBE.

Section 14

No State Obligations to Third Parties

- 14.1 No agreement between the SNOQUALMIE TRIBE and its non-employee members engaged under Section 3.1.4 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 SNOQUALMIE TRIBE hereby agrees to include this provision in all agreements it enters into for work by any non-employee Tribal members.

Section 15

No Waiver of WSDOT's Rights

- 15.1 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 SNOQUALMIE TRIBE. A waiver of any breach of the AGREEMENT shall not be held as a waiver of any other or subsequent breach.

Section 16

Records Retention

- 16.1 The SNOQUALMIE TRIBE shall maintain and retain, for a period of three years, 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 SNOQUALMIE 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.

Section 17
Applicable Laws, Jurisdiction and Venue

17.1 In the event that either PARTY deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT; the PARTIES hereto agree that any such action or proceedings shall be brought in the Superior Court of the State of Washington, situated in King County, Washington. The Parties hereto agree that all questions shall be resolved by application of Washington law and that all Parties to such action shall have the right of appeal from such decision of the Superior Court in accordance with the laws of the State of Washington. SNOQUALMIE TRIBE hereby consents to the personal jurisdiction of the Superior Court of the State of Washington, situated in King County.

Section 18
Limited Waiver of Sovereign Immunity

18.1 SNOQUALMIE TRIBE hereby expressly grants a limited waiver of sovereign immunity defense to any claim, cause of action whether legal or equitable, arising under the Agreement, including those resulting from SNOQUALMIE TRIBE indemnification obligations set forth in Section 15, Legal Relations.

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

SNOQUALMIE TRIBE

WASHINGTON STATE DEPARTMENT
OF TRANSPORTATION

By: Joe Mullen 8-14-08

By: Kim Henry

Joe Mullen, Chairman
Snoqualmie Tribe

Kim Henry, Director
I-405 Project

Date: _____

Date: 8/27/08

Approved as to form:

Approved as to form:

By: Andrea Rodgers Harris

By: Elizabeth Lagerberg

Andrea Rodgers Harris, In-House Legal Council
Snoqualmie Indian Tribe

Elizabeth Lagerberg, Assistant Attorney General
Office of the Attorney General

Date 8-13-08

Date 7-8-08