

SITE PREPARATION FY17/18

Exhibit A-1

Scope of Work

To facilitate the need for preparation of the sites for planting, the Contractor will pile XXX acres as described in Exhibit A – unit maps. The Contractor may use reservation roads as necessary to perform this contract, but the Nation shall not be held responsible for the conditions of the roads.

1. Contractor shall pile an adequate amount of the slash (under 8 inch diameter material), and noncommercial trees and brush so as to expose 400 or more well distributed planting spots per acre in the areas outlined on maps in Exhibit A. Some areas that contain brush, such as salmonberry, that cannot be effectively piled will be raked or disturbed sufficiently to expose soil for planting spots. Excavator shovel must be equipped with a 3 feet wide minimum brush rake capable of grabbing and piling brush; standard logging shovel tongs or grapples will not be permitted. It will be necessary to pull brush and or scrape the ground where it is concentrated to create plantable spots.
2. All sapling size or larger commercial tree species, including marked seed trees, shall be left standing and undamaged wherever possible.
3. Slash piles will meet the following specifications and shall be adhered to: Piles can be placed at random with a minimum pile size of eight feet in diameter by four feet in height. There is no maximum pile size specification, but pile width will be no greater than two and a half times its height. Piles shall be located a minimum of 40 feet away from the drip line of any commercial trees left standing, a minimum of 40 feet from the piling unit edge, 60 feet from mainline gravel roads, and a minimum of **90 feet from the running surface of all public roads** (ie. Hwy 101 and Moclips Hwy). Windrowing will not be allowed. Piling on top of stumps or large logs shall be avoided and piles shall have a minimum of ten feet between them.
4. Contractor may be required to re-pile existing piles from harvest operations if directed by the Contracting Officer. Some units may have a small amount of piles in need of re-piling (piles that do not meet the specifications listed in number 3 above or have concentrations of slash on the ground next to the pile) that will make them more successful to burn.
5. All living material pulled out of the ground shall be shaken so as to remove as much dirt from the root system as possible before being piled.

6. All material to be piled that is ten feet or longer shall be put in the pile parallel to the rest of the material in the pile (this will reduce air pockets that reduces the success of 100% consumption of the pile).
7. Contractor shall maintain a slash mat under the machine at all times wherever possible.
8. Pulling stumps will not be permitted. Excavator must have adequate ground clearance to avoid stump pulling.
9. Contractor shall maintain the integrity of the roads and ditches to the same or better standards than before this contract started.
10. During periods of rain when soils become saturated the Contractor will be required to stop work to avoid rutting and soil damage.
11. Cedar logs greater than 8 inches in diameter will not be piled, unearthing of cedar logs will not be permitted. **Moving cedar logs to a road is not permitted under this contract.** Care should be taken not to run over or damage any exposed large cedar logs that may be salvageable for shake or shingles.

Compensation

1. Payment shall be made on a per unit basis according to Attachment B Bid Sheet for satisfactorily piled acres, but not to exceed \$__.
2. This contract will be modified to add additional units as they become available for site preparation. The Contract Officer will negotiate a price with the Contractor. The Contractor will submit a price in writing for the work to be performed and a map will be provided to the Contractor.

DRAFT
STANDARDIZED
QUINALT INDIAN NATION
INDEPENDENT CONTRACTOR AGREEMENT

Program No. _____
Purchase Order No. _____
Resolution No. (if applicable) _____

This Standardized Quinalt Indian Nation Independent Contractor Agreement (“**Agreement**”) is effective as of _____ (“**Effective Date**”) and is entered into by and between the Quinalt Indian Nation, a federally-recognized Indian tribe with an address of P.O. Box 189, Taholah, WA 98587 (“**Nation**”) and _____ (“**Contractor**”).

This Agreement will not be binding unless signed by a Quinalt Business Committee Executive.

1. Services.

1.1. *Performance of Services.*

- (a) *General.* Contractor will perform for the Nation the services (“**Services**”) described in Exhibit A-1 and any such other Exhibits A-[n] (e.g., Exhibit A-2, Exhibit A-3, and so on) as may be executed by the parties from time to time during the Term (as defined in Section 7 below) of this Agreement (each a “**Service Exhibit**”).
- (b) *Service Exhibits.* Each Service Exhibit will be in the form attached as Exhibit A (or such other form on which the parties may agree in writing) and will be signed by both parties. Contractor is not obligated to perform any Services, and the Nation has not contracted for any Services, unless and until a Service Exhibit is executed by both parties. All executed Service Exhibits are incorporated into this Agreement upon their execution.
- (c) *Changes to the Services/Service Exhibits.* Changes may be made to the Services description or Service Exhibit by mutual written agreement of the parties.
- (d) *Contract Officer.* The Nation’s Contract Officer for this Agreement is Jimmy Hargrove. The Nation may change its Contract Officer by written notice to Contractor. The Contractor’s Contract Officer for this Agreement is _____.
- (e) *Subcontracting.* Contractor will not subcontract the Services or any portion of the Services under this Agreement to any third party without the prior written consent of the Nation. Contractor remains responsible for compliance with the terms of this Agreement notwithstanding the use of any approved subcontractors (if any).
- (f) *Submittal of Forms.* Contractor will provide the Nation with a completed W-9 and signed Debarment Certification within ten (10) business days of the execution of this Agreement.
- (g) *Observation by Contract Officer.* Upon the Nation’s request, Contractor will allow the Contract Officer to observe Contractor’s performance of any Services under this Agreement.
- (h) *Progress Reports.* Contractor will provide the Contract Officer with progress reports regarding Contractor’s performance of the Services, upon request.

- 1.2. *Work.* Contractor acknowledges and agrees that, if any Services provided under this Agreement include the preparation, development or delivery by Contractor of any software, reports, drawings, papers, memoranda, photographs, written presentations, or other material of any kind (and in any format *whatsoever*, including without limitation digital format), or of any ideas, concepts, designs, discoveries, or

improvements (collectively and individually, “**Work**”), then Contractor will deliver all Work to the Nation pursuant to the timeframe specified in the relevant Service Exhibit (the “**Schedule**”).

- 1.3. *Acceptance Process.* The Nation will, within thirty (30) days following delivery of a Work deliverable identified in the relevant Service Exhibit (or such other time frame on which the parties mutually agree), provide a written notice of acceptance or rejection to Contractor (such notice may be by email and failure by the Nation to issue written notice *within* the thirty (30) day time period will be deemed acceptance). Such acceptance or rejection will be based on whether the Work conforms to the description in the relevant Service Exhibit (subject to Section 2.2 below) and whether it was delivered pursuant to the applicable Schedule. If the Nation rejects the Work deliverable, Contractor will have thirty (30) days following notice of rejection to provide the Nation with a conforming Work deliverable (“**Correction Period**”). If Contractor fails to correct the Work deliverable within the Correction Period, or if Contractor fails to deliver a Work deliverable within the date(s) specified in the Schedule, the Nation may in its discretion take any one of the following actions: (a) accept the non-conforming (or untimely delivered) Work deliverable (without waiving the right to reject future Work deliverables and without waiving the right to terminate this Agreement or the relevant Service Exhibit under Section 7 below for breaches associated with such Work deliverable), (b) extend the Correction Period, or (c) accept or reject (in the Nation’s sole discretion) the non-conforming (or untimely delivered) Work deliverable and terminate this Agreement or the relevant Service Exhibit on written notice. Contractor will refund to the Nation any amounts paid under this Agreement for any rejected Work deliverables, and the Nation will have no obligation to pay for any Work deliverable unless and until it is accepted.

2. **Payment and Recordkeeping.**

- 2.1. *General.* As full and complete consideration for the Services satisfactorily performed under a given Service Exhibit (including all Work delivered as a part of the Services and that the Nation accepts pursuant to Section 1.3 above), the Nation will pay Contractor the amounts set forth in the relevant Service Exhibit, NOT TO EXCEED \$_____. All payment(s) will be made pursuant to the terms of this Agreement, including the terms of this Section 2.
- 2.2. *Satisfactory Performance.* The Nation will only pay for satisfactorily completed Services. The Nation will have no obligation to provide Contractor with any payment or other consideration for Work that the Nation rejects in accordance with Section 1.3. The Contract Officer, as identified in Section 1.1(d) above, will determine whether or not Contractor’s performance of the Services is satisfactory according to this Agreement.
- 2.3. *Payment Terms.*
- (a) *Retention.* The Nation will retain 0 percent from each progress payment under a given Service Exhibit until (i) all Services have been satisfactorily completed under the Service Exhibit and (ii) Contractor provides documentation showing that all Contractor supplier and/or subcontractor payments have been made in connection with such Service Exhibit, and (iii) if applicable, Contractor provides documentation to Contract Officer showing proof of payment of all obligations to the Washington State Department of Labor & Industries and Employment Security Department.
 - (b) *Invoicing.* Contractor will invoice the Nation for amounts due under Section 2.1, as they come due for each Service Exhibit. The Contract Officer must approve payment and the adequacy of documentation submitted by Contractor as required under Section 2.3(a) above within five (5) business days after receipt of a properly issued invoice from Contractor. Payment will be made within ten (10) business days after receipt by Finance. The CONTRACTOR agrees to waive any claims to payment under this Contract for failure to submit timely invoices.
 - (c) Payment of an invoice without asserting a dispute is not a waiver of any claim or right to challenge the invoice.
- 2.4. *Expenses.* Contractor bears sole responsibility for all expenses it incurs in connection with the performance of all of its obligations under this Agreement, unless otherwise expressly stated in a given Service Exhibit.

- 2.5. *Taxes.* The Nation is exempt from Washington State sales and business and occupation taxes for work done on the Quinault Reservation or goods delivered to the Nation on the Quinault Reservation. With respect to the Washington State business and occupation tax, this tax may not be included in overhead charges to the Nation. See, Washington Administrative Code (WAC) 458-20-192.
- 2.6. *Recordkeeping.* Contractor will maintain accurate and adequate books and records related to all costs and expenses incurred by Contractor under this Agreement, in such detail as will properly reflect and document all net costs, direct and indirect, of Services provided, including labor, materials, equipment, supplies, and other costs of whatever nature, for which reimbursement is properly claimed under the provisions of the Agreement (if and as authorized under a given Service Exhibit) (such books and records, the "Records"). Contractor will make available at Contractor's office all such Records for examination by a designated representative of the Nation, at all reasonable times during the Term and for a period of three (3) years after the expiration or termination of this Agreement.

3. Intellectual Property.

- 3.1. *Work Made for Hire.* The Nation has specially ordered and commissioned any and all Work, and Contractor agrees that any and all Work is a "work made for hire" for copyright purposes and the Nation will own all copyrights in the Work.
- 3.2. *Assignment.* Contractor hereby assigns to the Nation, its successors and assigns, all rights, title and interest in and to the Work including, without limitation, the following:
 - (d) any copyrights and equivalent rights (under any U.S. law or foreign law) that Contractor may possess or acquire in the Work that do not qualify as a work made for hire, including all renewals and extensions of such rights that may be secured under the laws now or hereafter in force and effect in the United States or any other country;
 - (e) all rights in and to any inventions, ideas, designs, concepts, techniques, discoveries, or improvements, whether or not patentable, embodied in the Work, but not limited to, all trade secrets, patent rights and equivalent rights in and to such inventions throughout the world, regardless of whether or not legal protection for the Work is sought;
 - (f) all trademarks that Contractor develops as part of the Work; and
 - (g) any documents, magnetically or optically encoded media, or other materials created by Contractor under this Agreement.
- 3.3. *Moral Rights.* To the maximum extent permitted by law, Contractor waives all moral rights in the Work.
- 3.4. *Additional Assistance.* At the Nation's expense, Contractor will execute and deliver such instruments and take such other action as may be requested by the Nation to perfect or protect the Nation's rights in the Work and to carry out the assignments contemplated in Sections 3.2 and 3.3. Contractor agrees to cooperate with the Nation in the filing and prosecution of any copyright, trademark or patent applications that the Nation may elect to file on the Work or inventions and designs relating to the Work.
- 3.5. *The Nation's Materials.* The Nation grants Contractor a limited, non-exclusive license to use, for the sole purpose of performing the Services under the relevant Service Exhibit, any software, reports, drawings, papers, memoranda, photographs, written materials, or other material of any kind (and in any format *whatsoever*, including without limitation digital format) (the "**Nation's Materials**"), that are provided by the Nation to Contractor under a Service Exhibit. Contractor will cease all use of any of the Nation's Materials upon the earlier of: the completion of the Services for which the particular Nation's Materials were provided, the expiration or termination of the relevant Service Exhibit, or the expiration or termination of this Agreement, at which point Contractor will return all of the Nation's Materials to the Nation. The Nation hereby reserves all rights not expressly granted in this Section 3.5 to the Nation's Materials and no additional rights are granted to Contractor in the Nation's Materials, whether by implication, estoppel or otherwise.

4. **Confidentiality.** Contractor agrees that at all times during the Term of this Agreement, and for five (5) years thereafter, Contractor will hold in strictest confidence, and will not use or disclose to any third party, any QIN Confidential Information. “**QIN Confidential Information**” means all non-public information that the Nation marks as “confidential” or “proprietary” (or some similar designation) or that ought in good faith to be treated as confidential given the nature of the circumstances surrounding its disclosure, and includes without limitation the terms of this Agreement, future business plans, information regarding unreleased product or service offerings, marketing plans, the Nation’s customers and suppliers, and information received from others that the Nation is obligated to treat as confidential. “**QIN Confidential Information**” does not include any information, however, that (a) was publicly available before it was disclosed to Contractor; (b) becomes publicly available after it is disclosed to Contractor under this Agreement, other than through a breach of this Agreement; (c) is or has been disclosed to Contractor by a third party who is not under an obligation to keep such information confidential; or (d) was developed independently by Contractor without use of the QIN Confidential Information.

5. **Representations and Warranties.**

Contractor represents and warrants to the Nation that:

- 5.1. Contractor has full right and power to enter into and perform according to the terms of this Agreement, and nothing in this Agreement violates the terms of any agreement between Contractor and a third party;
- 5.2. Contractor has not been debarred or suspended, or proposed for debarment, under federal procurement regulations;
- 5.3. Contractor will not subcontract any of its obligations under this Agreement to any entity or person who is debarred or suspended, or proposed for debarment, under federal procurement regulations;
- 5.4. The Services will be performed in a professional and skillful manner consistent with the standard of quality and professionalism generally followed in the Pacific Northwest in Contractor’s field;
- 5.5. Contractor will employ all personnel reasonably necessary to perform the Services under this Agreement and such personnel will comply with all applicable tribal, state and/or federal requirements and/or qualifications for performing the Services;
- 5.6. Contractor will at all times in the performance of Services under this Agreement, and the Services and the Work provided to the Nation under this Agreement will, comply with all applicable tribal, federal, state and local laws, including the QIN Tribal Employment Rights Ordinance, Title 97;
- 5.7. Contractor will obtain all licenses and permits necessary to perform the Services;
- 5.8. Contractor will obtain and maintain during the Term a Quinault Indian Nation business license;
- 5.9. Contractor will file all required notices, prepare and file all required returns for, and pay when due, all lawfully imposed taxes on any operations under this Agreement;
- 5.10. The Work as delivered to the Nation does not and will not infringe or misappropriate any copyright, patent, trade secret, or trademark, or violate any right of publicity, privacy or any other proprietary or legal right held by any third party;
- 5.11. Contractor has all necessary rights in the Work to transfer ownership to the Nation as required under Section 3 above;
- 5.12. Contractor will comply with all applicable laws in the performance of its obligations under this Agreement including, without limitation, applicable federal and state regulations regarding student records, student privacy, and the commercial use of student information; and

5.13. The Work will be performed in a professional manner and will be of a high grade, nature, and quality.

6. Limitation of Liability/Indemnification.

6.1. **EXCLUSION OF CERTAIN DAMAGES.** THE NATION WILL NOT BE LIABLE TO CONTRACTOR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE NATION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. THIS EXCLUSION OF DAMAGES SHALL APPLY REGARDLESS OF THE FORM OR CAUSE OF ACTION OR THE ALLEGED BASIS OF ANY CLAIM AND EVEN IF THE REMEDIES OTHERWISE PROVIDED UNDER THIS AGREEMENT, AT LAW OR IN EQUITY FAIL OF THEIR ESSENTIAL PURPOSE.

6.2. *Indemnification.* Contractor will indemnify, defend, and hold the Nation and its successors, officers, directors and employees harmless from any and all actions, causes of action, claims, demands, costs, liabilities, expenses and damages arising out of or in connection with any claim that: (a) as alleged, would constitute a breach of any Contractor representation or warranty set forth in Section 5 above, or (b) arises out of Contractor's negligent or willful misconduct.

6.3. *Procedure.* If any action is brought against the Nation for which Contractor is obligated to provide a defense under Section 6.2 above, the Nation will promptly notify Contractor in writing. The Nation will provide reasonable cooperation to Contractor, at Contractor's expense, in connection with the defense of any such action. Contractor will employ counsel reasonably acceptable to the Nation in defending any such action. The Nation has the right to employ separate counsel and participate in the defense of any claim, at the Nation's expense. Contractor will reimburse the Nation upon demand for any payments made or loss suffered by it at any time, based upon the judgment of any court of competent jurisdiction or pursuant to a bona fide settlement of claims covered by Contractor's indemnification obligation in Section 6.2. Neither party will settle any claim for which indemnification is sought under Section 6.2 without the other party's prior written consent, which consent will not be unreasonably withheld.

6.4. *Duty to Correct.* If the Work furnished hereunder is in any action held to be infringing and its use enjoined, Contractor, in addition to its obligations under Section 6.2 and 6.3, will promptly and at its expense:

(a) procure for the Nation the right to continue use, sale, and marketing of the Work; or

(b) replace or modify the Work with a version of the Work that is non-infringing.

If (a) or (b) are not available to Contractor, Contractor will refund to the Nation all amounts paid to Contractor by the Nation hereunder.

7. Termination.

7.1. *Term.* This Agreement will commence on the Effective Date and expire on June 30th, 2019, unless earlier terminated as provided in this Section 7 ("**Term**").

7.2. *Termination of Service Exhibits/Agreement.*

(a) *Without Cause.* The Nation may terminate any Service Exhibit or this Agreement (including all Service Exhibits) without cause by issuing Contractor a written termination notice at least ten (10) days before such termination, provided that the Nation will pay Contractor for all Services performed under the terminated Service Exhibit or this Agreement (as the case may be) prior to such termination. Upon termination under this Section 7.2(a), Contractor will immediately cease performance of all Services under the terminated Service Exhibit or this Agreement (as the case may be).

(b) *For Cause.* In addition to the Nation's rights of termination in Section 2.2 and 7.2(a) above, the Nation may terminate this Agreement or the relevant Service Exhibit under this Agreement (as the

Nation may decide, in its sole discretion) by issuing thirty (30) days prior written notice to Contractor of a material breach by Contractor of this Agreement or any Service Exhibit under this Agreement, if such breach remains uncured at the end of the thirty (30) day notice period.

7.3. *Effect of Termination.* Within ten (10) days following expiration or termination of this Agreement (or the termination of any Service Exhibit), Contractor will (a) deliver to the Nation all tangible materials (including any and all copies) constituting, containing or embodying the Work, all of the Nation’s Materials provided under this Agreement and any other materials containing or disclosing QIN Confidential Information or Personal Information (collectively, “**Service Materials**”) that were provided under this Agreement (or the relevant Service Exhibit, in the case of termination of a Service Exhibit), and (b) irretrievably delete all such Service Materials described in (a) that Contractor possesses or controls in electronic or other form. At the Nation’s request, Contractor will provide the Nation with written certification, executed by an officer of Contractor, confirming that Contractor has complied with the foregoing (a) and (b). Sections 2 (for amounts due and owing upon expiration or termination), 3, 4, 5, 6, 8, 9, 10 and 11 of this Agreement will survive expiration or any termination of this Agreement. With respect to the expiration or termination of a Service Exhibit only, this Section 7.3 shall apply only to those Service Materials relevant to the Service Exhibit that is expiring or being terminated.

8. **Insurance Coverage.** Contractor will obtain and maintain the following insurance and will give the Nation written proof of the same within ten (10) business days of the execution of this Agreement. Contractor will promptly provide written notification to the Nation of any changes regarding insurance.

- (a) *General Liability.* Contractor will maintain General Liability Insurance in the amount of one million dollars (\$1,000,000) each occurrence and one million dollars (\$1,000,000) aggregate.
- (b) *Automobile liability.* Contractor will maintain automobile liability insurance covering owned, hired, and non-owned vehicles used on the Quinault Indian Reservation. The policy shall provide for coverage of two hundred thousand dollars (\$200,000) per person and five hundred thousand dollars (\$500,000) per accident for bodily injury and five hundred thousand dollars (\$500,000) property damage, or five hundred thousand dollars (\$500,000) Combined Single Limit per occurrence.
- (c) *Workers’ compensation and disability benefits insurance.* Contractor will pay applicable Washington State Department of Labor and Industries insurance and Washington State Employment Security taxes.
- (d) *Professional Liability.* If the Services require Contractor to provide a professional service to the Nation, Contractor will maintain professional liability insurance in the amount of one million dollars (\$1,000,000) each occurrence and one million dollars (\$1,000,000) aggregate.

9. **Notices.** Any notices given under this Agreement will be delivered either by messenger or overnight delivery service, or sent by facsimile with a confirmation sent via certified or registered mail, postage prepaid and return receipt requested, and shall be deemed to have been given on the day when received by the party to whom the notice is given.

	Quinault Indian Nation Contact Person	Contractor Contact Person
Name, Title		
Party	Quinault Indian Nation	
Address	P.O. Box 189	
City, State, Zip	Taholah, WA 98587	
Phone	360-276-8215 ex. 621	
Facsimile	360-276-4682	
Copy to:		

10. **Sovereign Immunity.**

- 10.1. *Limited Waiver.* Provided that all of the following conditions are met, the Nation grants to Contractor a limited waiver of its sovereign immunity to be sued under an explicit provision of this Agreement, unless the Nation is otherwise protected from a claim under the Federal Tort Claims Act:
- (a) The claim is made by Contractor, and not by any other party, whether an individual or an entity of any kind. The right to sue shall not be transferable.
 - (b) The claim alleges a default by the Nation of one or more specific duties owed to Contractor that are expressly assumed by the Nation under the terms of this Agreement. No suit shall be had for any other reason.
 - (c) The claim seeks either:
 - i. specific performance by the Nation to bring the Nation into compliance with the obligations or duties expressly assumed by the Nation in this Agreement, provided that the cost of performance does not exceed the original cost of the Agreement; or
 - ii. payment of a monetary judgment arising from a default of an explicit duty owed by the Nation to Contractor under the terms of this Agreement, which shall not exceed the original cost of the Agreement and shall be limited to payment from the Nation's insurance, and not from any other source, asset or property of the Nation.
 - (d) The claim is brought in the Quinault Tribal Court.
- 10.2. Other than as expressly set forth in Section 10.1 above, no other provision in this Agreement shall be deemed a waiver by the Nation of its sovereign immunity in any form, regardless of the terms used or material directly or indirectly referenced.

11. Miscellaneous.

- 11.1. *Relationship of the Parties.* Contractor is an independent contractor for the Nation. Nothing in this Agreement creates an employer-employee, agency, joint venture, employment or partnership relationship. Neither party may make representations on behalf of or otherwise bind the other party. Contractor is responsible for all of Contractor's federal and state taxes, withholding, social security, insurance, and other benefits.
- 11.2. *Assignment.* Contractor will not assign this Agreement, or any rights or obligations hereunder, whether by operation of contract, law or otherwise, without the prior written consent of the Nation. Any attempted assignment in violation of this Section 11.2 is void, and the Nation may terminate this Agreement on written notice in the event of such an attempted assignment.
- 11.3. *Waiver/Severability.* No provision of this Agreement will be deemed waived unless the waiver is in writing and signed by the waiving party, and no such waiver will constitute a waiver of any other provision(s) or of the same provision on another occasion. If any term of this Agreement is found by a court of competent jurisdiction to be in whole or in part unenforceable, then such unenforceable term or portion thereof will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the allocation of risk among the parties reflected in the original provision, and the remainder of this Agreement will continue in effect.
- 11.4. *Dispute Resolution.*
- (a) *Informal Resolution/Mediation.* The Contract Officer shall attempt to resolve conflicts and disputes at the earliest opportunity. If the parties are unable to resolve disputes on an informal basis through their representatives, the parties will engage in mediation in good faith, with each party equally sharing the costs of mediation. Mediation involves each side of a dispute sitting down with an impartial person, the mediator, to attempt to reach a voluntary settlement. Mediation involves no formal court procedures or rules of evidence, and the mediator will not have the power to render a binding decision or force an agreement on the parties.

- (b) *Commencement of Mediation.* Either party may commence mediation by providing to the other party a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties will cooperate with one another in selecting either a certified mediator or a mediation services company, and in scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs.
- (c) *Confidentiality.* All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator and any mediation service employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.
- (d) The negotiation and execution of this Agreement is deemed by the parties to have occurred within the Quinault Indian Reservation and any interpretation hereof shall be in accordance with the laws of the Quinault Indian Nation or applicable federal law. All actions arising under this Agreement or reasonably related to this Agreement shall be litigated in the Quinault Tribal Court. If the Nation must enforce its rights under this Contract in court, Contractor shall be liable for reasonable attorney's fees and costs if the Nation is the prevailing party.

11.5. *Entire Agreement.* This Agreement constitutes the entire agreement between parties with respect to its subject matter, and it merges all prior and contemporaneous communications regarding such subject matter. It may not be modified except by a written agreement signed by duly authorized representatives of Contractor and the Nation.

IN WITNESS WHEREOF, the Nation and Contractor agree to the terms and conditions set forth in this Agreement as of the Effective Date, provided that: this Agreement will not be binding unless signed by a Quinault Business Committee Executive.

CONTRACTOR	QUINAULT INDIAN NATION
By: _____	Contract Officer: _____
Printed Name: _____	Division Director: _____
Title: _____	Office of Attorney General: _____
Date: _____	Grants and Contracts: _____
	QBC Executive: _____

