

**PROFESSIONAL SERVICES AGREEMENT**  
**for**  
**CULTURAL RESOURCES CONSULTING SERVICES**

THIS AGREEMENT is entered into between **Clallam Conservation District**, a political subdivision of the State of Washington, (hereinafter called the "District") and **Equinox Research and Consulting International, Inc. (ERCI)** (hereinafter called the "Consultant").

This Agreement is comprised of:

- Attachment "A" - Scope of Work
- Attachment "B" - Compensation
- Attachment "C" - General Conditions
- Attachment "D" - Special Terms and Conditions
- Attachment "E" - Project Task Order Form

Copies of which are attached hereto and incorporated herein by this reference as if fully set forth.

The terms of this Agreement shall commence on **May 11, 2021**, and shall terminate on or before **May 11, 2022**, unless terminated as provided elsewhere in the Agreement. This agreement may be renewed annually for up to three years.

IN WITNESS WHEREOF, the parties have executed this Agreement on this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

ERCI



(Signature)

CLALLAM CONSERVATION DISTRICT

Matthew V. Heins, Chair

By: Kelly R. Bush

Title: President

Date: 4/22/2021

Date:

## **SCOPE OF WORK**

No minimum amount of work is guaranteed under this contract. The Contractor shall only perform those services determined necessary for each project, as estimated per each Project Task Order (Attachment E). Time is of the essence with projects that require cultural resources surveys, and every effort will be made by the Consultant to complete all tasks by the estimated completion date identified in each Project Task Order. The following list includes the general scope and typical activities covered under this agreement:

For each request for cultural resource consulting services, the District will provide the Consultant with the following:

1. Project description.
2. Map of project area.
3. Depending on the scope of the project and capacity of the District, the District may complete a Washington Department of Archaeology and Historic Preservation (DAHP) EZ-1 form.

The Consultant will provide cultural resource assessment and reporting services as necessary for compliance with federal, state and local requirements regarding archaeological and historical site preservation, including but not limited to Section 106 and Governor's Executive Order 05-05 compliance. Such services may include but are not limited to the following:

1. Pre-field literature review.
2. Tribal and the DAHP consultation.
3. Site surveys and assessments/evaluations, which may include pot holing, test pitting, and soil testing, as necessary based on the professional judgment of the Consultant in consultation with affected tribes and the DAHP.
4. Preparation of draft reports, including maps and photo-documentation of site surveys.
5. Preparation of final reports, and distribution of reports to the District, affected tribes and the DAHP.
6. Monitoring project activity, if deemed necessary.
7. Providing technical support to the District when District personnel monitor project activity.

## COMPENSATION

Compensation shall be based on an hourly rate specified in the Fee Schedule below.

|                                       |                |
|---------------------------------------|----------------|
| Principal Investigator                | Up to \$139.87 |
| Biological Anthropologist             | Up to \$124.33 |
| Geoarchaeologist or other specialists | Up to \$124.00 |
| Senior Archaeologist                  | Up to \$99.46  |
| Archaeologist                         | Up to \$83.92  |
| Arch Technician                       | Up to \$68.38  |

The Consultant shall invoice monthly. Invoices shall cover the preceding month on a calendar basis. The Consultant shall submit with each invoice all records and documents necessary to support the invoice.

The District will promptly review each invoice and process it for payment within thirty (30) days of receipt.

Fees as set forth herein include all incidental overhead fees, such as mileage, copy and printing costs, telephone charges and similar costs, unless noted otherwise in the Professional Services Agreement.

## **GENERAL CONDITIONS**

1. **Scope of Consultant's Services.** The Consultant agrees to provide to the District services and any materials set forth in the project Task Order identified as Attachment "E" during the agreement period. No material, labor, or facilities will be furnished by the District, unless otherwise provided for in the Agreement.

2. **Accounting and Payment for Consultant Services.** Payment to the Consultant for services rendered under this Agreement shall be as set forth in a Project Task Order (Attachment "E"). Where Attachment "E" requires payments by the District, payment shall be based upon billings, supported unless otherwise provided in Attachment "E", by documentation of units of work actually performed and amounts earned, including where appropriate, the actual number of days worked each month, total number of hours for the month, and the total dollar payment requested. Unless specifically stated in a Task Order or approved in writing in advance by the District designated project manager ("Project Manager"), the District will not reimburse the Consultant for any costs or expenses incurred by the Consultant in the performance of this contract. Where required, the District shall, upon receipt of appropriate documentation, compensate the Consultant, no more often than monthly, through the District voucher system for the Consultant's service pursuant to the fee schedule set forth in Attachment "B".

3. **Delegation and Subcontracting.** Consultant's services are deemed personal and no portion of this contract may be delegated or subcontracted to any other individual, firm or entity without the express and prior written approval of the Project Manager. However, subcontracting for such services as surveying, drafting, printing, and excavating test pits are understood to be necessary for the provision of general Consulting services.

4. **Independent Consultant.** The Consultant's services shall be furnished by the Consultant as an independent contractor and nothing herein contained shall be construed to create a relationship of employer/employee or master/servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this Agreement by the Consultant as an independent contractor.

The Consultant acknowledges that the entire compensation for this Agreement is specified in Attachment "C" and the Consultant is not entitled to any District benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental or other insurance benefits, or any other rights or privileges afforded to District employees. The Consultant represents that he/she/it maintains a separate place of business, serves clients other than the District, will report all income and expense accrued under this contract with the Internal Revenue Service on a business tax schedule, and has a tax account with the State of Washington Department of Revenue for payment of all sales and use and Business and Occupation taxes collected by the State of Washington.

Consultant will defend, indemnify and hold harmless the District, its officers, agents or employees from any loss or expense, including but not limited to settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph.

5. **No Guarantee of Employment.** The performance of all or part of this contract by the Consultant shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any

employment of the Consultant or any employee of the Consultant or any subcontractor or any employee of any subcontractor by the District at the present time or in the future.

6. Regulations and Requirement. This Agreement shall be subject to all federal, state and local laws, rules, and regulations.
7. Right to Review. This contract is subject to review by any federal or state auditor. The District shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Project Manager. Such review may occur with or without notice, and may include, but is not limited to, on-site inspection by District agents or employees, inspection of all records or other materials which the District deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Consultant shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for three (3) years after contract termination, and shall make them available for such review, within Clallam County, State of Washington, upon request, during reasonable business hours.
8. Modifications. Either party may request changes in the Agreement. Any and all agreed modifications shall be in writing, signed by each of the parties.
9. Termination for Default. If the Consultant defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or makes an assignment for the benefit of creditors, the District may, by depositing written notice to the Consultant in the U.S. Mail, postage pre-paid, terminate the contract, and at the District's option, obtain performance of the work elsewhere. If the contract is terminated for default, the Consultant shall not be entitled to receive any further payments under the contract until all work called for has been fully performed. Any extra cost or damage to the District resulting from such default(s) shall be deducted from any money due or coming due to the Consultant. The Consultant shall bear any extra expenses incurred by the District in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the District by reason of such default.  
  
If a notice of termination for default has been issued and it is later determined for any reason that the Consultant was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public Convenience paragraph hereof.
10. Termination for Public Convenience. The District may terminate the contract in whole or in part whenever the District determines, in its sole discretion, that such termination is in the interests of the District. Whenever the contract is terminated in accordance with this paragraph, the Consultant shall be entitled to payment for actual work performed at unit contract prices for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this contract by the District at any time during the term, whether for default or convenience, shall not constitute a breach of contract by the District.
11. Rights and Remedies. The duties and obligations imposed by this Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

12. Defense and Indemnity Agreement. The Consultant agrees to defend, indemnify and save harmless the District, its appointed and elected officers and employees, from and against all loss or expense, including but not limited to judgments, settlements, attorneys' fees and costs by reason of any and all claims and demands upon the District, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the Consultant, his/her subcontractors, its successor or assigns, or its or their agent, servants, or employees, the District, its appointed or elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the District, its appointed or elected officials or employees. It is further provided that no liability shall attach to the District by reason of entering into this contract, except as expressly provided herein.

13. Industrial Insurance Waiver. With respect to the performance of this Agreement and as to claims against the District, its appointed and elected officers, agents and employees, the Consultant expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, as now or hereafter amended, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this Agreement extend to any claim brought by or on behalf of any employee of the Consultant. This waiver is mutually negotiated by the parties to this Agreement.

14. Venue and Choice of Law. In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action shall be in the courts of the State of Washington in and for the County of Clallam. This Agreement shall be governed by the law of the State of Washington.

15. Withholding Payment. In the event the Project Manager determines that the Consultant has failed to perform any obligation under this Agreement within the times set forth in this Agreement, then the District may withhold from amounts otherwise due and payable to Consultant the amount determined by the District as necessary to cure the default, until the Project Manager determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Consultant to termination or damages, provided that the District promptly gives notice in writing to the Consultant of the nature of the default or failure to perform, and in no case more than ten (10) days after it determines to withhold amounts otherwise due. A determination of the Project Manager set forth in a notice to the Consultant of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Consultant acts within the times and in strict accord with the provision of the Disputes clause of this Agreement. The District may act in accordance with any determination of the Project Manager which has become conclusive under this clause, without prejudice to any other remedy under the Agreement, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Consultant, (3) to set off any amount of paid or incurred from amounts due or to become due the Consultant. In the event the Consultant obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to the Consultant by reason of good faith withholding by the District under this clause.

16. Insufficient Funds. If sufficient funds are not appropriated or allocated for payment under this contract, this contract shall be null and void. No penalty or expense shall accrue to the District in the event this provision applies.

17. Consultant Commitments, Warranties and Representations. Any written commitment received from the Consultant concerning this Agreement shall be binding upon the Consultant, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Consultant to fulfill such a commitment shall render the Consultant liable for damages to the District. A commitment includes, but is not limited to any representation made prior to execution of this Agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.

18. Patent/Copyright Infringement. Consultant will defend, indemnify and save harmless the District, its appointed and elected officers and employees from any claimed action, cause or demand brought against the District, its appointed and elected officers and employees, to the extent such action is based on the claim that information supplied by the Consultant infringes any patent or copyright. The Consultant will pay those costs and damages attributable to any such claims that are finally awarded against the District, its appointed and elected officers and employees in any action. Such defense and payments are conditioned upon the following:

- (a) That Consultant shall be notified promptly in writing by District of any notice of such claim.
- (b) Consultant shall have the right, hereunder, at its option and expense, to obtain for the District the right to continue using the information, in the event such claim of infringement, is made, provided no reduction in performance or loss results to the District.

19. Disputes:

- (a) General. Differences between the Consultant and the District, arising under and by virtue of the contract documents shall be brought to the attention of the District at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. The records, orders, rulings, instructions, and decision of the Project Manager shall be final and conclusive thirty (30) days from the date of mailing unless the Consultant mails or otherwise furnishes to the District administrator a written notice of appeal. The notice of appeal shall include facts, law, and argument as to why the conclusions of the Project Manager are in error.

In connection with appeal of any proceeding under this clause, the Consultant shall have the opportunity to be heard and to offer evidence in support of the appeal. The decision of the District administrator for the determination of such appeals shall be final and conclusive. Reviews of the appellate determination shall be brought in the Superior Court of Clallam District within fifteen (15) days of mailing of the written appellate determination. Pending final decision of the dispute, the Consultant shall proceed diligently with the performance of this Agreement and in accordance with the decision rendered.

- (b) Notice of Potential Claims. The Consultant shall not be entitled to additional compensation or to extension of time for (1) any act or failure to act by the Project Manager or the District, or (2) the happening of any event or occurrence, unless the Consultant has given the District a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the District. The written Notice of Potential Claim shall set forth the reasons for which the Consultant believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Consultant shall keep full and

complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.

- (c) **Detailed Claim.** The Consultant shall not be entitled to claim any such additional compensation, or extension of time, unless within thirty (30) days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the District, the Consultant has given the District a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

20. **Ownership of Items Produced.** All writings, programs, data, public records or other materials prepared by the Consultant and/or its consultants or subcontractors, in connection performance of this Agreement shall be treated like academic journals or work produced by freelance writers for magazine and not treated as a work for hire, as that phrase is used in federal and/or state intellectual property laws.

21. **Recovery of Payments to Consultant.** The right of the Consultant to retain monies paid to it is contingent upon satisfactory performance of this Agreement. In the event that the Consultant fails, for any reason, to perform obligations required of it by this Agreement, the Consultant may, at the Project Manager's sole discretion, be required to repay to the District all monies disbursed to the Consultant for those parts of the project that are rendered worthless in the opinion of the Project Manager by such failure to perform.

Interest shall accrue at the rate of twelve percent (12%) per annum from the time the Project Manager demands repayment of funds.

22. **Project Approval.** The extent and character of all work and services to be performed under this Agreement by the Consultant shall be subject to the review and approval of the Project Manager. In the event there is a dispute with regard to the extent and character of the work to be done, the determination of the Project Manager as to the extent and character of the work to be done shall govern subject to the Consultant's right to appeal that decision as provided herein. For purposes of this Agreement, the District Project Manager is the District Executive Director or his/her designee.

23. **Non-Discrimination.** The Consultant shall not discriminate against any person on the basis of race, creed, political ideology, color, national origin, sex, marital status, sexual orientation, age, or the presence of any sensory, mental or physical handicap.

24. **Subcontractors.** In the event that the Consultant uses any subcontractors, the contract between the Consultant and the subcontractor shall provide that the subcontractor is bound by the terms of this Agreement between the District and the Consultant. The Consultant shall ensure that in all subcontracts entered into, the District is named as an express third-party beneficiary of such contracts with full rights as such.

25. **Time is of the Essence.** Time is of the essence in the performance of this contract unless a more specific time period is set forth in either the Special Terms and Conditions or Project Task Order.

26. **Notice.** Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, any notices shall be given by the Consultant to the Project Manager. Notice to



the Consultant for all purposes under this Agreement shall be given to the person executing the Agreement on behalf of the Consultant at the address identified on the signature page.

27. Severability. If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.

28. Precedence. In the event of inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

- (a) Applicable federal and state statutes and regulations;
- (b) Scope of Work [Attachment "A"] Compensation [Attachment "B"] and Project Task Order [Attachment E];
- (c) Special Terms and Conditions [Attachment "D"]; and
- (d) General Conditions [Attachment "C"].

29. Waiver. Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.

30. Survival. The provision of Paragraphs 4, 7, 11-15,17- 23, 28, 29 and 31 shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

31. Entire Agreement. This contract represents the entire Agreement between the parties and supersedes any prior statements, discussions or understandings between the parties except as provided herein.

### **SPECIAL TERMS AND CONDITIONS**

1. **Insurance.** The Consultant shall maintain in full force and effect during the term of this Agreement, and until final acceptance of the product, public liability and property damage insurance with companies or through sources approved by the state insurance commissioner pursuant to RCW Title 48, as now or hereafter amended. The District, its appointed and elected officials and employees, shall be specifically named as co-insured in a policy with the same company which insures the Consultant or by endorsement to an existing policy or with a separate carrier approved pursuant to RCW Title 48, as now or hereafter amended, and the following coverages shall be provided:

**COMMERCIAL GENERAL LIABILITY:**

Bodily Injury and Property Damage Liability Insurance **\$1,000,000** each per occurrence or combined single limit coverage of \$2,000,000, with not greater than \$1,000.00 deductible.

**PROFESSIONAL LIABILITY INSURANCE:**

Shall include errors and omissions insurance providing **\$1,000,000** coverage with no greater than \$5,000.00 deductible for all liability which may be incurred during the life the this contract.

**AUTOMOBILE:** coverage on owned, non-owned, rented and hired vehicles

Bodily Injury and Property Damage Liability Insurance **\$1,000,000** each per occurrence or combined single limit coverage of \$2,000,000, with not greater than \$1,000.00 deductible.

Any such insurance carried by the Consultant is primary over any insurance carried by the District. The District shall have no obligation to report occurrences unless a claim or lawsuit is filed with it and the District has no obligation to pay any insurance premiums.

Evidence of insurance coverage shall be submitted to the Project Manager within twenty (20) days of the execution of the Agreement. The Agreement shall be void ab initio if the proof of coverage is not timely supplied.

2. **Liquidated Damages.** For delays in timely completion of Consultanting work to be done or missed design milestones of the work in progress for which the Consultant is solely responsible, the Consultant shall be assessed Twenty Five Dollars (\$25.00) per day as liquidated damages and not as a penalty because the District finds it impractical to calculate the actual cost of delays. Liquidated damages will not be assessed for any days for which an extension of time has been granted. No deduction or payment of liquidated damages will, in any degree, release the Consultant from further obligations and liabilities to complete the entire project.

4. **Other (specify):**

**PROJECT TASK ORDER FORM**

**Task No. 1**

**Project Location**

**Project Description**

| <b>Project Cost Estimate</b> |                             |             |
|------------------------------|-----------------------------|-------------|
| <i>Work Area</i>             | <i>Hours for Completion</i> | <i>Cost</i> |
| Prefield literature search   |                             |             |
| Tribal/DAHP consultation     |                             |             |
| Fieldwork                    |                             |             |
| Draft report                 |                             |             |
| Final Report                 |                             |             |
| Report distribution          |                             |             |
| Misc. travel and expenses    |                             |             |
| Other (specify)              |                             |             |
| <b>Total Project Cost</b>    |                             |             |

Completion Date: No later than \_\_\_\_\_

**Payment:** Amount not to exceed Total Project Cost identified in **Estimated Project Cost** above.

Authorization Date: \_\_\_\_\_

Consultant: \_\_\_\_\_

\_\_\_\_\_  
Name

CCD Approving Authority: \_\_\_\_\_

Joe E. Holtrop, Executive Director