

QUIL CEDA VILLAGE IN-LIEU FEE PROGRAM

IN-LIEU FEE INSTRUMENT

AN AGREEMENT REGARDING THE OPERATION OF THE QUIL CEDA VILLAGE IN-LIEU FEE PROGRAM PURSUANT TO 33 CFR PARTS 325 AND 332 AS REVISED, EFFECTIVE JUNE 9, 2008 (FEDERAL MITIGATION RULE)

In consideration of the mutual promises and covenants contained herein, The Tulalip Tribes (the "Sponsor"), and the U.S. Army Corps of Engineers ("Corps"), are parties to this Instrument.

The parties to this instrument hereby agree as follows:

INTRODUCTION

The Tulalip Tribes are a federally recognized Indian tribe and reside on the Tulalip Indian Reservation established pursuant to provisions of the Treaty of Point Elliot of January 22, 1855 (12 Stat. 927) by Executive Order on December 23, 1873. This instrument applies to permitted impacts occurring within the jurisdiction of the Consolidated Borough of Quil Ceda Village, hereafter 'Quil Ceda Village', a municipality established as a political subdivision of The Tulalip Tribes, and incorporated under the Indian Tribal Government Tax Status Act of 1982.

A. Purpose

The purpose of this Quil Ceda Village In-Lieu Fee Program Instrument (hereinafter, "Instrument") is to set forth the agreed upon terms specifying responsibilities for the establishment, use, operation, and management of the Sponsor's In-Lieu Fee Program ("Quil Ceda Village In-Lieu Fee Program" or sometimes "QCV ILFP"). Quil Ceda Village Engineering and Environmental Services ("QCV EES") and Tulalip Natural and Cultural Resources Department ("TNCRD") are the Tulalip Tribal entities responsible for meeting these responsibilities on behalf of the Sponsor. This Instrument consists of two sets of documents: the document setting forth the general terms of agreement and establishing the central obligations assumed and consideration provided by each party ("Basic Agreement"), and the Appendices and Exhibits ("Appendices") that establish detailed provisions for operation of the QCV ILFP, including the Compensation Planning Framework, mitigation planning requirements, and standards and procedural requirements applicable to the QCV ILFP pursuant to 33 CFR 332. The terms and provisions of the Appendices are hereby incorporated into this Instrument and made a part hereof.

This instrument applies to permitted impacts occurring within the jurisdiction of the Consolidated Borough of Quil Ceda Village, hereafter 'Quil Ceda Village'. Pursuant to mitigation rules published

by the Corps and EPA (33 CFR 325 & 332; 40 CFR 230)¹, the Quil Ceda Village In Lieu Fee Program will provide compensatory mitigation for unavoidable adverse impacts to waters of the United States and tribal waters, including wetlands, aquatic areas, and aquatic resources and their buffers, as defined by Appendix B, from anticipated development projects within the tribal city of Quil Ceda Village authorized by Federal authorities., under Section 404 of the Clean Water Act. The Quil Ceda Village In-Lieu Fee Program may also provide compensation for unavoidable adverse impacts to aquatic resources authorized the Tulalip Tribes and by other Federal agencies. Credits under this In-lieu Fee program may also be sold to fulfill Tulalip mitigation requirements within Quil Ceda Village even when no Corps authorization is required such as for upland buffer-only impacts and for isolated waters.

The QCV ILF Program may also be used as a remedy to mitigate unauthorized activities when such use of the ILF Program is approved by appropriate regulatory agencies and all onsite remedies have been imposed on the offending individual or firm.

Through the in-lieu fee program, permittees within Quil Ceda Village will transfer their obligation for compensatory mitigation to The Tulalip Tribes by purchasing mitigation credits for unavoidable impacts to aquatic resources. The Tulalip Tribes will spend such funds on mitigation projects that provide the greatest potential to replace functions and services which are adversely affected, including essential fish habitat, or that protect aquatic resources at risk for development.

B. Quil Ceda Village In-Lieu Fee Program Mission and Program Objectives

The Quil Ceda Village In-Lieu Fee Program is adopted to allow for a more ecologically sound, comprehensive, successful mitigation program based on a watershed approach, as an alternative to permittee responsible mitigation for future development within Quil Ceda Village.

Under rules promulgated by the U.S. Army Corps of Engineers ("Corps") and the U.S. Environmental Protection Agency ("EPA"), the fundamental objective of compensatory mitigation is to offset environmental losses resulting from unavoidable impacts to waters of the United States authorized by Department of Army permits. One of the national goals of compensatory mitigation is to achieve no net loss of wetland functions and services.

The objectives of the in-lieu fee program are:

1. Meet Clean Water Act Section 404 requirements for compensation for unavoidable losses to aquatic resources as contained in 33 CFR 325 & 332; and 40 CFR 230. Mitigation projects developed under this Program are to replace functions and values of aquatic resources and associated habitats that have been degraded or destroyed as a result of unavoidable activities authorized by Department of Army and/or Tulalip Tribes issued permits.

¹ Federal Register Vol. 73, No. 70, Compensatory Mitigation for Losses of Aquatic Resources; Final Rule, Department of the Army, Corps of Engineers, 33 CFR Parts 325 and 332; Environmental Protection Agency 40 CFR Part 230, page 19593-19705.

2. Provide high quality, successful long term mitigation for unavoidable impacts to aquatic resources and to procedurally decouple permitted development projects from mitigation projects.
3. Meet The Tulalip Tribes Comprehensive Plan Environment Goals and Policies to protect, conserve and enhance the water quality and quantity on the Reservation, including surface water, groundwater and marine waters; and to protect, conserve and enhance the wetlands of the Reservation through the implementation of the Tribes' "no net loss with a long term net gain" wetland policy.
4. Provide mitigation under a watershed approach as defined in 33 CFR 332 to identify the most appropriate mitigation options available, thereby achieving greater success in the restoration, enhancement, creation and protection of tribal aquatic resources over that typically achieved by permittee-responsible, on-site compensatory mitigation for activities that impact wetlands and other waters of the U.S.
5. Meet The Tulalip Tribes Land Use Ordinance requirements for preservation and protection of environmentally sensitive lands, including streams, wetlands, and essential habitat for natural resources considered culturally important to the Tribes, as well as requirements for mitigation for impacts to tribal environmentally sensitive lands.
6. Provide public benefit by applying mitigation resources toward the improvement of ecologically-impaired ancestral lands of The Tulalip Tribes, both on and off Reservation, that have important ecological value to the watershed.

C. Interagency Review Team:

The Quil Ceda Village In-lieu Fee Program Interagency Review Team ("IRT") is the group of representatives from Federal, State and Tribal regulatory and resource agencies that have reviewed this Instrument and will advise the Corps regarding the establishment and management of the QCV In-Lieu Fee Program ("QCV ILFP") pursuant to the provisions of this Instrument. The IRT consists of:

1. Chair: District Engineer, U.S. Army Corps of Engineers, Seattle District(District Engineer) or his designee;
2. U.S. Environmental Protection Agency, Region 10 (EPA)
3. United States Fish and Wildlife Service (USFWS)
4. National Marine Fisheries Service (NMFS)
5. Washington Department of Ecology (Ecology). Ecology is a member of the IRT for projects outside of Tulalip Reservation boundaries, on lands within which State jurisdiction applies. For purposes of "consensus", when mitigation topics are at issue over which no state jurisdiction exists Ecology is not considered an IRT member with whom consensus must be reached.

D. The Role of the IRT:

The primary role of the IRT is to assist the Corps, in their role as Chair of the IRT, in the evaluation of mitigation plans, review of monitoring reports, the recommendation of remedial measures, the approval of credit releases, and the approval of modifications to this instrument. The IRT's role and responsibilities are more fully set forth in Section 332.8 of the Federal Mitigation Rule (33 CFR Part 332), and Appendices A and K of this Instrument. IRT members are invited to sign, but need not sign, this Instrument as an expression of their agreement with its terms. IRT members do not become a Party to this Instrument by signing and expressing such agreement. Signing this Instrument does not override or nullify the independent permitting authority of a Federal, State or Tribal permitting entity to enforce their permit requirements at Mitigation Sites.

The IRT will work to reach consensus in its actions per 33 CFR 332.8(d)(7). This consensus also includes giving the Sponsor the opportunity to provide information and input for the IRT members during these processes.

The members of the IRT will review such documents and mitigation sites as each considers necessary to provide meaningful input to the Chair and express any recommendations, concerns, or potential improvements concerning the implementation of the QCV ILF program to the Sponsor. The Sponsor will provide information and input for the IRT members during IRT review, as deemed necessary for clarification.

BASIC TERMS OF AGREEMENT

I. TRANSFER OF PERMIT LIABILITY

- A. **Transfer of Permit Mitigation Responsibility:** The Sponsor agrees to accept full legal responsibility for satisfying mitigation requirements of all Corps and/or Tribal permits for which mitigation fees from a permittee have been accepted under the terms of this Instrument. This responsibility includes compliance with 33 CFR Part 332, 40 CFR Part 230, Tulalip Tribal Code, and any other applicable federal and tribal laws and any local jurisdictional laws. In satisfaction of the compensatory mitigation requirements, the Sponsor shall provide compensatory mitigation of the type and in the amount necessary to meet applicable regulatory requirements. Any transfer of mitigation responsibility is contingent upon the prior approval of this Instrument by the Sponsor, and the Army Corps of Engineers.
1. Mitigation responsibility includes, but is not limited to, the identification and selection of mitigation sites, property rights acquisition, water rights acquisition, mitigation plan design and development, construction, monitoring, preservation, and long term protection and management of the required mitigation.
 2. The transfer of mitigation responsibility from the permittee to the Sponsor for each impact site shall be effective upon (a) the permittee purchasing from the Sponsor the appropriate number and resource type of credits and (b) the Corp's receipt of the Statement of Sale (Exhibit 3). The Statement of Sale expressly specifies that the

Sponsor, its successors and assigns, assume responsibility for accomplishment and maintenance of the transferee's compensatory mitigation requirements associated with the impacting project, as required by permit conditions, upon completion of the credit sale.

II. LEGAL AUTHORITIES

The establishment, use, operation and management of the Quil Ceda Village In-Lieu Fee Program shall be carried out in accordance with the following principle authorities:

A. Federal

1. Clean Water Act, (33 USC 1251 et seq.)
2. Rivers and Harbors Act of 1899 (33 USC § 403)
3. Regulatory Programs of the Corps of Engineers, Final Rule (33 CFR Parts 320- 332)
4. Federal Register Vol. 73, No. 70, Compensatory Mitigation for Losses of Aquatic Resources; Final Rule, Department of the Army, Corps of Engineers, 33 CFR Parts 325 and 332; Environmental Protection Agency 40 CFR Part 230, page 19593-19705.
5. Memorandum of Agreement between the Environmental Protection Agency and the Department of Army concerning the Determination of Mitigation Under the Clean Water Act, Section 404(b)(1) Guidelines (February 6, 1990)
6. U.S. Army corps of Engineers Regulatory Guidance Letter 05-01, Guidance on Use of Financial Assurances, and Suggested Language for Special Conditions for Department of the Army Permits Requiring Performance Bonds, U.S. Army Corps of Engineers, February 14, 2005
7. Guidelines for Specification of Disposal Sites for Dredged and Fill Material (40 CFR Part 230, Section 404(b)(1))
8. National Environmental Policy Act (42 USC 4321 et seq.)
9. Council on Environmental Quality Procedures for Implementing the National Environmental Policy Act (40 CFR Parts 1500-1508)
10. Executive Order 11990 (Protection of Wetlands)
11. Executive Order 11988 (Floodplains Management)
12. Executive Order 13112 (Invasive Species)
13. Fish and Wildlife Coordination Act (16 USC §§ 661 et seq.)
14. Fish and Wildlife Service Mitigation Policy (46 FR 7644-7663, 1981)
15. Endangered Species Act (16 USC §§ 1531 et seq.)
16. Magnuson-Stevens Fishery Conservation and Management Act (16 USC §§ 1801 et seq.)
17. National Historic Preservation Act, as amended (16 USC § 470)

B. Tulalip Tribes of Washington

1. Treaty of Point Elliot of January 22, 1855 (12 Stat. 927); Executive Order of December 23, 1873
2. Tribal Self-Governance Act of 1994, Title IV of Public Law 93-638, as amended, ("Act"); Title 23 of the United States Code, as amended by the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users ("SAFETEA-LU"), Public Law 109-59, 119 Stat. 1144 (August 10, 2005); 25 C.F.R. Part 170; and 25 C.F.R. Part 1000.
3. Tulalip Tribes Comprehensive Land Use Plan , September 2009
4. Tulalip Tribal Code, Title 7 Adopted December 8, 1994, as amended April 12, 2013

C. Quil Ceda Village

5. Charter of the Consolidated Borough of Quil Ceda Village, Enacted March 2, 2001,
6. Tulalip Tribal Code, Title 1, Chapter 1.25, The Tulalip Tribes Political Subdivisions Act, October 7, 2000.
7. Internal Revenue Code Tax Reform Act of 1984, §7871 and 7871(d) and IRS Letter Opinion Index Number 7871.00-00, November 14, 2001.
8. IRS Letter Opinion of Nov. 14, 2001 recognizing QCV as a political subdivision of The Tulalip Tribes under the Indian Tribal Governmental Tax Status Act of 1982 (Title II of Pub. L. No. 97-473, 1983-1 C.B. 510, 511, as amended by Pub. L. No. 98-21, 1983-2 C.B. 309, 315)

III. FUNDING PROVISIONS

- A. **Fee Collection:** Upon permit approval from appropriate regulatory agencies, mitigation fees will be collected from permittees by the Sponsor and deposited into the QCV ILF Program Account. Pursuant to this instrument, The Tulalip Tribes will establish a financial account, the "Quil Ceda Village In-Lieu Fee Mitigation Fund," to accept in-lieu fees for the purpose of restoring, enhancing, creating and/or preserving aquatic resources and their buffers. The Fund will be established as a separate interest-bearing fund solely for use by the Quil Ceda Village In-Lieu Fee Program, held in an FDIC-insured banking institution. . The Sponsor will deposit the funds into the dedicated in-lieu fee program account, in the percentages outlined in Appendix G.
- B. **Spending Authority and Disbursement:** Disbursement of funds to the Sponsor for mitigation projects subject to the terms of this Instrument will be made upon authorization from the Corps, as follows:
 1. **Administrative Costs:** Upon receipt of payment from a permittee for an impact site, the Corps hereby authorizes the Sponsor to use funds from the Program Administrative Account in the percentage amount specified in Appendix G.
 2. **Spending Agreement:** Disbursement of any additional funds from the program account will be made only upon receipt of written authorization from the Corps, after the Corps

has consulted with the IRT, pursuant to 332.8(i)(2) and pursuant to Appendix G and Article III.D. Written authorization will be in the form of a Spending Agreement, Exhibit 2. The Spending Agreement shall include:

- i. Statement of current account balances for the Service Area
- ii. Statement of anticipated mitigation site project cost
- iii. Allocation of percentages for project operation
- iv. Signature of the District Engineer or his designee

C. Mitigation Fees:

Mitigation Fees will comprise two fees: a Credit Fee and a Land Fee. The Credit Fee price will reflect average costs for implementing all components of a mitigation project, based on cost analyses of recent projects completed by the Program Administrator, as described in Appendices G and I. Credit Fees will be used to implement all aspects of mitigation projects undertaken by the Quil Ceda Village In-Lieu Fee Program. The Sponsor will aggregate the in-lieu fee payments into a dedicated interest bearing fund.

The Land Fee prices will be based on an analysis of average cost of recent Service Area lands acquisitions within different sub-watershed areas and zoning categories. Land Fees will be used for acquisition of lands as described in Appendix C, Section 6.1.

Mitigation fees collected will be based on full-cost accounting for establishment and management of mitigation sites, including: costs associated with site selection, permitting and design, construction, monitoring and maintenance, long-term management, program administration, contingencies, and property rights acquisition. Mitigation fees will be updated based on current market rates for mitigation costs and land purchase costs.

An analysis of the program's cost data will be provided in the annual report as described in Article III.G, along with a report of any fee adjustments. Further information on breakdown of mitigation fees and an initial fee schedule is attached in Appendix I.

D. Program Account

Mitigation fees collected under this program will be allocated as the Quil Ceda Village In-Lieu Fee Mitigation Fund (QCV ILFMF) within The Tulalip Tribes' Munis Financial Accounting System. The Munis Accounting System is annually audited by an independent accounting service and the audit will be available for QCV ILFP reporting as described in Appendix J.

Upon sale of the first advance credit, four primary accounts will be established under the QCV ILFMF: a Land Fee Account, Program Administration Account, General Project Implementation Project Account, and Long Term Management Fund. Separate management codes ("fund sites") will be established for each program account for tracking their respective costs. In addition, Individual Mitigation Project Accounts and a Contingency Account will be established under the General Program Project Account.

Accounting procedures are established in Appendix G. The allocation of percentages to each account will be determined by the Sponsor, and the Corps, in accordance with the process outlined

in Appendix G. The Sponsor must allocate and deposit funds to the appropriate accounts within 30 days of the receipt of mitigation funds from a permittee.

Collectively, the following accounts constitute the QCV ILFMF:

1. Land Fee Account: The Land Fee Account will contain 100% of the Land Fee portion of Mitigation Fees collected. These funds will be used for payment of land acquisition costs for the acquisition of property to include as potential mitigation sites or used to secure Preservation Credits (See Appendix K). In the event a project account within the Program Fund is insufficient to meet the needs of the required action, monies in the Land Fee Account may be used as Financial Assurances.
2. Program Administration Account: The Administrative Account will be funded by a percentage of Credit Fees collected by the QCV ILFP. These funds will pay for program administration duties, including but not limited to:
 - a. Project development, site selection and concept design
 - b. Fee and Credit accounting
 - c. Legal services
 - d. Data management(e.g. maintaining the QCV ILFP Database; see Appendix J, Section 3.0)
 - e. Reporting
 - f. Correspondence and meetings with the IRT and other regulatory agencies,
 - g. Program development, and
 - h. Other program administration duties as necessary
3. General Project Implementation Account: The General Project Implementation Account will be funded by an allocation of the percentage of Credit Fees that are not allocated to the other accounts, i.e., Program Administration Account, and Long Term Management Fund, and will include the percentage allocated to the Contingency Account. A dedicated Contingency Account will be located within the General Project Implementation Fund, in addition to Individual Mitigation Project Accounts. This account will hold the monies prior to their allocation to specific mitigation projects.
4. Long Term Management Fund (LTMF): The Long Term Management Fund is a separate account to be established from a percentage of the Credit Fees collected in the Service Area for the long term maintenance and monitoring of ILF receiving sites. The account is to be funded when Credit Fees are collected. Monies in the Long Term Management Fund will be held in reserve to fund long-term management, including adaptive management and remediation, at mitigation sites after completion of the establishment phase and the project enters the Long Term Management phase (See Appendix M). Long Term Management funds are not available for use on a project until the project enters the Long Term Management phase (i.e. after the establishment phase is complete, and all credit associated with a project is released.) (See Credit Release Schedule, Appendix K, Section 7.0). Monies in the Long Term Management Fund will be available solely for use in long term management

(i.e. for implementing long-term management plans included in approved Mitigation Plans and/or as Financial Assurances; see Appendix K, Section 5.0 and Appendix M, and Section F below). When a project enters the long-term management phase, any unused monies from its Project Account, with the exception of contingency dollars will be rolled into its individual Long Term Management Account.

5. Contingency Fee Account: The Contingency Fee Account is funded by deposits of a percentage of Credit Fees collected in the Service Area and will be held in a separate dedicated Contingency Account within the General Project Implementation Account. Monies in the Contingency Account will be held in reserve to fund adaptive management or contingency measures during the establishment phase or long term management phase for mitigation sites, including contingencies related to project implementation, and implementation of adaptive management plans (see Appendix M). In the event an account within the Program Fund is insufficient to meet the needs of a required action in the establishment or long term management phase, monies in the Contingency Account may be used as Financial Assurances according to the hierarchy established in Appendix H.2. Similarly, in the event monies in the Long Term Management Fund are insufficient to cover unexpected tasks related to the long-term management of a specific mitigation site, monies from the Contingency Fee Account may be used to cover the shortfall, in accordance with the hierarchy established in Appendix H.2. When a site enters Long Term Management, the remaining portion of the Contingency Fee Account related to that site will remain in the General Project Implementation Account Contingency Fee Account (see Appendix G).
6. Individual Mitigation Project Accounts. Each Mitigation Project in the Service Area will have an Individual Mitigation Project Account. The fees in this account, deposited into the account following the signing of a spending agreement, are used for development of Mitigation Plans, mitigation project implementation, and establishment period monitoring and maintenance activities. Separate management codes (“fund sites”) will be established for individual mitigation projects, for tracking their respective costs for project design, implementation, monitoring and maintenance within the Mitigation Project Account.
7. Accrual of interest earnings: Interest accrued shall remain with the fund, for use by the in-lieu fee program. Accrued interest in the Land Fee account shall remain with the land acquisition fund, and interest accrued in the Long Term Management Fund shall remain with the Long Term Management fund. Interest earnings from the remaining Program Accounts will be directed equally to Contingency Account and Long Term Management Fund (see Appendix G).

E. Ability to Direct Funds

In cases where the Sponsor does not provide compensatory mitigation as agreed to by the parties, or in cases of default, per Article V.AA, after consultation with the IRT and the Sponsor, the Corps has the authority to direct the Sponsor to disburse funds to alternative compensatory mitigation projects, in conformance with Appendix H.2, and Appendix O. The provisions of Appendix O call for collaboration with the Sponsor including providing the Sponsor an opportunity to suggest solutions to avoid default. In cases where default is determined per Appendix O, the Corps shall

consult with members of the IRT prior to making any decisions regarding direction of disbursement of QCV ILFP funds. Termination of any Program Account shall only occur upon receipt of written instructions signed by the Sponsor and the Corps; all funds shall be disbursed pursuant to the instructions of the Corps.

The Corps shall direct the use of funds through the issuance of a signed Directive Letter to the Sponsor. The letter will specify what financial and responsive action the Sponsor must take. The letter will also specify a timeframe in which the Sponsor must complete the actions. By signing this Instrument the Sponsor has agreed to abide by the direction of the Corps in authorization, release, and use of QCV ILFP funds. The Sponsor acknowledges that failure to abide by the Spending Agreement or Directive Letters, as provided herein, of the Corps, may constitute a violation of the program Instrument and may result in penalties including, in the most severe case, program termination.

F. Financial Assurance Requirements:

The Sponsor intends to satisfy its obligations under this Instrument by obtaining sufficient funding to carry out all design, development, monitoring, remediation and site management responsibilities. The financial assurances outlined in Appendix H are provided for the work described in this Instrument. Funding for all responsibilities and obligations arising under this Instrument has been included in the credit price estimation calculations, and mitigation fees collected are based on full cost accounting (see Appendix G, Section 2.0). Project approval by the Corps, in consultation with the IRT, is contingent upon each project being fully funded at the time of its approval to cover the Sponsor's obligations under this Instrument.

In the event an account in the QCV ILF Program is insufficient to meet the needs of the required action, moneys in the Land Fee, Contingency Fee, and Long Term Management Accounts, as well as interest accrued, may be used as Financial Assurances.

To the extent, if any, that these funds are insufficient to fully and timely fund the Sponsor's obligations as delineated in this Instrument, the QCV ILFP Program Administrator shall include in its budget request to the Tulalip Tribes Board of Directors appropriations sufficient to cover the balance of the Sponsor's obligations under this Instrument, and will use all reasonable and lawful means to fulfill its obligations hereunder. In the event the Tulalip Tribes Board of Directors does not appropriate funds in sufficient amounts to discharge these obligations, the Program Administrator shall use its best efforts to procure funding in order to satisfy its obligations under this Instrument from any other source of funds legally available for this purpose. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the Tulalip Tribes Board of Directors.

G. Program ledgers and reporting

The Program Administrator will maintain applicable program ledgers for reporting to the Corps and IRT, and for tracking purposes. The Program Administrator will submit ledger reports to the Corps and the Interagency Review Team, according to subsection 332.8(q) of the Federal Compensatory Mitigation Rule, annually or upon request. A summary report and the annual program ledger submittal will be provided to the Corps by the end of the first quarter (March 31) following the end

of the Tulalip Tribes' fiscal year. The purpose of the ledgers are to provide a summary of deposits made into the program account, debits incurred, projects funded, and impacts mitigated by resource type and sub-watershed area. Reporting protocols are elaborated in Appendices G and J.

IV. OPERATION OF THE QCV ILF PROGRAM

The Quil Ceda Village In-Lieu Fee program is approved to provide compensatory mitigation for impacts to waters of the U.S., and tribal waters, including wetlands, aquatic areas and aquatic resources and their buffers, as defined in Appendix B, undertaken within the jurisdiction of the Consolidated Borough of Quil Ceda Village. The Sponsor will sell mitigation credits to impact site permittees, and Sponsor will serve as the entity responsible for providing compensation for the credits purchased. The funds received from permittees will be consolidated and used to implement various Mitigation Projects within the Service Area established in this Instrument. Once a Mitigation Project reaches functioning capacity (e.g. successfully achieves all Ecological Performance Standards as listed in the approved Mitigation Plan) in the watershed, additional mitigation credits will be released to the Sponsor to sell.

A. Geographic Service Area

To accomplish the goal of watershed-focused mitigation, the greater Quilceda watershed is designated as the receiving area for mitigation projects of the QCV ILFP. The project impact area for which this In-Lieu Fee program is established is in the Quil Ceda Watershed within the jurisdictional boundaries of the municipality of Quil Ceda Village, located within the Tulalip Indian Reservation. The receiving area or geographic service area for compensatory mitigation projects of this in-lieu fee program is the Quilceda Watershed, including all of its tributary areas: Sturgeon and Coho Creek, the West Fork, Edgecomb, Hayho, Olaf Straad, and Mainstem and Middle Fork Quilceda Creek subwatersheds. The fees for various impacts in Quil Ceda Village will be collected and combined to fund mitigation projects in that Service Area.

If the Corps determines that the Sponsor has sold, used, or transferred credits at any time to provide compensatory mitigation for loss of aquatic resources outside of the Service Area where the impact occurred without prior approval under the terms of this instrument, the Corps, in consultation with other applicable members of the IRT, may direct that the sale, use, or other transfer of credits immediately cease. The Corps will determine, in consultation with the IRT, the Sponsor and appropriate regulatory authority, what remedial actions are necessary to correct the situation and will direct the Sponsor's performance prior to the award of any additional mitigation credits. Notwithstanding the fact that ceasing sale, use, or other transfer of credits may have been required, unless this Instrument is terminated pursuant to Article VI.B, the Sponsor shall remain responsible for the timely and effective achievement of all the Objectives and Performance Standards mandated in Appendix L.

B. Advance Credit Allocation to Sponsor

Pursuant to 33 CFR Part 332, the Sponsor requests and the Corps agrees to initially grant advance credits to be made available for sale to applicants undertaking permitted actions with unavoidable impacts. Appendices E and F detail the rationale, amount, and type of advance credits requested. The Sponsor may need to request additional advance credits, in which case approval must be

granted by the Corps, in consultation with the IRT. Requests for additional advance credits must also comply with Article VI.B.

C. Credit Deficit or Fraudulent Transactions:

If the Corps determines at any point that the QCV In-Lieu Fee program is operating without prior written approval, at a deficit, or engaged in fraudulent transactions in the sale, use and or other transfer of credits, or has sold, used, or transferred credits at any time to provide compensatory mitigation for loss of aquatic resources outside of the Service area without prior written approval under the terms of this Instrument, the Corps shall determine the program to be in default, and direct the Sponsor to immediately cease award and sale, use or otherwise transfer of credits, and the Corps shall determine, in consultation with the IRT what remedial actions are necessary to correct the situation and will direct the Sponsor's performance prior to award of any additional mitigation credits.

D. Program Administration

The Program Sponsor has designated Quil Ceda Village Engineering and Environmental Services Department as the Program Administrator. The Program Administrator will manage the ILF program and partner with the Tulalip Tribes Natural and Cultural Resources Department as the agency responsible for developing and implementing projects. Quil Ceda Village will administer in-lieu fees accepted for authorized impacts; will track ledgers, provide reporting from the Tulalip Tribes to the Corps, and provide for long term management and maintenance of mitigation sites.

Details of program administration are found in Appendices A-U, for project review, selection, and prioritization, minimization, functional assessment and methods for determining project specific credits and debits, and fee cost structure.

E. Permits

Except for the advance credits provided for in Article IV.B. above, the Sponsor shall obtain all appropriate environmental documentation, permits and other authorizations needed to establish and maintain Mitigation Sites, prior to release of any mitigation credits to the Sponsor. Compliance with this Instrument does not fulfill the requirement, or substitute, for such authorization.

F. Permittee use of program

An applicant seeking to use the Quil Ceda Village In-Lieu Fee Program must meet the requirements in Appendix C, and receive a permit approval from the appropriate permitting authority. Permit approval should require the permittee to calculate, and Sponsor to validate, the amount of impacts (debits) to the watershed and the credits required to mitigate for the impacts. The permitting authority will determine whether use of the Quil Ceda Village In-Lieu Fee Program is acceptable mitigation for the proposed impact, and whether the correct amount of mitigation credits have been required. If the permitting authority and Sponsor agree to the use of the Quil Ceda Village In-Lieu Fee Program by the permittee, the Sponsor shall collect fees for the mitigation credits required by the applicable permitting agencies to mitigate for the impact activity. The Sponsor must receive a copy of the permit approval prior to collecting mitigation fees from a permittee. Upon the Sponsor's

receipt of mitigation fees from a permittee the Sponsor shall sign and issue to the permittee a copy of the Statement of Sale, as found in Exhibit 3. The permittee shall be responsible for providing copies of the signed Statement of Sale to the applicable permitting agencies. The permittee may transfer or sell its credits to a third party provided that such action is approved by the Corps, in consultation with the Sponsor, the IRT, applicable regulatory agencies, and reflected in a transfer agreement.

G. Timing of Mitigation

By the end of the third full growing season after any impact in the Service Area the Sponsor agrees to complete land acquisition and initial physical and biological improvements at a Mitigation site using mitigation fees collected from the sale of mitigation credits in the Service Area, unless the District Engineer determines that more or less time is needed to plan and implement an in-lieu fee project. The Sponsor shall notify the Corps at least 60 days prior to the deadline when additional time is required to achieve these initial improvements on a project. If funds are not expended within 3 growing seasons of in-lieu fee payment, the District Engineer may direct funds to alternative mitigation projects, in consultation with the Sponsor and the IRT, pursuant to Article III.E.

H. Approval and Implementation of Mitigation Sites

To establish a Mitigation Site, the Sponsor agrees to follow the requirements of Appendix K, and Article IV.G. The Sponsor will first submit conceptual mitigation project proposals to the Corps for mitigation site approval, as described in Appendices C and K. Proposed mitigation projects for use of ILF funds will be reviewed by the Corps and the IRT, who will provide input to the Corps for site and mitigation plan approval. The Sponsor will also submit a proposed Spending Agreement for approval and signature by the Corps, using the template in Exhibit 2. Upon approval of a Mitigation Site by the Corps in consultation with the IRT, and the Sponsor's receipt of a signed Spending Agreement, the Sponsor shall prepare and submit a Mitigation Plan as described in Appendix K. Upon the approval by the Corps, in consultation with the IRT, of a Mitigation Plan, the Sponsor will proceed to implement the mitigation project in accordance with the terms of the approved Mitigation Plan and approved Spending Agreement (see Article III, Funding Provisions). For each approved Mitigation Plan, Appendix T will be amended in this Instrument to reflect the Mitigation Site and the Site's Mitigation Plan.

I. Compensation Planning Framework

All mitigation projects provided by the Sponsor under the terms of this Instrument will be consistent with the Compensation Planning Framework presented in Appendices H through Appendix Q. The Compensation Planning Framework will be used to select, secure, and implement aquatic resource restoration, enhancement, and/or preservation activities.

The Compensation Planning Framework in Appendix D provides a description and watershed characterization of the geographic service area, analysis of historic and current aquatic resource loss, threats to aquatic resources, aquatic resource goals and objectives, prioritization strategy and criteria for selecting compensatory mitigation activities, preservation objectives, as well as provisions for long term protection and management of mitigation.

J. Mitigation Site Operational Phases

Mitigation sites shall have two operational phases: 1) an Establishment phase of site development, including construction and active management and; 2) a Long Term Management phase, once the site has met performance standards of the mitigation plan.

1. The Establishment Phase of a particular mitigation site will commence upon the Sponsor's receiving both the approved Final Mitigation Plan, and a copy of a recorded Site Protection Instrument pursuant to Article IV.P. Prior to termination of the Establishment Phase of a Mitigation Site, the Corps, with IRT review, will approve the final site inspection documenting the achievement of the performance standards. Upon termination of the Establishment Phase, the Corps, after consultation with the IRT, shall release final available credits for the Mitigation Site to the Sponsor, in accordance with the Credit Release Schedule. Termination of the establishment phase is contingent on the Mitigation Site meeting requirements to enter Long Term Management.
2. The Long Term Management phase of a particular Mitigation Site will commence upon the Corps determining, in consultation with the IRT and Sponsor, that:
 - a. All applicable performance standards for the Site prescribed in the IRT-approved Mitigation Plan have been achieved;
 - b. All available credits for that phase have been awarded, or the Corps has approved the Sponsor's request to permanently cease QCV In-lieu Fee Program activities;
 - c. The Sponsor has prepared a Long Term Management Plan that has been approved by the Corps, in consultation with the IRT, pursuant to Appendices K and M;
 - d. The Sponsor has either: (1) assumed responsibilities for accomplishing the Long Term Management Plan, in which case the Sponsor will fulfill the role of Long Term Steward, or (2) has assigned those responsibilities to another Long-Term Steward pursuant to Article VI.D;
 - e. The Long Term Management Project Account has been funded as described in this Instrument;
 - f. Appropriate moneys from the Long Term Management Fund have been transferred to the Long Term Steward, if applicable; and
 - g. The Sponsor has complied with the terms of this Instrument.

K. Deviation from Mitigation Site Plans:

In establishing the Mitigation Sites, deviations from the approved Mitigation Plans may only be made with the prior approval of the Corps, following consultation with applicable members of the IRT. In the event the Sponsor determines that modifications to an approved Mitigation Plan are necessary, the Sponsor shall submit a written request for such modification to the Corps, and the IRT, for approval. The approved modifications will be appended to the Mitigation plan according

to Article VI.B., incorporated into the program instrument, implemented, and shall be monitored for performance standards according to Appendix L.

L. Credit Fulfillment and Release Schedule

Subject to the documentation and scheduling provisions of Appendix K, Section 6.0, the Sponsor shall submit to the IRT written evidence that particular performance standards have been achieved. If the Corps, after consulting with the IRT and the Sponsor, concur that the required performance standards have been achieved in full, they will notify the IRT and respond in writing to the Sponsor that the credits associated with those performance standards are released. Mitigation credits will be released to the Sponsor in accordance with the procedures and schedules prescribed in the Appendices; see especially Appendices K, and L.

M. Modification of Credits:

If the aquatic resource restoration, establishment, enhancement, and/or preservation activities cannot be implemented in accordance with an approved mitigation plan, the Sponsor must consult with the Corps and the IRT to consider modifications to the site mitigation plan, including adaptive management, revisions to the credit release schedule, and alternatives for providing compensatory mitigation to satisfy any credits that have already been sold. (see 33 CFR 332.8(l)(2)) Once implemented, if the in-lieu fee project does not then achieve its performance-based milestones, the Corps may modify the credit release schedule, including reducing the number of credits, in accordance with 33 CFR 332.8(o)(iii), and Appendix K. Any such modification to an approved mitigation plan or credit release schedule shall occur per article VI.B of this Basic Agreement. Conversely, if, once implemented, an in-lieu fee project site produces more acres or linear feet of established, enhanced, restored or preserved aquatic resource than was originally anticipated when the mitigation plan and associated credit release schedule were approved, the Sponsor can request a modification in accordance with the procedures at 33 CFR 332.8(g).

N. Monitoring Provisions

The Sponsor agrees to perform all necessary work, pursuant to Appendix K, to monitor mitigation sites both during the establishment period to demonstrate compliance with the performance standards established in the mitigation plan and during the long term management phase, to ensure the mitigation site's continued adherence to the project objectives.

O. Maintenance Provisions

Following achievement of performance standards, the Sponsor agrees to perform all necessary work to maintain those standards as prescribed in Appendix N.

P. Mitigation Site Protections

All real property established as mitigation sites under the QCV In-Lieu Fee program, now or in the future, shall be either (1) fee simple Reservation properties owned by the Sponsor or tribal trust properties held in trust by the Federal government for the benefit of the Tulalip Tribes, subject to a restrictive covenant established by the Sponsor limiting use to wetlands mitigation, or similarly restricted by a conservation easement granted by the Sponsor to a third party; or (2) subject to conservation easement granted to the Sponsor by a landowner that restricts use to aquatic mitigation consistent with this Program. The conservation easement or restrictive covenant must be granted to

a public agency, tribe, a land trust that has adopted the Land Trust Alliance Standards & Practices that restricts use to mitigation consistent with the QCV ILF Program, or other appropriate entity agreed to by the Sponsor and Corps. In accordance with 33 CFR 332.7(a), real property may be protected by an Integrated Natural Resource Management Plan that is duly approved by the Corps, in consultation with the IRT. All site protection mechanisms shall be perpetual in duration, must be approved by the Corps and must be recorded either with the Bureau of Indian Affairs Title Plant for tribal trust lands, or with Snohomish County Auditor's office, for fee simple lands. Mitigation site protection provisions regarding the conservation easement and Long Term site management are provided in more detail in Appendix M. The Conservation Easement template is Exhibit 4.

Q. Mitigation Site Restrictions on Use:

The Corps may treat the Sponsor as being in material default of a provision of this Instrument and proceed accordingly under Article IV.Y., should the Corps, in consultation with the IRT, determine that either of the following has occurred:

1. The Sponsor has granted additional easements, rights of way, or any other property interests in the project areas without the written approval of the Corps, in consultation with the IRT.
2. The Sponsor has used or authorized use of any areas of mitigation sites within the QCV In-Lieu Fee Program for any purpose that Corps, in consultation with the IRT, concludes is contrary to the provisions of this Instrument or the site protection mechanisms, or that interferes with the conservation purposes of the QCV ILF Program.

R. Mitigation Site Inspection

The Sponsor will allow, or otherwise provide rights of access, for appropriate members of the IRT to the Quil Ceda Village In-Lieu Fee Program Mitigation Sites, as reasonably necessary, for the purpose of inspection, compliance, monitoring, and remediation consistent with their role in the terms and conditions of this Instrument and the Appendices. The Department of Ecology IRT member rights of inspection shall be limited to off-Reservation Mitigation sites, unless otherwise provided. Rights of access shall be provided both during mitigation site establishment and long-term management phases. This right shall remain in place even in the event the program or Service Area closes. The inspecting parties shall provide the Sponsor reasonable prior notice of a scheduled inspection, and shall not unreasonably disrupt or disturb activities on the property.

S. Contingency Plans/Adaptive Management:

If during the establishment phase, mitigation projects funded through this ILF program do not achieve, by the specified date, one or more of the performance standards of the approved Mitigation Plan, consistent with the provisions in Appendix K, or cannot be implemented in accordance with an approved mitigation plan, the Sponsor shall develop necessary adaptive management / contingency plans and implement appropriate measures as specified in Appendix M, to attain those project objectives and performance standards including, if necessary, proposals for substitute mitigation project sites. Potential contingency actions and adaptive management strategies are to be elaborated in the mitigation plans funded under this program, and will meet the requirements in Appendix K and L. Prior to their execution, proposals for the contingency plans

and remediation and monitoring actions must be approved by the Corps, after consultation with the Sponsor, and the IRT. In the event the Sponsor fails to implement the necessary measures within the prescribed period, the Corps, in its sole discretion, following consultation with the Sponsor and the IRT, will direct remedial, corrective, and/or sanctioning action in accordance with the procedures specified in Appendix O. In cases of default as described in Article IV.Y and Appendix O, the Corps may accomplish such remedial action directly, acting through a third party designee, by directing use of the financial assurance instrument pursuant to Articles III.E and III.F.

T. Accomplishment of Sponsor Responsibilities; Ownership Transfer of a Mitigation Site:

The Sponsor shall remain responsible for complying with the provisions of this Instrument throughout the operational life of the QCV In-Lieu Fee Program, regardless of ownership status of the underlying real property where the Mitigation Sites are located, unless those responsibilities have been assigned pursuant to provision of Article VII.C.

The Sponsor is not required to, but may transfer ownership of all or a portion of the mitigation sites' real property interest to another party, provided the Corps, following consultation with other members of the IRT, expressly approves the transfer in writing. The Sponsor shall provide no less than 60 days written notice to the Corps and the IRT of any transfer of fee title or any portion of the ownership interest in the QCV In-Lieu Fee Program real property interest to another party.

U. Transfer of Long Term Management Responsibilities

The Sponsor may assign its long term management responsibilities to a third party assignee, who then will serve as a Long-Term Steward in the place of the Sponsor. The identity of the assignee, and the terms of the long-term management agreement between the Sponsor and the assignee must be approved by the Corps, following consultation with the IRT, in advance of any such assignment.

Upon execution of a long-term management assignment agreement and the transfer of the monies of the Long-Term Management Account, and upon satisfaction of the remaining requirements for termination of the establishment phase of the QCV In-Lieu Fee Program under Article IV.K., the Sponsor shall be relieved of all further long-term management responsibilities under this Instrument which are associated with the site for which responsibilities have been transferred.

V. Availability of Credits in the Event Contingencies or Financial Assurances are Accessed:

In the event the Corps, acting pursuant to Articles IV.S or IV.Y., directs the use of the Financial Assurances established pursuant to Article III.E and III.F, and the use of any Financial Assurances accomplishes any objectives, performance standards, or features of a Mitigation Site implemented by the QCV In-Lieu Fee Program, the Corps, in consultation with the IRT, may award credits for sale, use, or transfer by the Sponsor, in a quantity reflecting the objectives and performance standards achieved as a result of such remedial action.

W. Force Majeure

The Sponsor may request, pursuant to Article VI.C., and the Corps may approve, changes to the construction, operation, project objectives, performance standards, timelines or crediting formula of the QCV ILF program, pursuant to the standards and procedures specified in applicable

Appendices, if, all of the following occur: an act or event causes substantial damage such that it is determined to be force majeure; such an act or event has a significant adverse impact on the quality of the aquatic functions, native vegetation, or soils of the mitigation site; and such an act or event was beyond the reasonable control of the Sponsor, its agents, contractors, or consultants to prevent or mitigate.

1. The evaluation of damage caused by a force majeure and the resulting changes to mitigation requirements will necessarily involve communication among the Parties and the IRT. If the Sponsor asserts a mitigation site has sustained significant adverse impacts due to an event or act which may be determined to be force majeure, the Sponsor shall give written notice to the Corps, and the IRT as soon as is reasonably practicable. After receiving written notice, the Corps, in consultation with the Sponsor and the IRT, shall evaluate whether the event qualifies as force majeure. The Corps, in consultation with the Sponsor and the IRT, will then evaluate whether significant adverse impacts have occurred to the site. If a force majeure event is determined to have occurred and significant adverse impacts are found to have occurred to the site, the Corps, in consultation with the IRT and the Sponsor, will evaluate whether and to what extent changes to the mitigation site will be in the best interest of the site and the aquatic environment, and may approve such changes as detailed in paragraph W, above. The Corps retains sole discretion over the final determination of whether an act or event constitutes force majeure, whether significant adverse impacts to a mitigation site have occurred, and to what extent changes to a mitigation site will be permitted.
2. Force majeure events include natural or human-caused catastrophic events or deliberate and unlawful acts by third parties.
 - a. Examples of a natural catastrophic event include, but are not limited to: a flood equal to or greater in magnitude than the 100-year flood event; an earthquake or a force projected from an earthquake with a return period of 475 years; drought that is significantly longer than the periodic multi-year drought cycles that are typical of weather patterns in the Pacific Northwest; as well as events of the following type when they reach a substantially damaging nature: disease, wildfire, depredation, regional pest infestation, or significant fluviogeomorphic change.
 - b. Examples of a human-caused catastrophic event include, but are not limited to substantial damage resulting from the following: war, insurrection, riot or other civil disorders, spill of a hazardous or toxic substance, or fire.
 - c. Examples of a deliberate and unlawful act include, but are not limited to, substantial damage resulting from the following: the dumping of a hazardous or toxic substance, as well as significant acts of vandalism or arson.

X. Non-Compliance

Noncompliance not rising to the level of default may occur at an individual Mitigation Site, or QCV In-Lieu Fee Program/ Service Area. This noncompliance includes performance failure, and delinquency (see Appendix O). Before a Mitigation Site, Service Area or the program is found to be in default (see Article IV.Y., below), the Corps, in consultation with the IRT and the Sponsor, shall

seek to address the causes of noncompliance following the steps outlined in Appendix O, which describes the categories of non-compliance.

Y. Default:

Two levels of default exist: Mitigation Site Default and Program/Service Area Default, which may result from administrative failures or other actions or inactions specified in Appendix O. Should the Corps, in consultation with the IRT, determine that the Sponsor is in Mitigation Site, or Program/Service Area default, as defined in Appendix O, the Corps may take the measures as further prescribed in Appendix O.

Remedies available in the case of default include:

- a. Suspending credit sales;
- b. Decreasing available credits at a site or in the service area;
- c. Directing the Sponsor to utilize Financial Assurances to correct identified deficiencies (i.e. access contingency funds, Long-term Management Account funds, or Land Fees. See Appendix G, and Appendix H, Section 2);
- d. Directing the Sponsor to use the QCV Aquatic Mitigation Program Fund to secure necessary mitigation credits (see Article III.E and Appendix O);
- e. Terminating the program Instrument (see Section EE, below); or
- f. Referring the non-compliance with the terms of this Instrument to the Department of Justice.

Z. Notification of Credit Suspension or Program Suspension:

In the event of default the Corps may suspend credit sales or use of the program (see Appendix O). Upon written notification by the Corps of credit and/or program suspension, the Sponsor agrees to immediately cease any pending sale or transfer of credit transactions not yet finally completed and to cease any use of credits as compensatory mitigation for activities within the affected site or service area deemed to be in noncompliance until informed by the Corps that release, sale, use, or transfer of credits may be resumed.

AA. Sponsor's Failure to Correct Default:

Should the Sponsor fail to correct the reasons for default according to and within the time period specified in the default notification letter per Appendix O, the Corps, following consultation with the IRT, may terminate this Instrument and any subsequent Quil Ceda Village In-Lieu Fee operations pursuant to the closure provisions in Article IV. EE, and IV.FF.

BB. Unavoidable Delays:

The Sponsor shall not be deemed to be in noncompliance or default when delays to implementation or action are due to the Corps or IRT decision-making process including review and approval of mitigation actions, or to events categorized as force majeure in Article IV.Y.

CC. Site Closure:

If the Sponsor, Corps, or any member of the IRT, determine that a mitigation Site will not be able to meet performance standards specified in an approved Mitigation Plan, or that for any reason continued mitigation actions at a Site are impracticable, the Sponsor, the Corps or any member of the IRT may recommend closure of the affected Site. Following a recommendation of closure, the Corps, after consultation with the Sponsor and the IRT shall have the option of closing a Site. The Sponsor, the Corps, and members of the IRT shall seek consensus on Site closure decisions. If consensus cannot be reached, the Corps' determination shall be final. If Site closure occurs, the Sponsor shall comply with the Closure Provisions under Article IV. EE, and IV.FF. of this agreement and Appendix P.

DD. Program/Service Area Closure:

The Sponsor and/or the Corps, acting independently or in concert may terminate this Instrument within 60 days of written notification to the other parties and to the IRT members. In the event such a termination action is commenced, the Sponsor is responsible for providing to the Corps and the IRT reports detailing credit and fee ledger balances, as well as status reports for all mitigation projects.

If Program closure occurs, the Sponsor shall comply with the Closure Provisions under IV.EE, and IV.FF, of this agreement and Appendix P.

EE. Closure Provisions:

In cases of Site or Program/Service Area closure, the Sponsor, remains responsible for fulfilling any outstanding or pre-existing project obligations, including the successful completion of ongoing mitigation projects, relevant maintenance and monitoring, reporting, and long-term management requirements. The Sponsor shall remain responsible for fulfilling these obligations so that the obligations are satisfied or the long-term management and maintenance of all mitigation lands has been transferred to a third party approved by the Corps. In cases of closure, the Corps, after consultation with the Sponsor and the members of the IRT, will determine the amount of credits the Sponsor must recover through alternative mitigation (see Appendix P)

FF. Closure Provisions Regarding Funding:

Funds remaining in the QCV ILF Program accounts after all obligations are satisfied must continue to be used for the restoration, establishment, enhancement, and /or preservation of wetland areas, buffers and aquatic resources. Any expenditure of these remaining funds requires IRT review and Corps approval. If the Sponsor has outstanding mitigation obligations at the time of closure which it is unable to fulfill, the Corps in consultation with the IRT, shall direct the Sponsor to use remaining funds to secure credits from a third party source of mitigation as described in Appendix H.2.

V. RESPONSIBILITIES OF THE CORPS AS CHAIR OF THE IRT

- A. The Corps agrees to provide appropriate oversight in carrying out its responsibilities under the provisions of this Instrument
- B. The Corps agrees to review and provide comments on mitigation project plans, monitoring reports, contingency and remediation proposals and requests, and similar submittals from the Sponsor in a timely manner. The Corps will coordinate its review with the appropriate members of the IRT.
- C. The Corps agrees to timely review requests to modify the terms of this Instrument, to transfer title or interest in any real estate subject to the QCV In-Lieu Fee Program, to determine achievement of performance standards in order to evaluate the award of credits for each phase of the QCV In-Lieu Fee Program, or to approve the Long-Term Management Plans. The Corps will coordinate review with the members of the IRT so that a decision is rendered or comments detailing deficiencies are provided in a timely manner. The Corps agrees to not unreasonably withhold or delay action on such requests
- D. The Corps agrees to act in good faith when rendering decisions about acceptability of financial assurances, requiring corrective or remedial actions, requiring long-term management and maintenance actions, and releasing credits. The Corps shall exercise good judgment in accessing financial assurances, and will utilize those monies only to the extent it reasonably and in good faith concludes that such remedial or corrective actions are an effective and efficient expenditure of resources. In implementing the process delineated in Article III.E., the Corps will act in good faith in determining the scope and nature of corrective actions to be undertaken, shall act in good faith in conducting monitoring, developing reports, and assessing compliance with performance standards; and will not unreasonably limit options available as corrective action activities or otherwise apply its discretion so as to unduly prejudice the Sponsor regarding the timing or number of credits released. Approval by the Corps of the identity of any assignee responsible for executing the Long Term Management Plan, and approval of the terms of any long-term management assignment agreement, will not be unreasonably withheld.
- E. The Corps will periodically inspect the mitigation sites as necessary to evaluate, in consultation with the Sponsor and the other members of the IRT, the achievement of performance standards, to assess the results of any corrective measures taken, to monitor implementation of Long Term Management Plans, and in general, to verify the Sponsor's compliance with the provisions of this Instrument.
- F. Upon satisfaction of the requirements of Article IV.L for any mitigation site phase under this Instrument, the Corps will certify, following consultation with the Sponsor and the members of the IRT, that the establishment period of a mitigation site has been terminated, all credits associated with the site have been released, and that the site has entered the long-term management phase. Certification will occur upon the Sponsor's receipt of a letter issued by the Corps to the Sponsor, confirming that all credits are released.

VI. GENERAL PROVISIONS

A. Effect of the QCV In-Lieu Fee Program on Permitting Requirements:

Decisions on the use of the Quil Ceda Village In-Lieu Fee Program to provide compensatory mitigation will be made by the applicable permitting agencies during the permitting process for each permit. The parties to the Instrument recognize that permit decisions regarding the type, quantity, and appropriateness of compensatory mitigation are to be made by the appropriate permit reviewers for the applicable permitting agencies. The Corps and The Tulalip Tribes each have independent authority for permitting actions under their respective jurisdictions. On Tulalip Tribes trust lands and tribally-owned fee lands within the Reservation boundaries, the Corps holds the responsibility and authority under Section 404 of the Clean Water Act, and The Tulalip Tribes holds independent responsibility and authority under Section 401 of the Clean Water Act, and The Tulalip Tribes Land Use Ordinance. On tribally-owned fee lands off-Reservation, the Corps holds responsibility and authority under Section 404 of the Clean Water Act, and Washington Department of Ecology (Ecology) and in some cases Snohomish County holds independent responsibility and authority under Section 401 of the Clean Water Act. These independent authorities may apply to mitigation receiving sites depending on location. Nothing in this Instrument shall be construed to override the permitting authority of the Corps, The Tulalip Tribes, Ecology, or any local permitting entity to regulate applicable permit requirements on either impact or mitigation sites under their jurisdiction.

B. Decision Making by Consensus:

The Corps will strive to achieve consensus among the IRT per 33 CFR 332.8(d)(7) regarding issues that arise pertaining to the establishment, operation, management, and maintenance of the QCV ILF Program and mitigation receiving sites. As Chair, the Corps will coordinate the review and oversight activities of the IRT so as to best facilitate opportunity to reach the desired consensus. Review and oversight decisions will take into account the views of the Sponsor to the maximum extent practicable.

1. Where consensus cannot otherwise be reached within a reasonable timeframe, following full consideration of the comments of the members of the IRT and following consultation with the Sponsor, the Corps holds the responsibility and authority under Section 404 of the Clean Water Act of the Clean Water Act, to make final decisions regarding the application of the terms of this Instrument.

C. Entry into Effect, Modification or Amendment, and Termination of this Instrument:

1. This Instrument, consisting of both this Basic Agreement and the Appendices, will enter into effect upon the signature by authorized representatives of the Corps and the Sponsor, as of the date of the last of these signatures.
2. The Basic Agreement portion of this Instrument may be amended or modified only with the written approval of the Sponsor, and the Seattle District Engineer on behalf of the Corps, or their designees, following consultation with other members of the IRT, and following the modification procedures outlined in 33 CFR 332.8(g).

3. Amendment of the provisions of the Appendices, including amendments to include Mitigation Plans or to modify existing Mitigation Plans may be accomplished according to the procedures outlined in 33 CFR 332.8(g).
4. This Instrument may be terminated by the mutual agreement of the Sponsor, and the Seattle District Corps, following consultation with the IRT; or may be terminated under the terms of the Article IV.EE, .FF, and GG, of this Instrument in the case of default by the Sponsor. In the event any termination action is commenced, the Sponsor agrees to fulfill its pre-existing obligations to perform all establishment, monitoring, management, maintenance, and remediation responsibilities arising directly from credits that have already been awarded, sold, used or transferred at the time of termination.
5. Upon termination of the QCV In-Lieu Fee Program pursuant to Article IV.FF., this Instrument shall terminate without further action by any Party. Thereafter, Long Term Management plans developed, approved and instituted in accordance with Article IV.N shall govern continuing obligations of the Sponsor, or its assignee as applicable.

D. Limited Waiver of Sovereign Immunity:

By Resolution of the Tulalip Tribes Board of Directors attached to this Instrument as Exhibit 13 (Adoption of the ILF Program), the Tulalip Tribes hereby agrees to waive its sovereign immunity for the sole and limited purpose of enforcement of the terms of the Quil Ceda Village In-Lieu Fee Program established under the Compensatory Mitigation for Losses of Aquatic Resources rules adopted pursuant to 33 CFR 332, 40 CFR Part 230. The Compensatory Mitigation for Losses of Aquatic Resources implements authority granted by 33 U.S.C. 401 et. seq.; 33 U.S.C.1344; and Pub. L. 108-136. This waiver is expressly limited to enforcement of the provisions of the Quil Ceda Village In-Lieu Fee Program. This limited waiver is not, and should not be construed as, a blanket waiver of The Tulalip Tribes' sovereign immunity.

E. Assignment of Obligations under this Instrument:

The Sponsor may be permitted to assign its obligations, responsibilities and entitlements under this Instrument to a third party, provided that such assignment is consistent with the federal rule and approved by the Corps. The Corps, following consultation with the IRT, must approve the identity of the assignee in order for any assignment to effectively relieve the Sponsor of those obligations. In evaluating a prospective assignee, the Corps may consider characteristics such as environmental mitigation expertise, wetlands mitigation project or analogous experience, and financial strength and stability. Approval of the identity of the assignee will not be unreasonably withheld. The Sponsor must amend this Instrument accordingly to reflect third party assignments pursuant to the terms of Article VI.C. In this case the applicable financial assurances must be approved by the Corps. The physical ownership of a mitigation site real property and the obligations, responsibilities, and entitlements under this Instrument are separate and distinct; thus ownership of QCV In-Lieu Fee Program interest may be transferred independently with the approval of the Corps and pursuant to the provisions of Article IV.U. Once assignment has been properly accomplished, the Sponsor will be relieved of all obligations and responsibilities under this instrument associated with the mitigation site(s) for which third party assignments are made. Specific additional provisions pertaining to the assignment of long-term management obligations are described in Article IV.V.

F. Specific Language of this Basic Agreement Shall be Controlling:

To the extent that specific provisions of this Basic Agreement portion of this Instrument are inconsistent with any terms and conditions contained in the Appendices, or inconsistent with other program documents that are incorporated into this Instrument by reference, the specific language within the Basic Agreement shall be controlling, provided it is consistent with 33 CFR 332.

G. Notice:

Any notice required or permitted hereunder shall be deemed to have been given either (i) when delivered by hand, or (ii) three (3) days following the date deposited in the United States mail, postage prepaid, by registered or certified mail, return receipt requested, or (iii) when sent by Federal Express or similar next-day nationwide delivery system, addressed as follows (or addressed in such other manner as the party being notified shall have requested by written notice to the other party):

U.S. Army Corps of Engineers, Seattle District
Mitigation Manager/Co-chair of the IRT
Regulatory Branch
Seattle District, Corps of Engineers
4735 E. Marginal Way South
P.O. Box 3755
Seattle, WA 98124-3755
206-764-3495

The Tulalip Tribes
Quil Ceda Village In-Lieu Fee Mitigation Program
8802 27th Avenue NE
Tulalip, WA 98271
360-716-5069

H. Entire Agreement

This Instrument, and its appendices, constitutes the entire agreement between the parties concerning the subject matter hereof.

I. Invalid Provisions:

In the event any one or more of the provisions contained in this Instrument are held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provisions hereof, and this Instrument shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

J. Effect of Agreement:

This Instrument does not in any manner affect statutory authorities and responsibilities of the signatory Parties. This Instrument is not intended, nor may it be relied upon, to create any rights in third parties enforceable in litigation with the United States, The Tulalip Tribes, or the State of Washington. This Instrument does not authorize, nor shall it be construed to permit, the

establishment of any lien, encumbrance, or other claim with respect to The Tulalip Tribes trust or fee properties as designated by the Tribes for the QCV In-Lieu Fee Program, with the sole exception of the right on the part of the Corps to require the Sponsor to implement the provisions of this Instrument, including recording conservation easements or similarly restrictive covenants, required as a condition of the issuance of permits for discharges of dredged and fill material into waters of the United States associated with construction and operation and maintenance of a Mitigation Site.

K. Attorney's fees

If any action at law or equity, including any action for declaratory relief, is brought to enforce or interpret the provisions of this Instrument, each party to the litigation shall bear its own attorney's fees and costs of litigation.

L. Availability of Funds:

Implementation of this Instrument with regards to the Corps is subject to the requirements of the Anti-Deficiency Act, 32 U.S.C. & 1341, and the availability of appropriated funds. Nothing in this Instrument may be construed to require by the Corps the obligation, appropriation, or expenditure of any money from the United States Treasury, in advance of an appropriation for that purpose.

M. Headings and Captions:

Any paragraph heading or caption contained in this Instrument shall be for convenience of reference only and shall not affect the construction or interpretation of any provision of this Instrument.

N. Counterparts:

This Instrument may be executed by the Parties in any combination, in one or more counterparts, all of which together shall constitute one and the same Instrument.


O. Binding

This Instrument, consisting of both the Basic Agreement and the Appendices, shall be immediately, automatically and irrevocably binding upon the Sponsor and its heirs, successors, assigns and legal representatives upon execution by the Sponsor and the Corps.

I. SIGNATURES

IN WITNESS WHEREOF, the Parties hereto have executed this Instrument on the date herein below last written.

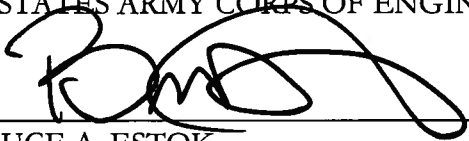
SPONSOR:



MELVIN R. SHELDON, JR., Chairman
The Tulalip Tribes of Washington

11/26/13
Date


UNITED STATES ARMY CORPS OF ENGINEERS:



BRUCE A. ESTOK
Colonel, Corps of Engineers
District Engineer, Seattle District

26 Nov 2013
Date

THE INTERAGENCY REVIEW TEAM MEMBERS EXPRESSING AGREEMENT WITH
THE TERMS OF THIS INSTRUMENT:



R. DAVID ALLNUTT
Director, Office of Ecosystems, Tribal and Public Affairs
U.S. EPA, Region 10

11/26/13
Date

This instrument is not binding on or does not give rise to any affirmative obligations, express or implied, to IRT members.