

EXHIBIT D

WDFW Right of Entry Permit

RIGHT OF ENTRY RIGHT OF ENTRY and CONSTRUCTION AGREEMENT for WDFW LAND

THIS AGREEMENT (hereinafter “permit”) is granted to _____ [INSERT CONTRACTOR], whose business address is INSERT, (collectively hereinafter “Permittee” or “Contractor”), in accordance with a Memorandum of Understanding with the Yakama Nation for habitat enhancement projects dated ____, 2019_ (MOU), by THE STATE OF WASHINGTON, THE DEPARTMENT OF FISH AND WILDLIFE (hereinafter “WDFW”). Pursuant to the authority set forth in RCW 77.12.210 and subject to the terms and conditions set forth below, WDFW hereby grants to Permittee the right to enter along existing roads to implement a construction project for habitat restoration using WDFW property located in _____[INSERT] County, Washington, as more particularly described in Exhibit A hereto (hereinafter “the Premises”) for the sole purpose of a habitat restoration project, as more particularly described in the design drawings and other materials attached as Exhibit B hereto (“the Project Design”). Performance Measures for successful completion of the Project are set forth in Exhibit C hereto.

THIS PERMIT IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

- 1. Term.** This permit is effective as of the date the last party signs this permit. Permittee shall not commence work on the Premises until the Yakama Nation has established the escrow required under the MOU, insurance and the performance bond are in place, and the contractor has obtained all necessary permits. The right to operate under the permit shall cease if any of the above requirements lapses during the term of the permit. .
- 2. Legal Description of the Premises.** WDFW is the owner of record of certain real property known as the INSERT Wildlife Area in INSERT County, located in Section INSERT, Township INSERT North, Range INSERT East, W.M., as recorded in INSERT under INSERT County Auditor’s File Number INSERT, of which approximately INSERT acres are the Premises for this Project. The legal description of the Premises is set forth in Exhibit A hereto.
- 3. Limited Rights.** Permittee expressly recognizes that the Premises are located within lands owned and operated by WDFW for wildlife habitat and public recreation. WDFW makes no warranty of quiet enjoyment of the Premises. Interruption of public recreational use of the property can only occur by specific, prior written permission from WDFW. No provision of this permit is intended, nor may be deemed, to transfer any real property from WDFW to Permittee. WDFW retains jurisdiction over its property in all other respects. WDFW retains the right of access to the Premises at all times. This permit shall not be deemed or construed to be an exclusive right; it does not prohibit WDFW from granting rights to other entities, providing these agreements do not

unreasonably interfere with the operations of Permittee during the term of this permit. WDFW expressly reserves the rights to any trees, minerals, oil and gas resources, or any other valuable materials on the Premises so long as such activities do not unreasonably interfere with construction of the Project. This permit does not convey the right to build roads or store any materials, vehicles, or equipment on WDFW property, except as necessary during periods of construction. In the event a road is necessary for construction, the permittee shall restore the road area to its original condition, unless otherwise agreed by WDFW.

4. **Project Manager.** Contractor acknowledges the Yakama Nation is solely responsible for contracting with and paying the Contractor to complete the Project described in the Project Design. That separate contract between the Yakama Nation and the Contractor creates no legal obligations upon WDFW. By contrast, Contractor does bind itself to WDFW to fulfill all the obligations of this Permit. Notwithstanding the foregoing, the Yakama Nation shall be the Project Manager for the Project, but shall at all times cooperate with WDFW in its role as property owner. Contractor agrees the Yakama Nation and the Contractor are solely responsible for: (a) all costs of the Project; (b) fulfilling all obligations imposed by the Project's funding sources and grants; (c) completion of the Project as set forth below; and (d) compliance with all of the terms and conditions of this document. The Project is not a joint venture of WDFW and Permittee. Permittee, its employees, and contractors are not employees or agents of WDFW and shall not hold themselves out as such.
5. **Project Design and Construction:** WDFW and Contractor have reviewed and approved the materials for the Project Design, which are dated _____[INSERT] and are attached as Exhibit B hereto. Contractor shall complete the Project in strict compliance with the design materials which are incorporated herein. All references to the Project Design are to these materials. Changes to the Project Design require mutual agreement of the parties. The Project includes certain post-construction obligations set forth in Exhibit D-Adaptive Management Plan. During construction, Contractor shall use its best efforts to implement general construction practices designed to minimize surface disturbance during construction; shall undertake specific measures to lessen construction impacts to soils, and to restore disturbed land to its pre-construction state. The Yakama Nation or the Contractor if so assigned in the contract between the Yakama Nation and contractor shall, under the terms of the Adaptive Management Plan, monitor and maintain mitigation control measures for three (3) years following completion of construction, for any site disturbed by construction, including, but not limited to roads, trails, parking areas, and construction sites.
6. **As-Built Plans.** Upon completion of a project, the Yakama Nation and the Contractor shall jointly be responsible to provide to WDFW as-built drawings and specifications for the Project in a form acceptable to WDFW. A Yakama Nation representative and Contractor representative will meet with WDFW on site for a post construction meeting prior to demobilization to discuss any issues related to completion and post construction follow-up. The Yakama Nation will not make final payment to a construction contractor until seven (7) days after as-built drawings were sent to WDFW. Issuance of "as-builts" shall be deemed Project Completion for purposes of this Agreement.

7. **Permitting.** With respect to all of its activities on the premises, Contractor shall, at its sole cost, meet all of the applicable governmental laws, rules, regulations, and permitting requirements, including, but not limited to, those for the State Environmental Policy Act (SEPA), hydraulic projects, hazardous substances, cultural resources protection, and payment of prevailing wages for public works under RCW 39.12. This permit is not a substitute for SEPA, a Hydraulic Project Approval, or any other permit. This obligation includes causing all work to be performed in compliance with federal and state cultural resources protection laws and regulations. Before commencing any work that involves disturbing the ground, Contractor shall provide proof to WDFW that it has complied with the legal requirements involving cultural and archaeological resources and has received a clearance letter from the State Historic Protection Officer.
8. **Insurance:** Contractor shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained during the entire Term, the insurance described in this section (or if not available, then its available equivalent), issued by an insurance company or companies licensed to do business in the State of Washington satisfactory to WDFW. Contractor shall procure and maintain the following:
- (a) **Commercial General Liability Insurance.** Commercial liability insurance including contractual liability covering all claims with respect to injuries or damages to persons or property sustained in, or about the Premises and the Project with limits of liability no less than the following:
- Bodily Injury and Property Damage Liability two Million Dollars (\$ 1,000,000) each occurrence, Two Million Dollars (\$2,000,000) aggregate.
- Such limits may be achieved through the use of umbrella liability insurance sufficient to meet the requirements of this section.
- (b) **Workmen's Compensation Insurance.** Workmen's compensation and employer's liability insurance with respect to any work by employees of Contractor on or about the Property.
- (c) The policies shall name WDFW as additional insured, and Contractor shall, upon request, provide promptly to State certificates of insurance and copies of policies obtained by Lessee hereunder.
- (d) The policies shall be written as primary policies not contributing with and not in excess of coverage that State may carry.
- (e) The policies shall contain an endorsement providing that such insurance may not be materially changed, amended or canceled with respect to WDFW except after forty-five (45) days' prior written notice from insurance company to WDFW.
- (f) The policies shall contain an endorsement with an express waiver of any right of subrogation by the insurance company against WDFW, its elected officials, agents, and employees.

(g) The policies shall provide that the insurance proceeds of any loss will be payable notwithstanding any act or negligence of Contractor which might otherwise result in a forfeiture of said insurance.

(h) The policies shall expressly provide that WDFW shall not be required to give notice of accidents or claims, and that WDFW shall have no liability for premiums.

9. **Licensed and Bonded Contractors.** Contractor shall, at its sole cost, ensure that all contractors and subcontractors performing work under this permit are licensed and bonded.
10. **Completion of the Project.** Completion of the Project is defined as: (a) WDFW-approved completion of all elements of the Project Design; (b) WDFW-approved demonstration of the Performance Measures set forth in Exhibit C; and (c) delivery to WDFW of as-built drawings. Post-construction obligations under Exhibit D will be deemed the separate obligation of the Yakama Nation unless otherwise assigned to the Contractor. The post construction obligations are nevertheless subject to the bonding and escrow requirements. Upon completion, all improvements and all additions, alterations, and improvements thereto or replacements shall become the property of WDFW without cost to WDFW.
11. **Indemnification.** To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless WDFW, and its officials, agents, and employees, from and against all claims for injuries or death or property damage arising out of or resulting from the performance or non-performance under this Permit. "Claim," as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorneys' fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting therefrom. To the extent the RCW 4.24.115 applies, this indemnity shall not apply to the sole negligence of the indemnitee, and, in the event of concurrent negligence, the indemnity shall apply only to the extent of the Contractor's negligence. Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold harmless State and its agencies, officials, agents, or employees.
12. **No Liens.** Permittee may not allow any lien for work, labor, services, materials, or any other reason related to the Project to be recorded or filed as an interest against the Premises or WDFW. If any such lien is recorded or filed, Permittee shall obtain, at its sole cost, a complete release of such lien.
13. **No Hazardous Substances.** Permittee shall not allow in or around the Premises any substance now or hereinafter regulated by any governmental authority as hazardous, toxic, dangerous, or harmful (hereinafter "hazardous substance"), unless said hazardous substance is necessary to carry out the Project and is handled in compliance with all applicable legal requirements. Permittee shall reimburse WDFW immediately upon demand for any and all cleanup costs and any and all other charges, fees, costs, fines, and penalties (civil and criminal) imposed on WDFW by any governmental authority for hazardous substances related to the Project.

- 15. Vehicle Parking.** Representatives of the Yakama Nation assigned to this project and the Contractor and its employees, subcontractors, and agents are not required to purchase the Discover Pass or obtain a Day Use Permit so long as they are operating under the terms of this Permit. The Permittee and its employees and subcontractors shall, nevertheless, obtain from WDFW and display in the vehicle window a WDFW issued contractor's placard.
- 16. No Assignment.** Neither this permit nor the rights and obligations set forth herein, may be assigned or sublet by Permittee in whole or in part.
- 17. Suspension.** In the event of an emergency during the term of this permit, WDFW may suspend this permit, including Permittee's right to enter the Premises. Reentry by Permittee shall be only by written permission of WDFW. Permittee's obligations and WDFW's rights concerning insurance, and liability, shall survive suspension of this permit.
- 18. Cancellation.** WDFW may cancel this permit for Permittee's failure to comply with any of the terms and conditions of this permit, failure to receive timely payments of administrative costs under the MOU or when WDFW is required to do so by another governmental authority. Contractor shall have no further rights to enter the Premises in the event of cancellation. Contractor's obligations and WDFW's rights concerning insurance and liability shall survive cancellation of this permit.
- 19. Termination.** Unless earlier canceled, this permit shall terminate upon performance of all Permittees obligation relating to the project including construction, monitoring, and restoration. Permittee shall have no further rights to enter the Premises at termination. Permittee's obligations and WDFW's rights concerning the performance bond and liability, shall survive termination of this permit.
- 20. Venue.** Jurisdiction and venue concerning this permit are proper in the County in which the work occurred.
- 21. Scope of Relief.** WDFW shall be entitled to injunctive relief, both prohibitive and mandatory, in addition to other relief, including, without limitation, specific performance of the terms and conditions of this permit. These remedies are cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- 22. No Waiver.** WDFW's forbearance to exercise its rights under this permit in the event of any default by Permittee shall not be deemed or construed to be a waiver by WDFW of such term or condition or of any of WDFW's rights under this permit. No delay or omission by WDFW in the exercise of any right or remedy shall impair such right or remedy, or be construed to be a waiver.
- 23. Severability.** If any covenant or provision of this permit shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision, or part thereof.

24. Signatories. Each person executing this permit represents that he or she is authorized to sign this permit on behalf of his or her respective party, and that this permit is a legal, valid, and binding obligation upon his or her respective party.

25. Entire Agreement. This instrument and to the extent incorporated herein the MOU contain the entire agreement between the parties and no other statement made by either party, or its respective officers, employees or agents shall be valid, binding or enforceable. To the extent there is an inconsistency between the MOA and this right of entry, the terms of this right of entry shall prevail.

IN WITNESS WHEREOF, the parties hereto have mutually agreed upon the terms and conditions of this instrument and have caused it to be executed as below subscribed:

[SIGNATURE LINES]