



# **TULE RIVER TRIBAL COUNCIL**

## **TULE RIVER INDIAN RESERVATION**

**REQUEST FOR BIDS**  
**Hyder Ranch Design / Build Potable Water Tank**  
**TRTC-07-2014**

**ADDENDUM NO. 1**

**August 4, 2014**

TO: Prospective Propers

FROM: Robert Camarena, Land Assignment Manager  
William L. Hayter, Tribal Council Advisor

This Addendum No. 1 forms a part of the Contract Documents and modifies the original Request for Bids posted July 22, 2014.

This Addendum consists of four (4) pages and contains the following information:

- 1) **CLARIFICATIONS and CHANGES TO PROPOSAL REQUIREMENTS**
  - 2) **Exhibit A - SAMPLE CONTRACT**
  - 3) **Exhibit B – GENERAL CONDITIONS**
  - 4) **Exhibit C – FINAL TOPO SITE MAP**
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## **CLARIFICATIONS and CHANGES TO PROPOSAL REQUIREMENTS**

1) Is there a Soils Report onsite?

**Clarification:** Not at this time. A soils investigation will be conducted after the contract is awarded and will be made available to the design engineer.

2) What are the Inlet and Outlet directions?

**Clarification:** Inlet will be from the west side of the site coming up the slope of the mountain.. The outlet will be on the north side of the site.

3) Is steel as an option for tank bottom?

**Clarification:** A steel tank bottom is required. Proposer may offer different materials as an option for consideration.

4) Recirculation and injection system will be required.

**ADD:** The bulk of the Hyder Ranch Tank capacity is reserved for fire flow for the new the new subdivision. Fifty four (54) homes will draw water from Hyder Ranch Tank for domestic use, therefore there will be insufficient turnover of waters within the tank and long detention will result in stagnant waters. Proposers are to include a recirculation and injection system in their designs.

5) Is solar power an option for the recirculation and injection system?

**ADD:** Proposers are to include solar powered systems for the recirculation and injection equipment. Solar systems to include a battery backup to power the system in the event of inclement weather for a period of eighteen (18) hours of emergency reserve and on demand site lighting.

6) What is the funding source for the project?

**Clarification:** There are no Federal or State funds provided for this project and the source of funding is provided by the Tule River Tribe from their Capital Projects program. Therefore, this **is not** a prevailing wages project.

7) Will permits be required?

**Clarification:** Yes, permits will be required from the Tulare County Building Department. In addition, there will be a plan and design review by the Tribe's Engineering Advisor and Building Inspector.

8) Is the Proposer required to provide the inlet and outlet valves. Sizes and Quantity required?

**Clarification:** Yes. One 6" each.

**Add:** Valves to be tamper resistant / lockout type. Valves and internal tank level is to be monitored via SCADA system (this is in addition to required external visual tank level gage)

9) Where is the water coming from to supply the tank?

**Clarification:** Well No. 1 and #3 located north and south of the new access road shown on the topo map From tank #8 to the east, see Exhibit B – SITE MAP. It is estimated that the combined output of both wells is a minimum 120 gpm.

10) Is Hyder Ranch Tank a welded or bolted tank?

**Clarification:** This is a bolted tank.

11) For Hyder Ranch Tank sterilization, is dry chlorine acceptable.

**Clarification:** Any of the three (3) methods as acceptable and approved under AWWA standards will be allowed?

12) Who will hook up the tank to the Inlet and Outlet pipelines?

**Clarification:** Tule River Public Works Dept. will provide the Inlet and Outlet pipelines to within 5 feet from the tank base perimeter. Proposer shall be required to make the physical connection.

13) Is an overflow or splash pad required?

**Clarification:** Overflow shall be piped to a rock filled overflow holding pond to be constructed within 25 feet of the tank and overflow channeled to spill away westerly to the existing drainage course.

14) Who will provide the finished tank pad?

**Clarification:** Tule River Public Works Dept. shall cut and fill the tank pad using materials excavated from the existing slope or imported as needed. Pad site to be graded to a two (2) percent slope to drain rain water and sufficient in area as to provide for a perimeter maintenance road around the tank upon completion of the installation.

**ADD:** Tribe shall provide screened decomposed granite for fill and tank base for the proposers use.

**ADD:** Access roads to the site will be graded to allow for large vehicle and concrete truck access.

15) What is the required useable capacity of the completed tank?

**Clarification:** 120,000 gallons. Tank size quoted in the Request for Proposal is the

optimal capacity needed for guideline purposes only. Final design to achieve the required water volume is to be determined by the design engineer.

16) Color of tank preferred? Tan or Green?

**Clarification:** Tank should match color of existing tanks on the Reservation to minimize maintenance costs. Tank color will be Tan.

17) Are aluminum domes permitted and what is the finish of the Aluminum Dome?

**Clarification:** Yes. Matte finish.

18) Do you want a roof access hatch, perimeter hand rail, interior and exterior ladders, and what type of materials?

**Clarification:** Proposer to provide roof top hatch for maintenance access, interior stainless steel and exterior galvanized steel access ladders. Exterior ladder to be provided with fall protection cage and exterior with lockout ladder access. A handrail is to be provided around the perimeter of the roof hatch only.

19) Is leak detection required?

**Clarification:** Leak detection is required during the course of construction to ensure tank is water tight. Methods of detection employed by the Proposer shall be consistent with those specified by the manufacturer and per AWWA standards.

20) Is living onsite during construction acceptable?

**Clarification:** Contractor may provide temporary housing adjacent to the construction site.

21) What is the seismic rating design criteria of the completed tank?

**Clarification:** Engineer shall use a factor of 1.5. Tank location is in Seismic Zone 4.

22) What is the Outlet valve size?

**Clarification:** 6 inch monitor valve.

23) Is this project on the Reservation and subject to Sovereign Immunities?

**Clarification:** No this project is not on the Reservation and no claim for Sovereign Immunities is made.

**EXHIBIT A**

**SAMPLE CONTRACT**



# TULE RIVER TRIBAL COUNCIL

## TULE RIVER INDIAN RESERVATION

### SAMPLE CONTRACT TRTC-07-2014

THIS CONTRACT, made this day of \_\_\_\_\_, in the Tule River Indian Reservation, in the County of Tulare, State of California, by and between the Tule River Tribal Council, hereinafter called the Owner and \_\_\_\_\_, hereinafter called the Contractor.

**WITNESSETH** that the Owner and the Contractor for the considerations stated herein agree as follows:

**ARTICLE 1 — SCOPE OF WORK.** The Contractor shall perform within the time stipulated in the Contract as herein defined in Article 2, and shall provide all labor, materials, equipment, tools, utility services, and transportation to complete all of the work required in a workmanlike manner in connection with the following titled project and in strict compliance with the Contract Documents as specified in Article 5 below:

#### DESIGN / BUILD

#### HYDER RANCH DOMESTIC WATER TANK

**BID NUMBER:** \_\_\_\_

The Contractor shall be liable to the Owner for any damages arising as a result of a failure to comply with this obligation, and the Contractor shall not be excused with respect to any failure to so comply by act or omission of the Construction Manager, Engineer, Inspector, or representative of any one of them, unless such act or omission actually prevents the Contractor from fully complying with the Contract Documents and the Contractor protests, in accordance with terms set forth in the General Conditions, Article 58, that the act or omission is preventing the Contractor from fully complying with the Contract Documents. Such protest shall not be effective unless reduced to writing and filed with the Owner's Administrative office, located at 340 N. Reservation Rd., Porterville, CA. 93257, within five (5) working days of the date of occurrence of the act or omission preventing the Contractor from fully complying with the Contract Documents.

**ARTICLE 2 — TIME FOR COMPLETION.** The work shall be commenced on the date stated in the Owner's Notice to Proceed to be issued by the Owner within ten (10) days from the effective date of this contract. As specified in the Owner's Notice to Proceed, the work shall be completed within \_\_\_\_\_ (\_\_\_\_) calendar days with a goal of advancing construction completion, if possible, to on or about \_\_\_\_\_, 2014. The \_\_\_\_\_ (\_\_\_\_) calendar days specified herein includes seven (7) calendar days for anticipated inclement weather, taking into consideration the seasonal weather for the time when construction will be undertaken.

In entering into this Contract, Contractor acknowledges and agrees that the construction duration stipulated herein is adequate and reasonable for the size and scope of the Project.

**ARTICLE 3 — CONTRACT PRICE.** The Owner shall pay to the Contractor as full consideration for the faithful performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including any applicable sales, use or other taxes or costs, the sum of \_\_\_\_\_ **Dollars ( \_\_\_\_\_ )** said sum being the total amount stipulated in the bid. Payment shall be made within 30 days of the receipt of an approved Contractor Payment Request.

Note that the payment of sales tax shall only apply to items which cannot be ordered by the Tribe through the Contractor and/or cannot be delivered to the Reservation. All materials or supplies ordered and purchased by the Tribe, through the Contractor and delivered to the Reservation shall be exempt from sales tax in accordance with Title 18, California Code of Regulations, Government Code Section 11349.3.

**ARTICLE 4 — LIQUIDATED DAMAGES.** It is agreed that the Contractor will pay the Owner the sum of Five Hundred Dollars (\$500) per calendar day for each and every day of delay beyond the time prescribed in the Contract Documents for finishing said work, as Liquidated Damages and not as a penalty or forfeiture. In the event the same is not paid, the Contractor further agrees that the Owner may deduct that amount thereof from any money due or that may become due the Contractor under the Contract. This Article does not exclude recovery of damages under other provisions of the Contract Documents.

**ARTICLE 5 — COMPONENT PARTS OF THE CONTRACT.** The agreement entered into by this Contract consists of the following Contract Documents, all of which are component parts of the Contract as if herein set out in full or attached hereto:

Request for Bids for \_\_\_\_\_ Potable Water Tank  
General Conditions  
Contractor's Certificate Regarding Workers' Compensation  
Contractors Certificate of Suspension and Debarment  
Bid Form, as accepted  
Information Required of Bidders  
Performance Bond  
Payment Bond for Public Works  
Insurance Policies  
Addenda No. \_\_, as issued

All of the above-named Contract Documents are intended to be complementary. Work required by one of the above-named Contract Documents and not by others shall be done as if required by all. This Contract shall supersede any prior agreement of the parties.

**ARTICLE 6 — PROVISIONS REQUIRED BY LAW.** Each and every provision of law and clause required to be inserted in this Contract shall be deemed to be inserted herein and this Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted or is not inserted correctly, then upon application of either party the Contract shall forthwith be physically amended to make such insertion or correction.

**ARTICLE 7 — SUBSTITUTION OF SECURITIES.** This contract does not provide for substitution of securities for any monies withheld by the Owner to ensure performance under this contract nor does this contract permit retainage to be placed in escrow nor to be invested for the benefit of the contractor.

**ARTICLE 8 --- RECORD AUDIT.** Pursuant to and in accordance with the provisions of Government Code section 8546.7, or any amendments thereto, all books, records and files of the Owner, the Contractor, or any subcontractor connected with the performance of this Contract involving the expenditure of public funds in excess of \$10,000 including, but not limited to, the costs of administration of the Contract, shall be subject to, at the request of the Owner, the examination and audit of the State Auditor or as part of any audit of the Owner for a period of three (3) years after final payment is made under this Contract.

**ARTICLE 9 — STATE LICENSE OWNER NOTICE.** The Contractors are required by law to be licensed and regulated by the Contractors' State License Owner which has jurisdiction to investigate complaints against contractors. If a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Owner, P.O. Box 26000, Sacramento, California 95826.

**ARTICLE 10 — INDEMNIFICATION.** The Owner inclusive of its Owner members, directors, officers, employees, agents and Owner's Representative, shall not be answerable or accountable in any manner for any loss or damage that may happen to the work or any part thereof, or for any of the materials or other things used or employed in performing the Work, of for injury or damage to any person or persons, either workers, employees of Contractor or its subcontractors or the public, or for damage to adjoining or other property, from any cause whatsoever arising out of or in connection with the performance of the Work. The Contractor shall be responsible for any damage to adjoining or other property, from any cause whatsoever arising out of or in connection with the performance of the work. The Contractor shall be responsible for any damage or injury to any person or property resulting from defects or obstructions or from any cause whatsoever arising out of or in connection with the performance of the Work; provided, however, that the Contractor shall not be liable for the sole established negligence, willful misconduct or active negligence of the Owner, its Owner members, directors, officers, employees, agents and Owner's Representative who are directly responsible to the Owner.

a. Contractor shall indemnify the Owner and its Owner members, directors, officers, employees, agents, hereinafter collectively referred to as the "Owner's Representatives", against, and will hold and save them and each of them harmless from, any and all actions, claims, damages to persons or property, penalties, obligations or liabilities that may be asserted or claimed by any person, firm entity, corporation, political subdivision or other organization arising out of or in connection with the Work, operation or activities of Contractor, its agents, employees, subcontractors or invitees, provided for herein, whether or not there is concurrent passive or active negligence on the part of the Owner, or its Owner members, directors, officers, employees, agents, and the Owner's Representative, but excluding such actions, claims, damages to persons or property penalties, obligations or liabilities arising from the sole established negligence, willful misconduct or active negligence of the Owner, the Owner's Representative(s), or those who are directly responsible to them, and in connection therewith:

- 1) Contractor will defend any action or actions filed in connection with any of said claims, damages, penalties, obligations or liabilities and will pay all costs and expenses, including attorney's fees incurred in connection therewith.
- 2) Contractor will promptly pay any judgment rendered against Contractor, the Owner and Owner Representative covering such claims, damages, penalties, obligations and

liabilities arising out of or in connection with such work, operations, or activities of Contractor hereunder and Contractor agrees to save and hold the Owner and its Owner Representative harmless therefrom.

- 3) In the event the Owner and its Owner members, directors, officers, employees, agents, authorized volunteers, the Owner's Representative, are made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of or in connection with the Work, or operation or activities of Contractor hereunder, Contractor agrees to pay to the Owner, the Owner's Representative, and its Owner members, directors, officers, employees, agents, authorized volunteers, the Owner's Representative, any and all costs and expenses incurred by the Owner and its Owner members, directors, officers, employees, agents and the Owner's Representative, in such action or proceeding together with reasonable attorney's fees.
- 4) The Owner may retain, to the extent it deems necessary, the money due to the Contractor under and by virtue of the Contract Documents until disposition has been made of such actions or claims for damages as specified herein above.

\_\_\_\_\_ . \_\_\_\_\_

IN WITNESS WHEREOF, this Contract has been duly executed by the above-named parties, on the day and year first above written.

CONTRACTOR:

TRIBE:

\_\_\_\_\_

Tule River Tribal Council

License No. \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_

By \_\_\_\_\_

(Corporate Seal)

APPROVED AS TO FORM:

\_\_\_\_\_  
General Counsel  
Tule River Indian Tribe of California

**CERTIFICATE OF OWNER'S ATTORNEY**

I, the undersigned, \_\_\_\_\_ the duly authorized and acting

(Please Type)

legal representative of \_\_\_\_\_, do hereby certify as

follows:

I have examined the attached Contract(s), Performance and Payment Bonds and insurance certificates and the manner of execution thereof, and I am of the opinion that each of the aforesaid agreements has been duly executed by the proper parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements on behalf of the respective parties named thereon; and that the foregoing agreements constitute valid and legally binding obligations upon the parties executing the same in accordance with terms, conditions, and provisions thereof. I also am of the opinion that the Contractor's insurance coverage complies with the requirements of the Contract.

\_\_\_\_\_

(Attorney's Signature)

DATE: \_\_\_\_\_

**EXHIBIT B**

**GENERAL CONDITIONS**



# TULE RIVER TRIBAL COUNCIL

## TULE RIVER INDIAN RESERVATION

### GENERAL CONDITIONS

#### Article 1. DEFINITIONS

- a. Acceptable, Acceptance or words of similar import are used, it shall be understood that the acceptance of the Engineer, and/or the Tribal Council is intended.
- b. Approval means written authorization by the Engineering Advisor, Inspector and/or Tribal Council for specific applications within the Contract.
- c. Engineering Advisor means the licensed Engineer employed by Tribal Council to provide design review of construction documents provided by the Contractor under Design/Build Contracts and related services for the Project.
- d. Engineer shall mean a licensed Engineer employed by the Contractor and registered with the State of California
- e. Contract, Contract Documents include all Contract Documents including: Notice to Contractors Calling for Bids, Information for Bidders/Pre-Qualification Documents, Bid Form, Certificate Regarding Workers' Compensation, Information Required of Bidders, Performance Bond, Payment Bond, Insurance Policies, Documents, General Conditions, Special Conditions, if any, Supplementary General Conditions, if any, Drawings, Plans, Specifications, the Contract, and all modifications, addenda, and amendments.
- f. Day as used herein shall mean calendar day unless otherwise specifically designated.
- g. Design / Build shall mean that the work to be provided shall be designed by a licensed Engineer employed by the Contractor and registered with the State of California which upon approval by the Tribal Council, or their authorized representative, shall be constructed by the Contractor.
- h. Tribal Council and Contractor are those mentioned as such in the Contract. For convenience and brevity, these terms, as well as terms identifying other persons involved in the Contract are treated throughout the Contract Documents as if they are of singular number and masculine gender. The terms Tribal Council and Owner are used interchangeably.
- i. Tribal Council's Representative or Representative(s) means any representative of the Tribal Council authorized in writing to act on behalf of the Tribal Council, including but not limited to the Tribal Council's Engineering Advisor, Inspector and/or Construction Manager.
- j. Equal, Equivalent, Satisfactory, Directed, Designated, Selected, As Required and words of similar meaning are used, the written approval, selection, satisfaction, direction, or similar action of the Tribal Council and/or Tribal Council's Representative is required.

- k. Includes and Including do not limit the work to the items following those words.
- l. Indicated, Shown, Detailed, Noted, Scheduled or words of similar meaning shall mean that reference is made to the drawings, unless otherwise noted.
- m. Locality in which the work is performed means the Tule River Indian Reservation and/or Trust or Fee lands held by the Tribe in which the public work is done.
- n. Perform shall be understood to mean that the Contractor, at Contractor's expense, shall perform all operations necessary to complete the work, including furnishing of necessary labor, tools, and equipment, and further including the furnishing and installing of materials that are indicated, specified, or required to complete such performance.
- o. Project is the undertaking planned by Tribal Council and Contractor as provided in the Contract Documents.
- p. Provide shall include "provide complete in place," that is, "furnish, install, test and make ready for use."
- q. Required and words of similar meaning are used, it shall mean "as required to properly complete the work" as intended by the Engineer, unless stated otherwise.
- r. Subcontractor as used herein, includes those having a direct contract with Contractor and one who furnishes material worked to a special design according to plans, drawings, and specifications of this work, but does not include one who merely furnishes material not so worked.
- s. Surety is the person, firm, or corporation, admitted as a California admitted surety, that executes as surety the Contractor's Performance Bond and Payment Bond for Public Works. Surety must be an admitted surety insurer pursuant to Code of Civil Procedure Section 995.120.
- t. The Work means the entire improvement proposed by the Tribal Council to be designed and constructed in whole, or in part, pursuant to the Contract Documents.
- u. Work means labor, equipment and materials incorporated in, or to be incorporated in the construction covered by the Contract Documents.
- v. Worker includes laborer, worker, or mechanic, and any supervisors thereto.

## **Article 2. DRAWINGS AND SPECIFICATIONS**

- a. **Contract Documents.** Contract Documents, as provided by the Contractor, are complementary, and what is called for by one shall be as binding as if called for by all. The intention of documents is to provide the Tribal Council with complete and fully operational facilities as indicated and specified including all labor and materials, equipment, and transportation necessary for the proper execution of the work. Materials or work described in words which as applied have a well-known technical or trade meaning shall be deemed to refer to such recognized standards.
- b. **Interpretations.** Drawings and specifications are intended to be fully cooperative and to agree. However, if Contractor observes that the approved drawings and specifications are in conflict, the Contractor shall promptly notify the Tribal Council's Engineering

Advisor and/or Inspector in writing and any necessary changes shall be adjusted as provided in contracts for changes in work. If such conflict arises, the following order of precedence shall generally apply, provided, however, that the order of precedence shall not be so rigidly interpreted as to affect an absurd or costly result:

- 1) Special Conditions, if any, shall take precedence over General Conditions.
  - 2) In the event of a conflict between the drawings and technical specifications, the higher quality, higher quantity and the most stringent requirements shall be deemed to apply and shall govern as to materials, workmanship, and installation procedures.
  - 3) With regard to drawings:
    - i. Figures govern over scaled dimensions;
    - ii. Larger scale drawings and details govern over smaller scale drawings;
    - iii. Addenda/change order drawings govern over Contract drawings;
    - iv. Contract drawings govern over standard drawings.
  - 4) Work not particularly shown or specified shall be the same as similar parts that are shown or specified.
- c. Misunderstanding of drawings and specifications shall be clarified by Engineer.
- d. Standards, Rules, and Regulations referred to are recognized printed standards and shall be considered as one and a part of these specifications within limits specified.
- e. **Compliance with Applicable Laws.** Drawings and specifications are intended to comply with all laws, ordinances, rules and regulations of authorities having jurisdiction, and where referred to in the Contract Documents, said laws, ordinances, rules and regulations shall be considered as part of said Contract Documents within the limits specified. The Contractor shall bear all expenses correcting work done contrary to said laws, ordinances, rules and regulations.
- f. **Provisions of Law Deemed Inserted.** Each and every provision of law required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein, and if through mistake, omission or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party the Contract shall be amended in writing to make such insertion or correction.
- g. **Tribal Council's Authority.** The Tribal Council retains the authority to issue the ultimate decision regarding any clarification requested, any necessary changes to conflicting drawings and specifications, any requested instructions or any similar issue presented under this Article 2.
- h. **Organization of Work.** Organization and arrangement of drawings shall not control the Contractor in dividing the work among subcontractors or in establishing the extent of work to be performed by any trade.

### **Article 3. COPIES FURNISHED**

Contractor will be furnished, free of charge, five copies of drawings and specifications as set forth in the Special Conditions. Additional copies may be obtained at cost of reproduction.

### **Article 4. OWNERSHIP OF DRAWING**

All drawings, specifications, and copies thereof furnished by the Contractor shall be the Contractor's property. With exception of one signed Contract set shall be returned to the Tribal Council on request at completion of work.

### **Article 5. DETAIL DRAWINGS AND INSTRUCTIONS**

- a. **Examination of Drawings and Specifications.** Before commencing any portion of the Work, the Engineering Advisor and Inspector shall carefully examine all Drawings and Specifications and other information provided by Contractor as to materials and methods of construction and other Project requirements. Engineering Advisor or Inspector shall immediately notify Tribal Council of any perceived or alleged error, inconsistency, ambiguity, or lack of detail or explanation in the Drawings and Specifications in the manner provided herein. If the Contractor or its Subcontractors, material or equipment suppliers, or any of their officers, agents and employees performs, permits, or causes the performance of any Work under the Contract Documents which it knows or should have known to be in error, inconsistent, or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all costs arising therefrom including, without limitation, the cost of correction thereof without increase or adjustment to the Contract Price, as set forth in Article 3 of the Contract, or the time for performance. If Contractor performs, permits, or causes the performance of any Work under the Contract Documents prepared by or on behalf of Contractor which is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all resulting costs, including, without limitation, the cost of correction, without increase to or adjustment in the Contract Price or the time for performance. In no case shall any Subcontractor proceed with the Work if uncertain without the Contractor's written direction and/or approval.
- b. **Additional Instructions.** Within ten (10) calendar days of notification of any identified ambiguity, conflict or lack of information, by the Tribes Engineering Advisor or Inspector, Contractor will provide prepared additional instructions, by means of drawings or other written direction, necessary for proper execution of work. All such drawings and instruments shall be consistent with the Contract Documents, true developments thereof, and reasonable inferable therefrom. Work shall be executed in conformity therewith and Contractor shall do no work without proper drawings and instructions. Any necessary additional details furnished by the Tribal Council to more fully explain the work shall be considered as part of the Contract Documents.
- c. **Scale Drawings.** Should any details need to be more elaborate, in the opinion of the Tribe's Engineering Advisor or Inspector, than scale drawings and specifications warrant, written notice thereof shall be given to the Contractor or Contractor's Engineer within five (5) working days of the receipt of same. In case no notice is given to the Contractor within five (5) working days, it will be assumed the details are a reasonable development of the scale drawings.

- d. **Quality of Parts, Construction and Finish.** All parts of the described and shown construction shall be of the best quality of their respective kinds and the Contractor is hereby advised to use all diligence to inform himself fully as to the required construction and finish, and in no case to proceed with the different parts of the work without obtaining first from both the Contractor's Engineer and the Tribe's Engineering Advisor such directions and/or drawings as may be necessary for the proper performance of the work.
  
- e. **Contractor's Variation from Contract Document Requirements.** If it is found that the Contractor has varied from the drawings and/or specifications, in materials, quality, form or finish, or in the amount or value of the materials and labor used, the Tribal Council shall be at liberty at any time, before or after completion of the work, to order such improper work removed, remade and replaced, and all work distributed by these changes shall be made good at the Contractor's expense, or shall receive from the Contractor, (or Tribal Council shall deduct from amount due Contractor), a sum of money equivalent to the difference in value between the work performed and that called for by the drawings and specifications, it being optional with the Tribal Council Architect to pursue either course.

#### **Article 6. TIME FOR COMPLETION AND LIQUIDATED DAMAGES**

- a. **Time for Completion/Liquidated Damages.** Work shall be commenced on or before the date stated in the Tribal Council's notice to the Contractor to proceed and shall be completed by Contractor in the time specified in the Request for Bids. The Tribal Council is under no obligation to consider early completion of the Project and the Contract completion date shall not be amended by the Tribal Council's acceptance of the Contractor's proposed earlier completion date. Furthermore, Contractor shall not, under any circumstances receive additional compensation from the Tribal Council for indirect, general, administrative or other forms of overhead costs for the period between the time of earlier completion proposed by the Contractor and the official Contract completion date. If the work is not completed in accordance with the foregoing, it is understood that the Tribal Council will suffer damage. It being impractical and infeasible to determine the amount of actual damage, it is agreed that Contractor shall pay to the Tribal Council as fixed and liquidated damages, and not as a penalty, the sum stipulated in the Special Conditions for each calendar day of delay until work is completed and accepted. Contractor and his surety shall be liable for the amount thereof. Any money due or to become due the Contractor may be retained to cover said liquidated damages. Should such money not be sufficient to cover said liquidated damages, the Tribal Council shall have the right to recover the balance from the Contractor or his sureties, who will pay said balance forthwith. Regardless of the schedule submitted by Contractor, no delay claims shall be accepted by the Tribal Council unless the event or occurrence delays the completion of the Project beyond the contractual completion date.
  
- b. **Inclement Weather.** Contractor shall abide by Tribal Council's determination of what constitutes inclement weather as determined by a bad weather day is a day when the weather causes unsafe work conditions or is unsuitable for work that should not be performed during inclement weather (i.e., exterior finishes), and shall include consideration when rain days exceed the normal frequency and amount based on the closest weather station data averaged over the past three years, for the period of this Contract and when Contractor can show that such rain days impact the critical path. Time extensions shall only be granted when the work that is stopped during inclement

weather is on the critical path of the Project schedule. Contractor shall be expected to perform all work he can possibly complete during inclement weather (i.e., interior work),

- c. **Extension of Time.** Contractor shall not be charged liquidated damages because of any delays in completion of work due to unforeseeable causes beyond the control and without the fault or negligence of Contractor including, but not restricted to: acts of God, or of public enemy, acts of Government, acts of Tribal Council or anyone employed by him or acts of another Contractor in performance of a contract with the Tribal Council, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes. Contractor shall within five (5) calendar days of the beginning of any such delay (unless the Tribal Council grants a further period of time prior to date of final settlement of the Contract) notify the Tribal Council in writing of causes of delay; thereupon the Tribal Council shall ascertain the facts and extent of delay and grant extension of time for completing work when, in its judgment, the findings of fact justify such an extension. The Tribal Council's findings of fact thereon shall be final and conclusive on parties hereto. In case of a continuing cause of delay, only one claim is necessary. Time extensions to the Project should be requested by the Contractor as they occur and without delay. Regardless of the schedule submitted by Contractor, no delay claims shall be accepted by the Tribal Council unless the event or occurrence delays the completion of the Project beyond the contractual completion date.
- d. **No Damages for Delay.** The Tribal Council's liability to Contractor for delays for which the Tribal Council is responsible shall be limited to an extension of time for delays unless such delays were unreasonable under the circumstances involved and were not within the contemplation of the parties when the Contract was awarded. Contractor agrees that the Tribe's Engineering Advisor shall determine the actual costs to Contractor of any delay for which Contractor may claim damages from the Tribal Council. Such costs, if any, shall be directly related to the Project, and shall not include costs that would be borne by the Contractor in the regular course of business, including, but not limited to, home office overhead and ongoing insurance costs. The Tribal Council shall not be liable for any damages which the Contractor could have avoided by any reasonable means including, but not limited to, the judicious handling of forces, equipment, or plant.

## **Article 7. PROGRESS SCHEDULE**

- a. **Estimated Schedule.** Within fourteen (14) calendar days after the effective date of the Notice to Proceed, Contractor shall prepare an estimated progress schedule and shall submit same to Tribal Council for approval. The schedule shall clearly identify all staffing and other resources which in the Contractor's judgment are needed to complete the Project within the time specified for completion. The schedule shall include milestones and shall include the "critical path" of construction. The Contractor is fully responsible to determine and provide for any and all staffing and resources at levels which allow for good quality and timely completion of the Project; the Tribal Council's approval of the progress schedule does not relieve the Contractor of any such responsibility. Contractor's failure to incorporate all elements of work required for the performance of the Contract or any inaccuracy in the schedule shall not excuse the Contractor from performing all work required for a completed Project within the specified Contract time period, notwithstanding the Tribal Council's acceptance of the schedule. If the required schedule is not received by the time the first payment request is due, Contractor shall not be paid until the schedule is received, reviewed and accepted by the Tribal Council.

- b. **Schedule Contents.** The schedule shall allow enough time for inclement weather. Such schedule shall indicate graphically the beginning and completion dates of all phases of construction, shall indicate the critical path for all critical, sequential time related activities. All required schedules shall indicate "float time" for all "slack" or "gaps" in the non-critical activities. Submitted construction schedules shall have a duration to match the Contract time. Excess time may be picked up with "float time" if needed or desired by the Contractor. A "bar chart" in reasonably complete detail shall be adequate and schedules shall be updated monthly to reflect changes in the status of the job, including weather delays in order to prevent delay claims.

#### **Article 8. CONTRACT SECURITY**

Unless otherwise specified, Contractor shall furnish a surety bond in an amount equal to one hundred percent (100%) of Contract Price as security for faithful performance of this Contract and shall furnish a separate bond in an amount at least equal to one hundred percent (100%) of the Contract Price as security for payment of persons performing labor and furnishing materials in connection with this Contract. Both the Payment and Performance Bonds must be executed by an admitted Surety, as defined in Code of Civil Procedure Section 995.120. The Payment and Performance Bonds must be accompanied by the original or a certified copy of the unrevoked power of attorney or other appropriate instrument entitling or authorizing the person who executed the bond to do so. In addition, to the extent required by law, the Payment and Performance Bonds must be accompanied by a certified copy of the certificate of authority of the insurer issued by the Insurance Commissioner of the State of California. Aforesaid bonds shall be in form set forth in these Contract Documents.

#### **Article 9. ASSIGNMENT**

Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of this Contract or any part thereof including any claims, without prior written consent of the Tribal Council. Any assignment without the written consent of the Tribal Council shall be void. Any assignment of money due or to become due under this Contract shall be subject to a prior lien for services rendered or material supplied for performance of work called for under said Contract in favor of all persons, firms, or corporations rendering such services or supplying such materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure, and/or the Government Code.

#### **Article 10. PROHIBITED INTERESTS**

No official of the Tribal Council, and no Tribal Council Representative who is authorized in such capacity and on behalf of the Tribal Council to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the Project, shall be or become directly or indirectly interested financially in this Contract or in any part thereof. No officer, employee, attorney, engineer or Inspector of or for the Tribal Council who is authorized in such capacity and on behalf of the Tribal Council to exercise any executive, supervisory or other similar functions in connection with construction of the Project, shall become directly or indirectly interested financially in this Contract or in any part thereof.

#### **Article 11. SEPARATE CONTRACTS**

- a. The Tribal Council reserves the right to let other contracts in connection with this work. Contractor shall afford other contractors reasonable opportunity for introduction and

storage of their materials and execution of their work and shall properly connect and coordinate his work with theirs.

- b. If any part of Contractor's work depends for proper execution or results upon work of any other contractor, the Contractor shall inspect and promptly report to the Tribal Council's Representative any defects in such work that renders it unsuitable for such proper execution and results. His failure so to inspect and report shall constitute his acceptance of other contractor's work as fit and proper for reception of his work, except as to defects which may develop in the other contractor's work after execution of contractor's work.
- c. To insure proper execution of his subsequent work, Contractor shall measure and inspect work already in place and shall at once report to the Tribal Council's Representative, any discrepancy between executed work and the Contract Documents.
- d. Contractor shall ascertain to his own satisfaction the scope of the Project and nature of any other contracts that may be awarded by the Tribal Council in prosecution of the Project to the end that Contractor may perform this Contract in the light of such other contracts, if any. Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy at site of the Project. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the Project. If simultaneous execution of any contract for the Project is likely to cause interference with performance of some other contract or contracts, the Tribal Council's Representative shall decide which Contractor shall cease work temporarily and which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously. The Tribal Council shall not be responsible for any damages suffered or for extra costs incurred by Contractor resulting directly or indirectly from award, performance, or attempted performance of any other contract or contracts on the Project, or caused by any decision or omission of the Tribal Council or Tribal Council's Representative respecting the order of precedence in performance of contracts.

#### **Article 12. SUBCONTRACTING**

- a. Contractor agrees to bind every subcontractor by terms of the Contract as far as such terms are applicable to subcontractor's work. If Contractor subcontracts any part of this Contract, Contractor shall be as fully responsible to the Tribal Council for the acts and omissions of his subcontractor and of persons either directly or indirectly employed by his subcontractor, as he is for acts and omissions of persons directly employed by himself. Nothing contained in these Contract Documents shall create any contractual relation between any subcontractor and the Tribal Council. The Tribal Council shall be deemed to be the third party beneficiary of the contract between the Contractor and the subcontractor.
- b. The Tribal Council's consent to or approval of any subcontractor under this Contract shall not in any way relieve Contractor of his obligations under this Contract and no such consent or approval shall be deemed to waive any provision of this Contract
- c. Substitution or addition of subcontractors shall be permitted only as authorized in chapter 4 (commencing at Section 4100), part 1, division 2 of the Public Contract Code.

#### **Article 13. TRIBAL COUNCIL'S RIGHT TO TERMINATE CONTRACT**

- a. The Tribal Council may, without prejudice to any other right or remedy, serve written notice upon Contractor and his surety of its intention to terminate this Contract if the

Contractor (i) refuses or fails to prosecute the work or any separable part thereof with such diligence as will insure its completion within the time specified or any extension thereof, or (ii) fails to complete said work within such time, or (iii) if the Contractor should file a bankruptcy petition or be adjudged a bankrupt, or (iv) if he should make a general assignment for the benefit of his creditors, or (v) if a receiver should be appointed on account of his insolvency, or (vi) if he should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials to complete the work in time specified, or (vii) if he should fail to make prompt payment to subcontractors or for material or labor, or (viii) persistently disregard laws, ordinances or instructions of the Tribal Council or those of Tribal Council's Representatives, or (ix) otherwise be guilty of a substantial violation of any provision of the Contract, or (x) if he or his subcontractors should violate any of the provisions of this Contract. The notice of intent to terminate shall contain the reasons for such intention to terminate. Unless within ten (10) calendar days after the service of such notice, such condition shall cease or such violation shall cease and satisfactory arrangements for the correction thereof be made, this Contract shall, upon the expiration of said ten (10) calendar days, cease and terminate. In such case, Contractor shall not be entitled to receive any further payment until work is finished. In event of any such termination, the Tribal Council shall immediately serve written notice thereof upon surety and Contractor written notice of termination stating that the contract has ceased and is terminated. Surety shall have the right to investigate, take over and perform this Contract, provided, however, that if Surety, within fifteen (15) calendar days after service upon it of said notice of termination, does not give the Tribal Council written notice of its intention to take over and perform this Contract and does not commence performance thereof within twenty (20) calendar days from the date of service upon it of such notice of termination, the Tribal Council may take over the work and prosecute same to completion by contract or by any other method it may deem advisable for the account and at the expense of Contractor. Contractor and his surety shall be liable to the Tribal Council for any excess cost or other damages occasioned the Tribal Council thereby. If the Tribal Council takes over the work as herein above provided, the Tribal Council may, without liability for so doing, take possession of and utilize in completing the work such materials, appliances, plant, and other property belonging to the Contractor as may be on the site of the work and necessary therefore. If Surety does not perform the Project work itself, the Surety shall consult with the Tribal Council regarding its planned choice of a contractor or contractors to complete the Project, and upon request by Tribal Council, Surety shall provide Tribal Council evidence of responsibility of Surety's proposed contractor or contractors. Tribal Council shall be entitled to reject Surety's choice of contractor or contractors if Tribal Council determines in its sole discretion that the contractor or contractors are non-responsible. If Surety provides Tribal Council written notice of its intention to take over and perform this Contract, within fifteen (15) calendar days of such written notice of intent to take over and perform, Surety or its chosen contractor or contractors (if such contractor or contractors are approved by Tribal Council) shall provide Tribal Council a detailed Progress Schedule as specified in Article 8 above. Contractor and his surety shall be liable to Tribal Council for any excess cost or other damages occasioned the Tribal Council as a result of Surety or Surety's contractor or contractors takeover and performance.

- b. If the unpaid balance of the Contract Price exceeds the expense of finishing work, including compensation for additional architectural, managerial, and administrative services, such excess shall be paid to Contractor. If such expense shall exceed such unpaid balance, Contractor shall pay the difference to the Tribal Council. Expense

incurred by the Tribal Council as herein provided, and damage incurred through Contractor's default, shall be certified by the (Engineer/Architect/Construction Manager).

- c. Should the Tribal Council determine that environmental considerations mandate that the underlying Project should not go forward, Tribal Council may notify Contractor that this Contract is terminated due to environmental considerations and Tribal Council shall only be obligated to pay Contractor for the work that Contractor had performed at the time of notification of termination of this Contract for environmental considerations.
- d. **Termination For Convenience:** The Tribal Council may terminate performance of the work called for by the Contract Documents in whole or, from time to time, in part, if the Tribal Council determines that a termination is in the Tribal Council's interest.

The Contractor shall terminate all or any part of the Work upon delivery to the Contractor of a Notice of Termination specifying that the termination is for the convenience of the Tribal Council, the extent of termination, and the effective Date of such termination.

After receipt of Notice of Termination, and except as directed by the Tribal Council, the Contractor shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:

- 1) Stop Work as specified in the Notice.
- 2) Complete any Work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.
- 3) Leave the property upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Documents is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety.
- 4) Terminate all subcontracts to the extent that they relate to the portions of the work terminated.
- 5) Place no further subcontracts or orders, except as necessary to complete the continued portion of the Contract.
- 6) Submit to the Tribal Council, within ten (10) calendar days from the Effective Date of the Notice of Termination, all of the usual documentation called for by the Contract Documents to substantiate all costs incurred by the Contractor for labor, materials and equipment through the Effective Date of the Notice of Termination. Any documentation substantiating costs incurred by the Contractor solely as a result of the Tribal Council's exercise of its right to terminate this Contract pursuant to this clause, which costs the Contractor is authorized under the Contract Documents to incur, shall: (i) be submitted to and received by the Tribal Council no later than thirty (30) calendar days after the Effective Date of the Notice of Termination; (ii) describe the costs incurred with particularity; and (iii) be conspicuously identified as "Termination Costs occasioned by the Tribal Council's Termination for Convenience."

Termination of the Contract shall not relieve Surety of its obligation for any just claims arising out of or relating to the Work performed. In the event that the Tribal Council exercises its right to terminate this Contract pursuant to this provision, the Tribal Council shall pay the Contractor, upon the Contractor's submission of the documentation required by this clause and other applicable provisions of the Contract Documents, all actual reimbursable costs incurred according to the provisions of this Contract.

- e. **Termination of Contract by Contractor:** The Contractor may terminate the Contract upon ten (10) calendar days written notice to the Tribal Council, whenever: (1) the entire Work has been suspended for ninety (90) consecutive days through no fault or negligence of the Contractor, and notice to resume the Work or to terminate the Contract has not been received from the Tribal Council within this time period; or (2) the Tribal Council should fail to pay the Contractor any substantial sums due it in accordance with the terms of the Contract and within the time limits prescribed. In the event of such termination, the Contractor shall have no claims against the Tribal Council except for Work performed as of the date of termination.
- f. The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to the Tribal Council.
- g. Notwithstanding the foregoing provisions, this Contract may not be terminated or modified where a trustee-in-bankruptcy has assumed the Contract pursuant to 11 U.S.C. Section 365 (Federal Bankruptcy Act).

#### **Article 14. GUARANTEE**

- a. Besides guarantees required elsewhere, Contractor shall, and hereby does, guarantee all work for a period of one (1) year after date of acceptance of work by the Tribal Council. Contractor shall repair or replace any or all such work, together with any other work, which may be displaced in so doing, that may prove defective in workmanship and/or materials within a two-year period from date of acceptance without expense whatsoever to the Tribal Council, ordinary wear and tear, unusual abuse or neglect excepted. The Tribal Council will give notice of observed defects with reasonable promptness. Contractor shall notify the Tribal Council upon completion of repairs.
- b. In the event of failure of Contractor to comply with above-mentioned conditions within one week after being notified in writing, the Tribal Council is hereby authorized to proceed to have defects repaired and made good at the expense of Contractor. Contractor hereby agrees to pay costs and charges therefore immediately on demand.
- c. If, in the opinion of the Tribal Council or Tribal Council's Representative, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to the Tribal Council or to prevent interruption of operations of the Tribal Council, the Tribal Council or the Tribal Council's Representative will attempt to give the notice required by this Article. If the Contractor cannot be contacted or does not comply with the Tribal Council's request for correction within a reasonable time as determined by the Tribal Council, the Tribal Council may, notwithstanding the provisions of this Article, proceed to make such correction or provide such attention. The costs of such correction or attention shall be charged against the Contractor. Such action by the Tribal Council or its Representative will not relieve the Contractor of the guarantees provided in this Article or elsewhere in this Contract.

- d. This Article does not in any way limit the guarantee on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. Contractor shall furnish the Tribal Council with all appropriate guarantee or warranty certificates upon completion of the Project.

**Article 15. NOTICE AND SERVICE THEREOF**

- a. Any notice from one party to the other under the Contract shall be in writing and shall be dated and signed by party giving such notice or by the duly authorized representative of such party. Any such notice shall not be effective for any purpose whatsoever unless served in one of the following manners:
  - 1) If notice is given to the Tribal Council, by personal delivery thereof to the Tribal Council or by depositing same in United States mail, enclosed in a sealed envelope addressed to the Tribal Council and for attention of the Tribal Council's Representative, postage prepaid and registered;
  - 2) If notice is given to Contractor by personal delivery thereof to said Contractor or to his foreman at site of Project, or by depositing same in United States mail, enclosed in a sealed envelope addressed to said Contractor at his regular place of business or at such other address as may have been established for the conduct of work under this Contract, postage prepaid and registered;
  - 3) If notice is given to surety or other person by personal delivery to such surety or other person or by depositing same in United States mails, enclosed in a sealed envelope addressed to such surety or person at the address of such surety or person last communicated by him to party giving notice, postage prepaid and registered.
  - 4) If notice is served by mail, it shall be deemed received and all time periods associated with the giving of notice shall run from the third day after mailing.

**Article 16. WORKERS**

- a. Contractor shall at all times enforce strict discipline and good order among his employees. Contractor shall not employ on work any unfit person or any one not skilled in work assigned to him.
- b. Any person in the employ of the Contractor whom the Tribal Council or Tribal Council's Representative may deem incompetent or unfit shall be dismissed from work and shall not again be employed on it except with the written consent of the Tribal Council.

**Article 17. HOURS OF WORK**

- a. Generally, construction work on the Project shall be accomplished on a regularly scheduled eight (8) hour per day work shift basis, Monday through Friday, between the hours of 7:00 a.m. and 5:00 p.m., however nothing herein shall prevent Contractor from working weekends and after hours in order to complete the Project so long as not otherwise prohibited by law or local ordinances or regulations.

## **Article 18. DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS**

The Contractor, or any subcontractor working under the Contractor, may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Title 49 of Federal Regulations, Part 29. Any contract on a public works project entered into between the Contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid, or may have been paid to a debarred subcontractor by the Contractor on the project shall be returned to the Tribal Council. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the project.

## **Article 19. NON-DISCRIMINATION**

Pursuant to the provisions of Executive Order 11246 and its implementing regulations, Contractor and its subcontractor shall not unlawfully discriminate in the employment of persons on this Project because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, and sex.

## **Article 20. WORKERS' COMPENSATION INSURANCE**

The Contractor shall provide, during the life of this Contract, workers' compensation insurance for all of the employees engaged in work under this Contract, on or at the site of the Project, and, in case any of his work is sublet, the Contractor shall require the subcontractor similarly to provide workers' compensation insurance for all the latter's employees. Any class of employee or employees not covered by a subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in work under this Contract, on or at the site of the Project, is not protected under the Workers' Compensation Statutes, the Contractor shall provide or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected. The Contractor is required to secure payment of compensation to his employees in accordance with the provisions of Section 3700 of the Labor Code. The Contractor shall file with the Tribal Council certificates of his insurance protecting workers. Company or companies providing insurance coverage shall be acceptable to the Tribal Council, if in the form and coverage as set forth elsewhere in this document.

## **Article 21. EMPLOYER'S LIABILITY INSURANCE**

Contractor shall provide during the life of this Contract, Employer's Liability Insurance in the amount of, at least, one million dollars (\$1,000,000.00) per accident for bodily injury and disease. Contractor shall provide Tribal Council with a certificate of Employer's Liability Insurance. Such insurance shall comply with the provisions of Article 29 below.

## **Article 22. COMMERCIAL GENERAL LIABILITY AND PROPERTY DAMAGE INSURANCE**

- a. Contractor shall procure and maintain during the life of this Contract and for such other period as may be required herein, at its sole expense, such comprehensive general liability insurance or commercial general liability and property damage insurance as shall protect Contractor and the Tribal Council, the Tribal Council's Representatives and Agents, from all claims for bodily (personal) injury, including accidental death, as well as claims for property damage arising from operations under this Contract, and other covered loss, however occasioned, occurring during the policy term. Such policy shall comply with all the requirements of this Article, and shall be in the form and amounts as

set forth in the Special Conditions hereof. The limits set forth in the Special Conditions shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth in the Special Conditions shall not be construed to relieve the Contractor from liability in excess of such coverage, nor shall it limit Contractor's indemnification obligations to the Tribal Council, and shall not preclude the Tribal Council from taking such other actions available to the Tribal Council under other provisions of the Contract Documents or law.

- b. Contractor shall make certain that any and all subcontractors hired by Contractor are insured in accordance with this Contract. If any subcontractor's coverage does not comply with the foregoing provisions, Contractor shall indemnify and hold the Tribal Council harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by the Tribal Council as a result thereof.
- c. Company or companies providing insurance coverage shall be acceptable to the Tribal Council and authorized to conduct business in the State of California.
- d. All general liability policies provided pursuant to the provisions of this Article shall comply with the provisions of Article 29 below.
- e. All general liability policies shall be written to apply to all bodily injury, including death, property damage, personal injury, owned and non-owned equipment, blanket contractual liability, completed operations liability, explosion, collapse, under-ground excavation, removal of lateral support, and other covered loss, however occasioned, occurring during the policy term, and shall specifically insure the performance by Contractor of that part of the indemnification contained in Article 29 hereof, relating to liability for injury to or death of persons and damage to property. If the coverage contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any aggregate limit has been paid or reserved, the Tribal Council may require additional coverage to be purchased by Contractor to restore the required limits. Contractor may combine primary, umbrella, and as broad as possible excess liability coverage to achieve the total limits indicated above. Any umbrella or excess liability policy shall include the additional insured endorsement described in Article 29 below.

#### **Article 23. AUTOMOBILE LIABILITY INSURANCE**

Contractor shall take out and maintain at all times during the term of this Contract Automobile Liability Insurance in the amount set forth in the Special Conditions. Such insurance shall provide coverage for bodily injury and property damage including coverage for non-owned and hired vehicles, in a form and with insurance companies acceptable to the Tribal Council. Such insurance shall comply with the provisions of Article 29 below.

#### **Article 24. PROOF OF CARRIAGE OF INSURANCE**

- a. Contractor shall, as soon as practicable following the placement of insurance required hereunder, but in no event later than the effective date of the Contract, deliver to the Tribal Council certificates of insurance evidencing the same, together with appropriate separate endorsements thereto, evidencing that Contractor has obtained such coverage for the period of the Contract. Contractor shall deliver certified copies of the actual insurance policies specified herein, within thirty days after commencement of work. Thereafter, copies of renewal policies, or certificates and appropriate separate

endorsements thereof, shall be delivered to the Tribal Council within thirty (30) calendar days prior to the expiration of the term of any policy required herein. Contractor shall permit the Tribal Council at all reasonable times to inspect any policies of insurance of Contractor which Contractor has not delivered to the Tribal Council.

- b. Certificates and insurance policies shall include the following clause:
  - 1) This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the Tribal Council stating date of cancellation, reduction or other adverse change respecting such insurance. The date of cancellation, reduction or adverse change may not be less than thirty (30) calendar days after date of mailing notice.”
- c. Any notice required to be sent pursuant to this Article shall be to the Tribal Council's address as shown in the Notice to Contractors Calling for Bids.
- d. Certificates of insurance shall state in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, and cancellation and reduction notice. All Certificates of Insurance provided by Contractor shall name the Tribal Council, the Construction Manager and Architect, and Construction Manager's and Architect's consultants as additional insureds.
- e. The coverage afforded by the additional insured endorsement described in paragraph (d) above, shall apply as primary insurance, and any other insurance maintained by the Tribal Council owner, the members of the Tribal Council's Board of Supervisors, or its officers, agents, employees and volunteers, or any self-funded program of the Tribal Council, shall be in excess only and not contributing with such coverage. This coverage must be given via ISO endorsement CG 2010 (11/85 ed.) or insurer's equivalent for coverage as respects: liability arising out of activities performed by or on behalf of the Contractors; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Tribal Council, its board of trustees, directors, officers, employees, agents or authorized volunteers.
- f. Insurance carriers shall be qualified to do business in California and maintain an agent for service of process within the State. Such insurance carriers shall have not less than an "A" policy holder's rating and a financial rating of not less than "Class VII" according to the latest Best's Key Rating Guide unless otherwise approved by the Tribal Council.
- g. After receiving written Notice of Cancellation of Insurance, Contractor shall have ten (10) calendar days to provide other policies of insurance similar to the canceled policies and acceptable insurance. If such replacement coverage is not provided, the Tribal Council may secure insurance at the Contractor's expense.
- h. Nothing contained in the insurance requirements shall be construed as limiting the extent of the Contractor's responsibility for payment of damages resulting from operations under this Contract.
- i. Contractor's failure to procure the insurance specified herein, or failure to deliver certified copies or appropriate certificates of such insurance, or failure to make the premium payments required by such insurance, shall constitute a material breach of the

Contract, and the Tribal Council may, at its option, terminate the Contract for any such default by Contractor.

- j. The requirements as to the types and limits of insurance coverage set forth herein and in the Special Conditions to be maintained by the Contractor, and any approval of said insurance by the Tribal Council or its insurance Contractor(s), are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to the Contract, including, but not limited to, the provisions concerning indemnification.
- k. The Tribal Council shall retain the right at any time to review the coverage, form, and amount of insurance required herein and may require Contractor to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required.
- l. All deviations from the contractual insurance requirements stated herein must be approved in writing by the Tribal Council's risk manager.
- m. Included in any policy or policies of liability insurance provided by Contractor hereunder, except Workers' Compensation Insurance, shall be a standard waiver of rights of subrogation against the Tribal Council, its Representatives, or Agents, by the insurance company issuing said policy or policies.
- n. If coverage is written on a "claims made" basis, the Certificate of Insurance shall clearly so state. In addition to the coverage requirements specified above, such policy shall provide that:
  - 1) The policy retroactive date coincides with or precedes Contractor's commencement of work under the Contract (including subsequent policies purchased as renewals or replacements)
  - 2) Contractor will make every effort to maintain similar insurance during the required extended period of coverage following expiration of the Contract, including the requirement of adding all additional insureds.
  - 3) If insurance is terminated for any reason, Contractor shall purchase an extended reporting provision of at least two years to report claims arising in connection with the Contract.
- o. The policy allows for reporting of circumstances or incidents that might give rise to future claims.
- p. Contractor shall notify the Tribal Council in writing of the amount, if any, of self-insured retention provided under the General Liability coverage, with a maximum limit of \$25,000. The Tribal Council may approve higher retention amounts, based upon review of documentation submitted by Contractor. Such review shall take into consideration Contractor's net worth and reserves for payment of claims of liability against Contractor, which must be sufficient to adequately compensate for the lack of other insurance coverage required hereunder.

## **Article 25. INDEMNIFICATION**

The Tribal Council and its members, directors, officers, employees, agents and authorized volunteers, and the Tribal Council's Representative, shall not be answerable or accountable in any manner for any loss or damage that may happen to the work or any part thereof, or for any of the materials or other things used or employed in performing the Work, or for injury or damage to any person or persons, either workers, employees of Contractor or its subcontractors or the public, or for damage to adjoining or other property, from any cause whatsoever arising out of or in connection with the performance of the Work. The Contractor shall be responsible for any damage to adjoining or other property, from any cause whatsoever arising out of or in connection with the performance of the work. The Contractor shall be responsible for any damage or injury to any person or property resulting from defects or obstructions or from any cause whatsoever arising out of or in connection with the performance of the Work; provided, however, that the Contractor shall not be liable for the sole established negligence, willful misconduct or active negligence of the Tribal Council, its Board members, directors, officers, employees, agents and authorized volunteers who are directly responsible to the Tribal Council.

- a. Contractor shall indemnify the Tribal Council and its members, directors, officers, employees, agents, authorized volunteers, the Tribal Council's Representatives against, and will hold and save them and each of them harmless from any and all actions, claims, damages to persons or property, penalties, obligations or liabilities that may be asserted or claimed by any person, firm entity, corporation, political subdivision or other organization arising out of or in connection with the Work, operation or activities of Contractor, its agents, employees, subcontractors or invitees, provided for herein, whether or not there is concurrent passive or active negligence on the part of the Tribal Council, or its Board members, directors, officers, employees, agents, and authorized volunteers, the Tribal Council's Representative, but excluding such actions, claims, damages to persons or property penalties, obligations or liabilities arising from the sole established negligence, willful misconduct or active negligence of the Tribal Council, the Tribal Council's Representative, the or those who are directly responsible to them, and in connection therewith:
  - 1) Contractor will defend any action or actions filed in connection with any of said claims, damages, penalties, obligations or liabilities and will pay all costs and expenses, including attorney's fees incurred in connection therewith.
  - 2) Contractor will promptly pay any judgment rendered against Contractor, the Tribal Council and its Board members, directors, officers, employees, agents, authorized volunteers, the Tribal Council's Representative, covering such claims, damages, penalties, obligations and liabilities arising out of or in connection with such work, operations, or activities of Contractor hereunder and Contractor agrees to save and hold the Tribal Council and its members, directors, officers, employees, agents, authorized volunteers, the Tribal Council's Representative, harmless therefrom.
  - 3) In the event the Tribal Council and its members, directors, officers, employees, agents, and the Tribal Council's Representative, are made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of or in connection with the Work, or operation or activities of Contractor hereunder, Contractor agrees to pay to the Tribal Council, the Tribal Council's Representative, and its Board members, directors, officers, employees, agents, any and all costs and expenses incurred by the Tribal Council and its

Board members, directors, officers, employees, agents and the Tribal Council's Representative, in such action or proceeding together with reasonable attorney's fees.

- 4) The Tribal Council may retain, to the extent it deems necessary, the money due to the Contractor under and by virtue of the Contract Documents until disposition has been made of such actions or claims for damages as specified herein above.

#### **Article 26. PERSONAL LIABILITY**

Neither the Tribal Council, the Tribal Council's Representative, nor any other director, officer or authorized assistant or agent of the Tribal Council, the Tribal Council's Representative, shall be personally responsible for any liability arising under the Contract.

#### **Article 27. LAWS AND REGULATIONS**

- a. Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on conduct of work as indicated and specified. If Contractor observes that drawings and specifications are at variance therewith, he shall promptly notify the Tribal Council in writing and any necessary changes shall be adjusted as provided for in this Contract for changes in work. If Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Tribal Council, he shall bear all costs arising therefrom.
- b. Contractor shall be responsible for familiarity with the Americans with Disabilities Act ("ADA") (42 USC §12101 et seq.). Installations of equipment and other devices shall be in

#### **Article 28. EXCISE TAXES (INSERT FOR "ON RESERVATION OR TRUST LANDS ONLY)**

If under state or federal sales or excise tax law any transaction hereunder constitutes a sale on which a state or federal excise tax is imposed and the sale is exempt from such excise tax because it is a sale to the Tule River Indian Reservation for its exclusive use, the Tribal Council, upon request, will execute a certificate of exemption which will certify (1) that the Tribal Council is a sovereign nation for the purposes of such exemption and (2) that the sale is for the exclusive use of the Tribal Council. No sales or excise tax for such materials shall be included in any bid price.

#### **Article 29. PATENTS, ROYALTIES, AND INDEMNITIES**

The Contractor shall indemnify, defend and hold harmless the Tribal Council and its members, officers, agents, and employees harmless from liability of any nature or kind, including cost and expense, for or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of this Contract, including its use by the Tribal Council, unless otherwise specifically stipulated in the Contract Documents.

#### **Article 30. MATERIALS**

- a. Except as otherwise specifically stated in this Contract, Contractor shall provide and pay for all materials, labor, tools, equipment, water, lights, power, transportation, superintendence, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to execute and complete this Contract within specified time.

- b. Unless otherwise specified, all materials shall be new and the best of their respective kinds and grades as noted and/or specified, and workmanship shall be of good quality.
- c. Materials shall be furnished in ample quantities and at such times as to insure uninterrupted progress of work and shall be stored properly and protected as required. Contractor shall be entirely responsible for damage or loss by weather or other causes to materials or work under this Contract.
- d. No materials, supplies, or equipment for work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in work and agrees upon completion of all work to deliver premises, together with all improvements and appurtenances constructed or placed thereon by him, to the Tribal Council free from any claims, liens, or charges. He further agrees that neither he nor any person, firm, or corporation furnishing any materials or labor for any work covered by this Contract shall have any right to lien upon premises or any improvement or appurtenance thereon, except that Contractor may install metering devices or other equipment of utility companies or of political subdivisions title to which is commonly retained by utility company or political subdivision. In event of installation of any such metering device or equipment, Contractor shall advise the Tribal Council as to the owner thereof. Nothing contained in this Article, however, shall defeat or impair right of persons furnishing material or labor under any bond given by Contractor for their protection or any rights under any law permitting such persons to look to funds due Contractor in hands of the Tribal Council, and this provision shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing material for work when no formal contract is entered into for such material.
- e. Materials shall be stored on the premises in such manner so as not to interfere with the work and so that no portion of the structure shall be overloaded.
- f. Materials or work required or necessary to be tested shall be tested under supervision of, as directed by and at such places as may be convenient to the Tribal Council and/or the Tribal Council's Representatives. The required testing of all structural materials shall be done by an approved testing laboratory.

### **Article 31. COST BREAKDOWN AND PERIODICAL ESTIMATES**

- a. Contractor shall furnish on forms approved by the Tribal Council:
  - 1) Within ten (10) calendar days of award of Contract a detailed estimate giving a complete breakdown of Contract Price; and
  - 2) A periodical itemized estimate of work done for the purpose of making partial payments thereon;
  - 3) Within ten (10) calendar days of request by the Tribal Council, a schedule of estimated monthly payments which shall be due under the Contract.
- b. Values employed in making up any of these schedules will be used only for determining basis of partial payments and will not be considered as fixing a basis for additions to or deductions from Contract Price.

## Article 32. PAYMENTS

- a. Each month within thirty (30) calendar days after receipt of an undisputed and properly submitted payment request, there shall be paid to Contractor a sum equal to ninety percent (90%) of the value of work performed up to the last day of the previous month, less the aggregate of previous payments. Monthly payments shall be made only on the basis of monthly estimates which shall be prepared by Contractor on an approved Application for Payment, "Partial Payment Estimate" form and filed with the Tribal Council before the fifth day of the month during which payment is to be made. Work completed as estimated shall be an estimate only and no inaccuracy or error in said estimate shall operate to release Contractor or any bondsman from damages arising from such work or from enforcing each and every provision of this Contract and the Tribal Council shall have the right subsequently to correct any error made in any estimate for payment. Contractor shall not be entitled to have any payment estimates processed or be entitled to have any payment made for work performed so long as any lawful or proper direction concerning the work, or any portion thereof given by the Tribal Council and Tribal Council's Representative shall remain uncomplished with.
- b. The final payment of ten percent (10%) of the value of work done under this Contract, if unencumbered, shall be made within sixty (60) calendar days after the date of completion of the work, provided however, that in the event of a dispute between the Tribal Council and the Contractor, the Tribal Council may withhold from the final payment an amount not to exceed one hundred and fifty percent (150%) of the disputed amount. Completion means any of the:
  - 1) The occupation, beneficial use, and enjoyment of a work of improvement, excluding any operation only for testing, startup, or commissioning, by the public agency, or its agent, accompanied by cessation of labor on the work of improvement.
  - 2) The acceptance by the public agency, or its agent, or the work of improvement.
  - 3) After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 100 calendar days or more, due to factors beyond the control of the Contractor.
  - 4) After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 30 calendar days or more, if the public agency files for record a notice of cessation or a notice of completion
- c. For purposes of this Contract, the acceptance by the Tribal Council means acceptance made only by an action of the governing body of the Tribal Council in session. Acceptance by Contractor of said final payment shall constitute a waiver of all claims against the Tribal Council arising from this Contract. At any time after fifty percent (50%) of the work has been completed, if the Tribal Council, by action of its governing body, finds that satisfactory progress is being made, the Tribal Council may reduce the retentions for remaining payments for actual work completed up to five percent (5%).
- d. **Final Payment.** The Tribal Council shall, after the satisfactory completion of the work, make a final estimate of the amount of Work done thereunder and the value of said work, and the Tribal Council shall pay the entire sum so found to be due after deduction therefrom all previous payments and all amounts to be retained under the provisions of

the Contract Documents, provided that a release of liens and claims has been received from the Contractor. All prior partial estimates and payments shall be subject to correction in the final estimate and payment. The final payment shall not be due and payable until the expiration of thirty-five (35) calendar days from the date of acceptance of the work by the Tribal Council, which acceptance shall be by formal action of the Tribal Council.

- 1) No certificate given or payments made under the Contract, except the final certificate or final payment shall be evidence of the performance of the Contract, either wholly or in part, and no payment shall be construed to be an acceptance of any defective work or improper materials.
- e. Whenever any part of the work is in a condition suitable for use, and the best interest of the Tribal Council requires such use, the Tribal Council may take possession of, connect to, open for public use, or use a part thereof. When so used, maintenance and repairs due to ordinary wear and tear or vandalism will be made at Tribal Council's expense. The use by the Tribal Council as contemplated in this Article shall in no case be construed as constituting acceptance of the work or any part thereof. Such use shall neither relieve the Contractor of any of his responsibilities under the Contract nor act as a waiver by the Tribal Council of any of the conditions thereof. Contractor shall continue to maintain all insurance, on the Project.

### **Article 33. PAYMENTS WITHHELD**

- a. In addition to amounts which the Tribal Council may retain under any and all other Articles in this Contract including those entitled "Payments," and "Time for Completion and Liquidated Damages," the Tribal Council may withhold a sufficient amount of any payment or payments otherwise due to Contractor, as may be necessary to cover:
- 1) Payments which may be past due and payable for just claims against Contractor or any subcontractors for labor or materials furnished in and about the performance of work on the Project under this Contract.
  - 2) Defective work not remedied.
  - 3) Failure of Contractor to make proper payments to his subcontractor or for material or labor.
  - 4) Completion of the Contract if there exists a reasonable doubt that the work can be completed for balance then unpaid.
  - 5) Damage to another Contractor.
  - 6) Amounts which may be due the Tribal Council for just claims against Contractor.
  - 7) Failure of Contractor to keep the record ("as-built") drawings up to date.
  - 8) Failure to provide update on construction schedule as required by Article 9 hereof. When the above grounds are removed, payment shall be made for amounts withheld because of them.
  - 9) Failure to perform site clean-up.

- b. The Tribal Council may apply such withheld amount or amounts to payment of such claims or obligations at its discretion with the exception of subsections (a)(1), (3), and (5) of this Article, which must be retained or applied in accordance with applicable law. In so doing, the Tribal Council shall be deemed the agent of Contractor and any payment so made by the Tribal Council shall be considered as a payment made under contract by the Tribal Council to Contractor and the Tribal Council shall not be liable to Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligations. The Tribal Council will render Contractor a proper accounting of such funds disbursed on behalf of Contractor.

#### **Article 34. CHANGES AND EXTRA WORK**

- a. **Changes In Work.** All changes which affect the cost or time of the construction of the project must be authorized by means of a Change Order. The Change Order will include extra work, work for which quantities have been altered from those shown in the bidding schedule, as well as decreases or increases in the quantities of installed units which are different than those shown in the bidding schedule because of final measurements. All changes should be recorded on a Change Order as they occur. Each Change Order must contain complete and detailed justification for all items addressed by the Change Order. All Change Orders must be executed on TRTC Form CCO, "Contract Change Order," (See sample Change Order form in Appendix 1).
- b. The Tribal Council, without invalidating the Contract, and as provided by law, may order extra work or make changes by altering, adding to, or deducting from work, the Contract sum being adjusted accordingly. All such work shall be subject to prevailing wage rates and shall be executed under the conditions of the original contract except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change.
- c. In giving instructions, Contractor agrees that the Tribal Council's Representative shall have authority to make minor changes in work, not involving change in cost, and not inconsistent with the purposes or approvals of the Project. Otherwise, except in an emergency endangering life or property, no extra work or change shall be made unless pursuant to a written order from the Tribal Council, and no claim for an addition to the Contract sum shall be valid unless so ordered. If the Contractor is delayed in completing the work by reason of any change made pursuant to this Article, the time for completion of the Work shall be extended by change order for a period commensurate with such delay. The Contractor shall not be subject to any claim for liquidated damages for this period of time.
- d. **Unforeseen Conditions.** Contractor shall provide the Tribal Council's Representative with written notice of unforeseen conditions immediately upon discovery of such conditions.
- e. Value of any such extra work, change, or deduction shall be determined at the discretion of the Tribal Council, in consultation with the Tribal Council's Representative and Architect, in one or more of the following ways:
  - 1) By acceptable lump sum proposal from Contractor with itemization as required by the Tribal Council's Representative.

- 2) By unit prices contained in Contractor's original bid and incorporated in the Contract Documents or fixed by subsequent agreement between the Tribal Council and Contractor.
- 3) By the actual cost of material and labor and a percentage for overhead and profit. The following information items shall be followed as applicable for additions and deductions to the Contract:

	EXTRA/ (CREDIT)
(a) Material (attach itemized quantity and unit cost plus sales tax)	_____
(b) Labor (attach itemized hours and base rates from identified prevailing wage rate schedules)	_____
(c) Commercial General Liability and Property Damage Insurance, Workers' Compensation Insurance, Social Security and Unemployment taxes at actual and verified cost.	_____
(d) Subtotal	_____
(e) Subcontractor's overhead and profit as defined in Article 48 (h), below, not to exceed 15% of Item (d) (if applicable)	_____
(f) Subtotal	_____
(g) Contractor's Overhead and Profit, as defined in Article 48 (h), below, not to exceed 5% of Item (f) for work performed by subcontractor, or 15% if performed by Contractor	_____
(h) Subtotal	_____
(i) Bond Premium, not to exceed 1% of Item (h)	_____
(j) Total	_____

f. Regardless of whether the cost of the change order is determined pursuant to 1, 2, or 3, above, in addition to the cost of the material and labor for deleted items, Contractor shall credit back overhead mark-up and the bonding mark up for deleted items at the time of the request for changes and extra work.

g. Should Contractor claim that any instruction, request, drawing, specification, action, condition, omission, default, or other situation (i) obligates the Tribal Council to pay additional compensation to the Contractor; or (ii) obligates the Tribal Council to grant an extension of time for the completion of the Contract; or (iii) constitutes a waiver of any provision in the Contract, CONTRACTOR SHALL NOTIFY THE TRIBAL COUNCIL, IN WRITING, OF SUCH CLAIM AS SOON AS POSSIBLE, BUT IN NO EVENT WITHIN MORE THAN FIVE (5) WORKING DAYS FROM THE DATE CONTRACTOR HAS

ACTUAL OR CONSTRUCTIVE NOTICE OF THE CLAIM. CONTRACTOR SHALL ALSO PROVIDE TRIBAL COUNCIL WITH SUFFICIENT WRITTEN DOCUMENTATION SUPPORTING THE FACTUAL BASIS OF THE CLAIM including in the documentation items D (3) a-j described in this Article 48 above. Contractor shall be required to certify under penalty of perjury the validity and accuracy of any claims submitted. The Contractor's failure to notify the Tribal Council within such five (5) working day period shall be deemed a waiver and relinquishment of the claim against the Tribal Council. If such notice be given within the specified time, the procedure for its consideration shall be as stated above in this Article.

- h. All costs associated with the change are to be included in the change order proposal to the Tribal Council's Representative. Costs may be in terms of time, money or both.
- i. **Overhead and Profit.** The term "overhead and profit" for the Contractor and any subcontractors shall be considered to include: insurance, other than mentioned in Article 42(c) above, field and office supervisors and assistants, watchman, use of small tools, consumables, and general field and home office expenses, and no separate allowance will be made therefor.

### **Article 35. DEDUCTIONS FOR UNCORRECTED WORK**

If the Tribal Council in consultation with the Tribal Council's Representative deems it inexpedient to correct work injured or not done in accordance with the Contract, an equitable deduction from the Contract Price shall be made therefor.

### **Article 36. PAYMENTS BY CONTRACTOR**

Contractor shall pay:

- a. For all transportation and utility services not later than the 20th day of the calendar month following that in which such services are rendered,
- b. For all materials, tools, and other expendable equipment to the extent of ninety percent (90%) of cost thereof, not later than the 30th day of the calendar month following that in which such materials, tools, and equipment are delivered at site of Project and balance of cost thereof not later than the 30th day following completion of that part of work in or on which such materials, tools, and equipment are incorporated or used, and
- c. To each of his subcontractors, not later than the 7th day following each payment to Contractor, the respective amounts allowed Contractor on account of work performed by respective subcontractor to the extent of such subcontractor's interest therein.

### **Article 37. CONTRACTOR'S SUPERVISION**

- a. Unless personally present on the premises where work is being done, Contractor shall keep on the work, during its progress, a competent full-time job (project) superintendent satisfactory to the Tribal Council's Representative. The job superintendent shall not be changed except with consent of the Tribal Council unless the job superintendent proves to be unsatisfactory to Contractor and ceases to be in his employ. The job superintendent shall represent Contractor in his absence and all directions given to him shall be as binding as if given to Contractor. Other directions shall be so confirmed on written request in each case.

- b. Contractor shall give efficient supervision to work, using his best skill and attention to control safety and job coordination. He shall carefully study and compare all drawings, specifications, and other instructions and shall at once report to the Tribal Council's Representative of any error, inconsistency or omission which he may discover.

**Article 38. DOCUMENTS ON WORK**

- a. Contractor shall keep one copy of all Contract Documents, including addenda, change orders, the International Building Code (IBC) and any other laws, rules or regulations governing building standards for public construction, which by this reference is a part of the Contract Documents, on job at all times. Said documents shall be kept in good order and available to both the Tribal Council's Representative and Tribal Council Building Inspector. Contractor shall be acquainted with and comply with the provisions of said these laws, rules or regulations as they relate to this Project.
- b. Contractor shall also make available all books, records, accounts, contracts, bids, etc. upon request of the Tribal Council or its authorized representative.

**Article 39. RECORD ("AS BUILT") DRAWINGS**

- a. Contractor shall maintain a clean, undamaged set of contract drawings and shop drawings. In addition to maintaining one complete set of record drawings (herein referred to as "as-builts"), Contractor shall require each trade to do its own as-builts. The trade as-builts shall contain information showing clean and clear drawings with horizontal and vertical controls suitable for conversion to electronic media. Graphic quality must be equal to clean and clear original drawings. Adequacy of the drawings shall be determined by the Tribal Council's representative. Contractor shall mark the set to show the actual installation where the installation varies from the work as originally shown. Contractor shall mark whichever drawings are most capable of showing conditions fully and accurately where shop drawings are used, record a cross-reference at the corresponding location on the contract drawings. Contractor shall give particular attention to concealed elements that would be difficult to measure and record at a later date. Contractor shall use colors to distinguish variations in separate categories of the work.
- b. Contractor shall note related change order numbers where applicable. Contractor shall organize record drawings sheets into manageable sets, bound with durable paper cover sheets and shall print suitable title, dates and other identification on the cover of each set.
- c. At the end of the Project, the Contractor shall provide the Tribal Council Representative with a complete set of as-built drawings. The complete set shall contain information showing clean and clear drawings with horizontal and vertical controls suitable for conversion to electronic media. Graphic quality must be equal to clean and clear original drawings; adequacy of the drawings shall be determined by the Tribal Council's representative. The as-builts must show the entire site for each major trade, including but not limited to water, sewer, electrical, data, telephone, cable, fire alarm, gas and plumbing.

**Article 40. UTILITY USAGE**

- a. All temporary utilities, including but not limited to electricity, water, gas, and telephone used on work shall be furnished and paid for by Contractor. Contractor shall furnish and

install necessary temporary distribution systems, including meters, if necessary, from distribution points to points on site where utility is necessary to carry on the work. Upon completion of work, Contractor shall remove all temporary distribution systems.

- b. Contractor may, with written permission of the Tribal Council, use the Tribal Council's existing utilities by making prearranged payments to the Tribal Council for utilities used by Contractor for construction.

#### **Article 41. SANITARY FACILITIES**

Contractor shall provide sanitary temporary toilet buildings for the use of all workers. All toilets shall comply with local codes and ordinances. Toilets shall be kept supplied with toilet paper and shall have workable door fasteners. Toilets shall be serviced no less than once weekly and shall be present in a quantity of not less than 1 per 20 workers. The building shall be maintained in a sanitary condition at all times and shall be left at the site until the Inspector directs removal.

#### **Article 42. PROTECTION OF WORK AND PROPERTY**

- a. The Contractor shall be responsible for all damages to persons or property occurring as a result of his fault or negligence in connection with the prosecution of this Contract. Contractor shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance by the Tribal Council. All work shall be solely at the Contractor's risk. Contractor shall adequately protect adjacent property from settlement or loss of lateral support as provided by law and the Contract Documents. Contractor shall take all necessary precautions for the safety of employees on the Project and shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to premises where work is being performed. Contractor shall erect and properly maintain at all times, as required by conditions and progress of work, all necessary safeguards, signs, barriers, lights, and watchmen for protection of workers and the public and shall post danger signs warning against hazards created by such features in the course of construction. Contractor shall designate a responsible member of his organization on the work, whose duty shall be prevention of accidents. The name and position of the person so designated shall be reported to the Tribal Council's Representative by Contractor.
- b. In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from either the Tribal Council's Representative or the Tribal Council, is hereby permitted to act, at his discretion, to prevent such threatened loss or injury, and he shall so act, without appeal, if so authorized or instructed by the Tribal Council's Representative the Tribal Council. Any compensation claimed by Contractor on account of emergency work shall be determined by agreement.
- c. Contractor shall provide such heat, covering, and enclosures as are necessary to protect all work, materials, equipment, appliances, and tools against damage by weather conditions.
- d. Contractor shall take adequate precautions to protect adjoining property, and structures, and to avoid damage thereto, and repair any damage thereto caused by construction operations. Contractor shall:

- 1) Enclose working area with a substantial barricade, arrange work to cause minimum amount of inconvenience and danger to the public.
- 2) Deliver materials to the building area over a route designated by the Tribal Council's Representatives.
- 3) When directed by the Tribal Council's Representative, take preventive measures to eliminate objectionable dust and follow applicable Air Quality Management District air quality regulations as appropriate.
- 4) Confine Contractor's apparatus, the storage of materials, and the operations of his workers to limits indicated by directions of the Tribal Council's Representative. Contractor shall not unreasonably encumber premises with his materials. Contractor shall enforce all instructions of the Tribal Council's Representative regarding signs, advertising, fires, danger signals, barricades, and smoking and require that all persons employed on work comply with all regulations while on construction site.
- 5) Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by an approved civil engineer or land surveyor, licensed in the State of California, at no cost to the Tribal Council.

#### **Article 43. LAYOUT AND FIELD ENGINEERING**

All field, mechanical and electrical engineering required for laying out this work shall be furnished by the Contractor at his expense. Such work shall be done by a qualified engineer approved by the Tribal Council's Representative. Any required "as-built" drawings of site development shall be prepared by the approved civil, mechanical and/or electrical engineer.

#### **Article 44. REMOVAL OF HAZARDOUS MATERIALS**

- a. Since removal and/or abatement of Asbestos, PCBs and other toxic wastes and hazardous materials is a specialized field of work with specialized insurance requirements, unless otherwise specified in the Contract Documents, the Tribal Council shall contract directly for such specialized services, if required, and shall not require the Contractor to subcontract for such services.
- b. In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop work in the area affected and report the condition to the Tribal Council's Inspector, and the and Tribal Council's Representatives in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the Tribal Council and Contractor if in fact the material is asbestos or PCB and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos or PCB, or when it has been rendered harmless, by written agreement of the Tribal Council and Contractor.

#### **Article 45. CUTTING AND PATCHING**

- a. Contractor shall do all cutting, fitting, or patching of work as required to make parts come together properly and fit it to receive or be received by work of other contractors showing

upon, or reasonably implied by, the drawings and specifications for the completed structure. Contractor shall make good after them as the Construction may direct.

- b. All cost caused by defective or ill-timed work shall be borne by party responsible therefor.
- c. Contractor shall not endanger any work by cutting, excavating, or otherwise altering work and shall not cut or alter work of any other contractor save with written consent of the and Tribal Council's Representative.

#### **Article 46. CLEANING UP**

- a. Contractor at all times shall keep premises free from debris such as waste, rubbish, and excess materials and equipment caused by this work. Contractor shall not leave debris under, in, or about the premises. Upon completion of work, Contractor shall clean the interior and exterior of the improvement including fixtures, equipment, walls, floors, ceilings, roofs, sills and ledges, horizontal projections, and any areas where debris has collected so surfaces are free from foreign material or discoloration. Contractor shall also remove temporary fencing, barricades, planking and construction toilet and similar temporary facilities from site. Contractor shall also clean all asphalt and concrete areas to the degree necessary to remove oil, grease, fuel, or other stains caused by Contractor operations or equipment.
- b. If the Contractor fails to clean up at the completion of the Work, the Tribal Council may do so and the cost of such clean up shall be charged back to the Contractor.

#### **Article 47. CORRECTION OF WORK BEFORE FINAL PAYMENT**

- a. Contractor shall promptly remove from the premises all work condemned by the Tribal Council as failing to conform to the Contract, whether incorporated or not. Contractor shall promptly replace and re-execute his own work to comply with the Contract Documents without additional expense to the Tribal Council and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.
- b. If Contractor does not remove such condemned work within a reasonable time, fixed by written notice, the Tribal Council may remove it and may store the material at Contractor's expense. If Contractor does not pay expenses of such removal within ten (10) calendar days' time thereafter, the Tribal Council may, upon ten (10) calendar days' written notice, sell such materials at auction or at private sale and shall account for net proceeds thereof, after deducting all costs and expenses that should have been borne by Contractor.

#### **Article 48. ACCESS TO WORK**

The Tribal Council and its Representatives shall at all times have access to work wherever it is in preparation or progress. Contractor shall provide safe and proper facilities for such access so that the Tribal Council's Representatives may perform their functions.

#### **Article 49. TESTS AND INSPECTIONS**

- a. If the Tribal Council, Tribal Council's Representative's, and/or instructions, laws, ordinances, or any public authority require any work to be specially tested or approved,

Contractor shall give notice in accordance with such authority of its readiness for observation or inspection at least two (2) working days prior to being tested or covered up. If inspection is by a public authority other than the Tribal Council, Contractor shall inform the Tribal Council's Representative of date fixed for such inspection. Required certificates of inspection shall be secured by Contractor. Observations by the Tribal Council Representative or Inspector shall be promptly made and where practicable at source of supply. If any work should be covered up without approval or consent of the Tribal Council or Tribal Council Representative, it must, if required by the Tribal Council, be uncovered for examination and satisfactorily reconstructed at Contractor's expense in compliance with the Contract. Costs for testing and inspection shall be paid by the Tribal Council. Costs of tests of any materials found not to be in compliance with the Contract shall be paid by the Contractor.

- b. Where such inspection and testing are to be conducted by an independent laboratory or agency, such materials or samples of materials to be tested shall be selected by such laboratory or agency, or the Tribal Council's Representative, and not by Contractor. All test or inspections of materials shall be made in accordance with the commonly recognized standards of national organizations.
- c. In advance of manufacture of materials to be supplied by Contractor under the Contract, which by the terms of the Contract must be tested, Contractor shall notify the Tribal Council in advance so that the Tribal Council and its Representatives may arrange for testing of same at the source of supply. Any materials shipped by Contractor from the source of supply prior to having satisfactorily passed such testing and inspection, or prior to receipt of notice from the Tribal Council's Representative that such testing and inspection will not be required, shall not be incorporated into the work without the prior approval of the Tribal Council or its Representatives and subsequent testing and inspection.
- d. Reexamination of questioned work may be ordered by the Tribal Council or its Representatives. If so ordered, work must be uncovered by Contractor. If such work is found to be in accordance with the Contract Documents, the Tribal Council shall pay the costs of reexamination and replacement. If such work be found not to be in accordance with the Contract Documents, Contractor shall pay such costs.

#### **Article 50. TRIBAL COUNCIL'S REPRESENTATIVE'S STATUS**

- a. Tribal Council's shall in writing, designate a Representative(s) during the construction period, and Representative shall have the responsibilities and authorities to act on behalf of the Tribal Council only to the extent identified in the Contract Documents, and generally as follows:
  - Interpreting the approved plans and specifications, and providing any necessary amplification of the plans and specifications.
  - Accepting and approving decisions and clarifications, pertaining to the technical aspects of the Contract Documents.
  - Serving as the Contractor's point of contact for management and administration of the Contract and coordination of interfaces with other Contractors and organizations participating in the same projects, as well as those of the Engineering Advisor and Inspector.

- Implementing the established procedures for processing all required submissions and documentation.
  - Monitoring and reviewing the Contractor's safety program, personnel and equipment, scheduling and progress of the work, and the work of the Contractor for conformance with the Contract Documents.
- b. The Tribal Council's Representative shall have authority to direct stoppage of the work whenever such stoppage may be necessary in the Tribal Council's Representative's reasonable opinion to insure the proper execution of the Contract.
- c. The Tribal Council retains the authority to issue the ultimate decision regarding any decisions, clarifications, instructions, directions, acceptances, or approvals required, issues, or made pursuant to the Contract Documents and in connection with the prosecution and progress of the Work.

**Article 51. DECISIONS OF TRIBAL COUNCIL'S REPRESENTATIVE**

Contractor shall promptly notify the Tribal Council in writing if the Tribal Council's Representative fails within a reasonable time, to make decisions on all claims of the Tribal Council or Contractor and on all other matters relating to the execution and progress of the work.

**Article 52. PROVISIONS REQUIRED BY LAW DEEMED INSERTED**

Each and every provision of State or Federal law and clause required by law to be inserted in this Contract as applicable for the location of the WORK, be it within lands governed by the Tribe's Sovereign Nation status or on Fee lands, shall be deemed to be inserted herein and/or referenced herein as if set out in full and the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party, the Contract shall forthwith be physically amended to make such insertion or correction.

**Article 53. LABOR/EMPLOYEE SAFETY**

The Contractor shall maintain emergency first aid treatment for his employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 USC, Section 651 et seq.), and California Code of Regulations, Title 8, Industrial Relations Division 1, Department of Industrial Relations, Chapter 4.

**Article 54. ASSIGNMENT OF ANTITRUST ACTIONS**

Pursuant to Section 7103.5 of the Public Contract Code, in entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, Contractor or subcontractor offers and agrees to assign to the Tribal Council all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 USC, Section 15) or under the Cartwright Act (chapter 2 (commencing with Section 16700) of part 2 of division 7 of the Business and Professions Code), arising from the purchase of goods, services, or materials pursuant to this Contract or any subcontract. This assignment shall be made and become effective at the time the Tribal Council tenders final payment to the Contractor, without further acknowledgment by the parties.

## **Article 55. AUDIT AND ACCESS TO RECORDS**

Pursuant to and in accordance with the provisions of Government Code section 8546.7, or any amendments thereto, all books, records and files of the Owner, the Contractor, or any subcontractor connected with the performance of this Contract involving the expenditure of public funds in excess of \$10,000 including, but not limited to, the costs of administration of the Contract, shall be subject to, at the request of the Owner or any of their duly authorized representatives, the examination and audit, or as part of any audit, of the Owner for a period of three (3) years after final payment is made under this Contract.

## **Article 56. NOTICE OF THIRD PARTY CLAIMS**

The Tribal Council shall provide Contractor with timely notification of the receipt of any third-party claim, relating to the Contract. Tribal Council is entitled to recover its reasonable costs incurred in providing such notification.

## **Article 57. SUBSTITUTION OF SECURITY**

The Bidders are notified that financing for this project is provided by the Tule River Indian Tribe and that this contract does not provide for substitution of securities for any monies withheld by the Owner to ensure performance under this contract. Bidders are further notified that this contract does not permit retainage to be placed in escrow nor to be invested for the benefit of the contractor.

## **Article 58. RESOLUTION OF CONSTRUCTION CLAIMS**

### **a. The following shall be applicable to all Claims:**

- 1) Definition of Claim: A "Claim" means a separate demand by the Contractor for (a) time extension, (b) payment of money or damages arising from work done by or on behalf of the Contractor pursuant to the Contract and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (c) an amount the payment of which is disputed by the Tribal Council.
- 2) Filing Claim is Not Basis To Discontinue Work: The Contractor shall promptly comply with work under the Contract or work requested by the Tribal Council even though a written claim has been filed. The Contractor and the Tribal Council shall make good faith efforts to resolve any and all claims that may arise during the performance of the work covered by this Contract.
  - (a) Claims in Excess of \$50,000. For claims over Fifty Thousand Dollars (\$50,000.00), and less than or equal to Three Hundred Seventy-five Thousand Dollars (\$375,000.00), the Tribal Council shall respond in writing to all written claims within sixty (60) days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim that the Tribal Council may have against the Contractor. If additional information is thereafter required, it shall be requested and provided by mutual agreement of the Tribal Council and the Contractor. The written response of the Tribal Council to the claim, as further documented, shall be submitted to the Contractor within thirty (30) days after receipt of the further documentation, or within a period of time no

greater than that taken by Contractor in producing the additional information or requested documentation, whichever is greater.

- 3) **Informal Meet and Confer Conference:** If Contractor disputes the written response of the Tribal Council, or the Tribal Council fails to respond within the time prescribed, Contractor may so notify the Tribal Council, in writing, either within fifteen (15) days of receipt of the Tribal Council's response or within fifteen (15) days of the failure of the Tribal Council to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the Tribal Council shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

b. **Procedures for Civil Actions to Resolve Disputed Claims:**

- 1) **Non-binding Mediation:** Within sixty (60) days, but no earlier than thirty (30) days, following the filing of a responsive pleading, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation by both parties. The mediation process shall provide for the selection within fifteen (15) days by both parties of a disinterested third person as mediator, shall be commenced within thirty (30) days of the submittal, and shall be concluded within fifteen (15) days from the commencement of the mediation unless a time requirement is extended upon a good cause shown to the court. If the parties fail to select a mediator within the 15 day period, any party may petition the court to appoint the mediator.

- c. **Rights and Remedies.** The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon Contractor by the General Conditions and amendments thereto and all of the rights and remedies available to Tribal Council and Tribal Council's Representatives thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by laws or regulations by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

- d. **Attorney's Fees and Costs.** In the event that any action, suit or other proceeding is instituted to enforce any provision of this Contract, and/or to remedy, prevent, or obtain relief from a breach of this Contract, the prevailing party shall be entitled to recover all of its attorney's fees and costs incurred in each and every such action, suit or other proceeding, including any and all appeals or petitions therefrom, except as may be provided to the contrary above. As used herein, attorney's fees shall be deemed to mean the full actual costs of any legal services actually performed in connection with the matters involved, calculated on the basis of the usual fees charged by the attorneys performing such services and shall not be limited to "reasonable attorney's fees" as defined by any statute or rule of court.

**Article 59. INTEGRATION**

- a. **Oral Modifications Ineffective.** No oral order, objection, claim or notice by any party to the other shall affect or modify any of the terms or obligations contained in any of the Contract Documents and none of the provisions of the Contract Documents shall be held to be waived or modified by reason of any act whatsoever, except by a waiver or modification thereof in writing and signed by the authorized representative of the Tribal Council and the Contractor.
  
- b. **Contract Documents Represent Entire Contract.** The Contract Documents represent the entire understanding of the Tribal Council and Contractor as to those matters contained therein, and no prior oral or written understanding shall be of any force or effect with respect to those matters covered by the Contract Documents.

**Article 60. NOTICE OF TAXABLE POSSESSORY INTEREST**

The terms of this document may result in the creation of a possessory interest. If such a possessory interest is vested in a private party to this document, the private party may be subjected to the payment of personal property taxes levied on such interest.

**Article 61. MISCELLANEOUS**

These Contract Documents shall be interpreted in accordance with the laws of the United States of America. If any action is brought to interpret or enforce any term of these Contract Documents, the action shall be brought in the California Eastern District court situated in the City of Fresno, State of California. Except as otherwise provided in these Contract Documents, in the event of any such litigation between the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorney's fees, as determined by the court.

**[END OF GENERAL CONDITIONS DOCUMENT]**

**EXHIBIT C**

**FINAL TANK SITE TOPO MAP**

