



TULE RIVER TRIBAL COUNCIL

TULE RIVER INDIAN RESERVATION

REQUEST FOR PROPOSALS

Water Sustainability Study

For The

Hyder Ranch Area Residential Subdivisions

PROPOSALS DUE: 2:00 P.M., Wednesday, November 2, 2016

SUBMIT TO: Neil Peyron, Chairman
Tule River Tribal Council
P.O. Box 589
Porterville, CA 93258

Any hand delivered, overnight or two (2) day deliveries can be sent to:

Neil Peyron, Chairman
Tule River Tribal Council
340 N. Reservation Road
Porterville, CA 93257

Sealed Bids mailed to the P.O. Box address, hand delivered or delivered by courier will not be opened if they are received after the bid opening time.

Note: Proposals shall include ONE (1) original, and SIX (6) copies, (no faxed or emailed submissions) are to be submitted.

REQUEST FOR PROPOSALS
TO COMPLETE A
WATER SUSTAINABILITY STUDY

Request

The Tule River Tribal Council is inviting proposals from qualified professionals to conduct a water sustainability study in compliance with SB 610 for a proposed:

- 1) Hyder Ranch Subdivision – 54 unit single family homes

APN: 305-01-025 – 87.27 acres
305-01-026 – 72.73 acres
305-07-012 – 215.44 acres

- 2) Tomatoe Patch Subdivision – 114 unit single family homes

APN: 305-07-08 – 89.43 acres

- 3) Traylor Property Subdivision – 77 unit single family homes

APN: 305-07-002 – 57.55 acres

The planned developments are located at the southwest and southeast corner of Reservation Road and Road 296 (Deer Creek Road). Located on gradually sloping foothill property these subdivisions would utilize five (5) existing domestic wells and up to two (2) new domestic wells to meet all water needs. The project site is located approximately eight miles east of the City of Porterville.

The County of Tulare - Resource Management Agency has, as a requirement of submittal of a tentative map application, required the preparation of a SB 610 water sustainability study and report addressing the project's potential impacts on the local water basin and the potential for the local water basin to sustain development without over-drafting of the water table.

Study goal:

The purpose of this study is to identify impacts that might be generated by the proposed project on the local water basin and offer effective mitigation measures and design considerations to alleviate those impacts. More specifically, the underlying goal of this study is to assess the sustainability of water resources available to serve the proposed developments. The proposed developments will use groundwater to serve the residential development needs and is to be classified under the State of California guidelines as a small public water system.

Scope of Services:

General tasks are as follows: The study will require the consultant to;

- Identify the extent of the water basin the project is located in.

- Collect all available well logs and pumping records for wells located within a mile radius of the site.
- Survey and review the area's climate history.
- Collect all available water studies and reports as well as existing data addressing water quality and quantity.
- Identify both surface and groundwater availability for an area within a radius of one mile.
- Map agricultural activities
- Where recent information is not available, conduct a pump test of the existing wells on-site inclusive of a drawn-down and rate of recovery test.
- Map all results.
- Map areas and levels of possible contamination.
- Make a determination of sufficiency of the groundwater within the basin.
- Document projected demands created by the combined 245 unit residential development
- Make recommendations on the maximum number of single family housing units the water basin can sustain.

The development will be served by a minimum of two 110,000 gallon water tanks situated one hundred feet above the projects connected to each home by a six inch main line and two inch laterals. Note that the projects are located in the State Responsibility Area (SRA). Fire hydrants will be provided on average of every four hundred lineal feet.

1. Existing Conditions: Again, the selected consultant will clearly define the study area and observe and document current water conditions within that area, collecting data as needed at appropriate locations.
2. Future Conditions: The selected consultant will obtain information regarding proposed development in the area through interviews with the County of Tulare Resource Management Agency and evaluate the likely impact of the pending development upon the Tribe's proposed project.
3. Existing Conditions: The selected consultant will also obtain information from the County of Tulare regarding well logs, water studies, and existing ground water conditions to gain a sense of current conditions near the site.
4. Current and Future Water Development Regulations: The selected consultant will review both State and local regulations regarding water use impacts and potential pending regulations which would impact development by limiting the drilling and development of new domestic water wells.
5. Projections and Mitigation: The selected consultant will utilize their results to identify possible mitigation measures necessary to alleviate or eliminate perceived problems generated by the project and ascertain the maximum number of individual single family homes which can be supported under a sustainable water management plan.
6. Final Recommendations: The selected consultant will develop a list of physical and operational improvements and a menu for proposed short term and long term interventions.

Project Deliverables:

This study will result in a report containing the following:

1. Executive Summary;
2. Narrative summarizing tasks;
3. Existing Conditions Analysis that details present groundwater conditions and issues;

4. Projections and Mitigation, which includes projections of water yields as well as recommendations, such as the use of gray water management systems or on-site recharge of storm water run-off, open to the development.
5. Summary of impacts on planned residential development from existing and proposed regulations governing water use or restrictions on development of future subsurface water supplies and a table of maximum potential housing units that can be developed within each subdivision.
6. Alternatives and Strategy, which includes a menu of specific interventions to improve the efficient use of local water resources within locations identified.

Proposals should specify in detail what will be produced for each task and identify any critical tasks and deliverables that have not been included in this document.

Schedule:

1. Proposals Due: 2:00 p.m., Wednesday, Nov. 2nd, 2016
2. Consultant Proposal Review: Nov. 3rd thru 9th, 2016
3. Consultant Selection: November 9th, 2016
4. Anticipated award date and project start: Nov. 10th, 2016
5. Project Completion: Feb. 25th, 2017

Submission Requirements:

One original and six bound copies must be submitted to the Tule River Tribal Council on or before Oct. 28, 2016, by 2:00 p.m. in a sealed envelope.

Address proposals to:

Chairman Neil Peyron
Tule River Tribal Council
P.O. Box 589
340 N. Reservation Road
Porterville, CA 93258
Attn: Robert Camarena (Robert.Camarena@tulerivertribe-nsn.gov)

Proposals:

The Consultant team must include one qualified engineer specializing in water systems and a hydrologist familiar with the east side water conditions of the Central San Joaquin valley, either within the one company or a joint venture with a lead firm. Engineering, civil engineering and general engineering firms with civil/hydrological engineering departments will be considered as prime consultants for this project. Sub consultants may be designated and utilized for work as outlined in proposals.

The proposal must contain the following:

1. Executive Summary, which includes a cover letter describing the firm(s) and acknowledging interest in the project. Include a primary contact person, mailing and email address, telephone and fax number.

2. Firm Description and History, including those of any sub-consultant firms. Include relevant experience on other projects of similar size and type competed within the last 5 years.

The consultant must specify individuals (including those from sub consultants) for key positions and must include their resume. One person may fill two positions listed below. The resume must be current and must specify educational qualifications and experience related to this type of project. Key positions include the following:

Project Director/ Manager - shall be responsible for all aspects of the Project including proposal preparation, contract negotiation, contract administration, task direction, and scheduling of team members and sub consultants, presentations, submission of deliverables and payment requests.

Project Engineer - shall be a Registered Civil Engineer in California, responsible for civil engineering portions of the Project.

The Team shall agree that the Project Director, Project Engineers, and Project team identified in the proposal shall be the persons utilized throughout the Project. Any change in the status of those positions must be submitted in writing and be approved by the Tribe.

3. Description of the Proposed Approach and Methodology for carrying out the Scope of Services. Organization of the project team and the roles and responsibilities of individual members shall be clearly set forth in the proposal.

4. Economic Opportunity Participation

The Tribe is firmly committed to providing full and equal business opportunities to all persons regardless of race, color, religion, gender, national origin, age or non-job related disability. In that regard, the Tribe will affirmatively assure that minority, female and disabled person-owned business enterprises are afforded equal opportunities to submit proposals for consideration. Prospective proposers should understand that the participation of certified firms is a matter of great interest in the evaluation of all proposals.

5. Proposed Fee for services shall be presented as a lump sum fee, but shall include information indicating hourly rates and number of hours for all personnel. The fee must be broken out by task as described in the Scope of Services. Additional tasks may be recommended in the proposal. However, they should be identified as such. Expenses, profit and overhead should be included as part of the lump sum fee.

6. Schedule of Completion.

7. Debarment Form attached as Exhibit "B"

8. Non-Competitively Bid contract Disclosure Form (NBC-1)

Proposals submitted in response to this RFP must include a cover letter signed by the person authorized to issue the proposal on behalf of the Applicant and include the Applicant's business identification information, including name, business address, telephone number, website address, and federal taxpayer identification number (TIN) or federal employer identification number (FEIN).

Selection:

A. Process

The Tribe will evaluate all submissions for completeness and compliance with the terms and conditions of the RFP. As described above, the Selection Committee consisting of representatives from the Land Management and Planning Departments, and the Tribal Housing Authority staff will evaluate the qualifications of submittals.

B. Criteria

The Selection Committee will evaluate all proposals received by the Tribe and will first be reviewed by the team for completeness. The team will rank the submissions according to the following criteria, but not necessarily in this order:

1. Qualifications and Experience of Firms and Personnel

The Selection Committee will evaluate the consultant's projects that demonstrate the consultant's experience, expertise and quality of work. If the proposal is a joint venture, the Selection Committee will evaluate the sub consultant's work and the experience of the project team working together. Qualifications of personnel will be evaluated by education, experience and demonstrated expertise in related projects.

2. Understanding of the Project

The Selection Committee will evaluate the consultant's understanding of the Project's goals and objectives as shown through the overall conceptual approach, organization, schedule and allocation of resources by task, methodologies, and presentation of the proposal.

3. Responsiveness to the Tribe's proposal

4. Fee

5. Schedule

Additional notes:

1. All costs for preparation of proposals shall be borne by the proposer.
2. Tribal staff and their designated agents or representatives shall review each proposal and select the one that they believe is most advantageous to the Council.
3. The Tule River Tribal Council will make the final selection and award. The Tribal Council may or may not decide to interview the recommended contractor prior to the award.
4. This request does not constitute an offer of employment or to contract for services.
5. The Council reserves the right to reject any and all submittals received in response to this Request for Proposals, wholly or in part.
6. The Council reserves the right to retain all proposals, whether selected or rejected.
7. All proposals shall remain firm for sixty (60) working days following the closing date for receipt of proposals.
8. Failure to provide sufficient information for the evaluation criteria will result in being deemed unresponsive. We reserve the right to verify the validity of all information provided.

9. The successful Contractor will be expected to enter into a contract of substantially the same format as the attached sample form Exhibit "C".
10. Council reserves the right to award the contract to the contractor that, in the sole judgment of the Council, can best accomplish the desired results. Selection criteria include, but are not limited to, consideration of the contractor's qualifications and experience, the contractors understanding and approach to the project, and the proposed fees for service.
11. Preference in the award of the contract shall be given to Indian and Alaskan Native organizations and economic enterprises. The Council may give preference to a fifty one percent Indian-owned economic enterprise so long as the bid by this enterprise does not exceed the lowest bid submitted by more than five (5) percent.
12. The Council reserves the right to negotiate further with the successful contractor.
13. All firms submitting proposals shall maintain errors and omissions insurance.

For additional information, please see the following:

Exhibit "A": Certification Regarding Debarment, Suspension, and Other Responsibility Matters

Exhibit "B": Site Maps for the Proposed Subdivisions

Exhibit "C": Sample Agreement

Signed:

NEIL PEYRON,

Chairman, Tule River Tribal Council

INDIAN EMPLOYMENT OF SUBCONTRACTS -INDIAN PREFERENCE

Pursuant to Section 7(b) of the Indian Self-Determination and Assistance Act, as amended, to the greatest extent feasible, this RFQ and any subcontracts awarded shall require Indian preferences. In addition, preference in the award of subcontracts shall be given to qualified Indian organizations and to Indian-owned economic enterprises. Pursuant to Section 7(c) of the Indian Self-Determination and Assistance Act, as amended, the tribal employment or contract preference laws adopted by such Tribe shall govern with respect to the administration of the contract or portions of the contract.

EXHIBIT "A"



TULE RIVER TRIBAL COUNCIL

TULE RIVER INDIAN RESERVATION

TULE RIVER TRIBAL COUNCIL

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND

OTHER RESPONSIBILITY MATTERS

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

2. Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and

4. Have not within a three year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 U.S.C. Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Name of Firm Submitting Bid

Signature and Title of Authorized Official

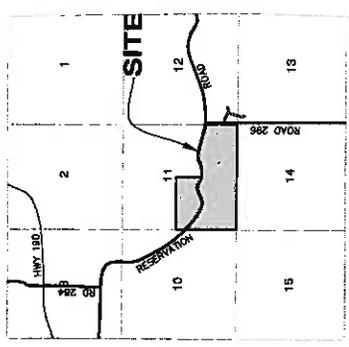
Date

I am unable to certify to the above statements. Attached is my explanation.

Prime or Subcontractor's Name: _____

Telephone Number: _____

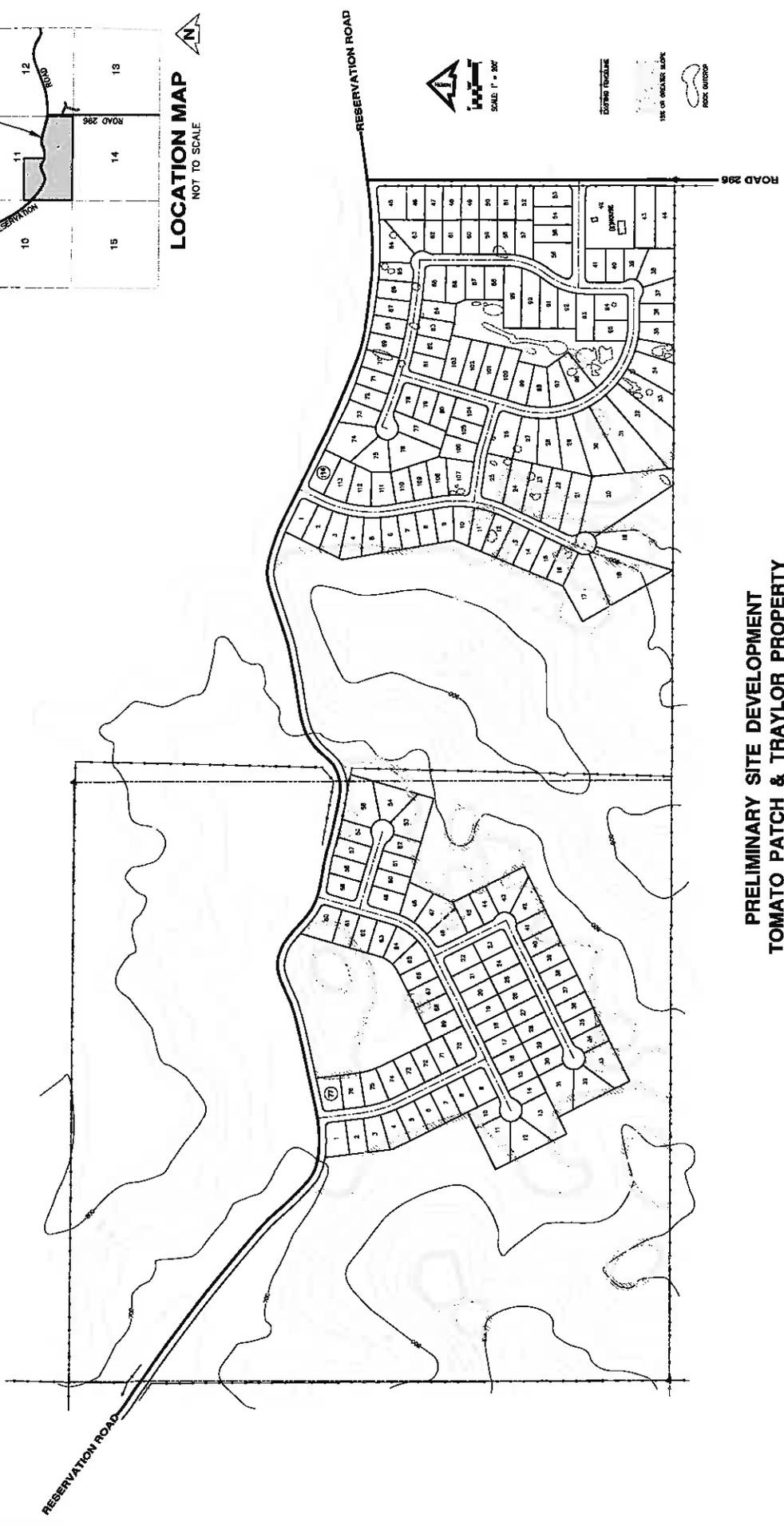
EXHIBIT "B"



LOCATION MAP
NOT TO SCALE



- EXISTING STRUCTURE
- USE OR BOUNDARY BLOCK
- ROCK OUTCROP



**PRELIMINARY SITE DEVELOPMENT
TOMATO PATCH & TRAYLOR PROPERTY**

TOTAL LOTS: 191
MINIMUM LOT SIZE: 12,000 SF

PRELIMINARY SITE PLAN

For
TULSA TRIBAL COALITION
 1000 W. G. WALKER BLVD.
 TULSA, OKLA. 74106-0000
 (918) 761-1234

By
JAMES WINTER & ASSOCIATES
 1000 W. G. WALKER BLVD., SUITE 1000
 TULSA, OKLA. 74106-0000
 (918) 761-1234



LOCATION MAP
 LOT 10 TO LOT 18

54 Home Sites

Average Home Site Size = 40,000 S.F.

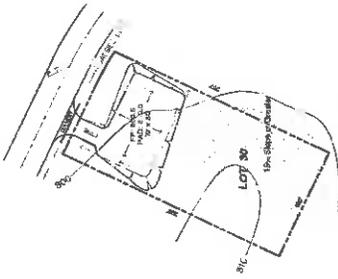
- DEVELOPMENT SCHEDULE:**
- Phase 1 - 10 Home Sites
 Wood Paving Lot
 - Phase 2 - 10 Home Sites
 1 Ball Field
 1 Swimming Pool
 - Phase 3 - 34 Home Sites
 1 Ball Field
 Community Garden

NOTES

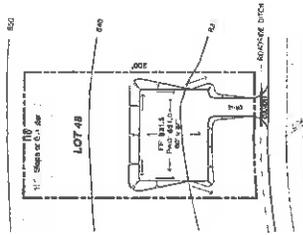
1. ALL DIMENSIONS ARE IN FEET. UNLESS OTHERWISE NOTED.
2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
3. EXISTING UTILITIES ARE SHOWN AS DASHED LINES.
4. EXISTING UTILITIES ARE TO REMAIN UNLESS OTHERWISE NOTED.
5. EXISTING UTILITIES ARE TO BE DELETED UNLESS OTHERWISE NOTED.
6. SERVICE LINES SHALL BE INSTALLED ON ALL LOTS.
7. THE LOCATION OF EXISTING UTILITIES IS TO BE DETERMINED BY FIELD SURVEY.
8. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
9. INTERLOCK CONCRETE PAVEMENT.

LEGEND

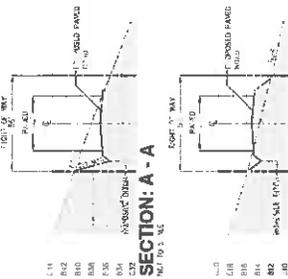
- - - - - EXISTING DRAINAGE
- - - - - PROPOSED DRAINAGE
- - - - - 1" = 10' HORIZONTAL SCALE
- - - - - 1" = 10' VERTICAL SCALE
- - - - - 1" = 10' HORIZONTAL SCALE
- - - - - 1" = 10' VERTICAL SCALE
- - - - - 1" = 10' HORIZONTAL SCALE
- - - - - 1" = 10' VERTICAL SCALE



TYPICAL HOME SITE GRADING
 LOT 48
 10' DRIVEWAY
 10' SIDEWALK

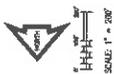
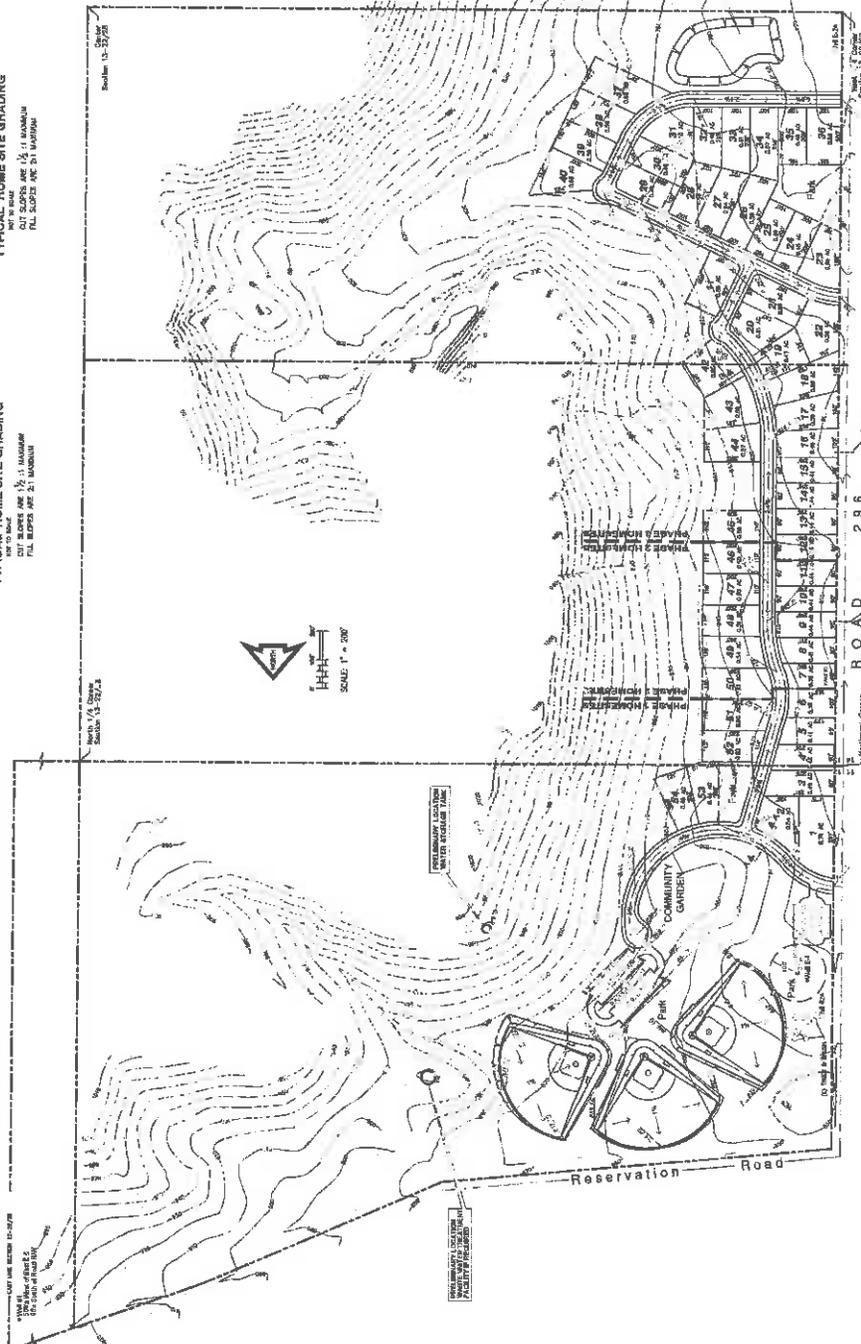


TYPICAL HOME SITE GRADING
 LOT 49
 10' DRIVEWAY
 10' SIDEWALK



SECTION A - A
 1" = 10' HORIZONTAL SCALE
 1" = 10' VERTICAL SCALE

SECTION B - B
 1" = 10' HORIZONTAL SCALE
 1" = 10' VERTICAL SCALE



SCALE 1" = 200'

EXHIBIT "C"



TULE RIVER TRIBAL COUNCIL TULE RIVER INDIAN RESERVATION

(SAMPLE) AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of _____, _____ ("Effective Date") between

_____ ("Owner") and

_____ ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

_____ ("Project").

Engineer's services under this Agreement are generally identified as follows:

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 Scope

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 General

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Exhibit C.
- C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 *Commencement*

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 *Time for Completion*

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay.* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
 1. Amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.

- C. *Disputed Invoices:* If Owner contests an invoice, Owner shall promptly advise Engineer of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.
- D. *Legislative Actions:* If after the Effective Date any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall reimburse Engineer for the cost of such invoiced new taxes, fees, and charges; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – GENERAL CONSIDERATIONS

5.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
 - 1. Engineer and Owner shall comply with applicable Laws and regulations.
 - 2. Prior to the Effective Date, Owner provided to Engineer in writing any and all policies and procedures of Owner applicable to Engineer's performance of services under this Agreement. provided to Engineer in writing. Engineer shall comply with such policies and procedures, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. Changes after the Effective Date to these Laws and Regulations, or to Owner-provided written policies and procedures, may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.
- F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose

existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.

G. Use of Documents

- A.** All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.
- B.** Either party to this Agreement may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern. If the parties agree to other electronic transmittal procedures, such are set forth in Exhibit J.
- C.** Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D.** When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E.** Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the Documents and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- F.** If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

5.02 Insurance

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. All policies of property insurance relating to the Project shall contain provisions to the effect that Engineer's and its Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds, additional insureds, or loss payees thereunder.
- C. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 30 days prior written notice has been given to Owner and Engineer and to each other additional insured (if any) to which a certificate of insurance has been issued.
- D. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

5.03 Suspension and Termination

A. Suspension:

- 1. By Owner: Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
- 2. By Engineer: Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Engineer's performance has been substantially delayed through no fault of Engineer.

B. Termination: The obligation to provide further services under this Agreement may be terminated:

- 1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
 - b. By Engineer:
 - 1) Upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) Upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.

3) Engineer shall have no liability to Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.04.b.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience,

a. By Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination:* The terminating party under Paragraph 6.04.a may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. *Payments Upon Termination:*

1. In the event of any termination under Paragraph 6.04, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.02.E.

2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.04.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit A.

5.04 *Controlling Law*

A. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.

5.05 *Successors, Assigns, and Beneficiaries*

A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
 - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Subcontractor, Supplier, other individual or entity, or to any surety for or employee of any of them.
 - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
 - 3. Owner agrees that the substance of the provisions of this Paragraph 6.06.C shall appear in the Contract Documents.

5.06 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights under law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights under law.

5.07 *Environmental Condition of Site*

- A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- C. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner" "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

5.08 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from reasonable claims, costs, losses, and damages arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."**
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations and to the extent (if any) required in Exhibit I, Limitations of Liability.
- C. *Environmental Indemnification:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *Percentage Share of Negligence:* To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- E. *Mutual Waiver:* To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

5.09 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 6 – DEFINITIONS

6.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following provisions:
 - 1. *Additional Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
 - 2. *Agreement* – This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
 - 3. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 - 4. *Basic Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
 - 5. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the

Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

6. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.
7. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work.
8. *Effective Date* – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
9. *Engineer* – The individual or entity named as such in this Agreement.
10. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
11. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
12. *Owner* – The individual or entity with which Engineer has entered into this Agreement and for which the Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
13. *PCBs* – Polychlorinated biphenyls.
14. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-hazardous waste and crude oils.
15. *Project* – The total of the Work to be performed under the Contract Documents may be the whole, or a part.
16. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
17. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
18. *Site* – Lands or areas to be indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Consultant for any and all exploratory investigations.

19. *Work* – The entire investigation, surveys and related items or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such studies, reports, drawings and cost estimations as required by the Contract Documents.

ARTICLE 7 – EXHIBITS AND SPECIAL PROVISIONS

7.01 *Exhibits Included:*

- A. Exhibit A, Engineer's Proposal.
- B. Exhibit B, Insurance.
- C. Exhibit C, Dispute Resolution.

7.02 *Total Agreement:*

- A. This Agreement, (together with the exhibits identified above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument based on the format of Exhibit F to this Agreement.

7.03 *Designated Representatives:*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of the respective party whom the individual represents.

7.04 *Engineer's Certifications:*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 - 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner:

Engineer:

By: _____

By: _____

Title: _____

Title: _____

Date _____

Date _____

Signed: _____

Signed: _____

Engineer License or Firm's
Certificate No. _____

State of: _____

Address for giving notices:

Address for giving notices:

Designated Representative (Paragraph 8.03.A):

Designated Representative (Paragraph 8.03.A):

Title: _____

Title: _____

Phone Number: _____

Phone Number: _____

Facsimile Number: _____

Facsimile Number: _____

E-Mail Address: _____

E-Mail Address: _____

EXHIBIT A

Engineer's Services / Owner's Responsibilities

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

A1.01 Study and Report Phase

A. Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the Project and available data.
2. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B which are not part of Engineer's Basic Services.
3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Engineer, including but not limited to mitigating measures identified in the environmental assessment.
4. Identify and evaluate [insert specific number or list here] alternate solutions available to Owner and, after consultation with Owner, recommend to Owner those solutions which in Engineer's judgment meet Owner's requirements for the Project.
5. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to Owner which Engineer recommends. For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a summary of allowances for other items and services included within the definition of Total Project Costs.
6. Perform or provide the following additional Study and Report Phase tasks or deliverables: [here list any such tasks or deliverables]
7. Furnish ___ review copies of the Report and any other deliverables to Owner within ___ calendar days of the Effective Date and review it with Owner. Within ___ calendar days of receipt, Owner shall submit to Engineer any comments regarding the Report and any other deliverables.
8. Revise the Report and any other deliverables in response to Owner's comments, as appropriate, and furnish ___ copies of the revised Report and any other deliverables to the Owner within ___ calendar days of receipt of Owner's comments.

- B. Engineer's services under the Study and Report Phase will be considered complete on the date when the revised Report and any other deliverables have been delivered to Owner.
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A1.02 *Preliminary Design Phase*

- A. After acceptance by Owner of the Report and any other deliverables, selection by Owner of a recommended solution and indication of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, and upon written authorization from Owner, Engineer shall:
1. Provide necessary field surveys and topographic and mapping as required for analytical purposes..
 2. Advise Owner if additional reports, data, information, or services of the types are necessary and assist Owner in obtaining such reports, data, information, or services.
 3. Perform or provide the following additional Preliminary Study Phase tasks or deliverables: [here list any such tasks or deliverables]
 4. Furnish ___ review copies of the Preliminary Study documents and any other deliverables to Owner within ___ calendar days of authorization to proceed with this phase, and review them with Owner. Within ___ calendar days of receipt, Owner shall submit to Engineer any comments regarding the Preliminary Study Phase documents and any other deliverables.
 5. Revise the Preliminary Study Phase documents and any other deliverables in response to Owner's comments, as appropriate, and furnish to Owner ___ copies of the revised Preliminary Study Phase documents.

A1.03 *Final Study Phase*

- A. After acceptance by Owner of the Preliminary Study Phase documents, and any other deliverables subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:
1. Prepare final Reports and Drawings indicating the scope, extent, and character of the Work.
 2. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project; assist Owner in consultations with such authorities; and revise the Reports or Drawings in response to directives from such authorities.
- B. Engineer's services under the Final Report Phase will be considered complete on the date when the submittals have been delivered to and accepted by, the Owner.

PART 2 – ADDITIONAL SERVICES

A2.01 *Additional Services Requiring Owner's Written Authorization*

- A. If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and
-

impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
3. Services resulting from significant changes in the scope, extent, or character of the portions of the Work designed or specified by Engineer, including but not limited to, changes in size, complexity, Owner's schedule, revising previously accepted studies, reports, Drawings, when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to as a part of the Contract.
5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
6. Furnishing services of Consultants for other than Basic Services.
7. Services during out-of-town travel required of Engineer other than for visits to the Site or Owner's office.
8. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.
9. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.

PART 3 – OWNER'S RESPONSIBILITIES

Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.
 - B. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 1. Property descriptions.
 2. Zoning, deed, and other land use restrictions.
-

3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions relating to existing surface or subsurface structures at the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
 5. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
- C. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services or in the Work.
- D. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.
- E. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- F. Examine all alternate solutions, studies, reports, sketches, drawings and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- G. Perform or provide the following additional services: *[Here list any such additional services]*.
-

EXHIBIT B INSURANCE

- A. Consultant shall procure and maintain insurance as set forth below and shall cause Council, its employees and agents to be listed as an additional insured on any applicable general liability insurance policy carried by Consultant.
- Workers' compensation
 - Automotive with minimum \$1,000,000.00 coverage.
 - General liability with minimum \$1,000,000.00 coverage.
 - Errors and omissions.
- B. Council shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, property damage (other than to the Work itself), motor vehicle damage and injuries, and other insurance necessary to protect Council's and Consultant's interests in the Project.
- C. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 30 days prior written notice has been given to Council and Consultant and to each additional insured (if any) to which a certificate of insurance has been issued.
-

EXHIBIT C

Dispute Resolution

Paragraph 6.08 of the Agreement is amended and supplemented to include the following agreement of the parties:

H6.08 *Dispute Resolution*

- A. *Mediation*: Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation by *[insert name of mediator, or mediation service]*. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.