

**PROJECT MANUAL  
for**

**PROJECT: Wells Band Multi-Purpose Center  
Wells Band of the Te-Moak Tribe of Western Shoshone Indians**

**Contracting Officer**

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Wells Band  
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Wells, Nevada, 89835  
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**Project Manager**

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**Wells Band of the Te-Moak Tribe of Western Shoshone Indians - Multi-Purpose Community Center**  
**INVITATION FOR CONSTRUCTION BIDS**

(WELLS BAND MULTI-PURPOSE CENTER)

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Date: November 11, 2010

Project: WELLS BAND MULTI-PURPOSE CENTER

The Owner, WELLS BAND OF THE TE-MOAK TRIBE OF WESTERN SHOSHONE INDIANS is seeking bids for construction of a MULATI-PURPOSE CENTER at the WELLS BAND COLONY, WELLS, NEVADA. The work consists of

Bids will be received and accepted until 4:00 p.m. on SEPTEMBER 24, 2010, at the address below after which time they will be opened, read aloud, and accepted for consideration. Bids received after this time will not be accepted.

This project is subject to Indian preference, but bids are invited from non-Indian as well as qualified Indian-owned economic enterprises or organizations. Indian enterprises or Indian organizations must prequalify for Indian preference by first submitting evidence of Indian ownership and control to the Owner no later than 3 days prior to bid opening. Specific details of the information to be submitted and preference criteria are set forth in the Instructions to Bidders.

Award will be made to the lowest responsive and responsible bidder, but only after preference is given to Indian bidders using the "X" factor explained in the Instructions to Bidders.

The Owner reserves the right to reject any and all bids and to waive any irregularities.

A pre-bid conference will take place on the Wells Colony, Wells, Nevada at the Wells Band Administration Office, Mountain View Drive at the following date and time:

December 1, 2010 at 2:00 p.m.

Information, bid documents, drawings and specifications may be obtained digitally from the ARCHITECT at no charge on the website: [www.r6studio.com](http://www.r6studio.com)

**ARCHITECT: Catherine Wines, r6studio**  
401 Railroad Street ste 309  
Elko, Nevada  
Catherine@r6studio.com

## INSTRUCTIONS TO BIDDERS

(Wells Band Multi-Purpose Center)

**1.0 PRE-BID CONFERENCE.** There will be no pre-bid conference. All visitors to the site are to contact the Wells Band prior to visiting.

**2.0 BID FORM.** All Bids must be submitted on the "Proposal for Lump Sum Bid" form attached hereto as Instructions to Bidders Attachment # 1. Attached to the Bid must be the required (1) Bid bond; (2) Non-collusive Affidavit; (3) Previous Participation Certification; and (4) Statements Regarding Indian Preference in Subcontracting, Employment and Training, all of which are attached to these Instructions to Bidders.

**3.0 BID ACCEPTANCE PERIOD.** All bids shall remain open for 45 calendar days from the date the bids are opened.

**4.0 SUBSTITUTIONS.** Identification of material or equipment by a single manufacturer's name or trade name is not meant to give preference to any one manufacturer or to limit competition, but is merely to establish a standard of quality. To obtain prior approval to use unspecified products, bidders shall submit written requests at least 10 days before the bid opening date. Requests received after this time will not be considered. Requests shall clearly describe the product for which approval is asked, including all data necessary to demonstrate acceptability. If the product is acceptable, the Owner or its Architect will approve it in an addendum issued to all bidders on record.

**5.0 BID SECURITY.** Bid security must be submitted in the amount of 5% of the bid in the form of a bid bond secured by a surety company listed in the current U.S. Treasury Circular 570 Surety Companies, acceptable on Federal Bonds, in the form attached as Instructions to Bidders Attachment # 2, or by a certified check in the amount of 5% of the bid. The Owner may accept a letter of credit as bid security or in lieu of a certified check or bid bond. If bids are submitted without a proper bid security, they will be returned to the bidder as a non-responsive bid. A bid security furnished after the bid opening will not be accepted.

**6.0 PAYMENT AND PERFORMANCE SECURITY.** The successful bidder must furnish security for its performance of the Contract and payment of suppliers and contractors. Such security may be in either a Payment and Performance Bond or in an Irrevocable Letter of Credit using the forms attached to the Contract. The specific requirements for these are outlined in the General Conditions, section 6.

**7.0 AWARD OF CONTRACT AND INDIAN PREFERENCE USED IN THE AWARD.** The Contract will be awarded to the lowest responsive and responsible bidder except as limited by the following paragraph.

Pursuant to Section 7(b) of the Indian Self-Determination and Education Assistance Act and HUD requirements set forth at 24 C.F.R.1000.52, if a Contract is awarded, the Contract will be awarded to the lowest responsive and responsible bid received from a pre-qualified Indian enterprise or organization if such bid is within budgeting limits established for construction of this project and is no more than "X" percent higher than the lowest responsive bid from any qualified non-Indian bidder.

"X" is determined as follows: **X** equals the lesser of, when the lowest responsive bid is,

Less than \$400,000--**6% of that bid**;

At least \$400,000 but less than \$500,000--**4% of that bid**

At least \$500,000 and more --**2% of the lowest responsive bid, with no dollar limit**

If no responsive and responsible bid by a qualified Indian enterprise or organization is within the stated range, the award will be made to a responsible bidder with the lowest responsive bid.

**8.0 PRE-QUALIFICATION OF BIDDERS SEEKING INDIAN PREFERENCE.** Indians, Indian enterprises or Indian organizations seeking to qualify for preference in the award of this Contract shall submit the following proof of Indian ownership and control to the Owner:

a. Certification by a tribe that an individual applicant is an enrolled member;

b. Evidence of not less than 51% Indian ownership and control of the bidding entity, such as stock ownership, structure, management control, financing, and salary or profit sharing arrangements of the enterprise.

The evidence of eligibility must be submitted to the Owner no later than the pre-bid conference. The evidence submitted must be sufficient to demonstrate not less than 51% Indian ownership and control as well as the ability to properly perform the work to the satisfaction of the Owner. The Owner will attempt to notify all applicants as to eligibility for Indian preference prior to the bid opening.

## **Wells Band of the Te-Moak Tribe of Western Shoshone Indians - Multi-Purpose Community Center**

An Indian or Indian-owned bidder who is awarded the Contract under Indian preference is required to maintain not less than 51% Indian ownership and control during the Contract or be in material breach of the Contract. Any changes in ownership and control after the submission of evidence of Indian ownership and control must be reported to and approved by the Owner.

**9.0 STATEMENTS REGARDING INDIAN PREFERENCE IN SUBCONTRACTING, EMPLOYMENT AND TRAINING.** All bidders, both Indian and non-Indian, are required to submit with their bids a statement describing how they will provide Indian preference in the award of subcontracts on the form prescribed, Instructions to Bidders Attachment #3. The specific requirements of that statement and the factors to be used by the Owner in determining the adequacy of the statement are as follows:

a. A statement describing the bidder's plan to provide Indian preference in subcontracting, including how eligibility for preference will be determined, the procedures that will be followed by the bidder for qualifying subcontractors for Indian preference, the documentation that must be submitted by subcontractors seeking to qualify for Indian preference, how Indian preference in the award of subcontracts will be made, and any other miscellaneous information.

b. All bidders are also required to submit with their bids a statement detailing their employment and training opportunities. The specific requirements of that statement are as follows:

1. A statement detailing the bidder's employment and training opportunities and its plans to provide preference to Indians in implementing the Contract; and

2. The number or percentage of Indians anticipated to be employed and trained.

Statements detailing employment and training opportunities will be evaluated based on criteria such as the methods proposed to provide employment and training opportunities, past evidence of the success of the bidder in providing employment and training pursuant to a plan, feasibility of the submitted plan, and the number or percentage of Indians proposed to be employed and trained as compared to the number of employees anticipated to be needed on the project and the size of the project.

The Owner may reject a bid if it determines that the Statement does not represent, in its opinion, a good faith effort to promote such preference.

**10.0 SUBMISSION OF NAMES OF ANY CORE CREW EMPLOYEES.** For purposes of administering Indian employment preference, each bidder must submit for the Owner's approval a list of all core crew employees (if any) in their Proposal for Bid.

**11.0 PREVIOUS PARTICIPATION CERTIFICATION.** The Bidder must submit with his bid a completed Previous Participation Certification which is included as Instructions to Bidders Attachment #4, setting forth a history of projects over \$50,000 worked on over the previous 7 years by the bidder and any of its principals.

**12.0 NON-COLLUSIVE AFFIDAVIT.** The bidder must submit with its bid a Non-Collusive Affidavit, in the form shown as Instructions to Bidders Attachment #5 signed and sworn to by the individual, partner or corporate officer submitting the bid.

**13.0 TERO.** The successful bidder must comply with the Tribe's Tribal Employment Right's Ordinance (TERO) including paying any and all TERO taxes and any licensing requirements, except Tribal minimum wage rates shall not apply if they are in conflict with any federal prevailing wage rates.

**14.0 RIGHT TO REJECT ANY AND ALL BIDS.** This solicitation does not commit the Owner to award a Contract nor to pay any costs incurred in the preparation of bids or the procurement of supplies. The Owner reserves the right to reject any and all bids, to waive any informalities or irregularities and to re-advertise when it is in the best interest of the Owner.

**15.0 SERVICE OF PROTESTS.** Any bid protest must be made in writing and shall be served on the Owner at the address listed in the Invitation to Bid within 20 days after the event triggering the protest. Within 20 days of receipt of a protest, the Owner will contact the complainant in an effort to resolve the matter. The Owner shall make a determination on the protest and notify the complainant, in writing, within 30 days of receipt of the protest. The decision of the Owner shall constitute final administrative action on the protest. A protest will not necessarily delay any award of the Contract, such a decision to be at the discretion of the Owner.

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Instructions to Bidders Attachment #3 Statements Regarding Indian Preference in Subcontracting, Employment and Training  
Instructions to Bidders Attachment #4 Previous Participation Certification  
Instructions to Bidders Attachment #5 Non-Collusive Affidavit

Instruction to Bidders Attachment #1

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**PROPOSAL FOR LUMP SUM BID**

Project name: WELLS BAND MULTI-PURPOSE CENTER

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

Bid submitted by: \_\_\_\_\_,

\_\_\_\_\_ (state whether bidder is corporation, partnership, individual, etc.)

To: Chairman of the Wells Band (hereinafter called Owner)

Gentlemen:

1. The undersigned acknowledges having visited the site and having familiarized itself with the local conditions affecting the cost of the work. The undersigned further acknowledges that it has received and has familiarized itself with the following:

Bidding and Contract Documents:

- Addenda (if any)
- Invitation for Construction Bids
- Instructions to Bidders (with attachments 1-5)
- Contract (with attachments 1-6)
- General Conditions
- Special Conditions (if any)
- Technical Specifications
- Drawings

2. In submitting this bid, the undersigned agrees:

To furnish all material, labor, tools, expendable equipment, and all utility and transportation services necessary to perform and complete, in a workmanlike manner, all of the work required in accord with the Contract Documents for the consideration hereinafter set forth.

To hold this bid open for 45 calendar days after the receipt of bids and to accept the provisions of the Instructions to Bidders regarding disposition of bid security.

To execute and deliver a Contract in the prescribed form if awarded on the basis of this bid, and to furnish performance and payment security acceptable to the Owner in accord with the General Conditions, section 6.0, within 10 days after the Contract is presented for signature.

To commence work at the time stipulated in a Notice to Proceed and to complete the work within \_\_\_\_\_ calendar days after the receipt of the Notice to Proceed as prescribed in section 5.1 of the Contract.

3. The undersigned hereby proposes and agrees to perform the foregoing for the lump sum bid of:  
\$ \_\_\_\_\_.

The Lump Sum Bid includes the following amounts:

General Building Construction	\$ _____
Mechanical Work	\$ _____
Electrical Work	\$ _____
Foundation Work	\$ _____
Work outside the building line	\$ _____

**Wells Band of the Te-Moak Tribe of Western Shoshone Indians - Multi-Purpose Community Center**

(The above numbers are for purposes of the Owner's evaluation, only, and do not bind the Owner for such particular payments.)

The Bidder proposes to use the following subcontractors, if any:

Mechanical Work: \_\_\_\_\_

Electrical Work: \_\_\_\_\_

Site Work: \_\_\_\_\_

Material Suppliers: \_\_\_\_\_

- 1. The undersigned proposes to use the following listed persons (with their positions) in its core crews (if any), subject to the Owner's approval.

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
(name)	(position)

- 2. The undersigned has attached the required Bid Bond; Non-Collusive Affidavit; Previous Participation Certification; and Statements Regarding Indian Preference in Subcontracting, Employment and Training.
- 3. In submitting this bid, it is understood that the right to reject any and all bids and to waive irregularities in the bidding has been reserved by the Owner.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(print name of bidder)

\_\_\_\_\_  
(address of bidder)

\_\_\_\_\_  
(print name of authorized officer) (title)

\_\_\_\_\_  
(signature of authorized officer)

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Instructions to Bidders Attachment #2

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**BID BOND**

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned bidder, \_\_\_\_\_, as Principal, and the undersigned bonding company, \_\_\_\_\_, as Surety, are hereby held and firmly bound unto the Owner in the penal sum of five percent of the Principal's bid, \_\_\_\_\_ dollars (\$ \_\_\_\_\_) for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

Signed, this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

The conditions of the above obligation is such that whereas the Principal has submitted to the Owner a certain bid, attached hereto and hereby made part hereof, to enter into a Contract in writing, for the construction of \_\_\_\_\_ located at \_\_\_\_\_ and known as Project \_\_\_\_\_.

NOW THEREFORE,

- a) If said bid shall be rejected, or in the alternate,
- b) If said bid shall be accepted, the Principal shall execute and deliver to the Owner an executed Contract and shall furnish a bond for his faithful performance of said Contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said bid, then, upon notice of same from the Owner to the Surety, this obligation shall be void, otherwise the same shall remain in force and effect, it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by any extension of the time within which the Owner may accept such bid; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety has hereunto affixed their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

\_\_\_\_\_  
PRINCIPAL

By: \_\_\_\_\_

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
SURETY

By: \_\_\_\_\_  
(attorney-in-fact)

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
(address)

attach Surety's power of attorney for attorney-in-fact signature requirements

**STATEMENTS REGARDING INDIAN PREFERENCE  
IN SUBCONTRACTING, EMPLOYMENT AND TRAINING**

The bidder must set forth a plan showing how it will provide Indian preference in subcontracting, employment and training. This statement must include:

1. how eligibility for preference will be determined,
2. the procedures that will be followed by the bidder for qualifying subcontractors for Indian preference,
3. the documentation that must be submitted by subcontractors seeking to qualify for Indian preference,
4. how Indian preference in the award of subcontracts will be made, and
5. any other miscellaneous information.

All bidders are also required to submit with their bids a statement detailing their employment and training opportunities. The specific requirements of that statement are as follows:

6. a statement detailing the bidder's employment and training opportunities and its plans to provide preference to Indians in implementing the Contract; and
7. the number or percentage of Indians anticipated to be employed and trained

Instructions to Bidders Attachment #4

**Wells Band of the Te-Moak Tribe of Western Shoshone Indians - Multi-Purpose Community Center**

**PREVIOUS PARTICIPATION CERTIFICATION**

The bidder must present a history of Construction Contract work that it and its principals have done over the past 7 years on projects where the bidder's contract amount on the project exceeded \$50,000. Bidders must complete the following form for each such contract. Please repeat use of this form as needed.

**NAME OF PRIOR PROJECT:** \_\_\_\_\_  
**PROJECT LOCATION:** \_\_\_\_\_  
**OWNER OF PRIOR PROJECT:** \_\_\_\_\_

If this involves a company other than the bidder, list the name and address of the company:	Owner and Owner's address:
Description of project & contract:	Contact name at Owner and telephone number:
Contract amount: \$ <i>(bidder's participation in the project)</i>	
Date participation in the project was commenced:  date completed (if completed):	Was the Project completed as originally scheduled?  <input type="checkbox"/> Yes <input type="checkbox"/> No If no, please explain _____ _____ _____
Have there been any claims on behalf of or against this Contractor/Principal concerning this project?  <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please explain. _____ _____ _____	Has the Contractor defaulted on this Contract or has had its Right to Proceed been permanently suspended?  <input type="checkbox"/> Yes <input type="checkbox"/> No If so, please explain. _____ _____ _____
Has this company or any of its current principals been debarred from doing work by any company or governmental entity because of their performance on this or any other project  <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please explain. _____ _____ _____	Additional comments (optional):
I certify that all statements made by me and my company herein are true, complete and correct to the best of my knowledge. I understand that false or incomplete statements may result in being disqualified for an award or if awarded a Contract grounds for termination of that Contract and that other legal action may be taken against me and my company. _____ (Signature) (Printed name) (title) (company) (date)	

**NON-COLLUSIVE AFFIDAVIT**

State of \_\_\_\_\_ )  
 )  
County of \_\_\_\_\_ )

\_\_\_\_\_, being first duly sworn, deposes and says:  
(print name)

That I am an owner, a partner or an officer of \_\_\_\_\_, the party making the foregoing bid, that such bid is genuine and not collusive or sham, that said bidder has not colluded, conspired, connived or agreed, directly or indirectly, with any bidder or person, to put in a sham bid or to refrain from bidding, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference with any person, to fix the bid price submitted or of any other bidder, or to fix any overhead, profit or cost element of said bid price, or of that of any other bidder, or to secure any advantage against the Owner or any person interested in the proposed Contract, and that all statements in said proposal or bid are true.

\_\_\_\_\_  
(signature of bidder)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_,  
by \_\_\_\_\_.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

# CONTRACT BETWEEN OWNER AND CONTRACTOR

(Wells Band Multi-Purpose Center)

---

This **Contract** made this day of \_\_\_\_\_, \_\_\_\_\_, by and between,  
\_\_\_\_\_  
\_\_\_\_\_ which is a \_\_\_\_\_  
\_\_\_\_\_ (describe the nature of the entity), hereinafter called the Contractor, and the  
Wells Band Multi-Purpose Center, a Federally Recognized Indian Tribe, hereinafter called the Owner.

WITNESSETH, that the Contractor and the Owner, for the consideration stated herein, mutually agree as follows:

## 1.0 STATEMENT OF WORK

1.1 The Contractor shall provide all materials and perform and complete work required for the construction of a Multi-Purpose Community Center located on the Wells Band Colony at Wells, Nevada in strict accordance with the drawings. Two sets of drawings shall be dated and initialed by both parties on each page. The Owner and Contractor shall each retain a dated and initialed set of drawings.

## 2.0 THE AGREED PRICE

2.1 The Owner shall pay the Contractor the lump sum of \$ \_\_\_\_\_, subject to additions and deductions as agreed to by the parties.

## 3.0 CONTRACT DOCUMENTS

3.1 The Contract shall consist of the following component parts (and any attachments thereto):

1. Addenda (if any)
2. This Contract (with attachments 1-6)
3. Instruction to Bidders (with attachments 1-5)
4. Invitation for Construction Bids
5. General Conditions
6. Special Conditions (if any)
7. Technical Specifications
8. Drawings

3.2 All of the component parts together form the Contract. In the event that any provision of any component part of this Contract conflicts with any provision of any other component part, the provision of the component part first enumerated in this section 3.0 shall govern, except as otherwise specifically stated. The various provisions in Addenda shall be construed in the order of preference of the component part of the Contract which each modifies.

**Wells Band of the Te-Moak Tribe of Western Shoshone Indians - Multi-Purpose Community Center**

**4.0 INDIAN PREFERENCE**

4.1 This Contract is subject to cancellation or assessments of penalties for failure to comply with the Indian Preference requirements as provided in other provisions of this Contract (see Instructions to Bidders, section 7.0) and required by 24 CFR §1000.48 - §1000.54. If the Contractor receives an Indian preference, it must maintain no less than 51% Indian ownership and control during the course of this Contract. Failure to do so may be considered a substantial breach.

**5.0 COMPLETION DATE, PROGRESS SCHEDULES AND DAMAGES FOR FAILURE TO COMPLETE**

5.1 The Contractor agrees to complete the project to the Owner’s satisfaction (see General Conditions, section 21) within \_\_\_\_\_ days of the date of the Notice to Proceed. The General Conditions, section 7.0, requires that the Contractor submit Construction Progress Schedules in a format acceptable to the Owner. Unless otherwise agreed, Contract Attachment #1 must be used for this purpose. The Owner and Contractor agree to a delay damage amount of \$\_\_\_\_\_ for every day that the project exceeds the contractual completion date. See section 32 in General Conditions.

**6.0 STORED MATERIALS**

6.1 The Contractor may store materials off-site with the Owner’s approval. If the Owner approves of such an arrangement, an Agreement for Storing Material Off-site, Contract Attachment #2, must be entered into and signed by the Owner and by the Contractor.

**7.0 PERFORMANCE-PAYMENT BOND OR LETTER OF CREDIT**

7.1 The Contractor agrees to provide to the Owner a Performance-Payment Bond or Letter of Credit, in the form of Contract Attachments #3 or #4, within 10 days after signing this Contract. If the Letter of Credit is used, then the Contractor must also provide the Owner with a Cash Monitoring and Disbursement Escrow Agreement, Contract Attachment #5, with the Letter of Credit. See General Conditions, section 6.0, for the requirements of this security.

**8.0 WAGE RATES**

8.1 Federal Davis-Bacon wage rates **ARE NOT** applicable to this project.

**9.0 INSURANCE**

9.1 The Contractor shall furnish evidence of the following insurance coverage as required by section 35 of the General Conditions in the following amounts:

- 1. \$ \_\_\_\_\_ General Liability insurance
- 2. \$ \_\_\_\_\_ Automobile Liability insurance
- 3. \$ \_\_\_\_\_ Workmens’ Compensation insurance
- 4. \$ \_\_\_\_\_ Builder’s Risk insurance

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in two original counterparts as of the day and year written above.

\_\_\_\_\_  
(Owner)

By: \_\_\_\_\_

Title: \_\_\_\_\_

**Wells Band of the Te-Moak Tribe of Western Shoshone Indians - Multi-Purpose Community Center**

Business Address:

\_\_\_\_\_  
(street)

\_\_\_\_\_  
(city) (state) (zip code)

\_\_\_\_\_  
(Contractor)

By: \_\_\_\_\_

Title: \_\_\_\_\_

Business Address:

\_\_\_\_\_  
(street)

\_\_\_\_\_  
(city) (state) (zip code)

(Print or type the name underneath the signature)

**Wells Band of the Te-Moak Tribe of Western Shoshone Indians - Multi-Purpose Community Center**

Certificate:

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_ of the party named as Contractor herein; that \_\_\_\_\_, who signed this Contract on behalf of the Contractor, was then \_\_\_\_\_ of said entity; that said Contract was duly signed for and on behalf of said entity by authority of its governing body, and is within the scope of its powers.

(Affix Corporate seal if Contractor is a corporation)

\_\_\_\_\_

\_\_\_\_\_

(title)

(Print or type the name underneath the signature)

**INDEX OF ATTACHMENTS TO THE CONTRACT**

- Contract Attachment #1: Construction Progress Schedules
- Contract Attachment #2: Agreement to Store Material Off Site
- Contract Attachment #3: Performance-payment Bond
- Contract Attachment #4: Irrevocable Letter of Credit
- Contract Attachment #5: Cash Monitoring and Disbursement Escrow
- Contract Attachment #6: Davis-Bacon Wage Rates

**ADDENDUM**

This is an **Addendum** to the Contract Between Owner and Contractor signed and dated the \_\_\_\_\_ day of \_\_\_\_\_, in the year of \_\_\_\_\_ between the Owner \_\_\_\_\_ and the Contractor \_\_\_\_\_ and involving project \_\_\_\_\_. The parties to that Agreement agree to modify the Agreement at its signing as follows:

IN WITNESS WHEREOF, this Addendum is dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ and the parties hereto have caused this instrument to be executed in two original counterparts.

\_\_\_\_\_  
(Owner)  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

**Wells Band of the Te-Moak Tribe of Western Shoshone Indians - Multi-Purpose Community Center**

\_\_\_\_\_  
(Contractor)

By: \_\_\_\_\_

Title: \_\_\_\_\_

Certificate:

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_ of the party named as Contractor herein; that \_\_\_\_\_, who signed this Contract on behalf of the Contractor, was then \_\_\_\_\_ of said entity; that said Contract was duly signed for and on behalf of said entity by authority of its governing body, and is within the scope of its powers.

(Affix Corporate  
seal if Contractor  
is a corporation)

\_\_\_\_\_

\_\_\_\_\_  
(title)

(Print or type the name underneath the signature)



**Wells Band of the Te-Moak Tribe of Western Shoshone Indians - Multi-Purpose Community Center**  
**INSTRUCTIONS FOR CONSTRUCTION PROGRESS SCHEDULE**

Before commencing work, the Contractor shall complete the first progress schedule and submit it to the Owner. This original schedule is created by completing item #3 on the schedule. This shall establish the original schedule of projected work progress for the entire project period, and is to be set out in a cumulative manner so that the final month of work shows the accumulated value of work in place at 100% (in the percentage column) and the full Contract price (in the dollars column). This original schedule is to be shown on each subsequent monthly progress schedule submitted by the Contractor and is not to be changed, even if the actual work in place is different from what it was projected to be.

With each monthly pay request the Contractor shall prepare and submit an updated monthly progress schedule which involves completing the figures in item #1 in both dollars and in percentages (see section 7.0 in General Conditions). The figures in item #1 will show the **actual** monthly values of work in place through the current month. Should the Contractor not meet the anticipated progress as shown on the original schedule at item #3, it must revise its original progress schedule and set out in item #1 not only its progress to date but also a new schedule for completing the work commencing with the month that the current schedule was not met. This is to be done at the time the pay request is made. This will appear the following month not as item #1 but rather item #2. If there are still more revisions in subsequent months, item #1 is to be revised each time with the previous revised schedule always listed in item #2. Item #1 should always show the Contractor's latest anticipated progress as well as how it anticipates it will complete the Contract.

**Wells Band of the Te-Moak Tribe of Western Shoshone Indians - Multi-Purpose Community Center**

Contract Attachment #2

**AGREEMENT FOR STORING MATERIAL OFF-SITE**

AGREEMENT made this \_\_ day of \_\_\_\_\_, \_\_\_\_\_, between the Contractor and the Owner.

WHEREAS, the Contractor desires to store materials off the site at the following location: \_\_\_\_\_

\_\_\_\_\_ for use in construction of the \_\_\_\_\_ project under Contract dated \_\_\_\_\_  
\_\_\_\_\_. This is being done in order to furnish better storage, all in accordance with Contract provisions as though the materials were properly stored on the site. Such storage shall be permitted provided the following conditions are complied with:

- 1) The Contractor must obtain a written agreement in a form acceptable to the Owner from the person who controls the site allowing the Contractor the right to store materials at the site for the period of the Contract and any extensions thereto and further allowing the Owner ingress and egress to the storage site and access to the stored materials at any time including upon termination, and a copy of such agreement must be provided to the Owner;
- 2) The consent of the Surety to this agreement;
- 3) All materials stored must be properly secured and reasonably protected from weather;
- 4) Any extra expense incurred because of off-site storage shall be borne by the Contractor;
- 5) Title to materials stored shall be transferred to the Owner as if it were incorporated into the project under section 23 of the General Conditions and the Owner shall have access to all materials at any time including upon termination;
- 6) Notwithstanding the transfer of title, storage shall be at the risk of the Contractor and the loss, damage or destruction of any materials so stored does not relieve the Contractor of the duty to complete the Contract and the Contractor shall replace such items at its own expense and the Contractor shall ensure that all materials stored shall be insured to cover their full value;
- 7) The Owner will advance to the Contractor 90% (or such lesser percentage as it determines would be consistent with its best interest) of the invoice value of the materials thus stored;
- 8) Payments for materials stored off the site will be made only on regular periodical estimates at the prescribed monthly intervals, the same as for materials stored on the site;
- 9) The Contractor shall tag or group together all material stored for this project for rapid identification and ease in spot checking;
- 10) The materials stored shall be used to perform the project named above and no other, and shall not be moved from the site except as needed to perform such work and in that event shall be transported directly to the site and properly stored at the site until used;
- 11) The Contractor shall furnish such documentation as the Owner may require to assure the protection of the Owner's interest in such materials and such documentation shall be furnished before any progress payment, including payment for stored material, is made.

The Contractor

The Owner

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
(date)

\_\_\_\_\_  
(date)

\_\_\_\_\_  
(Name of Surety)

By: \_\_\_\_\_  
(Attorney-in-Fact)

\_\_\_\_\_  
(date)

**Wells Band of the Te-Moak Tribe of Western Shoshone Indians - Multi-Purpose Community Center**

Contract Attachment #3

**PERFORMANCE-PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS: That we, the undersigned Contractor, hereinafter called PRINCIPAL, and the undersigned Bonding Company, hereinafter called SURETY, are held and firmly bound unto the OWNER, in the penal sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the PRINCIPAL entered into a certain Contract with the OWNER, dated on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, a copy of which is hereto attached and made a part hereof, for the construction of \_\_\_\_\_ located at \_\_\_\_\_ and known as Project \_\_\_\_\_.

NOW THEREFORE, if the PRINCIPAL shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions and agreements of said Contract during the original term thereof, any extensions thereof which may be granted by the OWNER, with or without notice to the SURETY, and if the PRINCIPAL shall satisfy all claims and demands incurred under such Contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, and shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing materials for performing labor in the prosecution of the work provided for in such Contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such work, and all insurance premiums on said work, and for all labor, performed in such work whether by subcontractor or otherwise, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said SURETY, for value received hereby stipulates and agrees that no change, extensions of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the specifications.

PROVIDE, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in six counterparts, each one of which shall be deemed an original, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Principal)  
By: \_\_\_\_\_

\_\_\_\_\_  
(address)

\_\_\_\_\_ (witness to Principal) \_\_\_\_\_ (address)

\_\_\_\_\_  
(Surety)

By: \_\_\_\_\_

\_\_\_\_\_  
(address)

\_\_\_\_\_ (witness to Surety) \_\_\_\_\_ (address)

(Surety's seal)

(attach Surety's power of attorney for attorney-in-fact signature requirements)

Note: date of bond must not be prior to date of Contract. If Contractor (ie, the Principal) is a partnership, then all partners should execute the bond.

Contract Attachment #4

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(to be re-typed onto the bank's letterhead, addressed to the Owner)

**IRREVOCABLE LETTER OF CREDIT**

(Owner's address)

(date)

Dear Sir:

We hereby authorize the Owner to draw on \_\_\_\_\_ (name of institution issuing the credit) to the aggregate amount of \$\_\_\_\_\_ if the Contractor defaults or fails to complete construction and payments under the construction Contract dated \_\_\_\_\_ entered into between the Contractor and the Owner and attached hereto.

We warrant to you that all drafts drawn by you in substantial compliance with the terms of this Letter of Credit will be duly honored up to one year after the date of substantial completion of the work described in the construction Contract, including any amendments or revisions thereto.

This letter is irrevocable and shall be in full force and effect unless the Owner presents notification in writing canceling same. This credit shall not be modified or amended except upon written agreement of this Bank and the Owner.

Sincerely,

By \_\_\_\_\_  
(name) (title)

\_\_\_\_\_  
(print name)

Note: if this Letter of Credit is used, the Contractor must also complete Contract Attachment #5, the Cash Monitoring and Disbursement Escrow Agreement

Contract Attachment #5

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**CASH MONITORING AND DISBURSEMENT  
ESCROW AGREEMENT**

The Owner, the Contractor ( \_\_\_\_\_ ), and the Bank ( \_\_\_\_\_ ), agree to the following escrow and disbursement arrangements for Project \_\_\_\_\_.

1. The Bank is mutually retained by the Owner and the Contractor to perform as an escrow agent in disbursement of those Contractor funds that become due to the Contractor from the Owner. This procedure is agreed to because of the Contractor's decision to utilize a 10% letter of credit as security for its Contract performance.
2. The Bank has been fully paid by the Contractor a fee of \$ \_\_\_\_\_ to act as the escrow agent for both the Contractor and the Owner. The Bank's representative/ trust officer shall be \_\_\_\_\_. Any substitution or replacement of that individual shall first require approval of the Owner.
3. The Contractor shall ensure that all subcontractors, materialmen, and suppliers will submit to the Contractor payment requests or invoices for services performed or materials delivered for the period since the last previous payment date by the 20th of the following month.
4. After the Contractor's requests for periodic payment have been submitted and approved by the Owner, the Contractor shall submit to the Owner and the Bank a list of all subcontractors, materialmen, and suppliers who are owed money by the Contractor. The Contractor shall 1) certify in a separate writing that no laborers or other subcontractors, materialmen or suppliers are owed money, and 2) submit to the Owner and the Bank partial lien and payment waivers from all the subcontractors, materialmen, and supplier that are owed funds by the Contractor.
5. All subcontractors, materialmen and suppliers will be required to execute partial lien or payment waivers with each of their monthly payment requests or invoices covering all past work excluding, where appropriate, retainage.
6. After the Owner has submitted an approved periodic payment to the Contractor and after the Contractor has submitted necessary releases and certifications, the Bank shall immediately schedule a check writing session. The Owner and the Contractor shall be given a three-day notice of this meeting unless such a notice is waived by the Owner and the Contractor.
7. Present at the check writing session shall be 1) the Bank's representative; 2) the Owner's Contracting Officer or his designee; 3) the Owner's Architect, Inspector or the Architect's designee; and 4) the Contractor. The Bank's representative officer shall conduct this session. The session shall be at a location reasonably convenient for the Owner. The Owner shall submit a check in the amount of the approved periodic payment minus any retainage and deductions to the Bank and that check shall be deposited in Trust Account No. \_\_\_\_\_ at the Bank. The Bank will then proceed at the session to pay out of the trust account, by way of two-party checks in both the name of the Contractor and the individual subcontractors, materialmen and suppliers, amounts equal to the currently outstanding amount as shown on the partial lien or payment releases. The balance of the funds in the periodic payment, if any, will then be paid by the Bank to the Contractor if all subcontractors, materialmen and suppliers can be properly paid.
8. All checks written by the Bank shall contain restrictive endorsement language waiving any rights to further payment except for retainage that may currently be held back.
9. The Owner may alter this procedure at any time and direct the bank to issue one-party checks directly to the subcontractors, materialmen and suppliers. In such cases the Bank shall without any delay deliver those checks to these parties by mail.
10. If the Bank or the Contractor shall become aware of any unpaid subcontractors, materialmen, suppliers or laborers or any claims of non-payment, they will immediately notify the Owner in writing.
11. Should there be any outstanding and unsatisfied subcontractor, materialmen, supplier, and laborer claims the Owner may make withholdings on the periodic payments pursuant to the terms of its Contract with the Contractor. If such a right is exercised by the Owner, it will be done to protect the interests of the Owner and to insure proper completion of the project. The decision to make such withholdings shall be the sole discretion of the Owner and shall in no way release the Contractor from its obligations to ensure proper payments. If the Owner exercises this right and withholds funds for a specific claim this shall be treated by the Bank as a release of that claim for purposes of its disbursements.

**Wells Band of the Te-Moak Tribe of Western Shoshone Indians - Multi-Purpose Community Center**

12. This agreement shall not modify any rights the Owner may have pursuant to the Owner's construction Contract with the Contractor.

13. In addition to all other records and reports that it is otherwise obligated to provide, the Contractor shall provide to the Bank and Owner monthly summaries of work currently or about to be performed by the Contractor and its subcontractors, the number and names of parties working on the project and major supplies that are being delivered.

14. This escrow agreement shall expire when a final payment is made by the Owner under its Contract with the Contractor. This disbursement agreement may only be terminated at an earlier time by the Owner and when that is done in writing.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

CONTRACTOR:

By: \_\_\_\_\_ (title)  
\_\_\_\_\_ (print name)

OWNER:

By: \_\_\_\_\_ (title)  
\_\_\_\_\_ (print name)

BANK:

By: \_\_\_\_\_ (title)  
\_\_\_\_\_ (print name)

Contract Attachment #6

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**DAVIS-BACON WAGE RATES**

**DAVIS BACON WAGE RATES ARE NOT APPLICABLE TO THIS  
CONTRACT**

**GENERAL CONDITIONS  
FOR  
CONTRACT BETWEEN OWNER AND CONTRACTOR  
(WELLS BAND MULTI-PURPOSE CENTER)**

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**GENERAL INFORMATION:** These General Conditions are part of the Contract Between Owner and Contractor. They apply along with other Contract component parts and, though not executed separately, pursuant to the Contract they are effective upon the signing of the Contract Between Owner and Contractor. These General Conditions contain many of the detailed requirements of the Contract and, along with other Contract component parts, they prescribe the terms and conditions of the Contract Between the Owner and Contractor.

- 1.0 DEFINITIONS
- 2.0 CONTRACTOR'S RESPONSIBILITY FOR WORK
- 3.0 ARCHITECT'S DUTIES, RESPONSIBILITIES, AND AUTHORITY
- 4.0 OTHER CONTRACTS
- 5.0 PRECONSTRUCTION CONFERENCE AND NOTICE TO PROCEED
- 6.0 PAYMENT AND PERFORMANCE SECURITY
- 7.0 CONSTRUCTION PROGRESS SCHEDULE
- 8.0 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK
- 9.0 DIFFERING SITE CONDITIONS
- 10.0 TECHNICAL SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION
- 11.0 AS-BUILT DRAWINGS
- 12.0 COMMUNICATIONS
- 13.0 ON-SITE OFFICE
- 14.0 MATERIAL AND WORKMANSHIP
- 15.0 PERMITS, CODES AND TAXES
- 16.0 HEALTH, SAFETY, AND ACCIDENT PREVENTION
- 17.0 AVAILABILITY AND USE OF UTILITY SERVICES
- 18.0 PROTECTIONS OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS
- 19.0 TEMPORARY BUILDINGS AND TRANSPORTATION OF MATERIALS
- 20.0 ENVIRONMENTAL AND HISTORICAL PRESERVATION COMPLIANCE
- 21.0 INSPECTION AND ACCEPTANCE OF CONSTRUCTION
- 22.0 USE AND POSSESSION PRIOR TO COMPLETION
- 23.0 WARRANTY OF TITLE AND TRANSFER OF OWNERSHIP
- 24.0 WARRANTY OF CONSTRUCTION
- 25.0 PROHIBITION AGAINST LIENS
- 26.0 PAYMENTS
- 27.0 CONTRACT MODIFICATIONS
- 28.0 CHANGES
- 29.0 SUSPENSION OF WORK
- 30.0 DISPUTES AND SOVEREIGN IMMUNITY
- 31.0 DEFAULT
- 32.0 DAMAGES FOR FAILURE TO COMPLETE (AND NO DAMAGE FOR OWNER'S DELAY)
- 33.0 TERMINATION FOR CONVENIENCE
- 34.0 ASSIGNMENT OF CONTRACT
- 35.0 INSURANCE AND HOLD HARMLESS CLAUSE
- 36.0 SUBCONTRACTS
- 37.0 EQUAL EMPLOYMENT OPPORTUNITY
- 38.0 ROYALTIES AND PATENTS
- 39.0 EXAMINATION AND RETENTION OF CONTRACTOR'S RECORDS
- 40.0 TERO ORDINANCE
- 41.0 SPECIAL ECONOMIC OPPORTUNITIES UNDER SECTION 3
- 42.0 LABOR STANDARDS--Davis Bacon and Related Acts
- 43.0 MINORITY PREFERENCE
- 44.0 DEBARRED PARTIES
- 45.0 IMPROPER INFLUENCE
- 46.0 CONFLICT OF INTEREST
- 47.0 LEAD-BASED PAINT
- 48.0 CIVIL RIGHTS REQUIREMENTS
- 49.0 DRUG FREE WORKPLACE REQUIREMENTS
- 50.0 ENERGY EFFICIENCY REQUIREMENTS

# Wells Band of the Te-Moak Tribe of Western Shoshone Indians - Multi-Purpose Community Center

## 1.0 DEFINITIONS

1.1 “**Architect**” means the person or other entity engaged by the Owner to perform architectural, engineering, design, and other services related to the work as provided for in the Contract. When the Owner uses an engineer to act in this capacity, the terms “architect” and “engineer” shall be synonymous. The Architect shall serve as a technical representative of the Contracting Officer. The Architect’s authority is as set forth in section 3.0 below. When no Architect is employed, the Owner shall assume those duties that are identified to be done by the Architect.

1.2 “**Contract**” means the Contract entered into between the Owner and the Contractor incorporating all documents referenced in the Contract between Owner and Contractor.

1.3 “**Contracting Officer**” means the person delegated the authority by the Owner to enter into, administer, and/or terminate this Contract and designated as such in writing to the Contractor. The term includes any successor Contracting Officer and any duly authorized representative of the Contracting Officer also designated in writing. The Contracting Officer shall be deemed the authorized agent of the Owner in all dealings with the Contractor. Throughout the General Conditions, “Owner” is often used in lieu of “Contracting Officer.”

1.4 “**Contractor**” means the person or other entity entering into the Contract with the Owner to perform all of the work required under the Contract.

1.5 “**Drawings**” means the drawings that are dated and initialed by the parties as referenced in the Contract between Owner and Contractor.

1.6 “**Project**” means the entire project, whether construction or rehabilitation, the work for which is provided for in whole or in part under this Contract.

1.7 “**Owner**” is the tribal entity set forth in the document entitled “Contract” as the Owner.

1.8 “**Technical Specifications,**” also referred to as “specifications,” means the written description of the technical requirements for construction and includes the criteria and tests for determining whether the requirements are met.

1.9 “**Work**” means materials, workmanship, manufacture and fabrication of components.

## 2.0 CONTRACTOR'S RESPONSIBILITY FOR WORK

2.1 The Contractor shall furnish all necessary labor, materials, tools, equipment, and transportation necessary for performance of the work. The Contractor shall also furnish all necessary water, heat, light, and power not made available to the Contractor by the Owner pursuant to section 17 below entitled Availability and Use of Utility Services.

2.2 The Contractor shall perform on the site, and with its own organization, all work that is not subcontracted.

2.3 At all times during performance of this Contract and until the work is completed and accepted, the Contractor shall directly superintend the work and have on the work site a competent superintendent to superintend the work, who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

2.4 The Contractor shall be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the Contract.

2.5 The Contractor agrees to fully indemnify and save and hold harmless the Owner from any and all claims, demands losses, damages, actions and causes of action, including, but not limited to, expenses, costs and attorneys' fees that the Owner may at any time sustain or incur by reason of any act or omission of the Contractor under this Contract or in connection with this Project.

2.6 If, through acts, omissions or negligence on the part of the Contractor, any other Contractor or any subcontractor shall suffer loss or damages on the work, the Contractor agrees to use his best efforts to settle with such other Contractor or subcontractor. If such other Contractor or subcontractor shall assert any claim against the Owner on account of any damage alleged to have been so sustained, the Owner shall notify the Contractor, who shall defend at his own expense any suit based upon such claim, and if any judgment or claim against the Owner shall be allowed, the Contractor shall pay or satisfy such judgment or claims and pay all costs and expenses in connection therewith.

## **Wells Band of the Te-Moak Tribe of Western Shoshone Indians - Multi-Purpose Community Center**

**2.7** The Contractor shall lay out the work from base lines and bench marks indicated on the drawings and be responsible for all lines, levels, and measurements of all work executed under the Contract. The Contractor shall verify the figures before laying out the work and will be held responsible for any error resulting from its failure to do so.

**2.8** The Contractor shall confine all operations (including storage of materials) on the Owner's premises to areas authorized or approved by the Contracting Officer.

**2.9** The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. After completing the work and before final inspection, the Contractor shall (1) remove from the premises all scaffolding, equipment, tools, and materials (including rejected materials) that are not the property of the Owner and all rubbish caused by its work; (2) leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer; (3) perform all specified tests; and (4) deliver the installation in complete and operating condition.

**2.10** The Contractor's responsibility will terminate when all work has been completed, the final inspection made, and the work accepted by the Owner. The Contractor will then be released from further obligation except as required by the warranties specified elsewhere in the Contract.

### **3.0 ARCHITECT'S DUTIES, RESPONSIBILITIES, AND AUTHORITY**

**3.1** The Architect, and any successor, for this Contract may be designated in writing by the Contracting Officer.

**3.2** The Architect shall serve as the Contracting Officer's technical representative with respect to architectural, engineering, and design matters related to the work performed under the Contract. The Architect may provide direction on Contract performance. Such direction shall be within the scope of the Contract and may not be of a nature which (1) institutes additional work outside the scope of the Contract; (2) constitutes a change as defined in the Changes section herein (see section 28); (3) causes an increase or decrease in the cost of the Contract; (4) alters the Construction Progress Schedule; or (5) changes any of the other express terms or conditions of the Contract.

**3.3** The Architect's duties and responsibilities may include but shall not be limited to:

a. Making periodic visits to the work site and, on the basis of his/her on-site inspections, issuing written reports to the Owner which shall include all observed deficiencies. The Architect shall file a copy of the report with the Contractor's designated representative at the site;

b. Making modifications in drawings and technical specifications and assisting the Contracting Officer in the preparation of change orders and other Contract modifications for issuance by the Contracting Officer;

c. Previewing and making recommendations with respect to (i) the Contractor's construction progress schedules; (ii) the Contractor's shop and detailed drawings; (iii) the machinery, mechanical and other equipment and materials or other articles proposed for use by the Contractor; and, (iv) the Contractor's price breakdown and progress payment estimates; and,

d. Assisting in inspections, signing Certificates of Completion, and making recommendations with respect to acceptance of work completed under the Contract.

### **4.0 OTHER CONTRACTS**

**4.1** The Owner may undertake or award other Contracts for additional work at or near the site of the work under this Contract. The Contractor shall fully cooperate with the other Contractors and with Owner employees and shall carefully adapt scheduling and performing the work under this Contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other Contractor or by Owner employees.

### **5.0 PRECONSTRUCTION CONFERENCE AND NOTICE TO PROCEED**

**5.1** Within 14 calendar days of Contract execution, and prior to the commencement of work, the Contractor shall attend a preconstruction conference with representatives of the Owner, its Architect, and other interested parties convened by the Owner. The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the Contract. The Owner will provide the Contractor with a date, time, and place of the conference.

## **Wells Band of the Te-Moak Tribe of Western Shoshone Indians - Multi-Purpose Community Center**

**5.2** The Contractor shall begin work upon receipt of a written Notice to Proceed from the Contracting Officer. The Contractor shall not begin work prior to receiving such notice.

### **6.0 PAYMENT AND PERFORMANCE SECURITY**

**6.1** The successful bidder must furnish security for its performance of the Contract and payment of suppliers and Contractors. Such security may be in either of the following forms:

a) A Payment and Performance Bond from a bonding company acceptable to the Owner in the amount of 100% of the total Contract price in the exact form specified in Contract Attachment #3 issued by a surety company listed in the current U.S. Treasury Circular 570 Surety Companies, acceptable on Federal Bonds; or

b) Irrevocable Letter of Credit from a banking institution and acceptable to the Owner in the amount of ten percent of the total Contract price in the exact form shown in Contract Attachment #4. The Letter of Credit shall be on bank letterhead and signed by an officer of the bank legally authorized to execute said document. If a Letter of Credit is used as security for payment and performance, the 10% retainage normally required under the construction Contract will always be continued even after 50 percent of the work has been completed. Additionally, if a Letter of Credit is used, then the Contractor shall enter into a written Cash Monitoring and Disbursement Escrow Agreement with the Owner and a bank acceptable to the Owner in the form set forth in Contract Attachment #5. The bank shall assign a representative/trust officer to perform the monitoring.

### **7.0 CONSTRUCTION PROGRESS SCHEDULE**

**7.1** The Contractor shall, within five days after the work commences on the Contract or other period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring labor, materials, and equipment). Unless otherwise agreed in writing, the Contractor will use Contract Attachment #1, Construction Progress Schedule. The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments or take other remedies under the Contract until the Contractor submits the required schedule.

**7.2** The Contractor shall enter the actual progress on the Progress Schedule and always deliver three copies of the annotated schedule to the Contracting Officer with every periodic pay request. If the Contracting Officer determines that the Contractor is not meeting the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the Owner. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments or take other remedies available under the Contract until the Contractor submits the required schedule.

**7.3** Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the Contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the Default clause of this Contract. See section 31.0 below.

### **8.0 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK**

**8.1** The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Owner, as well as from the drawings and specifications made a part of this Contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Owner.

**8.2** The Owner assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Owner. Nor does the Owner assume responsibility for any understanding reached or

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representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this Contract, unless the understanding or representation is expressly stated in this Contract.

### **9.0 DIFFERING SITE CONDITIONS**

**9.1** The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this Contract, or (2) unknown physical conditions at the site(s), of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

**9.2** The Contracting Officer shall investigate the site conditions promptly after receiving the notice. Work shall not proceed at the affected site, except at the Contractor's risk, until the Contracting Officer has provided written instructions to the Contractor. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this Contract, whether or not changed as a result of the conditions, the Contractor shall file a claim in writing to the Owner within ten days after receipt of such instructions and, in any event, before proceeding with the work. An equitable adjustment in the Contract price, the delivery schedule, or both shall be made under this clause and the Contract modified in writing accordingly.

**9.3** No request by the Contractor for an equitable adjustment to the Contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in 9.1 above for giving written notice may be extended by the Contracting Officer.

**9.4** No request by the Contractor for an equitable adjustment to the Contract for differing site conditions shall be allowed if made after final payment under this Contract. See section 26.8.

### **10.0 TECHNICAL SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION**

**10.1** The Contractor shall keep on the work site a copy of the drawings and Technical Specifications (also referred to as "specifications") and shall at all times give the Contracting Officer access thereto. The Owner shall retain the dated and initialed set of drawings referenced in the Contract. In the event of a difference between any set of drawings, the Owner's dated and initialed copy shall govern. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

**10.2** Wherever in the specifications or upon the drawings the words "directed," "required," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that it is the "direction," "requirement," "order," "designation," or "prescription" of the Contracting Officer that is intended and similarly the words "approved," "acceptable," "satisfactory," or words of like import shall mean "approved by," or "acceptable to," or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

**10.3** Where "as shown," "as indicated," "as detailed," or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this Contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is "furnished and installed."

**10.4** "Shop drawings" mean drawings, submitted to the Owner by the Contractor, a subcontractor, or any lower tier subcontractor, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials of equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the Contract. The Owner may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this Contract.

**10.5** If this Contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with other requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the Owner's reasons therefor. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this Contract, except with respect to variations described and approved in accordance with 10.6 below.

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**10.6** If shop drawings show variations from the Contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Architect approves any such variation and the Contracting Officer concurs, the Contracting Officer shall issue an appropriate modification to the Contract, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

**10.7** It shall be the responsibility of the Contractor to make timely requests of the Owner for such large scale and full size drawings, color schemes, and other additional information, not already in his possession, which shall be required in the planning and production of the work. Such requests may be submitted as the need arises, but each such request shall be filed in ample time to permit appropriate action to be taken by all parties involved so as to avoid delay.

**10.8** The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the Owner and one set will be returned to the Contractor. As required by the Contracting Officer, the Contractor, upon completing the work under this Contract, shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the work is completed and accepted.

**10.9** The following clause shall be included in all subcontracts: "It shall be the responsibility of the Contractor to ensure that all shop drawings prepared by subcontractors are submitted to the Contracting Officer."

**10.10** Except for the Contractor's executed set, all drawings and the Technical Specifications are and remain the property of the Owner. Such drawings and Technical Specifications are not to be used on other work, and those sets in usable condition shall be returned to the Owner, upon request, at the completion or cessation of the work or termination of the Contract.

### **11.0 AS-BUILT DRAWINGS**

**11.1** "As-built drawings," as used in this clause, means drawings submitted by the Contractor or subcontractor at any tier to show the construction of a particular structure or work as actually completed under the Contract. "As-built drawings" shall be synonymous with "record drawings."

**11.2** As required by the Contracting Officer, the Contractor shall provide the Contracting Officer accurate information to be used in the preparation of permanent as-built drawings. For this purpose, the Contractor shall record on one set of Contract drawings all changes from the installations originally indicated, and record final locations of underground lines by depth from finish grade and by accurate horizontal offset distances to permanent surface improvements such as buildings, curbs, or edges or walks.

**11.3** The following clause shall be included in all subcontracts: "It shall be the responsibility of the Contractor to ensure that all as-built drawings prepared by subcontractors are submitted to the Contracting Officer."

### **12.0 COMMUNICATIONS**

**12.1** All notices, demands, requests, instructions, approvals, proposals and claims shall be in writing. Any notice to the Owner shall be hand-delivered to the Contracting Officer or mailed to the Owner at the address stated on the signature page of the Contract. Any notice to the Contractor shall be hand-delivered to the Contractor or his agent or mailed to the Contractor at the address stated on the signature page of the Contract.

### **13.0 ON-SITE OFFICE**

**13.1** The Contractor shall keep an on-site office, at a place approved by the Contracting Officer, where the Contractor may be located on a regular basis.

### **14.0 MATERIAL AND WORKMANSHIP**

**14.1** All equipment, material, and articles furnished under this Contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this Contract. References in the Contract to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of, and as approved by the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this Contract.

**14.2** Approval of equipment and materials:

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- a) The Contractor shall obtain the Contracting Officer's approval of the material, machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this Contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.
- b) When required by the specifications or the Contracting Officer, the Contractor shall submit appropriately marked samples (and certificates related to them) for approval at the Contractor's expense, with all shipping charges prepaid. The Contractor shall label, or otherwise properly mark on the container, the material or product represented, its place of origin, the name of the producer, the Contractor's name, and the identification of the construction project for which the material or product is intended to be used.
- c) Certificates shall be submitted in triplicate, describing each sample submitted for approval and certifying that the material, equipment or accessory complies with Contract requirements. The certificates shall include the name and brand of the product, name of manufacturer, and the locations where produced.
- d) Approval of a sample shall not constitute a waiver of the Owner's right to demand full compliance with Contract requirements. Materials, equipment and accessories may be rejected for cause even though samples have been approved.
- e) Wherever materials are required to comply with recognized standards or specifications, such specifications shall be accepted as establishing the technical qualities and testing methods, but shall not govern the number of tests required to be made nor modify other Contract requirements. The Contracting Officer may require laboratory test reports on items submitted for approval or may approve materials on the basis of data submitted for approval or may approve materials on the basis of data submitted in certificates with samples. Check tests will be made on materials delivered for use only as frequently as the Contracting Officer determines necessary to ensure compliance of materials with the specifications. The Contractor will assume all costs of re-testing materials which fail to meet Contract requirements and/or testing materials offered in substitution for those found deficient.
- f) After approval, samples will be kept in the project office until completion of work. They may be built into the work after a substantial quantity of the materials they represent has been built in and accepted.

### **15.0 PERMITS, CODES AND TAXES**

**15.1** The Contractor shall give all notices and comply with all applicable laws, ordinances, codes, rules and regulations, including those established by the WELLS BAND. Notwithstanding the requirement of the Contractor to comply with the drawings and specifications in the Contract, all work installed shall comply with all applicable codes and regulations as amended by any waivers. Before installing the work, the Contractor shall examine the drawings and the specifications for compliance with applicable codes and regulations bearing on the work and shall immediately report any discrepancy it may discover to the Contracting Officer. Where the requirements of the drawings and specifications fail to comply with the applicable code or regulation, the Contracting Officer shall modify the Contract by change order pursuant to the clause entitled Changes herein (see section 28 below) to conform to the code or regulation.

**15.2** Before commencing work, the Contractor shall secure and pay for all permits, fees and licenses necessary for the proper execution and completion of the work, including tribal permits, fees and licenses. The Contractor shall also pay all taxes applicable to the construction of the project, including all tribal taxes. Where the Owner can arrange for the issuance of all or part of these permits, fees and licenses, without cost to the Contractor, the Contract amount shall be reduced accordingly.

### **16.0 HEALTH, SAFETY, AND ACCIDENT PREVENTION**

**16.1** In performing this Contract, the Contractor shall:

- a) Ensure that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his/her health or safety;
- b) Protect the lives, health, and safety of other persons;
- c) Prevent damage to property, materials, supplies, and equipment;
- d) Avoid work interruptions; and

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e) Provide for signage, if necessary, to direct the public's foot or vehicular traffic.

**16.2** For these purposes, the Contractor shall comply with regulations and standards issued by any authority governing this project. Failure to comply may result in imposition of sanctions in accordance with applicable law including tribal law and federal law where applicable.

**16.3** The Contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this Contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment, and shall report this data in the manner prescribed by any applicable law.

**16.4** The Contracting Officer shall notify the Contractor of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor's representative at the site of the work, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.

**16.5** The Contractor shall be responsible for any subcontractors' compliance with the provisions of this section. The Contractor shall take such action with respect to any subcontract as the Owner or any governmental inspector shall direct as a means of enforcing such provisions.

### **17.0 AVAILABILITY AND USE OF UTILITY SERVICES**

**17.1** The Contractor, at its expense, is responsible for supplying all utilities necessary to properly complete all work.

**17.2** The Contractor, at its expense and in a manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the Owner, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

### **18.0 PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS**

**18.1** The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed under this Contract, and which do not unreasonably interfere with the work required under this Contract.

**18.2** The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. Prior to disturbing the ground at the construction site, the Contractor shall ensure that all underground utility lines are clearly marked.

**18.3** The Contractor shall shore up, brace, underpin, secure, and protect as necessary all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be affected by the excavations or other operations connected with the construction of the project.

**18.4** Any equipment temporarily removed as a result of work under this Contract shall be protected, cleaned, and replaced in the same condition as at the time of award of this Contract.

**18.5** New work which connects to existing work shall correspond in all respects with that to which it connects or be similar to existing work unless otherwise required by the specifications.

**18.6** No structural members shall be altered or in any way weakened without the written authorization of the Contracting Officer, unless such work is clearly specified in the plans or specifications.

**18.7** If the removal of the existing work exposes discolored or unfinished surfaces, or work out of alignment, such surfaces shall be refinished, or the material replaced as necessary to make the continuous work uniform and harmonious. This, however, shall not be construed to require the refinishing or reconstruction of dissimilar finishes previously exposed, or finished surfaces in good condition, but in different planes or on different levels when brought together by the removal of intervening work, unless such refinishing or reconstruction is specified in the plans or specifications.

**18.8** The Contractor shall give all required notices to any adjoining or adjacent property owner or other party before the commencement of any work.

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**18.9** The Contractor shall indemnify and save harmless the Owner and its agents from any damages on account of settlement or the loss of lateral support of adjoining property, any damages from changes in topography affecting drainage, and from all loss or expense and all damages for which the Owner may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.

**18.10** The Contractor shall repair any damage to vegetation, structures, equipment, utilities, or improvements, including those that are the property of a third party, resulting from failure to comply with the requirements of this Contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

### **19.0 TEMPORARY BUILDINGS AND TRANSPORTATION OF MATERIALS**

**19.1** Temporary buildings (e.g., storage sheds, shops, offices, sanitary facilities) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the Owner. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.

**19.2** The Contractor shall, as directed by the Contracting Officer, use only established roadways or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any tribal, federal, state, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks or roads.

### **20.0 ENVIRONMENTAL AND HISTORICAL PRESERVATION COMPLIANCE**

**20.1** The Contractor is responsible for complying with, and assuring that all subcontractors comply with, all applicable environmental and historical preservation laws, regulations and requirements relating to the performance of the work for this project.

**20.2** For contracts exceeding \$100,000, the Contractor must comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 USC §1857(h)), section 508 of the Clean Water Act (33 USC §1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

### **21.0 INSPECTION AND ACCEPTANCE OF CONSTRUCTION**

**21.1** Definitions. As used in this section:

**a) "Acceptance"** means the act of an authorized representative of the Owner by which the Owner approves and assumes ownership of work performed under this Contract. Acceptance may be partial or complete.

**b) "Inspection"** means examining and testing the work performed under the Contract (including, when appropriate, raw materials, equipment, components, and intermediate assemblies) to determine whether it conforms to Contract requirements.

**c) "Testing"** means that element of inspection that determines the properties or elements, including functional operation of materials, equipment, or their components, by the application of established scientific principles and procedures.

**21.2** The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the Contract conforms to Contract requirements. All work is subject to the Owner's inspection and testing at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the Contract.

**21.3** The Owner's inspections and tests are for the sole benefit of the Owner and do not: (1) relieve the Contractor of responsibility for providing adequate quality control measures, (2) relieve the Contractor of responsibility for loss or damage of the material before acceptance, (3) constitute or imply acceptance, or (4) affect the continuing rights of the Owner after acceptance of the completed work under paragraph 21.10 below.

**21.4** The presence or absence of the Owner's inspector does not relieve the Contractor from any Contract requirement, nor is the inspector authorized to change any term or condition of the specifications without the Contracting Officer's written authorization. All instructions and approvals with respect to the work shall be given to the Contractor by the Contracting Officer. Although the Owner has the right to inspect, it relies on the Contractor to ensure that all methods used are safe.

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**21.5** The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The Owner may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The Owner shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the Contract.

**21.6** The Owner may conduct routine inspections of the construction site on a daily basis.

**21.7** The Contractor shall, without charge, replace or correct work found by the Owner not to conform to Contract requirements, unless the Owner decides that it is in its interest to accept the work with an appropriate adjustment in Contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

**21.8** If the Contractor does not promptly replace or correct rejected work, the Owner may, among other options, (1) replace or correct the work and charge the cost to the Contractor or (2) terminate for default the Contractor's Right to Proceed, but the Owner is not limited to these remedies.

**21.9** If any work requiring inspection is covered up without approval of the Owner, it must, if requested by the Contracting Officer, be uncovered at the expense of the Contractor. If at any time before final acceptance of the entire work, the Owner considers it necessary or advisable, to examine work already completed by removing or tearing it out, the Contractor shall, on request, promptly furnish all necessary facilities, labor, and material. If such work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray all the expenses of the examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the Contract, the Contracting Officer shall make an equitable adjustment to cover the cost of the examination and reconstruction, including, if completion of the work was thereby delayed, a no-cost extension of time.

**21.10** The Contractor shall notify the Contracting Officer, in writing, as to the date when in its opinion all or a designated portion of the work will be substantially completed and ready for inspection. If the Architect determines that the state of preparedness is as represented, the Owner will promptly arrange for the inspection. Unless otherwise specified in the Contract, the Owner shall accept, as soon as practicable after completion and inspection, the work required by the Contract or that portion of the work, at the discretion of the Owner, that the Contracting Officer determines and designates can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Owner's right under any warranty or guarantee.

### **22.0 USE AND POSSESSION PRIOR TO COMPLETION**

**22.1** The Owner shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the Owner intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the Contract. The Owner's possession or use shall not be deemed an acceptance of any work under the Contract.

**22.2** While the Owner has such possession or use, the Contractor shall be relieved of the responsibility for (1) the loss of or damage to the work resulting from the Owner's possession or use; (2) all maintenance costs on the areas occupied; and (3) furnishing heat, light, power, and water used in the areas occupied without proper remuneration therefor. If prior possession or use by the Owner delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the Contract price or in the time of completion, and the Contract shall be modified in writing accordingly.

### **23.0 WARRANTY OF TITLE AND TRANSFER OF OWNERSHIP**

**23.1** The Contractor warrants good title to all materials, supplies, and equipment incorporated in the work and agrees to deliver the premises together with all improvements thereon free from any claims, liens or charges, and agrees further that neither it nor any other person, firm or corporation shall have any right to a lien upon the premises or anything appurtenant thereto. Ownership transfers to the Owner upon incorporation of the material, supply or equipment into the project or upon payment therefor, whichever first occurs.

### **24.0 WARRANTY OF CONSTRUCTION**

**24.1** In addition to any other warranties in this Contract, the Contractor expressly warrants, except as provided below in this section, that work performed under this Contract conforms to the Contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any subcontractor or supplier at any tier. This warranty shall continue for a period of one year from the date of final acceptance of the work. If the Owner takes possession of any part of

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the work before final acceptance, this warranty shall continue for a period of one year from the date that the Owner takes possession. This express warranty and all the terms of this section entitled to warranty of construction neither negates nor limits any Contractor obligations or Owner rights established under the law of implied warranties.

**24.2** The Contractor shall remedy, at the Contractor's expense, any failure to conform or any defect. In addition, the Contractor shall remedy, at the Contractor's expense, any damage to Owner-owned or controlled real or personal property when the damage is the result of a) the Contractor's failure to conform to Contract requirements or b) any defects of equipment, material, workmanship or design furnished by the Contractor.

**24.3** The Contractor shall restore any work damaged in fulfilling the terms and conditions of this section. The Contractor's warranty with respect to work repaired or replaced will run one year from the date of repair or replacement.

**24.4** The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after its discovery of any failure, defect or damage.

**24.5** If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Owner shall have the right to replace, repair or otherwise remedy the failure, defect, or damage at the Contractor's expense.

**24.6** With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this Contract, the Contractor shall a) obtain all warranties that would be given in normal commercial practice; b) require all warranties to be executed in writing, for the benefit of the Owner; and c) enforce all warranties for the benefit of the Owner.

**24.7** In the event the Contractor's warranty under section 24.1 above has expired, the Owner may bring suit at its own expense to enforce a subcontractor's, manufacturer's or supplier's warranty.

**24.8** Notwithstanding any provisions herein to the contrary, the establishment of the time periods described above relate only to the specific obligation of the Contractor to correct the work, and have no relationship to the time within which its obligation to comply with the Contract may be sought to be enforced, nor to the time within which a proceeding may be commenced to establish the Contractor's liability with respect to its obligation other than specifically to correct the work.

**24.9** This warranty shall not limit the Owner's rights under the Inspection and Acceptance of Construction section of these General Conditions section 21.0 with respect to latent defects, gross mistakes or fraud.

### **25.0 PROHIBITION AGAINST LIENS**

**25.1** The Contractor is prohibited from placing a lien on the Owner's property. This prohibition shall apply to all subcontractors at any tier and to all materials suppliers.

### **26.0 PAYMENTS**

**26.1** The Owner shall pay the Contractor the price as provided in this Contract.

**26.2** The Owner shall make progress payments approximately every 30 days as the work proceeds on estimates of work accomplished which meets the standards of quality established under the Contract as approved by the Contracting Officer.

**26.3** Before the first progress payment under this Contract, the Contractor shall furnish, in such detail as requested by the Contracting Officer, a Schedule of Values or a Schedule of Amounts. This Schedule sets forth a breakdown of the total Contract price showing the amount included therein for each principal category of the work, which shall substantiate the payment amount requested in order to provide a basis for determining progress payments. The breakdown shall be approved by the Contracting Officer. If the Contract covers more than one project, the Contractor shall furnish a separate breakdown for each. The values and quantities employed in making up this breakdown are for determining the amount of progress payments and shall not be construed as a basis for additions to or deductions from the Contract price. For example, an hypothetical progress payment of \$1,000 per foundation does not establish a value for the foundation of \$1,000 in the event there is a change order adding one foundation; rather, the completion of the foundation is merely a measuring device for progress payments. The Contractor shall pro-rate its overhead and profit over the construction period of the Contract.

**26.4** The Contractor shall submit, along with an updated Progress Schedule, on forms provided by the Owner, periodic estimates (or progress payments) showing the value of the work performed during each period based upon the approved breakdown of the Contract price. Such estimates shall be subject to correction and revision as required. The estimates must be approved by the Contracting Officer with the concurrence of the Architect prior to payment. If the Contract covers more than one project, the Contractor shall furnish a separate progress payment estimate for each.

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**26.5** Along with each request for progress payments and the required estimates, the Contractor shall furnish the following certification, or payment shall not be made.

I hereby certify, to the best of my knowledge and belief that:

- 1. The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the Contract;**
- 2. All payments to subcontractors and suppliers have been made from previous payments received under the Contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements; and**
- 3. This request for progress payments does not include any amounts which the prime Contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract.**

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(Name)

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(Title)

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(Date)

**26.6** The Owner shall retain ten percent of the amount of progress payments until completion and acceptance of all work under the Contract; except, that if upon completion of 50% of the work, the Contracting Officer, after consulting with the Architect, determines that the Contractor's performance and progress are satisfactory, the Owner **may make** the remaining payments in full for the work subsequently completed. Such reduction shall not be considered if the Contractor secures performance with an Irrevocable Letter of Credit. If the Contracting Officer subsequently determines that the Contractor's performance and progress are unsatisfactory, the Owner shall reinstate retainage until such time as the Contracting Officer determines that performance and progress are satisfactory.

**26.7** All material and work covered by the progress payments made shall, at the time of payment, become the sole property of the Owner (*see also* section 23.0 for transfer of ownership), but this shall not be construed as (1) relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work or (2) waiving the right of the Owner to require the fulfillment of all of the terms of the Contract. In the event the work of the Contractor has been damaged by other Contractors or persons other than employees of the Owner in the course of their employment, the Contractor shall restore such damaged work without cost to the Owner and to seek redress for its damage only from those who directly caused it.

**26.8** The Owner shall make the final payment due the Contractor under this Contract after (1) completion and final acceptance of all work and (2) presentation of release of all claims against the Owner arising by virtue of this Contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. Each such exception shall embrace no more than one claim, the basis and scope of which shall be clearly defined. The amounts for such excepted claims shall not be included in the request for final payment. A release may also be required of the assignee if the Contractor's claim to amounts payable under this Contract has been assigned.

**26.9** Prior to making any payment, the Contracting Officer may require the Contractor to furnish receipts or other evidence of payment from all persons performing work and supplying material to the Contractor, if the Contracting Officer determines such evidence is necessary to substantiate claimed costs.

### **27.0 CONTRACT MODIFICATIONS**

**27.1** Only the Contracting Officer has authority to modify any term or condition of this Contract. Any Contract modification shall be authorized in writing.

**27.2** The Contracting Officer may modify the Contract unilaterally (1) pursuant to a specific authorization stated in a Contract clause (*e.g.*, Changes in the section below) or (2) for administrative matters which do not change the rights or responsibilities

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of the parties (e.g., change in the Owner's address). All other Contract modifications shall be in the form of supplemental agreements signed by the Contractor and the Contracting Officer.

### **28.0 CHANGES**

**28.1** The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make changes in the work within the general scope of the Contract including changes:

- a) In the Technical Specifications (including drawings and designs);
- b) In the method or manner of performance of the work;
- c) In the Owner-furnished facilities, equipment, materials, services, or site; or
- d) Directing the acceleration in the performance of the work.

**28.2** Any other written order or oral order (which includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this section; provided, that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances and source of the order and (2) that the Contractor regards the order as a change order.

**28.3** Except as provided in this section 28.0, no order, statement or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

**28.4** If any change under this section 28.0 causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this Contract, the Contracting Officer shall make an equitable adjustment and modify the Contract in writing. However, except for an adjustment based on defective specifications, no proposal for any change under paragraph 28.2 above shall be allowed for any costs incurred more than 20 days (5 days for oral orders) before the Contractor gives written notice as required. In the case of defective specifications for which the Owner is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

**28.5** The Contractor must assert its right to an adjustment under this section 28.0 within 30 days after (1) receipt of a written change order under paragraph 28.1 of this section or (2) the furnishing of a written statement describing the general nature and the amount of the proposal and within the time period prescribed. If the facts justify it, the Contracting Officer may extend the period for submission. No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this Contract.

**28.6** The Contractor's written proposal for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the Contract in at least the following details:

- a) Direct Costs. Materials (list individual items, the quantity and unit cost of each, and the aggregate cost); Transportation and delivery costs associated with materials; Labor breakdowns by hours or unit costs (identified with specific work to be performed); Construction equipment exclusively necessary for the change; Costs of preparation and/or revision to shop drawings resulting from the change; Worker's Compensation and Public Liability Insurance; Employment taxes under FICA and FUTA; and Bond Costs (when size of change warrants revision).
- b) Indirect Costs. Indirect costs may include overhead, general and administrative expenses, and fringe benefits not normally treated as direct costs.
- c) Profit. the amount of profit shall be negotiated and may vary according to the nature, extent, and complexity of the work required by the change.

**28.7** The allowability of the direct and indirect costs shall be determined in accordance with applicable standards. The Contractor shall not be allowed a profit on the profit received by any subcontractor. Equitable adjustments for deleted work shall include a credit for profit and may include a credit for indirect costs. On proposals covering both increases and decreases in the amount of the Contract, the application of indirect costs and profit shall be on the net-change in direct costs for the Contractor or subcontractor performing the work.

**28.8** The Contractor shall include in the proposal its request for time extension (if any), and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the completion of the Contract in its entirety.

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**28.9** The Contracting Officer shall act on proposals within 20 days after their receipt, or notify the Contractor of the date when such action will be taken.

**28.10** Failure to reach an agreement on any proposal shall be a dispute under the section entitled Disputes herein (section 30). Nothing in this section 28, however, shall excuse the Contractor from proceeding with the Contract as changed. Except in an emergency endangering life or property, no change shall be made by the Contractor without a prior order from the Contracting Officer.

**28.11** If the Contractor claims that any instructions by drawings or otherwise involve extra cost or extension of time, the Contractor shall, within ten days after the receipt of such instructions, and in any event before proceeding to execute the work, submit his protest thereto in writing to the Owner, stating clearly and in detail the basis of his objections. No such claim shall be valid unless so made.

**28.12** Claims for additional compensation for extra work, due to alleged errors in spot elevations, contour lines, or bench marks, will not be recognized unless accompanied by certified survey data, made prior to the time the original ground was disturbed, clearly showing that errors exist which resulted, or would result, in handling more material, or performing more work, than would be reasonably estimated from the plans and topographical maps issued. See section 8.

**28.13** Any discrepancies which may be discovered between actual conditions and those represented by the topographical maps and plans shall be reported to the Owner at once, and work shall not proceed, except at the Contractor's risk, until written instructions have been received by him from the Owner. See section 9.

**28.14** By execution of the Contract, the Contractor warrants that its representatives have visited the site of the proposed work and fully acquainted themselves with the conditions there existing related to construction, demolition and labor (see section 8.0) and that the Contractor fully understands the facilities, difficulties and restrictions attending the execution of the work under the Contract. The Contractor further warrants that by execution of this Contract, his failure when he was bidding on this Contract to receive or examine any form, instrument, or document, or to visit the site and acquaint himself with conditions there existing, in no way relieves him from any obligation under the Contract and the Contractor agrees that the Owner shall be justified in rejecting any claim based on facts regarding which the Contractor should have been on notice as a result thereof.

### **29.0 SUSPENSION OF WORK**

**29.1** The Contracting Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work of this Contract for the period of time that the Contracting Officer determines appropriate for the convenience of the Owner. If the parties mutually agree additional time may be added to the Contract period (see section 32.0 below).

### **30.0 DISPUTES AND SOVEREIGN IMMUNITY**

**30.1** "Claim" means a written demand or written assertion by the Contractor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of Contract terms, or other relief arising under or relating to the Contract. A claim arising under the Contract is a claim that can be resolved under a Contract clause that provides for the relief sought by the claimant. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim by complying with the requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

**30.2** All disputes arising under or relating to this Contract, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this section.

**30.3** All claims by the Contractor shall be made in writing, identified as a "claim," and submitted to the Contracting Officer for a written decision. A claim by the Owner against the Contractor shall be subject to a written decision by the Contracting Officer.

**30.4** The Contracting Officer shall, within 60 days (unless otherwise indicated) after receipt of the request, decide the claim or notify the Contractor of the date by which the decision will be made.

**30.5** The Contracting Officer's decision shall be final unless the Contractor (1) appeals in writing to a higher level in the Owner's organization in accordance with the Owner's policy and procedures, if any, or (2) files suit in a tribal court of competent jurisdiction, which tribal court shall have sole jurisdiction over all legal claims under this Contract. Such appeal must be made within 30 days after receipt of the Contracting Officer's decision. The Owner hereby expressly waives its sovereign immunity only regarding disputes with the Contractor that arise under this Contract and only when the Contractor follows the requirements of this subsection. The Owner makes no other implied or express waiver of immunity to the Contractor or to any other party to this project and this partial waiver shall not constitute any waiver of sovereign immunity on behalf of the Tribe.

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**30.6** The Contractor shall proceed diligently with performance of this Contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the Contract, and comply with any decision of the Contracting Officer.

### **31.0 DEFAULT**

**31.1** If the Contractor refuses or fails to properly prosecute the work, or any separable part thereof, with the diligence that will ensure its completion within the time specified in this Contract, or any extension thereof, or fails to complete said work within this time, the Contracting Officer may, by written notice to the Contractor, terminate the Right to Proceed with the work (or separable part of the work) that has been delayed. In this event, the Owner may take over the work and complete it, by Contract or otherwise, and may take possession of and use any materials, equipment, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Owner resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Owner in completing the work.

**31.2** The Contractor's Right to Proceed shall not be terminated or the Contractor charged with damages under this section if:

a) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God or of the public enemy, (ii) acts of a governmental entity, (iii) acts of another Contractor in the performance of a Contract with the Owner, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from similar unforeseeable causes beyond their control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

b) The Contractor, within 10 days from the beginning of such delay, notifies the Contracting Officer in writing of the delay and the causes of the delay. The Contracting Officer shall ascertain the facts and the extent of the delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, time for completing the work shall be extended by written modification to the Contract. The findings of the Contracting Officer shall be reduced to a written decision which shall be subject to the provisions of the Disputes section of this Contract (See section 30.0).

**31.3** If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been for convenience of the Owner. (See section 33.0)

### **32.0 DAMAGES FOR FAILURE TO COMPLETE (AND NO DAMAGE FOR OWNER'S DELAY)**

**32.1** If the Contractor fails to complete the work within the time specified in the Contract, or any extension, as specified in the clause entitled Default of this Contract (see section 31.0), the Contractor shall pay to the Owner as delay damages, the sum as set forth in the Contract between Owner and Contractor, section 5.1. If different completion dates are specified in the Contract for separate parts or stages of the work, the amount of delay damages shall be assessed on those parts or stages which are delayed. To the extent that the Contractor's delay or nonperformance is excused under another clause in this Contract, delay damages shall not be due the Owner. The Contractor remains liable for damages caused other than by excused delay.

**32.2** It is hereby understood and mutually agreed by and between the Contractor and the Owner, that the dates for commencement and completion of the work to be done hereunder as specified in the Contract are essential conditions of this Contract.

**32.3** The Contractor agrees that said work shall be prosecuted regularly, diligently and uninterruptedly at such rate of progress as will ensure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time for the completion of the same work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

**32.4** If the Contractor shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the Owner, then the Contractor does hereby agree, as a part of consideration for the awarding of this Contract, to pay to the Owner the amount enumerated in the Contract, section 5.1, not as a penalty, but as delay damages for such breach of Contract, for each and every calendar day that the Contractor shall be in default after the time stipulated for completing the work.

**32.5** The said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain; said amount may be retained from time to time by the Owner from current periodical estimates.

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**32.6** The Contractor is not allowed any additional compensation for any damages arising from delay caused by the Owner; however, in such event, additional time may be added to the Contract period.

### **33.0 TERMINATION FOR CONVENIENCE**

**33.1** The Contracting Officer may terminate this Contract in whole, or in part, whenever the Contracting Officer determines that such termination is in the best interest of the Owner. Any such termination shall be effected by the delivery to the Contractor of a Notice of Termination specifying the extent to which the performance of the work under the Contract is terminated, and the date upon which such termination becomes effective.

**33.2** If the performance of the work is terminated, either in whole or in part, the Owner shall be liable to the Contractor to reasonable and proper costs resulting from such termination upon the receipt by the Owner of a properly presented claim setting out in detail: (1) the total cost of the work performed to date of termination less the total amount of Contract payments made to the Contractor; (2) the cost (including reasonable profit) of settling and paying claims under subcontracts and material orders for work performed and materials and supplies delivered to the site, payment for which has not been made by the Owner to the Contractor or by the Contractor to the subcontractor or supplier; (3) the cost of preserving and protecting the work already performed until the Owner or assignee takes possession thereof or assumes responsibility therefor; (4) the actual or estimated cost of legal and accounting services reasonably necessary to prepare and present the termination claim to the Owner; and (5) an amount constituting a reasonable profit on the value of the work performed by the Contractor.

**33.3** The Contracting Officer will act on the Contractor's claim within 60 days of receipt of the Contractor's claim.

**33.4** Any disputes with regard to this section are expressly made subject to the provisions of the Disputes section of these General Conditions (section 30.0).

**33.5** If a bankruptcy action is filed by or is filed against the Contractor or any major subcontractor of the Contractor or if a bankruptcy has been adjudged, or if the Contractor makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of their insolvency or other reasons, or if they should refuse or fail to supply enough properly skilled workmen or proper materials, or if they should fail to make prompt payments to employees or to subcontractors, or persistently disregard instructions of the Owner or Architect or fail to observe or perform the provisions of the Contract, or otherwise be guilty of a substantial violation of any provision of the Contract, then the Owner may, with written notice to the Contractor, without prejudice to any rights or remedies of the Owner, terminate the Contractor's right to proceed with the work. In such event, the Owner may take over and prosecute the work to completion, by Contract or otherwise, and the Contractor and his sureties shall be liable to the Owner for any and all excess cost occasioned the Owner thereby, including but not limited to excess costs of construction, administrative expenses, interest, inspection costs, fees for services and other losses as may be shown. In any such case, the Owner may take possession of and utilize in completing the work such materials, appliances, equipment and plants as may be on the site of the work and necessary therefor. The foregoing provisions are in addition to, and not in limitation of the rights of the Owner under any other provisions of the Contract.

### **34.0 ASSIGNMENT OF CONTRACT**

**34.1** The Contractor shall not assign or transfer any interest in this Contract without written approval of the Owner. If the Contractor is a partnership, this Contract shall inure to the benefit of the surviving or remaining member(s) of such partnership as approved by the Contracting Officer. If more than 51% of this Contract is subcontracted to a single subcontractor, such subcontracting shall be considered an assignment.

### **35.0 INSURANCE AND HOLD HARMLESS CLAUSE**

**35.1** Before commencing work, the Contractor and each subcontractor shall furnish the Owner with certificates of insurance showing the following insurance is in force and will insure all operations under the Contract in the amounts set forth in the Contract, section 9.1:

a) Commercial General Liability with a combined single limit for bodily injury and property damage of the amount stated in the Contract between Owner and Contractor, section 9.1, to protect the Contractor and each subcontractor against claims for bodily injury or death and damage to the property of others. This shall cover the use of all equipment, hoists, and vehicles on the site(s) not covered by Automobile Liability under subparagraph (b) below. If the Contractor has a "claims-made" policy, then the following additional requirements apply: the policy must provide a "retroactive date" which must be on or before the execution date of the Contract and the extended reporting period may not be less than five years following the completion date of the Contract.

b) Automobile Liability on owned and non-owned motor vehicles used on the site(s) or in connection therewith for a combined single limit for bodily injury and property damage.

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c) Workers' Compensation, in accordance with state Workers' Compensation laws.

**35.2** Before commencing work, the Contractor shall furnish the Owner with a certificate of insurance evidencing that Builder's Risk Insurance (fire and extended coverage) on all work in place and/or materials stored at the building site(s), including foundations and building equipment, is in force. The Builder's Risk Insurance shall be for the benefit of the Contractor and the Owner as their interests may appear and each shall be named in the policy or policies as an insured. The Contractor in installing equipment supplied by the Owner shall carry insurance on such equipment from the time the Contractor takes possession thereof until the Contract work is accepted by the Owner. The Builder's Risk Insurance need not be carried on excavations, piers, footings, or foundations until such time as work on the super-structure is started. It need not be carried on landscape work. Policies shall furnish coverage at all times for the full cash value of all completed construction, as well as materials in place or stored at the site(s), whether or not partial payment has been made by the Owner. The Contractor may terminate this insurance on buildings as of the date taken over for occupancy by the Owner. The Contractor is not required to carry Builder's Risk Insurance for modernization work which does not involve structural alterations or additions and where the Owner's existing fire and extended coverage policy can be endorsed to include such work.

**35.3** All insurance shall be carried with companies which are financially responsible and admitted to do business in the State in which the project is located. If any such insurance is due to expire during the construction period, the Contractor (including subcontractors, as applicable) shall not permit the coverage to lapse and shall furnish evidence of coverage to the Contracting Officer. All certificates of insurance, as evidence of coverage, shall provide that no coverage may be canceled or non-renewed by the insurance company until at least 30 days prior written notice has been given to the Contracting Officer.

**35.4** In the event that any insurance lapses or fails to provide for coverage for a loss or damage under this Contract, the Contractor agrees to indemnify and hold harmless the Owner from any loss.

**35.5** The Contractor shall notify the Owner in writing of the name of a subcontractor and any sub-tier subcontractors prior to their commencing any work on the project.

### **36.0 SUBCONTRACTS**

**36.1** Definitions. As used in this Contract:

a) "Subcontract" means any Contract, purchase order, or other purchase agreement, including modifications and change orders to the foregoing, entered into by a subcontractor to furnish supplies, materials, equipment, and services for the performance of the prime Contract or a subcontract.

b) "Subcontractor" means any supplier, vendor, or firm that furnishes supplies, materials, equipment, or services to or for the Contractor or another subcontractor.

**36.2** The Contractor shall be as fully responsible for the acts or omissions of its subcontractors, and of persons either directly or indirectly employed by them, as for the acts or omissions of persons directly employed by the Contractor.

**36.3** The Contractor shall insert appropriate clauses in all subcontracts to bind subcontractors to the terms and conditions of this Contract insofar as they are applicable to the work of subcontractors.

**36.4** Nothing contained in this Contract shall create any contractual relationship between any subcontractor and the Owner.

### **37.0 EQUAL EMPLOYMENT OPPORTUNITY**

**37.1** The Contractor must comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).

### **38.0 ROYALTIES AND PATENTS**

**38.1** The Contractor shall pay all royalties and license fees. It shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof; except that the Owner shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified and the Contractor has no reason to believe that the specified design, process, or product is an infringement. If, however, the Contractor has reason to believe that any design, process or product specified is an infringement of a patent, the Contractor shall promptly notify the Contracting Officer. Failure to give such notice shall make the Contractor responsible for resultant loss.

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### **39.0 EXAMINATION AND RETENTION OF CONTRACTOR'S RECORDS**

**39.1** The Owner or any of its duly authorized representatives shall for a period of three years after final payment under this Contract have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this Contract for the purpose of making audit, examination, excerpts, and transcriptions.

**39.2** The Contractor agrees to include in first-tier subcontracts under this Contract a clause substantially the same as paragraph 39.1 above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.

**39.3** The period of access and examination in paragraphs 39.1 and 39.2 above for records relating to (1) appeals under the Disputes section of these General Conditions, (2) litigation or other forum for resolution or settlement of claims arising from the performance of this Contract, or (3) costs and expenses of this Contract to which the Owner or its duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

### **40.0 TERO ORDINANCE**

**40.1** The successful Contractor and all subcontractors must comply with the Tribe's Tribal Employment Rights Office (TERO) Ordinance, including any licensing, tax, permit or employment requirements.

### **41.0 SPECIAL ECONOMIC OPPORTUNITIES UNDER SECTION 3.**

**41.1** In accordance with section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations at 24 CFR part 135, for projects exceeding \$200,000, the Owner and any Contractor on this project will make best efforts, consistent with federal and tribal laws and regulations (including section 7(b) of the Indian Self-Determination and Education Assistance Act), to give training, employment and Contracting opportunities generated by section 3 of the Act to low- and very low-income persons and to qualified businesses in the area of the project.

### **42.0 LABOR STANDARDS--Davis-Bacon and Related Acts**

**42.1** This contract is exempt from the Davis-Bacon Act, 40 USC §§276a--276a-5. Davis-Bacon wage rates are not applicable to this contract.

**42.2 & 42.3** (intentionally left blank)

**42.4** The Contractor or subcontractor shall make its records available for inspection, copying, or transcription by authorized representatives of the Owner and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Owner or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

**42.5** The Contractor shall comply with the requirements of the Copeland Act prescribing "anti-kickback" activities (18 USC §874 supplemented by 29 CFR Part 3), which are hereby incorporated by reference in this Contract. All rulings and interpretations of Davis-Bacon and related acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Contract.

**42.6** Disputes arising out of the labor standards provisions of this clause shall not be subject to the general disputes clause of this Contract, General Conditions, section 30. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5 and 6.

**42.7** The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these provisions.

**42.8** The Contractor must comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §327-330) as supplemented by Department of Labor regulations (29 CFR part 5) (Construction Contracts in excess of \$2,000, and in excess of \$2,500 for other Contracts which involve the employment of mechanics or laborers).

### **43.0 MINORITY PREFERENCE**

**43.1** Affirmative steps by the Contractor and all subcontractors are required to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible (24 CFR 85.36(e); E.O. 11625).

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### **44.0 DEBARRED PARTIES**

**44.1** No award or subcontract shall be made, at any tier, to any party which is a) debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension" and all prohibitions in 24 CFR part 24 apply or b) formally debarred by the Owner or Tribe.

### **45.0 IMPROPER INFLUENCE**

**45.1** There shall be full compliance by all individuals and entities involved in this Contract with the provisions of the Hatch Act (5 U.S.C. §1501-1508) and the Intergovernmental Personnel Act of 1970 as amended by Title VI of Civil Service Reform Act (Pub. L. 95-454 Section 4728) prohibiting use of federally appropriated funds for influencing or attempting to influence the award of any federal monies and to make such reports and disclosures as are required thereunder. The signing of the Contract is a certification of agreed compliance.

### **46.0 CONFLICT OF INTEREST**

**46.1** No personal or financial interest in or benefit from this Contract may be obtained by certain affiliates, associates, board members or employees of Owner or its grantees, either for themselves or their families or business associates, during their tenure or for one year thereafter.

### **47.0 LEAD-BASED PAINT**

**47.1** The Contractor shall fully comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §4821, *et seq.*) and implementing regulations at 24 CFR 570.608, as well as compliance with the requirements regarding asbestos of 40 CFR Part 61 and 40 CFR Part 763, as well as 29 CFR 1910.1001 and 1926.58.

### **48.0 CIVIL RIGHTS REQUIREMENTS**

**48.1** Except as Indian Preference requirements and the provisions of the Native American Housing Assistance and Self-Determination Act (NAHASDA), 25 U.S.C. §1401, *et seq.* may supersede, the Contractor shall comply with prohibitions against discrimination as provided by Title VI of the Civil Rights Act of 1976 (Pub. L. 88-352) and related HUD regulations, Age Discrimination Act of 1975 and the implementing regulations at 24 CFR Part 146, Section 504 of the Rehabilitation Act of 1973, as amended, 24 CFR Part 8, Title VIII of the Civil Rights Act of 1968, and, as applicable, the Indian Civil Rights Act, Title II of the Civil Rights Act of 1968; 25 U.S.C. 1301-1303.

**48.2** Section 504 of the Rehabilitation Act of 1973 (29 USC §794, the precursor to the Americans with Disabilities Act) and HUD's regulations at 24 CFR part 146 shall also apply to the Contract.

### **49.0 DRUG FREE WORKPLACE REQUIREMENTS**

**49.1** This Contract is subject to the Drug-Free Workplace Act of 1988 (41 USC §§701, *et seq.*) and HUD's implementing regulations in 24 CFR part 24 apply.

### **50.0 ENERGY EFFICIENCY REQUIREMENTS**

**50.1** Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act shall be complied with.