

Skokomish Indian Tribe Construction General Conditions

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1. DEFINITIONS

Wherever used in the CONTRACT DOCUMENTS, the following terms shall have the meanings indicated which shall be applicable to both the singular and plural thereof:

- 1.1 ADDENDA mean written or graphic instruments issued prior to the execution of the Contract (Agreement) which modify or interpret the CONTRACT DOCUMENTS, DRAWINGS and SPECIFICATIONS, by additions, deletions, clarifications or corrections.
- 1.2 AWARD means the formal decision by the TRIBE to accept the lowest responsible and responsive Bidder for the WORK.
- 1.3 BID means the offer or proposal of the BIDDER submitted on the prescribed form (Bid Form) setting forth the prices for the WORK to be performed.
- 1.4 BIDDER means any person, partnership, firm, corporation, or joint venture submitting a BID for the WORK. When required by law or otherwise, a prospective BIDDER shall be prequalified.

RESPONSIBLE BIDDER means a BIDDER that is not disqualified under the CONTRACT DOCUMENTS and meets all criteria established by the Tribe in the INVITATION TO BID.

RESPONSIVE BIDDER means a BIDDER submitting a BID that meets all of the requirements identified in the INVITATION TO BID and on the Bid Form.

INVITATION TO BID means the Call for Bids (Advertisement for Bids) soliciting Project Proposals and the Bid Documents describing the WORK to be performed and all requirements and qualifications, including any prequalification criteria, that BIDDERS must meet in order to submit a BID.

- 1.5 BOND means Bid Deposit, including surety bonds in accordance with the Invitation to Bid and Bid Form, or Contract Bond (Performance and Payment Bonds) and other instruments of security, furnished by the CONTRACTOR and the CONTRACTOR's Surety in accordance with the CONTRACT DOCUMENTS.
- 1.6 CHANGE ORDER means a CONTRACT AMENDMENT authorizing an addition, deletion or revision in the WORK within the general scope of the CONTRACT DOCUMENTS, or authorizing an adjustment in the CONTRACT PRICE or CONTRACT TIME.
- 1.7 CONTRACT means the written agreement between the Skokomish Indian Tribe and the CONTRACTOR. It describes, among other things:

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- a. What work will be done, and by when;
- b. Who provides labor and materials; and
- c. How Contractor will be paid.

The contract includes all CONTRACT DOCUMENTS and various certifications and affidavits, supplemental agreements, change orders, and subsurface boring logs (if any) as may be required to complete the WORK.

- 1.8 CONTRACT DOCUMENTS means the CONTRACT including the following DOCUMENTS listed in order of precedence: the Contract (Agreement) Form approved as to form by the Skokomish Tribal Attorney, Addenda, Bid Form, General Conditions, Special Provisions, Contract Drawings, Amendments to Standard Specifications, Standard Specifications, and Standard Plans.
- 1.9 CONTRACT PRICE means the total monies payable to the CONTRACTOR under the terms and conditions of the CONTRACT DOCUMENTS.
- 1.10 CONTRACT TIME means the number of CALENDAR DAYS or WORKING DAYS stated in the CONTRACT DOCUMENTS for the PHYSICAL COMPLETION of the WORK. CONTRACT TIME is initially specified by the SPECIAL PROVISIONS.

FINAL COMPLETION: Date identified by the CONTRACT DOCUMENTS by which all the WORK specified in the CONTRACT DOCUMENTS is completed and all obligations of the CONTRACTOR under the CONTRACT are fulfilled by the CONTRACTOR. All documentation required by the CONTRACTOR and required by law must be furnished by the CONTRACTOR before establishment of this date. The date by which FINAL COMPLETION must occur is initially specified in the Contract (Agreement) Form.

CALENDAR DAYS: The number of days between the STARTING DATE OF WORK and the PHYSICAL COMPLETION Date excluding any period(s) during which the CONTRACT WORK was suspended.

NON-WORKING DAYS: Saturday, Sunday, and holidays designated by the Skokomish Indian Tribe as follows:

New Years's Eve	Labor Day observed
New Year's Day	WA American Indian Day
Martin Luther King Day	Veteran's Day
Point No Point Treaty Day	Thanksgiving Day
President's Day	Day after Thanksgiving
Memorial Day	Christmas Eve
Independence Day observed	Christmas Day observed;

WORKING DAYS: The number of days between the STARTING DATE OF WORK and the PHYSICAL COMPLETION Date excluding NON-WORKING DAYS.

STARTING DATE OF WORK: Date identified by the NOTICE TO PROCEED

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to the CONTRACTOR to commence WORK or the date that the CONTRACTOR begins onsite WORK if earlier.

TIME FOR (OF) COMPLETION: occurs upon PHYSICAL COMPLETION of the CONTRACT WORK. TIME FOR COMPLETION describes the passage of CONTRACT TIME; TIME OF COMPLETION describes a specific date provided to the CONTRACTOR by the ENGINEER identifying PHYSICAL COMPLETION of the WORK.

- 1.11 CONTRACTOR means the person, partnership, firm, corporation, or joint venture with whom the Skokomish Indian Tribe has executed the Contract (Agreement).
- 1.12 DRAWINGS mean the part of the CONTRACT DOCUMENTS, which show the characteristics and scope of the WORK to be performed, and which have been prepared and/or approved by the ENGINEER.
- 1.13 ENGINEER means the person, partnership, firm, corporation, or joint venture named as such in the CONTRACT DOCUMENTS and hired by the Skokomish Indian Tribe to provide professional services consistent with those of a Professional Engineer registered in the State of Washington.
- 1.14 FIELD ORDER means a written notice effecting a change in the WORK not involving an adjustment in the CONTRACT PRICE or an extension of the CONTRACT TIME, issued by the TRIBE in consultation with the ENGINEER and the TRIBAL CONTRACT REPRESENTATIVE to the CONTRACTOR during construction
- 1.15 NOTICE OF AWARD means the written notice from the TRIBE accepting the Bid to the successful BIDDER.
- 1.16 NOTICE TO PROCEED means the written notice issued by the TRIBE to the CONTRACTOR authorizing the CONTRACTOR to proceed with the WORK and establishing the date of commencement of the WORK.
- 1.17 PHYSICAL COMPLETION means that date when construction of the PROJECT is physically completed including: any minor incidental work, replacement of temporary substitute facilities, and correction or repairs in accordance with the CONTRACT DOCUMENTS. All documentation required by the CONTRACT DOCUMENTS and required by law does not necessarily need to be furnished by the CONTRACTOR by the PHYSICAL COMPLETION Date (TIME OF COMPLETION).
- 1.18 PROJECT means the WORK to be performed as required by one or more sets of CONTRACT DOCUMENTS for one or more interrelated CONTRACTS.
- 1.19 SHOP DRAWINGS means all drawings, including WORKING DRAWINGS, diagrams, illustrations, brochures, schedules and other data which are prepared by the CONTRACTOR, a SUBCONTRACTOR, manufacturer, SUPPLIER or

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distributor, which illustrate how specific portions of the WORK shall be fabricated or installed.

- 1.20 SPECIFICATIONS mean a part of the CONTRACT DOCUMENTS consisting of written descriptions of a technical nature providing an explicit set of requirements for the WORK (materials, equipment, construction, workmanship, CONTRACT TIME, etc.).
- 1.21 SUBCONTRACTOR means a person, partnership, firm, corporation, or joint venture having a direct contract with the CONTRACTOR or with any other SUBCONTRACTOR for the performance of a part of the WORK at the site.
- 1.22 SUBSTANTIAL COMPLETION means that date as certified by the ENGINEER when the construction of the PROJECT is sufficiently completed in accordance with the CONTRACT DOCUMENTS, so that the PROJECT or specified part can be utilized for the purposes for which it is intended.
- 1.23 SPECIAL PROVISIONS means a part of the CONTRACT DOCUMENTS consisting of written modifications to the General Conditions and/or Standard Specifications which may be required by a Federal agency for participation in the PROJECT, or such requirements that may be imposed by applicable federal, state or local laws, or the TRIBE's contracting practices.
- 1.24 SUPPLIER means any person, partnership, firm, corporation, or joint venture who supplies materials or equipment for the WORK, including that fabricated to a special design, but who does not perform labor at the site.
- 1.25 TRIBE means the Skokomish Tribal Council, the governing body of the Skokomish Indian Tribe, which has jurisdiction on the Skokomish Indian Reservation on or near which the WORK will be performed. The TRIBE is a Public Authority under 23 U.S.C. Sec.(a)(23) authorized to execute and administer contracts for public highway improvements.
- 1.26 TRIBAL CONTRACT REPRESENTATIVE means the person, partnership, firm, corporation, or joint venture who is authorized by the TRIBE to manage on-site construction, inspect the WORK, assist the ENGINEER, and assist with required reporting.
- 1.27 TRIBAL PROJECT MANAGER means the employee or agent of the TRIBE authorized to administer the CONTRACT or CONTRACTS in the overall management of a PROJECT.
- 1.28 WORK means all labor, materials, tools, equipment, and everything necessary to successfully complete a PROJECT as required by the CONTRACT DOCUMENTS.
- 1.29 WORKING DRAWINGS means shop plans, erection plans, falsework plans,

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framework plans, cofferdam, cribbing and shoring plans, bending diagrams for reinforcing steel, or any other supplementary plans or similar data.

2. ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS

- 2.1 The CONTRACTOR may be furnished additional instructions and detail drawings, by the ENGINEER, as necessary to carry out the WORK.
- 2.2 All additional drawings and instructions thus supplied will become a part of the CONTRACT DOCUMENTS. The CONTRACTOR shall carry out the WORK in accordance with the additional detail drawings and instructions.

3. REPORTS AND RECORDS

- 3.1 The CONTRACTOR shall submit to the TRIBE such schedule of quantities and costs, payrolls, reports, estimates, records and other data where applicable as are required by the CONTRACT DOCUMENTS for the WORK to be performed.
- 3.2 The CONTRACTOR shall keep all records related to the CONTRACT for a minimum of three years after acceptance of the completed work.

4. DRAWINGS AND SPECIFICATIONS

- 4.1 The intent of the DRAWINGS and SPECIFICATIONS is that the CONTRACTOR shall furnish all labor, materials, tools, equipment, and transportation necessary for the proper execution of the WORK in accordance with the CONTRACT DOCUMENTS and all incidental work necessary to complete the PROJECT in an acceptable manner, ready for use, occupancy or operation by the TRIBE.
- 4.2 The intent within the CONTRACT DOCUMENTS is for DRAWINGS and SPECIFICATIONS to be complimentary with neither taking precedence over the other. However, in the event of discrepancies between the DRAWINGS and SPECIFICATIONS, whether due to errors, omissions, differences in scale dimensions or matters of detailed DRAWINGS relative to general DRAWINGS, the ENGINEER shall consider all factors and make a determination to use the DRAWINGS and/or SPECIFICATIONS identified by the ENGINEER.
- 4.3 Any discrepancies found between the DRAWINGS and SPECIFICATIONS and site conditions or any inconsistencies or ambiguities in the DRAWINGS or SPECIFICATIONS shall be immediately reported to the ENGINEER, in writing, who shall promptly correct such inconsistencies or ambiguities in writing. WORK done by the CONTRACTOR after his discovery of such discrepancies, inconsistencies or ambiguities shall be done at the CONTRACTOR'S risk.

5. SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

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- 5.1 The CONTRACTOR will take steps necessary to ascertain the nature and location of the work, and investigate 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 will observe and determine 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 TRIBE (e.g. boring logs). 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 TRIBE.
- 5.2 The TRIBE assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the TRIBE. The TRIBE does not assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its representatives before the execution of this contract, unless that understanding or representation is expressly stated in the CONTRACT DOCUMENTS.

6. SHOP DRAWINGS

- 6.1 The CONTRACTOR shall provide SHOP DRAWINGS as may be necessary for the prosecution of the WORK as required by the CONTRACT DOCUMENTS. The ENGINEER shall promptly review all SHOP DRAWINGS. The ENGINEER'S approval of any SHOP DRAWING shall not release the CONTRACTOR from responsibility for deviations from the CONTRACT DOCUMENTS. The approval of any SHOP DRAWING which results in substantial deviations from CONTRACT DOCUMENTS and either a change in CONTRACT PRICE or CONTRACT TIME or both shall be evidenced by a CHANGE ORDER.
- 6.2 When submitted for the ENGINEER'S review, SHOP DRAWINGS shall bear the CONTRACTOR'S certification that the CONTRACTOR has reviewed, checked and approved the SHOP DRAWINGS and that they are in conformance with the requirements of the CONTRACT DOCUMENTS.
- 6.3 Portions of the WORK requiring a SHOP DRAWING or sample submission shall not begin until the SHOP DRAWING or submission has been approved by the ENGINEER. A copy of each approved SHOP DRAWING and each approved sample shall be kept in good order by the CONTRACTOR at the site and shall be available to the ENGINEER and the TRIBAL CONTRACT

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REPRESENTATIVE.

7. MATERIALS, SERVICES AND FACILITIES

- 7.1 It is understood that, except as otherwise specifically stated in the CONTRACT DOCUMENTS, the CONTRACTOR shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the WORK during the CONTRACT TIME.
- 7.2 Materials and equipment shall be so stored as to insure the preservation of their quality and fitness for the WORK. Stored materials and equipment to be incorporated in the WORK shall be located so as to facilitate prompt inspection.
- 7.3 Manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.
- 7.4 Materials, supplies and equipment shall be in accordance with samples submitted by the CONTRACTOR and approved by the ENGINEER.
- 7.5 Materials, supplies or equipment to be incorporated into the WORK shall not be purchased by the CONTRACTOR or the SUBCONTRACTOR subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.

8. SUBSTITUTIONS

- 8.1 Whenever a material, article or piece of equipment is identified on the drawings or specifications by reference to brand name or catalogue number, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function shall be considered. The CONTRACTOR may recommend the substitution of a material, article, or piece of equipment of equal substance and function for those referred to in the CONTRACT DOCUMENTS by reference to brand name or catalogue number, and if, in the opinion of the ENGINEER, such material, article, or piece of equipment is of equal substance and function to that specified, the ENGINEER may approve its substitution and use by the CONTRACTOR. Any cost differential shall be deductible from the CONTRACT PRICE and the CONTRACT DOCUMENTS shall be appropriately modified by CHANGE ORDER. The CONTRACTOR warrants that if substitutes are approved, no major changes in the function or general design of the PROJECT will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the CONTRACTOR without a change in the CONTRACT PRICE or CONTRACT TIME.

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9. PATENTS

9.1 The CONTRACTOR shall pay all applicable royalties and license fees. The CONTRACTOR shall defend all suits or claims for infringement of any patent rights and save the TRIBE harmless from loss on account thereof, except that the TRIBE shall be responsible for any such loss when a particular process, design, or the product of a particular manufacturer or manufacturers is specified, however if the CONTRACTOR has reason to believe that the design, or product specified is an infringement of a patent, the CONTRACTOR shall be responsible for such loss unless the CONTRACTOR promptly gives such information to the ENGINEER.

10. SURVEYS, PERMITS, AND REGULATIONS

10.1 The TRIBE shall furnish all boundary surveys and establish all base lines for locating the principal component parts of the WORK together with a suitable number of benchmarks adjacent to the WORK as shown in the CONTRACT DOCUMENTS. From the information provided by the TRIBE, unless otherwise specified in the CONTRACT DOCUMENTS, the CONTRACTOR shall develop and make all detail surveys needed for construction such as slope stakes, batter boards, stakes for pile locations and other working points, lines, elevations and cut sheets.

10.2 The CONTRACTOR shall carefully preserve bench marks, reference points and stakes and, in case of willful or careless destruction, the CONTRACTOR shall be charged with the resulting expense and shall be responsible for any mistakes that may be caused by their unnecessary loss or disturbance.

10.3 Permits and licenses of a temporary nature necessary for the prosecution of the WORK shall be secured and paid for by the CONTRACTOR unless otherwise specified in the CONTRACT DOCUMENTS. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the TRIBE, unless otherwise specified. The CONTRACTOR shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the WORK as drawn and specified. If the CONTRACTOR observes that the CONTRACT DOCUMENTS are at variance therewith, he shall promptly notify the ENGINEER in writing, and any necessary changes shall be adjusted as provided in Section 30-CHANGES IN THE WORK.

11. LAWS AND REGULATIONS AFFECTING WORK

11.1 The CONTRACTOR shall at all times observe and comply with Federal, State, City, County and Tribal laws, ordinances and regulations which in any manner affect the conduct of the WORK; and all such orders and decrees as exist at the present and which may be enacted later by legislative bodies or tribunals having

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legal jurisdiction or authority over the WORK. No pleas of misunderstanding or ignorance thereof will be considered. The CONTRACTOR shall be wholly responsible for any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order or decree.

12. TAXES

12.1 The TRIBE is exempt from Washington State Sales and Business and Occupation Tax for services or items delivered on the Reservation. RCW 82.08.0254 and WAC 458-20-192. In the event that WORK is performed and services provided outside the boundaries of the SKOKOMISH INDIAN RESERVATION, the CONTRACTOR remains liable for all applicable local, state and federal taxes.

13. PROTECTION OF WORK, PROPERTY AND PERSONS

13.1 The CONTRACTOR will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the WORK. CONTRACTOR will take all necessary precautions for the safety of and will provide the necessary protection to prevent damage, injury or loss to all employees on the WORK and other persons who may be affected thereby, all the WORK and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto.

14. PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS

14.1 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 and which do not unreasonably interfere with the work required under this contract, CONTRACTOR shall remove trees only when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the CONTRACTOR shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the ENGINEER.

14.2 The CONTRACTOR shall protect from damage all existing improvements and utilities (1) on 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. The existence and location of utilities are not guaranteed by the TRIBE and shall be investigated and verified in the field by the CONTRACTOR before commencing construction activities in any particular area. The CONTRACTOR shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the

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requirements of the CONTRACT DOCUMENTS or failure to exercise reasonable care in performing the work. If the CONTRACTOR fails or refuses to repair the damage promptly, the TRIBE may have the necessary work performed and charge the cost to the CONTRACTOR.

15. OPERATIONS AND STORAGE AREAS

15.1 The CONTRACTOR shall confine all operations (including storage of materials) to areas authorized or approved by the TRIBE. The CONTRACTOR shall hold and save the TRIBE and its representatives, free and harmless from liability of any nature occasioned by the CONTRACTOR'S performance.

15.2 Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the CONTRACTOR only with the approval of the TRIBE and shall be built with labor and materials furnished by the CONTRACTOR without expense to the TRIBE. The temporary buildings and utilities shall remain the property of the CONTRACTOR and shall be removed by the CONTRACTOR at its expense prior to PHYSICAL COMPLETION of the work. Only with the written consent of the TRIBE may the buildings and utilities be abandoned and not removed.

15.3 The CONTRACTOR shall use only established roadways, or use temporary roadways constructed by the CONTRACTOR when and as authorized by the TRIBE. In such case, the CONTRACTOR shall minimize disruption and delays to traffic in the affected areas. 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 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.

16. PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

16.1. General Requirements

The CONTRACTOR shall obtain the insurance described in this section from insurers approved by the State Insurance Commissioner pursuant to RCW Title 48. The insurance must be provided by an insurer with a rating of A-: VII or higher in the A.M. Best's Key Rating Guide, which is licensed to do business in the state of Washington (or issued as a surplus line by a Washington Surplus lines broker). The TRIBE reserves the right to approve or reject the insurance provided, based on the insurer (including financial condition), terms and coverage, the Certificate of Insurance, and/or endorsements.

16.1.1 The CONTRACTOR shall obtain and keep in force the following policies of insurance consistent with this Section.

16.1.1.1 Commercial General Liability Insurance with minimum limits of \$1,000,000 per occurrence and \$3,000,000 in aggregate for each policy period. This protection may be a CGL policy or any combination of

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primary, umbrella or excess liability coverage affording total liability limits of not less than \$3,000,000.

16.1.1.2 Commercial Automobile Liability Insurance providing bodily injury and property damage liability coverage for all owned and non-owned vehicles assigned to or used in the performance of Work with a combined single limit of not less than \$1,000,000 each occurrence.

16.1.2 The CONTRACTOR shall keep this insurance in force during the term of the contract and for thirty (30) days after the PHYSICAL COMPLETION Date, unless otherwise indicated (see 16.1.2 below).

16.1.3 If any insurance policy is written on a claims-made form, its retroactive date, and that of all subsequent renewals, shall be no later than the effective date of this Contract. The policy shall state that coverage is claims made, and state the retroactive date. Claims-made form coverage shall be maintained by the CONTRACTOR for a minimum of 36 months following the FINAL COMPLETION or earlier termination of this CONTRACT, and the CONTRACTOR shall annually provide the TRIBE with proof of renewal. If renewal of the claims made form of coverage becomes unavailable, or economically prohibitive, the CONTRACTOR shall purchase an extended reporting period (“tail”) or execute another form of guarantee acceptable to the TRIBE to assure financial responsibility for liability for services performed.

16.1.4 The insurance policies shall contain a “cross liability” provision.

16.1.5 The CONTRACTOR’s and all subcontractors’ insurance coverage shall be primary and non-contributory insurance as respects the TRIBE’s insurance, self-insurance, or insurance pool coverage.

16.1.6 All insurance policies and Certificates of Insurance shall include a requirement providing for a minimum of 30 days prior written notice to the TRIBE of any cancellation in any insurance policy.

16.1.7 Upon request, the CONTRACTOR shall forward to the TRIBE a full and certified copy of the insurance policy(s).

16.1.8 The CONTRACTOR shall not begin work under the Contract until the required insurance has been obtained and approved by the TRIBE.

16.1.9 Failure on the part of the CONTRACTOR to maintain the insurance as required shall constitute a material breach of contract, upon which the TRIBE may, after giving five business days notice to the CONTRACTOR to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the TRIBE on demand, or at the sole discretion

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of the TRIBE, offset against funds due the CONTRACTOR from the TRIBE.

16.1.10 All costs for insurance shall be incidental to and included in the unit or lump sum prices of the contract and no additional payment will be made.

16.2 Additional Insured

All insurance policies, with the exception of Professional Liability and Workers Compensation, shall name the following listed entities as additional insured(s):

16.2.1 The TRIBE and its officers, elected officials, employees, and agents.

16.3 Subcontractors

CONTRACTOR shall ensure that each subcontractor of every tier obtains and maintains at a minimum the insurance coverages listed in Section 16.1.1. Upon request of the TRIBE, the CONTRACTOR shall provide evidence of such insurance.

16.4 Evidence of Insurance

The CONTRACTOR shall deliver to the TRIBE a Certificate(s) of Insurance and endorsements for each policy of insurance meeting the requirements set forth herein when the CONTRACTOR delivers the signed Contract for the work. The certificate and endorsements must conform to the following requirements:

16.4.1 An ACORD certificate or a form determined by the TRIBE to be equivalent.

16.4.2 Copies of all endorsements naming TRIBE and all other entities listed in 16.1.1 as Additional Insured(s), showing the policy number. The CONTRACTOR may submit a copy of any blanket additional insured clause from its policies instead of a separate endorsement. A statement of additional insured status on an ACORD Certificate of Insurance shall not satisfy this requirement.

16.4.3 Any other amendatory endorsements to show the coverage required herein.

17. INDEMNIFICATION

17.1 The CONTRACTOR will indemnify and hold harmless the TRIBE and their agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the WORK, provided that any such claims, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom; and is caused in whole or in part by any negligent or willful act or omission of the CONTRACTOR, or SUBCONTRACTOR, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

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- 17.2 In any and all claims against the TRIBE or any of their agents or employees, by any employee of the CONTRACTOR, any SUBCONTRACTOR anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or any SUBCONTRACTOR under Workmen's Compensation Acts, disability benefit acts or other employee benefits acts.
- 17.3 The obligation of the CONTRACTOR under this paragraph shall not extend to the liability of the ENGINEER, his agents or employees arising out of the preparation or approval of maps, DRAWINGS, opinions, reports, surveys, , designs or SPECIFICATIONS.

18. CONTRACT SECURITY (For Contracts Greater than \$100,000.00)

- 18.1 The CONTRACTOR shall within five (5) calendar days after the receipt of the NOTICE OF AWARD furnish the TRIBE with a Performance Bond and a Payment Bond in penal sums equal to the amount of the CONTRACT PRICE, conditioned upon the performance by the CONTRACTOR of all undertakings, covenants, terms, conditions and agreements of the CONTRACT DOCUMENTS, and upon the prompt payment by the CONTRACTOR to all persons supplying labor and materials in the prosecution of the WORK provided by the CONTRACT DOCUMENTS. Such BONDS shall be executed by the CONTRACTOR and a corporate bonding company licensed to transact such business in the State of Washington. The expense of these BONDS shall be borne by the CONTRACTOR. If at any time a surety on any such BOND is declared as bankrupt or loses its right to do business in the State of Washington, the CONTRACTOR shall within five (5) calendar days after notice from the TRIBE to do so, substitute an acceptable BOND (or BONDS) in such form and sum and signed by such other surety or sureties as may be satisfactory to the TRIBE. The premiums on such BOND shall be paid by the CONTRACTOR. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable BOND to the TRIBE.

19. ACCIDENT PREVENTION AND SAFETY PROGRAM

- 19.1 The CONTRACTOR shall be solely and completely responsible for conditions of the jobsite, including safety of all persons, including employees, and property during performance of the work. This requirement shall apply continuously and not be limited to normal working hours. Safety provisions shall conform to U.S. Department of Labor (OSHA), and all other applicable Federal, State, County, and local laws, ordinances, codes, the requirements set forth below, and any regulations that may be detailed in other parts of these documents. Where any of these are in conflict, the more stringent requirement shall be followed. The CONTRACTOR's failure to thoroughly familiarize himself with the aforementioned safety provisions shall not relieve him from compliance with the

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obligations and penalties set forth herein.

- 19.2 The TRIBE or the TRIBAL CONTRACT REPRESENTATIVE will notify the CONTRACTOR of any observed non-compliance with the foregoing provisions and the action to be taken. The CONTRACTOR shall, upon receipt of such notice, immediately take corrective action. If the CONTRACTOR fails or refuses to comply promptly, the TRIBE may issue an order stopping all or part of the WORK until satisfactory corrective action has been taken. No part of the time lost due to any such stop orders shall be made the subject of claims for extension of time, or for excess costs or damages by the CONTRACTOR.
- 19.3 The CONTRACTOR shall develop and maintain for the duration of this Contract, a safety program that will effectively incorporate and implement all required safety provisions. The CONTRACTOR shall appoint an employee who is qualified and authorized to supervise and enforce compliance with the safety program.
- 19.4 The CONTRACTOR as a part of his safety program, shall maintain at his office or other well-known place at the jobsite, safety equipment applicable to the WORK as prescribed by the aforementioned authorities, all articles necessary for giving first aid to the injured, and shall establish the procedure for the immediate removal to a hospital or a doctor's care of persons who may be injured on the jobsite.
- 19.5 If death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger to both the ENGINEER and TRIBE. In addition, the CONTRACTOR must promptly report in writing to appropriate authorities and the TRIBE'S representative all accidents whatsoever arising out of, or in connection with, the performance of the WORK whether on, or adjacent to, the site, giving full details and statements of witnesses. If a claim is made by anyone against the CONTRACTOR or any subcontractor on account of any accident, the CONTRACTOR shall promptly report the facts in writing to the TRIBE giving full details of the claim.
- 19.6 The CONTRACTOR shall plan, manage, supervise, and perform all temporary traffic control activities needed to support the WORK of the CONTRACT in accordance with Part 6 and all other applicable Parts, Chapters, and Sections of the current version of the "Manual on Uniform Traffic Control Devices for Streets and Highways." If the temporary traffic control activities are conducted within a State Highway right-of-way, the Contractor shall also perform these activities in accordance with Section 1-10 of the current version of the Washington State Department of Transportation "Standard Specifications for Road, Bridge, and Municipal Construction." The CONTRACTOR will implement an approved Traffic Control Plan included in the CONTRACT DOCUMENTS. Traffic Control Plan changes must be approved prior to implementation.

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19.7 Compliance with the requirements of this provision by subcontractors will be the responsibility of the CONTRACTOR.

20. TEMPORARY SANITARY FACILITIES

20.1 The CONTRACTOR shall provide and maintain necessary sanitary conveniences for the use of those employed on or about the WORK, properly secluded from public observation in such a manner and at such points as shall be approved by the TRIBAL CONTRACT REPRESENTATIVE, and their use shall be strictly enforced.

21. SUPERVISION BY CONTRACTOR

21.1 The CONTRACTOR will supervise and direct the WORK. He will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The CONTRACTOR will employ and maintain on the WORK a qualified supervisor or superintendent who shall have been designated in writing by the CONTRACTOR as the CONTRACTOR'S representative at the site. The supervisor shall have full authority to act on behalf of the CONTRACTOR and all communications given to the supervisor shall be as binding as if given to the CONTRACTOR. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the WORK.

22. SUBCONTRACTING

22.1 The CONTRACTOR may utilize the services of specialty SUBCONTRACTORS on those parts of the WORK which, under normal contracting practices, are performed by specialty SUBCONTRACTORS.

22.2 The CONTRACTOR must perform at least thirty percent (30%) of the total amount of the WORK using the CONTRACTOR'S own work force and equipment. The CONTRACTOR shall not award WORK to SUBCONTRACTOR(s), in excess of seventy percent (70%) percent of the CONTRACT PRICE, without prior written approval of the TRIBE.

22.3 The CONTRACTOR shall be fully responsible to the TRIBE for the acts and omissions of his SUBCONTRACTORS, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

22.4 The CONTRACTOR shall cause appropriate provisions to be inserted in all subcontracts relative to the WORK to bind SUBCONTRACTORS to the CONTRACTOR by the terms of the CONTRACT DOCUMENT insofar as applicable to the WORK of SUBCONTRACTORS and to give the CONTRACTOR the same power as regards terminating any subcontract that the TRIBE may exercise over the CONTRACTOR under any provision of the CONTRACT DOCUMENTS.

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22.5 Nothing contained in this CONTRACT shall create any contractual relation between any SUBCONTRACTOR and the TRIBE

23. SEPARATE CONTRACTS

23.1 The TRIBE reserves the right to let other contracts in connection with this PROJECT. The CONTRACTOR shall afford other CONTRACTORS reasonable opportunity for the introduction and storage of their materials and the execution of their WORK, and shall properly connect and coordinate his WORK with theirs. If the proper execution or results of any part of the CONTRACTOR'S WORK depends upon the WORK of any other CONTRACTOR, the CONTRACTOR shall inspect and promptly report to the TRIBAL CONTRACT REPRESENTATIVE or Inspector (such agent on site) any defects in such WORK that render it unsuitable for such proper execution and results.

23.2 The TRIBE may perform additional WORK related to the PROJECT by himself, or he may let other contracts containing provisions similar to these. The CONTRACTOR will afford the other CONTRACTORS who are parties to such Contracts (or the TRIBE, if he is performing the additional WORK himself), reasonable opportunity for the introduction and storage of materials and equipment and the execution of WORK and shall properly connect and coordinate his WORK with theirs.

23.3 If the performance of additional WORK by other CONTRACTORS or the TRIBE is not noted in the CONTRACT DOCUMENTS prior to the execution of the CONTRACT, written notice thereof shall be given to the CONTRACTOR prior to starting any such additional WORK. If the CONTRACTOR believes that the performance of such additional WORK by the TRIBE or others involves him in additional expense or entitles him to an extension of the CONTRACT TIME, he may make a claim therefore as provided in Sections 30 and 31.

24. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

24.1 The TIME FOR COMPLETION of the WORK is an essential condition of the CONTRACT DOCUMENTS. The TIME FOR COMPLETION appears in the SPECIAL PROVISIONS. The WORK embraced shall be commenced by a date (STARTING DATE OF WORK) specified in the NOTICE TO PROCEED.

24.2 The CONTRACTOR will proceed with the WORK at such rate of progress to insure PHYSICAL COMPLETION within the TIME FOR COMPLETION. It is expressly understood and agreed, by and between the CONTRACTOR and the TRIBE, that TIME FOR COMPLETION of the WORK under the CONTRACT is

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a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the WORK.

- 24.3 If the CONTRACTOR shall fail to complete the WORK within the TIME FOR COMPLETION, or extension of time granted by the ENGINEER, then the CONTRACTOR will pay to the TRIBE liquidated damages for each WORKING DAY or CALENDAR DAY that the WORK shall be incomplete after the date established by the Time for Completion per the formula below:

$$LD = \frac{.15C}{T}$$

Where: LD = liquidated damages per WORKING DAY or
CALENDAR DAY (rounded to the nearest dollar)
C = original Contract amount
T = original time for PHYSICAL COMPLETION

However, following the Date of SUBSTANTIAL COMPLETION certified by the ENGINEER and provided by written notice to the CONTRACTOR, the charging of WORKING DAYS or CALENDAR DAYS ceases and the above formula will not be used to determine Liquidated Damages if any. Instead, Liquidated Damages shall be assessed on the basis of direct engineering and related costs assignable to the PROJECT until the TIME OF COMPLETION (PHYSICAL COMPLETION).

- 24.4 The CONTRACTOR shall not be charged with Liquidated Damages or any excess cost when the delay in TIME OF COMPLETION of the WORK is due to the following, and the CONTRACTOR has promptly given WRITTEN NOTICE of such delay to the TRIBAL PROJECT MANAGER.

24.4.1 To any preference, priority or allocation order duly issued by the TRIBE.

24.4.2 To unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including but not restricted to, acts of God, or of the public enemy, acts of the TRIBE, acts of another CONTRACTOR in the performance of a contract with the TRIBE, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and abnormal and unforeseeable weather; and

24.4.3 To any delays of SUBCONTRACTORS occasioned by any of the causes specified in paragraphs 24.4.1 and 24.4.2 of this article.

25. PROGRESS SCHEDULES AND REQUIREMENTS FOR COMPLIANCE

- 25.1 The CONTRACTOR shall within 10 calendar days of receipt of NOTICE TO PROCEED, submit to the TRIBE through the TRIBAL CONTRACT

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REPRESENTATIVE for approval a practicable schedule, showing the order in which the CONTRACTOR proposes to carry on the WORK, the dates on which he will start the major items of work (including procurement of materials, plant and equipment) and the contemplated dates for completing the same.

- 25.2 If, in the opinion of the TRIBAL PROJECT MANAGER in consultation with the TRIBAL CONTRACT REPRESENTATIVE and the ENGINEER, the CONTRACTOR falls behind the progress schedule, the CONTRACTOR shall take such steps as may be necessary to assure performance within the allowable TIME FOR COMPLETION. The CONTRACTOR may propose for approval by the TRIBAL PROJECT MANAGER measures such as increasing number of workers, number of shifts, or overtime operations, days of work, or the amount of construction plant, or all of them. The TRIBAL PROJECT MANAGER may require the CONTRACTOR to submit for approval such supplementary schedule or schedules necessary to demonstrate that the WORK shall be performed within the allowable TIME FOR COMPLETION, all without additional cost to the TRIBE.
- 25.3 Failure of the CONTRACTOR to comply with the requirements of this provision shall be grounds for determination that the CONTRACTOR is not prosecuting the work with such diligence as will insure completion within the specified TIME FOR COMPLETION. Upon such determination the TRIBE may terminate the CONTRACTOR'S right to proceed with the WORK, or any separable part thereof in accordance with Section 27-SUSPENSION OF WORK, TERMINATION AND DELAY.

26. LAND AND RIGHTS-OF-WAY

- 26.1 Prior to issuance of NOTICE TO PROCEED, the TRIBE shall obtain all land and rights-of-way necessary for carrying out and for the completion of the WORK to be performed pursuant to the CONTRACT DOCUMENTS, unless otherwise mutually agreed.
- 26.2 The TRIBE shall provide to the CONTRACTOR information which delineates and describes the lands owned and rights-of-way acquired.
- 26.3 The CONTRACTOR shall provide at his own expense and without liability to the TRIBE any additional land and access thereto that the CONTRACTOR may desire for temporary construction facilities, or for storage of materials.

27. SUSPENSION OF WORK, TERMINATION AND DELAY

- 27.1 The TRIBE may suspend the WORK or any portion thereof for a period of not more than ninety (90) days or such further time as agreed upon by the CONTRACTOR, by WRITTEN NOTICE to the CONTRACTOR and the

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ENGINEER which notice shall fix the date on which WORK shall be resumed. The CONTRACTOR will resume that WORK on the date so fixed. The CONTRACTOR will be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to any suspension. Neither CALENDAR DAYS or WORKING DAYS will be counted during the time that the WORK is suspended.

- 27.2 If the CONTRACTOR is adjudged as bankrupt or insolvent, or if he makes a general assignment for the benefit of his creditors or if a trustee or receiver is appointed for the CONTRACTOR or for any of his property, or if he files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or if he repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if he repeatedly fails to make prompt payments to SUBCONTRACTORS or for labor, materials or equipment or if he disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the WORK, or if he disregards the authority of the ENGINEER or TRIBAL CONTRACT REPRESENTATIVE, or if he otherwise violates any provision of the CONTRACT DOCUMENTS then the TRIBE may, without prejudice to any other right or remedy and after giving the CONTRACTOR and his surety a minimum of ten (10) days from delivery of a WRITTEN NOTICE, terminate the services of the CONTRACTOR and take possession of the PROJECT and of all materials, equipment, tools, construction equipment and machinery thereon owned by the CONTRACTOR, and finish the WORK by whatever method he may deem expedient. In such case the CONTRACTOR shall not be entitled to receive any further payment until the WORK is finished. If the unpaid balance of the CONTRACT PRICE exceeds the direct and indirect costs of completing the PROJECT, including compensation for additional professional services, such excess SHALL BE PAID TO THE CONTRACTOR. If such costs exceed such unpaid balance, the CONTRACTOR will pay the difference to the TRIBE. Such costs incurred by the TRIBE will be determined by the TRIBAL CONTRACT REPRESENTATIVE and incorporated in a CHANGE ORDER.
- 27.3 Where the CONTRACTOR'S services have been so terminated by the TRIBE, said termination shall not affect any right of the TRIBE against the CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of monies by the TRIBE due the CONTRACTOR will not release the CONTRACTOR from compliance with the CONTRACT DOCUMENTS.
- 27.4 After ten (10) days from delivery of a WRITTEN NOTICE to the CONTRACTOR and the ENGINEER, the TRIBE may without cause and without prejudice to any other right or remedy, elect to abandon the PROJECT and terminate the CONTRACT. In such case, the CONTRACTOR shall be paid for all WORK executed and any expense sustained plus reasonable profit. If this contract is terminated by the TRIBE without cause, the rights, duties, and obligations of the parties, including compensation to the CONTRACTOR, shall be in accordance with Part 49 of the Federal Acquisition Regulation in effect on

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the date of this contract.

- 27.5 If, through no act or fault of the CONTRACTOR, the WORK is suspended for a period of more than ninety (90) days by the TRIBE or under an order of court or other public authority, or the TRIBAL CONTRACT REPRESENTATIVE fails to act on any request for payment within thirty (30) days after it is submitted, or the TRIBE fails to pay the CONTRACTOR substantially the sum approved by the TRIBAL CONTRACT REPRESENTATIVE or awarded by arbitrators within thirty (30) days of its approval and presentation, then the CONTRACTOR may, after ten (10) days from delivery of a WRITTEN NOTICE to the TRIBE and the ENGINEER, terminate the CONTRACT and recover from the TRIBE payment for all WORK executed and all expenses sustained. In addition and in lieu of terminating the CONTRACT, if the TRIBE has failed to make any payment as aforesaid, the CONTRACTOR may upon ten (10) days WRITTEN NOTICE to the TRIBE and the ENGINEER stop the WORK until he has been paid all amounts then due, in which event and upon resumption of the WORK, CHANGE ORDERS shall be issued for adjusting the CONTRACT PRICE or extending the CONTRACT TIME or both to compensate for the costs due to delays attributed to the stoppage of the WORK.
- 27.6 If all or any portion of the WORK is suspended or interrupted as a result of a failure by the TRIBE or ENGINEER to act within the time specified in the CONTRACT DOCUMENTS, or if no time is specified, within a reasonable time, resulting in a delay in the CONTRACTOR's performance of the WORK, an adjustment in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, shall be made by CHANGE ORDER to compensate the CONTRACTOR for any costs due to the delay attributable to the failure of the TRIBE or ENGINEER.

28. INSPECTION AND TESTING

- 28.1 All materials and equipment used in the construction of the PROJECT shall be subject to adequate inspection and testing in accordance with generally accepted standards, as required and defined in the CONTRACT DOCUMENTS.
- 28.2 The TRIBE shall provide all inspection and testing services not required by the CONTRACT DOCUMENTS.
- 28.3 The CONTRACTOR shall provide at his expense the testing and inspection services required by the CONTRACT DOCUMENTS.
- 28.4 If the CONTRACT DOCUMENTS, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any WORK to specifically be inspected, tested, or approved by someone other than the CONTRACTOR, the CONTRACTOR will give the ENGINEER timely notice of readiness. The CONTRACTOR will then furnish the ENGINEER the required certificates of

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inspection, testing or approval.

- 28.5 Inspections, tests or approvals by the ENGINEER or others shall not relieve the CONTRACTOR from his obligations to perform the WORK in accordance with the requirements of the CONTRACT DOCUMENTS.
- 28.6 The ENGINEER and his representatives will at all times have access to the WORK. In addition, authorized representatives and agents of any participating Federal or state agency shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records. The CONTRACTOR will provide proper facilities for such access and observation of the WORK and also for any inspection, or testing thereof.
- 28.7 If any WORK is covered contrary to the written instructions of the ENGINEER it must, if requested by the ENGINEER, be uncovered for his observation and replaced at the CONTRACTOR'S expense.
- 28.8 If the ENGINEER considers it necessary or advisable that covered WORK be inspected or tested by others, the CONTRACTOR, at the ENGINEER'S request, will uncover, expose or otherwise make available for observation, inspection or testing as the ENGINEER may require, that portion of the WORK in question, furnishing all necessary labor, materials, tools and equipment. If it is found that such WORK is defective, the CONTRACTOR will bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction. If, however, such WORK is not found to be defective, the CONTRACTOR will be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction and an appropriate CHANGE ORDER shall be issued.

29. CORRECTION OF WORK

- 29.1 The CONTRACTOR shall promptly remove from the premises all WORK rejected by the ENGINEER for failure to comply with the CONTRACT DOCUMENTS, whether incorporated in the construction or not, and the CONTRACTOR shall promptly replace and re-execute the WORK in accordance with the CONTRACT DOCUMENTS and without expense to the TRIBE and shall bear the expense of making good all WORK of other CONTRACTORS destroyed or damaged by such removal or replacement.
- 29.2 All removal and replacement WORK shall be done at the CONTRACTOR'S expense. If the CONTRACTOR does not take action to remove such rejected WORK within ten (10) days after receipt of WRITTEN NOTICE, the TRIBE may remove such WORK and store the materials at the expense of the CONTRACTOR.

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30. CHANGES IN THE WORK

- 30.1 The TRIBE may at any time, as the need arises, order changes within the scope of the WORK without invalidating the Agreement. If such changes increase or decrease the amount due (CONTRACT PRICE) under the CONTRACT DOCUMENTS, or in the time required for performance (CONTRACT TIME) of the WORK, an equitable adjustment shall be authorized by CHANGE ORDER.
- 30.2 The ENGINEER or the TRIBAL CONTRACT REPRESENTATIVE may at any time recommend issuance of a FIELD ORDER to the TRIBAL PROJECT MANAGER to make changes in the details of the WORK. The CONTRACTOR shall proceed with the performance of any changes in the WORK so ordered by FIELD ORDER unless the CONTRACTOR believes that such FIELD ORDER or an accumulation of FIELD ORDERS entitles the CONTRACTOR to a change in CONTRACT PRICE or CONTRACT TIME, or both, in which event the CONTRACTOR shall give the TRIBAL PROJECT MANAGER written notice thereof within seven (7) days after the receipt of the ordered change. Thereafter the CONTRACTOR shall document the basis for the change in CONTRACT PRICE or CONTRACT TIME within thirty (30) days. The CONTRACTOR shall not execute such changes pending the receipt of an executed CHANGE ORDER or further instruction from the TRIBE. At its sole discretion, the TRIBE may initiate preparation of a CHANGE ORDER from a single FIELD ORDER of any multiple of FIELD ORDERS.

31. CHANGES IN CONTRACT PRICE

- 31.1 The CONTRACT PRICE may be changed only by a CHANGE ORDER. The value of any WORK covered by a CHANGE ORDER or of any claim for increase or decrease in the CONTRACT PRICE shall be determined by one or more of the following methods in the order of precedence listed below:
- a. Unit prices previously approved; or
 - b. An agreed lump sum; or
 - c. The actual cost for labor, direct overhead, materials, supplies, equipment, and other services necessary to complete the work. In addition there shall be added an amount to be agreed upon but not to exceed fifteen (15%) percent of the actual cost of the WORK to cover the cost of general overhead and profit.

32. DIFFERING SITE CONDITIONS

- 32.1 During progress of the WORK and before the affected WORK is performed, the CONTRACTOR shall promptly, and before such conditions are disturbed, except in the event of an emergency, notify the TRIBE by written notice of:
- 32.1.1 Preexisting subsurface or latent physical conditions encountered at the site, differing materially from those indicated in the CONTRACT DOCUMENTS; or

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- 32.1.2 Preexisting unknown physical conditions encountered at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the WORK of the character provided for in the CONTRACT DOCUMENTS.

Written notice to the TRIBE shall occur within 3 days of the discovery of the event(s).

- 32.2 Upon written notification, the TRIBE in consultation with the ENGINEER, or other specialists as may be required, shall promptly investigate the conditions, and if it is found that the conditions materially differ and cause an increase or decrease in the cost of, or in the time required for performance of any WORK specified by the CONTRACT DOCUMENTS, an equitable adjustment, excluding loss of anticipated profits, shall be made and the CONTRACT PRICE or the CONTRACT TIME or both shall be modified by a CHANGE ORDER including any appropriate modifications to the CONTRACT DOCUMENTS. The TRIBE will notify the CONTRACTOR of the determination of whether or not an adjustment of the CONTRACT PRICE or CONTRACT TIME is warranted.
- 32.3 Any claim of the CONTRACTOR for adjustment hereunder shall not be allowed unless the CONTRACTOR has given the required written notice; provided that the TRIBE may, if it determines the facts so justify, consider and adjust any such claims asserted before the date of final payment.

33. USE AND POSSESSION PRIOR TO FINAL COMPLETION

- 33.1 The TRIBE shall have the right to take possession of or use any completed or partially completed part of the WORK subsequent to SUBSTANTIAL COMPLETION and prior to FINAL COMPLETION. Before taking possession of or using any WORK, the TRIBE shall furnish the Contractor a list of items of WORK remaining to be performed or corrected on those portions of the WORK that the TRIBE intends to take possession of or use. However, failure of the TRIBE to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The TRIBE'S possession or use shall not be deemed an acceptance of any WORK under the contract.
- 33.2 While the TRIBE has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the WORK resulting directly from the TRIBE'S possession or use. If prior possession or use by the TRIBE delays the progress of the WORK or causes additional expense to the Contractor, an adjustment shall be made in the CONTRACT PRICE or the CONTRACT TIME or both, and the contract shall be modified by CHANGE ORDER.

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34. CLEANUP AND FINISH GRADING

34.1 The CONTRACTOR shall restore all areas disturbed by construction to a condition at least equal to that existing prior to construction. Excess construction materials, equipment, tools, waste excavation, and rubbish shall be removed. Excavated areas shall be finish graded to provide drainage as required by the Contract Documents, or in the absence of specific requirements, to provide drainage away from the facilities constructed and to restore original drainage patterns in existence prior to construction and to provide drainage away from excavated areas and installed facilities.

35. MEASUREMENT AND PAYMENT

35.1 Completed items of work shall be measured and paid for in accordance with the requirements listed in the Bid Form or Schedule. Payment shall be based on the actual quantities completed, and shall represent full compensation under the contract. The price paid for the completed item of work shall include full compensation for furnishing all labor, materials, (other than that furnished by the TRIBE), tools, equipment, and performing all work required by the provisions of the contract to furnish and install the item of work, complete in place. In all cases, the finished product shall be a complete, operational system or component. The price for the completed item of work shall also include all applicable state and local sales and other taxes.

For projects bid under a single lump sum price for the entire project, measurement and payment shall be based on the **estimated percentage of WORK completed for each payment item in the approved schedule of values**, as determined by the TRIBAL PROJECT MANAGER and/or the TRIBAL CONTRACT REPRESENTATIVE. **The Contractor shall prepare the schedule of values identifying the major items of work, with corresponding values that total to the equivalent lump sum price.**

36. VARIATION IN ESTIMATED QUANTITIES

36.1 If the quantity of a unit-priced item in this CONTRACT is an estimated quantity and the actual quantity of the unit-priced item varies more than 25 percent above or below the estimated quantity, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 125 percent or below 75 percent of the estimated quantity. If the quantity variation is

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such as to cause an increase in the time necessary for completion, the CONTRACTOR may request, in writing, an extension of time, to be received by the TRIBE within 10 days from the beginning of the delay, or within such further period as may be granted by the TRIBE before the date of final settlement of the CONTRACT. Upon the receipt of a written request for an extension, the TRIBAL PROJECT MANAGER, in consultation with the ENGINEER, shall ascertain the facts and make any appropriate adjustment for extending the PHYSICAL COMPLETION Date and/or the FINAL COMPLETION Date.

For projects bid under a single lump sum price for the entire project, The Contractor shall also provide unit prices for the items identified in the Bid Documents. In the event that work is added or deleted at the request of the Skokomish Tribe, these unit prices shall be used as the basis for any proposed change order.

37. PAYMENTS TO CONTRACTOR

37.1 The CONTRACTOR will submit to the TRIBAL CONTRACT REPRESENTATIVE a partial payment estimate completed and signed by the CONTRACTOR covering the WORK performed during the period covered by the partial payment estimate and supported by such data as the TRIBAL CONTRACT REPRESENTATIVE may reasonably require. The request for payment may also include an allowance for the cost of such major materials and equipment which are suitably stored either at or near the site. If payment is requested on the basis of materials and equipment not incorporated in the WORK but delivered and suitably stored at or near the site, the partial payment estimate shall also be accompanied by such supporting data, satisfactory to the TRIBE, as will establish the TRIBE's title to the material and equipment and protect its interest therein, including applicable insurance. The TRIBAL CONTRACT REPRESENTATIVE will, within ten (10) days after receipt of each partial payment estimate, either indicate in writing, approval of payment, or return the partial payment estimate to the CONTRACTOR indicating in writing the reasons for refusing to approve payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the partial payment estimate. The TRIBAL PROJECT MANAGER will, within ten (10) days of presentation from the TRIBAL CONTRACT REPRESENTATIVE of an approved partial payment estimate, authorize payment to the CONTRACTOR of a progress payment on the basis of the approved partial payment estimate.

37.2 The TRIBE shall retain five percent (5%) of the amount of each payment until FINAL COMPLETION and acceptance of all WORK covered by the CONTRACT DOCUMENTS. When the WORK is substantially complete and all WORKING DAYS or CALENDAR DAYS have been counted, the retained amount may be reduced below five (5) percent to only that amount necessary to assure PHYSICAL COMPLETION. Upon completion and acceptance of a part of the WORK on which the price is stated separately in the CONTRACT

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DOCUMENTS, payment may be made in full, including retained percentages less authorized deductions.

- 37.3 No payments will be made that would deplete the retainage, place in escrow any funds that are required for retainage, or invest the retainage for the benefit of the CONTRACTOR.
- 37.4 Upon receipt by the TRIBE of the CONTRACTOR's Final Pay Request and FINAL COMPLETION and acceptance of the WORK, the ENGINEER shall issue a certificate that the WORK has been accepted by him under the conditions of the CONTRACT DOCUMENTS. The entire balance found to be due the CONTRACTOR including the retained percentages, but except such sums as may be lawfully retained by the TRIBE, shall be paid to the CONTRACTOR within thirty (30) days of FINAL COMPLETION and acceptance of the WORK.
- 37.5 The CONTRACTOR will indemnify and save the TRIBE or the TRIBE'S agents harmless from all claims growing out of the lawful demands of SUBCONTRACTORS, laborers, workmen, mechanics, material men, and furnishers of machinery and parts thereof, equipment, tools, and all supplies, incurred in the furtherance of the performance of the WORK. The CONTRACTOR shall at the TRIBE'S request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If the CONTRACTOR fails to do so the TRIBE may, after having notified the CONTRACTOR, either pay unpaid bills or withhold from the CONTRACTOR'S unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the CONTRACTOR shall be resumed, in accordance with the terms of the CONTRACT DOCUMENTS, but in no event shall the provisions of this sentence be construed to impose any obligations upon the TRIBE to either the CONTRACTOR, his Surety, or any third party. In paying any unpaid bills of the CONTRACTOR, any payment so made by the TRIBE shall be considered as a payment made under the CONTRACT DOCUMENTS by the TRIBE to the CONTRACTOR and the TRIBE shall not be liable to the CONTRACTOR for any such payments made in good faith.
- 37.6 If the TRIBE fails to make payment thirty (30) days after approval by the TRIBAL CONTRACT REPRESENTATIVE, in addition to other remedies available to the CONTRACTOR, there shall be added to each such payment interest at the maximum legal rate commencing on the first day after said payment is due and continuing until the payment is received by the CONTRACTOR.

38. ASSIGNMENTS

- 38.1 Neither the CONTRACTOR nor the TRIBE shall sell, transfer, assign or otherwise dispose of the CONTRACT or any portion thereof, or of his right, title or interest therein, or his obligations thereunder, without written consent of the

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other party.

39. GUARANTY

39.1 Where allowed by law, the CONTRACTOR shall guarantee all materials and equipment furnished and WORK performed for a period of one (1) year from the date of PHYSICAL COMPLETION of the system that the completed system is free from all defects due to faulty materials or workmanship and the CONTRACTOR shall promptly make such corrections as may be necessary by reason of such defects including the repairs of any damage to other parts of the systems resulting from such defects. The TRIBE will give notice of observed defects with reasonable promptness. In the event that the CONTRACTOR should fail to make such repairs, adjustments, or other WORK that may be made necessary by such defects, the TRIBE may do so and charge the CONTRACTOR the cost thereby incurred. The performance BOND shall remain in full force and effect through the guarantee period.

40. ACCEPTANCE OF FINAL PAYMENT AS RELEASE

40.1 The acceptance by the CONTRACTOR of final payment shall be and shall operate as a release to the TRIBE of all claims and all liability to the CONTRACTOR other than claims in stated amounts as may be specifically excepted by the CONTRACTOR for all things done or furnished in connection with this WORK and for every act and neglect of the TRIBE and others relating to or arising out of this WORK. Any payment, however, final or otherwise, shall not release the CONTRACTOR or his sureties from any obligations under the CONTRACT DOCUMENTS or the performance BOND and Payment BONDS.

41. ROLE AND AUTHORITY OF TRIBAL PROJECT MANAGER, TRIBAL CONTRACT REPRESENTATIVE, AND ENGINEER

41.1 The TRIBAL CONTRACT REPRESENTATIVE shall act as the TRIBE'S on-site representative during the construction period. He or she shall assist the TRIBAL PROJECT MANAGER to coordinate overall project operations and interpret the CONTRACT DOCUMENTS in a fair and unbiased manner. The TRIBAL PROJECT MANAGER is responsible for the administrative aspects of the CONTRACT DOCUMENTS including payments, CHANGE ORDERS, dispute resolution, compliance for administrative document submittals, and reporting.

41.2 The TRIBAL CONTRACT REPRESENTATIVE shall also assist the ENGINEER in order to make a fair interpretation of design intent and to decide questions which may arise as to quality and acceptability of materials furnished and WORK performed. The ENGINEER will make visits to the site and

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determine if the WORK is proceeding in accordance with the CONTRACT DOCUMENTS.

- 41.3 The CONTRACTOR will be held strictly to the CONTRACT DOCUMENTS in regard to the quality of materials, workmanship and execution of the WORK. Inspections may be made at the factory or fabrication plant of the source of material supply.
- 41.4 The ENGINEER, TRIBAL CONTRACT REPRESENTATIVE, OR the TRIBAL PROJECT MANAGER will not be responsible for the construction means, controls, techniques, sequences, procedures, or construction safety used by the CONTRACTOR or his or her agents, representatives or employees.
- 41.5 The ENGINEER does not have authority to obligate the TRIBE to changes in the terms of the CONTRACT.

42. RECORDS

- 42.1 For all negotiated contracts and negotiated modifications, the TRIBE shall have access to any books, documents, papers, and records of the CONTRACTOR, which are pertinent to the CONTRACT, for the purpose of making audits, examinations, excerpts and transcriptions. CONTRACTOR shall maintain all required records for three years after final payment is made and all other pending matters are closed.

43. JUDICIAL REVIEW

- 43.1 Any decision made by the TRIBE regarding the Award and execution of the Contract or Bid rejection shall be conclusive subject to the scope of judicial review permitted under Tribal law. Such review, if any, shall be timely filed in Skokomish Tribal Court.

44. SITE CONDITIONS

44.1 WORK is to be performed on the SKOKOMISH INDIAN RESERVATION, Mason County, near Shelton, Washington and accessible from U.S. Highway 101. The CONTRACTOR shall exercise caution in all construction activities to ensure minimal impact to Tribal and Washington State Parks property.

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45. LIMITATION ON USE OF SITE AND OTHER AREAS

- 45.1 CONTRACTOR shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the site and other areas permitted by applicable laws and regulations, and shall not unreasonably encumber the site and other areas with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the TRIBE or occupant thereof, or of any adjacent land or areas resulting from the performance of the WORK.
- 45.2 Should any claim be made by any such occupant because of the performance of the WORK, CONTRACTOR shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

46. DAYS OF WORK

- 46.1 WORK shall not be normally permitted on Saturdays, Sundays, or Federal and Tribal Holidays. The CONTRACTOR may submit a written request to the TRIBE at least forty-eight (48) hours in advance, for permission to work on any Saturday, Sunday, or Federal or Tribal Holiday. Tribal Holidays included are Washington American Indian Day and Point No Point Treaty Day. Written approval must be obtained before the CONTRACTOR may work on any such day.

47. PRE-CONSTRUCTION CONFERENCE AND PROJECT MEETINGS

- 47.1 Prior to commencing WORK under this Agreement, the CONTRACTOR shall be required to participate in a pre-construction conference with the TRIBE and the TRIBE representatives. The purpose of this conference will be to discuss the authorities, duties, and responsibilities of parties involved and to plan operating procedures mutually satisfactory to those involved. It will also present an opportunity to resolve any questions regarding performance under the Contract which have not been previously resolved. A construction schedule and safety plan (per OSHA requirements) submitted by the CONTRACTOR shall be discussed and revised as necessary at the pre-construction conference.

47.2 To enable orderly review of progress during construction and to provide for systematic discussion of problems, the TRIBAL CONTRACT REPRESENTATIVE may conduct project meetings throughout the construction period. In general, project meetings may be held monthly, or more often, in accordance with a mutually agreeable schedule. The purpose of the meetings is to analyze problems that might arise relative to

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execution of the WORK. Persons designated by the CONTRACTOR to attend and participate in the project meetings shall have all the required authority to commit the CONTRACTOR to solutions as agreed upon in the project meetings. To the maximum extent practicable, project meetings shall be held at the construction site and physical notes shall be taken by all parties present.