

The Tulalip Tribes of Washington

**GENERAL CONDITIONS**

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## **ARTICLE 1 – GENERAL PROVISIONS**

### **1.1 APPLICATION AND GOVERNING LAW**

- 1.1.1 The Contractor, the Architect, the Construction Manager and the Tulalip Tribes of Washington shall be familiar with all provisions of the Contract Documents.
- 1.1.2 The parties to the Contract shall comply with all applicable tribal, federal, state and local codes, statutes, ordinances and regulations in the performance of the Work of the Project.
- 1.1.3 The Tribal Court of the Tulalip Tribes of Washington shall have exclusive jurisdiction over any action or proceeding for any injunction or declaratory judgment concerning any agreement or performance under the Contract Documents or in connection with the Project. Any such action or proceeding arising out of or related in any way to the Contract or performance thereunder shall be brought only in the Tribal Court of the Tulalip Tribes of Washington and the Contractor irrevocably consents to such jurisdiction and venue. The Contract shall be governed by the law of the State of Washington.
- 1.1.4 The Tribal Court of the Tulalip Tribes of Washington shall be the exclusive jurisdiction for any action or proceeding for any injunction or declaratory judgment concerning any agreement or performance under the Contract Documents or in connection with the Project. The Tribal Court of the Tulalip Tribes of Washington shall be the exclusive jurisdiction for any action or proceeding by the Contractor or the Contractor's Surety for any money damages concerning any agreement or performance under the Contract Documents or in connection with the Project.
- 1.1.5 Other rights and responsibilities of the Contractor, the Architect, the Construction Manager and the Tulalip Tribes of Washington are set forth throughout the Contract Documents and are included under different titles, articles and paragraphs for convenience.
- 1.1.6 The Tulalip Tribes of Washington, may maintain an action in its own name for violations of any law relating to the Project or for any injury to persons or property pertaining to the Work, or for any other cause which is necessary in the performance of the Tulalip Tribes of Washington's duties.
- 1.1.7 Nothing in this Contract, or any action taken by the Tulalip Tribes of Washington or any of its agents or employees in connection with this Contract shall be deemed to be a waiver of the sovereign immunity of the Tulalip Tribes of Washington unless such waiver is explicit and in writing, and fully complies with all tribal and federal requirements for the waiver of such immunity.

### **1.2 CONDITIONS OF CONTRACT**

- 1.2.1 Nondiscrimination
  - 1.2.1.1 During the performance of the Contract, the Contractor agrees that in the hiring of employees for the performance of Work, including without limitation Work to be performed by a Subcontractor, no Contractor or Subcontractor, and no person acting on behalf of the Contractor or Subcontractor, shall, by reason of race, religion, national origin, age, sex, disability, or color, discriminate against any citizen in the employment of labor or workers who are qualified and available to perform the Work to which the employment relates.

- 1.2.1.2 The Contractor further agrees that no Contractor or Subcontractor, and no person acting on behalf of the Contractor or Subcontractor, shall, in any manner, discriminate against or intimidate any employee hired for the performance of Work on account of race, religion, national origin, age, sex, disability, Vietnam era Veteran status or color.
- 1.2.1.3 Notwithstanding any other provisions of these general conditions the Contractor agrees that the Contractor will fully cooperate with the Tulalip Tribes' TERO Compliance Officer, with any other official or agency of the Tulalip Tribes of Washington or federal government which seeks to eliminate unlawful employment discrimination, and with all other Tulalip Tribes of Washington and federal efforts to assure equal employment practices under the Contract.
- 1.2.1.4 In the event of the Contractor's noncompliance with the nondiscrimination clauses, the Contract may be terminated or suspended in whole or in part, and the Contractor may be declared not responsive or responsible for further Tulalip Tribes of Washington contracts or such other sanctions as provided by law.

#### 1.2.2 Affirmative Action

- 1.2.2.1 Notwithstanding any other provisions of these general conditions the Tulalip Tribes of Washington's Board of Directors has the authority to require those employers subject to Tulalip Tero Code 9.05 and applicable federal laws and guidelines, to give preference to Indians in hiring promotions, training and all other aspects of employment contracting and subcontracting, and those contractors subject to Tulalip Tero Code 9.05 to give preference to Indians in contracting goods and services and must comply with Tulalip Tero Code 9.05 and the rules, regulations and orders of the TERO Commission.
- 1.2.2.2 Notwithstanding any other provisions of these general conditions each contractor must fully comply with the Tulalip Tribes' Tribal Employment Rights Program in hiring and or contracting for employment as defined in Tribal Employment Rights Ordinance 9.05. in contracting for goods and services as defined in Tulalip Tero Code 9.05.

### 1.3 GIVING NOTICE

- 1.3.1 Whenever any provision of the Contract Documents requires the giving of any notice, such notice shall be deemed to have been validly given if given in writing and delivered personally to the individual or to a member of the entity for whom the notice is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address of such individual or entity known to the giver of the notice.
  - 1.3.1.1 All notices provided to the Bidder from the Construction Manager shall be copied to the Architect.
  - 1.3.1.2 All notices provided to the Bidder from the Architect shall be copied to the Construction Manager.
  - 1.3.1.3 All notices provided to the Architect from the Bidder shall be copied to the Construction Manager.

- 1.3.1.4 All notices provided to the Construction Manager from the Bidder shall be copied to the Architect.
- 1.3.2 When any period of time is referred to in the Contract Documents by days, it shall be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday, Sunday or a legal holiday, such day will be omitted from the computation and such period shall be deemed to end on the next succeeding day which is not a Saturday, Sunday or legal holiday.
- 1.3.3 The effective date of any and all notices, regardless of the method of delivery, shall be the date of receipt.

#### **1.4 USE OF FACSIMILE TRANSMISSION**

- 1.4.1 Any notice required to be given under the Contract Documents may be given by facsimile transmission, provided the original signed notice is delivered pursuant to paragraph GC 1.3.1.
- 1.4.2 Facsimile transmittals in excess of ten (10) pages are discouraged.

#### **1.5 CONTRACT DOCUMENTS**

- 1.5.1 Intent
  - 1.5.1.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. The Contractor shall be held to provide all labor and materials necessary for the entire completion of the Work described in the Contract Documents and reasonably implied therefrom to produce the intended results.
  - 1.5.1.2 The Standard Conditions may not be superseded or amended by Drawings or Specifications unless so provided in Special Conditions prepared by the Architect and approved in writing by the Construction Manager.
  - 1.5.1.3 The Drawings shall generally govern dimensions, details and locations of the Work. The Drawings shall not be scaled. The Specifications shall generally govern quality of materials and workmanship.
  - 1.5.1.4 The organization of the Specifications in divisions, sections and articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.
  - 1.5.1.5 In the event of inconsistencies within or between the Contract Documents, the Contractor shall provide the better quality or greater quantity of Work, and shall comply with the more stringent requirement.
  - 1.5.1.6 Unless otherwise specified in the Contract Documents, words which have well-known technical or construction industry meanings are used in accordance with such recognized meanings.
  - 1.5.1.7 Unless otherwise specified in the Contract Documents, all Work shall be completed in accordance with each manufacturer's

recommendations and or directions for best results. No preparatory step or installation procedure may be omitted unless specifically modified or exempted by these Documents. Where Contractor is required to follow manufacturer's directions, recommendations, instructions, and the like, but more than one manufacturer is involved in the Work, or its component parts, Contractor shall follow all manufacturers' directions and recommendations. In the event of conflict between two or more manufacturers' directions and recommendations, Contractor shall submit such discrepancy or conflict to the Architect, through the Construction Manager, for resolution and instruction.

#### 1.5.2 Interpretation

- 1.5.2.1 If the Contractor finds any perceived ambiguity, conflict, error, omission or discrepancy on or between the Drawings and Specifications, or any of the Contract Documents, or existing conditions, the Contractor, before proceeding with the Work, shall submit a written Request for Information to the Architect, through the Construction Manager, seeking an interpretation or clarification. The Contractor shall be responsible for the prompt delivery of any such Request for Information to the Construction Manager.
- 1.5.2.2 The Architect shall respond, through the Construction Manager, in writing to any and all requests for interpretation or clarification of the Contract Documents within three (3) days of receipt of a request.
- 1.5.2.3 Any interpretation or clarification of the Contract Documents made by any person other than the Architect or Construction Manager, or in any manner other than in writing, shall not be binding and the Contractor shall not rely upon any such interpretation or clarification.
- 1.5.2.4 If any change to the Work is made to accommodate unforeseen circumstances, the Construction Manager shall initiate the appropriate action.

### 1.6 DRAWINGS AND SPECIFICATIONS

#### 1.6.1 Ownership

- 1.6.1.1 All Drawings and Specifications are the property of the Tulalip Tribes of Washington.
- 1.6.1.2 In making copies of the Drawings and Specifications available, the Tulalip Tribes of Washington does not confer a license or grant permission for any use other than Work on the Project.

#### 1.6.2 Access

- 1.6.2.1 The Contractor shall maintain in good order at a secure location at the Project a set of Drawings and Specifications approved by the local building department and or local authority having jurisdiction.
- 1.6.2.2 The Contractor shall maintain in good order at the Project site one (1) copy of all Drawings, Specifications, Bulletins, Addenda, approved Shop Drawings, catalog data, manufacturer operating and maintenance instructions, certificates, Warranties from manufacturers, Material Suppliers and Subcontractors, Change Orders, Requests for Information and responses thereto and other modifications, including As-Built Drawings.



1.6.2.3 The Contractor shall at all times permit access to the documents described in subparagraph GC 1.6.2.1 and GC 1.6.2.2 and any Contract Documents to authorized representatives of the Tulalip Tribes of Washington, the Architect and the Construction Manager.

1.6.3 As-Built Drawings

1.6.3.1 The Contractor shall keep an accurate record of all approved changes made to the Drawings to show Work as actually performed where such Work varies from Work as originally shown on the Contract Documents, including the exact location and depth of underground utility lines.

1.6.3.2 During the performance of the Work, the Contractor shall record any approved changes on the Drawings, neatly in colored pencil, noting new information not shown on the original Drawings.

1.6.3.3 Where Shop Drawings are used, the Contractor shall cross-reference the corresponding sheet numbers on the Drawings. The Contractor shall note related Change Order numbers where applicable.

1.6.3.4 The Contractor shall keep a record of any change made to the Specifications, noting particularly any variation from manufacturer's installation instructions and recommendations.

## **ARTICLE 2 – THE CONTRACTOR**

### **2.1 CONSTRUCTION PROCEDURES**

2.1.1 The Contractor shall be responsible for and have control over all construction means, methods, techniques, sequences and procedures for all portions of the Contractor's Work and shall be responsible for any injury or damage which may result from improper construction, installation, maintenance or operation to the fullest extent permitted by law.

2.1.2 The Contractor, prior to the performance of any Work, shall field verify all elevations and dimensions depicted in the Contract Documents. The Contractor shall be responsible for properly and accurately laying out all lines, levels, elevations and measurements for all the Work as required by the Contract Documents.

2.1.3 The Contractor shall do all cutting, fitting or patching required for the Contractor's Work and shall not endanger the Project by cutting, excavating or otherwise altering the Project, or any part of it.

2.1.3.1 The Contractor requiring sleeves shall furnish and coordinate the installation of those sleeves. The Contractor shall be responsible for the exact location and size of all holes and openings required to be formed or built for the Work, to permit coordination with any Work performed by others on the Project.

2.1.3.2 The Contractor shall allow sufficient time for installation of any Work by others before covering or closing the applicable portion of the Project.

2.1.3.3 Patching shall match and blend with the existing or adjacent surface. Any patching required because of faulty or ill-timed Work shall be done by and at the expense of the Contractor.

- 2.1.4 The Contractor shall not cut away any timber or dig under any foundation or into any wall, or other part of the Project, without the written approval of the Construction Manager and the Architect.
  - 2.1.4.1 Unless otherwise specified in the Contract Documents, the Contractor, prior to starting excavation or trenching, shall determine the location of any underground utilities and notify any public authority or utility having jurisdiction over the Project and secure any required approval. The Tulalip Tribes of Washington assumes no liability for any damage to underground utilities caused by the Contractor.
  - 2.1.4.2 The Contractor shall backfill any excavation with the material specified and approved by the Architect.
- 2.1.5 The Contractor shall install all Work in accordance with the Contract Documents and any installation recommendations of the manufacturer, including required heat and dryness for installation of the various materials.
- 2.1.6 No portion of the Work requiring an authorization to act on the behalf of the Tulalip Tribes of Washington shall be commenced until the authorization has been given in writing by the Construction Manager. Any Work commenced by the Contractor prior to issuance of authorization by the Construction Manager shall be performed by the Contractor under risk that no payment will be approved or made by the Tulalip Tribes of Washington for such Work.
- 2.1.7 The Contractor shall comply with all requirements and conditions of the National Pollutant Discharge Elimination System (NPDES) general permit, including, without limitation, implementing and maintaining the control measures specified in the storm water pollution prevention plan, maintaining records of construction activities, removing materials no longer required and taking proper action if there is a reportable quantity spill.

## **2.2 CONSTRUCTION SUPERVISION**

- 2.2.1 The Contractor shall provide continuous supervision at the Project by a competent superintendent when any Work is being performed.
  - 2.2.1.1 The superintendent shall be responsible for supervision of Work only and shall not participate in the performance of the Work.
- 2.2.2 The Contractor's superintendent shall have responsibility and authority to act on behalf of the Contractor. All communications to the Contractor's superintendent shall be as binding as if given directly to the Contractor.
- 2.2.3 The Contractor shall submit an outline of the qualifications and experience of the Contractor's proposed superintendent, including references, to the Construction Manager within ten (10) days of the Notice to Proceed.
  - 2.2.3.1 The Tulalip Tribes of Washington reserves the right to reject the Contractor's proposed superintendent. Failure of the Construction Manager to notify the Contractor of such rejection within 30 days of receipt of the required information shall constitute notice that the Tulalip Tribes of Washington has no objection.
  - 2.2.3.2 If the Tulalip Tribes of Washington rejects the Contractor's superintendent, the Contractor shall replace the superintendent at no additional cost to the Project.
- 2.2.4 The Contractor shall not change the Contractor's superintendent without written notice to the Tulalip Tribes of Washington pursuant to the following procedure.

- 2.2.4.1 If the Contractor proposes to change the Contractor's superintendent, the Contractor shall submit to the Construction Manager, a written justification for the change, along with the name and qualifications of the individual whom the Contractor proposes to be the new superintendent.
- 2.2.4.2 The procedure provided in paragraph GC 2.2.3 shall be conducted to evaluate the Contractor's proposed new superintendent.

## **2.3 PROTECTION OF THE PROJECT**

- 2.3.1 The Contractor shall protect the Contractor's Work from weather, and shall maintain the Work and all materials, equipment, apparatus, fixtures and other items on or adjacent to the Project site free from injury or damage during the entire construction period.
  - 2.3.1.1 Work or items likely to be damaged shall be covered or protected at all times to prevent damage.
  - 2.3.1.2 Any Work or item damaged by failure of the Contractor to provide coverage or protection shall be removed and replaced with new Work or a new item, as applicable, at the Contractor's expense.
  - 2.3.1.3 Any adjacent property, including without limitation roads, walks, shrubbery, plants, trees or turf, damaged during the Contractor's Work shall be properly repaired or replaced at the Contractor's expense.
  - 2.3.1.4 Any damage due to herbivores or omnivores to plant material during initial planting through the end of the first year of plant establishment shall be the sole responsibility of the Contractor to restore, correct, replant, and replace to the specified condition and to protect the plant material from future damage.
- 2.3.2 Unless otherwise specified in the Contract Documents, the Contractor shall protect the Project and existing or adjacent property from damage at all times and shall erect and maintain necessary barriers, furnish and keep lighted necessary danger signals at night, and take precaution to prevent injury or damage to persons or property.
- 2.3.3 The Contractor shall not load, nor permit any part of the Project to be loaded, in any manner that will endanger the Project, or any portion thereof, nor shall the Contractor subject any part of the Project or existing or adjacent property to stress or pressure that will endanger the Project or property.
- 2.3.4 The Contractor shall provide all temporary bracing, shoring and other structural support required for safety of the Project and proper execution of the Work.
- 2.3.5 Unless otherwise specified in the Contract Documents, the Contractor shall remove all snow and ice as may be required for access to the Work.
- 2.3.6 The Contractor shall provide adequate dust control of the Project site at all times. Dust from the construction area shall be controlled to prevent drifting to non-work areas, including without limitation, occupied facilities, parking lots, buildings and adjacent properties.
- 2.3.7 The Contractor shall provide adequate noise control of the Project site at all times. Loud construction activities shall be scheduled so as not to unduly disturb the adjacent area activities. The Contractor shall identify loud activities and coordinate scheduling of those activities with the requirements of the Tulalip Tribes of Washington.

## **2.4 MATERIAL AND EQUIPMENT**

- 2.4.1 The Contractor's material and equipment shall be new and of the quality specified in the Contract Documents. All manufactured articles, materials and equipment shall be applied, installed, connected, created, used, cleaned and conditioned as directed in manufacturer's latest printed instructions. No manufactured articles, materials or equipment shall be used for any purpose unless recommended by the manufacturer. Any discrepancies between specified use and manufacturer's recommendations shall be brought to the attention of the Architect and the Construction Manager by the Contractor before installation.
- 2.4.2 Only the materials and equipment which are to be used directly in the Work shall be brought to or stored at the Project by the Contractor and the Contractor's Subcontractors and Material Suppliers.
- 2.4.2.1 The Contractor shall be responsible for the proper storage of all material and equipment brought to the Project.
- 2.4.2.2 After the material or equipment is no longer required for the Work, the Contractor shall remove such material and equipment from the Project.
- 2.4.3 The Contractor's material and equipment shall not cause damage to the Project or adjacent property and shall not endanger any person at, or in the vicinity of, the Project.
- 2.4.4 Any injury to person or damage to property resulting from the Contractor's material or equipment shall be the responsibility of the Contractor.

## **2.5 LABOR**

- 2.5.1 The Contractor shall maintain a sufficient workforce and enforce good discipline and order among the Contractor's employees and the employees of the Contractor's Subcontractors and Material Suppliers. The Contractor shall provide sufficient qualified on-site engineering and clerical project staff, in addition to the Contractor's superintendent, to process the daily Work, including without limitation, processing and coordinating Shop Drawings, correspondence, daily reports, As-Built Drawings and scheduling.
- 2.5.2 The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Contractor shall dismiss from the Project any person employed by the Contractor or the Contractor's Subcontractors and Material Suppliers who is found by the Tulalip Tribes of Washington, pursuant to a recommendation from the Construction Manager or the Architect, to be incompetent, guilty of misconduct, or detrimental to the construction of the Project.
- 2.5.3 The Contractor shall employ all legal efforts to minimize the likelihood or effect of any strike, work stoppage or other labor disturbance. Informational pickets shall not justify any work stoppage.
- 2.5.4 The Contractor shall comply with all applicable tribal and federal laws or regulations pertaining to labor, wages, hours, including, but not limited to TERO Ordinance No. 60, laws affecting the employment of minors on construction projects, and laws affecting the employment of illegal aliens.

## **2.6 SAFETY PRECAUTIONS**

- 2.6.1 The Contractor shall take precautions and shall be responsible for the safety of individuals on the Project and shall comply with all applicable provisions of tribal and federal safety laws and buildings codes to prevent injury to persons on or adjacent to the Project.
- 2.6.2 The Contractor shall comply with the rules and regulations of the Tulalip Tribes of Washington, the Department of Labor, Occupational Safety and Health Administration (OSHA). The Contractor shall be responsible for any fine or cost incurred as a result of any violation or alleged violation by the Contractor, the Contractor's employees or Subcontractors.
- 2.6.3 Prior to the start of any Work, the Construction Manager shall review Contractor's safety program. The field superintendent of the Contractor shall conduct regular inspections of the site for compliance with safety regulations, stating in writing each month as a part of the Application for Payment that he has done so. The Architect, the Tulalip Tribes of Washington and the Construction Manager reserve the right to inspect and recommend Contractor compliance with safety regulations if, in their opinion, conditions on the site do not comply.
- 2.6.4 Methods and equipment for protecting persons and the Project shall be subject to inspection and approval of the appropriate authority having jurisdiction over the Project site.
- 2.6.5 Work Stoppage Due to Hazardous Materials
  - 2.6.5.1 In the event a Contractor, except a licensed abatement Contractor, encounters materials reasonably believed to contain asbestos, polychlorinated biphenyl (PCB) or other hazardous waste or material, which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Architect, the Construction Manager and the Tulalip Tribes of Washington in writing.
  - 2.6.5.2 The Work in the affected area shall be resumed upon written notice from the Construction Manager that the material has been removed or rendered harmless.
  - 2.6.5.3 The term "rendered harmless" shall mean that the level of exposure is less than any applicable permissible exposure standards set forth in tribal law, OSHA or other applicable regulations.

## **2.7 TEMPORARY FACILITIES AND UTILITIES NOT USED**

## **2.8 PERMITS**

- 2.8.1 Building Permits
  - 2.8.1.1 The Architect shall secure the required plan approvals.
  - 2.8.1.2 The Contractor shall schedule the intermediate and final inspections required for any permit certification. The Contractor shall give the Architect, the Construction Manager and the Tulalip Tribes of Washington reasonable notice of the date arranged for any inspection.
  - 2.8.1.3 The Tulalip Tribes of Washington shall secure the required building permits.

- 2.8.2 Local Permits
  - 2.8.2.1 Unless otherwise specified in the Contract Documents, the Contractor shall obtain, maintain and pay for any permit or license required by local authorities having jurisdiction over the Project.
- 2.8.3 National Pollutant Discharge Elimination System (NPDES) Storm Water General Permit NOT USED

## **2.9 TESTS AND INSPECTIONS**

- 2.9.1 If after the commencement of the Work, the Architect or the Construction Manager determine that any portion of the Work requires special inspection, testing or approval in order to insure proper conformance to the Contract Documents, the Architect or the Construction Manager may instruct the Contractor in writing to order such special inspection, testing or approval, or the Architect or the Construction Manager may make the arrangements for same.
  - 2.9.2.1 If such special inspection, testing or approval reveals a failure of the Work to comply with the requirements of the Contract Documents, the Contractor shall pay all costs associated with such special inspection, testing or approval.
  - 2.9.2.2 If such special inspection, testing or approval reveals that the Work is in compliance with the Contract Documents, the Contractor will be paid, by appropriate Change Order, for all costs associated with such special inspection, testing or approval.
- 2.9.3 Neither the observations of the Architect or the Construction Manager in the administration of the contract, nor inspections, tests or approvals by persons other than the Contractor shall relieve the Contractor from the Contractor's obligation to perform the Work in conformity with the Contract Documents.

## **2.10 CLEANING UP**

- 2.10.1 During the progress of the Work, the Contractor shall be responsible for the removal of all waste materials and rubbish attributable to the Work to an appropriate disposal site designated by the Construction Manager. Unless otherwise specified in the Contract Documents, the Contractor shall perform daily broom cleaning in the area of the Contractor's Work.
  - 2.10.1.1 Unless otherwise specified in the Contract Documents, the Contractor shall, at the end of each working day or as directed by the Construction Manager, remove all waste materials and rubbish from the Project.
  - 2.10.1.2 Unless otherwise specified in the Contract Documents, the Contractor shall, as required for the Project or as directed by the Construction Manager, remove any waste materials or rubbish from areas adjacent to the Project.
- 2.10.2 If the Contractor fails to clean up during the progress of the Work, the provision of paragraph GC 5.2 may be invoked.
- 2.10.3 If the Contractor fails to maintain the areas adjacent to the Project clean and free of waste materials and rubbish, upon written notification by the Construction Manager, the Tulalip Tribes of Washington shall direct the local jurisdiction having responsibility for the area to clean the area.
  - 2.10.3.1 The cost of cleaning the area adjacent to the Project shall be deducted from the responsible Contractor as the Construction

Manager recommends and the Tulalip Tribes of Washington determines to be appropriate.

2.10.3.2 The decision of the Tulalip Tribes of Washington shall be final.

## **2.11 SUBSTITUTIONS**

2.11.1 Substitutes for Standards or Approved Equals shall not be considered after the bid opening unless the Contractor can conclusively demonstrate to the Architect and the Construction Manager one of the following conditions:

2.11.1.1 Unavailability of all Standards or Approved Equals through no fault of the Contractor or the Contractor's Subcontractors and Material Suppliers;

2.11.1.2 All Standards or Approved Equals are no longer produced; or

2.11.1.3 All Standards or Approved Equals will not perform as designed.

## **2.12 EXPLOSIVES AND BLASTING (NOT USED)**

## **2.13 EMERGENCY**

2.13.1 In the event of an emergency affecting the safety of individuals, the Project or adjacent property, the Contractor, without special instruction or authorization, shall act to prevent any threatened damage, injury or loss.

2.13.2 The Contractor shall give the Tulalip Tribes of Washington and the Construction Manager written notice if the Contractor believes that any significant change in the Work or variation from the Contract Documents has been caused by any emergency or action taken in response to an emergency.

2.13.3 If the Construction Manager recommends that a change in the Contract Documents be made because of any emergency or action taken in response to an emergency, and the Tulalip Tribes of Washington approve, a Change Order will be issued.

## **2.14 UNCOVERING THE WORK**

2.14.1 If any Work is covered contrary to the requirements of the Contract Documents or to the written request of the Architect or the Construction Manager, such Work must, if required by the Architect or the Construction Manager in writing, be uncovered for observation and replaced, if not in conformity with the Contract Documents, and recovered at the Contractor's expense.

2.14.2 If any Work has been covered in accordance with the Contract Documents and is Work which the Architect or the Construction Manager had not requested the opportunity to observe prior to covering, the Architect or the Construction Manager may request that such Work be uncovered by the Contractor.

2.14.2.1 If such Work is found not to be in conformity with the Contract Documents, the Contractor shall pay all costs of uncovering, replacing and recovering the Work, unless it is found by the Tulalip Tribes of Washington that such condition was caused by another Contractor.

2.14.2.2 If such Work is found to be in conformity with the Contract Documents, the cost of uncovering, replacing and recovering the Work shall, by appropriate Change Order, be paid to the Contractor.

## **2.15 CORRECTION OF THE WORK**

2.15.1 The Architect, through the Construction Manager, or Construction Manager shall notify the Contractor in writing if any Work is found by the Architect or the

Construction Manager to be Defective, whether observed before or after Contract Completion. The Architect or the Construction Manager shall specify in the written notice the time within which the Contractor shall correct the Defective Work.

- 2.15.2 The Contractor shall bear all costs of correcting such Defective Work, including the cost of any consequential damages.
- 2.15.3 If the Contractor fails to correct any Defective Work within the time fixed in the written notice, the Tulalip Tribes of Washington may correct such Work and recover all costs, including any consequential damages, from the Contractor or the Contractor's Surety.

## **2.16 INTERRUPTION OF EXISTING SERVICES**

- 2.16.1 Whenever it becomes necessary to interrupt existing services in use by the Tulalip Tribes of Washington, such as sewer, water, gas and steam lines, electric, telephone or cable service, the Contractor responsible for the Work shall continue the Work on a 24 hour basis until the Work is completed and the service restored, or at such alternate time required by the Tulalip Tribes of Washington.
- 2.16.2 Before beginning such Work, the Contractor, through the Construction Manager, shall apply in writing to and receive approval in writing from the Tulalip Tribes of Washington and the authority with appropriate jurisdiction over the Project, to establish a time when interruption of the service will cause a minimum of interference with the activities of the Tulalip Tribes of Washington.

## **2.17 ARCHAEOLOGICAL AND HISTORICAL OBJECTS**

- 2.17.1 Archaeological, or historical objects, which may be encountered by the Contractor, shall not be further disturbed. The Contractor shall immediately notify the Construction Manager of any such finds. The Construction Manager will contact the Tribal Natural Resource and Cultural Resource Department who will determine the nature of the object(s). The Contractor may be required to stop work in the vicinity of the discovery until such determination is made. If the Tribal Representative determines that the object(s) are to be surveyed, the Tribal Representative may require the Contractor to stop work in the vicinity of the discovery until the survey is accomplished.

# ***ARTICLE 3 – THE ARCHITECT***

## **3.1 PROJECT OVERSIGHT**

- 3.1.1 The Architect shall notify, advise and consult with the Construction Manager and the Tulalip Tribes of Washington and shall protect the Tulalip Tribes of Washington against Defective Work throughout the completion of the Project.
  - 3.1.1.1 The Architect shall designate a representative, who shall be approved by the Tulalip Tribes of Washington, to attend the Project to observe and check the progress and quality of the Work and to take such action as is necessary or appropriate to achieve conformity with the Contract Documents.
  - 3.1.1.2 It shall be the duty of the Architect to have any consultant attend the Project at such intervals required, or as may be deemed necessary by the Tulalip Tribes of Washington, to review the Work in order to achieve the results intended by the Contract Documents.



- 3.1.2 The Architect shall have the authority to disapprove or reject any item of Work which is Defective, or that the Architect believes will not produce a Project that conforms to the Contract Documents, or that will prejudice the integrity of the design concept of the Project as a functioning whole as indicated by the Contract Documents. The Architect shall immediately notify the Tulalip Tribes of Washington, through the Construction Manager, whenever Work has been disapproved or rejected.
- 3.1.3 The Architect shall not be responsible for construction means, methods, techniques, sequences, procedures, safety precautions and programs in connection with the Work, or for the Contractor's failure to carry out the Work in conformity with the Contract Documents.

## **3.2 CONTRACT ADMINISTRATION**

- 3.2.1 The Architect shall assist the Construction Manager to provide administration of the Contracts for the Project including, without limitation, the performance of the functions hereinafter described.
  - 3.2.1.1 The Architect shall secure the NPDES general permit by submitting a notice of intent application form (NOI) to the United States Environmental Protection Agency at least 45 days prior to the start of construction. The Architect shall prepare and certify a storm water pollution prevention plan and process the required notice of termination (NOT) prior to completion of the Project.
  - 3.2.1.2 The Architect shall attend any and all progress meetings and any coordination meetings as requested by the Construction Manager. The Architect shall assist the Construction Manager to prepare an agenda and a written report of each progress meeting and coordination meeting the Architect attends.
  - 3.2.1.3 The Architect, through the Construction Manager, may authorize minor changes or alterations in the Work not involving additional costs and not inconsistent with the overall intent of the Contract Documents.
  - 3.2.1.4 The Architect shall review and approve, or recommend approval, of all forms required under the Contract Documents.
  - 3.2.1.5 The Architect, through the Construction Manager, shall render decisions in connection with the Contractor's responsibilities under the Contract Documents, and submit recommendations to the Tulalip Tribes of Washington, through the Construction Manager, for enforcement of the Contract as necessary.
- 3.2.2 The Architect will be the initial interpreter of all requirements of the Contract Documents, pursuant to paragraph GC 1.5.2.
- 3.2.3 The Architect, with concurrence of the Construction Manager, shall be authorized to require special inspection, testing or approval of the Work, as provided in paragraph GC 2.9, whenever in the Architect's reasonable opinion such action is necessary or advisable to insure conformance to the Contract Documents.
- 3.2.4 Based upon the Architect's on-site observations and evaluation of the Contractor's Application for Payment, the Architect shall review, approve, modify or reject amounts due the Contractor. The Architect may recommend to the Tulalip Tribes of Washington, through the Construction Manager, that payment be withheld from, or Liquidated Damages be assessed against, a

Contractor's Application for Payment, stating the reasons for such recommendation. The Architect's certification for payment shall constitute a representation that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the Work is in conformity with the Contract Documents and the Contractor is entitled to payment in the amount certified.

- 3.2.5 The Architect shall review and approve or take other appropriate action upon the Contractor's submittals, within the required time, for the purpose of checking for conformity with the Contract Documents.
- 3.2.6 The Architect, with the assistance of the Construction Manager, shall prepare Bulletins, including a cost estimate and supportive documentation and data for any change to the Work.
- 3.2.7 The Architect shall assist the Construction Manager to conduct inspections to determine the date of Contract Completion and shall receive, review and forward to the appropriate entity all Project record submittals required by the Contract Documents.
- 3.2.8 The Architect, with the assistance of the Construction Manager, shall render written recommendations, within the time specified, on any matter in question involving the Contractor and shall provide information or services to the Tulalip Tribes of Washington until final disposition of any dispute.

#### **ARTICLE 4 – CONSTRUCTION PHASE COORDINATION**

##### **4.1 RESPONSIBILITY OF CONTRACTORS**

- 4.1.1 The Contractor shall schedule the Project and coordinate the Work of all Subcontractors with each other and with the activities and responsibilities of the Tulalip Tribes of Washington and the Architect to complete the Project in accordance with the Contract Documents.
  - 4.1.1.1 If the Contractor fails to prosecute the Work in accordance with the most current Construction Schedule, the provisions of paragraph GC 5.2 may be invoked.
  - 4.1.1.2 Coordination of the Work of the Contractor by the Construction Manager shall not relieve the Contractor from the Contractor's duty to supervise, direct and perform the Contractor's Work in accordance with the Contract Documents.
- 4.1.2 The Contractor shall develop and update the Construction Schedule for the Project in accordance with paragraph GC 4.3 and shall prepare and keep current, for the Architect's approval, a schedule of submittals which is coordinated with the Construction Schedule.
  - 4.1.2.1 The Construction Schedule shall not exceed the time limit specified in the Notice to Proceed, shall provide for reasonable, efficient and economical performance of the Work, as determined by the Construction Manager, and shall be related to the entire Project to the extent required by the Contract Documents.
  - 4.1.2.2 The Construction Schedule shall be used to plan, organize and perform the Work, record and report actual performance and progress and show how the Contractor plans to complete the remaining Work by Contract Completion.

- 4.1.3 The Contractor shall monitor, update, coordinate and seek conformance to the Construction Schedule and shall initiate and coordinate revisions of the Construction Schedule as required by the Contract Documents.
- 4.1.4 The Contractor shall afford other Contractors and such Contractor's Subcontractors and Material Suppliers reasonable opportunity for the introduction and storage of materials and equipment and execution of Work and shall properly connect and coordinate the Contractor's Work with the Work of other Contractors on the Project. The Contractor shall perform the construction activities constituting its Work in accordance with the early start and early finish dates of the most current Construction Schedule.
- 4.1.5 The Contractor shall perform the Work so as not to interfere with, disturb, hinder or delay the Work of other Contractors or the responsibilities of the Architect and the Construction Manager. The sole remedy provided by the Tulalip Tribes of Washington for any injury, damage or expense resulting from interference, hindrance, disruption or delay caused by or between Contractors or their agents and employees shall be an extension of time in which to complete the Work.
  - 4.1.5.1 If the Contractor, or the Contractor's Subcontractors or Material Suppliers, cause damage or injury to the property or Work of any other Contractor, or by failure to perform the Work with due diligence, delay, interfere with, hinder or disrupt any Contractor who suffers damage, injury or expense thereby, the responsible Contractor shall be responsible for such damage, injury or expense.
  - 4.1.5.2 The intent of paragraph GC 4.1.5.1 is to benefit the other Contractors on the Project and to demonstrate that each other Contractor who performs Work on the Project is a third party beneficiary of the Contract.
  - 4.1.5.3 Should the Contractor's, or the Contractor's Subcontractors' or Material Suppliers' acts or errors cause, or relate to in any fashion, the damages claimed by any other Contractor arising out of the Contractor's failure to perform with due diligence, or otherwise in accordance with the Contract Documents, then the Contractor shall indemnify and hold harmless the Tulalip Tribes of Washington and the Construction Manager from any such damages.
  - 4.1.5.4 Claims, disputes or actions between Contractors concerning such damage, injury or expense shall not delay completion of the Work which shall be continued by the parties to any such dispute, action or claim.
- 4.1.6 If any part of the Contractor's Work is preceded by the Work of another Contractor, the Contractor shall inspect such other Contractor's preceding Work before commencing any Work, and report in writing to the Construction Manager, any defects which render the other Contractor's preceding Work unsuitable as related to the Contractor's Work.
  - 4.1.6.1 Failure of the Contractor to make such inspection and report in writing, as required by paragraph GC 4.1.5, shall constitute an acceptance of the other Contractor's Work as fit and proper for the reception of the Contractor's preceding Work, except as to latent defects which such inspection would fail to disclose.

- 4.1.7 The Contractor shall consult with the Construction Manager, the Architect and the Tulalip Tribes Tribal Employment Rights Office to obtain full knowledge of the rules, regulations or requirements affecting the Project.
- 4.1.8 Under the direction of the Construction Manager, the Contractor shall coordinate the Contractor's Work with the Work of all other Contractors and with the activities of the Construction Manager and the Architect to complete the Project in accordance with the Contract Documents.
- 4.1.9 The Contractor shall supervise the Work in conformity with the coordination of the Construction Manager and shall take orders and directions from the Construction Manager as provided in the Contract Documents. Orders and direction from the Construction Manager for the coordination of the Work of the Contractors shall not relieve the Contractor from the Contractor's duty to supervise the Contractor's Work in accordance with the Contract Documents.
- 4.1.10 The Contractor shall give reasonable notice to the Architect, through the Construction Manager, when the Architect's presence is required for special consultations, inspections, testing, approvals or decisions.
- 4.1.11 If the Contractor fails to perform the Contract according to the requirements of the Contract Documents, such failure to perform may be just cause for the Tulalip Tribes of Washington to find the Contractor is not responsible for future contract awards.
- 4.1.12 The Contractor shall cooperate with the Architect and the Construction Manager so as not to interfere, disturb, hinder or delay the Work of other Contractors or the responsibilities of the Architect and the Construction Manager.
- 4.1.13 The Contractor shall keep a daily log containing a record of weather, number of workers on site for each Subcontractor, identification of equipment, Work accomplished, problems encountered and other similar relevant data. The Contractor shall submit a copy of the daily log to the Construction Manager by the end of the following work day.

## **4.2 RESPONSIBILITY AND AUTHORITY OF CONSTRUCTION MANAGER**

- 4.2.1 The Construction Manager shall consult with the Architect, the Tulalip Tribes of Washington and any governmental authority having jurisdiction over the Project to obtain full knowledge of all rules, regulations or requirements affecting the Project. The Construction Manager shall establish the regular working hours, subject to approval by the Tulalip Tribes of Washington.
- 4.2.2 The Construction Manager shall have the authority to disapprove or reject any item of Work which is Defective, or that the Construction Manager believes will not produce a Project that conforms to the Contract Documents. The Construction Manager shall immediately notify the Contractor, the Architect and the Tulalip Tribes of Washington whenever Work has been disapproved or rejected.
- 4.2.3 The Construction Manager shall render decisions in connection with the Contractor's responsibilities under the Contract Documents, and submit recommendations to the Tulalip Tribes of Washington for enforcement of the Contract as necessary.
- 4.2.4 The Construction Manager shall have the authority to approve the Contractor's Application for Payment and may recommend to the Tulalip Tribes of Washington that payments be withheld from, or Liquidated Damages be

assessed against, a Contractor's Application for Payment, stating the reasons for such recommendation.

- 4.2.5 The Construction Manager shall attend and conduct any and all progress and coordination meetings. The Construction Manager shall prepare an agenda and a written report of each progress and coordination meeting and distribute the report to the Architect, the Tulalip Tribes of Washington and the Contractors. The Construction Manager shall not delegate the duty to prepare the agenda and written reports of any progress or coordination meeting.
- 4.2.6 In the event of default by any Contractor, the Construction Manager shall cooperate with the Architect and the Tulalip Tribes of Washington and the defaulting Contractor's Surety to Contract Completion.
- 4.2.7 The Construction Manager, with the assistance of the Architect, shall render written recommendations, within the time specified, on any matter in question involving the Contractor and shall provide information or services to the Tulalip Tribes of Washington until final disposition of any dispute.
- 4.2.8 The Construction Manager shall not be responsible for construction means, methods, techniques, sequences, procedures, safety precautions and programs in connection with the Work. The services provided by the Construction Manager and the existence of schedules or services prepared or performed by the Construction Manager shall in no way relieve the Contractor from responsibility for complying with all the requirements of the Contract Documents.

### **4.3 CONSTRUCTION SCHEDULE**

- 4.3.1 Utilizing information deemed appropriate in the Contractor's opinion, the Contractor shall prepare the Construction Schedule for the Project.
  - 4.3.1.1 Within ten (10) working days of the date of the Notice to Proceed, the Contractor shall furnish to the Construction Manager a proposed schedule for the prosecution of Work on the Project. This proposed schedule shall include the following at a minimum.
    - 4.3.1.1.1 A listing of work activities for each contractor.
    - 4.3.1.1.2 A proposed logical relationship between all work activities.
    - 4.3.1.1.3 Proposed work activities' durations.
    - 4.3.1.1.4 The work day calendar used in preparation of the proposed schedule (including any Holidays and non-work days).
    - 4.3.1.1.5 The total float, free float, and early and late starts and finishes.
    - 4.3.1.1.6 Any constrained activities, including milestone dates indicated in the Contract Documents and periods of shutdown or disruption due to other operations or usages.
    - 4.3.1.1.7 Procurement related activities, including shop drawing preparation, approval, and material fabricating and delivery activities.
    - 4.3.1.1.8 Each phase of the Work, including Punch List and Commissioning and start-up for each phase or area of

work activity, Project Close-out activities, Contract Completion and occupancies for each phase or area.

This information shall be provided in hard copy and in electronic executable form (in the software typically used by the Construction Manager).

- 4.3.1.2 The Construction Manager shall within five (5) working days of receipt of the Contractor's proposed schedule, provide the following in the form requested by the Contractor:
  - 4.3.1.2.1 Review comments as to whether or not it appears the Contractor's activities listed in the proposed schedule is a full and complete listing of necessary activities to allow the Contractor to economically perform its work and coordinate its work with other Contractors.
  - 4.3.1.2.2 If applicable, suggest new activities that will allow the Contractor to prepare a more complete construction schedule for the Work.
    - 4.3.1.2.2.1 For any proposed activities under 4.3.1.2.2, the Construction Manager may propose logical relationships to any other work activities.
- 4.3.1.3 Within ten (10) calendar days of receipt of the Construction Manager's information required under subparagraph GC 4.3.1.2, or no later than 40 calendar days from the Notice to Proceed, the Contractor shall issue the Construction Schedule to the Tulalip Tribes of Washington, the Architect and the Construction Manager in both paper form and electronic executable files (using software typically used by the Construction Manager).
- 4.3.1.4 In the interim period between the Notice to Proceed and the issuing of the Construction Schedule, the Contractor shall conform to weekly schedules produced by the Contractor, with such conformance shall be the same as the Contractor's obligation to perform in accordance with the Construction Schedule under the Contract Documents.
- 4.3.1.5 The Construction Manager and Architect may recommend to the Tulalip Tribes of Washington that no payment be made to the Contractor for failure to issue the Construction Schedule within the time periods set forth under paragraph GC 4.3.1.
- 4.3.2 Unless otherwise specified by the Contract Documents, the Contractor shall, on a weekly basis, prepare and submit to the Construction Manager a written report describing activities begun or finished during the preceding week, Work in progress, expected completion of the Work, a projection of all activities to be started or finished in the following two (2) weeks, including without limitation, the Contractor's planned crew size and estimated remaining or total duration for the period for such Work and any other information requested by the Construction Manager. The aforementioned information shall be included in the minutes of progress meetings on a timely basis.
- 4.3.3 The Contractor shall update the Construction Schedule on a monthly basis in general conformance with the following:

- 4.3.3.1 The Contractor shall issue two (2) updated paper copies of the Construction Schedule and necessary accompanying schedule reports and narratives to the Architect, the Construction Manager and the Tulalip Tribes of Washington, with these copies including at a minimum the following information:
  - 4.3.3.1.1 Early and late starts and finishes, and total and free float of all activities;
  - 4.3.3.1.2 The current Construction Schedule targeted against the previous update as well as the initial Construction Schedule;
  - 4.3.3.1.3 Logical relationships, indicating predecessor and successor activities, as well as leads and lags;
  - 4.3.3.1.4 All constrained activities; and
- 4.3.4 Should it become apparent to the Construction Manager that activities then on the longest path or critical path(s) are not progressing such that their late finish dates may not be attained, or that the progress necessary to achieve the late finish dates of activities that are logically related to interim contract milestone dates may not be met, or if preliminary updates of the Construction Schedule indicates that critical path(s) have negative float such that interim contract milestones or Contract Completion dates may not be achieved, then the Contractor shall take the following actions:
  - 4.3.4.1 Identify the activities that are impacting the Construction Schedule and assess what has occurred since the previous period in which the Construction Schedule was updated.
  - 4.3.4.2 Develop possible courses of action whereby the milestone dates and Contract Completion date may be attained. The Contractor shall cooperate in providing all information requested by the Construction Manager.
  - 4.3.4.3 The Construction Manager shall review the possible courses of action developed under 4.3.4.2 with the Architect and the Tulalip Tribes of Washington, and, as deemed appropriate by the Construction Manager.
  - 4.3.4.4 Upon review of these courses of action, the Contractor shall issue the updated Construction Schedule in accordance with 4.3.3.

#### **4.4 PROGRESS MEETINGS**

- 4.4.1 Unless otherwise specified in the Contract Documents, the Construction Manager shall schedule a weekly progress meeting for all Contractors and other persons involved in the Project. The purpose of the progress meeting is to review progress in the Work during the previous week, discuss anticipated progress during the following weeks, and review critical operations and existing and potential problems.
- 4.4.2 The Contractor, the Construction Manager and the Architect shall be represented at every progress meeting by a person authorized with signature authority to make decisions regarding possible modification of the Contract Documents.
  - 4.4.2.1 The Construction Manager shall notify the Architect and the Contractors of the time and place of the progress meeting which shall

thereafter be the same day and hour of the week for the duration of the Project, unless the Construction Manager shall notify the Contractors of a different day and hour at least two (2) days in advance.

4.4.2.2 The Contractor shall have any of the Contractor's Subcontractors and Material Suppliers attend the progress meeting as deemed advisable by the Contractor or as requested by the Construction Manager or the Architect.

4.4.3 The Construction Manager shall prepare a written report of each progress meeting and distribute such report to the Architect, the Tulalip Tribes of Washington and the Contractor. The Construction Manager shall not delegate the duty to prepare a written report of each progress meeting.

4.4.3.1 If any person in attendance objects to anything in a report of a progress meeting, the person shall notify the Construction Manager in writing explaining the objection.

4.4.3.2 The report of each progress meeting shall reflect any objection made to the report of the previous progress meeting and any response thereto.

#### **4.5 COORDINATION MEETINGS**

4.5.1 Unless otherwise specified in the Contract Documents, the Contractor shall schedule a weekly coordination meeting for appropriate Subcontractors and Material Suppliers. The Architect and the Construction Manager shall attend coordination meetings when requested by the Contractor.

4.5.1.1 The purpose of the coordination meeting is to establish the exact location of each piece of equipment, pipe, duct, conduit, or other component of the Project; to discuss the sequence of construction consistent with the Construction Schedule, and to appropriately share available construction and storage space.

4.5.1.2 Unless otherwise specified in the Contract Documents, the Contractor shall prepare a written report of each coordination meeting and distribute the report to the Contractors, the Architect and the Construction Manager. The Contractor shall not delegate the duty to prepare a written report of each coordination meeting.

4.5.1.3 Project coordination meetings are in addition to specific meetings held for other purposes, such as regular progress meetings and pre-installation meetings. Refer to Section 01200 – PROJECT MEETINGS for additional meeting requirements.

4.5.2 Unless otherwise specified in the Contract Documents, the Contractor shall, within 45 days of the date of the Notice to Proceed or such other period of time as mutually agreed by the Contractor and the Construction Manager, prepare one-fourth inch equals one foot scale drawings of all sheet metal work with plan and elevation dimensions to specifically locate all duct work, equipment and HVAC pipe work, either on the same or separate drawings.

4.5.2.1 The Contractor will provide the drawings to the other contractors for use in preparing drawings of contractor's Work, to specifically locate equipment, piping, conduit and other Work.

4.5.2.2 The contractor shall resubmit the drawings to the Contractor showing the location of the contractor's equipment, piping, conduit, and other



Work for preparation of detailed coordination drawings by the Contractor.

- 4.5.3 The Contractor shall be represented at every coordination meeting by a person authorized with signature authority to make decisions regarding possible modification of the Contract Documents. The Contractor shall have any of the Contractor's Subcontractors and Material Suppliers attend the coordination meeting as deemed advisable by the Contractor.
- 4.5.4 The Construction Manager may conduct additional project coordination meetings on an "as needed" basis at times convenient for all parties involved. Any contractor may request that a coordination meeting be held to discuss an issue they are concerned about.

## **ARTICLE 5 – RIGHTS AND RESPONSIBILITIES OF THE TULALIP TRIBES OF WASHINGTON**

### **5.1 THE TULALIP TRIBES OF WASHINGTON**

- 5.1.1 The Tulalip Tribes of Washington shall competitively bid, execute and administer contracts for the construction of the Project in compliance with Tulalip Tribes' Tribal Employment Rights Title 9.05 and applicable tribal law, federal and local statutes, ordinances, codes and regulations.
- 5.1.2 The Tulalip Tribes of Washington shall designate a representative authorized to act on the behalf of the Tulalip Tribes of Washington with respect to decisions required by the Tulalip Tribes of Washington during the Project.
- 5.1.3 Information and services required of the Tulalip Tribes of Washington shall be furnished in good faith and in a timely manner to avoid delay in the progress of the Project.
- 5.1.4 The Tulalip Tribes of Washington and the Tulalip Tribes of Washington's officers, agents, employees, representatives and consultants shall at all times have access to the Work whenever the Project is in preparation or progress, subject to the coordination of the Construction Manager.
- 5.1.5 Upon the issuance of the Notice to Proceed or at a reasonable time thereafter, the Tulalip Tribes of Washington shall provide the Contractor the Project site in such condition to permit the Contractor to perform the Work.
- 5.1.6 The Tulalip Tribes of Washington may request any change in the Work.
- 5.1.7 The foregoing are in addition to other rights and responsibilities of the Tulalip Tribes of Washington enumerated herein.

### **5.2 RIGHT TO PROSECUTE WORK AND BACKCHARGE CONTRACTOR**

- 5.2.1 If the Contractor provides Defective Work or fails or neglects to prosecute the Work with the necessary diligence so as to complete the Work within the time specified in the Contract Documents or any portion of the Work by the applicable milestone date as set forth in the Construction Schedule, the Construction Manager may notify the Contractor in writing of such Defective Work, failure, or neglect.
- 5.2.2 If the Contractor fails or refuses to cure such Defective Work or its failure or neglect to timely prosecute the Work within three (3) working days after receipt of the written notice, the Construction Manager shall recommend enforcement of the Contract to the Tulalip Tribes of Washington pursuant to paragraphs GC 3.1.2, GC 3.2.1.5, GC 4.2.2 and GC 4.2.3. Without prejudice to any other

remedy the Tulalip Tribes of Washington may have, the Tulalip Tribes of Washington may employ upon the Work the additional force, or supply the materials or such part of either as is deemed appropriate, to correct the deficiency in the Contractor's Work, as determined by the Tulalip Tribes of Washington.

5.2.2.1 In such case, a Change Order shall be issued deducting from payments then or thereafter due the Contractor the costs of correcting such deficiency.

5.2.2.2 If the payments then or thereafter due the Contractor are not sufficient to cover such costs, the Contractor and the Contractor's Surety shall pay the amount of the insufficiency to the Tulalip Tribes of Washington.

5.2.2.3 The decision of the Tulalip Tribes of Washington to backcharge the Contractor shall be final.

### **5.3 RIGHT TO PARTIAL OCCUPANCY**

5.3.1 If the Tulalip Tribes of Washington finds it necessary to occupy or use a portion of the Project prior to Contract Completion, such occupancy or use may be accomplished if the Construction Manager informs the Tulalip Tribes of Washington that the area in question has been approved for temporary occupancy by the local building department or authority having jurisdiction.

5.3.2 If such Partial Occupancy or use is approved, the Architect, through the Construction Manager, may process either a Change Order or a Contract Completion certificate listing the deficient Work under the Contract for approval by the Tulalip Tribes of Washington, provided that no such occupancy or use shall commence before any insurers providing property insurance have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby.

5.3.3 From the date of execution of the Change Order or Contract Completion certificate by the Tulalip Tribes of Washington, the Contractor shall be relieved of obligation to maintain the accepted portion of the Work, but shall remain obligated to complete or correct any deficient Work including, without limitation, any Punch List items then uncorrected. The Contractor shall continue to carry the appropriate insurance during performance of any such Work.

5.3.4 Partial Occupancy or use of the premises by the Tulalip Tribes of Washington shall not constitute acceptance of any Work not in conformity with the Contract Documents. Partial Occupancy shall not relieve the Contractor of liability for any express or implied warranties or responsibility for Defective Work.

## ***ARTICLE 6 – TIME***

### **6.1 TIME OF ESSENCE**

6.1.1 Time is of the essence to the Contract Documents and all obligations thereunder. By executing the Contract, the Contractor acknowledges that the time for Contract Completion, any specified milestone completion dates, are reasonable, taking into consideration the average climatic range and usual conditions prevailing in the locality of the Project.

6.1.1.1 The Contractor agrees that the Notice to Proceed shall establish the date for completion of the Work.

- 6.1.1.2 The Contractor agrees that the Tulalip Tribes of Washington has entered into, or may enter into, agreements for use of all or part of the premises where the Work is to be completed based upon the Contractor achieving Contract Completion within the Contract time.
- 6.1.1.3 The Contractor agrees that the Work will be prosecuted in a reasonable, efficient and economical sequence, in cooperation with other Contractors, the Construction Manager, the Architect and in the order and in accordance with the early start and finish dates as provided in the Construction Schedule.
- 6.1.1.4 The Contractor shall perform the Work so as not to interfere with, disturb, hinder or delay the Work of other Contractors and such other Contractors' Subcontractors and Material Suppliers.
- 6.1.1.5 The Contractor agrees that the possibility that the Contractor may be subject to interference, disruption, hindrance or delay in the progress of the Work from any and all causes is within the contemplation of the parties and that the sole remedy for such interference, disruption, hindrance or delay shall be an extension of time granted pursuant to paragraph GC 6.2 and GC 6.3.

## **6.2 EXTENSIONS**

- 6.2.1 If the Contractor is interfered with, disrupted, hindered or delayed at any time in the progress of the Work by any of the following causes, the time for Contract Completion and any affected milestone completion dates shall be extended for such reasonable time which the Construction Manager determines, in consultation with the Architect and the Tulalip Tribes of Washington, as has been caused by the interference, disruption, hindrance or delay in the Work:
  - 6.2.1.1 Due to suspension of the Work for which the Contractor is not responsible; inclement weather conditions not normally prevailing in the particular season; labor dispute excluding informational picketing; fire or flood;
  - 6.2.1.2 Due to an act or omission of any other Contractor having a Contract for adjoining or contiguous Work; or
  - 6.2.1.3 Due to any unforeseeable cause beyond the control and without fault or negligence of the Contractor.

## **6.3 SOLE REMEDY**

- 6.3.1 To the fullest extent permitted by law, any extension of time granted pursuant to paragraph GC 6.2 shall be the Contractor's sole remedy which may be provided by the Tulalip Tribes of Washington, and the Contractor shall not be entitled to additional compensation or mitigation of Liquidated Damages for any delay, interference, hindrance or disruption, including, without limitation, costs of acceleration, consequential damages, loss of efficiency, loss of productivity, lost opportunity costs, impact damages, lost profits or other similar remuneration. The Contractor agrees that the possibility that the Contractor may accelerate the Contractor's performance to meet the Construction Schedule is within the contemplation of the parties and that such acceleration is solely with the discretion of the Contractor.

## **6.4 REQUEST FOR EXTENSION**

- 6.4.1 Any request by the Contractor for an extension of time shall be made in writing to the Construction Manager no more than ten (10) days after the initial

occurrence of any condition which, in the Contractor's opinion, entitles the Contractor to an extension of time. Failure to timely provide such notice to the Construction Manager shall constitute a waiver by the Contractor of any claim for extension, damages or mitigation of Liquidated Damages, to the fullest extent permitted by law.

6.4.2 The Contractor's request shall provide the following information so that a timely response may be made to minimize any resulting damage, injury or expense.

6.4.2.1 Nature of the interference, disruption, hindrance or delay;

6.4.2.2 Identification of persons, entities and events responsible for the interference, disruption, hindrance or delay;

6.4.2.3 Date (or anticipated date) of commencement of the interference, disruption, hindrance or delay;

6.4.2.4 Activities on the Construction Schedule which may be affected by the interference, disruption, hindrance or delay, or new activities created by the interference, disruption, hindrance or delay and the relationship with existing activities;

6.4.2.5 Anticipated duration of the interference, disruption, hindrance or delay;

6.4.2.6 Specific number of days of extension requested; and

6.4.2.7 Recommended action to avoid or minimize any future interference, disruption, hindrance or delay.

## **6.5 EVALUATION OF REQUEST**

6.5.1 Within ten (10) days of receipt of the Contractor's request, the Construction Manager shall evaluate the facts and extent of any interference, disruption, hindrance or delay to the Work, consult with the Architect and the Tulalip Tribes of Washington about the request and respond in writing to the Contractor.

6.5.1.1 The time for Contract Completion and milestone completion dates may only be extended by execution of an appropriate Change Order.

6.5.1.2 The Contractor shall make any necessary change in the Construction Schedule if an extension is granted.

## **6.6 CRITICAL PATH**

6.6.1 Notwithstanding any other provision of the Contract Documents, time extensions will depend upon the extent to which the Work on the Critical Path of the Construction Schedule is affected. A Change Order granting a time extension may provide that the contract time will be extended for only those specific elements so interfered with, disrupted, hindered or delayed and that remaining milestone completion dates will not be altered and may further provide for equitable adjustment of Liquidated Damages.

# ***ARTICLE 7 – CHANGES IN THE WORK***

## **7.1 CHANGE ORDER**

7.1.1 The Tulalip Tribes of Washington, without invalidating the Contract, may order changes in the Work consisting of additions, deletions or other revisions. To the extent the time for Contract Completion or Contract price are affected, the

Contract may be equitably adjusted by Change Order in accordance with this Article.

7.1.1.1 The Contractor shall proportionately increase the amount of the Bond, if a Bond was required, whenever the Contract price is increased.

7.1.1.2 If notice of any change affecting the Contract is required by the provision of any Bond, the giving of any such notice shall be the Contractor's responsibility, and the amount of each applicable Bond shall be adjusted accordingly.

7.1.2 The Contractor shall not proceed with any change in the Work without the appropriate written authorization. If the Contractor believes that any item is not Work required by the Contract Documents, the Contractor shall obtain a Change Order before proceeding with such item. Except as provided in GC Article 8, failure to obtain such a Change Order shall constitute a waiver by the Contractor of any request for additional compensation for such item.

7.1.3 The Tulalip Tribes of Washington reserves the right to cancel or modify any Change Order authorization.

## **7.2 PRICE DETERMINATION**

7.2.1 The maximum cost or credit resulting from a change in the Work shall be determined as described below.

7.2.1.1 Lump Sum Proposals will not be considered or accepted unless the total cost does not exceed \$1,000.00.

7.2.1.2 A Unit Price Proposal shall only be valid when incorporated into the Contract by Change Order.

7.2.2 The Contractor shall not assign any portion of the Work to another person or entity whereby the Contractor would benefit directly or indirectly from the double application of charges for overhead or profit.

7.2.3 If no agreement can be reached as to the cost or credit resulting from a change in the Work or if the Contractor refuses to sign a Change Order, the Tulalip Tribes of Washington may direct the associated change in the Work and determine the cost or credit, upon the recommendation of the Construction Manager and the Architect.

7.2.3.1 The Contractor shall proceed with the Change Order Work when so directed by the Construction Manager.

7.2.3.2 The Contractor may dispute the Tulalip Tribes of Washington's determination by filing a request for equitable adjustment of Contract in accordance with GC Article 8.

7.2.4 The Tulalip Tribes of Washington reserves the right to require notarized payrolls for labor costs and notarized invoices for material costs and reserves the right to audit the records of the Contractor and the Contractor's Subcontractors and Material Suppliers.

## **7.3 CHANGE ORDER PROCEDURE**

7.3.1 Depending on the cost of the change in the Work and the urgency of proceeding with the Work, two methods of executing a Change Order are available:

7.3.1.1 Change Order via Field Work Order (FWO) - a change in the Work costing not more than \$10,000 and initiated by a FWO.

- 7.3.1.2 Change Order via regular process - a change in the Work approved pursuant to a three (3) step process: 1) justification letter / Bulletin, 2) recommendation / pricing, and 3) execution of a Change Order.
- 7.3.2 The Construction Manager, with the assistance of the Architect, has responsibility for:
  - 7.3.2.1 Preparing, reviewing, recommending, coordinating, monitoring and processing a Change Order and related documents.
  - 7.3.2.2 Reviewing the Contractor's pricing within the stated time period, verifying the pricing complies with the Pricing Guidelines set forth in paragraph GC 7.4 and negotiating pricing, if necessary, to an equitable amount.
  - 7.3.2.3 If the change is to have a not-to-exceed price based on performing the Work on a time and material basis, monitoring the Work and signing daily time tickets. If the changed Work should cost less than the maximum amount noted on the Change Order, preparing a deduct Change Order for the cost difference.
  - 7.3.2.4 Reviewing and resolving the Contractor's request for an extension of time related to a Change Order.
  - 7.3.2.5 Confirming that the Tulalip Tribes of Washington concurs with the change and has available funds or a written commitment for funding the Change Order.
  - 7.3.2.6 Monitoring the overall Change Order process for timeliness and follow up.
  - 7.3.2.7 Authorizing the Contractor to proceed with the Change Order Work.
- 7.3.3 The Contractor has responsibility for:
  - 7.3.3.1 Responding to requests for pricing within the stated time period.
  - 7.3.3.2 Preparing all necessary proposals in sufficient detail for intelligent review with pricing, including Subcontractor and Material Supplier pricing, according to the Pricing Guidelines and negotiating pricing, if necessary, to an equitable amount.
  - 7.3.3.3 If the change is to have a not-to-exceed price based on performing the Work on a time and material basis, furnishing and certifying detailed records of all labor and materials provided. If the changed Work should cost less than the maximum amount noted on the Change Order, the Contractor is also responsible for executing a deduct Change Order prepared for the cost difference.
  - 7.3.3.4 Proceeding with the Work upon receipt of one of the following authorizations which is appropriate for the circumstances:
    - a) A fully signed FWO;
    - b) An authorization letter from the Construction Manager; or
    - c) A fully signed Change Order.

- 7.3.3.5 If the Contractor performs Work without the appropriate, required authorization, the Contractor does so at the Contractor's own risk that payment for such Work may not be approved or made.
- 7.3.4 Paperwork Consolidation
  - 7.3.4.1 Related transactions of one Contractor occurring at or about the same time shall, whenever possible, be consolidated into the same Bulletin or Change Order, or both.
  - 7.3.4.2 Add and deduct items may be included on the same Change Order.
  - 7.3.4.3 Do not combine error / omission changes with other transactions. If multiple transactions are processed together and include more than one reason for the changed Work, the cost of each separate change must be stated separately.
- 7.3.5 Change Order Numbering System
  - 7.3.5.1 The Construction Manager, in conjunction with the Architect, shall assign a number to each change which shall be stated on the Bulletin or scope of work description for the Project, starting with number 001. All Contractors affected by the change will be recorded under the same number. The Construction Manager will establish and maintain a master list of Change Order numbers, taking care not to duplicate or reuse any number throughout the Project.
  - 7.3.5.2 When Change Order numbers are assigned, the number should consist of the Contractor's contract number, followed by a hyphen, and then the sequential number of the change for that particular Contractor. The bulletin or scope of work description number shall be referenced on the Change Order form.

## **7.4 CHANGE ORDER PRICING GUIDELINES**

- 7.4.1 For each change, the Contractor shall furnish a detailed, written Proposal itemized according to these Pricing Guidelines. Any Subcontractor or Material Supplier pricing shall also be itemized according to these Pricing Guidelines. In order to expedite the review and approval process, all Proposals shall be prepared in the categories and in the order listed below. These Pricing Guidelines are intended to establish the maximum amount which the Tulalip Tribes of Washington will pay for any Change Order, including without limitation all amounts for interference, delay, hindrance or disruption of the Work. A Change Order may provide that the Tulalip Tribes of Washington may pay less than the amount established by these Pricing Guidelines if an equitable amount is negotiated between the Construction Manager and the Contractor.
- 7.4.2 LABOR – All field labor shall be priced at the current base rate being paid by the Contractor for such labor on the Project, or if such labor has not been previously employed on the Project, the base rate currently being paid by the Contractor on projects in the same locality, excluding fringe benefits. The payroll is to be based on straight time only and is to include number of hours and rate of pay for each classification of worker. If overtime is approved, list only the straight time portion in this item; overhead and profit will not be permitted on the cost of any premium time costs or shift work premiums.

- 7.4.3 FRINGES – All established payroll taxes, assessments and fringe benefits on the labor in paragraph 7.4.2. This may include, without limitation, FICA, Federal and State Unemployment, Health and Welfare, Pension Funds, Workers' Compensation and Apprentice Fund. Each of the fringes is to be a separate line item.
- 7.4.4 EQUIPMENT RENTALS – All charges for certain non-owned heavy or specialized equipment at up to 100 percent of the documented rental cost. No rental charges will be allowed for hand tools, minor equipment, simple scaffolds, etc. Downtime due to repairs, maintenance and weather delays will not be allowed.
- 7.4.5 OWNED EQUIPMENT – All charges for certain owned heavy or specialized equipment at up to 100 percent of the cost listed by the Associated Equipment Dealers Blue Book. No recovery will be allowed for hand tools, minor equipment, simple scaffolds, etc. The longest period of time that the equipment is to be required for the Work will be the basis for the pricing. Downtime due to repairs, maintenance and weather delays will not be allowed.
- 7.4.6 TRUCKING – A reasonable delivery charge or per-mile trucking charge for delivery of required materials or equipment. Charges for use of a pick-up truck will not be allowed.
- 7.4.7 OVERHEAD – Overhead on items in paragraph GC 7.4.2, GC 7.4.3, GC 7.4.4, GC 7.4.5, and GC 7.4.6, up to 10 percent, which shall include all costs required to schedule the work and coordinate with the Contractors.
  - 7.4.7.1 Overhead includes, without limitation, telephone, telephone charges, facsimile, telegrams, postage, photos, photocopying, hand tools, simple scaffolds (one level high), tool breakage, tool repairs, tool replacement, tool blades, tool bits, home office estimating and expediting, home office clerical and accounting support, home office labor (management, supervision, engineering\*), legal services, travel and parking expenses.
  - 7.4.7.2 \*An exception from paragraph GC 7.4.7.1 is allowed for shop or engineering labor for steel fabricators, sheet metal fabricators and sprinkler system fabricators. Recovery for such matters will be allowed under paragraph GC 7.4.2 and GC 7.4.3.
- 7.4.8 MATERIALS
  - 7.4.8.1 All materials purchased by the Contractor and incorporated into the changed Work, showing costs, quantities, or Unit Prices of all items, as appropriate. Reimbursement of material costs shall only be allowed in the amount of the Contractor's actual cost, including any and all discounts, rebates or related credits.
  - 7.4.8.2 One-third (33 percent) of the cost of reusable materials for each use, such as formwork lumber, shoring or temporary enclosures.
- 7.4.9 PROFIT - Profit on items in paragraphs GC 7.4.2, GC 7.4.3, GC 7.4.4, GC 7.4.5, GC 7.4.6, GC 7.4.7 and GC 7.4.8, up to 5 percent.
- 7.4.10 SUBCONTRACTOR - The reasonable cost of all labor and material provided by a Subcontractor whose pricing is included and which complies with these Pricing Guidelines.
- 7.4.11 CONTRACTOR MARK-UP ON SUBCONTRACTOR - Mark-up on items in paragraph GC 7.4.10, up to 10 percent.



- 7.4.12 MISCELLANEOUS - The following items are allowable at the cost of the Work, with **no overhead or profit**.
- 7.4.12.1 The cost of extending the Bond and the cost of extending liability, property damage, builder's risk or specialty coverage insurance.
  - 7.4.12.2 The premium portion only for approved overtime (labor and fringes). The straight time portion is included in paragraphs GC 7.4.2 and GC 7.4.3.
  - 7.4.12.3 Fees for permits, licenses, inspections, tests, etc.
  - 7.4.12.4 When requested by the Contractor and approved in writing by the Tulalip Tribes of Washington due to special circumstances, reimbursement will be paid for overnight lodging, travel and food in an amount not to exceed the Tulalip Tribes of Washington travel guidelines.
- 7.4.13 Costs which will not be reimbursed for Change Order Work include the following:
- 7.4.13.1 Voluntary Employee Deductions – examples are United Way and U.S. Savings Bonds, etc.
  - 7.4.13.2 Bonuses or other performance related salary adjustments.
  - 7.4.13.3 Washington State sales tax when the goods are delivered to or services provided within the exterior boundaries of the Tulalip Reservation.

## **7.5 DIFFERING SITE CONDITIONS**

- 7.5.1 Unless otherwise specified in the Contract Documents, borings, test excavations and other subsurface information, if any, are incomplete, are not a part of the Contract Documents, and are not warranted to show the actual subsurface conditions and may not be relied upon by the Contractor. Such matters are provided solely to share information available to the Tulalip Tribes of Washington and any use of them by the Contractor is at the risk of the Contractor.
- 7.5.2 Should the Contractor encounter, during the progress of the Work, concealed physical conditions at the Project, differing materially from those upon which the Contract Documents permit the Contractor to rely and differing materially from those ordinarily encountered and generally recognized as inherent in the Work of the character provided for in the contract, the Contractor shall notify the Construction Manager, in writing of such conditions, before they are disturbed.
- 7.5.3 The Construction Manager, with the assistance of the Architect, will promptly investigate the conditions and if the Construction Manager finds that such conditions do materially differ from those upon which the Contract Documents permit the Contractor to rely and differ materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract, causing an increase or decrease in the cost of the Contract, an appropriate Change Order shall be processed.
- 7.5.3.1 The Contractor shall only proceed with a proper authorization, in writing, as provided by the Contract Documents.

7.5.3.2 No request for additional compensation under paragraph GC 7.5.3 shall be allowed unless the Contractor provided the notice required in paragraph GC 7.5.2.

## **7.6 TIME EXTENSION**

- 7.6.1 Notwithstanding any other provision of the Contract Documents, time extensions for changes in the Work will depend upon the extent to which the change causes delay in Work on the Critical Path of the Construction Schedule as determined pursuant to paragraph GC 6.4 to GC 6.5.
- 7.6.2 If extending the time for Contract Completion is not possible, the Contractor shall price all costs of accelerated performance in the Contractor's Proposal.
- 7.6.3 A Change Order granting a time extension may provide that the time for Contract Completion will be extended for only those specific elements so delayed and that remaining milestone completion dates will not be altered and may further provide for adjustment of Liquidated Damages.

## ***ARTICLE 8 – DISPUTE RESOLUTION PROCEDURES***

### **8.1 REQUEST FOR EQUITABLE ADJUSTMENT OF CONTRACT**

- 8.1.1 Any request for equitable adjustment of Contract shall be made in writing to the Construction Manager, and filed prior to Contract Completion, provided the Contractor notified the Construction Manager, no more than ten (10) days after the initial occurrence of the facts which are the basis of the claim. To the fullest extent permitted by law, failure of the Contractor to timely provide such notice and a contemporaneous statement of damages shall constitute a waiver by the Contractor of any claim for additional compensation or for mitigation of Liquidated Damages.
- 8.1.2 In every such written claim filed in accordance with paragraph GC 8.1.1, the Contractor shall provide the following information to permit evaluation of the request for equitable adjustment of the Contract.
  - 8.1.2.1 Nature and amount of the claim, which the Contractor shall certify before a notary public is a fair and accurate assessment of the damages suffered by the Contractor;
  - 8.1.2.2 Identification of persons, entities and events responsible for the claim;
  - 8.1.2.3 Activities on the Construction Schedule affected by the claim or new activities created by any delay, interference, hindrance or disruption and the relationship with existing activities;
  - 8.1.2.4 Anticipated duration of any delay, interference, hindrance or disruption;
  - 8.1.2.5 Recommended action to avoid or minimize any future delay, interference hindrance or disruption.
- 8.1.3 The Contractor shall promptly provide any additional information requested by the Construction Manager or the Architect.

### **8.2 JOB SITE DISPUTE RESOLUTION PROCEDURE**

- 8.2.1 To avoid or minimize the filing of requests for equitable adjustment of the Contract, the Contractor and the Construction Manager, with the assistance of the Architect, shall endeavor to timely and proactively identify, address and

resolve matters involving persons, entities or events which may give rise to a request for equitable adjustment of the Contract.

8.2.2 The Construction Manager, with the assistance of the Architect, shall within 30 days of receipt of a request for equitable adjustment of the Contract filed pursuant to paragraph GC 8.1.1, schedule a meeting with the Contractor.

8.2.3 If no agreement can be reached between the Contractor, the Construction Manager, the Architect and the Tulalip Tribes of Washington, the Construction Manager shall provide a written recommendation about a Change Order for the request pursuant to paragraph GC 7.2.3. If the parties agree with the recommendation of the Construction Manager, they shall enter into a Change Order; otherwise, they shall proceed with the dispute resolution process set forth in paragraph GC 8.3.

### **8.3 DISPUTE RESOLUTION**

8.3.1 The parties agree that any and all disputes, claims or controversies arising out of or relating to this Agreement may be submitted to a mediator selected by both parties for mediation, and only if the matter is not resolved through mediation, then it may be submitted for final and binding arbitration.

#### **8.3.2 MEDIATION PREFERRED**

8.3.2.1 Either party may commence mediation by providing the other party a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties will cooperate with one another in selecting a mediator and in scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct agents, employees, experts and attorneys, and by the mediator are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either party may initiate arbitration with respect to the matters submitted to mediation by filing a written demand for arbitration with the other party at any time following the initial mediation session. Unless otherwise agreed by the parties, the mediator shall be disqualified from serving as arbitrator in the case.

#### **8.3.3 BINDING ARBITRATION**

8.3.3.1 Any dispute, claim or controversy arising out of or relating to this Agreement or breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined by arbitration before a single arbitrator agreed upon by both parties in accordance with the laws of the Tulalip Tribes. The arbitration shall be administered by the arbitrator pursuant to JAMS Streamlined Arbitration Rules and Procedures (effective March 26, 2007). The arbitrator's decision is final and judgment on the award may be entered and enforced by Tribal Court.

8.3.3.2 The arbitrator shall, in the Award, allocate all of the costs of the arbitration (and the mediation, if applicable), including the fees of the

arbitrator and the reasonable attorneys' fees of the prevailing party, against the party who did not prevail.

- 8.3.4 The parties agree that all mediation or arbitration proceedings shall take place within the exterior boundaries of the Tulalip Reservation.
- 8.3.5 This agreement shall not preclude parties from seeking provisional remedies in aid of arbitration from Tribal Court. This agreement is not a waiver of the Tribes' sovereign immunity.
- 8.3.6 The provisions of this paragraph GC 8.3 may be enforced by Tribal Court and the successful party shall be entitled to an award of all costs, fees and expenses, including attorneys' fees, to be paid by the party against whom enforcement is ordered in accordance with tribal law.
- 8.3.7 If, at any time, any of the provisions of this Contract (including, but not limited to, any Attachments, Addendums or Attachments) or the JAMS Streamlined Arbitration Rules and Procedures conflict with the terms of this dispute resolution agreement, the terms of this dispute resolution agreement shall govern.

#### **8.4 PERFORMANCE AND PAYMENT**

- 8.4.1 The Contractor shall proceed with performance of the Work during any dispute resolution process, unless otherwise agreed by the Contractor and the Tulalip Tribes of Washington in writing. The Tulalip Tribes of Washington shall continue to make payment in accordance with the Contract Documents pending final resolution of a request for equitable adjustment of the Contract.

### ***ARTICLE 9 – CONTRACTOR PAYMENT***

#### **9.1 CONTRACT COST BREAKDOWN**

- 9.1.1 The Contractor shall submit to the Construction Manager, a full, accurate and detailed estimate (the "Contract Cost Breakdown") of the various kinds of labor to be performed and material to be furnished, with separate amounts shown for labor and materials for each branch of Work, following the preferred titles and sequences of Sections of Construction Specifications Institute (CSI) format used in developing the Specifications.
- 9.1.2 The grand total shown on the Contract Cost Breakdown must equal the total Contract price. The Tulalip Tribes of Washington reserves the right to use the approved Contract Cost Breakdown to determine the cost or credit to the Tulalip Tribes of Washington resulting from any change in the Work.
  - 9.1.2.1 The first item should be actual cost of Bond, insurance, permits and tests required for the Project.
  - 9.1.2.2 The amounts for labor and material shall accurately reflect the cost for each item. Separate items shall not be shown for overhead or profit, but shall be included in the totals for labor and materials.
  - 9.1.2.3 Whenever the material allocation exceeds 55 percent of the Contract price, the Contractor shall provide, upon request, sufficient information to support such higher percentage.
  - 9.1.2.4 When more than one (1) major structure is included in the Contract, the Contract Cost Breakdown shall be subdivided accordingly if requested by the Construction Manager, with cost details for each structure shown separately.

- 9.1.2.5 Unless otherwise specified in the Contract Documents, mechanical and electrical contractors shall include separate line items for all major pieces of equipment and group smaller equipment items by type.
- 9.1.2.6 A line item shall be included for Punch List Work, regular clean-up and final cleaning, Project Record Document Submittals, delivery of attic stock and specified training.
- 9.1.2.7 Refer to Section 01370 – CONTRACT COST BREAKDOWN for identification of additional line items and responsibilities associated with the Contract Cost Breakdown.
- 9.1.3 The Contract Cost Breakdown will be returned to the Contractor for resubmittal if it does not meet the requirements or contains insufficient items or details of the Work.
- 9.1.4 No payment will be made without an approved Contract Cost Breakdown.

## **9.2 APPLICATION FOR PAYMENT**

- 9.2.1 The Contractor shall submit monthly to the Construction Manager an itemized Application for Payment for Work performed based upon the Contract Cost Breakdown.
  - 9.2.1.1 Prior to the submission of a formal Application for Payment the Contractor shall submit a pencil copy to the Construction Manager for review.
  - 9.2.1.2 The Construction Manager shall review the pencil copy of the Application for Payment and advise the Contractor of any required adjustments within five (5) working days of receipt. Failure of the Construction Manager to notify the Contractor of any required adjustments within five (5) working days of receipt shall constitute notice that the Construction Manager has no objection to the pencil copy of the Application for Payment.
  - 9.2.1.3 If a pencil copy of the Application for Payment is adjusted or disapproved by the Construction Manager, the Contractor shall promptly correct the deficiencies and submit an amended and clean version of the Application for Payment to the Construction Manager for processing for payment. Only an unmarked and clean version of the Application for Payment will be processed for payment by the Tulalip Tribes of Washington.
  - 9.2.1.4 The Application for Payment shall be supported by data substantiating the Contractor's right to payment. The Contractor shall supply such additional documentation as the Construction Manager or the Architect may request in connection with each Application for Payment.
  - 9.2.1.5 The Contractor shall list on the Application for Payment any approved Change Orders processed and performed during the time covered by the Application for Payment.
  - 9.2.1.6 The Tulalip Tribes of Washington reserves the right to require notarized payrolls for labor costs and notarized invoices for material costs and reserve the right to audit the records of the Contractor and the Contractor's Subcontractors and Material Suppliers.

- 9.2.1.7 The Contractor shall execute and submit an interim waiver and release of claims affidavit with each Application for Payment to certify that the Contractor has paid all Subcontractors, Material Suppliers and laborers in full for all Work performed or materials furnished for the Project.
- 9.2.2 The Contractor warrants and agrees that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work, whether completed or under construction.
- 9.2.3 Each Application for Payment shall act as a representation and certification by the Contractor that: (i) Contractor and all subcontractors are in compliance with the terms of their respective contracts; (ii) all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current Application and there is no known basis for the filing of any claim in respect of the Work except for any claim that Contractor has provided written notice to Owner about such claim; and (iii) waivers and releases from all first and second tier subcontractors, and from all suppliers, vendors and materialmen have been obtained in such form as to constitute an effective waiver and release of all known claims except for any claim that Contractor has provided written notice to Owner about such claim. Contractor shall require in its contracts with subcontractors and suppliers appropriate support documentation for the payment applications. The Contractor shall provide all applicable conditional waivers or releases within sixty (60) days after each approved pay request. Further, the Contractor shall provide all applicable unconditional releases within forty-five (45) days after payment of the approved final pay request.
- 9.2.4 Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.
- 9.2.5 Payment of an approved Application for Payment shall be made within 30 days from the date of approval by the Construction Manager, the Tulalip Tribes of Washington and the Architect.
- 9.2.5.1 The Tulalip Tribes of Washington reserves the right to require proof of the renewal of required insurance as a condition precedent to payment.
- 9.2.6 The amount of Liquidated Damages to which the Tulalip Tribes of Washington is apparently entitled under the Contract Documents may be deducted from any Application for Payment.

### **9.3 LABOR PAYMENTS**

- 9.3.1 Partial payments to the Contractor for labor performed under either a Unit Price or lump sum Contract shall be made at the rate of 90 percent of the amount invoiced through the Application for Payment.

## 9.4 MATERIAL PAYMENTS

- 9.4.1 The Tulalip Tribes of Washington shall pay to the Contractor a sum at the rate of 90 percent of the invoice cost, not to exceed the bid amount in a Unit Price or lump sum Contract, for material delivered on the site of the Project, or other point in the vicinity of the Project, or other storage site approved by the Construction Manager, provided the Contractor provides the following information with the Application for Payment:
- 9.4.1.1 A list of the fabricated materials consigned to the Project, giving the place of storage, together with copies of invoices, in order to verify quantity and cost.
  - 9.4.1.2 A certification of materials stored off site, prepared by the Contractor and signed by the Construction Manager and the Architect to evidence that the materials are in conformity with the Specifications and have been tagged with the Project name and number for delivery to the Project. All costs incurred by the Construction Manager or the Architect to visit a storage site, other than the areas adjacent to the Project, shall be paid by the Contractor.
  - 9.4.1.3 Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Tulalip Tribes of Washington to establish the Tulalip Tribes of Washington's title to such materials and equipment or otherwise protect the Tulalip Tribes of Washington's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site at no additional cost to the Tulalip Tribes of Washington. Conditions precedent to the Tulalip Tribes of Washington paying for on or off site stored materials shall be as follows:
    - 9.4.1.3.1 For materials stored on-site, (i) Bill of Sale transferring title and ownership of material(s) or equipment to the Tulalip Tribes of Washington; (ii) detailed listing of all stored material(s) or equipment; and (iii) stored material(s) or equipment shall be segregated from other material(s) or equipment.
    - 9.4.1.3.2 For materials stored off-site, (i) certificate of insurance for full replacement value of material being stored against fire, loss, damage or theft; and (ii) comply with all requirements for material(s) or equipment stored on site under subparagraph 9.4.1.3.1.
    - 9.4.1.3.3 The Contractor shall only be reimbursed by the Tulalip Tribes of Washington for actual invoice cost of material(s) or equipment being stored, regardless of location.
- 9.4.2 The balance of such invoiced cost shall be paid when such material is incorporated into and becomes a part of the Project.
- 9.4.3 When payment is allowed on account of material delivered on or off site of the Project or in the vicinity thereof or under the possession and control of the Contractor but not yet incorporated in the Project, such material shall become the property of the Tulalip Tribes of Washington, but if such material is stolen, destroyed, or damaged by casualty before being used, the Contractor will be required to replace it at the Contractor's expense.

- 9.4.4 Completed line items concealed, underground and buried and not subject to final Punch List may be paid for at the rate of 100 percent. Completed line items subject to final Punch List requiring testing or start-up shall be paid at the rate of 90 percent.

## **9.5 RETAINAGE**

- 9.5.1 When the major portion of the Project is occupied or in use, and there exists no other reason to withhold retainage, including without limitation, compliance with GC Article 11, the retainage withheld in connection with such Work or portion of Work may, upon request of the Contractor, be released and paid to the Contractor, withholding only that amount necessary to assure completion, in the discretion of the Tulalip Tribes of Washington.
- 9.5.1.1 Any reduction or release of retainage, or portion thereof, shall not be a waiver of the Tulalip Tribes of Washington's right to retainage in connection with other payments to the Contractor, or any other right or remedy the Tulalip Tribes of Washington have under the Contract Documents and or applicable law.
- 9.5.1.2 Funds not previously paid shall be released to the Contractor within 30 days of approval of a final Application for Payment by the Tulalip Tribes of Washington and execution of the certificate of Contract Completion by the Architect, the Construction Manager and the Tulalip Tribes of Washington.
- 9.5.2 Upon written consent by the Contractor's Surety, the Tulalip Tribes of Washington may reduce the amount of funds retained for the faithful performance of Work by 50 percent of the amount of funds required to be retained, provided the Contractor's Surety remains responsible for all damages that may be caused due to default by the Contractor, including without limitation, the following:
- 9.5.2.1 Completion of the Work;
- 9.5.2.2 All interference, disruption, hindrance and delay claims;
- 9.5.2.3 All Liquidated Damages; and
- 9.5.2.4 All additional expenses incurred by the Tulalip Tribes of Washington.

## **9.6 PAYMENTS WITHHELD**

- 9.6.1 The Architect and the Construction Manager shall have the authority to recommend to the Tulalip Tribes of Washington that payments be withheld from, or Liquidated Damages be assessed against and withheld from, a Contractor's Application for Payment, stating the reasons for such recommendation.
- 9.6.2 The Tulalip Tribes of Washington reserves the right to decline to approve any Application for Payment or part thereof, or because of subsequent evidence or inspection, may nullify any previous Application for Payment, in whole or in part, to such extent as may be necessary to protect the Tulalip Tribes of Washington from loss because of:
- 9.6.2.1 The Contractor's failure to comply with the Contract Documents, including, without limitation, Defective Work not remedied;
- 9.6.2.2 Damage caused by the Contractor; and or
- 9.6.2.3 Liquidated Damages.



- 9.6.3 If the basis for withholding payment pursuant to paragraph GC 9.6.2 is removed, payment shall be made for amounts withheld because of them.
- 9.6.4 Whenever the Tulalip Tribes of Washington receives a Claim Affidavit, the Tulalip Tribes of Washington shall detain the stated amount from the Contractor's subsequent Application for Payment unless the Contractor provides a release and waiver of claim affidavit with the Application for Payment.
  - 9.6.4.1 The release and waiver of claim affidavit shall be executed by the person or entity supplying labor, materials or services on a Project, which has or may have a right of claim against the Contractor's proceeds.
  - 9.6.4.2 If the Tulalip Tribes of Washington detains an amount as set forth above, such action shall not be construed as conferring any right on such Subcontractor or Material Supplier, nor as enlarging or altering the application or effect of the existing claim.

## **9.7 FINAL APPLICATION FOR PAYMENT**

- 9.7.1 The Contractor, as a condition precedent to execution of the certificate of Contract Completion and to final payment, shall provide all documents required pursuant to paragraph GC 11.1.1 for approval by the Construction Manager and the Architect.
  - 9.7.1.1 The Contractor shall execute a final waiver and release of claims affidavit to certify that the Contractor has paid all Subcontractors, Suppliers and laborers in full for all Work performed or materials furnished for the Project.
- 9.7.2 Payment of the final Application for Payment shall be made within 30 days from the date of approval by the Construction Manager, the Tulalip Tribes of Washington and the Architect.
- 9.7.3 The making of final payment by the Tulalip Tribes of Washington shall constitute a waiver of all claims by the Tulalip Tribes of Washington except those arising after Contract Completion including, without limitation, the following:
  - 9.7.3.1 Defective or nonconforming Work resulting from latent defects, fraud or gross mistakes;
  - 9.7.3.2 Outstanding claims; and or
  - 9.7.3.3 Failure of the Contractor to comply with any Warranties required by the Contract Documents.
- 9.7.4 The acceptance of final payment by the Contractor shall constitute a waiver of all claims against the Tulalip Tribes of Washington except those that the Contractor has previously made in writing in accordance with GC Article 8 and which remain unsettled at the time of final payment.
- 9.7.5 Notwithstanding anything to the contrary under paragraph GC 9.7.1, final payment shall not become due and payable to Contractor until Contractor has delivered to Owner all close-out related documentation and a final release and waiver of claims affidavit, conditioned only by receipt of final payment and listing of claims previously made by Contractor in writing and identified by Contractor as unsettled at the time of final Application for Payment.

## **ARTICLE 10 – FINAL INSPECTION AND ACCEPTANCE**

### **10.1 CONTRACTOR’S PUNCH LIST**

- 10.1.1 When the Work, or designated portion thereof, is near completion, the Contractor shall prepare a list of all deficient items remaining on the Work or the designated portion thereof (the “Contractor's Punch List”).
- 10.1.2 The Contractor shall proceed to correct all items listed on the Contractor's Punch List and verify that the deficient items have been corrected by signing said Punch List.
- 10.1.3 The Contractor shall submit the signed Contractor's Punch list to the Construction Manager and the Architect, together with a request for a Final Inspection of the Work.

### **10.2 ARCHITECT’S PUNCH LIST**

- 10.2.1 The Architect and the Construction Manager shall, within seven (7) days of receipt of the request for Final Inspection, notify the Contractor of acceptance or rejection of the request for Final Inspection, stating reasons for any rejection.
- 10.2.2 Upon acceptance of the Contractor's request, the Architect and the Construction Manager shall conduct the Final Inspection to determine whether the Work, or designated portion thereof, is in conformity with the Contract Documents. The Construction Manager shall notify the Contractor, the Architect and the Tulalip Tribes of Washington of the scheduled time of the Final Inspection.
- 10.2.3 Within three (3) days of the Final Inspection, the Construction Manager shall notify the Contractor of any items remaining in a deficient or unacceptable condition. The list of such items shall be known as the Architect's Punch List.

### **10.3 CORRECTION OF PUNCH LIST ITEMS**

- 10.3.1 Within 30 days of receipt of the notice required by paragraph GC 10.2.3, the Contractor shall complete and correct all items remaining on the Architect's Punch List.
  - 10.3.1.1 If the Contractor does not complete the items on the Architect's Punch List within 30 days of receipt of the notice, the provisions of paragraph GC 5.2 may be invoked.
  - 10.3.1.2 If the Work on the Architect's Punch List cannot be completed within 30 days of receipt of the notice, the Contractor shall justify, to the reasonable satisfaction of the Construction Manager, the reasons the items cannot be so completed, and the Contractor shall propose, for approval by the Construction Manager, a time when such items will be completed.
  - 10.3.1.3 Failure of the Architect or the Construction Manager to include any items on the Architect's Punch List shall not alter the responsibility of the Contractor to complete all the Work in accordance with the Contract Documents.
  - 10.3.1.4 If multiple inspections of items on the Architect's Punch List are required due to the Contractor's failure to properly and timely complete them, the Contractor shall be responsible for any additional costs incurred by other Contractors, the Construction

Manager, the Architect and the Tulalip Tribes of Washington resulting from any attendant delay.

#### **10.4 CERTIFICATE OF CONTRACT COMPLETION**

10.4.1 When all items on the Architect's Punch List have been corrected to the satisfaction of the Architect, the Construction Manager and the Tulalip Tribes of Washington and the provisions of paragraphs GC 11.1 to GC 11.4 have been fulfilled, the Construction Manager, with the assistance of the Architect, shall process a certificate of Contract Completion. The Tulalip Tribes of Washington reserves the right of Final Acceptance of the Project.

#### **10.5 DEFERRED ITEMS**

10.5.1 With the approval of the Construction Manager, when upon Final Inspection, items of Work cannot be completed because of seasonal condition, such as bituminous paving or landscaping, or if the Tulalip Tribes of Washington agrees that a particular item need not be completed until a subsequent date, the Tulalip Tribes of Washington may release payment to the Contractor less twice the cost of completing the remaining Work as determined in the sole discretion of the Tulalip Tribes of Washington.

#### **10.6 GUARANTEE PERIOD INSPECTION**

10.6.1 The Contractor will attend a walk-through of the Project scheduled by the Construction Manager to occur one month prior to the expiration of the one year Guarantee provided by the Contractor. The walk-through will be attended by the Architect, the Tulalip Tribes of Washington and the Construction Manager.

10.6.2 The Construction Manager, with the assistance of the Architect, shall notify the Tulalip Tribes of Washington of any defects in workmanship, materials and equipment. The provisions of paragraph GC 11.3.3 shall be implemented to remedy the Defective Work.

### ***ARTICLE 11 – CONTRACT COMPLETION***

#### **11.1 PROJECT RECORD DOCUMENT SUBMITTALS**

11.1.1 The Contractor, as a condition precedent to execution of the certificate of Contract Completion, release of retainage and final payment, shall provide all Project record documents to the Construction Manager for review for conformity with the requirements of the Contract Documents, then transmittal to the Architect for approval, which may include, without limitation:

- 11.1.1.1 Certificate of Occupancy issued by the local building department;
- 11.1.1.2 Inspection Certificates required and issued by the authority having jurisdiction, such as Plumbing, Piping Purification, Pressure Piping, Elevator, Boiler, Electrical, etc.;
- 11.1.1.3 Letter of Approval from the Fire Marshal for fire suppression system;
- 11.1.1.4 Operating and Maintenance Manuals, which shall be organized into suitable sets of manageable size. Indexed data shall be bound in individual binders, with pocket folders for folded sheet information and appropriate identification shall be marked on the front and the spine of each binder;

- 11.1.1.5 Neatly and accurately marked sets of As-Built Drawings and other Contract Documents reflecting the actual construction of the Project;
- 11.1.1.6 Reproducible detailed Drawings reflecting the exact location of any concealed utilities, mechanical or electrical systems and components;
- 11.1.1.7 An electronic copy of all Operating and Maintenance manual documentation, As-Built drawings, Warranties and Guarantees and other Contract Documents in a pdf format;
- 11.1.1.8 Assignment to the Tulalip Tribes of Washington of all Warranties and Guarantees, including the most recent address and telephone number of any Subcontractors, Material Suppliers, or manufacturers;
- 11.1.1.10 A final waiver and release of claims affidavit to certify that the Contractor has paid all Subcontractors, Material Suppliers and laborers in full for all Work performed or materials furnished for the Project.

## **11.2 RECORD DRAWINGS**

- 11.2.1 Upon completion of the Work, the Contractor shall organize the As-Built Drawings into manageable sets, bind the sets with durable paper cover sheets, certify to the accuracy of the As-Built Drawings by signature thereon, and deliver the As-Built Drawings to the Construction Manager. The Construction Manager shall review the As-Built Drawings and verify that, to the best of the Construction Manager's knowledge based upon the Construction Manager's observations made during the progress of the Work, the As-Built Drawings detail the actual construction of the Project.
- 11.2.2 If requested by the Tulalip Tribes of Washington, the Architect shall revise the original Drawing tracings and computer files with the information contained on the As-Built Drawings provided by the Contractor. The revised original Drawing tracings or computer files shall be labeled "Drawings of Record" and reflect the date of the Architect's revision of the As-Built Drawings.
- 11.2.3 The Tulalip Tribes of Washington may thereafter use the Record Drawings for any purpose relating to the Project including, without limitation, additions to or completion of the Project.

## **11.3 GUARANTEE AND WARRANTY**

- 11.3.1 The Contractor shall provide a Guarantee to the Tulalip Tribes of Washington that all Work is in conformity with the Contract Documents and free from defects in workmanship, materials and equipment for a period of one (1) year or such longer period as specified in the Contract Documents. The Bond shall remain in effect until the expiration of that period unless the Contractor provides a maintenance bond satisfactory to the Tulalip Tribes of Washington in form and substance.
  - 11.3.1.1 The Guarantee time period shall commence on the date of approval of the certificate of Contract Completion by the Tulalip Tribes of Washington, unless otherwise provided in writing.
  - 11.3.1.2 The Guarantee time period for any incomplete or uncorrected Work at the time of Partial Occupancy, if any, shall commence with the date of approval of the certificate of Contract Completion by the Tulalip Tribes of Washington, unless otherwise provided in writing.

- 11.3.1.3 The Guarantee provided in this Article shall be in addition to, and not in limitation of, any other Guarantee, Warranty or remedy provided by law or by the Contract Documents.
- 11.3.2 Any damage due to herbivores or omnivores to plant material during initial planting through the end of the first year of plant establishment shall be the sole responsibility of the Contractor to restore, correct, replant, and replace to the specified condition and to protect the plant material from future damage.
- 11.3.3 The Contractor shall, prior to installing material or equipment which is subject to a Warranty, provide a copy of the Warranty to the Construction Manager, with the assistance of the Architect, for review and approval.
- 11.3.4 If Defective Work becomes apparent within the Warranty or Guarantee period, the Tulalip Tribes of Washington shall promptly notify the Contractor in writing and provide a copy of said notice to the Architect and the Construction Manager.
- 11.3.4.1 Within three (3) days of receipt of said notice, the Contractor shall visit the Project in the company of one or more representatives of the Tulalip Tribes of Washington to determine the extent of the Defective Work. The Contractor shall promptly repair or replace the Defective Work, including all adjacent Work damaged as a result of such Defective Work or as a result of remedying the Defective Work, whether or not such adjacent Work was originally provided by the Contractor.
- 11.3.4.2 If the Defective Work is considered by the Tulalip Tribes of Washington to be an emergency, the Tulalip Tribes of Washington may require the Contractor to visit the Project within one (1) day of receipt of said notice.
- 11.3.4.3 The Contractor shall be fully responsible for the cost of temporary materials, facilities, utilities or equipment required during the repair or replacement of the Defective Work.
- 11.3.5 If the Contractor does not promptly repair or replace Defective Work, the Tulalip Tribes of Washington may repair or replace such Defective Work and charge the cost thereof to the Contractor or the Contractor's Surety.
- 11.3.6 Work which is repaired or replaced by the Contractor shall be inspected and accepted by the Tulalip Tribes of Washington and shall be guaranteed by the Contractor for one (1) year from the date of acceptance of the corrective Work by the Tulalip Tribes of Washington.
- 11.3.7 Where Warranties from the Contractor, Material suppliers or manufacturers are limited to material only, the Contractor shall furnish Warranties to provide labor required to remove the defective work and install the replacement materials.

#### **11.4 FINAL CLEANING**

- 11.4.1 At the completion of the Work, the Contractor shall restore all property not designated for alteration by the Contract Documents to as near its original condition as practicable and clean the site of all waste materials and rubbish attributable to the Work, including without limitation:
- 11.4.1.1 Replace chipped, scratched or broken glass or other damaged transparent materials;

- 11.4.1.2 Remove excess glazing or caulking compound, and other substances that are noticeable vision-obscuring materials;
- 11.4.1.3 Remove labels that are not permanent, remove marks, stains and soiled spots from finished surfaces;
- 11.4.1.4 Remove marks, stains, paint droppings and other blemishes and leave in polished condition all equipment and material with exposed finished surfaces;
- 11.4.1.5 Clean exposed exterior and interior hard-surfaced finishes;
- 11.4.1.6 Sweep paved areas broom clean, rake grounds that are neither paved nor planted to an even-textured surface, and broom clean concrete floors;
- 11.4.1.7 Clean washable air filters or replace all air filters at the Project;
- 11.4.1.8 Remove all waste materials and rubbish from any roof surface and clean any roof drains;
- 11.4.1.9 Remove any temporary controls required pursuant to the storm water pollution prevention plan and permit.
- 11.4.1.10 Remove any debris or property of the Contractor.
- 11.4.2 At the completion of the Project, the Contractor shall clean all light fixtures, which includes, without limitation, removing bugs, debris, stains, rust and dirt, and replacing any burned out or substantially diminished light bulbs.
- 11.4.3 If any Work is performed after a final cleaning by the Contractor, the Contractor responsible for such Work shall clean any affected area again as provided above.
- 11.4.4 Final cleaning shall be done to the reasonable satisfaction of the Architect, the Construction Manager and the Tulalip Tribes of Washington.
  - 11.4.4.1 If the Contractor fails to clean up at completion of the Work, the provision of paragraph GC 5.2 may be invoked.
  - 11.4.4.2 If a dispute arises among Contractors as to responsibility for final cleaning, the Construction Manager may authorize another Contractor, or engage a qualified cleaning company, to perform the clean up, and deduct the cost from amounts due to those Contractors responsible as the Construction Manager recommends and the Tulalip Tribes of Washington determines to be appropriate. The decision of the Tulalip Tribes of Washington on the responsibility for such cost shall be final.

## ***ARTICLE 12 – INSURANCE***

### **12.1 CONTRACTOR'S LIABILITY INSURANCE**

- 12.1.1 The Contractor shall purchase and maintain such liability and other insurance as will protect the Tulalip Tribes of Washington and the Contractor from claims or losses which may arise out of or result from the Contractor's performance or obligations under the Contract Documents, whether due to action or inaction by the Contractor or any person for whom the Contractor is responsible.
- 12.1.2 A Commercial General Liability insurance policy and Business Automobile Liability insurance policy to provide insurance coverage and limits as indicated

below. Automobile liability insurance coverage shall include owned, non-owned and hired automobiles. An Umbrella or Excess Liability policy may be used to reach such limits.

Policy Limits – Commercial General Liability

\$2,000,000	General Aggregate
\$2,000,000	Products/Completed Operations Aggregate
\$1,000,000	Occurrence Limit
\$1,000,000	Personal and Advertising Injury Limit
\$ 100,000	Fire Legal Liability Limit
\$ 10,000	Medical Payments
\$1,000,000	Employer's Liability

Policy Limits – Business Automobile Liability

\$1,000,000	Combined Single Limit
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12.1.2.1 Contracts exceeding the amount of \$5 million or those deemed to be a higher construction hazard may require coverage in an amount to be determined by the Tulalip Tribes of Washington and identified in the Special Conditions, but in no case less than \$5 million general aggregate and per occurrence.

12.1.2.2 Such policies shall be endorsed to provide that the General Aggregate Limit applies per project.

12.1.2.3 There shall be no residential construction or subsidence coverage exclusions or other coverage limitations without specific disclosure and approval of the Tulalip Tribes of Washington.

12.1.3 Professional Liability Insurance.

12.1.3.1 Consultant shall maintain a policy of professional liability insurance protecting it against claims arising out of the negligent acts, errors or omissions of Consultant in the amount of not less than \$2,000,000; provided, however, Contractor may require Consultant to obtain additional professional liability insurance on a per project basis.

12.1.3.2 Contractor shall maintain a policy of professional liability insurance protecting it against claims arising out of the negligent acts, errors or omissions of the Contractor in the amount of not less than \$2,000,000 on a per project basis on Design-Build Work performed by Contractor.

12.1.4 Pollution Liability Insurance.

12.1.4.1 The Contractor shall maintain a policy of pollution liability insurance in the amount of not less than \$1,000,000 per claim or \$2,000,000 annual aggregate if contaminated (hydrocarbons) or hazardous (asbestos) waste clean-up, treatment or disposal work is involved in the Contract. The Contractor shall be responsible for all requirements related to transportation and proper disposal of contaminated and or hazardous waste materials off-site.

## **12.2 WORKER'S COMPENSATION**

- 12.2.1 All employees of Contractor and subcontractor are to be insured, including qualified self insured plans, under Washington State Industrial Insurance as well as in compliance with any Federal workers compensation regulations including USL&H and Jones Act Coverages. Employees not subject to the State Act are to be insured under Employer's Contingent Liability (Stop Gap) \$1,000,000 on accident and aggregate.
- 12.2.2 Such evidence of insurance shall be in the form of an Insurance Certificate issued by the State of Washington Department of Labor and Industries or an insurer satisfactory to the Tulalip Tribes of Washington and shall provide for not less than 30 days prior written notice to the Tulalip Tribes of Washington of cancellation or reduction in coverage.

## **12.3 BUILDER'S RISK**

- 12.3.1 The Tulalip Tribes of Washington shall provide and maintain, during the progress of the Work and until the execution of the certificate of Contract Completion, a Builder's Risk Insurance policy to cover all on-site Work in the course of construction including false work, temporary buildings and structures and materials used in the construction process. The amount of coverage is based upon the total completed value of the project (including the value of permanent fixtures and decorations.) Such insurance shall be on a special cause of loss form and may include such other coverage extension as the Tulalip Tribes of Washington deem appropriate. Unless otherwise provided for through agreement, the contractor experiencing any loss claimed under the Builder's Risk policy shall be responsible for up to \$10,000 of that loss. Contractor may provide its own builder's risk or installation insurance coverage for amounts up to the \$10,000 deductible. Contractor is responsible for insuring their property in transit, in temporary storage away from the site as well as their own tools, equipment and any employee tools.
  - 12.3.1.1 Incidents related to pollution and contamination are specifically excluded from the Builders Risk Insurance policy.
  - 12.3.1.2 To be eligible to make a claim under the Tulalip Tribes of Washington's Builders Risk Insurance policy, Contractor shall be responsible to secure all materials stored on the project site in a secured fenced area.

## **12.4 INSURANCE POLICY REQUIREMENTS**

- 12.4.1 Each policy of insurance required to be purchased and maintained by the Contractor shall name the Tulalip Tribes of Washington, the Construction Manager, the Architect and its members as primary and non-contributory additional insureds using the ISO general liability form CG 2010 11/85 edition or equivalent to include products and completed operations for all Contractors and Subcontractors work. Each policy and respective Certificate of Insurance shall expressly provide a provision wherein no less than 30 days or 10 days in the event of cancellation for non-payment prior written notice shall be given to the Tulalip Tribes of Washington in the event of cancellation, non-renewal, expiration or material alteration of the coverage contained in such policy or evidenced by such Certificate of Insurance.
- 12.4.2 At least five (5) days prior to commencement of the Work or any portion thereof, and prior to the performance of any services hereunder, Contractor shall, for the purposes of protecting Owner against any claims, damages or



expenses as a consequence of any acts and omissions on the part of Contractor and any of its Subcontractors of any tier in performing the Work, procure or cause or cause to be procured the following insurance coverage with insurance carriers (with an A.M. Best rating of A-VII or better) in form acceptable to Owner and shall maintain all such coverage in full force and effect through the term of this Agreement.

- 12.4.3 The Contractor, if requested, shall furnish the Tulalip Tribes of Washington a certified copy of any insurance policy or additional insured endorsement required to be purchased or maintained by the Contract Documents. In no event shall any failure to demand a certified copy of any required insurance or insured endorsement be construed as a waiver of the obligation of the Contractor to obtain insurance required to be purchased or maintained by the Contract Documents.
- 12.4.4 The Contractor shall maintain all insurance in the required amounts, without interruption, from the date of the execution of the Contract until three (3) years after the date of approval of the certificate of Contract Completion by the Tulalip Tribes of Washington. Failure to maintain the required insurance during the time specified shall be cause for termination of the Contract.
- 12.4.5 Insurance policies required to be purchased and maintained by the Contractor may include a reasonable loss deductible, which shall be the responsibility of the Contractor to pay in the event of loss.
- 12.4.6 The prompt repair or reconstruction of the Work as a result of an insured loss or damage shall be the Contractor's responsibility and shall be accomplished at no additional cost to the Tulalip Tribes of Washington.

## **12.5 WAIVERS OF SUBROGATION**

- 12.5.1 The Tulalip Tribes of Washington and the Contractor waive all rights against each other for damages caused by fire or other perils to the extent of actual recovery of any insurance proceeds under any property insurance obtained pursuant to this Article or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Tulalip Tribes of Washington as fiduciary.

## **12.6 OTHER PROVISIONS**

- 12.6.1 Neither the Tulalip Tribes of Washington nor Contractor shall be liable to the other party or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to any building, structure or tangible personal property of the other occurring in or about the Work, if such loss or damage is covered by insurance benefiting the party suffering such loss or damage or was required to be covered by insurance under terms of the Agreement. Each party shall cause each insurance policy obtained by it to contain the waiver of subrogation clause.
- 12.6.2 The Tulalip Tribes of Washington and its agent, representatives and other contractors, shall have the right to occupy or cause to be occupied any area of the Work and use any piece of equipment in order to do whatever work is necessary to complete the interior of the building (to the extent that such work is not covered hereunder) to install fixtures and equipment as soon as such area or piece of equipment is sufficiently completed or installed so that such occupancy will not detrimentally interfere with the Work remaining to be performed and notwithstanding that all Work hereunder shall not have been completed at the time of such occupancy. Contractor shall coordinate the

Work with the Tulalip Tribes of Washington or the Tulalip Tribes of Washington's designated agents, representatives, contractors and tenants. It is the intent of both the Tulalip Tribes of Washington and the Contractor that such occupancy before completion of Contractor's work shall not operate to cause a change in the Cost of Work or the Contract time, nor shall such occupancy or use negate any insurance required by this Agreement. The Tulalip Tribes of Washington and those holding through the Tulalip Tribes of Washington, however, will assume the risk of any damage to the Work arising out of occupancy prior to completion of the Work, and shall assume all liability for personal injuries or property damage arising out of such occupancy, and hold Contractor harmless there from, exempt damage or injury due to the negligence or the intentional act or omission of Contractor, its employees, agents, Subcontractor, Sub-subcontractors, and assigns.

- 12.6.3 Contractor shall indemnify, defend and hold the Tulalip Tribes of Washington harmless from all losses, damages, liabilities, fines penalties, costs (including clean-up costs) and expenses (including attorneys' fees) arising from hazardous, toxic or harmful wastes, materials or substances, as defined by applicable law, deposited on or about the Project site by Contractor, Subcontractors, suppliers or materialmen or its or their agents or employees. Should any material that exhibits hazardous or toxic characteristics as defined in applicable law be brought onto the Project site by Contractor, Subcontractors, suppliers or materialmen or its or their agents or employees, that material will be handled, stored, transported and disposed of by Contractor in accordance with respective regulations and the best available technology. Should any such material be found on the Project site that was not brought onto the Project site by Contractor, Subcontractors, suppliers or materialmen or its or their agents or employees, Contractor shall immediately notify the Tulalip Tribes of Washington through the Construction Manager.
- 12.6.4 In the event Contractor fails to maintain any and all insurance required by this Contract during the entire life of this Contract, the Tulalip Tribes of Washington may at its option, and without waiver of other available remedies, purchase such insurance in the name of Contractor and deduct the cost of same from payments due Contractor.

## **ARTICLE 13 – CONTRACT TERMINATION**

### **13.1 SUSPENSION OF THE WORK**

- 13.1.1 The Tulalip Tribes of Washington may order the Contractor in writing to suspend, delay or interrupt the performance of Work in whole or in part for such period of time as the Tulalip Tribes of Washington may determine. The Tulalip Tribes of Washington shall provide notice to the Contractor's Surety of any suspension ordered pursuant to this Article.
- 13.1.1.1 In case of such suspension, delay or interruption, an extension of time, if appropriate, will be allowed as provided in the Contract Documents but no payment will be made to the Contractor for any expense or damages resulting therefrom.
- 13.1.2 The Contractor, upon receipt of notice of suspension, delay or interruption, shall cease Work on the suspended activities and take all necessary or appropriate steps to limit disbursements and minimize costs with respect thereto. The Contractor, through the Construction Manager, shall furnish a report to the Tulalip Tribes of Washington, within five (5) days of receipt of the

notice of suspension, describing the status of the Work, including without limitation, results accomplished, conclusions resulting therefrom, and such other information as the Tulalip Tribes of Washington may require.

- 13.1.3 In the event of suspension, delay or interruption under this Article, the Contractor shall be entitled to payment of compensation due under the Contract Documents, upon submission of a proper invoice, for the Work performed prior to receipt of notice of suspension, delay or interruption, which shall be payable based upon the Contract Cost Breakdown.

## **13.2 TERMINATION FOR CONVENIENCE**

- 13.2.1 The Tulalip Tribes of Washington may, upon the recommendation of the Construction Manager and the Architect, at any time upon 20 days written notice to the Contractor terminate the Contract in whole or in part for the Tulalip Tribes of Washington's convenience and without cause.
- 13.2.2 Upon receipt of the notice of termination for convenience, the Contractor shall immediately, in accordance with instructions from the Tulalip Tribes of Washington, proceed with performance of the following duties.
- 13.2.2.1 Cease operation as specified in the notice;
- 13.2.2.2 Place no further orders and enter into no further subcontracts for materials, labor, services or facilities except as necessary to complete continued portions of the Project;
- 13.2.2.3 Terminate all subcontracts and orders to the extent they relate to the Work terminated;
- 13.2.2.4 Proceed to complete the performance of any Work not terminated;
- 13.2.2.5 Take actions that may be necessary, or that the Tulalip Tribes of Washington may direct, for the protection and preservation of the terminated Work.
- 13.2.3 Upon such termination, the Contractor shall be paid in accordance with the Contract Cost Breakdown for Work completed, including any amount retained, and the value of materials ordered and delivered, less any salvage credit the Contractor may receive for them.
- 13.2.3.1 All materials, equipment, facilities and supplies at the Project site, or stored off site, for which the Contractor has been compensated, shall become property of the Tulalip Tribes of Washington.
- 13.2.3.2 The Contractor shall be entitled to a fair and reasonable profit for all Work performed. In no event shall the Contractor's compensation exceed the total Contract price.
- 13.2.3.3 Any dispute as to the sum then payable to the Contractor shall be resolved in accordance with the provisions of GC Article 8 of the General Conditions.
- 13.2.4 It is understood and agreed that in the event of any termination of the Contractor by the Tulalip Tribes of Washington, whether with or without cause, the Contractor shall not have a claim for other damages, loss profits on future work or penalties.

## **13.3 TERMINATION FOR CAUSE**

- 13.3.1 If the Tulalip Tribes of Washington determines, upon the recommendation of the Construction Manager and the Architect that the Contractor has failed to

prosecute the Work with the necessary force or in a timely manner, or has refused to remedy any Defective Work or has otherwise failed to comply with the requirements of the Contract Documents, the Tulalip Tribes of Washington shall notify the Contractor and the Contractor's Surety of such failure or refusal. The Contractor shall begin to cure such failure or refusal within five (5) days of receipt of the notice.

- 13.3.2 If the Contractor fails to cure such failure or refusal within 20 days of receipt of the notice, the Tulalip Tribes of Washington may terminate the Contract and employ upon the Work the additional force, or supply the materials or such part of either as is appropriate, and may remove Defective Work.
- 13.3.3 If the Contractor is so terminated, the Contractor's Surety shall have the option to perform the Contract. If the Contractor's Surety does not commence performance of the Contract within ten (10) days of the date on which the Contract was terminated, the Tulalip Tribes of Washington may complete the Work by such means as the Tulalip Tribes of Washington deems appropriate. The Tulalip Tribes of Washington may take possession of and use all materials, facilities and equipment at the Project site or stored off site for which the Contractor has been paid.
- 13.3.4 If the Contractor is so terminated, the Contractor shall not be entitled to any further payment. If the Tulalip Tribes of Washington completes the Work and if the cost of completing the Work exceeds the balance of the Contract price, including compensation for all direct and consequential damages incurred by the Tulalip Tribes of Washington as a result of the termination, such excess shall be paid by the Contractor or the Contractor's Surety.
- 13.3.5 If the Contractor's Surety performs the Work, the provisions of the Contract Documents shall govern such Surety's performance, with the Surety being substituted for the Contractor in all such provisions including, without limitation, provisions for payment for the Work and provisions about the right of the Tulalip Tribes of Washington to complete the Work.
- 13.3.6 It is understood and agreed that in the event of any termination of the Contractor by the Tulalip Tribes of Washington, whether with or without cause, the Contractor shall not have a claim for other damages, loss profits on future work or penalties.

#### **13.4 CONTRACTOR BANKRUPTCY**

- 13.4.1 If the Contractor files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against the Contractor, or if the Contractor makes a general assignment for the benefit of creditors, or if a receiver is appointed for all or a substantial part of the Contractor's business or property, the Tulalip Tribes of Washington shall serve written notice on the Contractor and the Contractor's Surety stating that any failure of the Contractor to provide adequate assurances of continued performance will be considered a rejection of the Contract, which shall result in termination of the Contract for cause. Such termination of the Contract need not be evidenced by an order of any court rejecting the Contract.
  - 13.4.1.1 Upon a final determination, either by a court or by arbitrators having jurisdiction, that the termination pursuant to paragraph GC 13.4.1 was improper, the termination will be deemed to be a termination for convenience.

- 13.4.1.2 The Contractor's sole remedy for a wrongful declaration of default by the Tulalip Tribes of Washington shall be limited to recovery of profit on Work completed prior to such declaration.

## **ARTICLE 14 – SHOP DRAWINGS AND SAMPLES**

### **14.1 DESCRIPTION**

- 14.1.1 Shop Drawings, Samples and other submittals shall be provided by the Contractor for any item required by the Contract Documents but not fully described in the Drawings and Specifications, unless waived by the Architect or the Construction Manager, and shall include, without limitation:
- 14.1.1.1 Construction of the various parts, method of jointery, type of material, grade, quality and thickness of material, alloy of material, profiles of all sections, reinforcement, method of hanging doors or installing windows, anchorage, type and grade of finish.
- 14.1.1.2 Capacities, types of materials and performance charts that are pertinent to the materials and performance charts that are pertinent to the equipment item. Wiring diagrams, control diagrams, schematic diagrams, working and erection dimensions, arrangement and specifications.

### **14.2 FORM OF SUBMITTALS**

- 14.2.1 The Contractor shall provide a submittal letter and shall stamp “approved” and submit the Shop Drawings, Samples or other submittals to the Architect and the Construction Manager, in accordance with a schedule established by the Architect, the Construction Manager and the Contractor.
- 14.2.1.1 Unless otherwise specified in the Contract Documents, the Contractor shall submit five (5) prints of all Shop Drawings and seven (7) copies of any other submittals.
- 14.2.1.2 The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to show the Architect the materials and equipment which the Contractor proposes to provide.
- 14.2.1.3 Each Sample will be identified clearly as to material, supplier, pertinent data such as catalog numbers and the use for which intended and other uses as the Architect may require to enable the Architect to intelligently review the submittal.
- 14.2.1.4 Contractors shall submit all Contract required submittals and receive approval from the Architect in a timely manner so as not to adversely impact the Contract completion schedule. Contractors shall allow for resubmission and lead time for equipment procurement in order to meet all Contract and milestone completion dates.

### **14.3 VARIATION FROM CONTRACT DOCUMENTS**

- 14.3.1 If the Shop Drawings, Samples or other submittals show variations from the requirements of the Contract Documents, the Contractor shall make specific mention of such variations in the Contractor's letter of submittal to the Architect.
- 14.3.1.1 If the variation is acceptable to the Architect, the Architect shall recommend acceptance of the variation to the Tulalip Tribes of

Washington, through the Construction Manager, in writing. Upon written approval of the Tulalip Tribes of Washington, the variation shall be incorporated into the Contract Documents.

- 14.3.1.2 The Contractor shall not be relieved of any responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Samples or other submittals.

#### **14.4 CONTRACTOR'S REVIEW**

14.4.1 All Shop Drawings, Samples and other submittals shall be reviewed and stamped "approved" by the Contractor prior to submittal to the Architect and the Construction Manager. If it is apparent to the Architect or the Construction Manager that the Contractor has not reviewed the submittals, or has conducted an incomplete review, the Architect or the Construction Manager shall reject the submittals.

14.4.1.1 Correction of dimensions, location of various items, encroachments of Work of other Contractors or variations from the requirements of the Contract Documents shall be made or corrected by the Contractor.

14.4.1.2 If required by the Contract Documents or applicable law, the Contractor shall have the Shop Drawings or other submittals prepared by persons and entities possessing expertise and experience in an appropriate trade or profession or by a licensed architect, engineer or other professional.

#### **14.5 ARCHITECT'S AND CONSTRUCTION MANAGER'S REVIEW**

14.5.1 The Construction Manager and the Architect shall review and approve or disapprove Shop Drawings, Samples or other submittals within 15 days of receipt or in accordance with the approved submittal schedule or such other period of time as is mutually agreed by the Construction Manager, the Architect and the Contractor.

14.5.1.1 The Contractor shall make any corrections required by the Architect and the Construction Manager and shall resubmit the required number of corrected copies of Shop Drawings, Samples or other submittals until approved, which resubmission shall be acted upon by the Architect and the Construction Manager with 15 days of receipt or such other period of time as is mutually agreed by the Architect, the Construction Manager and the Contractor.

14.5.1.2 When resubmitting submittals, the Contractor shall direct the Architect's and Construction Manager's attention to any revisions made by noting such revisions on the resubmitted submittal.

14.5.1.3 All costs incurred by the Architect and the Construction Manager due to the failure of the initial submittal to meet the requirements of the Contract Documents, or in reviewing resubmittals of resubmittals or by the Tulalip Tribes of Washington for attendant delay, interference, hindrance or disruption of the Project shall be paid by the Contractor.

#### **14.6 RISK OF NONPAYMENT**

14.6.1 No portion of the Work requiring a Shop Drawing, Sample or other submittal shall be commenced until the submittal has been approved by the Architect. Any Work commenced by the Contractor prior to final approval of the Shop

Drawings, Sample or other submittal by the Architect shall be performed by the Contractor under risk that no payment will be approved or made by the Tulalip Tribes of Washington for such Work.

#### **14.7 SCOPE OF ARCHITECT'S AND CONSTRUCTION MANAGER'S REVIEW**

14.7.1 The Architect's review and approval of Shop Drawings, Samples and other submittals is to determine if the items covered by the submittals will, after installation and incorporation into the Work, conform to the Contract Documents and be compatible with the design concept of the Project as a functioning whole.

14.7.1.1 Neither the Architect's review and approval, nor any review by the Construction Manager, shall extend to means, methods, techniques, sequences, procedures of construction or to safety precautions or programs incident thereto.

14.7.1.2 The Architect's review and approval of a separate item will not indicate approval of the assembly in which the item functions.

### ***ARTICLE 15 – SUBCONTRACTORS AND MATERIAL SUPPLIERS***

#### **15.1 TULALIP TRIBES OF WASHINGTON'S APPROVAL OF SUBCONTRACTORS AND MATERIAL SUPPLIERS**

15.1.1 Within ten (10) days of the Notice to Proceed, the Contractor shall list the Contractor's proposed Subcontractors and Material Suppliers and submit such lists to the Construction Manager, for the review and approval by the Tulalip Tribes of Washington.

15.1.1.1 The Tulalip Tribes of Washington reserve the right to reject any Subcontractor or Material Supplier. Failure of the Construction Manager to notify the Contractor of rejection within ten (10) days of receipt of the list shall constitute notice that the Tulalip Tribes of Washington has no objection.

15.1.1.2 If the Tulalip Tribes of Washington rejects any Subcontractor or Material Supplier, the Contractor shall replace the Subcontractor or Material Supplier at no additional cost to the Tulalip Tribes of Washington.

#### **15.2 REPLACEMENT**

15.2.1 The Contractor shall not replace any Subcontractor or Material Supplier after execution of the Contract without written approval of the Tulalip Tribes of Washington.

15.2.2 The Contractor shall submit to the Construction Manager, a written justification for the change of the Contractor's Subcontractors or Material Suppliers.

#### **15.3 CONTRACTOR'S RESPONSIBILITY**

15.3.1 The Contractor shall be fully responsible for all acts and omissions of the Contractor's Subcontractors and Material Suppliers and shall be responsible for scheduling and coordinating the Work of the Contractor's Subcontractors and Material Suppliers with the Construction Manager.

15.3.1.1 Interference, disruption, hindrance or delay attributable to the Contractor's Subcontractors or Material Suppliers shall be deemed

to be interference, disruption, hindrance or delay within the control and responsibility of the Contractor.

15.3.1.2 The Contractor shall require that each of the Contractor's Subcontractors have a competent supervisor at the Project whenever Work is being performed by the Subcontractor.

15.3.1.3 The Contractor agrees to bind the Contractor's Subcontractors and Material Suppliers to the terms of the Contract Documents, so far as applicable to the Work of such Subcontractors or Material Suppliers and shall not agree to any provisions which seek to bind the Tulalip Tribes of Washington to terms inconsistent with or at variance from the terms of the Contract Documents.

## **15.4 WARRANTY AND GUARANTEE**

15.4.1 The Contractor shall require each Subcontractor and Material Supplier to fully warrant and guarantee, for the benefit of the Tulalip Tribes of Washington, the effectiveness, fitness for the purpose intended, quality and merchantability of any Work performed or item provided or installed by such Subcontractor or Material Supplier.

## **15.5 PROMPT PAYMENT**

15.5.1 If a Subcontractor or Material Supplier requests payment in time to allow the Contractor to include the request in the Contractor's Application for Payment, the Contractor shall pay within ten (10) days after receipt of payment from the Tulalip Tribes of Washington:

15.5.1.1 To a Subcontractor an amount equal to percent of completion allowed by the Tulalip Tribes of Washington for the Subcontractor's Work,

15.5.1.2 To a Material Supplier an amount equal to percent of completion allowed by the Tulalip Tribes of Washington for the Material Supplier's request for materials furnished.

15.5.2 The Contractor may reduce the amount to be paid to a Subcontractor or Material Supplier pursuant to paragraph GC 15.5.1 by an amount necessary to resolve disputed claims involving the Work of the Subcontractor or Material Supplier.

## **15.6 CLAIM AFFIDAVIT**

15.6.1 In order to establish claim rights, Subcontractors and Material Suppliers not in privity of contract with the Contractor must serve a notice of furnishing on the Contractor whose contract is the contract under which the Subcontractor or Material Supplier is performing.

15.6.1.1 The notice of furnishing must be served upon the Contractor within 21 days of performing the Work or furnishing the materials.

15.6.1.2 Subcontractors and Material Suppliers not in privity of contract with the Contractor must, at the time of filing a Claim Affidavit with the Tulalip Tribes of Washington's representative, provide a copy of the notice of furnishing and proof that it was received by the Contractor.

15.6.2 In order to establish claim rights, a claimant must file a Claim Affidavit with the Tulalip Tribes of Washington's representative, within 120 days from the date of the last Work or furnishing of materials.



- 15.6.2.1 In order to receive priority over similar claims, the claimant must file a copy of the claim with the appropriate Tulalip Tribes of Washington's representative within 30 days of serving the Construction Manager.
- 15.6.2.2 All claimants who serve the Construction Manager, and file with the appropriate Tulalip Tribes of Washington's representative within 30 days, have no priority among themselves and share in the funds prorata.
- 15.6.2.3 Claimants who file with the Construction Manager, but not with the appropriate Tulalip Tribes of Washington's representative, are paid only if there are sufficient funds left after paying those claimants who file with the appropriate Tulalip Tribes of Washington's representative.
- 15.6.3 The Tulalip Tribes of Washington shall notify the Contractor of the receipt of the claim within five (5) days of receiving the Claim Affidavit. A copy of the Claim Affidavit and a statement advising the Contractor of the Contractor's right to dispute the claim will accompany the notice.
  - 15.6.3.1 The Contractor shall have 20 days to dispute said claim.
  - 15.6.3.2 If the Contractor does not notify the Tulalip Tribes of Washington in writing of an intention to dispute the claim within 20 days after receipt of the Claim Affidavit, the Contractor is deemed to have assented to its correctness.
- 15.6.4 The Tulalip Tribes of Washington shall detain the amount stated in the Claim Affidavit from subsequent Applications for Payment when such amounts are otherwise due to the Contractor and deposit said amount in an escrow account.
  - 15.6.4.1 The escrow agent shall hold the deposit and any interest earned thereon until receipt of notice from the Tulalip Tribes of Washington specifying an amount to be released and the person to whom the amount is to be released.
  - 15.6.4.2 The Tulalip Tribes of Washington reserves the right to pay a Claim Affidavit which is not timely disputed.

## **15.7 CLAIMS AGAINST THE BOND**

- 15.7.1 Laborers, Subcontractors or Material Suppliers who have furnished or delivered labor or materials to the Project may, at any time after performing the labor or delivering the materials, but not later than 90 days after the Final Acceptance of the Work, or applicable portion thereof by the Tulalip Tribes of Washington, furnish the Surety a statement of the amount due.
- 15.7.2 After furnishing the statement, laborers, Subcontractors or Material Suppliers must wait 60 days to bring a suit for the amount due. If the Surety has not paid the claim at the expiration of 60 days, laborers, Subcontractors or Material Suppliers may bring suit for amounts not paid, but must bring the suit within one (1) year of the Final Acceptance of the Work, or applicable portion thereof, by the Tulalip Tribes of Washington.

## ***ARTICLE 16 – INDEMNIFICATION***

## 16.1 INDEMNIFICATION FOR INJURY OR DAMAGE

- 16.1.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Tulalip Tribes of Washington, the Construction Manager and the Architect, Architect's consultants, their respective officers, members, officials, consultants, agents representatives and employees, in both individual and official capacities, from and against all claims, damages, losses and expenses, direct, indirect or consequential arising out of or resulting from the Work.
- 16.1.1.1 In the event of any such injury, including death, or loss or damage, or claims therefor, the Contractor shall give prompt notice thereof to the Tulalip Tribes of Washington.
- 16.1.2 The indemnification obligations of the Contractor under paragraph GC 16.1.1 shall not extend to the liability of the Architect, the Architect's consultants, agents or employees for negligent preparation or approval of Drawings, Specifications, Change Orders, opinions, and any other responsibility of the Architect, except to the extent covered by the Contractor's insurance.
- 16.1.3 If the claim, suit, or action for injuries, death, or property damage is caused by or results from the concurrent negligence of (a) the Contractor or its officers, employees or agents and (b) the Tulalip Tribes of Washington, its officers, employees or agents, this indemnity provision shall be enforceable only to the extent of the negligence of the Contractor, its officers, employees, or agents.
- 16.1.4 Without limiting the generality of the foregoing, the Contractor shall indemnify, defend and hold the Tulalip Tribes of Washington and the Construction Manager harmless from and against claims, losses, damages and expenses (including attorneys' fees) arising out of or related to allegations, claims or public claims by Subcontractors and Material Suppliers for non-payment. Contractor expressly waives its immunity under RCW Title 51 as to Owner.
- 16.1.5 The indemnification obligation under this Contract shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under Workers' Compensation Acts, Disability Benefit Acts, or other employee benefit acts.

**OWNER AND CONTRACTOR ACKNOWLEDGE THAT THIS INDEMNITY PROVISION WAS SPECIFICALLY NEGOTIATED AND AGREED TO BY THE PARTIES.** The provisions under paragraph GC 16.1 shall be included in all Contractor lower-tier subcontracts. Notwithstanding anything to the contrary in the foregoing, Contractor shall promptly notify the Tulalip Tribes of Washington in writing of all accidents involving serious injuries to or death of persons or damage to or loss of property occurring in connection with the Work.

Contractor's Initials: \_\_\_\_\_ Date Initialed: \_\_\_\_\_, 20\_\_\_\_

The Tulalip Tribes of Washington's Initials: \_\_\_\_\_ Date Initialed: \_\_\_\_\_, 20\_\_\_\_

## 16.2 INDEMNIFICATION FOR PATENT OR COPYRIGHT USE

- 16.2.1 To the fullest extent permitted by law, the Contractor shall indemnify, hold harmless and defend the Tulalip Tribes of Washington, the Construction Manager and the Architect, their respective members, officials, officers, consultants, agents representatives and employees, in both individual and official capacities from and against all claims, damages, losses and expenses arising out of the Contractor's infringement of patent rights or copyrights.

## **ARTICLE 17 – AUDITS AND RECORDS**

### **17.1 EXAMINATION**

- 17.1.1 The Tulalip Tribes of Washington shall have the right to examine all books, records, documents and other data of the Contractor and of the Contractor's Subcontractors and Material Suppliers related to the bidding, pricing or performance of the Work, including without limitation, related to any Proposals and request for equitable adjustment of the Contract.
- 17.1.2 The right of inspection, audit and reproduction shall extend to all documents necessary to permit intelligent evaluation of the cost of pricing data submitted along with the computations and projections used therein.
- 17.1.3 The above referenced materials shall be made available at the office of the Contractor, Subcontractor or Material Supplier, as applicable, at all reasonable times for inspection, audit and reproduction until the expiration of seven (7) years after the date of acceptance of the Project by the Tulalip Tribes of Washington.
- 17.1.4 To the extent that the Contractor, Subcontractor or Material Supplier, as applicable, informs the Tulalip Tribes of Washington in writing that any documents copied by the Tulalip Tribes of Washington are trade secrets, the Tulalip Tribes of Washington shall treat such documents as trade secrets of the Contractor, Subcontractor or Materials Supplier, as applicable. In the event any dispute arises with any other person about whether such other persons should be given access to the documents, the Contractor, Subcontractor or Material Supplier, as applicable, agrees to indemnify the Tulalip Tribes of Washington against all costs, expenses, and damages, including without limitation attorney fees, incurred by reason of that dispute.

### **17.2 TERMINATION AND DISPUTES**

- 17.2.1 If the Contract has been terminated, in whole or in part, the records relating to the Work terminated shall be made available to the Tulalip Tribes of Washington for a period of seven (7) years from the date of any applicable final settlement.
- 17.2.2 Records which relate to any dispute, litigation, or claim arising out of the performance of the Work shall be made available until such dispute, litigation or claim have been finally decided or settled.

## **ARTICLE 18 – MISCELLANEOUS**

### **18.1 TAXES**

- 18.1.1 The Tulalip Tribes of Washington is a federally recognized Indian Tribal government with a constitution and bylaws approved by the United States Secretary of the Interior. See: 65 Federal Register 13298, 13301 (March 13, 2000). As a recognized tribal government, the Tulalip Tribes of Washington and all of its governmental agencies, is a tax exempt entity. See: 26 USC §7871, and Washington Administrative Code Excise Tax Rule 192 (WAC 458-20-192). A citation of this code can be viewed at the Washington State Department of Revenue's "Doing Business With Indians" website at the following address <http://dor.wa.gov/content/doingbusiness/Indians/default.aspx>.
- 18.1.2 Only those tangible personal property, supplies and or services which meet the following criteria are exempt from Washington State sales taxes:

- 18.1.2.1 Tangible personal property or services purchased by the Tulalip Tribes of Washington when the goods are delivered to or services provided within the exterior boundaries of the Tulalip Reservation.
  - 18.1.2.2 Tangible personal property or services purchased by the Tulalip Tribes of Washington for use in treaty fishery.
  - 18.1.2.3 Supplies or services purchased by prime contractors hired by the Tulalip Tribes of Washington to perform construction within the exterior boundaries of the Tulalip Reservation when the goods are delivered to or services provided within the exterior boundaries of the Tulalip Tribes of Washington.
  - 18.1.2.4 The Tulalip Tribes of Washington will provide to Contractor awarded a Contract a Buyers' Retail Sales Tax Exemption Certification exempting the Project from Washington State sales taxes that meet the criteria under paragraphs GC 18.1.2.1, GC 18.1.2.2 and GC 18.1.2.3.
- 18.1.3 The Contractor who performs work within the exterior boundaries of the Tulalip Reservation shall pay a TERO tax to the Tulalip Tribes of Washington's Tribal Employment Rights Office (TERO) to provide revenue to operation of the Tulalip Tribes of Washington's TERO Program as follows:
- 18.1.3.1 With respect to each Project / Contract or Subcontract of \$10,000 or more, operating within the exterior boundaries of the Tulalip Reservation, the Contractor shall pay a one time tax of 1.75% of the total Project / Contract cost, i.e., equipment labor, materials and operations and any increase of the Contract / Project or Subcontract amount. If the Contractor initially enters into a Contract / Project or Subcontract of less the \$10,000, but subsequent changes in the Work increases the total Contract / Project or Subcontract amount to \$10,000 or more, the tax shall apply to the total amount including increases.
  - 18.1.3.2 The TERO tax provided for in the Tulalip Tero Chapter 9.05 shall be paid by the Contractor / Employer or Subcontractor, prior to commencing work within the exterior boundaries of the Tulalip Reservation. However, where good cause is shown, the TERO Representative may authorize the Contractor / Employer or Subcontractor to pay the tax in installments over a course of the Contract, when:
    - 18.1.3.2.1 The total annual tax exceeds \$10,000.00; or
    - 18.1.3.2.2 The Contractor demonstrates hardship or other good cause.
    - 18.1.3.2.3 The decision whether to authorize an alternative arrangement, which, if allowed, shall be in writing, shall rest solely with the discretion of the TERO Representative.

## **18.2 ROYALTIES AND PATENTS**

- 18.2.1 The Contractor shall pay all royalties, license fees and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others.

18.2.2 If a particular invention, design, process, product or device is specified in the Contract Documents and if, to the knowledge of the Architect, use of the specified item is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by the Architect in the Contract Documents.

18.2.2.1 If the Contractor has reason to believe that use of the specified item is subject to patent or copyright protection, the Contractor shall immediately notify the Construction Manager.

### **18.3 ASSIGNMENT OF ANTITRUST CLAIMS**

18.3.1 By executing the Contract, the Contractor assigns, conveys and transfers to the Tulalip Tribes of Washington any right, title and interest to any claims or causes of action it may have or acquire under federal antitrust laws relating to any goods, products, or services purchased, procured or rendered to the Tulalip Tribes of Washington pursuant to the Contract.

### **18.4 BOND REDUCTION**

18.4.1 Upon notice and consent of the Contractor's Surety, the Tulalip Tribes of Washington may reduce the Bond by 25 percent of the total amount of the Bond after at least 50 percent of the Work has been completed, and by 50 percent after at least 75 percent of the Work has been completed, provided that all of the following conditions are met:

18.4.1.1 The Tulalip Tribes of Washington determines that the percentage of Work that has been completed at the time of determination has been satisfactorily performed and meets the terms of the Contract Documents, including a provision in regard to the time when the whole or any specified portion of the Work must be completed;

18.4.1.2 The Tulalip Tribes of Washington determines that no disputed claim caused by the Contractor exists or remains unresolved;

18.4.1.3 The bid upon which the Contract is based was not more than ten (10) percent below the next lowest bid or not more than ten (10) percent below the cost estimate for the Work as published in the Notice to Bidders.