

**ADDENDUM NO. 3**

**May 16, 2022**

**Engineer:**  
Parametrix  
1019 39th Avenue SE  
Suite 100  
Puyallup, Washington 98374

**Owner:**  
Tulalip Tribes of Washington  
6406 Marine Drive  
Tulalip, Washington 98271

**PAVEMENT REHABILITATION AND SAFETY IMPROVEMENTS PROJECTS  
28TH DRIVE NW – 81ST STREET NE HOUSING AREA ROADS –  
TOTEM BEACH ROAD**

To: All Holders of the Bidding Documents, Contract Specifications, and Construction Drawings

This Addendum forms a part of the Contract Documents and modifies the Bidding Documents, Contract Specifications, and Construction Drawings for the opening date of May 19, 2022.

Acknowledge receipt of this addendum on the Bid Proposal Form. Failure to do so may subject the Bidder to disqualification. This addendum consists of:

- |           |   |
|-----------|---|
| <u>4</u>  | Pages of text (including this cover sheet)      |
| <u>26</u> | Tulalip Tribes Construction Contract (Attached) |



Prepared by: \_\_\_\_\_ *5/16/2022*  
Austin Fisher, PE

Checked by: \_\_\_\_\_  
Happy Longfellow, PE

Approved by: \_\_\_\_\_  
Happy Longfellow, PE

## ADDENDUM NO. 3

### PAVEMENT REHABILITATION AND SAFETY IMPROVEMENTS PROJECTS 28TH DRIVE NW – 81ST STREET NE HOUSING AREA ROADS – TOTEM BEACH ROAD

#### REVISIONS TO CONTRACT DOCUMENTS

#### DIVISION 0 BIDDING REQUIREMENTS, CONTRACT FORMS, AND CONDITIONS OF CONTRACT

##### 1. Contract Agreement

- a. Replace the Tulalip Tribes Construction Contract form with the attached Tulalip Tribes Construction Contract form labeled Addendum No. 3.

#### SPECIAL PROVISIONS

##### 1. Division 1, General Requirements, Section 1-01.3

- a. Add the following new term/definition:

**Resident Engineer**  
Same as Engineer.

- b. The definition of “Engineer” in Section 1-01.3 is replaced as follows:

**Engineer**

The Contracting Agency’s representative who administers the construction program for the Contracting Agency. The Engineer is not required to be a licensed professional engineer.

##### 2. Division 1, General Requirements, Section 1-04.2

- a. The second paragraph of Section 1-04.2, Coordination of Contract Documents, Plans, Special Provisions, Specifications, and Addenda, is replaced as follows:

(\*\*\*\*\*)

Any inconsistency in the parts of the contract shall be resolved by following this order of precedence (e.g., 1 presiding over 2, 2 over 3, 3 over 4, and so forth):

1. Construction Contract Finalized and Executed
2. Any Addenda (issued after the Contract issued in bid package)
3. Construction Contract (issued in draft as part of bid package)
4. Proposal Form,
5. Special Provisions,
6. Contract Plans,
7. Standard Specifications, and
8. Standard Plans

On the Contract Plans, Working Drawings, and Standard Plans, figured dimensions shall take precedence over scaled dimensions.

**3. Division 1, General Requirements, Section 1-04.5.**

- a. Add Section 1-04.5, Procedure, Protest, and Dispute by the Contractor, as follows:

**1-04.5 Procedure, Protest, and Dispute by the Contractor**

Delete and replace the first four paragraphs as follows:

(\*\*\*\*\*)

If in disagreement with anything required in a change order, or the Engineer's Written Determination, or any other decision or action of the Engineer or the Contracting Agency, or any other event or circumstance for which the Contractor believes it is entitled to an increase in the Contract price or time, or for other relief under the Contract, the Contractor shall:

1. Give a signed written notice of protest to the Engineer, the Project Engineer, or the Engineer's field Inspectors prior to performing the Work but in no case later than 3 working days after receipt of such change order, Written Determination, or other decision or action of the Engineer or Contracting Agency, or such other event or circumstance set forth above.
2. Supplement the written protest within 14 calendar days, or an extension of time as agreed by the Engineer or Contracting Agency in writing, with a written statement and supporting documents providing the following:
  - a. The date and nature of the protested order, direction, instruction, interpretation, determination, action, event, or circumstance;

- b. Add Section 1-04.5(1), Disputes, as follows:

**1-04.5(1) Disputes**

Delete the entire Section and replace with the following:

(\*\*\*\*\*)

When protests occur during a Contract, the Contractor shall first pursue resolution through the Engineer as outlined in Section 1-04.5. Unless noted otherwise in the specifications, compliance with all the requirements of Section 1-04.5 is a condition precedent to initiating any action pursuant to this Section or under the Contract.

If the negotiations using the procedures outlined in Section 1-04.5 fail to provide satisfactory resolution of the protest, then the Contractor shall provide the Engineer with written notification of dispute stating that the Contractor will continue to pursue the dispute in accordance with the Construction Contract. The written notification shall be provided within 7 calendar days after receipt of the Engineer's determination under Section 1-04.5 or within 30 days of providing the submission of such protest or dispute to the Engineer without receiving a written determination.

**4. Division 1, General Requirements, Section 1-09.11**

- a. Remove Section 1-09.11 in the Special Provisions.

**ATTACHMENT**

**1. The Tulalip Tribes Construction Contract**

**THE TULALIP TRIBES  
CONSTRUCTION CONTRACT**

**Contractor –  
Project No. 2022-04**

This agreement entered into this \_\_\_day of \_\_\_\_\_202\_\_\_, between “Owner” the Tulalip Tribes 6406 Marine Drive., Tulalip, WA 98271 and \_\_\_\_\_, hereinafter referred to as “Contractor”. In these Contract Documents, the Owner may also be referred to as Contracting Agency.

**SECTION ONE  
DESCRIPTION OF WORK**

This Contract consists of this written agreement and all appurtenant “Contract Documents” described in Section Eight of this Contract. Contractor shall perform the following work in accordance with this Contract and Contract documents: The provision of all labor, materials, tools, equipment, and everything necessary to build \_\_\_\_\_ (“Work”).

**SECTION TWO  
CONTRACT PRICE**

The Tulalip Tribes agrees to pay Contractor for the Work described a total Contract price not to exceed the amount of Payment of this amount is subject to additions or deductions in accordance with provisions of this Contract and of any other documents to which this contract is subject. Contractor shall be entitled to request “Progress Payments” during the course of its Work. Progress payments shall be made to the Contractor under terms and conditions described under Section Four of this Contract.

**SECTION THREE  
SUBCONTRACTING REQUIREMENTS**

The Contractor will be required to self-perform no less than \_\_\_ percent (%) of the project’s total contracted labor. In the subcontracting of the Work, the Contractor will be responsible to provide the Owner a copy of all subcontract agreement templates in the performance of this contract.

**SECTION FOUR  
PROGRESS PAYMENTS**

- (A) The Owner shall make progress payments approximately every 30 days as the Work proceeds, on estimates of Work accomplished which meets the standards of quality established under the Contract, as approved by the Engineer, Project Coordinator and Engineer. Payments shall be processed for each draw request within 30 days of final approval once all requested and required documents are received.
- (B) The documents required to submit for payment will be a draw form, invoice, certified payroll, conditional waiver, release of claim and anything else deemed necessary by the Engineer.
- (C) Before the first progress payment is made under this Contract, the Contractor shall furnish, in such detail as requested by the Engineer, a breakdown of the total Contract price showing the amount included therein for each principle category of the Work, which shall substantiate the payment amount requested in order to provide a basis for determining progress payments. The values and quantities employed in making up this breakdown are for determining the amount of progress payments and shall not be construed as a basis for additions to or deduction from the Contract price. The Contractor shall prorate its overhead and profit over the construction period of the Contract.
- (D) The Engineer must approve the draw request with the concurrence of the project coordinator before payment. *Along with each request for progress payments and the required invoice, the Contractor shall furnish the following certification, or payment shall not be made:* I hereby verify, to the best of my knowledge and belief, that:

- (1) The amounts requested are only for performance in accordance with the specifications, terms and conditions of the Contract:
- (2) Payments due to Sub-contractors and the Contractors material suppliers have been made from previous payments

received under the Contract, and timely payments will be made from the proceeds of the payment covered by this certification in accordance with Subcontract agreements; and

(3) The request for progress payments does not include any amounts, which the Contractor intends to withhold or retain from a subcontractor or their supplier in accordance with the terms and conditions of the Subcontract.

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

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

(E) The Owner shall retain 5% of the amount of progress payments until completion and acceptance of all Work under the Contract.

(F) The Engineer may authorize material delivered on site and preparatory Work taken into consideration when computing progress payments. Material delivered to the Contractor at locations other than the site may also be taken into consideration if the Contractor furnishes satisfactory evidence that (1) it has acquired title to such material; (2) the material is properly stored in a bonded warehouse, storage yard, or similar suitable place as may be approved by the Engineer; (3) the material is insured to cover its full value; and (4) the material will be used to perform this contract, before any progress payment which includes delivered material is made, the Contractor shall furnish such documentation and the Engineer may require to assure the protection of the Owners interest in such material. The Contractor shall remain responsible for such stored material notwithstanding the transfer of title to the Owner.

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

#### **SECTION FIVE FINAL PAYMENT**

(A) The Owner shall make the final payment due to the Contractor under this Contract within thirty (30) days after:

(1) Completion and final acceptance of all Work; and

(2) Presentation of release of all claims against the Owner arising by virtue of this Contract, other than claims, in stated amounts, that the Contractor has specially made an exception from the operation of the release. Each such exception shall embrace no more than one claim; the basis and scope of which shall be clearly defined. The amounts for such excepted claims shall not be included in the request for final payment. A release may also be required of the assignee if the subcontractors claim to amount payable under this Contract has been assigned.

(3) Three sets of As-built drawings and three electronic version on a USB Flash drive are submitted to the Engineer, as described in section 22 of this Contract.

(B) Prior to making any payment, the Engineer may require the Contractor to furnish receipts or their evidence of payment from all others performing Work and/or supplying material to Contractor, if the Engineer determines such evidence is necessary to substantiate claim costs.

(C) Failure of Contractor to comply with any special guarantees required by the contract documents shall result in the

withholding of final payment. Contractor, by accepting final payment, waives all claims except those, which he has previously made in writing, and which remain unsettled at the time of acceptance. Payment by the Tulalip Tribes shall not release the Contractor or its surety from any obligation under the Contract or under the Performance and Payment Bonds, which obligations shall continue through the Contract warranty period.

#### SECTION SIX STARTING AND COMPLETION DATES

Work shall commence on \_\_\_\_\_ at the start of the business day and be substantially completed in **working days** with all Work complete by \_\_\_\_\_. All construction must be completed in accordance with the approved Construction Schedule. Failure to complete shall result in imposition of liquidated damages as provided in Section Seven.

#### SECTION SEVEN LIQUIDATED DAMAGES

Upon failure by the Contractor to submit an acceptable Construction Schedule within the time required by Section 18, or achieve substantial completion of each phase of construction in accordance with the Construction Schedule, the Contractor shall pay to the Owner, as liquidated damages and not as a penalty, the sum of **seven hundred and fifty dollars (\$750.00)** per day of delay or until such time as Substantial Completion of the Work as required by the **80 working day** Construction Schedule is achieved. The Contractor and Owner agree that the liquidated damages amount is a reasonable forecast of just compensation for the harm caused the Owner by the Contractor's breach for failure to meet construction schedule timelines.

#### SECTION EIGHT CONTRACT DOCUMENTS

The Contract Documents on which the agreement between Owner and Contractor are based in accordance with which the Work is to be done are as follows:

- a. **This Instrument**
- b. **Notice to Bidders attached as EXHIBIT A**
- c. **Project Specs (Scope of Work) attached as EXHIBIT B**
- d. **Contract Documents (Bidding Requirements, contract forms, and conditions of contract, Special Provisions, Plans and Appendices, and the Standard Specifications for Road, Bridge, and Municipal Construction, 2022 edition as issued by the Washington State Department of Transportation (WSDOT) ("Standard Specifications")) - EXHIBIT C**
- e. **Addendum No.1 dated May 3, 2022**
- f. **Addendum No.2 dated May 11, 2022**
- g. **Addendum No.3 dated May \_\_\_\_, 2022**

These Contract Documents together form the Contract for the Work herein described. The parties intend that the documents include provisions for all labor, equipment, tools, materials and other items necessary for the execution and completion of the Work and all terms and conditions of payment. The documents also include all work and procedures not expressly indicated therein which are necessary for the proper execution of the project. If there is a conflict between the above Contract Documents, the inconsistency shall be resolved by the following order: (i) Construction Contract Finalized and Executed, (ii) Any Addenda (issued after the Construction Contract is issued in bid package), (iii) Construction Contract issued in bid package, (iv) Proposal Form, (v) Special Provisions, (vi) Contract Plans, (vii) Amendments to the Standard Specifications, (viii) Standard Specifications, and (ix) Standard Plans. The order of precedence shall not apply when Work is required by one part of the Contract but omitted from another part or parts of the Contract. The Work required in one part must be furnished even if not mentioned in other parts of the Contract. Any conflicts not so resolved shall be resolved as set forth in Section 31 and in Special Provision Section 1-04.1.

## SECTION NINE

### AUTHORITY OF OWNER CONTRACTING COORDINATOR and ENGINEER

The Owner will designate Engineer for purposes of this agreement, who may be changed from time to time. The duties and authority of the Engineer shall be as follows:

- (A) General Administration of Contract. The primary function of the Engineer is to provide general administration of the contract as representative during the entire period of construction.
- (B) Inspection, Opinions and Progress Reports. The Engineer shall keep familiar with the progress and quality of the Work being performed by Contractors and their subcontractors. The Engineer will make general determinations as to whether the Work is proceeding in accordance with the Contract. Neither Owner nor the Engineer will be responsible for the means of construction or for Contractor failure to perform the Work properly and in accordance with The Contract document.
- (C) Access to worksite for inspections. The Engineer shall have free access to the Work at all times during the Contract period provided that person first signs-in at the Contractor's Field Office and adheres to all safety practices and policies of the Contractor while on the jobsite. However, the Engineer is not required to make exhaustive or continuous on-site inspections to perform the duty of checking and reporting on Work progress.
- (D) Interpretation of Contract Documents. The Engineer will be the interpreter of the Contract Documents requirements and will make decisions on claims and disputes between the Contractor and the Owner.
- (E) Rejection and stoppage of Work. The Engineer shall have authority to reject Work, which in the officer's opinion does not conform to the Contract Documents and, in this connection, to stop the Work or a portion thereof when necessary to insure Contractor's performance is in accordance with the terms of this agreement.
- (F) Progress payment certification. The Engineer will determine the amount owing to the Contractor as the Work progresses, based on Contractor's application for payment as per Section Four and upon the Engineer's inspections and observation, and will issue certificates for progress payments and final payment in accordance with the terms of the Contract.

## SECTION TEN

### RESPONSIBILITY OF CONTRACTOR

Contractor's duties and rights in connection with the project herein are as follows:

- (A) Responsibility for and supervision of construction. Contractor represents that it has inspected and is familiar with the worksite and the local conditions under which the Work is to be performed. Contractor shall be solely responsible for all construction under this Contract, including the techniques, sequences, procedures, and means for coordination of all Work. Contractor shall properly supervise and direct the work of the employees and subcontractors, and shall give all attention necessary for such proper direction
- (B) Contractor's Representative. Contractor's representative for this contract will be \_\_\_\_\_.  
Contractor's representative shall be the point of contact regarding contract compliance issues and shall have the authority to obligate the company in resolving contract compliance and performance issues. Contractor's Representative, or designated Contractor construction superintendent, must be on-site at all times while any Work under this Contract is being performed, unless Contractor's representative or construction superintendent receives prior authorization from the Owner to be offsite.
- (C) Discipline and employment. Contractor shall maintain at all times strict discipline among its workers and agrees not to employ for work on the project any persons unfit or without sufficient skill to perform the job for which he was employed.



- (D) Furnishing of labor, materials, etc. Contractor shall provide and pay for all labor, and or materials and equipment, including but not limited to tools, construction equipment, machinery, utilities including water, transportation, and all other facilities and services necessary for the proper completion of the Work on the project in accordance with the Contract documents.
- (E) Manufacturer's instructions. Contractor shall comply with manufacture's installation instructions and recommendations to the extent that those instruction and recommendations are more explicit or stringent than requirements contained within Contract documents.
- (F) Payment of taxes, procurement of license and permits. Contractor shall pay any taxes required by law in connection with Work on the project and shall secure all licenses and permits necessary for proper completion of the Work, paying the fees therefore. 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). All or portions of this project are Tax Exempt from all Sales and/or Use Taxes for all materials and supplies incorporated in construction of the Work that become a permanent part of the Project. Upon request a Tax Exemption form may be obtained from the Tulalip Tribes. WAC 458-20-192(5)(a)(ii) states that retail sales tax is not imposed if the retailer service (e.g. construction services) is performed for the member or tribe in Indian country.
- (G) Compliance with laws and regulations. Contractor shall comply with all applicable laws and ordinances, and rules, regulations, or orders of all tribal and or public authorities relating to the performance of the Work herein. If any of the Contract documents are at variance there with, he shall notify the Engineer promptly on discovery of such variance.
- (H) Responsibility for negligence of employees and subcontractors. Contractor assumes full responsibility for acts, negligence, or omission of its employees and all other persons doing Work under a subcontract with Contractor.
- (I) Warranty of fitness of equipment and materials. Contractor represents and warrants to the Owner that all equipment and materials used in the Work and made a part of any structure thereon, or placed permanently in connection therewith, will be new unless otherwise specified in the Contract documents, of good quality, free of defects, and in conformity with the Contract documents. It is understood between the parties that all the equipment and materials that are not so in conformity are defective.
- (J) Cleaning and protection. Contractor shall during handling and installation, clean and protect construction in progress and adjoining materials in place. Contractor shall apply protective covering where required ensuring protection from damage or deterioration.
- (K) Furnishing of design and engineering plans as identified in the Contract Documents. Contractor shall furnish the Engineer, upon request, all design and engineering plans for consideration and approval as to conformance with the specifications of the Contract documents.
- (L) Clean up. Contractor agrees to keep the Work premises and adjoining way free of waste materials and rubbish caused by its Work or that of its subcontractors, and further shall remove all such waste materials and rubbish on termination of the project, together with all its tools, equipment and machinery.
- (M) Indemnity and hold harmless agreement. Contractor shall indemnify, defend and hold harmless the Tulalip Tribes its elected and appointed officials, officers, employees, agents and representatives from and against all claims, losses, suits, actions, legal or administrative proceedings, costs, attorney's fees (including attorney's fees in establishing indemnification of whatsoever nature), litigation costs, expenses, damages, loss, penalties, fines judgment, or decrees, including, but not limited to, any death, injury or disability to or any person or party ( including employees), and/or damage to any property or business, including loss of use (collectively "Indemnified Loss"), related to or arising out of the

Work, this Contract, or by any intentional or willful misconduct, or any negligent act, error or omission of the Contractor, Contractors employees, agents or subcontractor, or anyone from whom they are legally liable.

The Contractor's obligation shall include, but not be limited to, investigation, adjusting, and defending all claims alleging loss from Indemnified Loss. The Contractor's obligations to indemnify, defend and hold harmless shall apply even if the Indemnified Loss, directly or indirectly, result from, arise out of relate to, one or more concurrent negligent acts or omissions of the Tulalip Tribes or its elected and appointed officials, officers, employees, agents, representatives, of the Tulalip Tribes, its agents and its employees acting within the scope of their employment.

If the claim, suit, or action for injuries, death or damages as provided for in the preceding paragraphs of this agreement is caused by or results from the concurrent negligence of (a) the Tulalip Tribes, it's elected and appointed officials, officers, employees, agents and representatives and (b) the Contractor, Contractors employees, agents or subcontractors, the indemnity provision provided for in the preceding paragraph of these specifications shall not apply to damages caused by the Tribes' negligence.

It is specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity it may have under any applicable worker's compensation or workman's compensation statute, solely for the purpose of this indemnification. The Contractor expressly agrees that it has provided for this waiver of immunity in the bid price for the Contract and will include similar waivers in its subcontracts. In addition to any remedy authorized by law, the Owner may retain so much of the money due the Contractor's as deemed necessary by the Engineer to assure indemnification until disposition has been made of any suits or claims. Contractor agrees to pay all royalties and license fees necessary for the Work and to defend all actions and settle all claims for infringement of copyright or patent rights, and to save Owner harmless therefrom.

(N) Contractor's liability insurance. The Contractor shall purchase and maintain such liability and other insurance as will protect the Tulalip Tribes 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.

(O) Prior to commencing Work, the Contractor shall procure and have in effect 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
\$ 2,500.00	Medical Payments
\$1,000,000	Employer's Liability
\$10,000,000	Umbrella Liability

Policy Limits – Business Automobile Liability

\$1,000,000	Combined Single Limit
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There shall be no subsidence coverage exclusions or other coverage limitations without specific disclosure and approval of the Tulalip Tribes.

(P) Contractor's Workers Compensation.

1.1 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 Coverage as applicable. Employees not subject the State Act are to be insured under Employer's Contingent Liability (Stop Gap) \$1,000,000 on accident and aggregate.

1.2 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 and shall provide for not less than 30 days prior written notice to the Tulalip Tribes of cancellation or reduction in coverage.

(Q) Builder's Risk.

The Tulalip Tribes 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 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.

1.1 Incidents related to pollution and contamination are specifically excluded from the Builders Risk Insurance policy.

1.2 To be eligible to make a claim under the Tulalip Tribes' Builders Risk Insurance policy, Contractor shall be responsible to secure all materials and or equipment stored on the project site in a secured fenced area.

(R) Insurance Policy Requirements.

Each policy of insurance required to be purchased and maintained by the Contractor shall name the Tulalip Tribes and its members as primary and non-contributory additional insured's 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 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.

1.1 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 required insurance coverage with insurance carriers (with and 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 terms of this agreement.

1.2 The Contractor, if requested, shall furnish the Tulalip Tribes 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.

1.3 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 certificates of Contract Completion by the Tulalip Tribes. Failure to maintain the required insurance during the time specified shall be cause for termination of the Contract.

1.4 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.

1.5 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.

(S) Waivers of Subrogation. The Contractor waive all rights against the Owner and any of its consultants, subconsultants, contractors and subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent of actual recovery of any insurance proceeds under any property insurance obtained pursuant to this Article or other insurance applicable to the Work, except such rights as it has to proceeds of such insurance held by the Tulalip Tribes as fiduciary. The Contractor shall require its subcontractors, sub-subcontractors, consultants and agents, similar waivers in favor of the parties enumerated herein. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

(T) Other Provisions.

1.1 Neither the Tulalip Tribes 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 actually covered by insurance benefiting the party suffering such loss or damage. Each party shall cause each insurance policy obtained by it to contain the waiver of subrogation clause. Notwithstanding the foregoing, Contractor shall be liable for any loss it caused that is not covered due to deductibles, self-insured retention, or limits/sub-limits.

1.2 Contractor shall reimburse and indemnify, defend, and hold the Tulalip Tribes harmless for, from, and against all losses, damages, liabilities, fines penalties, cost (including clean-up cost) and expenses (including attorney's 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, Subcontractor, suppliers or materialmen or its or their agents or employees, Contractor shall immediately notify the Tulalip Tribes through the Engineer. Contractor is not responsible for losses, damages, liabilities, fines, penalties, costs including cleanup and expenses arising from hazardous, toxic or harmful wastes, materials or substances existing at the site prior to Contractor mobilization.

1.3 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 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

(U) Inspection and Testing Laboratory Services.

1. Owner will appoint, employ, and pay for services of an independent firm to perform inspection and testing as identified in the Contract documents.
2. Site visits and retesting that is required because of the scheduling problems caused by the Contractor and/or non-conformance to specified requirements shall be performed by the same independent firm. Payment for retesting will be charged to the Contractor by deducting inspection or testing charges from the Contract Price.

(V) Drug free Workplace. Contractor will be responsible to pre-screen & enforce a drug free workplace program to their employees and any subcontractors that they employ or subcontract within the performance of this contract to insure that they are drug free during the execution of this contract. Contractor agree that they and their subcontractors will maintain a drug free workplace and will be responsible for conducting pre-screen drug testing on their employees who will be working at the jobsite per the Contractor's company policies.

Contractor acknowledges and agrees to advise its employees, agents, and subcontractors that it is the policy of the Tribe (1) to prohibit the use, possession, sale, and distribution of alcohol, illegal drugs, or other controlled substances on its premises; and (2) to prohibit the presence on Tribe's property of employees of a contractor, subcontractor, or agent who has such substances in his/her body for nonmedical reasons. Entry onto Tribe's property constitutes consent to an inspection of the employees of the Contractor, subcontractor, or agent, including vehicles and personal effects when entering, while on, or upon leaving Tribe's jobsite property. Any Contractor employee, subcontractor, or agent who is found in violation of this policy will be removed and barred from Tribe's jobsite property.

Contractor further agrees that when one of its employees, agents, or an employee of a subcontractor, while on Tribe's jobsite property, has a documented performance deviation, abnormal incident, or unusual behavior which is suspected to be the result of drug or alcohol abuse, this employee will be asked to leave the premises upon the arrival of his/her immediate supervisor who will accompany the employee from Tribe's jobsite property. An employee or agent of Contractor or subcontractor suspected to be under the influence of alcohol or drugs will not be readmitted to Tribe's jobsite until a negative urinalysis for drug screen for that employee is certified by an approved laboratory, at Contractor's expense, and transmitted to Tribes' designated representative.

Contractor employees, subcontractors, and agents who test positive for alcohol or other drugs in a test administered by a qualified laboratory suitable to Tribe, on samples taken after leaving Tribe's jobsite, will not be permitted reentry to Tribe's jobsite property, unless, at Tribes discretion it allows employee to re-enter jobsite after receiving notice of compliance with a treatment plan and release by a health care provider that employee is fit to work.

All of Contractor's employees, agents, and subcontractors presently working on Tribes' property are to be immediately notified of this policy. Any agents or subcontractors under contract to Contractor must also be notified of Tribe's policy. Contractor agrees that disciplinary actions or other employment decisions affecting Contractor's employees, subcontractor, agents, and applicants that arise in any way out of matters related to this Section are the sole responsibility of Contractor. The Tribe agrees to maintain the confidentiality of test results and to use test results solely in connection with its decisions as to whether to permit a contractor employee, subcontractor, or agent to enter or remain on the Tribe's jobsite property. Contractor agrees to maintain the confidentiality of any information gained or exchanged from or during the implementation of this policy.

The unit or structure that the Contractor was constructing or rehabilitating will also be tested for the presence of drugs that pose a health hazard and if found to test positive for drugs, the Contractor will be financially responsible to fully decontaminate the structure or unit before acceptance of the Work or any further payment are made under the Contract.

- (W) Archaeological and Historical Objects. Archaeological or historical objects, which may be encountered by the Contractor, shall be protected and not further disturbed. The Contractor shall immediately notify the Engineer of any such finds. The Engineer will contact the Tribal Natural Resource and Cultural Department who will determine the nature of the object(s) to be surveyed. The Tribal Representative may require the Contractor to stop Work in the vicinity of the discovery until the survey is accomplished, and further instructions are provided. The Contractor will be entitled to additional days of performance related to stop Work notices issued by the Engineer of Tribe.
- (X) Excess Material. All excess material left on site shall become the property of the Owner after seven (7) calendar days.
- (Y) Performance and Payment Bond. Contractor **is required** to provide to the Owner a 100% percent Performance and Payment Bond issued by a company located in the United States (no later than ten (10) days after the Contract has been awarded) issued by an approved surety duly licensed and authorized to transact business in the State. The payment and performance bonds are conditioned upon (i) faithful performance of all of the provisions of this Contract, including warranty obligations; (ii) the payment of all laborers, mechanics, Subcontractors, and Suppliers, and all persons who supply such persons with provisions in carrying out the Work; and (iii) payment of any liabilities, increases, or penalties (including TERO) incurred on the Project which may be due. Contractor's obligations under this Contract shall not be limited to the dollar amount of the bond. Such bonds shall be on Performance Bond and Payment Bond published by The American Institute of Architects (AIA) Form A312, as revised and included in the Contract Documents. Liability under each bond shall

be 100% percent of the applicable Contract price, for the base bid and alternates. Within the Performance and Payment Bonds, the surety(ies) must waive notice of any change orders and agree to be bound in all ways to the Tulalip Tribes for any such change order as if it (they) had received notice of the same. This bond will include a warranty guarantee of 5% of the Contract price to cover any defects found in the Work, during the warranty period. A Surety under the Performance Bond allowed by the Tulalip Tribes to complete the Work in the event of a default, termination, or other failure of the Contractor, shall comply fully with all Contract requirements and shall not use the defaulted or terminated Contractor for continuation of completion of the Work unless the Tulalip Tribes consent. Contractor shall attach a current copy of the power of attorney indicating authority and any limitations on all such bonds, and display the surety bond number on each bond.

Each party agrees that electronic signatures (whether digital or encrypted) and/or scanned copies of original signatures on any such bond is intended to authenticate the bond and shall have the same force and effect as manual signatures and original copies. Such electronically signed or scanned/PDF versions of the AIA Document A312TM, Payment Bond and Performance Bond shall be fully enforceable against the Surety.

#### **SECTION ELEVEN EXAMINATION AND AUDIT**

- (A) Examination. The Tulalip Tribes 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.
- (B) Inspection. 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.
- (C) Availability. 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.
- (D) Confidentiality. 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 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.

#### **SECTION TWELVE TIME OF ESSENCE – EXTENSION OF TIME**

All times stated herein or in the Contract documents are of the essence hereof. Contract times may be extended by a contract modification from the Engineer for such reasonable times as the Engineer may determine when in its opinion the Contractor is delayed in Work progress by changes ordered, labor disputes, fire, prolonged transportation delays, injuries, or other caused beyond the Contractor's control or which justify delay, provided Contractor provides timely notice as required by this Contract.

#### **SECTION THIRTEEN CORRECTING WORK**

When it appears to the Owner or Contractor during the course of construction that any Work does not conform to the provision of the contract documents, it shall make necessary corrections so that such Work will so conform, and in addition will correct any defects caused by Contractor or by its subcontractor, appearing within one year from the date of issuance of a certificate of substantial completion for the project, or within such longer period as may be prescribed by law or as may be provided for by applicable special guarantees or warranties in the Contract Documents.

#### **SECTION FOURTEEN**

## WORK MODIFICATIONS

Owner reserves the right to order Work modifications in the nature of additions or deletions, without invalidating the Contract, and agrees to make corresponding adjustments in the Contract price and time for completion. Any such modifications will be authorized by a written **Field Directive** or **Contract Modification** signed by the Engineer. The Work shall be modified, and the contract price and completion time shall be modified only as set out in the written Field Directive / Contract Modification. Any adjustment in the Contract price resulting in a credit or a charge to Owner shall be determined by the mutual written agreement of the parties to this Contract.

## SECTION FIFTEEN TERMINATION

This Contract may be terminated as follows:

(A) Termination by Owner. Owner may on seven (7) days' written notice to the Contractor terminate this Contract before the completion date hereof, and without prejudice to any other remedy Owner may have, when the Contractor defaults in performance of any provision herein, or fails to carry out the construction in accordance with the provision of the Contract documents. On such termination, Owner may take possession of the worksite and all materials, equipment, tools, and machinery thereon it has paid or will pay for, and finish the Work in whatever way Owner deems expedient. If the unpaid balance on the Contract price at the time of such termination exceeds the expenses of finishing the Work, Owner will pay such excess to the Contractor. If the expense of finishing the Work exceeds the unpaid balance at the time of termination, the Contractor agrees to pay the difference to Owner. On such default by the Contractor, Owner may elect not to terminate the Contract and in such event Owner may make good the deficiency of which the default consists and deduct the costs from the progress payments then or to become due to the Contractor.

(B) Owner's Termination for Convenience. The Engineer may terminate this contract in whole, or in part, whenever the Engineer determines that such termination is in the best interest of the Owner. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which the performance of the Work under the contract is terminated, and the date upon which such termination becomes effective. If the performance of the Work is terminated, either in whole or in part, the Owner shall pay the Contractor for reasonable and proper cost resulting from such termination upon the receipt by the Owner of a properly presented claim setting out in detail: (1) the total cost of the Work performed to date of termination less the total amount of contract payments made to the Contractor (2) the cost (including reasonable profit) of settling and paying claims under subcontracts and material orders for Work performed and materials and supplies delivered to the site, payment for which has not been made by the Owner to the Contractor or by the Contractor to the subcontractor or supplier; (3) the cost of preserving and the protecting the Work already performed until the Owner or assignee takes possession thereof or assumes responsibility therefore; (4) the actual or estimated cost of administrative services reasonably necessary to prepare and present the termination claim to the Owner; (5) and amount constituting reasonable profit on the value of the Work performed by the Contractor.

(C) Records. 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 for a period of seven (7) years from the date of any applicable final settlement. 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. The Engineer will act on the Contractor's claim. Any disputes with regard to this clause are expressly made subject to the provisions of the **Disputes** clause of this contract.

## SECTION SIXTEEN ENGINEERS/DESIGN PROFESSIONAL DUTIES, RESPONSIBILITIES, AND AUTHORITY

(A) The Engineer is as defined in the Special Provisions, and has the obligations and authority as set forth in the Special Provisions and Standard Specifications. The Engineer may also be called the construction manager, Project Engineer, or resident engineer. Regardless of the title used, the Contractor shall treat such entity as the "Engineer" for all purposes under the Contract Documents.

(B) Any design professional engaged by the Owner for this contract and any successor shall be designated in writing by the Owner or Engineer.

(C) Any so designated design professional shall serve as the technical representative with respect to architectural,

engineering, and design matters related to the Work performed under the Contract. Such design professional may provide direction with approval of the Engineer on contract performance. Such direction shall be within the scope of the Contract and may not be of a nature which: (1) institutes additional Work outside the Contract; (2) constitutes a change as defined in the work change clause herein; (3) causes an increase or decrease in the cost of the Contract; (4) alters the Construction progress schedule; or (5) changes any of the other express terms or conditions of the Contract.

(D) The duties and responsibilities of any such design professional engaged by the Owner for this contract may include the following: (1) Make periodic visits to the worksite and on the basis of such on-site inspections, issues written reports to the Engineer which shall include all observed deficiencies. Such design professional shall file a copy of the report with the Contractor's designated representative at the site; (2) Making modifications in the drawings and technical specifications and assisting the Engineer; (3) reviewing and making recommendation with respect to (i) the drawings; (ii) the Contractors shop and detailed drawings; (iii) the machinery, mechanical and other equipment and materials or other articles proposed for use by the Contractor , and, (iv) the Contractors price breakdown; (4) Assisting in inspections, signing Certificates of completion, and making recommendations with respect to acceptance of Work completed under the contract; and, (5) such other duties and responsibility as are designated in writing by the Engineer or Owner.

## **SECTION SEVENTEEN SUBCONTRACTORS OTHER CONTRACTS**

(A) OTHER CONTRACTORS: The Owner may undertake or award other contracts for additional Work at or near the site of the Work under this Contract. The Contractor shall fully cooperate with the other Contractors and with Owner's employees and shall carefully adapt scheduling and performing the Work under this contract to accommodate the additional Work, heeding any directions that may be provided by the Engineer. The Contractor shall not commit or permit any act that will interfere with the performance of Work by any other Contractor or by Owners' employees.

(B) SUBCONTRACTS DEFINITIONS

1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

(C) AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

1.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Engineer the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Engineer will promptly reply to the Contractor in writing stating whether or not the Owner, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner to reply within five (5) working days shall constitute notice of no reasonable objection.

1.2 The Contractor shall not contract with a proposed person or entity to whom the Engineer has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

1.3 If the Engineer has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Engineer has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement



of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

1.4 The Contractor shall not change a Subcontractor, person or entity previously selected if the Engineer makes reasonable objection to such substitute.

(D) SUBCONTRACTUAL RELATIONS

1.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner. Each subcontract agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

(E) CONTINGENT ASSIGNMENT OF SUBCONTRACTORS

1.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

1. Assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 15 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor and Contractor in writing; and
2. Assignment is subject to the prior rights of the Contractor and surety, if any, obligated under bond relating to the Contract.

1.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

**SECTION EIGHTEEN  
CONSTRUCTION SCHEDULE**

(A) Ten (10) days prior to commencing Work, the Contractor shall prepare and submit to the Engineer for approval a practicable written schedule showing the order in which the Contractor proposes to perform the Work, and the dates on which the Contractor contemplates starting and completing the salient features of Work (including acquiring a TERO compliant labor force, materials and equipment) and the final completion date. Such Construction Schedule shall be in compliance with the Standard Specifications. If the Contractor fails to submit a schedule within the time prescribed, the Engineer may impose Liquidated Damages under Section Seven or invoke other remedies under the contract until the Contractor submits the required schedule.

(B) After receipt of the Construction Schedule, the Owner may make adjustments as needed, upon mutual agreement with the Contractor, and shall issue a final approved Construction Schedule. The Contractor shall be bound by the mutually approved Construction Schedule and shall be subject to Section Seven liquidated damages and other remedies for failure to complete the project by the required date or otherwise perform the Work in accordance with the Construction Schedule. The approved Construction Schedule shall be incorporated and made a part of this Contract.

(C) If the Engineer determines that the Contractor is not meeting the approved schedule, the Contractor shall take steps necessary to improve its progress without additional cost to the Owner.

(D) Failure of the Contractor to comply with the requirements of the Engineer under this clause shall be grounds for a determination by the Engineer that the Contractor is not prosecuting the Work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Engineer may terminate the Contractor's right to proceed with the Work, or any separable part of it, in accordance with the Termination clause of this contract.

**SECTION NINETEEN  
SITE INVESTIGATIONS AND CONDITIONS AFFECTING THE WORK**

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

(B) The Owner assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Owner. Nor does the Owner assume responsibility for any understanding reached or representation made concerning conditions which can affect the Work by any of its officers or agents before the execution of this Contract, unless that understanding or representation is expressly stated in this Contract.

**SECTION TWENTY  
DIFFERING SITE CONDITIONS**

(A) Contractor shall comply with the provisions of Section 1-04.7 of the Standard Specifications. If the Engineer determines that different site conditions do not exist and no adjustment in time or cost is warranted, such decision shall be final.

(B) No request by the Contractor for an equitable adjustment to the Contract under this clause shall be allowed, unless the Contractor has given the written notice required. If there is a decrease in the costs or time required to perform the Work, failure of the Contractor to notify the Engineer of the differing site conditions shall not affect the Owner's right to make an adjustment in the costs or time.

(C) No Claim by the Contractor for an equitable adjustment to the contract for differing site conditions shall be unless the Contractor has followed the procedures provided in Section 32 of this Contract and Section 1-04.5 of the Standard Specifications.

**SECTION TWENTY-ONE  
SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION**

(A) The Contractor shall keep on the worksite a copy of the drawings and specifications, addenda and modification orders and shall at all times give the Engineer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications or in case of discrepancy in the figures in

the drawings, or in the specifications, the Contractor shall promptly submit the matter in writing to the Engineer for resolution. The Engineer shall promptly make a determination in writing. Any Work completed or action undertaken by the Contractor without such a determination shall be at its own risk and expense. The Engineer shall furnish from time to time such detailed drawings and other information as considered necessary.

(B) "Shop drawings" means drawings, submitted to the Engineer by the Contractor, or any lower tier Contractor, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain

in detail specific portions of the Work as required by the Contract. The Owner may duplicate, use or disclose in any manner and for any purpose shop drawings delivered under this Contract unless the Contractor identifies the shop drawing as proprietary upon which the Engineer will not share or disseminate without Contractor approval.

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

(D) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Engineer, upon consultation with any design professional engaged by the Owner for this contract, approves any such variation, the Engineer shall issue an appropriate modification to the contract, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

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

(F) The Contractor shall submit to the Engineer for approval all shop drawings as called for under the various headings of the specifications. **Two sets consisting of (3 electronic flash drive and 2 hard copy)** of all shop drawings, will be retained by the Owner and **one set** will be returned to the Contractor. As required by the Engineer, the Contractor, upon completing the Work under this Contract, shall furnish a complete set of all shop drawings as finally approved. The drawings shall show all changes and revisions made up to the time the Work is completed and accepted.

(G) This clause shall be included in all subcontracts at any tier. It shall be the responsibility of the Contractor to ensure that all shop drawings prepared by lower tier contractors are submitted to the Engineer.

(H) The Contractor shall promptly give written notice to the Engineer of any errors or omissions in the design of the Work.

## SECTION TWENTY-TWO

### AS – BUILT DRAWINGS

(A) "As-built drawings," as used in this clause, means drawings submitted by the Contractor or lower tier Contractor at any tier to show the construction of a particular structure of Work as actually completed under the Contract. "As-built drawings" shall be synonymous with "Record drawings."

(B) As required by the Engineer, the Contractor shall provide to the Owner within ten (10) working days of acceptance of the Work accurate information to be used in the preparation of permanent set of as-built drawings. The

Contractor shall record on one set of contract drawings all changes from the installations originally indicated. This clause shall be included in all subcontracts at any tier. It shall be the responsibility of the Contractor to ensure that all as-built drawings prepared by lower tier contractors are the responsibility of the Contractor.

**SECTION TWENTY-THREE  
PUNCH LIST & INSPECTION**

- (A) Contractors Punch List. When the Work, or designated portion thereof, is near completion, the Contractor shall prepare a list of all deficient items remaining of the Work or the designated portion thereof (the "Contractor's Punch List")
- a. 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.
  - b. The Contractor shall submit the signed Contractor's Punch List to the Engineer.
- (B) Punch List. Within (7) days of receipt of the request for Final Inspection the Engineer shall Work with the Project Coordinator, Engineer and applicable design professionals to notify the Contractor acceptance or rejection of the request for Final Inspection, stating reasons for any rejections
- a. Upon acceptance of the Contractor's request, the Owner, Project Coordinator, and Engineer, and any design professional requested by Owner, shall conduct the Final Inspection to determine whether the Work, or designated portion thereof, is in conformity with the Contract Documents. The Engineer shall notify the Contractor, the Owner, Project Coordinator and the Engineer of the scheduled time of the Final Inspection.
  - b. Within three (3) days of the Final Inspection, the Engineer shall notify the Contractor of any items remaining in a deficient or unacceptable condition. The list if such items shall be known as the Engineer's Punch List.
- (C) Correction of Punch List Items. Within 30 days of written notice the Contractor shall complete and correct all items remaining on the Engineer's Punch List.
- a. If the Work on the Punch List cannot be completed within 30 days of receipt of the written notice, the Contractor shall justify, to the Engineer the reasons the items cannot be so completed, and the Contractor shall propose to the Engineer a time when such items will be completed.
  - b. Failure of the Owner or Project Coordinator and Engineer to include any items in the Engineer's Punch List shall not alter the responsibility of the Contractor to complete all the Work in accordance with the Contract Documents.
  - c. If multiple inspections of items on the Engineer'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 and Tulalip Tribes of Washington resulting from any attendant delay.
- (D) Deferred Items. With the approval of the Engineer, when Final Inspection, items of Work cannot be completed because of seasonal condition, such as bituminous paving or landscaping, or if the Engineer agrees that a particular item not be completed until a subsequent date, the Tulalip Tribes of Washington may release payment to the Contractor less the cost of completing the remaining Work as determined in the sole discretion of the Tulalip Tribes of Washington.
- (E) Guarantee Period of Inspection. The Contractor will attend a walk-through of the Project scheduled by the Engineer to occur one month prior to the expiration of the one (1) year warranty period provided by the Contractor. The walk-through will be attended by the Engineer.

- a. The Engineer, with the assistance of any design professionals, shall notify the Tulalip Tribes of Washington of any defects in workmanship, materials and equipment

**SECTION TWENTY-FOUR  
HEALTH, SAFETY, AND ACCIDENT PREVENTION**

(A) In performing this Contract, the Contractor shall be responsible for: (1) Ensuring that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to the health and/or safety of such laborer or mechanic as determined under construction safety and health standards promulgated by any tribal entity or agency having jurisdiction over such matters or any other entity or agency having authority over such matters; (2) Protecting the lives, health, and safety of other persons; (3) Preventing damage to property, materials, supplies, and equipment; and (4) Avoiding work interruptions.

(B) For these purpose, the Contractor shall: (1) Comply with such regulations and standards as may be issued by any tribal entity or agency having jurisdiction over such matters and as issued by the Secretary of labor at 29 agency having jurisdiction over such matters and as issued by the Secretary of Labor at 29 CFR Part 1926. Failure to comply may result in imposition of sanctions under applicable tribal law; and (2) include the terms of this clause in every subcontract so that such terms will be binding on each lower tier subcontractor.

(C) The Contractor shall maintain and accurate record of exposure data on all accidents incident to Work performed under this Contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment and shall report this data in the manner prescribed by applicable tribal law an in the manner prescribed by 29 CFR Part 1904.

(D) The Engineer shall notify the Contractor of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor's representative at the site of the Work, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the Engineer may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop work order issued under these circumstances. Failure to receive notice from the Engineer under this section shall not relieve Contractor of any of its responsibilities under this section.

(E) The Contractor shall be responsible for its lower tier subcontractor's compliance with the provisions of this clause. The Contractor shall take such action with respect to any lower tier subcontractor as the Owner, or the Tribal entity or agency have jurisdiction over such matters or any other entity or agency having authority over such matters shall direct as a means of enforcing such provisions.

(F) The Contractor shall immediately notify the Engineer in writing if any hazardous material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site or believed to be encountered on the site. The Contractor shall immediately stop Work in the affected area until the nature of the material or substance has been ascertained and until such remedial or corrective measures, if any are required, has been taken. A compensable time extension shall be issued to the Contractor if jobsite progress is slowed, stalled, suspended, or the Contract terminated as a result of such discovery.

(G) The Contractor will submit to the Engineer prior to the commencement of any Work a detailed company safety plan that will be used during the execution of the contract. The plan shall name the on-site company safety officer that will be responsible to conduct on site safety meetings, modify safety plan and make notification to the Engineer in the event of any on-site accidents by an employee of the company. Contractor is responsible to provide the minutes of the safety meetings held by the Company on a weekly basis.

## **SECTION TWENTY – FIVE**

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

- (A) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the worksite, which are not to be removed under this Contract.
- (B) The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during performance of this Contract, or by the operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Engineer.
- (C) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the worksite; and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. Prior to disturbing the ground at the construction site, the Contractor shall ensure that all underground utility lines are clearly marked.
- (D) The Contractor shall shore up, brace, underpin, secure, and protect as necessary all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be affected by the excavations or other operations connected with the construction of the project.
- (E) Any equipment temporarily removed as a result of Work under this Contract shall be protected, cleared, and replaced in the same condition as at the time of award of this Contract.
- (F) New work which connects to existing work shall correspond in all respects with that to which it connects and/or be similar to existing work unless otherwise required by the specifications.
- (G) No structural members shall be altered or in any way weakened without the written authorization of the Engineer, unless such work is clearly specified in the specifications or other contract documents.
- (H) If the removal of the existing work exposes discolored or unfinished surfaces or work out of alignment, such surfaces shall be refinished, or the material replaced as necessary to make the continuous work uniform and harmonious. This, however, shall not be construed to require the refinishing or reconstruction of dissimilar finishes previously exposed, or finished surfaces in good condition, but in different planes or on different levels when brought together by the removal of intervening work, unless such refinishing or reconstruction is specified in the specifications or other contract documents.
- (I) The Contractor shall give all required notices to any adjoining or adjacent property owner or other party before the commencement of any Work.
- (J) The Contractor shall be responsible for any damages on account of settlement or the loss of lateral support of the adjoined property, any damages from changes in topography affecting drainage, and from all loss or expense and all damages for injury or damage to adjoining and adjacent structures and their premises and shall indemnify and save harmless the Owner there from.
- (K) The Contractor shall repair any damage to vegetation, structures, equipment, utilities, or improvements, including those that are the property of a third party. If the Contractor fails or refuses to repair the damage promptly, the Engineer may have the necessary work performed and charge the cost to the Contractor.

## **SECTION TWENTY – SIX**

### **TEMPORARY BUILDING AND TRANSPORTATION OF MATERIALS**

- (A) Temporary buildings (e.g., storage sheds, shops, offices, sanitary facilities) may be erected by the Contractor only with the approval of the Engineer and shall be built with labor and materials furnished by the Contractor without expense to the Owner. The temporary buildings shall remain the property of the Contractor and shall be removed by the

Contractor at its expense upon completion of the Work. With the written consent of the Engineer, the buildings may be abandoned and need not be removed.

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

#### **SECTION TWENTY – SEVEN INSPECTIONS AND ACCEPTANCE OF CONSTRUCTION**

(A) Definitions. As used in this clause –

(1) “Acceptance” means the act by which the Engineer approves the Work performed under this contract. Acceptance may be partial or complete. (2) “Inspection” means examining and testing the Work performed under the contract (including, when appropriate, raw materials, equipment, components, and intermediate assemblies during the normal course of construction as identified in the approved Construction Schedule) to determine whether it conforms to contract requirements. (3) “Testing” means that element of inspection that determines the properties or elements, including functional operation of materials, equipment, or their components, by the application of established scientific principles and procedures.

(B) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the Work performed under the contract conforms to contract requirements, including applicable tribal laws, ordinances, codes, rules and regulations. All Work is subject to Owner inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

(C) Owner inspections and tests are for the sole benefit of the Owner and do not: (1) Relieve the Contractor of responsibility for providing adequate quality control measures; (2) Relieve the Contractor of responsibility for loss or damage of the material before acceptance; (3) Constitute or imply acceptance; or, (4) Affect the continuing rights of the Owner after acceptance of the completed Work under paragraph (K) below.

(D) The presence or absence of an Owner inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specifications without the Engineer’s written authorization. All instructions and approvals with respect to the Work shall be given to the Contractor by the Engineer.

(E) The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Engineer. The Owner may charge to the Contractor any additional cost of inspection or test when Work is not ready at the time specified by the Contractor for inspection or test, when prior rejection makes re-inspection or retest necessary. The Owner shall perform all inspections and test in a manner that will not delay the Work. Special, full size and performance tests shall be performed as described in the contract.

(F) The Engineer may conduct routine inspections of the construction site on a daily basis.

(G) The Contractor shall, without charge, replace or correct Work found by the Engineer not to conform to Contract requirements, unless the Engineer decides that it is in the Owner’s interest to accept the Work with an appropriate adjustment in Contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(H) If the Contractor does not promptly replace or correct rejected Work, the Engineer may (1) By contract or otherwise, replace or correct the Work and charge the cost to the Contractor, or (2) Terminate for default the Contractor’s right to proceed.

(I) If any Work requiring inspection is covered up without approval of the Engineer, it must, if requested by the Engineer, be uncovered at the expense of the Contractor. Following inspection and correction of the defective Work, if any, the uncovered Work must be covered up at the expense of the Contractor.

(J) If at any time before final acceptance of the entire Work, the Engineer considers it necessary or advisable, to examine Work already completed by removing or tearing it out, the Contractor, shall on request, promptly furnish all necessary facilities, labor, and materials. If such Work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or Subcontractors, the Contractor shall defray all the expenses of the examination and of satisfactory reconstruction, and the Contractor shall not be entitled to any adjustment in the time for completion of the Work. If however, such Work is found to meet the requirements of the Contract, the Engineer shall make an equitable adjustment to cover the cost of the examination and reconstruction related to conforming Work, including, if completion of the Work was thereby delayed, a compensable extension of time to the Contract. If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract price will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made or whether or not this Agreement has been terminated. Owner shall not be obligated to accept defective or non-conforming Work, or damages for the difference in value between conforming and defective or nonconforming Work, and in all cases Owner, in its sole and absolute discretion, shall be entitled to full removal and correction of defective or non-conforming Work. At all times, Owner shall be entitled to offset against any sum due and owing Contractor amounts associated with the removal and correction of defective or non-conforming Work.

(K) The Contractor shall notify the Engineer, in writing, as to the date when in its opinion all or a designated portion of the Work will be substantially completed and ready for inspection. If the Engineer determines that the state of preparedness is as represented, the Engineer will conduct the inspection. Unless otherwise specified in the Contract, the Owner shall accept, as soon as practicable after completion and inspection by the Engineer, all Work required by the Contract or that portion of the Work the Engineer determines and designates can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes, or the right under any warranty or guarantee.

(L) Nothing in this clause shall impose any duty on the Owner to conduct any inspection and inspections conducted by the Owner shall be for its sole benefit and use.

#### **SECTION TWENTY – EIGHT**

##### **WARRANTY OF TITLE**

The Contractor warrants good title to all materials, supplies, and equipment, unless purchased by Owner that is incorporated in the Work and agrees to deliver the premises together with all improvements thereon free from any claims, liens or charge, and agrees further that neither it nor any other person, firm or corporation shall have any right to a lien or purported lien upon the premises or anything appurtenant thereto.

#### **SECTION TWENTY – NINE**

##### **WARRANTY OF CONSTRUCTION**

In addition to any other warranties in this contract, the Contractor warrants that Work performed under this Contract conforms to the Contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any subcontractor or supplier at any tier. This warranty shall continue for a period of one year (unless otherwise indicated) from the date that the Owner take possession.

(A) The Contractor shall remedy at the Contractor's expense, any failure to conform, or any defect. In addition, the Contractor shall remedy, at the Contractor's expense, any damages to real or personal property of the Owner or of any other person or entity when the damages is the result of; (1) The Contractor's failure to conform to Contract requirements; or (2) Any defects of equipment, material, workmanship or design furnished by the Contractor.



- (B) The Contractor shall remedy at the Contractor's expense, any failure to conform, or any defect. In addition, the Contractor shall remedy, at the Contractor's expense, any damages to real or personal property of the Owner or of any other person or entity when the damages is the result of; (1) The Contractor's failure to conform to Contract requirements; or (2) Any defects of equipment, material, workmanship or design furnished by the Contractor.
- (C) The Engineer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect or damage.
- (D) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Owner shall have the right to replace, repair or otherwise remedy the failure, defect, or damage at the Contractors expense.
- (E) With respect to all warranties, express or implied, from lower tier subcontractors, manufacturers, or suppliers for Work performed and materials furnished under this Contract, the Contractor shall: (1) Obtain all warranties that it would give in normal commercial practice; (2) Require all warranties to be executed in writing and assigned to the Owner, for the benefit of the Owner and its successors and assigns; and (3) Enforce all warranties for the benefit of the Owner and its successors and assigns.
- (F) Before final acceptance of the Work by the Engineer, the Contractor shall provide to the Engineer all special warranties required to be provided in the specifications or other Contract documents. Any such warranties to be provided by subcontractors, manufacturers, or suppliers shall comply with the provisions of subparagraph (E) (2) and (E) (3).
- (G) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defect of material or design furnished by the Owner nor for the repair of any damage that results from any defect in Owner furnished material or design.
- (H) Notwithstanding any provisions herein to the contrary, the time limitations established under this clause relate only to the scope of the obligation of the Contractor to correct the Work, and has no relationship to the time within which any obligation of the Contractor under this contract may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to any obligation under this contract.
- (I) These warranties set forth in this clause and elsewhere in the Contract documents shall not limit the Owner's rights with respect to latent defects, gross mistakes or fraud.

### **SECTION THIRTY PROHIBITIONS AGAINST LIENS**

The Contractor is prohibited from placing a lien or purporting to place a lien on the Owner's property. This prohibition shall apply to all subcontractors at any tier and all material suppliers.

### **SECTION THIRTY-ONE CONFLICTS**

- (A) In the event of a conflict or discrepancy within, between or among any of the Contract Documents, not resolved by the order of precedence in Section 8 of this Contract, the Contractor shall promptly submit the matter in writing to the Engineer for resolution. The Engineer shall promptly make a determination in writing. Any Work completed or action undertaken by the Contractor without such a determination shall be at its own risk and expense.
- (B) In the event of a conflict between the terms of this instrument and the contract exhibits, the terms of this instrument shall take precedence.
- (C) In the event of a conflict between the Contract and applicable tribal law or regulations, the tribal law or regulations shall prevail.

### **SECTION THIRTY-TWO**

**PROTESTS, CLAIMS  
AND DISPUTES**

- (A) "Claim" as used in this clause, means a written demand or written assertion by the Contractor, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of Contract terms, or other relief arising under or relating to the Contract or the Work. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a Claim. The submission may be converted to a Claim by complying with the requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.
- (B) The Contractor must comply with the protest and notice procedures of Sections 1-04.5 of the Standard Specifications to assert any Claim related to or arising out of the Contract, the Work, or any change order, written or oral order from the Engineer or Owner, or a representative thereof, including any direction, instruction, interpretation or determination by the Engineer or Owner. Compliance with the procedures and protest requirements of Section 1-04.5 is a condition precedent to asserting any Claim and by not protesting as that Section provides, the Contractor waives any additional entitlement and accepts from the Engineer or Owner any written or oral order (including directions, instructions, interpretations, and determination). Section 32(C) of this Contract shall replace reference to Section 1-09.11 of the Standard Specifications, such that if the Contractor does not accept the Engineer's determination then the Contractor shall pursue the dispute and claims procedures set forth in Section 32(C) below. In spite of any protest or dispute, the Contractor shall promptly proceed with the Work as the Engineer or Owner orders. By failing to follow the procedures of Section 1-04.5 and Section 32(C) below, the Contractor completely waives any Claims for protested Work.
- (C) When protests or any disputes occur during the project, the Contractor shall pursue resolution through the Engineer. The Contractor shall follow the procedures outlined in Section 1-04.5 and Section 1-04.5(1) of the Standard Specifications. The written notice of intent that the Contractor shall continue to pursue the dispute, as set forth in Section 1-04.5(1) shall be titled "Notice of Continued Claim." Such Notice of Continued Claim can only be submitted if the Contractor has pursued and exhausted the means provided in Section 1-04.5. Within thirty (30) days of providing the Notice of Continued Claim, the Contractor may submit a Claim – which shall be provided to both the Owner and the Engineer. Such Claim shall include all of the information required by Section 1-09.11(2) of the Standard Specifications. The Claim must be verified and signed as required in Section 1-09.11. The Contractor agrees to waive any Claim where written notification provided in this Section is not followed or where the Engineer or Owner is not afforded reasonable access by the Contractor to complete records of actual costs and additional time incurred as required in Section 1-04.5. Full compliance by the Contractor with the provisions of this Section 32 is a contractual condition precedent to the Contractor's right to seek relief.
- (D) All Claims and any other disputes arising under or relating to this Contract or the Work, including any Claims by the Contractor after termination or completion or Claims by the Contractor' surety, and the notice and protest procedures set forth above must be followed.
- (E) The Contractor's Claim will be reviewed by the Engineer and Owner. A written determination as to the validity of the Claim shall be provided to the Contractor within 45 calendar days from the date the Claim is received by both the Owner and the Engineer if the Claim amount is less than \$100,000, or within 90 calendar days from the date the Claim is received by both the Owner and the Engineer if the Claim is greater than \$100,000. If the above restraints are unreasonable due to the complexity of the Claim, then the Owner or Engineer will notify the Contractor when a written response will be provided.
- (F) If the Contractor disagrees with the determination, it may invoke the dispute resolution procedures in Section 33.
- (G) Compliance with written Claim procedures in this Section shall be a required condition precedent to the Contractor invoking the Dispute Resolution procedures in Section 33.
- (H) The Contractor shall proceed diligently with performance of this Contract, pending final resolution of any request for relief, claim, or action arising under or relating to the Contract, and comply with any decision of the Engineer or Owner.

**SECTION THIRTY-THREE  
DISPUTE RESOLUTION**

- (A) Mediation. Claims, disputes, or other matters in controversy arising out of or related to the Contract, for which the requisites for invoking dispute resolution have been satisfied, shall be subject to mediation as a condition precedent to binding

arbitration.

The parties shall endeavor to resolve their Claims by mediation, which, unless the parties mutually agree otherwise, shall be in accordance with the Judicial Arbitration and mediation Services' (JAMS) Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section 33(A), the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

The Parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.

(B) Arbitration. Any Claim arising out of or related to the Contract, except Claims waived as provided in this Contract, shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Section 33.A.

Claims not waived or resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the JAMS rules currently in effect. The demand for arbitration shall be filed in writing with the other party to the Contract and with JAMS.

Any such arbitration shall take place before a single arbitrator if the aggregate value of the Claim and any counterclaim is less than \$2,000,000, exclusive of costs and attorney fees. The parties shall endeavor to mutually agree on the arbitrator. Unless otherwise agreed upon by the parties, the arbitrator shall be an attorney with at least fifteen years of experience in handling construction disputes and has a demonstrable understanding of the applicability of and interaction between federal law and tribal law. Such demonstrable understanding can be accomplished by admission to a tribal court bar, handling at least five (5) cases or disputes as judge or arbitrator with a Tribe as a party, significant experience representing tribal entities, negotiation of at least five (5) construction contracts or handling two (2) or more cases or disputes in which a Tribe is a party, or other similar substantive knowledge of Indian Country. If the parties are unable to agree upon the selection of an arbitrator within (20) days of their first meeting, the parties shall each select an arbitrator and the two selected arbitrators shall together select a third arbitrator who alone shall decide the matter in dispute. For any Claim and counterclaim having an aggregate value of \$2,000,000 or more, a panel of three (3) arbitrators shall be appointed unless both parties mutually agree to a single arbitrator. Each of the parties shall designate an arbitrator and the third arbitrator, who shall be a lawyer with at least fifteen years of experience in handling construction disputes and has a demonstrable understanding of the applicability of and interaction between federal law and tribal law, shall be selected by the arbitrators designated by the parties. If the two selected arbitrators are unable to agree on a third arbitrator, the third arbitrator shall be appointed pursuant to JAMS construction arbitration procedures. All arbitrators shall be neutral.

Following the initiation of arbitration, the parties shall cooperate in the exchange of information relating to the Claim. For those claims less than \$1,000,000 in aggregate, the arbitration shall be governed by JAMS Streamlined Arbitration Procedures. For claims greater than \$1,000,000 in the aggregate, discovery shall be guided by the scope of the applicable rules of discovery under the Federal Rules of Civil Procedure for the Federal District Court for the Western District of Washington and JAMS Discovery Protocols. Discovery, however, shall not include interrogatories or request for admission. The parties shall freely exchange documents relevant to the claim(s) and depositions shall be limited to those reasonably necessary for each party to prepare for or defend against the claim(s), subject to the limitations on e-discovery set forth in the JAMS Discovery Protocols. Disputes regarding discovery shall be resolved by the arbitrator or, where there is an arbitration panel, by the Chair.

Arbitration may include by consolidation, joinder or in any other matter, any additional person or entity who is, or may be involved in, the Claim, including but not limited to the Contractor, its consultants, Subcontractors and/or suppliers retained by the Contractor. In order to effectuate the purposes of this Section 33.B. the Contractor shall incorporate by reference the provisions of this Section 33B in each Subcontract.

In the event of or arbitration between the parties hereto, declaratory or otherwise relating to the Contract, and notwithstanding any

other provisions herein or in the applicable arbitration rules, each party shall bear its own costs and attorneys' fees. The arbitrator does not have any authority to award prevailing party attorneys' fees or costs.

A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation. For such purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim.

**Claims and Timely Assertion of Claims.** The party filing a notice of demand for arbitration must assert in the demand all Claims, that are not otherwise waived, then known to that party on which arbitration is permitted to be demanded.

**Judgment on Final Award.** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in the tribal court of the Tulalip Tribes of Washington. The Contractor and the Owner shall comply with the arbitration award and shall not seek further remedy or appeal except as specifically provided by the Federal Arbitration Act.

(C) **Limited waiver of sovereign immunity.** By signing the Agreement, the Owner neither waives, limits nor modifies its sovereign immunity from any lawsuit, except as expressly provided in this Section. The Owner hereby expressly and irrevocably waives its sovereign immunity (and any defense based thereon) for arbitration of Claims, demands, or other disputes arising out of or related to the Work or the Contract Documents, but only for arbitration in conformity with the provisions and requirements of this Dispute Resolution Section; and for judicial proceedings in Tribal Court for the purposes of (i) compelling arbitration of a Claim, (ii) determining the arbitrator's jurisdiction, (iii) confirming an arbitration award or (iv) collecting sums due and owing pursuant to an otherwise enforcing any award or judgment. The Owner and Contractor hereby irrevocably consents to and submits itself to the jurisdiction of any arbitration proceeding properly convened pursuant to the terms of this Contract, as well as to the jurisdiction of the Tribal Court for the limited purpose set forth herein. Any judgement entered against Contractor or its Surety by the Tribal Court confirming such arbitration award may be enforced by the Tulalip Tribes in any court have jurisdiction over Contractor or its Surety.

This limited waiver of sovereign immunity is solely for the benefit of the Contractor (and Subcontractors whose claims are sponsored by the Contractor, if any) and surety, and the Owner, by granting this limited waiver to the Contractor and surety, does not otherwise waive its sovereign immunity. Additionally, this Limited Waiver of Sovereign Immunity expressly does not permit, nor shall be construed to permit, the Contractor, or any other person or entity, to encumber or seek satisfaction of judgment from any restricted assets (as opposed to unrestricted assets). A restricted asset is held in trust by the United States for the beneficial use of the Owner or a member of the tribe of the Owner.

(D) **Applicable Law.** The Contract shall be governed by the laws of the Tulalip Tribes and all applicable federal laws and regulations, and, only to the extent applicable to the Work and outlined in the Contract, state laws and regulations. Should any conflict arise between such laws, the following precedence shall apply: (i) Tribal law, (ii) Federal law, and (iii) state law. The Owner does not hereby consent to jurisdiction under any tribal, state or federal law that would not otherwise apply to the Owner as a Tulalip Tribes governmental entity or activity occurring within Indian Country.

#### **SECTION THIRTY-FOUR POSSESSION UPON SUBSTANTIAL COMPLETION**

Owner reserves the right to take over and utilize areas of the worksite upon which the Contractor's Work has been substantially completed, although other portions of the contracted Work remain to be finished. In such an instance, all the Contractor's obligations under this Contract shall remain in force and the Contractor will remain responsible for the entire project covered by this Contract until the Engineer has issued a certificate of completion.

#### **SECTION THIRTY FIVE CONTRACT COMPLETION**

(A) 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 Engineer for review for conformity with the requirements of the Contract Documents, for Engineer's review and approval, which may include, without limitation:

- a. Certificate of Occupancy issued by the local building department;

- b. Inspection Certificates required and issued by the authority having jurisdiction, such as Plumbing, Piping Purification, Pressure Piping, Elevator, Boiler, Electrical, etc.;
- c. Letter of Approval from the Fire Marshal for fire suppression system;
- d. 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;
- e. Neatly and accurately marked sets of As-Built Drawings and other Contract Documents reflecting the actual construction of the Project;
- f. Reproducible detailed Drawings reflecting the exact location of any concealed utilities, mechanical or electrical systems and components;
- g. An electronic copy of all Operating and Maintenance manual documentation, As-Built drawings, Warranties and Guarantees and other Contract Documents in a pdf format;
- h. 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;
- i. Final waiver and release of claims from all subcontractors that they are paid in full.

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.

**SECTION THIRTY – SIX  
NOTICES TO THE CONTRACTOR**

Whenever notice is required to be delivered to Owner or Contractor, the same shall be effective when mailed via first class US Mail, postage prepaid, to the following persons of the following addresses:

CONTRACTOR \_\_\_\_\_  
\_\_\_\_\_

OWNER Tulalip Tribes Construction \_\_\_\_\_

The Tulalip Tribes \_\_\_\_\_

6406 Marine Drive \_\_\_\_\_

Tulalip, WA 98271 \_\_\_\_\_

Contractor shall notify Owner of any Change of Address. The Owner or Engineer may also deliver notices to the Contractor via electric mail.

**SECTION THIRTY-SEVEN  
T.E.R.O**

**Contractor agrees that Contract is subject to the Tulalip Tribal Employment Rights Ordinance, TTC 9.05.**

IN WITNESS WHEREOF, the parties have executed this agreement at the Tulalip Indian Reservation as of the day and year first above written.

<b>Attest:</b>		
<b>Contractor:</b>	<b>Tulalip Tribes Representative:</b>	<b>Tulalip Tribes (BOD):</b>
<b>Signature</b>	<b>Signature</b>	<b>Signature</b>
<b>Date</b>	<b>Date</b>	<b>Date</b>