
REQUEST FOR BID PROPOSAL

**REQUEST FOR GENERAL CONSTRUCTION SERVICES
FOR
THE QUIL CEDA VILLAGE BOEING SITE DRAINAGE REPAIR**

Project No. QCV – CP – 21-006
Bid Package 21 -006 – Quil Ceda Village Boeing Site Drainage Repair
Tulalip, Washington

INTRODUCTION

The Tulalip Tribes of Washington ("Tribes") is soliciting construction firms ("Bidders") with experience in Storm water/Stream management and culvert replacement in Quil Ceda Village on the Tulalip Reservation. Bidders must have the ability to provide the full-range of services necessary to complete the Project.

The Request for Bid Proposal is restricted to certified Tulalip Tribal Member Small Businesses (i.e., Bidders) only. The Tulalip Tribes' TERO Office will verify that Bidders, who submit a Bid Proposal, are certified Tulalip Tribal Member Small Businesses. Bidders shall include with their Bid Proposal evidence of certification from the Tulalip Tribes' TERO office.

Native American Preference related to contracting, subcontracting and suppliers in the project is required. Bidders shall abide by The Tulalip Code, Chapter 9.05 – TERO CODE which provides Indian preference in contracting goods and services. Additionally, The Tulalip Tribes Board of Directors has the authority to require those employers subject to The Tulalip Code, Chapter 9.05 – TERO CODE and applicable federal laws and guidelines, to give preference to Indians in hiring promotions, training and all other aspects of employment. Bidders shall comply with this Code and the rules, regulations and orders of the TERO Commission. For more information about The Tulalip TERO Code, contact the Tulalip Tribes' TERO Department at 6406 Marine Dr., Tulalip, WA 98271, Office (360) 716-4747 or Facsimile (360) 716-0249. The Tulalip TERO Code is available for review on the Tulalip TERO website: <http://www.tulaliptero.com/>

SUBMITTAL DEADLINE AND REQUIREMENTS

Bid Proposals must be received at the Consolidated Borough of Quil Ceda Village's – Project Development & Management Office no later than 2:00 p.m. on July 21, 2021. Submittals sent by mail or courier shall be sent to the address below and must be delivered to the Contract and Procurement Office by the deadline stated above. Faxed or e-mailed submittals will not be accepted.

Consolidated Borough of Quil Ceda Village
Project Development & Management Office
Attention: Lukas Reyes
8802 27th Avenue NE
Tulalip, WA 98271-9694

Bidders shall submit bids on the provided Bid Proposal Form sealed in an envelope clearly marked as containing a bid, indicating the Project name, the Contractor scope of work, and the date of the bid opening on the envelope. The Bidder shall fill in all relevant blank spaces in the Bid Form in ink or by typewriting and not in pencil. Alterations or erasures of items filled in on the Bid Form shall be initialed by the Bidder in ink. Any change, alteration or addition in the wording

of the Bid Form by a Bidder may cause the Bidder to be rejected as not responsible for award of a Contract. Contract Bonds are required.

Any addenda issued for this RFB will be distributed to the Bidders listed on the Pre Bid Meeting Sign-In Bidders List. Interested Firms are responsible for checking for any addenda by contacting the QCV Project Development and Management Office (listed above).

PRE-BID MEETING

A Pre-Bid Meeting and site walk will be held on July 6th, 2021 at 10:00 a.m., at the following location:

Quil Ceda Village – Boeing Site Drainage Repair

Tulalip, WA 98271-9694

Also known as the “Boeing test Site”

Intersection of 27th AVE NE, Tulalip WA 98271 and Magazine RD at the Electric Gate

Near or around

10902 19th AVE NE

Tulalip WA, 98271

All interested firms are encouraged to attend the Pre-Bid Meeting and to visit the project site in order to acquaint themselves with the local conditions under which the work will be performed and to obtain personal observations of the project site.

SCOPE OF WORK

The Quil Ceda Village Boeing Site Drainage project will consist of demolition and removal of certain culverts and installation of identified culvert. Project also includes installation of gravel with grading of identified locations as indicated below with in the work area of the Quil Ceda Village Boeing Test Site on the Tulalip Reservation.

Work includes but is not limited to:

1. The Work of this Bid Package consists of the Work as shown and indicated on SCOPE OF WORK. The Work is not restricted by division of drawing(s) or specification(s). Unless otherwise specifically noted, all Work to be performed shall consist of labor, materials, tools, equipment, supervision, insurance, bond, applicable taxes and all other associated provisions necessary to provide and install the complete scope of work of the Prime Contract in its entirety in strict accordance with the Contract Documents.
2. The Contractor shall develop and maintain a Project “EMERGENCY SAFETY PLAN”. All contractors shall abide by the Prime Contractor’s “EMERGENCY SAFETY PLAN.”
3. Prior to commencing work, the Contractor shall provide and review on-site a “TEMPORARY EROSION AND SEDIMENT CONTROL PLAN” with the Project Manager in compliance with Attachment-A. All contractors shall abide by the Prime Contractor’s “TEMPORARY EROSION AND SEDIMENT CONTROL PLAN.”

4. The Contractor shall provide and maintain an appropriate number of 20# ABC fire extinguishers and stands to be used for general use throughout the duration of the Project.
5. The Contractor shall remove and properly dispose of debris, identified culverts and soils related to the removal of culverts but not limited to:
 - i. Site 5: 36"D x 30'L culvert to be removed and 4 ft deep in roadbed. Total excavation is 10 ft deep including culvert, 26 ft wide roadbed. Roadbed pullback 20 ft wide at channel bottom, taper 1:1 to 40 ft wide at top of roadbed. Remove fish from channel once channel is isolated.
 - ii. Site 7: 24"D x 24'L culvert to be removed, 5-6 ft deep in roadbed. Total excavation is estimated at 10-12 ft deep including culvert, with existing roadbed 16 FT wide. Roadbed pullback is 16 ft wide at channel bottom, taper 1:1 to 36 ft wide at top of roadbed.
6. The Contractor shall furnish and install but not limited to:
 - i. All equipment shall be washed for invasive weed control prior to entering the site gate.
 - ii. Erosion control: Install erosion prevention and sedimentation BMPs prior to any grading activity. Protect natural vegetation and trees. Prevent disturbance of sensitive areas and their buffers. Use vegetated buffers and minimize footprint. Before grading, mark clearing limits and sensitive areas for protection. Restrict clearing to approved limits as marked by the Owner.
 - iii. Establish construction access utilizing WA Dept. of Ecology Stormwater Manual BMP C105. Reduce vehicle access points and stabilize entrance to the site with crushed rock as shown in Attachment-A. Install compost/straw wattles along road edges above ditches for 200 feet from the construction site as shown in SCOPE OF WORK and WA Dept. of Ecology Stormwater Manual BMP C235.
 - iv. Sedimentation control: Check dams shall be installed prior to all instream work. Check dams shall be installed as soon as construction will allow. The Contractor may substitute a different check dam material, in lieu of what is specified in the contract, with approval of the Construction Manager. Straw bales shall not be used as check dams. The check dam is a temporary or permanent structure, built across a minor channel placed perpendicular to the flow of water. Water shall not flow freely through the check dam structure. Check dams shall be constructed in a manner that creates a ponding area upstream of the dam to allow pollutants to settle, with water from increased flows channeled over a spillway in the check dam. The check dam shall be constructed to prevent erosion in the area below the spillway. The outer edges shall extend up the sides of the conveyance to prevent water from going around the check dam. Check dams shall be of sufficient height to maximize detention, without causing water to leave the ditch. Check dams should be inside the fish isolation area. Installation shall be approved by the Project Manager prior to proceeding with work. Channels shall be lined with coir erosion blanket according to BMP C202 at completion of work, and prior to re-diverting stream thru new channel construction.

- v. Culvert: Contactor shall remove and install convert(s) in accordance with 2021 WSDOT Standard Specifications 7.02, 7.08.3, 9.05.4
- vi. Site 5, 7, 8: stream diversion measures to fully isolate stream flow around construction area. Any secondary channel will be fully segregated from the main channel and fully protected with erosion and sedimentation control. Contractor to submit plan for approval by the Project Manager. Install a sedimentation control "check dam" at overflow approximately 30ft downstream. Arrange with Construction Manager to notify Tulalip Natural Resources for a fish biologist to be present for assistance with fish removal. Install fish screen to seclude the construction area from fish. Channels shall be lined with coir erosion blanket according to WA Dept of Ecology Stormwater Manual BMP C122 at completion of work, and prior to re-diverting stream thru new channel construction
- vii. Site 8: replace existing culvert with 72"D x 28' corrugated steel culvert pipe. Stabilize roadbed inlet and outlet with large 1-man rock and 4-8" minus quarry rock. Restore roadbed to 20 ft wide. Culvert shall be countersunk to a point 1/5 of its diameter, installed at a grade to allow fish passage, and lined with washed and rounded gravels (2" minus) and as not to leave a perched culvert.
- viii. Site 5 and 7: install streambanks at 1:1 slope. Install rock and soil barrier to vehicle access from both sides of restored stream crossings.
- ix. Contractor will spread and grade existing road way with 4" minus to stabilize site approach approximately:
 - 1. West Security Road – 300 LF
 - 2. Revetment Road – 200 LF
 - 3. North Security Road - 250 LF
- x. Contractor will grade and top dress existing road way site approaches with 5/8 minus to finish road at conclusion of work, approximately:
 - 1. West Security Road – 300 LF
 - 2. Revetment Road – 200 LF
 - 3. North Security Road - 250 LF
- 7. The Contractor shall provide adequate protection of existing infrastructure and roadways that outside the identified work zone and complete the work in a sequence to prevent incidental and or accidental damage caused in the performance of the Work performed as a part of this Scope of work. Protection may include protective measures not fully identified herein, as well as, strict adherence to daily cleaning requirements. The Contractor shall provide, maintain and remove any protective measures installed as a part of this project.
- 8. The Contractor shall be responsible to repair to like "new" conditions any and all existing roadways and infrastructure that are damaged as a result of work performed as a part of this SCOPE PF WORK and project.

General Conditions of the Work includes but is not limited to:

1. Contractor shall protect existing improvements from damage during the performance of Work. Any adjacent property, including without limitation structures, roads, walks, light poles, signage or other improvements, damaged during the Contract Work shall be properly repaired or replaced at the Contractor's expense.
2. Contractor shall assume full responsibility for protection and safekeeping of equipment stored on-site.
3. Contractor shall be responsible for daily site clean-up.
4. Contractor shall be responsible for the removal and disposal of all debris and rubbish generated by the Contract Work.
5. Contractor shall take precautions and shall be responsible for the safety of individuals on the Project and shall comply with all applicable provisions of tribal and federal safety laws and codes to prevent injury to persons on or adjacent to the Project.
6. Contractor shall be responsible for and have control over all construction means, methods, techniques, sequences and procedures for all portions of the Contract Work.
7. Contractor shall provide continuous supervision at the Project by a competent superintendent when any Work is being performed. The Contractor's superintendent shall have responsibility and authority to act on behalf of the Contractor. All communications to the Contractor's superintendent shall be as binding as if given directly to the Contractor.
8. Contractor shall review the attached Contract Form and Scope of Work for additional General Conditions of the Work, Insurance Requirements, and other Contract Requirements.

BID EVALUATION CRITERIA

The Contract will be awarded to the lowest responsive and responsible Bidder as determined in the discretion of the Tulalip Tribes of Washington. In determining which Bidder is lowest responsive and responsible, the Tulalip Tribes of Washington shall consider the Base Bid and the bids for any Unit Price or Unit Prices which the Tulalip Tribes of Washington requests and determines to accept. The total of the bids for accepted Unit Price(s) will be added to the Base Bid for the purpose of determining the lowest Bidder.

Base Bid:

Bidders shall include all materials, equipment, supervision, labor, delivery, installation, overhead, profit and any other cost or expense, in connection with or incidental to, the performance of the Work complete.

The Tulalip Tribes of Washington reserves the right to waive, or to allow any Bidder a reasonable opportunity to cure, a minor irregularity or technical deficiency in a bid, provided the irregularity or deficiency does not affect the bid amount or otherwise give the Bidder a competitive advantage. Noncompliance with any requirement of the Contract Documents may cause a Bidder to be rejected.

FINAL SELECTION

The Tulalip Tribes of Washington intend to select the Bidder with the lowest responsive and responsible Bid Proposal. Final selection shall be at the sole discretion of the Tulalip Tribes' Board of Directors. While it is the expressed intent of the Board of Directors to select the Firm with the lowest responsive and responsible Bid Proposal, the Tulalip Tribes reserve the right to select any responsive and responsible Firm they determine.

RIGHT OF REJECTION

The Tulalip Tribes of Washington reserves the right to reject any and all proposals and the right to elect not to proceed with the project.

SCHEDULE

The Tulalip Tribes anticipates the Bid, Contract Award, and Construction Schedule will be as follows:

RFB Issued	June 22, 2021
Pre-Bid Meeting	10:00 AM July 6, 2021
Bid Due Date	2:00 PM July 21, 2021
Anticipated Notice to Proceed	August 18, 2021
Substantial Completion	September 24, 2021

Questions may be delivered by U.S. mail, by facsimile, or by electronic mail. All requests for interpretation shall be brought to the attention of the Construction Manager in writing no later than 4:00 PM on July 12, 2021. Questions should be addressed to:

Lukas Reyes Project Manager
 Quil Ceda Village
 8802 27th Ave NE
 Tulalip, Washington 98271

lreyes@tulaliptribes-nsn.gov
 Phone: (360)716-5022
 Cell: (360) 631-7996

ATTACHMENTS

- A. Bid Proposal Form
- B. Contract Agreement

Attachment A
Bid Proposal Form

The Tulalip Tribes of Washington

BID PROPOSAL FORM

Project Name: The Quil Ceda Village
Boeing Site Drainage Repair

Date of Bid: _____

Location of Project: Boeing Test Site

COMPANY NAME OF BIDDER: _____

CERTIFIED "INDIAN-OWNED" ENTERPRISE OR ORGANIZATION:

YES _____ If Yes, Percentage (%) of Indian Ownership: _____ **NO** _____

Having read and examined the Contract Documents, including without limitation the Drawings and Specifications, prepared by the Architect and the Tulalip Tribes of Washington for the above-referenced Project, and the following Addenda:

ADDENDA ACKNOWLEDGED (Enter Addenda Number and Date of Addenda below):

1. _____ 2. _____

The undersigned Bidder proposes to perform all Work for the applicable Contract, in accordance with the Contract Documents, for the following sums:

BASE BID FOR PACKAGE #21-006 – Boeing Site Drainage Repair

BASE BID: _____ **Dollars\$** _____
(Write in Words Above Base Bid Amount) (Write in Number Form Above)

Bid Clarification: The Tulalip Tribes of Washington's exemption of Washington State Sales Taxes related to Project.

BIDDER'S CERTIFICATION

The Bidder hereby acknowledges that the following representations in this bid are material and not mere recitals:

1. The Bidder has read and understands the Contract Documents and agrees to comply with all requirements of the Contract Documents, regardless of whether the Bidder has actual knowledge of the requirements and regardless of any statement or omission made by the Bidder which might indicate a contrary intention.
2. The Bidder represents that the bid is based upon the Standards specified by the Contract Documents.
3. The Bidder acknowledges that all Work shall be completed within the time established in the Contract Documents, and that each applicable portion of the Work shall be completed upon the respective milestone completion dates, unless an extension of time is granted in accordance with the Contract Documents. The Bidder understands that the award of separate contracts for the Project will require sequential, coordinated and interrelated operations which may involve interference, disruption, hindrance or delay in the progress of the Bidder's Work. The Bidder agrees that the Contract price, as amended from time to time by Change Order, shall cover all amounts due from the Tulalip Tribes of Washington resulting from interference, disruption, hindrance or delay caused by or between Contractors or their agents and employees.
4. The Bidder has visited the Project site, become familiar with local conditions and has correlated personal observations with the requirements of the Contract Documents. The Bidder has no outstanding questions regarding the interpretation or clarification of the Contract Documents.
5. The Bidder agrees to comply with The Tulalip Code, Chapter 9.05 – TERO CODE and give preference to Indians in hiring promotions, training and all other aspects of employment contracting and subcontracting.
6. The Bidder agrees to comply with The Tulalip Code, Chapter 9.05 – TERO CODE and give preference to certified, qualified Indian-owned enterprises and organizations in the award of contracts and subcontracts.
7. The Bidder and each person signing on behalf of the Bidder certifies, and in the case of a joint or combined bid, each party thereto certifies as to such party's entity, under penalty of perjury, that to the best of the undersigned's knowledge and belief: (a) the Base Bid, any Unit Prices and any Alternate Bid in the bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition as to any matter relating to such Base Bid, Unit Prices or Alternate bid with any other Bidder; (b) unless otherwise required by law, the Base Bid, any Unit Prices and any Alternate bid in the bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to the bid opening, directly or indirectly, to any other Bidder who would have any interest in the Base Bid, Unit Prices or Alternate bid; (c) no attempt has been made or will be made by the Bidder to induce any other individual, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.
8. The Bidder will execute the Contract Form with the Tulalip Tribes of Washington, if a Contract is awarded on the basis of this bid, and if the Bidder does not execute the Contract Form for any reason, other than as authorized by law, the Bidder and the Bidder's Surety are liable to the Tulalip Tribes of Washington as provided in Article 6 of the Instructions to Bidders.
9. Bidder agrees to furnish any information requested by the Tulalip Tribes of Washington to evaluate the responsibility of the Bidder.

Any modification made to either the bid form or exception taken to the defined scope of work outlined in this bid package may result in the bid proposal being considered non-responsive.

Each bid shall contain the name of every person interested therein. If the Bidder is a corporation, partnership, sole proprietorship, or limited liability corporation, an officer, partner or principal of the Bidder, as applicable, shall print or type the legal name of the Bidder on the line provided and manually sign the Bid Form. If the Bidder is a joint venture, an officer, partner or principal, as applicable, of each member of the joint venture shall print or type the legal name of the applicable member on the line provided and signs the Bid Form. An unsigned or non-original signed Bid Form will render the Bid as non-responsive.

BIDDER'S NAME (PRINT): _____

Authorized Signature: _____

Title: _____

Company Name: _____

Mailing Address: _____

Telephone Number: (_____) _____ Facsimile Number (_____) _____

Where Incorporated: _____

Type of Business (circle one): corporation partnership sole proprietorship limited liability corporation

The Tulalip Tribes Business License Number: _____

State of Washington Contractor's License Number: _____

Federal ID Number: _____

Contact Person for Contract processing: _____

END OF BID FORM

Attachment B
Contract Agreement



THE TULALIP TRIBES OF WASHINGTON CONTRACT AGREEMENT

FOR
BOEING SITE DRAINAGE REPAIR

TULALIP TRIBES BID SOLICITATION PROJECT# QCV-CP-21-006

This agreement entered into this ___ day of _____, 20___, between The Tulalip Tribes of Washington and Consolidated Borough of Quil Ceda Village, 8802 27th Avenue NE, Tulalip, WA 98271, hereinafter referred to as "Tulalip Tribes", (Contractor name and address) hereinafter referred to as "Contractor".

WITNESSETH, that the Contractor and The Tulalip Tribes for the consideration stated herein mutually agree as follows:

SECTION ONE DESCRIPTION OF WORK

This Contract consists of this written agreement and all appurtenant "contract documents" described in Section Six of this agreement. Contractor shall perform the following described work in accordance with this contract and the Scope of Work, incorporated as Tulalip Tribes Bid Project# QCV-CP-21-006:

The Contractor shall remove and properly dispose of debris, identified culverts and soils related to the removal of culverts and other work related to the install and removal identified in EXHIBIT A - SCOPE OF WORK.

The project is located on the Tulalip Tribes Reservation.

SECTION TWO CONTRACT PRICE

The Tulalip Tribes agrees to pay Contractor for the Work described a total contract price of \$_____ (the "Contract Price"). Payment of this amount is subject to additions or deductions in accordance with the bid unit price amounts listed in the bid proposal, provisions of this contract and of any other documents to which this contract is subject. Contractor shall be entitled to full payment when contract work is completed and approved by the Tulalip Tribes. Progress payments shall be made to the Contractor in accordance with the provisions of Section Three of this Contract.

SECTION THREE PAYMENTS

The Tulalip Tribes shall make payment for a portion of the work to the Contractor no later than thirty (30) days after the Tulalip Tribes' accounting department begins processing Contractor's invoice for that work. Such processing shall begin after Contractor presents the invoices and deliverables to the Tulalip Tribes' Contract Officer and Construction Director and the Contract Officer and Construction Director submits written approval to the accounting department for payment based on an inspection of the work. Payment by the Tulalip Tribes does not constitute a waiver of any claims by the Tulalip Tribes against Contractor concerning or arising out of this agreement. Acceptance of final payment by Contractor constitutes a waiver of all claims by Contractor.

Contractor agrees to maintain for inspection by the Tulalip Tribes for three years after final payment all books, records, documents, and other evidence pertaining to the costs and expenses of this agreement, hereinafter collectively called, "records", to the extent and in such detail as will properly reflect all net costs, direct and indirect, of labor, supplies, and services, and other costs of whatever nature for which reimbursement is claimed under the provisions of this agreement.

In the event payment for work performed under this agreement is made from federal or state funds, Contractor shall abide by all applicable federal and state laws and regulations governing such funds which laws and regulations are hereby incorporated by reference. Any rights of the Contractor are subject to the limitations on and availability of such funds to the Tulalip Tribes.

Contractor shall not be entitled to any interest on any amount found due and owing hereunder, whether before or after judgment, but shall, at most, only be entitled to the amount specified in Section Two – CONTRACT PRICE.

SECTION FOUR STARTING AND COMPLETION DATES

The date of commencement of the work shall be the date of this agreement unless a different date is made for the date to be fixed in a notice to proceed issued by the Tulalip Tribes. This agreement shall become effective upon its signing by the Tulalip Tribes Board of Directors, Contract Officer and Contractor.

The contract time (the "Contract Time") shall be measured from the date of commencement.

The Contractor shall diligently prosecute the Work and shall complete all Work so that Contract Completion can occur on or before **Forty-five (45) Calendar days** from the date of the Notice to Proceed, unless the Contractor timely requests and the Tulalip Tribes grants an extension of time in accordance with the Contract Documents.

It is understood and agreed that all Work shall be completed within the established time for Contract Completion, and that each applicable portion of the Work shall be completed upon the respective milestone completion date(s), unless the Contractor timely requests and the Tulalip Tribes grants an extension of time in accordance with the Contract Documents.

**SECTION FIVE
LIQUIDATED DAMAGES**

Upon failure to have all Work completed within the period of time above specified, or failure to have the applicable portion of the Work completed upon any milestone completion date, the Tulalip Tribes shall be entitled to retain or recover from the Contractor, as Liquidated Damages, and not as a penalty, the applicable amount set forth in the 2021 WSDOT Standard Specifications and the Special Provisions for each and every day or portion of a day thereafter until Contract Completion, unless the Contractor timely requests and the Tulalip Tribes grants an extension of time in accordance with the Contract Documents.

The amount of Liquidated Damages is agreed upon by and between the Contractor and the Tulalip Tribes because of the impracticality and extreme difficulty of ascertaining the actual amount of damage the Tulalip Tribes would sustain.

**SECTION SIX
CONTRACT DOCUMENTS**

The contract documents includes the following, which are incorporated by reference as if fully set forth herein (not in order of precedence), on which the agreement between the Tulalip Tribes and Contractor is based, in accordance with which the work is to be done, are as follows:

This agreement, together with such supplementary agreements and conditions as are attached hereto;

- A. SCOPE OF WORK;
- B. Bid Proposal

These contract documents together form the contract for the work herein described. The parties intend that the documents include provisions for all labor, materials, equipment, supplies, 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.

This agreement, including its referenced appendices, represents the entire and complete agreement between the parties and supersedes all prior negotiations, representations, or agreements either written or oral and may be amended or modified only in writing signed by both parties. Nothing whatsoever in this agreement constitutes or shall be construed as a waiver of the Tulalip Tribes of Washington's sovereign immunity. This agreement shall not be valid unless each and every signature designated below is affixed.

**SECTION SEVEN
AUTHORITY OF TULALIP TRIBES' REPRESENTATIVE(S)**

The Tulalip Tribes' representative designated as the Contract Officer and Construction Director authorized to administer and implement the terms and conditions of this agreement is,

Lukas Reyes

Quil Ceda Village Project management

8802 27th Ave NE

Tulalip, Wa 98271

The Tulalip Tribes' representative designated as Inspector authorized to inspect Contract performance in detail is Lukas Reyes.

The Tulalip Tribes' authorized representatives shall be allowed to observe any work done by the Contractor which is covered by this agreement.

SECTION EIGHT RESPONSIBILITIES OF CONTRACTOR

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

- a. Responsibility for and supervision of work. Contractor represents that he has inspected and is familiar with the work site and the local conditions under which the work is to be performed. Contractor shall be solely responsible for all construction and installation in accordance with the 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. Contractor represents that he is bonded in sufficient amount to cover Contractor's liability occasioned by Contractor's performance of this contract.
- b. Discipline and employment. Contractor shall maintain at all times strict discipline among his workers and agrees not to employ for work on the project any person unfit or without sufficient skill to perform the job for which he was employed.
- c. Furnishing of labor, materials, etc. Contractor shall provide and pay for all labor, 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.
- d. Manufacturer's instructions. Contractor shall comply with manufacturer's installation instructions and recommendations to the extent that those instruction and recommendations are more explicit or stringent than requirements contained within the Contract documents.
- e. 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). 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 retail service (e.g. construction services) is performed for

the member or tribe in Indian country. In the case of retail service that is performed on and off Indian country, only the portion of the contract that relates to work done in Indian country is excluded from tax. The work done for a tribe or Indian outside of Indian country, for example a road work that extends outside of Indian country, is subject to retail sales tax.

- f. Compliance with laws and regulations. Contractor shall comply with all applicable laws and ordinances, and rules, regulations, or orders of all public authorities relating to the performance of the work herein. If any of the contract documents are at variance therewith, he shall notify the Tulalip Tribes, through the Construction Director, promptly on discovery of such variance.
- g. Responsibility for negligence of employees and subcontractors. Contractor assumes full responsibility for acts, negligence, or omissions of all other persons doing work under a contract with him.
- h. Warranty of fitness of equipment and materials. Contractor represents and warrants to the Tulalip Tribes 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 equipment and materials that are not so in conformity are defective.
- i. 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.
- j. Furnishing of design and engineering plans. Upon request Contractor shall furnish the Tulalip Tribes or the Contract Officer and/or Construction Director all design and engineering plans for consideration and approval as to conformance with the specifications of the Contract documents.
- k. Clean-up. Contractor agrees to keep the work premises and adjoining way free of waste materials and rubbish caused by his work or that of his subcontractors, and further shall remove all such waste materials and rubbish on termination of the project, together with all his tools, equipment and machinery.
- l. Indemnity and hold harmless agreement. Contractor agrees to indemnify and hold harmless the Tulalip Tribes, its employees, and their agents from and against all claims, damages, losses, and expenses including reasonable attorney fees in case it shall be necessary for the Tulalip Tribes to commence or defend any action arising out of or associated in any way with performance of the work herein, which is:
 - 1. For bodily injury, illness or death, property damage including loss of use, or other damage, and
 - 2. Caused in whole or part by Contractor's negligent act or omission, or that of a subcontractor, or that of anyone employed by them or for whose acts Contractor or subcontractor may be liable.
- m. Contractor shall defend, indemnify and hold harmless the Tulalip Tribes, its employees, and their agents against all loss, damage, liability, claims, lawsuits demands, or costs arising in connection with this agreement. Contractor shall reimburse the Tulalip Tribes for all costs reasonably incurred to defend the Tulalip Tribes against such claims through attorneys of the Tulalip Tribes' choice.

- n. Contractor shall promptly notify the Tulalip Tribes, through the Contract Officer and/or Construction Director, of any litigation arising from or affecting its operations under this agreement, including any bankruptcy or insolvency proceedings of Contractor or of its assignees or subcontractors. Contractor shall not assign its rights under this agreement without first obtaining the Tulalip Tribes' written approval.
- o. Payment of royalties and license fees; hold harmless agreements. 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 the Tulalip Tribes harmless therefrom.
- p. The Contractor will be required as part of this contract to provide weekly certified payrolls and be in compliance with the Tribal Employment Rights Office (TERO) requirements. The Contractor shall be required to schedule a meeting with TERO prior to the start of work on this project and provide a signed approved copy of their Compliance Plan to the Contract Officer and/or Construction Director.
- q. Archaeological and Historical Objects. Archaeological or historical objects, which may be encountered by the Contractor, shall not be further disturbed. The Contractor shall immediately notify the Contract Officer and/or Construction Director of any such finds. The Contract Officer and/or Construction Director will contact the Tribal Natural Resource and Cultural Resource Department who will determine the nature of the object(s). The Contractor may be required to stop work in the vicinity of the discovery until such determination is made. If the Tribal representative determines that the object(s) are to be surveyed, the Tribal representative may require the Contractor to stop work in the vicinity of the discovery until the survey is accomplished.
- r. Excess material. All excess material shall become the property of the Tulalip Tribes.
- s. The Contractor shall, whether or not federal or state funds are involved, without additional expense to the Tulalip Tribes, comply with all applicable laws and obtain all required licenses and permits necessary to execute the provisions of this agreement. Contractor shall file all required returns and notices.
- t. When working within the exterior boundaries of the Tulalip Indian Reservation, Contractor shall comply with all Tribal laws. Before commencing work, Contractor shall obtain all required Tribal licenses and permits. Contractor shall indemnify and hold the Tulalip Tribes, its employees, and their agents harmless from any and all costs, liabilities, or obligations by reason of the failure of Contractor or his or her employees, agents, subcontractors or assigns to comply with any applicable law.
- u. Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, religion, age, sex, national origin, or handicap, with regard to employment "upgrading, demotion, transfer, recruitment, advertising, layoff, termination, rates of pay, or other forms of compensation and selection for training. Notwithstanding the foregoing, Contractor shall provide preference in employment and subcontracting in accordance with The Tulalip Code, Chapter 9.05 – TERO Code as it now exists or may be hereafter amended.

**SECTION NINE
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 change order from the Tulalip Tribes, through the Contract Officer and/or Construction Director, for such reasonable time as the Tulalip Tribes may determine when in their opinion Contractor is delayed in work progress by changes ordered, labor disputes, fire, prolonged transportation delays, injuries, or other causes beyond Contractor's control or which justify delay. Contractor shall be entitled to an equitable adjustment in the Contract Time for changes made in the time of performance directly attributable to the Force Majeure Event, as defined below, provided it makes a notice of claim in accordance with this Section. However, Contractor shall not be entitled to any adjustment in the Contract Price resulting from a Force Majeure Event.

As used herein, a "Force Majeure Event" is an event, circumstance or condition that was unforeseeable and beyond the control of either party or their respective contractors, subcontractors, or suppliers at any tier below them. Force Majeure Events include but are not limited to:

- (i) Acts of God or public enemy;
- (ii) Acts or omissions of any government entity;
- (iii) Fire or other casualty for which Contractor or its subcontractors at any tier were not responsible;
- (iv) Quarantine or epidemic;
- (v) Strike or defensive lockout; and
- (vi) Unusually Severe Weather Conditions which could not have been reasonably anticipated.

"Unusually Severe Weather Condition" as used in this Section means weather that is more severe than the adverse weather anticipated for the project site during any given season. Unusually Severe Weather Condition as used in the prior sentence means the atmospheric conditions at the definite time and place, as measured by the National Climatic Data Center station closest to the project site, that are unfavorable to construction activities. Unusually Severe Weather Conditions must actually cause a delay to the completion of the Work and the critical path. The delay must be beyond the control and without the fault or negligence of the Contractor. For any Claims related to an Unusually Severe Weather Condition, the Contractor must comply with and make a notice of claim in accordance with this Section.

Any request by the Contractor for an extension of time shall be made in writing to the Tulalip Tribes, through the Contract Officer and/or Construction Director, no more than ten (10) days after the initial occurrence of any condition which, in the Contractor's opinion, entitles the Contractor to an extension of time. Failure to timely provide such notice to the Tulalip Tribes shall constitute a waiver by the Contractor of any claim for extension, damages or mitigation of Liquidated Damages, to the fullest extent permitted by law.

SECTION TEN CORRECTING NON-CONFORMING WORK

If a portion of the work is covered contrary to the Contract Officer and/or Construction Director request or to requirements specifically expressed in the Contract documents, it must, if requested in writing by the Contract Officer and/or Construction Director, be uncovered for the Contract Officer and/or Construction Director's and or Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

If a portion of the Work has been covered which the Contract Officer and/or Construction Director has not specifically requested to examine prior to its being covered, the Contract Officer and/or Construction Director may request to see such work and it shall be uncovered by the Contractor. If it is determined that such work has been performed in accordance with the Contract documents all costs incurred by Contractor to uncover and replace the work shall, by appropriate change order, be reimbursed by the Tulalip Tribes. If such work is found not to be in accordance with the Contract documents, any and all required corrections shall be assigned to the Contractor unless the condition was caused by the Tulalip Tribes or a separate contractor in which event the Tulalip Tribes shall be responsible for payment of such costs.

When it appears to any authorized representative of the Tulalip Tribes or Contractor during the course of construction that any work does not conform to the provisions of the contract documents, Contractor shall make necessary corrections so that such work will so conform, and in addition Contractor will correct any defects caused by him or by a subcontractor, appearing within one year from the date of issuance of a certificate of Contract completion by the Tulalip Tribes, or within such longer period as may be prescribed by law or as may be provided for by applicable special guarantees in the contract documents.

SECTION ELEVEN CHANGES IN THE WORK

The Tulalip Tribes reserves the right to order changes in the work in the nature of additions, deletions or modifications, without invalidating the Contract, and agrees to make corresponding adjustments in the Contract Price and time for completion, if justified. Any such changes will be authorized by a written change order signed by an authorized representative of the Tulalip Tribes. The change order will include conforming changes in the Contract and completion time. Work shall be changed, and Contract Price and completion time shall be modified only as out in the written change order. Any adjustment in the Contract Price resulting in a deductive credit or a charge to the Tulalip Tribes shall be determined by the mutual agreement of the parties to the Contract.

SECTION TWELVE TERMINATION

The Tulalip Tribes may terminate this agreement on ten (10) days written notice and in such case Contractor shall only be entitled to payment for work performed prior to receipt of said notice. Additionally, the Tulalip Tribes may immediately suspend operations under this agreement by written notice of any breach. Suspension shall continue until the Tulalip Tribes' authorized representative certifies in writing that the breach is remedied. If Contractor is still in breach after seven (7) days from the notice of suspension, the Tulalip Tribes may, without further notice,

terminate all rights of Contractor under this agreement.

Any failure by the Tulalip Tribes to suspend or terminate this agreement in case of breach shall not waive Contractor's duty to perform strictly in accordance with this agreement. Failure by Contractor to perform on its part any duty, term or condition herein shall constitute a breach.

Any notice sent under this Section may either be sent by personally giving a copy thereof to Contractor or its agents, employer or contractors or mailing a copy to the address set forth herein.

SECTION THIRTEEN DISPUTES

Tulalip Tribes' Limited Waiver of Sovereign Immunity; Consent to Jurisdiction. By signing this contract, The Tulalip Tribes neither waives, limits, nor modifies its sovereign immunity from any lawsuit, except as expressly provided in this Section Thirteen. The Tulalip Tribes hereby expressly and irrevocably waives its sovereign immunity (and any defense based thereon) for arbitration of Claims arising out of or related to this contract, but only pursuant to subsections (b), (c), (d), (e) and (f) below, and to that extent, irrevocably consents to and submits itself to the jurisdiction of the tribal court of The Tulalip Tribes ("Tribal Court") for the purposes of compelling arbitration of a Claim, confirming an arbitration award or collecting sums due and owing pursuant to and otherwise enforcing any award or judgment. This limited waiver and consent are expressly limited to the following limitations and qualifications:

- a. If the parties do not resolve any dispute through direct negotiation, either party shall submit the matter to mediation with a professional mediation service mutually agreed upon by the parties, as a condition precedent to arbitration. Persons with authority to resolve the dispute shall be present at the mediation. If the parties do not otherwise agree on a mediation service to conduct the mediation, the mediation shall be conducted in accordance with the Construction Industry Mediation Rules of the American Arbitration Association. The parties shall share the mediator's fee, filing fees and associated costs equally.
- b. If, within 30 days of any such submission by either party, the mediation has not resulted in a resolution of the dispute, either party may submit the dispute to binding arbitration in accordance with the Construction Industry Rules of the American Arbitration Association and the Federal Arbitration Act; provided, however, that the party demanding arbitration shall serve upon the other party, personally or by registered mail, a written notice of intention to arbitrate. Such notice must state in substance that unless within (20) twenty days after its service, the party served therewith shall file a motion to stay the arbitration, such party shall thereafter be barred from putting in issue the existence or validity of the Agreement or the agreement to arbitrate.
 1. The Construction Industry Rules of the American Arbitration Association, R-51(c) shall be amended to read: "parties to these rules will be deemed to have consented that judgment upon the arbitration award may be entered in the Tulalip Tribal Court;"
- c. In the event arbitration to resolve a dispute is necessary, the party seeking arbitration shall send a written notice that shall contain a detailed written statement of the claim and the parties shall meet as soon as practicable but not less than

thirty (30) days after receipt of the written notice and attempt to agree on an arbitrator to decide the matter at issue.

- d. Selection of the arbitrators shall be pursuant to the following:
 - 1. Any such arbitration shall take place before a single arbitrator if the aggregate value of the Claim and any counterclaim is less than \$200,000, exclusive of costs and attorney fees. The parties shall endeavor to mutually agree on the arbitrator. Either party may specify and require that the arbitrator selected be an attorney licensed to practice law in the State of Washington and shall be experienced in the field of construction. If the parties are unable to agree upon the selection of an arbitrator within twenty (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 \$200,000 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 one arbitrator and the third arbitrator, who shall be a lawyer with experience in construction disputes, 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 by the Chief Judge of the Tulalip Tribal Court.
- e. Following the initiation of arbitration, the parties shall cooperate in the exchange of information relating to the Claim, being guided by the scope of the applicable rules of discovery under the Federal Rules of Civil Procedure for the Federal District Courts including the local rules adopted by the Western District of Washington. Discovery shall not include interrogatories or requests for admission. The parties shall freely exchange documents relevant to the Claim and depositions shall be limited to those reasonably necessary for each party to prepare for or defend against the Claim. Disputes regarding discovery shall be resolved by the arbitrator or, where there is an arbitration panel, by the Chair.
- f. Arbitration may include by consolidation, joinder or in any other matter, an additional person or entity who is, or may be involved in, the Claim, including but not limited to the Designer of Record, lower-tiered contractors and/or suppliers, and consultants retained by the Designer of Record or Contractor. In order to effectuate the purposes of this Section Eleven, (f), the Contractor shall incorporate by reference the provisions of this Section Eleven, (f) in each lower-tiered contract.
- g. In the event of arbitration between the parties hereto, declaratory or otherwise relating to the Contract Documents, and notwithstanding any other provisions therein, (1) each party shall bear its own costs and attorneys' fees if the aggregate value of the Claim and any counterclaim is less than \$200,000 and (2) the losing party shall pay all costs and attorneys' fees actually incurred by the substantially prevailing party if the aggregate value of the Claim and any counterclaim is \$200,000 or more. The parties covenant and agree that they intend by clause (2) of the preceding sentence to award the amount of attorney's fees actually incurred by the prevailing party, and that said clause (2) shall constitute an instruction to the Arbitrator that such fees shall be deemed reasonable.
- h. A demand for arbitration shall be made within the time limits specified in this Section Thirteen as applicable, and in other cases within a reasonable time after

the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to subsections (h.1), (h.2) and (h.3) below:

1. Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;
 2. Between Substantial Completion and Final Certificate for Payment. As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment; and
 3. After Final Certificate for Payment. As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any Contract Warranty provisions, the date of any correction of the Work or failure to correct the Work by the Contractor under the Contract Corrections of the Work provisions, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Tulalip Tribes, whichever occurs last.
- i. Claims and Timely Assertion of Claims. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.
 - j. 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.
 - k. 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 Tulalip Tribes, by granting this limited waiver to the Contractor and surety, does not otherwise waive its sovereign immunity.
 - l. The award rendered by the arbitrator shall be final. Judgment on any arbitration award may be entered in and enforced by the Tribal Court as provided in this section. The Contractor and The Tulalip Tribes shall comply with the arbitration award and shall not seek further remedy or appeal.

SECTION FOURTEEN EMPLOYMENT PREFERENCE

Contractor recognizes and agrees that Contractor and Contractor's subcontractors are bound by The Tulalip Code, Chapter 9.05 – TERO Code.

SECTION FIFTEEN CONTRACTING PREFERENCE

Contractor recognizes and agrees that Contractor and Contractor's subcontractors are bound by The Tulalip Code, Chapter 9.05 – TERO Code.

SECTION SIXTEEN CONTRACT INSURANCE

CONTRACTOR'S LIABILITY INSURANCE

Contractor shall purchase and maintain such liability and other insurance as will protect the Tulalip Tribes, WSDOT, 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. Contractor shall provide insurance coverage and limits as indicated in the Special Provisions, Section 1-07.18 Public Liability and Property Damage Insurance

CONTRACTOR'S WORKER'S COMPENSATION

All employees of Contractor and subcontractor(s) are to be insured, including qualified self-insured plans, under Washington State Industrial Insurance as well as in compliance with any Federal workers compensation regulations including USL&H and Jones Act Coverages. Employees not subject to the State Act are to be insured under Employer's Contingent Liability (Stop Gap) \$1,000,000 on accident and aggregate.

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 thirty (30) days prior written notice to the Contacting Agency of cancellation or reduction in coverage.

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.

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

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.

**SECTION SEVENTEEN
OTHER PROVISIONS**

Any and all reports, data, findings or other materials or deliverables under this agreement shall become the property of and remain under the sole proprietorship of the Tulalip Tribes. Contractor will keep all information learned under this agreement confidential and will not release any such information, either orally or in writing, to parties other than the Tulalip Tribes, its agents, contractors or employees without the express written permission of the Tulalip Tribes.

The Tulalip Tribes and Contractor each binds themselves and their partners, agents, assigns, successors and legal representatives of such other party to this agreement and to the partners, successors and legal representatives of such other party with respect to all terms and conditions of this agreement.

Neither the Tulalip Tribes nor Contractor shall delegate, assign, sublet or transfer their duties or interest in this agreement without the written consent of the other party. Any such assignment, sublet, delegation or transfer shall be subject to the same terms and conditions as this agreement.

The negotiation and execution of this agreement shall be deemed by the parties to have occurred within the exterior boundaries of the Tulalip Indian Reservation and any interpretation thereof shall be in accordance with the laws of the Tulalip Tribes of Washington.

The failure of the Tulalip Tribes to assert any claim or right at any time under this agreement shall not waive its right to assert any claim or right at a later time.

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IN WITNESS WHEREOF, the parties have executed this agreement at the Tulalip Indian Reservation, Washington, on the date first above written.

APPROVED BY CONTRACTOR:

(Company Name)

(Print Name & Title)

By: _____

(Authorized Signature)

APPROVED BY THE TULALIP TRIBES OF WASHINGTON:

Quil Ceda Village Council President:

(Print Name & Title)

By: _____

(Authorized Signature)

Contract Officer:

(Print Name & Title)

By: _____

(Authorized Signature)

Attachment- A
SCOPE OF WORK

Attachment- B
BID PROPOSAL

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