

**WATER MAIN LOOP CONSTRUCTION
PROJECT PO-21-N04**

**KOOTENAI INDIAN RESERVATION
BOUNDARY COUNTY, IDAHO**

***A COOPERATIVE PROJECT BETWEEN
THE INDIAN HEALTH SERVICE
AND
THE KOOTENAI TRIBE OF IDAHO***

BID DOCUMENTS



**CONTRACT # _____
KOOTENAI TRIBAL COUNCIL**

CONTRACT PACKAGE PREPARED FOR THE KOOTENAI TRIBE BY:

**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
PUBLIC HEALTH SERVICE
INDIAN HEALTH SERVICE
OFFICE OF ENVIRONMENTAL HEALTH
AND ENGINEERING
PORTLAND AREA OFFICE
SPOKANE DISTRICT OFFICE**

MARCH 2024

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END

**SECTION 00100
ADVERTISEMENT FOR BIDS**

Scope: This project proposes the following:

- Construction of a new section of 6-inch PVC water main to loop the existing community water distribution system, relocate an existing fire hydrant, install a new one, and reconfigure valves to optimize water movement in the Kootenai Indian Reservation.

Eligible Contractors shall bid on all items on the Bid Offer Sheet.

Contacts: *Contract information*, including project specifications and drawings may be obtained from:

Theresa Wheat
Administrative Director
Kootenai Tribe of Idaho
100 Circle Dr.
Bonners Ferry, ID 83805
Office: 208-267-3519
Cell: 208-255-0075
Email: theresa@kootenai.org

Performance Time: 120 Calendar Days

Liquidated Damages: \$100.00 per Calendar Day

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**SECTION 00110
INFORMATION FOR BIDDERS**

BIDS will be received by the Tribe, at 100 Circle Dr. Bonners Ferry, ID 83805, until **1:30 PM PST on Tuesday, April 30th, 2024** and then at said office publicly opened and read aloud.

Each BID must be submitted in a sealed envelope, addressed to:

Bid for Kootenai Community Water Main Loop Construction Sanitation
Facilities

Theresa Wheat
Administrative Director
Kootenai Tribe of Idaho
100 Circle Dr.
Bonners Ferry, ID 83805

Each sealed envelope containing a BID must be plainly marked on the outside as **BID Kootenai Community Water Main Loop Construction Sanitation Facilities** and the envelope should bear on the outside the name of the BIDDER, their address, their license number if applicable and the name of the project for which the BID is submitted. If forwarded by mail, the sealed envelope containing the BID must be enclosed in another envelope addressed to the TRIBE.

All BIDS must be made on the required BID form. All blank spaces for BID prices must be filled in, in ink or typewritten, and the BID form must be fully completed and executed when submitted. Only one copy of the BID form is required.

Pre-BID meeting will be held for interested bidders on Wednesday, April 17th, 2024 at 11:00 AM PST at the address listed above.

Required Forms for BID submittal:

1. BID OFFER
2. BID SCHEDULE
3. BID BOND
4. INDIAN ENTERPRISE QUALIFICATION STATEMENT (If applicable)

The TRIBE may waive any informalities or minor defects or reject any and all BIDS. Any BID may be withdrawn prior to the above scheduled time for the opening of BIDS or authorized postponement thereof. Any BID received after the time and date specified shall not be considered. No BIDDER may withdraw a BID within 60 days after the actual date of the opening thereof. Should there be reasons why the contract cannot be awarded within the specified period, the time may be extended by mutual agreement between the TRIBE and the BIDDER.

BIDDERS must satisfy themselves of the accuracy of the estimated quantities in the BID Schedule by examination of the site and a review of the drawings and specifications including ADDENDA. After BIDS have been submitted, the BIDDER shall not assert that there was a misunderstanding concerning the quantities of WORK or of the nature of the WORK to be done.

The TRIBE shall provide to BIDDERS prior to BIDDING, all information, which is pertinent to, and delineates and describes, the land owned and rights-of-way acquired or to be acquired.

The CONTRACT DOCUMENTS contain the provisions required for the construction of the PROJECT. Information obtained from an officer, agent, or employee of the TRIBE or any other person shall not affect the risks or obligations assumed by the CONTRACTOR or relieve him from fulfilling any of the conditions of the contract.

A BID bond payable to the TRIBE must accompany each BID for five percent of the total amount of the BID. As soon as the BID prices have been compared, the TRIBE will return the BONDS of all except the three lowest responsible BIDDERS. When the Agreement is executed the bonds of the two remaining unsuccessful BIDDERS will be returned. The BID BOND of the successful BIDDER will be retained until the payment BOND and performance BOND have been executed and approved, after which it will be returned. A certified check may be used in lieu of a BID BOND.

A performance BOND and a payment BOND, each in the amount of 100 percent of the CONTRACT PRICE, with a corporate surety approved by the TRIBE, will be required for the faithful performance of the contract.

Attorneys-in-fact who sign BID BONDS or payment BONDS and performance BONDS must file with each BOND a certified and effective dated copy of their power of attorney.

The party to whom the contract is awarded will be required to execute the Agreement and obtain the performance BOND and payment BOND within ten (10) calendar days from the date when NOTICE OF AWARD is delivered to the BIDDER. The necessary Agreement and BOND forms shall accompany the NOTICE OF AWARD. In case of failure of the BIDDER to execute the Agreement, the TRIBE may at their option consider the BIDDER in default, in which case the BID BOND accompanying the proposal shall become the property of the TRIBE.

The TRIBE within ten (10) days of receipt of acceptable performance BOND, payment BOND and Agreement signed by the party to whom the Agreement was awarded shall sign the Agreement and return to such party an executed duplicate of the Agreement. Should the TRIBE not execute the Agreement within such period, the BIDDER may by WRITTEN NOTICE withdraw his signed Agreement. Such notice of withdrawal shall be effective upon receipt of the notice by the TRIBE.

The NOTICE TO PROCEED shall be issued within (10) days of the execution of the Agreement by the TRIBE. Should there be reasons why the NOTICE TO PROCEED cannot be issued within such period, the time may be extended by mutual agreement between the TRIBE AND CONTRACTOR. If the NOTICE TO PROCEED has not been issued within the ten (10) day period or within the period mutually agreed upon, the CONTRACTOR may terminate the Agreement without further liability on the part of either party.

The TRIBE may make such investigations as he deems necessary to determine the ability of the BIDDER to perform the WORK, and the BIDDER shall furnish to the TRIBE all such information and data for this purpose as the TRIBE may request. The TRIBE reserves the right to reject any BID if the evidence submitted by, or investigation of, such BIDDER fails to satisfy the TRIBE that such BIDDER is properly qualified to carry out the obligations of the Agreement and to complete the WORK contemplated therein.

A conditional or qualified BID will not be accepted.

Award will be made to the lowest responsible BIDDER.

All applicable laws, ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the PROJECT shall apply to the contract throughout.

Disputes under this contract will be submitted to for third party mediation; if not resolved, submit the dispute to the tribal court.

Each BIDDER is responsible for inspecting the site and for reading and being thoroughly familiar with the CONTRACT DOCUMENTS. The failure or omission of any BIDDER to do any of the foregoing shall in no way relieve any BIDDER from any obligation in respect to his BID. Further, the BIDDER agrees to abide by the requirements under Executive Order No. 11246, as amended, including specifically the provisions of the equal opportunity clause set forth in the SUPPLEMENTAL GENERAL CONDITIONS.

The low BIDDER shall supply the names and addresses of major material SUPPLIERS and SUBCONTRACTOR when requested to do so by the TRIBE.

Minimum percentage of work to be completed by the prime CONTRACTOR is 33-1/3%.

State lien laws do not apply on Federal Trust Land.

This is not a Federal Contract, responsibility for compliance with and enforcement of the contract resides with the TRIBE. State and Local taxes apply.

The Indian Health Service is serving as a technical advisor and Construction Inspector for the TRIBE.

The DESIGN ENGINEER is:

Benjamin Chadwick, P.E.
Acting District Engineer
Spokane District Office
Indian Health Service
528 E Spokane Falls Blvd, Ste. 302
Spokane, WA 99202

The PROJECT ENGINEER is:

Jullyanne De Pasion
Environmental Engineer
Spokane District Office
Indian Health Service
528 E Spokane Falls Blvd, Ste. 302
Spokane, WA 99202

**SECTION 00400
BID OFFER**

Proposal of _____
(hereinafter called "BIDDER"), organized and existing under the laws of the
State of _____ doing business with
_____ (hereinafter called "TRIBE").

In compliance with your Advertisement for Bids, BIDDER hereby proposes to
perform all WORK for the construction of _____
in strict accordance with the CONTRACT DOCUMENTS, within the time set forth
therein, and at the prices stated below.

By submission of this BID, each BIDDER certifies, and in the case of a joint BID
each party thereto certifies as to his own organization, that this BID has been
arrived at independently, without consultation, communication, or agreement as to
any matter relating to this BID with any other BIDDER or with any competitor.

BIDDER hereby agrees to commence WORK under this contract on or before a
date to be specified in the NOTICE TO PROCEED and to fully complete the
PROJECT within **120 consecutive calendar days** thereafter. BIDDER further
agrees to pay as liquidated damages, **the sum of \$100.00** for each consecutive
calendar day thereafter as provided in the General Conditions.

BIDDER acknowledges receipt of the following ADDENDUM:

BIDDER agrees to perform all the work described in the CONTRACT

DOCUMENTS for the following prices or lump sum:

BIDDER agrees to submit a complete salary breakdown of all hired employees to
the Tribe.

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PO-21-N04 KOOTENAI WATER LOOP CONSTRUCTION
INDIAN HEALTH SERVICE

Schedule A

ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL PRICE
1.	Mobilization and Demobilization	1	LS	_____	_____
2.	6-inch PVC Watermain, C900 - DR-18	1,247	LF	_____	_____
3.	Fire Hydrant Assembly	1	EA	_____	_____
4.	6-inch Gate Valve with Box	4	EA	_____	_____
5.	1-inch Corporation Stop with Saddle	1	EA	_____	_____
6.	1-inch Curb Stop with Box	1	EA	_____	_____
7.	1-inch Water Service Line, HDPE, SDR09	55	LF	_____	_____
8.	2-inch Corporation Stop with Saddle	1	EA	_____	_____
9.	2-inch Curb Stop with Box	1	EA	_____	_____
10.	2-inch Water Service Line, HDPE, SDR09	15	LF	_____	_____
11.	Connections to Existing System	1	LS	_____	_____
12.	Pipe Abandonment	1	LS	_____	_____
13.	Asphalt Pavement Resurfacing (Driveway)	120	SF	_____	_____
14.	Tree Removal (if necessary)	2	EA	_____	_____
				Total Schedule A:	_____

**SECTION 00450
INDIAN ENTERPRISE QUALIFICATION STATEMENT**

NOTE: If BIDDER wishes to qualify as an "Indian-owned Economic Enterprise", submit this completed questionnaire to the OWNER within the time frame specified. Use additional sheets to complete answers if needed.

The undersigned certifies under oath the truth and correctness of all answers to questions made hereinafter:

1. Applicant wishes to qualify as:

An "Economic Enterprise" as defined in Section 23(e) of the Indian Financing Act of 1974 (P.L. 93-262); that is "any Indian-Owned ... commercial, industrial or business activity established or organized for the purpose of profit: provided, that such Indian ownership shall constitute not less than 51 percent of the enterprise:

or

A "Tribal Organization" as defined in Section 4 (c) of the Indian Self-Determination and Education Assistance Act (P.L. 93-638); that is: "the recognized governing body of any Indian Tribe; any legally established organization of Indians which is controlled, sanctioned or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indian in all phases of its activities: Provided, that in any case where a contract is let or grant made to an organization to perform services benefitting more than one Indian Tribe, the approval of each such Indian Tribe shall be a prerequisite to the letting or making of such contract or grant ..."

2. Name of Enterprise or Organization:

Address:

Telephone Number:

3. Check One:

- | | |
|--|--|
| <input type="checkbox"/> Corporation | <input type="checkbox"/> Joint Venture |
| <input type="checkbox"/> Partnership | <input type="checkbox"/> Other |
| <input type="checkbox"/> Sole Proprietorship | |

4. Answer the following:

If a Corporation:

a. Date of incorporation: _____ b. State of incorporation:

c. Give the names and addresses of the officers of this Corporation and establish whether they are Indian (I) or Non-Indian (NI).

<u>Name and Social Security No.</u>	<u>I or NI</u>	<u>Title</u>	<u>Address</u>	<u>% of stock Ownership</u>
_____	___	<u>President</u>	_____	
_____	___	<u>Vice-President</u>	_____	
_____	___	<u>Secretary or Clerk</u>	_____	
_____	___	<u>Treasurer</u>	_____	

d. Complete the following information on all stockholders who are not listed in C above, owning 10% or more of the stock. Establish whether they are Indian (I) or Non-Indian (NI).

<u>Name and Social Security No.</u>	<u>I or NI</u>	<u>Address</u>	<u>% of stock Ownership</u>
_____	___	_____	
_____	___	_____	
_____	___	_____	
_____	___	_____	
_____	___	_____	
_____	___	_____	
_____	___	_____	

If a Sole Proprietorship or Partnership:

- a. Date of Organization:
- b. Give the following information on the individual or partners and establish whether they are Indian (I) or Non-Indian (NI).

<u>Name and Social Security No.</u>	<u>I or NI</u>	<u>Address</u>	<u>% of stock Ownership</u>
_____	___	_____	_____
_____	___	_____	_____
_____	___	_____	_____
_____	___	_____	_____
_____	___	_____	_____
_____	___	_____	_____

If a Joint Venture:

- a. Date of Joint Venture Agreement:
 - b. Attach the information for each member of the joint venture prepared in the appropriate format given above.
5. Give the name, address, and telephone number of the principal spokesperson of your organization:
6. Will any officer or partner listed in #4 be engaged in outside employment?
 Yes No

If Yes, complete:

<u>Name/Title:</u>	<u>Hours Per Week Outside the Enterprise</u>
_____	_____
_____	_____
_____	_____
_____	_____

7. Does this enterprise have any subsidiaries or affiliates or is it a subsidiary or affiliate of another concern?

Yes No

If yes, complete:

Name and address of subsidiary, affiliate or other concern:

Description of Relationship

8. Does this enterprise or any person listed in #4 above have or intend to enter into any type of agreement with any other concern or person which relates to or affects the on-going administration, management or operations of this enterprise? These include but are not limited to management and joint venture agreements and any arrangement or contract involving the provision of such compensated services as administrative assistance, data processing, management consulting of all types, marketing, purchasing, production and other type of compensated assistance.

Yes No

If yes, attach a copy of any written agreement or an explanation of any oral or intended agreement:

9. Trade References (include addresses and phone numbers):

10. a. Indicate the core employees in your work force, their job titles, and whether they are Indian or Non-Indian. Core crew is defined as an individual who is a current bona-fide individual who is regularly employed by the contractor in a supervisory or other key position when work is available.

b. Over the past three years, what has been the average number of employees?

11. Attach certification by a Tribe or other evidence of enrollment in a Federally recognized Tribe, or qualification as a California Indian according to Federal law, for each officer, partner or individual designated as an Indian in #4.

12. Attach a certified copy of the charter, article of incorporation, by-laws, partnership agreement, joint venture agreement and/or other pertinent organizational documentation.

NOTE: I. Omission of any information may be cause for this statement not receiving timely and complete consideration.

- II. The persons signing below certify that all information in the Indian Enterprise Qualification statement, including exhibits and attachments is true and correct.
- III. Print and type name below all signatures.

If applicant is Sole Proprietor, sign below:

Name	Date

If applicant is in a Partnership or Joint Venture, all Partners must sign below:

Name	Date

Name	Date

Name	Date

Name	Date

If applicant is a corporation, affix corporate seal:

Corporate Seal	Date

By:

Attested by: _____
 Corporate Secretary's Signature

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CONTRACT FOR CONSTRUCTION SERVICES

This Contract is between the KOOTENAI TRIBE OF IDAHO, with headquarters at Bonners Ferry, Idaho, hereinafter referred to as "The Tribe" and _____ hereinafter referred to as the "Contractor." This Contract shall take effect upon signing by the authorized representatives of both parties.

1.0 Description of Work and Contract Documents

1.1 This Contract consists of this written agreement and all attached "contract documents" CONTRACTOR shall perform the following described work in accordance with this written agreement and the attached contract documents (do not leave blank):

1.2 As part of Contract Documents, required attachments include at a minimum, the RFP/RFQQ or Sealed Bid for the Project, Bidder's Response, and a Certification Regarding Debarment by any Tribal government, Federal agency or State government.

1.3 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 by the CONTRACTOR, and all terms and conditions of payment. The documents also include a requirement to perform all work and procedures not expressly indicated herein, but which are necessary for the proper execution of the project. In case of a conflict between this written agreement and any document attached to it, the terms of this written agreement shall govern.

2.0 Contract Price

The Tribe agrees to pay CONTRACTOR for the work described not to exceed _____. Payment of this amount is subject to additions or deductions in accordance with the provisions of this Contract.

3.0 Payments

3.1 Payment shall be made by the Tribe within thirty days of review and approval of Contractor's monthly billing, minus any amount retained in accordance with this written agreement. Payment shall be made for accepted work completed according to the approved "Schedule of Values" which is the written and approved estimates of costs of material, equipment, and/or labor necessary to complete the work required by this Contract.

- 3.2 Progress payments may be withheld and this Contract may be terminated if:
- 3.2.1 Work is found to be defective and not remedied;
 - 3.2.2 CONTRACTOR does not make prompt and proper payments to subcontractors;
 - 3.2.3 CONTRACTOR does not make prompt and proper payments for labor, materials, or equipment furnished to him;
 - 3.2.4 Another CONTRACTOR is damaged by an act for which CONTRACTOR is responsible;
 - 3.2.5 Claims or liens are filed on the job;
 - 3.2.6 In the opinion of the Contract Officer Representative, CONTRACTOR's work is not progressing in a satisfactory manner.

4.0 Final Payment

- 4.1 The Tribe shall make final payment to CONTRACTOR within thirty (30) days after the work is completed, provided that:
- 4.1.1 This Contract is then fully performed;
 - 4.1.2 CONTRACTOR has delivered to the Tribe:
 - a) A complete release of all liens arising out of the contract;
 - b) Receipts showing payment has been made for all labor, materials, and equipment for which a lien could be filed or other satisfactory evidence that no such amounts remain due and owing; or
 - c) A bond satisfactory to the Tribe indemnifying the Tribe against such liens.
 - d) As-built drawings showing all changes from original design documents

5.0 Claims

- 5.1 By making final payment, the Tribe waives all claims except those arising out of:
- 5.1.1 Faulty work appearing after a certificate of substantial completion has been issued;
 - 5.1.2 Work that does not comply with the contract documents;
 - 5.1.3 Outstanding claims of liens;
 - 5.1.4. Failure of CONTRACTOR to comply with any special guarantees or warranty required by the contract documents.
- 5.2 CONTRACTOR, by accepting final payment, waives all claims except those which he or she has previously made in writing, and which remain unsettled at the time of acceptance.

6.0 Starting and Completion Dates

CONTRACTOR's work under this Contract shall begin on _____, and shall be completed by _____. The Contractor and or Contractors surety, if any will be liable for and pay \$100.00, and not as a penalty, for each calendar day of delay after 50 days from the notice to proceed date until the work is substantially complete.

7.0 Work Changes

7.1 The Tribe reserves the right to order work changes in the nature of additions, deletions, or modifications to this Contract, without invalidating the Contract, and agrees to make corresponding adjustments in the Contract Price and time for completion as are then agreed to by the parties. Any such changes will be authorized by a written Change Order, which must be signed by the tribe's Contract Officer, designated in Section Nine (9) below. The Change Order will include conforming changes in the Contract and completion time.

7.2 The scope of work shall be changed, and the Contract Price and completion time shall be modified only as set out in the written Change Order. Any adjustment in the Contract Price resulting in a credit or a charge to the Tribe shall be determined by the mutual agreement of the parties to this Contract before starting the work involved in the change.

8.0 Default and Termination

8.1 This Contract may be terminated by either party without prejudice to any other remedy that the non-defaulting party may have if the other party defaults in performance of any provision of this Contract. The non-defaulting party shall give the defaulting party **10** days' written notice of the non-defaulting party's intention to terminate this Contract, within which time the defaulting party may cure the default condition to the satisfaction of the non-defaulting party. Should the defaulting party be CONTRACTOR, the Tribe may, pursuant to Section 3 of this Contract, withhold any portion of the Contract Price still owing at the time of default.

8.2 The Tribe may also terminate this Contract for its convenience without cause. Should the Tribe elect to terminate under this subparagraph, the Tribe shall give the CONTRACTOR **10** days' written notice of the termination. The Tribe shall pay for all work completed and building materials purchased for the project up to the effective date of the termination. CONTRACTOR shall have no additional rights as against the Tribe except for the payment provided under this subparagraph.

8.3 This Contract is funded from appropriated funds or federal funds. Should those funds be reduced or eliminated, the Tribe may terminate or modify this Contract to reflect the change in funding. If this Contract is terminated under this subparagraph, CONTRACTOR shall be paid for all work properly completed and building materials purchased up to the effective date of

termination. Any work changes required, as a result of the provisions of this Section shall be processed as provided under herein.

9.0 Contract Officer/Contract Officer Representative/Contractor Representative

- 9.1 Theresa Wheat is the designated Contract Officer (CO) for the purpose of this Contract and shall provide general administration of the Contract as the Tribe's representative.
- 9.2 The designated Contract Officer Representative (COR) for the purpose of this Contract shall be Theresa Wheat. The Contract Officer Representative shall provide specific administration of the Contract as the Tribe's representative, and shall have authority to initiate Change Orders, including approval of compensation and expense payments.
- 9.3 CONTRACTOR's representative for this project is _____ who shall be responsible for the conduct of the work completed hereunder, and who shall have signature authority for the CONTRACTOR for all matters related to this Contract.

10.0 Authorities

- 10.1 The duties and authority of the Tribe's CO and COR shall be as follows:
 - 10.1.1 Specific Administration of Contract: COR
 - 10.1.2 Inspections and Instructions: COR
 - The COR shall keep familiar with the progress and quality of the work by making periodic visits to the work site. The COR will make general determinations as to whether the work is proceeding in accordance with the contract. Neither the Tribe nor the COR will be responsible for the means of construction or for CONTRACTOR's failure to perform the work properly and in accordance with the contract documents. Any instructions given to the CONTRACTOR by the Tribe shall be given through the COR or his or her designate. The COR/designate has the authority to reject work not in compliance with this Contract.
 - 10.1.3 Access to Worksite for Inspection: COR
 - The COR shall be given free access to the work at all times during the contract period. However, the COR is not required to make exhaustive or continuous onsite inspections to perform the duty of checking and reporting on work progress.
 - 10.1.4 Interpretation of Contract Documents: CO/OR
 - The CO in consultation with the Legal Department will interpret the contract documents requirements and make decisions on claims and disputes between the CONTRACTOR and the Tribe. The COR does not have the authority to make decisions on these matters.
 - 10.1.5 Rejection and Stoppage of Work: COR
 - The COR shall have authority to reject work which in his or her 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 Contract.

11.0 Rights of the Tribe

The Tribe reserves the right to let other contracts in connection with the project. CONTRACTOR shall cooperate with all other contractors to the effect that their work shall not be impeded by CONTRACTOR's construction, and shall give them access to the work site necessary to perform their contracts.

12.0 Responsibilities of Contractor

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

12.1.1 Responsibility for and Supervision of Construction:

CONTRACTOR represents that he or she 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 under this Contract, including the techniques, sequences, procedures, and means for coordination of all work. CONTRACTOR shall properly supervise and direct the work of his or her employees and subcontractors, and shall give all attention necessary for such proper supervision and direction.

12.1.2 Discipline and Employment:

CONTRACTOR shall maintain at all times strict discipline among his or her employees, and agrees not to employ for work on the project any person unfit or without sufficient skill to perform the job for which he or she was employed.

12.1.3 Furnishing of Labor, Materials, etc.:

CONTRACTOR shall provide and pay for all labor, materials and equipment, including but not limited to tools, construction equipment, and 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.

12.1.4 Payment of Taxes, Procurement of Licenses 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.

12.1.5 Compliance with Laws and Regulations:

CONTRACTOR shall comply with all applicable laws, 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 or she shall notify the Contract Officer promptly on discovery of such variance.

- 12.1.6 Responsibility for Negligence of Employees and Subcontractors:
CONTRACTOR assumes full responsibility for acts, negligence or omissions of all his or her employees on the project, for those of his or her subcontractors and their employees, and for those of all other persons doing work under a contract with him.
- 12.1.7 Warranty of Fitness of Structures, Work Equipment and Materials:
CONTRACTOR represents and warrants to the Tribe that all structures constructed and work done under this Contract and equipment and materials used in the work and made a part of any structure, or placed permanently in connection with any structure, 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 hereto that all equipment and materials that are not so in conformity are defective. Upon completion of the project which is the subject of this Contract, the Contractor shall provide valid written warranties for all materials and equipment provided which will remain on site; such warranties shall be in force for at least year or per the manufacturer's warranty period, whichever is longer.
- 12.1.8 Furnishing of Samples, Shop Drawings and As-Built Drawings:
CONTRACTOR agrees to furnish the Tribe COR, upon request, all samples and shop drawings for consideration and approval as to conformance with the specifications of the contract documents and concepts of design called for therein.
- 12.1.9 Clean Up: CONTRACTOR agrees to keep the work premises and adjoining ways free of waste materials and rubbish caused by his or her work or that of subcontractors. He or she further agrees to remove all such waste materials and rubbish caused by his or her work or that of subcontractors, and to dispose of such materials only at approved landfill sites or collection stations as approved by a valid solid waste permit issued to Contractor or his/her subcontractor(s). He or she further agrees to remove all such waste materials and rubbish on termination of the project, together with all CONTRACTOR's tools, equipment, machinery, and surplus materials. CONTRACTOR agrees on terminating work at the site to conduct general clean up operations of any and all areas affected by the work, including the cleaning of all glass surfaces, paved streets and walks, steps, and interior floors and walls.
- 12.1.10 Indemnity and Hold Harmless Agreement:
CONTRACTOR agrees to indemnify and hold harmless the Tribe and its agents and employees from and against all claims, damages, losses, and expenses including reasonable attorney's fees in case it shall be necessary for the Tribe to commence or defend an action

arising out of or associated in any way with performance of the work herein which is

- a) For bodily injury, illness, or death, property damage including loss of use, or other damage, and
- b) 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.

12.1.11 Payment of Royalties and License Fee (Hold Harmless Agreement):

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 Tribe harmless therefrom.

12.1.12 Safety Precautions and Programs:

CONTRACTOR has the duty of providing for and overseeing all safety orders, precautions, and programs necessary to the reasonable safety of the work and will comply with all applicable Tribal and federal laws, rules, and regulations. In this connection CONTRACTOR shall take reasonable precautions for the safety of all work employees and other persons whom the work might affect, all work and materials incorporated in the project, and all property and improvements on the constructions site and adjacent thereto, complying with all applicable laws, ordinances, rules, regulations, and orders.

12.1.13 Drug and Alcohol-Free Workplace:

CONTRACTOR shall at all times maintain a drug and alcohol-free workplace, and shall take reasonable steps to ensure that no employees of, nor subcontractors of the CONTRACTOR are allowed to work while under the influence of illegal drugs or of alcohol, and that no such illegal drugs or alcohol are allowed at any time at the work site. Failure to comply with this paragraph is grounds for immediate termination of this Contract.

13.0 Time of Essence/Extension of Time

All times for performance set out in the Contract Documents are deemed to be of the essence. The CONTRACTOR will schedule and perform all work under this Contract to complete the work within the time required by this Contract. Contract times may only be extended by a written Change Order from the Contract Officer issued to the CONTRACTOR prior to the expiration of the original date for performance of this Contract or any of its parts. Contract times may be extended by a Change Order from the Tribe's Contract Officer for such reasonable time as the Contract Officer may determine when in his or her opinion CONTRACTOR is delayed in work progress by Change Ordered, labor disputes, fire, prolonged

transportation delays, injuries, or other causes beyond CONTRACTOR's control or which justify the delay. The Tribe reserves the absolute right to refuse to permit an extension of the contract except in case of Change Orders issued by the Tribe.

14.0 Subcontractors

CONTRACTOR agrees to furnish the Tribe Contract Officer, before the commencement of work under this Contract, a list of subcontractors to whom he or she proposes to award the work to be subcontracted by him. A subcontractor for the purpose of this Contract shall be a person with whom contractor has a direct contract for work at the project site. CONTRACTOR agrees not to employ a subcontractor to whose employment the Contract Officer of the Tribe objects, nor shall he or she be required to hire a subcontractor to whose employment he or she may reasonably object. All contracts between CONTRACTOR and subcontractors shall conform to the provisions of the contract documents and shall incorporate in such subcontracts the relevant provisions of this Contract. All subcontractors shall be informed in writing of the contents of this Contract, including all Contract documents, which apply to the performance of subcontractors. Additionally, Contractor shall provide written notification to all subcontractors that they are subject to all the terms of this Contract which reasonably may be applied to their performance.

15.0 Insurance

CONTRACTOR shall provide insurance as follows, and shall provide to the CO certificates verifying the indicated insurance coverage:

15.1 CONTRACTOR's Liability Insurance:

CONTRACTOR agrees to keep in force at CONTRACTOR's expense during the entire period of construction on the project such liability insurance as will protect him from claims under workman's compensation, and other employee benefit laws for bodily injury and death, and for property damage that may arise out of work under this Contract, whether directly or indirectly by CONTRACTOR, or directly or indirectly by a subcontractor. The amount of such coverage shall be at least \$1 million per incident and \$2 million aggregate and the Certificate of Insurance provided by CONTRACTOR shall specifically name the Tribe as an additional insured. Such insurance shall include contractual liability insurance applicable to CONTRACTOR's obligations under this Contract. Proof of such insurance shall be filed by CONTRACTOR with the Tribe within a reasonable time after execution of this Contract and **before** the commencement of work by the CONTRACTOR. Failure to provide proof of insurance prior to commencement of work shall result in a Stop Work order by the CO.

15.2 Builder's Risk Insurance:

Builder's Risk Insurance is not required for work on structures currently insured by the Tribe. However, CONTRACTOR further agrees to purchase and maintain in full force and effect during the entire period of construction

a policy of Builder's Risk Insurance for the benefit of the Tribe in the amount equal to the cost of the project which provides insurance coverage for the Tribe against any claim or lawsuit against the Tribe for bodily injury, illness or death, or for property damage, including loss of use, or any other damage, which is caused in whole or in part by CONTRACTOR's negligent act or omission or that of a subcontractor.

16.0 Performance/Payment Bond or Increased Retainage (select one)

16.1 If the Contract Price set out in §2.0 of this written agreement equals or exceeds \$10,000.00, Contractor shall:

- 16.1.1 Provide a performance and payment bond for the full Contract price, and any increase in that price authorized by a Change Order, guaranteeing the faithful performance of this Contract. In this case, 10% of the contract price shall be retained and released to the Contractor only upon completion of this contract. OR
- 16.1.2 Contractor shall agree that the total amount retained from the Contract Price shall be 25%, which shall be released to the Contractor only upon completion of this contract. If the Performance Bond option is chosen, the bond shall be provided before the performance of any work on this contract.

17.0 Correcting Work

When it appears to the COR 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 will correct any defects caused by faulty materials, equipment, or workmanship in work supervised by him or by at any work does not conform to the provisions of the contract documents, he or she shall make necessary corrections so that such work will so conform, and in addition will correct any defects caused by faulty materials, equipment, or workmanship in work supervised by him or by a subcontractor, appearing within One (1) Year from the date of issuance of a certificate of substantial completion by the Contract Officer, 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.

18.0 Possession upon Substantial Completion

The Tribe reserves the right to take over and utilize areas of the work site in which CONTRACTOR's work has been substantially completed, although other portions of the contracted work remain to be finished. In such an instance, all CONTRACTOR's obligations under this Contract shall remain in force and CONTRACTOR will remain responsible for the entire project covered by this Contract until the Contract Officer has issued a certificate of substantial completion. Should the Tribe take possession of a portion of the Project which is

substantially completed prior to completion of the Project, CONTRACTOR shall be relieved of liability for liquidated damages for the portion of the Project occupied by the Tribe pursuant to this paragraph.

19.0 Jurisdiction

The Tribe and CONTRACTOR agree that sole and exclusive jurisdiction over disputes arising from this Contract shall be in the Tribal Courts of the Kootenai Tribe.

20.0 Reporting

CONTRACTOR shall report to the COR or as requested by the COR. Reports may be made in writing, or by fax, teleconference, or E-mail, as directed by the COR.

21.0 Independent Contractor

It is understood that the CONTRACTOR is operating as an independent contractor, and as such shall comply with all applicable laws and regulations and shall pay all applicable taxes and other assessments and hold the Tribe harmless from the consequences of any act or omission of whatever kind or nature of CONTRACTOR or its employees or agents of whatever kind. CONTRACTOR shall not have any right as an employee of the Tribe, and no employee-employer relationship is established by this Contract. Further, the CONTRACTOR is responsible for reporting this income to the applicable federal and/or state agencies. The CONTRACTOR is responsible for all taxes associated with this income.

22.0 Proprietary Rights

CONTRACTOR agrees that all proprietary rights, including patents and copyrights, contracted for or otherwise created for or on behalf of the Tribe shall be owned by the Kootenai Tribe of Idaho.

23.0 Records

CONTRACTOR will maintain adequate financial records, in accordance with generally accepted accounting practices, such that the CONTRACTOR can clearly and easily identify all claimed costs and expenses and the relatedness of those costs and expenses to this Contract.

24.0 Embezzlement

The CONTRACTOR agrees to insert this clause in all subcontracts:
Any officer, director, agent, employee or other person connected in any capacity with this Contract or any subcontract hereunder who embezzles, willfully misapplies, steals or obtains by fraud any of the money, funds, assets or property provided through this Contract may be subject to federal and tribal criminal prosecution and may be fined up to \$10,000 or imprisoned for up to two years, or both if convicted.

25.0 Certification of Non-Segregated Facilities

By signing this Contract, the CONTRACTOR certifies that it does not maintain or provide for its employees any segregated facilities at any of CONTRACTOR’s establishments, and that CONTRACTOR’s employees are not permitted to perform their services at any location, under this Contract, where segregated facilities are maintained.

The CONTRACTOR agrees that failure to abide this certification is a breach of this Contract.

26.0 Warranty of Special Expertise

The CONTRACTOR warrants that he or she has the educational credentials, expertise and training required to accomplish the purposes of this Contract.

27.0 Compliance with Applicable Laws

By acceptance of this Contract, the CONTRACTOR agrees that it will comply with this and all other applicable tribal, state, and federal laws.

IN WITNESS WHEREOF, the parties have executed this Contract at Bonners Ferry, Idaho, on the date herein indicated.

DATE

AUTHORIZED REPRESENTATIVE
KOOTENAI TRIBE OF IDAHO

DATE

AUTHORIZED COMPANY RESPRSENTATIVE

Contract Number: _____

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**SECTION 00510
NOTICE OF AWARD**

To: _____

Project Description: KOOTENAI "COMMUNITY WATER MAIN LOOP CONSTRUCTION
SANITATION FACILITIES", IHS Project PO-21-N04

The TRIBE has considered the BID submitted by you for the above-described WORK in response to its Advertisement for Bids dated _____, and Information for Bidders.

You are hereby notified that your BID has been accepted for items in the amount of \$_____.

You are required by the Information for Bidders to execute the Agreement and furnish the required CONTRACTOR'S Performance BOND, Payment BOND, and certificates of insurance within ten (10) calendar days from the date of this Notice to you.

If you fail to execute said Agreement and to furnish said BONDS within ten (10) days from the date of this Notice, said TRIBE will be entitled to consider all your right arising out of the TRIBE'S acceptance of your BID as abandoned and as a forfeiture of your BID BOND. The TRIBE will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this NOTICE OF AWARD to the TRIBE.

Dated this _____ day of _____.

TRIBE
By _____
Title _____

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD is hereby acknowledged

by _____
this the _____ day of _____
By _____
Title _____

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**SECTION 00550
NOTICE TO PROCEED**

To: _____

Date: _____

Project Description: KOOTENAI "COMMUNITY WATER MAIN LOOP CONSTRUCTION SANITATION FACILITIES", IHS Project PO-21-N04

You are hereby notified to commence WORK in accordance with the Agreement dated _____, 20_____, on or before _____, 20_____, and you are to complete the WORK within **one hundred and twenty (120)** consecutive calendar days thereafter. The date of completion of all WORK is therefore _____, 20_____. You will be required to mobilize within 10 days from the commencement date given above.

You are required to return an acknowledged copy of this NOTICE OF AWARD to the TRIBE.

Dated this _____ day of _____, 2_____.

TRIBE
By _____
Title _____

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD is hereby acknowledged by _____
this the _____ day of _____, 2_____
By _____
Title _____

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**SECTION 00610
BID BOND**

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned,
_____ as Principal, and
_____ as Surety, are hereby held and firmly
bound unto _____ as TRIBE in the
penal sum of \$_____ for the payment of which, well and truly to
be made, we hereby jointly and severally bind ourselves, successors and assigns.
Signed this _____ day of _____ 2_____.

The Condition of the above obligation is such that whereas the Principal has
submitted to the Kootenai Tribe a certain BID, attached hereto and hereby made a
part hereof to enter into a contract in writing, for the

NOW, THEREFORE,

- (a) If said BID shall be rejected, or
- (b) If said BID shall be accepted and the Principal shall execute and deliver a contract in the Form of Contract attached hereto (properly completed in accordance with said BID) and shall furnish a BOND for his faithful performance of said contract and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said BID, then this obligation, shall be void, otherwise the same shall remain in force and effect: it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its BOND shall be in no way impaired or affected by any extension of the time with which the TRIBE may accept such BID: and said Surety does hereby waive notice of any such extension.

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

Principal

Surety

By: _____

IMPORTANT – Surety companies executing BONDS must appear on the Treasury Department’s most current list (Circular 570 as amended) and be authorized to transact business in the state where the PROJECT is located.

**SECTION 00620
PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS: THAT

Name of Contractor

Address of Contractor

a _____ hereinafter called Principal.
Corporation, Partnership or Individual

and _____

Name of Surety

Address of Surety

Hereinafter called Surety, are held and firmly bound unto _____

Name of TRIBE

Address of TRIBE

Hereinafter called TRIBE, in the penal sum of _____ Dollars, \$ (_____)

In lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the TRIBE, dated the ____ day of __, 2____, a copy of which is hereto attached and made a part hereof for the construction of:

NOW, THEREFORE, if the Principal shall promptly make payment to all person, firms, SUBCONTRACTORS, and corporations furnishing materials for or performing labor in the prosecution of the WORK provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such WORK, and all insurance premiums on said WORK, and for all labor, performed in such WORK whether by SUBCONTRACTOR or otherwise, then this obligation shall be void: otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the WORK to be performed hereunder or the SPECIFICATIONS accompanying the same shall in any wise affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or the SPECIFICATIONS.

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

IN WITNESS WHEREOF, this instrument is executed in _____ counterparts, each
Number
one of which shall be deemed an original, this the _____ day of _____, 20____

ATTEST: _____
Principal

Principal Secretary

(SEAL)

By _____ (s)

Address

Witness as to Principal

Address

Surety

ATTEST:

Attorney-in-Fact

Witness as to Surety Address

Address

Address

NOTE: Date of BOND must not be prior to date of Contract.
If CONTRACTOR is Partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the PROJECT is located.

**SECTION 00630
PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS: THAT

Name of Contractor

Address of Contractor

a _____ hereinafter called Principal.
Corporation, Partnership or Individual

and _____
Name of Surety

Address of Surety

Hereinafter called Surety, are held and firmly bound unto _____

Name of TRIBE

Address of TRIBE

Hereinafter called TRIBE, in the penal sum of _____ Dollars, \$ (_____)

In lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the TRIBE, dated the ____ day of __, 2____, a copy of which is hereto attached and made a part hereof for the construction of:

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof, which may be granted by the TRIBE, with or without notice to the Surety, and during the one year guaranty period, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the TRIBE, from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the TRIBE all outlay and expense which the TRIBE may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to WORK to be performed hereunder or the SPECIFICATIONS accompanying the same shall in any wise affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

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

IN WITNESS WHEREOF, this instrument is executed in _____ counterparts, each one of which shall be deemed an original, this the _____ day of _____, 20____

ATTEST:

Principal

Principal Secretary

(SEAL)

By _____(s)

Address

Witness as to Principal

Address

Surety

ATTEST:

Attorney-in-Fact

Witness as to Surety Address

Address

Address

NOTE: Date of BOND must not be prior to date of Contract.
IF CONTRACTOR is Partnership, all partners should execute BOND.
IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the PROJECT is located.

**SECTION 00700
GENERAL CONDITIONS**

01. Definitions
02. Additional Instructions and Detail Drawings
03. Reports and Records
04. Drawings and Specifications
05. Site Investigation and Conditions Affecting the Work
06. Shop Drawings
07. Materials, Services and Facilities
08. Substitutions
09. Patents
10. Surveys, Permits, Regulations
11. Laws and Regulations Affecting Work
12. Taxes
13. Protection of Work, Property, Persons
14. Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements
15. Operations and Storage Areas
16. Insurance
17. Indemnification
18. Contract Security
19. Accident Prevention and Safety Program
20. Temporary Sanitary Facilities
21. Supervision by Contractor
22. Subcontracting
23. Separate Contracts
24. Time for Completion and Liquidated Damages
25. Progress Schedules and Requirements for Compliance
26. Land and Right-of-Way
27. Suspension of Work, Termination and Delay
28. Inspection and Testing
29. Correction of Work
30. Changes in the Work
31. Changes in the Contract Price
32. Differing Site Conditions
33. Use and Possession Prior to Completion
34. Cleanup and Finish Grading
35. Measurement and Payment
36. Variation in Estimated Quantities
37. Payments to Contractor
38. Assignments
39. Guaranty
40. Acceptance of Final Payment as release

41. Engineer's Role and Authority
42. Resolution of Disputes
43. Equal Employment Opportunity
44. Clean Air and Water
45. Indian Health Service

1. DEFINITIONS

- 1.1 Wherever used in the CONTRACT DOCUMENTS, the following terms shall have the meanings indicated which shall be applicable to both the singular and plural thereof:
- 1.2 ADDENDA -Written or graphic instruments issued prior to the execution of the Agreement which modify or interpret the CONTRACT DOCUMENTS, DRAWINGS and SPECIFICATIONS, by additions, deletions, clarifications or corrections.
- 1.3 BID -The offer or proposal of the BIDDER submitted on the prescribed form setting forth the prices for the WORK to be performed.
- 1.4 BIDDER -Any person, firm or corporation submitting a BID for the WORK.
- 1.5 BONDS -Bid, Performance, and Payment Bonds and other instruments of security, furnished by the CONTRACTOR and his surety in accordance with the CONTRACT DOCUMENTS.
- 1.6 CHANGE ORDER -A written order to the CONTRACTOR authorizing an addition, deletion or revision in the WORK within the general scope of the CONTRACT DOCUMENTS, or authorizing an adjustment in the CONTRACT PRICE or CONTRACT TIME.
- 1.7 CONTRACT DOCUMENTS -The contract, including Advertisement For Bids, Information For Bidders, Bid, Bid Bond, Agreement, General Provisions, Labor Provisions, Special Provisions, Payment Bond, Performance Bond, NOTICE OF AWARD, NOTICE TO PROCEED, CHANGE ORDER, DRAWINGS, Technical Provisions, Submittal Requirements, and ADDENDA.
- 1.8 CONTRACT PRICE -The total monies payable to the CONTRACTOR under the terms and conditions of the CONTRACT DOCUMENTS.
- 1.9 CONTRACT TIME -The number of calendar days stated in the CONTRACT DOCUMENTS for the completion of the WORK.

- 1.10 CONTRACTING OFFICER -The person with the OWNER organization who is authorized to administer the contract for the OWNER.
- 1.11 CONTRACTING OFFICER'S REPRESENTATIVE - The representative of the CONTRACTING OFFICER authorized to deal with the CONTRACTOR at the site to administer the technical aspects of the CONTRACT, and to assure compliance with the drawings and specifications.
- 1.12 CONTRACTOR - The person, firm or corporation with whom the OWNER has executed the Agreement.
- 1.13 DRAWINGS - The part of the CONTRACT DOCUMENTS, which show the characteristics and scope of the WORK to be performed, and which have been prepared or approved by the ENGINEER.
- 1.14 ENGINEER - The person, firm or corporation named as such in the CONTRACT DOCUMENTS.
- 1.15 FIELD ORDER- A written order effecting a change in the WORK not involving an adjustment in the CONTRACT PRICE or an extension of the CONTRACT TIME, issued by the ENGINEER to the CONTRACTOR during construction.
- 1.16 INDIAN HEALTH SERVICE (IHS) - Federal agency which is providing funding and/or technical assistance to the Owner on this project.
- 1.17 NOTICE OF AWARD -The written notice of the acceptance of the Bid from the OWNER to the successful BIDDER.
- 1.18 NOTICE TO PROCEED -Written communication issued by the OWNER to the CONTRACTOR authorizing him to proceed with the WORK and establishing the date of commencement of the WORK.
- 1.19 OWNER -A public or quasi-public body or authority, tribe, corporation, association, partnership, or individual for whom the WORK is to be performed.
- 1.20 PROJECT -The undertaking to be performed as provided in the CONTRACT DOCUMENTS.
- 1.21 RESIDENT PROJECT REPRESENTATIVE -The authorized representative of the OWNER who is assigned to the PROJECT site or any part thereof.

- 1.22 SHOP DRAWINGS -All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the CONTRACTOR, a SUBCONTRACTOR, manufacturer, SUPPLIER or distributor, which illustrate how specific portions of the WORK shall be fabricated or installed.
- 1.23 SPECIFICATIONS -A part of the CONTRACT DOCUMENTS consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship.
- 1.24 SUBCONTRACTOR -An individual, firm or corporation having a direct contract with the CONTRACTOR or with any other SUBCONTRACTOR for the performance of a part of the WORK at the site.
- 1.25 SUBSTANTIAL COMPLETION -That date as certified by the ENGINEER when the construction of the PROJECT is sufficiently completed in accordance with the CONTRACT DOCUMENTS, so that the PROJECT or specified part can be utilized for the purposes for which it is intended.
- 1.26 SPECIAL PROVISIONS -Modifications and additions to General Provisions which may be required by a Federal agency for participation in the PROJECT, or such requirements that may be imposed by applicable state or local laws, or the OWNER'S contracting practices.
- 1.27 SUPPLIER - ANY person or organization who supplies materials or equipment for the WORK, including that fabricated to a special design, but who does not perform labor at the site.
- 1.28 TRIBE -The governing body of the INDIAN TRIBE which has jurisdiction on the INDIAN RESERVATION on or near which the WORK will be performed.
- 1.29 WORK -All labor necessary to produce the construction required by the CONTRACT DOCUMENTS and all materials and equipment incorporated or to be incorporated in the PROJECT.
- 1.30 WRITTEN NOTICE -Any notice to any party of the Agreement relative to any part of this Agreement in writing and considered delivered and the service thereof completed, when posted by certified or registered mail to the said party at his last given address, or delivered in person to said party or his authorized representative on the WORK.

2. ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS

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

3. REPORTS AND RECORDS

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

4. DRAWINGS AND SPECIFICATIONS

- 4.1 The intent of the DRAWINGS and SPECIFICATIONS is that the CONTRACTOR shall furnish all labor, materials, tools, equipment, and transportation necessary for the proper execution of the WORK in accordance with the CONTRACT DOCUMENTS and all incidental work necessary to complete the PROJECT in an acceptable manner, ready for use, occupancy or operation by the OWNER.
- 4.2 In case of conflict between the DRAWINGS and SPECIFICATIONS, the SPECIFICATIONS shall govern. Figure dimensions on DRAWINGS shall govern over scale dimensions, and detailed DRAWINGS shall govern over general DRAWINGS.
- 4.3 Any discrepancies found between the DRAWINGS and SPECIFICATIONS and site conditions or any inconsistencies or ambiguities in the DRAWINGS or SPECIFICATIONS shall be immediately reported to the ENGINEER, in writing, who shall promptly correct such inconsistencies or ambiguities in writing. WORK done by the CONTRACTOR after his discovery of such discrepancies, inconsistencies or ambiguities shall be done at the CONTRACTOR'S risk.

5. SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

- 5.1 The CONTRACTOR will take steps necessary to ascertain the nature and location of the work, and investigate the general and local conditions

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

- 5.2 The OWNER assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the OWNER. The OWNER does not assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its representatives before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

6. SHOP DRAWINGS

- 6.1 The CONTRACTOR shall provide SHOP DRAWINGS as may be necessary for the prosecution of the WORK as required by the CONTRACT DOCUMENTS. The ENGINEER shall promptly review all SHOP DRAWINGS. The ENGINEER'S approval of any SHOP DRAWING shall not release the CONTRACTOR from responsibility for deviations from the CONTRACT DOCUMENTS. The approval of any SHOP DRAWING which substantially deviates from the requirement of the CONTRACT DOCUMENTS shall be evidenced by a CHANGE ORDER.
- 6.2 When submitted for the ENGINEER'S review, SHOP DRAWINGS shall bear the CONTRACTOR'S certification that he has reviewed, checked and approved the SHOP DRAWINGS and that they are in conformance with the requirements of the CONTRACT DOCUMENTS.
- 6.3 Portions of the WORK requiring a SHOP DRAWING or sample submission shall not begin until the SHOP DRAWING or submission has been approved by the ENGINEER. A copy of each approved SHOP

DRAWING and each approved sample shall be kept in good order by the CONTRACTOR at the site and shall be available to the ENGINEER.

7. MATERIALS, SERVICES AND FACILITIES

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

8. SUBSTITUTIONS

- 8.1 Whenever a material, article or piece of equipment is identified on the drawings or specifications by reference to brand name or catalogue number, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function shall be considered. The CONTRACTOR may recommend the substitution of a material, article, or piece of equipment of equal substance and function for those referred to in the CONTRACT DOCUMENTS by reference to brand name or catalogue number, and if, in the opinion of the ENGINEER, such material, article, or piece of equipment is of equal substance and function to that specified, the ENGINEER may approve its substitution and use by the CONTRACTOR. Any cost differential shall be deductible from the CONTRACT PRICE and the CONTRACT DOCUMENTS shall be

appropriately modified by CHANGE ORDER. The CONTRACTOR warrants that if substitutes are approved, no major changes in the function or general design of the PROJECT will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the CONTRACTOR without a change in the CONTRACT PRICE or CONTRACT TIME.

9. PATENTS

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

10. SURVEYS, PERMITS, AND REGULATIONS

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

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

10.3 Permits and licenses of a temporary nature necessary for the prosecution of the WORK shall be secured and paid for by the CONTRACTOR unless otherwise specified in the CONTRACT DOCUMENTS. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the OWNER, unless otherwise specified. The CONTRACTOR shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the WORK as drawn and specified. If the CONTRACTOR observes that the CONTRACT DOCUMENTS are at variance therewith, he shall

promptly notify the ENGINEER in writing, and any necessary changes shall be adjusted as provided in Section 30 - "CHANGES IN THE WORK".

11. LAWS AND REGULATIONS AFFECTING WORK

11.1 The CONTRACTOR shall at all times observe and comply with Federal, State, City, County and Tribal laws, ordinances and regulations which in any manner affect the conduct of the work; and all such orders and decrees as exist at the present and which may be enacted later by legislative bodies or tribunals having legal jurisdiction or authority over the work. No pleas of misunderstanding or ignorance thereof will be considered. The CONTRACTOR shall be wholly responsible for any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order or decree.

12. TAXES

12.1 The CONTRACTOR will pay all sales, consumer, use and other similar taxes required by the law of the place where the WORK is performed.

13. PROTECTION OF WORK, PROPERTY AND PERSONS

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

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

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

14.2 The CONTRACTOR shall protect from damage all existing improvements and utilities (1) on or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the CONTRACTOR. The existence and location of utilities are not guaranteed by the OWNER and shall be investigated and verified in the field by the CONTRACTOR before commencing construction activities in any particular area. The CONTRACTOR shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the CONTRACTOR fails or refuses to repair the damage promptly, the OWNER may have the necessary work performed and charge the cost to the CONTRACTOR.

15. OPERATIONS AND STORAGE AREAS

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

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

15.3 The CONTRACTOR shall use only established roadways, or use temporary roadways constructed by the CONTRACTOR when and as authorized by the OWNER. In such case, the CONTRACTOR shall minimize disruption and delays to traffic in the affected areas. When materials are transported in prosecuting the work vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the CONTRACTOR shall protect them from damage. The CONTRACTOR shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

16. INSURANCE

- 16.1 The CONTRACTOR shall purchase and maintain such insurance as will protect him from claims set forth below which may arise out of or result from the CONTRACTOR'S execution of the WORK, whether such execution be by himself or by any SUBCONTRACTOR or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:
- 16.1.1 Claims under workmen's compensation, disability benefit and other similar employee benefit acts;
 - 16.1.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of his employees;
 - 16.1.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;
 - 16.1.4 Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the CONTRACTOR or (2) by any other person; and
 - 16.1.5 Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.
- 16.2 Certificates of Insurance acceptable to the OWNER shall be filed with the OWNER prior to commencement of the WORK. These Certificates shall contain a provision that coverages afforded under the Policies will not be cancelled unless at least fifteen (15) days prior WRITTEN NOTICE has been given to the OWNER.
- 16.3 The CONTRACTOR shall procure and maintain, at his own expense, during the CONTRACT TIME, liability insurance as hereinafter specified;
- 16.3.1 CONTRACTOR'S General Public Liability and Property Damage Insurance including vehicle coverage issued to the CONTRACTOR and protecting him from all claims for personal injury, including death, and all claims for destruction of or damage to any property, arising out of or in connection with any operations under the CONTRACT DOCUMENTS, whether such operations be by himself or by any SUBCONTRACTOR under him, or anyone directly or indirectly employed by the CONTRACTOR or by a

SUBCONTRACTOR under him. Insurance shall be written with a limit of liability of not less than \$500,000 for all damages arising out of bodily injury, including death, at any time resulting therefrom, sustained by any one person in any one accident; and a limit of liability of not less than \$1,000,000 aggregate for any such damages sustained by two or more persons in any one accident. Insurance shall be written with a limit of liability of not less than \$200,000 for all property damage sustained by any one person in any one accident; and a limit of liability of not less than \$500,000 aggregate for any such damage sustained by two or more persons in any one accident.

- 16.3.2 The CONTRACTOR shall acquire and maintain, if applicable, Fire and Extended Coverage insurance upon the PROJECT to the full insurable value thereof for the benefit of the OWNER, the CONTRACTOR, and SUBCONTRACTORS as their interest may appear. This provision shall in no way release the CONTRACTOR or CONTRACTOR'S surety from obligations under the CONTRACT DOCUMENTS to fully complete the PROJECT.
- 16.4 The CONTRACTOR shall procure and maintain, at his own expense, during the CONTRACT TIME, in accordance with the provisions of the laws of the state in which the work is performed, Workmen's Compensation Insurance, including occupational disease provisions, for all of his employees at the site of the PROJECT and in case any work is sublet, the CONTRACTOR shall require such SUBCONTRACTOR similarly to provide Workmen's Compensation Insurance, including occupational disease provisions for all of the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. In case any class of employees engaged in hazardous work under this contract at the site of the PROJECT is not protected under Workmen's Compensation statute, the CONTRACTOR shall provide, and shall cause each SUBCONTRACTOR to provide, adequate and suitable insurance for the protection of his employees not otherwise protected.
- 16.5 The CONTRACTOR shall secure, if applicable, "All Risk" type Builder's Risk Insurance for WORK to be performed. Unless specifically authorized by the OWNER the amount of such insurance shall not be less than the CONTRACT PRICE totaled in the BID. The policy shall cover not less than the losses due to fire, explosion, hail, lightning, vandalism, malicious mischief, wind, collapse, riot, aircraft, and smoke during the CONTRACT TIME, and until the WORK is accepted by the OWNER. The policy shall

name as the insured the CONTRACTOR, the ENGINEER, and the OWNER.

17. INDEMNIFICATION

- 17.1 The CONTRACTOR will indemnify and hold harmless the OWNER and the ENGINEER and their agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the WORK, provided that any such claims, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom; and is caused in whole or in part by any negligent or willful act or omission of the CONTRACTOR, and SUBCONTRACTOR, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.
- 17.2 In any and all claims against the OWNER or the ENGINEER or any of their agents or employees, by any employee of the CONTRACTOR, any SUBCONTRACTOR anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or any SUBCONTRACTOR under Workmen's Compensation Acts, disability benefit acts or other employee benefits acts.
- 17.3 The obligation of the CONTRACTOR under this paragraph shall not extend to the liability of the ENGINEER, his agents or employees arising out of the preparation or approval of maps, DRAWINGS, opinions, reports, surveys, CHANGE ORDERS, designs or SPECIFICATIONS.

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

- 18.1 The CONTRACTOR shall submit with the BID OFFER with a 5% Bid Bond.
- 18.2 The CONTRACTOR shall within ten (10) days after the receipt of the NOTICE OF AWARD furnish the OWNER with a Performance Bond and a Payment Bond in penal sums equal to the amount of the CONTRACT PRICE, conditioned upon the performance by the CONTRACTOR of all undertakings, covenants, terms, conditions and agreements of the CONTRACT DOCUMENTS, and upon the prompt payment by the CONTRACTOR to all persons supplying labor and materials in the prosecution of the WORK provided by the CONTRACT DOCUMENTS.

Such BONDS shall be executed by the CONTRACTOR and a corporate bonding company licensed to transact such business in the state in which the WORK is to be performed. The expense of these BONDS shall be borne by the CONTRACTOR. If at any time a surety on any such BOND is declared as bankrupt or loses its right to do business in the state in which the WORK is to be performed, the CONTRACTOR shall within ten (10) days after notice from the OWNER to do so, substitute an acceptable BOND (or BONDS) in such form and sum and signed by such other surety or sureties as may be satisfactory to the OWNER. The premiums on such BOND shall be paid by the CONTRACTOR. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable BOND to the OWNER.

19. ACCIDENT PREVENTION AND SAFETY PROGRAM

- 19.1 The CONTRACTOR shall be solely and completely responsible for conditions of the jobsite, including safety of all persons, including employees, and property during performance of the work. This requirement shall apply continuously and not be limited to normal working hours. Safety provisions shall conform to U.S. Department of Labor (OSHA), and all other applicable Federal, State, County, and local laws, ordinances, codes, the requirements set forth below, and any regulations that may be detailed in other parts of these documents. Where any of these are in conflict, the more stringent requirement shall be followed. The CONTRACTOR's failure to thoroughly familiarize himself with the aforementioned safety provisions shall not relieve him from compliance with the obligations and penalties set forth herein.
- 19.2 The OWNER or his Representative will notify the CONTRACTOR of any observed non-compliance with the foregoing provisions and the action to be taken. The CONTRACTOR shall, upon receipt of such notice, immediately take corrective action. If the CONTRACTOR fails or refuses to comply promptly, the OWNER may issue an order stopping all or part of the WORK until satisfactory corrective action has been taken. No part of the time lost due to any such stop orders shall be made the subject of claims for extension of time, or for excess costs or damages by the CONTRACTOR.
- 19.3 The CONTRACTOR shall develop and maintain for the duration of this Contract, a safety program that will effectively incorporate and implement all required safety provisions. The CONTRACTOR shall appoint an employee who is qualified and authorized to supervise and enforce compliance with the safety program.

- 19.4 The CONTRACTOR as a part of his safety program, shall maintain at his office or other well-known place at the jobsite, safety equipment applicable to the WORK as prescribed by the aforementioned authorities, all articles necessary for giving first aid to the injured, and shall establish the procedure for the immediate removal to a hospital or a doctor's care of persons who may be injured on the jobsite.
- 19.5 If death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger to both the ENGINEER and OWNER. In addition, the CONTRACTOR must promptly report in writing to appropriate authorities and the OWNER'S representative all accidents whatsoever arising out of, or in connection with, the performance of the WORK whether on, or adjacent to, the site, giving full details and statements of witnesses. If a claim is made by anyone against the CONTRACTOR or any subcontractor on account of any accident, the CONTRACTOR shall promptly report the facts in writing to the OWNER giving full details of the claim.
- 19.6 The CONTRACTOR shall provide, erect, and maintain all necessary barricades, suitable and sufficient lights, danger signals, signs and other traffic control devices, and shall take all necessary precautions for the protection of the WORK and safety of the public. Highways closed to traffic shall be protected by effective barricades, and obstructions shall be illuminated during the hours of darkness. Suitable warning signs shall be provided to control and direct traffic properly. The CONTRACTOR shall erect warning signs in advance of any place on the project where operations may interfere with the use of the road by traffic, and at all intermediate points where the new work crosses or coincides with an existing road.
- 19.7 Compliance with the requirements of this provision by subcontractors will be the responsibility of the CONTRACTOR.

20. TEMPORARY SANITARY FACILITIES

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

21. SUPERVISION BY CONTRACTOR

- 21.1 The CONTRACTOR will supervise and direct the WORK. He will be solely

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

22. SUBCONTRACTING

- 22.1 The CONTRACTOR may utilize the services of specialty SUBCONTRACTORS on those parts of the WORK which, under normal contracting practices, are performed by specialty SUBCONTRACTORS.
- 22.2 The CONTRACTOR must perform at least thirty three (33%) of the total amount of the WORK using the CONTRACTOR'S own work force and equipment. The CONTRACTOR shall not award WORK to SUBCONTRACTOR(s), in excess of sixty seven (67%) percent of the CONTRACT PRICE, without prior written approval of the OWNER.
- 22.3 The CONTRACTOR shall be fully responsible to the OWNER for the acts and omissions of his SUBCONTRACTORS, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.
- 22.4 The CONTRACTOR shall cause appropriate provisions to be inserted in all subcontracts relative to the WORK to bind SUBCONTRACTORS to the CONTRACTOR by the terms of the CONTRACT DOCUMENT insofar as applicable to the WORK of SUBCONTRACTORS and to give the CONTRACTOR the same power as regards terminating any subcontract that the OWNER may exercise over the CONTRACTOR under any provision of the CONTRACT DOCUMENTS.
- 22.5 Nothing contained in this CONTRACT shall create any contractual relation between any SUBCONTRACTOR and the OWNER

23. SEPARATE CONTRACTS

- 23.1 The OWNER reserves the right to let other contracts in connection with this PROJECT. The CONTRACTOR shall afford other CONTRACTORS reasonable opportunity for the introduction and storage of their materials

and the execution of their WORK, and shall properly connect and coordinate his WORK with theirs. If the proper execution or results of any part of the CONTRACTOR'S WORK depends upon the WORK of any other CONTRACTOR, the CONTRACTOR shall inspect and promptly report to the ENGINEER any defects in such WORK that render it unsuitable for such proper execution and results.

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

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

24. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

24.1 The TIME FOR COMPLETION of the WORK is an essential condition of the CONTRACT DOCUMENTS. The TIME FOR COMPLETION appears in the Special Provisions. The WORK embraced shall be commenced on a date specified in the NOTICE TO PROCEED.

24.2 The CONTRACTOR will proceed with the WORK at such rate of progress to insure full completion within the TIME FOR COMPLETION. It is expressly understood and agreed, by and between the CONTRACTOR and the OWNER, that TIME FOR COMPLETION of the WORK under the CONTRACT is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the WORK.

24.3 If the CONTRACTOR shall fail to complete the WORK within the TIME FOR COMPLETION, or extension of time granted by the OWNER, then the CONTRACTOR will pay to the OWNER the amount for liquidated damages as specified in the Special Provisions for each calendar day that the work shall be incomplete after the date established by the TIME FOR

COMPLETION.

24.4 The CONTRACTOR shall not be charged with liquidated damages or any excess cost when the delay in completion of the WORK is due to the following, and the CONTRACTOR has promptly given WRITTEN NOTICE of such delay to the OWNER or ENGINEER.

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

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

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

25. PROGRESS SCHEDULES AND REQUIREMENTS FOR COMPLIANCE

25.1 The CONTRACTOR shall within 10 days of receipt of NOTICE TO PROCEED, submit to the OWNER through the ENGINEER for approval a practicable schedule, showing the order in which the CONTRACTOR proposes to carry on the WORK, the dates on which he will start the major items of work (including procurement of materials, plant and equipment) and the contemplated dates for completing the same. The schedule shall be prepared on the form entitled "Contract Progress Schedule," a copy of which is included in the contract.

25.2 If, in the opinion of the OWNER, the CONTRACTOR falls behind the progress schedule, the CONTRACTOR shall take such steps as may be necessary to assure performance within the allowable TIME FOR COMPLETION. The CONTRACTOR may propose for approval by the OWNER measures such as increasing number of workers, number of shifts, or overtime operations, days of work, or the amount of construction plant, or all of them. The OWNER may require the CONTRACTOR to submit for approval such supplementary schedule or schedules necessary to demonstrate that the WORK shall be performed within the allowable TIME FOR COMPLETION, all without additional cost to the OWNER.

25.3 Failure of the CONTRACTOR to comply with the requirements of this provision shall be grounds for determination that the CONTRACTOR is not prosecuting the work with such diligence as will insure completion within the specified TIME FOR COMPLETION. Upon such determination the OWNER may terminate the CONTRACTOR'S right to proceed with the WORK, or any separable part thereof in accordance with Section 27 entitled "Suspension of Work, Termination and Delay".

26. LAND AND RIGHTS-OF- WAY

26.1 Prior to issuance of NOTICE TO PROCEED, the OWNER shall obtain all land and rights-of-way necessary for carrying out and for the completion of the WORK to be performed pursuant to the CONTRACT DOCUMENTS, unless otherwise mutually agreed.

26.2 The OWNER shall provide to the CONTRACTOR information which delineates and describes the lands owned and rights-of-way acquired.

26.3 The CONTRACTOR shall provide at his own expense and without liability to the OWNER any additional land and access thereto that the CONTRACTOR may desire for temporary construction facilities, or for storage of materials.

27. SUSPENSION OF WORK, TERMINATION AND DELAY

27.1 The OWNER may suspend the WORK or any portion thereof for a period of not more than ninety (90) days or such further time as agreed upon by the CONTRACTOR, by WRITTEN NOTICE to the CONTRACTOR and the ENGINEER which notice shall fix the date on which WORK shall be resumed. The CONTRACTOR will resume that WORK on the date so fixed. The CONTRACTOR will be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to any suspension.

27.2 If the CONTRACTOR is adjudged as bankrupt or insolvent, or if he makes a general assignment for the benefit of his creditors or if a trustee or receiver is appointed for the CONTRACTOR or for any of his property, or if he files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or if he repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if he repeatedly fails to make prompt payments to SUBCONTRACTORS or for labor, materials or equipment or if he disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the WORK, or if he disregards the authority of the ENGINEER, or if he otherwise

violates any provision of the CONTRACT DOCUMENTS then the OWNER may, without prejudice to any other right or remedy and after giving the CONTRACTOR and his surety a minimum of ten (10) days from delivery of a WRITTEN NOTICE, terminate the services of the CONTRACTOR and take possession of the PROJECT and of all materials, equipment, tools, construction equipment and machinery thereon owned by the CONTRACTOR, and finish the WORK by whatever method he may deem expedient. In such case the CONTRACTOR shall not be entitled to receive any further payment until the WORK is finished. If the unpaid balance of the CONTRACT PRICE exceeds the direct and indirect costs of completing the PROJECT, including compensation for additional professional services, such excess SHALL BE PAID TO THE CONTRACTOR. If such costs exceed such unpaid balance, the CONTRACTOR will pay the difference to the OWNER. Such costs incurred by the OWNER will be determined by the ENGINEER and incorporated in a CHANGE ORDER.

- 27.3 Where the CONTRACTOR'S services have been so terminated by the OWNER, said termination shall not affect any right of the OWNER against the CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of monies by the OWNER due the CONTRACTOR will not release the CONTRACTOR from compliance with the CONTRACT DOCUMENTS.
- 27.4 After ten (10) days from delivery of a WRITTEN NOTICE to the CONTRACTOR and the ENGINEER, the OWNER may without cause and without prejudice to any other right or remedy, elect to abandon the PROJECT and terminate the CONTRACT. In such case, the CONTRACTOR shall be paid for all WORK executed and any expense sustained plus reasonable profit. If this contract is terminated by the OWNER without cause, the rights, duties, and obligations of the parties, including compensation to the CONTRACTOR, shall be in accordance with Part 49 of the Federal Acquisition Regulation in effect on the date of this contract.
- 27.5 If, through no act or fault of the CONTRACTOR, the WORK is suspended for a period of more than ninety (90) days by the OWNER or under an order of court or other public authority, or the ENGINEER fails to act on any request for payment within thirty (30) days after it is submitted, or the OWNER fails to pay the CONTRACTOR substantially the sum approved by the ENGINEER or awarded by arbitrators within thirty (30) days of its approval and presentation, then the CONTRACTOR may, after ten (10) days from delivery of a WRITTEN NOTICE to the OWNER and the ENGINEER, terminate the CONTRACT and recover from the OWNER

payment for all WORK executed and all expenses sustained. In addition and in lieu of terminating the CONTRACT, if the ENGINEER has failed to act on a request for payment or if the OWNER has failed to make any payment as aforesaid, the CONTRACTOR may upon ten (10) days WRITTEN NOTICE to the OWNER and the ENGINEER stop the WORK until he has been paid all amounts then due, in which event and upon resumption of the WORK, CHANGE ORDERS shall be issued for adjusting the CONTRACT PRICE or extending the CONTRACT TIME or both to compensate for the costs and delays attributed to the stoppage of the WORK.

- 27.6 If the performance of all or any portion of the WORK is suspended, delayed, or interrupted as a result of a failure of the OWNER or ENGINEER to act within the time specified in the CONTRACT DOCUMENTS, or if no time is specified, within a reasonable time, an adjustment in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, shall be made by CHANGE ORDER to compensate the CONTRACTOR for the costs and delays necessarily caused by the failure of the OWNER or ENGINEER.

28. INSPECTION AND TESTING

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

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

29. CORRECTION OF WORK

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

30. CHANGES IN THE WORK

- 30.1 The OWNER may at any time, as the need arises, order changes within the scope of the WORK without invalidating the Agreement. If such changes increase or decrease the amount due under the CONTRACT DOCUMENTS, or in the time required for performance of the WORK, an equitable adjustment shall be authorized by CHANGE ORDER.
- 30.2 The ENGINEER, also, may at any time, by issuing a FIELD ORDER, make changes in the details of the WORK. The CONTRACTOR shall proceed with the performance of any changes in the WORK so ordered by the ENGINEER unless the CONTRACTOR believes that such FIELD ORDER entitles him to a change in CONTRACT PRICE or TIME, or both, in which event he shall give the ENGINEER WRITTEN NOTICE thereof within seven (7) days after the receipt of the ordered change. Thereafter the CONTRACTOR shall document the basis for the change in CONTRACT PRICE or TIME within thirty (30) days. The CONTRACTOR shall not execute such changes pending the receipt of an executed CHANGE ORDER or further instruction from the OWNER.

31. CHANGES IN CONTRACT PRICE

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

32. DIFFERING SITE CONDITIONS

- 32.1 The CONTRACTOR shall promptly, and before such conditions are disturbed, except in the event of an emergency, notify the OWNER by WRITTEN NOTICE of:
- 32.1.1 Subsurface or latent physical conditions at the site differing materially from those indicated in the CONTRACT DOCUMENTS; or

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

32.2 The OWNER shall promptly investigate the conditions, and if he finds that such conditions do so materially differ and cause an increase or decrease in the cost of, or in the time required for, performance of the WORK, an equitable adjustment shall be made and the CONTRACT DOCUMENTS shall be modified by a CHANGE ORDER. Any claim of the CONTRACTOR for adjustment hereunder shall not be allowed unless he has given the required WRITTEN NOTICE; provided that the OWNER may, if he determines the facts so justify, consider and adjust any such claims asserted before the date of final payment.

33. USE AND POSSESSION PRIOR TO COMPLETION

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

33.2 While the OWNER has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting directly from the OWNER'S possession or use. If prior possession or use by the OWNER delays the progress of the work or causes additional expense to the Contractor, an adjustment shall be made in the contract price, the time of completion or both, and the contract shall be modified in writing accordingly.

34. CLEANUP AND FINISH GRADING

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

construction and to provide drainage away from excavated areas and installed facilities.

35. MEASUREMENT AND PAYMENT

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

36. VARIATION IN ESTIMATED QUANTITIES

36.1 If the quantity of a unit-priced item in this CONTRACT is an estimated quantity and the actual quantity of the unit-priced item varies more than 25 percent above or below the estimated quantity, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 125 percent or below 75 percent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the CONTRACTOR may request, in writing, an extension of time, to be received by the OWNER within 10 days from the beginning of the delay, or within such further period as may be granted by the OWNER before the date of final settlement of the CONTRACT. Upon the receipt of a written request for an extension, the OWNER shall ascertain the facts and make any appropriate adjustment for extending the completion date.

37. PAYMENTS TO CONTRACTOR

37.1 The CONTRACTOR will submit to the ENGINEER a partial payment estimate filled out and signed by the CONTRACTOR covering the WORK performed during the period covered by the partial payment estimate and supported by such data as the ENGINEER may reasonably require. The request for payment may also include an allowance for the cost of such major materials and equipment which are suitably stored either at or near the site. If payment is requested on the basis of materials and equipment not incorporated in the WORK but delivered and suitably stored at or near

the site, the partial payment estimate shall also be accompanied by such supporting data, satisfactory to the OWNER, as will establish the OWNER'S title to the material and equipment and protect his interest therein, including applicable insurance. The ENGINEER will, within ten (10) days after receipt of each partial payment estimate, either indicate in writing his approval of payment and present the partial payment estimate to the OWNER, or return the partial payment estimate to the CONTRACTOR indicating in writing his reasons for refusing to approve payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the partial payment estimate. The OWNER will, within twenty (20) days of presentation to him of an approved partial payment estimate, pay the CONTRACTOR a progress payment on the basis of the approved partial payment estimate. The OWNER shall retain ten (10) percent of the amount of each payment until final completion and acceptance of all work covered by the CONTRACT DOCUMENTS. The OWNER at any time, however, after fifty (50) percent of the WORK has been completed, if he finds that satisfactory progress is being made, shall reduce retainage to five (5%) percent on the current and remaining estimates. When the WORK is substantially complete (operational or beneficial occupancy), the retained amount may be further reduced below five (5) percent to only that amount necessary to assure completion. On completion and acceptance of a part of the WORK on which the price is stated separately in the CONTRACT DOCUMENTS, payment may be made in full, including retained percentages less authorized deductions.

- 37.2 Upon completion and acceptance of the WORK, the ENGINEER shall issue a certificate attached to the final payment request that the WORK has been accepted by him under the conditions of the CONTRACT DOCUMENTS. The entire balance found to be due the CONTRACTOR including the retained percentages, but except such sums as may be lawfully retained by the OWNER, shall be paid to the CONTRACTOR within thirty (30) days of completion and acceptance of the WORK
- 37.3 The CONTRACTOR will indemnify and save the OWNER or the OWNER'S agents harmless from all claims growing out of the lawful demands of SUBCONTRACTORS, laborers, workmen, mechanics, material men, and furnishers of machinery and parts thereof, equipment, tools, and all supplies, incurred in the furtherance of the performance of the WORK. The CONTRACTOR shall at the OWNER'S request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If the CONTRACTOR fails to do so the OWNER may, after having notified the CONTRACTOR, either pay unpaid bills or withhold from the CONTRACTOR'S unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful

claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the CONTRACTOR shall be resumed, in accordance with the terms of the CONTRACT DOCUMENTS, but in no event shall the provisions of this sentence be construed to impose any obligations upon the OWNER to either the CONTRACTOR, his Surety, or any third party. In paying any unpaid bills of the CONTRACTOR, any payment so made by the OWNER shall be considered as a payment made under the CONTRACT DOCUMENTS by the OWNER to the CONTRACTOR and the OWNER shall not be liable to the CONTRACTOR for any such payments made in good faith.

- 37.4 If the OWNER fails to make payment thirty (30) days after approval by the ENGINEER, in addition to other remedies available to the CONTRACTOR, there shall be added to each such payment interest at the maximum legal rate commencing on the first day after said payment is due and continuing until the payment is received by the CONTRACTOR.

38. ASSIGNMENTS

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

39. GUARANTY

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

40. ACCEPTANCE OF FINAL PAYMENT AS RELEASE

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

41. ENGINEER'S ROLE AND AUTHORITY

41.1 The ENGINEER shall act as the OWNER'S representative during the construction period. He shall decide questions which may arise as to quality and acceptability of materials furnished and WORK performed. He shall interpret the intent of the CONTRACT DOCUMENTS in a fair and unbiased manner. The ENGINEER will make visits to the site and determine if the WORK is proceeding in accordance with the CONTRACT DOCUMENTS.

41.2 The CONTRACTOR will be held strictly to the intent of the CONTRACT DOCUMENTS in regard to the quality of materials, workmanship and execution of the WORK. Inspections may be made at the factory or fabrication plant of the source of material supply.

41.3 The ENGINEER will not be responsible for the construction means, controls, techniques, sequences, procedures, or construction safety.

41.4 The ENGINEER does not have authority to obligate the OWNER to changes in the terms of the CONTRACT without the approval of the OWNER.

42. RESOLUTION OF DISPUTES

42.1 All claims, disputes and other matters in question arising out of, or relating to, the CONTRACT DOCUMENTS or the breach thereof, except for claims which have been waived by the making and acceptance of final payment as provided by Section 40, if not resolved, submit the dispute to the tribal court.

43. EQUAL EMPLOYMENT OPPORTUNITY

43.1 During the performance of this contract, the CONTRACTOR agrees as follows:

- 43.1.1 The CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
- 43.1.2 The CONTRACTOR shall take affirmative action to ensure the applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- 43.1.3 The CONTRACTOR agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- 43.1.4 The CONTRACTOR shall, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, or national origin.
- 43.1.5 The CONTRACTOR shall send, to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' representative of the CONTRACTOR'S commitment under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- 43.1.5 The CONTRACTOR shall comply with all provisions of Executive Order No. 11246, as amended, and the rules, regulations, and relevant orders of the Secretary of Labor.
- 43.1.6 The CONTRACTOR shall furnish to the OWNER, all information required by Executive Order No. 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. Standard Form 100 (EEO -1), or any successor form, is the prescribed form to be filed within 30 days following the award, unless filed within 12 months

preceding, the date of award.

- 43.1.7 The CONTRACTOR shall permit access to its books, records, and accounts by the OWNER or the Office of Federal Contract Programs (OFCCP) for the purposes of investigation to ascertain compliance with the applicable rules, regulations, and orders.
- 43.1.8 If the OFCCP determines that the CONTRACTOR is not in compliance with this clause or any rules, regulations, and orders of the Secretary of Labor, this contract may be cancelled, terminated, or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the CONTRACTOR as provided in Executive Order No. 11246, as amended, the rules, regulations, or orders of the Secretary of Labor, or as otherwise provided by law.
- 43.1.9 The CONTRACTOR shall include the terms and conditions of this clause in every SUBCONTRACT or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order No. 12246, as amended, so that such provisions will be binding upon each SUBCONTRACTOR or vendor.
- 43.1.10 The CONTRACTOR shall take such action with respect to any SUBCONTRACT or purchase order as the OWNER may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided that if the CONTRACTOR becomes involved in, or is threatened with litigation with a SUBCONTRACTOR or vendor as a result of such direction by the OWNER, the CONTRACTOR may request the OWNER and the United States to enter into such litigation to protect the interests of the United States.
- 43.1.11 Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

44. CLEAN AIR AND WATER

44.1 The CONTRACTOR agrees:

- 44.1.1 To comply with all the requirements of section 114 of the Clean Air Act (42 U.S.C. 7414) and section 308 of the Clean Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Clean Air Act and the Clean Water Act, and all regulations and guidelines issued to implement those acts before the award of this contract
- 44.1.2 That no portion of the WORK required by this prime contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of the facility from the listing.
- 44.1.3 To use best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed.
- 44.1.4 To insert the substance of this clause into any nonexempt SUBCONTRACT, including this subparagraph 44.1.4.

45. INDIAN HEALTH SERVICE

- 45.1 There shall be no contractual relationship either implied or express between the IHS and the CONTRACTOR or any SUBCONTRACTOR at any tier.
- 45.2 IHS representatives shall be afforded access to the site at all times during the construction period to observe the work and determine if the work conforms to the intent of the design.
- 45.3 IHS representatives shall not be responsible for the construction means, controls, techniques, sequences, procedures, or construction safety.
- 45.4 IHS representatives do not have authority to obligate the OWNER to changes in the terms of the CONTRACT nor to act as an agent of the OWNER in any manner. Inspections conducted by IHS representatives shall be for the sole benefit of the IHS and the OWNER and shall not relieve the CONTRACTOR of any contract requirements.

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**SECTION 00705
SPECIAL PROVISIONS**

SP-01 SITE CONDITIONS

Work is to be performed on the Kootenai Indian Reservation Bonners Ferry, Idaho and is accessible from U.S. Route 95 and Kootenai Trail Rd. Special site conditions to be noted by the CONTRACTOR are as follows:

- 1) The CONTRACTOR is responsible to verify the location of all utilities, including those not located or shown on the drawings.

SP-02 DAYS OF WORK AND WORK HOURS

Construction work shall not be normally permitted on Saturdays, Sundays, Federal, or Tribal holidays. Contractor shall request dates of Tribal holidays from the Tribe. The CONTRACTOR may submit a written request to the Owner at least 48 hours in advance, for permission to work on any Saturday, Sunday, or Federal holiday. Written approval must be obtained before the CONTRACTOR may work on any such day. Work shall be performed between the hours of 7:00 AM and 5:00 PM.

SP-03 TIME FOR COMPLETION

In accordance with the NOTICE TO PROCEED, the TIME FOR COMPLETION (as described in GC 24.1) shall be 120 calendar days for all work.

SP-04 LIQUIDATED DAMAGES

If the CONTRACTOR shall fail to complete the WORK within the TIME FOR COMPLETION, or extension of time granted by the OWNER, then the CONTRACTOR will pay to the OWNER \$100.00 for each calendar day that the work shall be incomplete after the date established by the TIME FOR COMPLETION

SP-05 LICENSING

The General Contractor performing work shall be registered in the State of Idaho for the type of construction and magnitude of construction being performed.

SP-06 INSURANCE

CONTRACTOR'S insurance policy shall name the Kootenai Tribe as co-insured. A certificate of insurance naming the Kootenai Tribe shall be submitted to the Kootenai Tribe prior to NOTICE TO PROCEED.

CONTRACTOR shall carry General Public Liability and Property Damage Insurance including vehicle coverage issued to the CONTRACTOR and protecting him from all claims for personal injury, including death, and all claims for destruction of or damage to any property, arising out of or in connection with any operations under the CONTRACT DOCUMENTS, whether such operations be by himself or by any SUBCONTRACTOR under him, or anyone directly or indirectly employed by the CONTRACTOR or by a SUBCONTRACTOR under him. Insurance shall be written with a limit of liability of not less than \$1,000,000 for all damages arising out of bodily injury, including death, at any time resulting therefrom, sustained by any one person in any one accident; and a limit of liability of not less than \$2,000,000 aggregate for any such damages sustained by two or more persons in any one accident. Insurance shall be written with a limit of liability of not less than \$200,000 for all property damage sustained by any one person in any one accident; and a limit of liability of not less than \$500,000 aggregate for any such damage sustained by two or more persons in any one accident.

SP-07 RESOLUTION OF DISPUTES

Any dispute or claim relating to this Contract or any breach hereof that cannot be negotiated between the parties shall be submitted to the office for third party mediation. If not resolved the dispute shall be heard in Kootenai Tribal Court. The CONTRACTOR will carry on the WORK and maintain the progress schedule during any proceedings, unless otherwise mutually agreed in writing. This shall supersede the conditions of GENERAL CONDITION 42 - RESOLUTION OF DISPUTES.

SP-08 RIGHT TO AWARD ALL, NONE, OR A COMBINATION OF LINE ITEMS

The OWNER reserves the right to award all, none, or a combination of the line items on the BID OFFER SHEET.

SP-09 ORDER OF PRECEDENCE

In the event of an inconsistency between provisions of this contract, the inconsistency shall be resolved by giving precedence in the following order:

- 1) Bid Schedule (Schedule A & B) and Terms and Conditions of Contract.
- 2) Written bid instructions.

- 3) Special Provisions
- 4) General Conditions
- 5) Exhibits and other provisions of the contract, where incorporated by reference or otherwise
- 6) Technical Provisions
- 7) Drawings

SP-10 INDIAN OWNED PREFERENCE

Preference in the award of this CONTRACT shall be given to Indian and Alaskan Native organizations and economic enterprises. The OWNER shall give preference to a 51 percent Indian owned Economic Enterprise so long as the BID by this Enterprise does not exceed the lowest responsive bid submitted by more than ten (10) percent and is within the project budget. "Indian owned Economic Enterprise" means any Indian owned commercial, industrial, or business activity established or organized for the purpose of profit, provided that such Indian ownership shall constitute not less than 51 percent of the enterprise, and that ownership shall encompass active operation and control of the enterprise. All preferences shall be publicly announced at the bid opening. Any BIDDER claiming Indian preference shall complete and submit with the BID the attached form entitled "Indian Enterprise Qualification Statement" to support their claim. The BIDDER also agrees to give preference to Indian-owned economic enterprises in the awarding of any subcontracts, and the acquisition of materials, to the extent feasible and consistent with the efficient performance of this CONTRACT. Feasibility regards reasonable terms and conditions, including price, and the timely delivery of services and supplies.

SP-11 ADVERSE WEATHER

If in the opinion of the Contractor, adverse weather conditions prevent construction activities to proceed under this contract, the contractor may submit a written request to the Contracting Officer to suspend the contract performance period and construction activities until fairer seasonal weather returns. The Contracting Officer shall consider the request and if in agreement, issue a modification to the contract to suspend work due to adverse weather conditions and establish a date to resume work. The contract performance period shall remain unchanged by the modification and there will be no additional payment made. If the Contracting Officer disapproves the contractor's request, the contractor will be notified in writing. If the request is disapproved, the contractor shall proceed with work under the contract and no additional payment will be made.

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**SECTION 00810
LABOR PROVISIONS**

I. DAVIS-BACON ACT

- (a) All laborers and mechanics employed or working upon the site of the WORK will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the CONTRACTOR and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions or paragraph (d) of this clause also, regular contributions made or costs incurred for more than a weekly period (but not less than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for classification of work actually performed without regard to skill, except as provided in the clause entitled "Apprentices" and "Trainees." Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-I32I) shall be posted at all times by the CONTRACTOR and its subcontractors at the site of the WORK in a prominent and accessible place where it can be easily seen by the workers.
- (b) (1) The OWNER shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The OWNER shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (ii) The Classification is utilized in the area by the construction industry; and
 - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (2) If the CONTRACTOR and the laborers and mechanics to be employed in

the classification (if known), or their representatives, and the OWNER agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the OWNER to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator or an approved authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the OWNER or will notify the OWNER within a 30-day period of that additional time is necessary.

(3) In the event the CONTRACTOR, the laborers or mechanics to be employed in the classification or their representatives, and the OWNER do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the OWNER shall refer the questions, including the views of all interested parties and the recommendation of the OWNER, to the Administrator of the Wage and Hour Division for determination. The Administrator or an authorized representative, will issue a determination within 30 days of receipt and so advise the OWNER or will notify the OWNER within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (b)(2) or (b)(3) of this clause, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

- (c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the CONTRACTOR shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (d) If the CONTRACTOR does not make payments to a trustee or other third person, the CONTRACTOR may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, that the Secretary of Labor has found, upon the written request of the CONTRACTOR, that applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the CONTRACTOR to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION

- (a) Overtime requirements: No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics (See Federal Acquisition Regulation 22.300) shall require or permit any such laborer or mechanic in any workweek in which individual is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (b) Violation, liability for unpaid wages, liquidated damages: In the event of any

violation of the provisions set forth in paragraph (a) of this clause, the CONTRACTOR and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, employed in violation of the provisions set forth in paragraph (a) of this clause, in the sum of \$10 for each calendar day for which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the provisions set forth in paragraph (a) of this clause.

- (c) Withholding for unpaid wages and liquidated damages: The Contracting officer shall upon his or her own action or written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the CONTRACTOR or subcontractor under any such contract or any other Contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.
- (d) Payrolls and basic records:
- (1) The CONTRACTOR or subcontractor shall maintain payrolls and basic payroll records during the course of contract work and shall preserve them for a period of 3 years from the completion of the contract for all laborers and mechanics working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.
- (2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the CONTRACTOR or subcontractor for inspection, copying, or transcription by authorized representatives of the OWNER or the Department of Labor. The CONTRACTOR or subcontractor shall permit such representatives to interview employees during working hours on the job.
- (e) Subcontracts: The CONTRACTOR or subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (d) of this clause and also a clause requiring the subcontractors to include these provisions any lower tier subcontracts. The Prime CONTRACTOR shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

3. APPRENTICES AND TRAINEES

- (a) Apprentices: Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the Program but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeyman on the job site in any craft classification shall not be greater than the ratio permitted to the CONTRACTOR as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringes in accordance with the provisions of the apprenticeship program.

If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits shall be paid in accordance with that determination.

In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the CONTRACTOR will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (b) Trainees: Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be

paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employee and Training Administration withdraws approval of a training program, the CONTRACTOR will not longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (c) Equal Employment Opportunity: The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

4. PAYROLLS AND BASIC RECORDS

- (a) Payrolls and basic records relating thereto shall be maintained by the CONTRACTOR during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the WORK. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates or wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deduction made and actual wages paid. Whenever the Secretary of Labor has found under paragraph (d) of the clause entitled "Davis-Bacon Act" that the wages of any Laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the CONTRACTOR shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- (b) (1) The CONTRACTOR shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the OWNER. The payrolls submitted shall set out accurately and completely all of the information required

to be maintained under paragraph (a) of this clause. The information may be submitted in any form desired. Optional Form WH-347 Federal stock number 029-005-00014-1 is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance" signed by the CONTRACTOR or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause entitled "Payrolls and Basic Records" and that such information is correct and complete.
- (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deduction as set forth in Regulations, 29 CFR Part 3 and
- (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (b)(2) of this clause.

(4) The falsification of any of the certifications may subject the CONTRACTOR or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 18 and Section 231 of Title 31 of the United States Code.

- (c) The CONTRACTOR or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by authorized OWNER or representatives of the OWNER or the Department of Labor. The CONTRACTOR or subcontractor shall permit the OWNER or representatives of the OWNER or the Department of Labor to interview employees during working hours on the job. If the CONTRACTOR or subcontractor fails to submit the required records or to make them available, the OWNER may, after written notice to the CONTRACTOR, sponsor take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

5. COMPLIANCE WITH COPELAND ACT REQUIREMENTS

The CONTRACTOR shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

6. WITHHOLDING OF FUNDS

The OWNER shall upon his or her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the CONTRACTOR under this contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirement, which is held by the same Prime CONTRACTOR, so much of the accrued payment or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the CONTRACTOR or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of WORK, all or part of the wages required by the contract, the OWNER may, after written notice to the CONTRACTOR, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

7. SUBCONTRACTS (LABOR STANDARDS)

- (a) The CONTRACTOR or subcontractor shall insert in any subcontracts the clauses entitled "Davis-Bacon Act", "Contract Work Hours and Safety Standards Act Overtime Compensation", "Apprentice and Trainees", "Payrolls and Basic Records", "Compliance With Copeland Act Requirements", "Withholding of Funds", "Subcontracts (Labor Standards)", "Contract Termination: Debarment", "Disputes Concerning Labor Standards", "Compliance with Davis-Bacon and Related Act Requirements", and "Certification of Eligibility", and such other clauses as the OWNER may by appropriate instruction require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses cited in this paragraph.
- (b) (1) Within 14 days after of the contract, the CONTRACTOR shall deliver to the OWNER a completed Statement and Acknowledgment Form (SF-1413) for each subcontract, including the subcontractor's signed and dated acknowledgement that the clauses set forth in paragraph 7.1 of this clause have been included in the subcontract.
- (2) Within 14 days after the award of any subsequently awarded subcontract the CONTRACTOR shall deliver to the OWNER an updated completed SF 1413 for such additional subcontract.

8. CONTRACT TERMINATION: DEBARMENT

A breach of the contract clauses entitled "Davis-Bacon Act", "Contract Work Hours and Safety Standards Act-Overtime Compensation", "Apprentices and Trainees", "Payrolls and Basic Records", "Compliance with Copeland Act Requirements", "Subcontracts", (Labor Standards) "Compliance with Davis-Bacon and Related Act Requirements", and "Certification of Eligibility" may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

9. DISPUTES CONCERNING LABOR STANDARDS

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with the procedures and not the Disputes clause of this Contract. Disputes within the meaning of this clause include disputes between the CONTRACTOR (or any of its subcontractors) and the OWNER, the U.S. Department of Labor, or the employees or their representatives.

10. COMPLIANCE WITH THE DAVIS-BACON AND RELATED ACT REQUIREMENTS

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

11. CERTIFICATION OF ELIGIBILITY

- (a) By entering into this contract, the CONTRACTOR certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government assisted contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government assisted contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**SECTION 00930
CHANGE ORDER**

Order No. _____

Date _____

Agreement Date _____

**Name of Project: KOOTENAI "COMMUNITY WATER MAIN LOOP CONSTRUCTION
SANITATION FACILITIES"- IHS PROJECT PO-21-N04**

Construction/Installation of:

OWNER: Kootenai Tribe

CONTRACTOR:

The following changes are hereby made to the CONTRACT DOCUMENTS:

Justification:

Change to CONTRACT PRICE:

Current CONTRACT PRICE: \$ _____

Current CONTRACT PRICE adjusted by previous CHANGE ORDER \$ _____

The CONTRACT PRICE due to this CHANGE ORDER will be increased by: \$ _____

The new CONTRACT PRICE including this CHANGE ORDER will be: \$ _____

Change to CONTRACT TIME:

The CONTRACT TIME will be (increased)(decreased) by ____ calendar days.

The date for completion of all work will be _____.

Approvals Required:

To be effective this ORDER must be approved by the Federal agency if it changes the scope or objective of the PROJECT, or as may otherwise be required by the GENERAL REQUIREMENTS.

Recommended by: (ENGINEER) _____

Ordered by: (Owner) _____

Accepted by: (Contractor) _____

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