

CONSTRUCTION AGREEMENT

between the

PASCUA YAQUI TRIBE

And

Click or tap here to enter text.

an Arizona Company

This Construction Agreement between the Pascua Yaqui Tribe and the Contractor identified below ("Contractor"), (collectively the "Party" or the "Parties"), shall constitute and shall hereinafter be referred to as the "Agreement."

1. **NAME OF CONTRACTOR:** Click or tap here to enter text.

2. **ADDRESS:** Click or tap here to enter text.
Click or tap here to enter text.

3. **PRINCIPAL PLACE OF BUSINESS OF CONTRACTOR (if different from above):**

☐ same as above

☐ Click or tap here to enter text.

4. **QUALIFICATIONS:**

Contractor is licensed with the Arizona Registrar of Contractors. ROC Click or tap here to enter text.

5. **DATE OF AGREEMENT:** Click or tap to enter a date.

EFFECTIVE DATE: If different than date of Agreement, this Agreement shall become effective on the date of last execution by the parties to this Agreement and shall remain in effect through completion of the Work. Applicable terms of this Agreement shall survive through the date that defective workmanship is discovered and remedied.

6. **NAME OF PROJECT AND LOCATION WHERE COVERED SERVICES ARE TO BE PROVIDED:**

Click or tap here to enter text., Project #Click or tap here to enter text. (the "Project").

To be performed:

☐ on the Pascua Yaqui Reservation adjacent to Tucson, Arizona in Pima County.

☐ at Click or tap here to enter text..

7. DESCRIPTION OF THE SCOPE OF SERVICES ("Covered Services"):

- A. Contractor shall perform and complete all services set forth herein and in all Attachments. Work shall be performed pursuant to the Contractor's Proposal dated Click or tap to enter a date.(Bid due date), and associated or referenced drawings therein, and other drawings and specifications as approved by Tribe.
- B. Contractor shall:
Click or tap here to enter text.in accordance with the following:

Click or tap here to enter text. (the "Construction Documents").
- C. Contractor acknowledges that Tribe has contracted with Contractor only for the specific Covered Services as designated herein. While providing services to Tribe, or on Tribe's Reservation, or in or on Tribe's facilities, Contractor agrees to limit its activities to those Covered Services set forth herein or those services necessarily and ordinarily related thereto. Contractor also agrees that it will not perform any tasks, duties or actions that are not within the scope of Covered Services to be provided by Contractor.
- D. Contractor shall perform additional services as required by Tribe provided the Contractor and Tribe agree to the scope and compensation for such additional work in writing. If Contractor reasonably believes that additional services will be required due to circumstances beyond Contractor's control, Contractor shall provide written notification to Tribe and must receive Tribe's prior written preauthorization to perform additional services prior to the commencement of such services. Tribe will not be liable for any additional work performed without Tribe's prior written preauthorization.
- E. Contractor shall complete the work in a good and workmanlike manner in accordance with the Contract Documents; all applicable laws and regulations, including all building and construction codes; all manufacturer's instructions; and in accordance with industry standards and practices. By starting work, Contractor acknowledges acceptance for the responsibility of current conditions and of meeting all laws, regulations, codes and orders currently in effect or as may subsequently be enacted and shall not be permitted to seek additional compensation for changes required to meet the laws, regulations, codes and orders currently in effect or as may subsequently be enacted.
- F. Contractor agrees to meet with Tribe or Tribe's representatives as determined or required by Tribe, including but not limited to attendance at construction or other meetings. Contractor's liaison or representative shall have appropriate authority to respond to issues in a timely manner and to bind Contractor for decisions made.

8. CONTRACTOR'S COMPENSATION:

- A. Contractor shall be compensated in the amount of \$Click or tap here to enter text. , subject to additions and/or deductions as provided in the specifications or proposal. for satisfactory completion of work performed pursuant to an assigned scope of work in accordance with this Agreement (the "Contract Amount"). As used in this Agreement, satisfactory shall mean all work

usually done at the stage of construction for which disbursement is requested shall have been done in a good and workmanlike manner and all materials and fixtures usually furnished and installed at that stage of construction shall have been furnished and installed, all in compliance with the Plans and Specifications.

- B. The Contract Amount is based on Contractor's Bid Submission. Actual payment made shall be based on the work performed and approved by the Contracting Officer as set forth in Section 19 of this Agreement.
- C. Contractor will be responsible for paying for, and will pay for, all materials and labor arising hereunder and for making payment to any subcontractors that Contractor uses in connection with its work. In no event will Tribe be responsible for making payments to or be liable to materials vendors or suppliers or to Contractor's workers, employees, or subcontractors.

9. TRIBAL REPRESENTATIVES - OWNER'S REPRESENTATIVE, CONTRACTING OFFICER AND PROJECT MANAGER:

- A. Tribe designates the following individual as the Owner's Representative ("Owner's Rep"): Click or tap here to enter text.. Their contact information is Telephone and Email.
- B. Tribe designates the following individual as the Contracting Officer: Click or tap here to enter text.. Their contact information is Telephone and Email.
- C. Tribe designates the following individual as the Project Manager Click or tap here to enter text.. Their contact information is Telephone and Email.
- D. Upon written notice to the Contractor, Tribe's designation of the Owner's Rep, Project Manager and/or Contracting Officer may be changed.
- E. The Owner's Rep, Project Manager and/or Contracting Officer shall have authority to enforce the provisions of this Agreement.
- F. The Owner's Rep, Project Manager and/or Contracting Officer or their designated representative shall visit the work site to ascertain whether the work is proceeding in accordance with the Contract.

10. CONTRACT DOCUMENTS:

- A. The "Contract Documents" that comprise the entire Contract between Tribe and Contractor concerning the work shall consist of this Agreement and the following Attachments and Exhibits:

1	Solicitation Documents and Addenda, including Contractor's Bid Submission / Proposal Dated <u>Click or tap to enter a date.</u> (Bid due Date)
2	Plans, Drawings, and Specifications, if applicable
3	Change Orders, Work Directive Changes, and Field Orders, if applicable
4	Critical Path Schedule
5	Schedule of Values

6	Tribe's Tribal Employment Rights Office (TERO) Agreement, if applicable
7	Pascua Yaqui Tribe Purchase Order
8	Contractor's Certificates of Insurance
9	Subcontractor's Certificates of Insurance
10	Pascua Yaqui Business License
11	Internal Revenue Service Form W-9
12	Written Interpretations of the Contract Documents, if applicable
13	Performance and Payment Bonds
14	Project Special Provisions, if applicable
15	Notice to Proceed

- B. The intention of the Contract Documents is to include all labor, materials, equipment, and other items necessary for the proper execution and completion of the work and the terms and conditions for payment therefore, and also to include all work which may be reasonably inferable from the Contract Documents as being necessary to produce the intended results.
- C. Contract Documents also include documents that may be delivered or issued by the Tribe after the Effective Date of this Agreement that may not be attached hereto, including documents amending, modifying, or supplementing the Contract Documents.
- D. The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

11. ADDITIONAL DOCUMENTS:

- A. The parties agree to execute whatever papers and documents may be necessary to effectuate the terms of this Agreement, including conditional and unconditional lien waivers, as required and appropriate, for non-public projects located off the reservation.
- B. In addition to any documents, reports or information required by any other section of this Agreement, Contractor shall furnish Tribe with any further documents and information deemed necessary by Tribe.

12. TIME REQUIREMENTS:

- A. Time is of the essence in the construction and completion of all work and services provided by Contractor.
- B. Work under this Agreement shall commence upon the issuance of a Notice to Proceed by

the Tribe and shall be substantially completed no later than Click or tap here to enter text. following the issuance of the Notice to Proceed. Substantially complete shall mean the stage in progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that Tribe can occupy or utilize the Work for its intended use.

- C. Specific time requirements: ☐ None
☐ Click or tap here to enter text.
- D. Contractor may be excused from delays of performance of the terms or obligations of this Agreement for reasons of Force Majeure pursuant to the provisions of Section 14 herein. Contractor's excused delay in performance shall equal the period of the duration of the allowable delay.
- E. Tribe may give written notice to Contractor to suspend work on the Project or any part thereof.
- F. No claims for increased costs, charges, expenses or damages of any kind shall be made by Contractor against Tribe for any delays or hindrances from any cause whatsoever; provided that Tribe, in Tribe's discretion, may compensate Contractor for any said delays by extending the time for completion of the scope of work as specified herein.

13. FUNDING: IS THIS AGREEMENT SUBJECT TO NON-TRIBAL FUNDING SOURCES/RESTRICTIONS?

- ☐ Yes: Click or tap here to enter text.
☐ No

If yes:

Contractor acknowledges that the use of non-tribal funding sources, including but not limited to federal and state grant monies, requires adherence with certain applicable additional conditions. By signing this Agreement, Contractor certifies that Contractor is familiar with all applicable state and federal laws and Tribe has no responsibility to provide an exhaustive list of applicable state and federal laws to Contractor.

14. FORCE MAJEURE:

- A. Any prevention of performance of the terms or obligations of this Agreement by Tribe or Contractor due to strike, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes, acts of God, governmental restrictions or regulations or controls, judicial orders, enemy or hostile government actions, civil commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform hereunder ("Force Majeure Event"), shall excuse said performance for a period equal to the duration of the prevention or delay.
- B. The impacted party shall give notice within three (3) business days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue.

- C. The impacted party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized.
- D. The impacted party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause of the failure or delay.
- E. Nothing herein shall be construed to prohibit or prevent Tribe from terminating this Agreement due to Contractor's failure to complete the work in a timely manner or Contractor's failure to make adequate progress toward completing the work.
- F. Whether Contractor has failed to complete the work in a timely manner or has failed to make adequate progress toward completing the work shall be determined in Tribe's sole discretion.
- G. In accordance with Section 12(F) of this Agreement, Contractor shall not be entitled to claim increased costs, charges, expenses or damages of any kind against Tribe resulting from a Force Majeure event.

15. LIQUIDATED DAMAGES:

- A. Tribe will suffer financial loss if Contractor fails to complete or reach substantial completion of the Project by the time specified in Section 12.
- B. In the event the Project is not completed within the time period set forth in Section 12, Contractor shall pay Tribe the amount of Click or tap here to enter text. Dollars (\$Click or tap here to enter text.) per Choose an item. for each calendar Choose an item. after the end of the required time period, as liquidated damages, plus all costs incurred by Tribe caused by the delay, including compensation for expenses, until the Work is completed.

16. TAXES.

- A. Contractor shall pay all taxes applicable to Contractor's operation. Contractor shall hold Tribe harmless from responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or State and local laws and regulations and any other costs.
- B. Tribe has enacted a Transaction Privilege Tax (7 PYTC § 4-1-10 et seq.) equal to 5% of the gross proceeds of sales, gross contracts, or gross income of the business of every person or entity engaging or continuing within the exterior boundaries of the Pascua Yaqui Reservation. Unless waived by the Tribe or exempted by law, Contractor agrees that it shall be responsible for submitting the Transaction Privilege Tax to the Tribe.

☐ 1. Tribe's Transaction Privilege Tax does not apply because Project is located off-Reservation

_____ 2. Waiver. By initialing here the Tribe hereby waives its Transaction Privilege Tax for this Agreement.

_____ 3. Exemption. By initialing here, Contractor warrants that it is exempt from the Transaction Privilege Tax for one of the following reasons:

- a. The laws of the United State government preclude the levying of the TPT on Contractor's business, calling, profession or occupation;
 - b. Sales of tangible personal property and services are being made directly to the Tribe, its departments, enterprises or agencies; or
 - c. Contractor has obtained a Short-Term Temporary Business License or a Temporary Business License in accordance with 7 PYTC § 3-1-130 and paid the applicable fee.
- C. For work performed on Tribe's Reservation pursuant to this Agreement, Contractor will not charge Tribe any State of Arizona privilege or sales taxes and will assure that all of its subcontractors do not charge State of Arizona privilege or sales taxes to Contractor or the Tribe on this Project. If applicable, Tribe shall provide Contractor with an AZDOR Form 5000.

17. PERFORMANCE AND PAYMENT BOND:

- A. If the Contract Amount is greater than \$100,000.00, the Contractor shall be required, at its own expense, to provide a Performance and Payment Bond in the amount of 100% of the Contract Amount. Said bond(s) shall be executed by one or more Surety companies legally authorized to conduct business in the State of Arizona.
- B. As an alternate to the above bond requirement Tribe will, in its sole discretion, accept one of the alternatives below: (Check if acceptable)
- 1. ☐: Separate payment and performance bonds, each for 50% of the Contract Amount.
 - 2. ☐: A 20% of Contract Amount cash escrow account.
 - 3. ☐: A 25% of Contract Amount irrevocable letter of credit.
 - 4. ☐: An irrevocable letter of credit for 10% of the total Contract Amount with a monitoring and disbursement agreement with the HUD (applicable only to contracts awarded by an IHA under the Indian Housing Program).
- C. If the surety for any Bond furnished by Contractor is declared bankrupt, becomes insolvent, its right to do business is terminated in the State of Arizona, or it ceases to meet the requirements imposed by the Contract Documents, the Contractor shall, within five (5) calendar days thereafter, substitute bond and surety, both of which shall be subject to Tribe's approval. Failure by Contractor to maintain its bonds in full force and effect at all times, including the warranty period, shall be grounds for termination of this Agreement.

18. RETAINAGE:

- A. During the performance of this Agreement Tribe shall retain 10% of each payment from Contractor (the "Retainage"). The Contracting Officer may decrease the retention amount to 5% when the Project reaches the 50% completion mark, depending on Contractor's performance.
- B. The Tribe shall hold the Retainage to pay the cost of punch list and/or warranty related repairs (collectively, the "Punch List Repairs").
- C. Upon completion of all work and all Punch List Repairs to Tribe's satisfaction, the Retainage will be released to Contractor.

19. PAYMENT PROCEDURES:

- A. Payments shall be made as follows: Progressive Payments per phase of completion and acceptance by Tribal Representative(s).
- B. Final Payment shall be made after completion of all work and after final written acceptance is provided by Tribe. Payment shall not be made until the work site has been cleaned up to Tribe's satisfaction and all work has been inspected, approved and accepted by Tribe. The Project Manager shall review the invoice and inspect the work to ensure that all work has been completed to the satisfaction of Tribe. All close out items must be submitted.
- C. Invoices must be detailed and must specify charges for different personnel and expense classifications. The invoice must reference the Pascua Yaqui Tribe Purchase Order Number, an invoice number, dates of services, an invoice date, and a detailed list of all charges.
- D. Contractor shall submit the invoice to Tribe within Click or tap here to enter text. days of the provision of Covered Services.
- E. Contractor shall submit the original invoice via email to:

Tribe's Contracting Officer
Finance.ap@pascuayaqui-nsn.gov
- F. In the event Contractor has not made satisfactory progress, the Contracting Officer may instruct Tribe's Finance Department to withhold or delay payment to Contractor.
- G. Contractor shall direct all inquiries concerning claims and payments directly to Tribe's Procurement Office, telephone number (520) 879-5168.
- H. Tribe shall make check payable to: Click or tap here to enter text.
- I. Tribe shall mail payment to Contractor at the following address:

Click or tap here to enter text.

[Click or tap here to enter text.](#)

or Tribe may send payment to Contractor via ACH provided Contractor has provided Tribe all required information to make ACH payment possible.

- J. Tribe shall pay Contractor pursuant to Tribe's normal processes and procedures within thirty (30) days for undisputed amounts following the Contracting Officer's approval of all properly itemized and legitimate claim forms under agreed schedules. If the thirty (30)-day time period hereunder expires on a day which is a Saturday, Sunday or Tribe holiday, the time period shall be automatically extended to the business day immediately following such Saturday, Sunday or holiday. All payments are further subject to appropriations as required by law.
- K. Payment of any amount by Tribe does not constitute a waiver of Tribe's right to subsequently question, dispute, obtain reimbursement of, compromise or request repayment of, or require future credit for, such amount. Tribe retains the right to audit all bills or files that are or have been the subject matter of any billing or payment made pursuant to or in connection with the Contract. In the event of such an audit, Contractor shall produce all documentation that would support the billing submitted by Contractor.

20. PAYMENT RECOUPMENT:

Contractor must reimburse Tribe upon demand or Tribe may deduct or offset from future payments for any of the following:

- A. Any amounts received by Contractor from Tribe for Covered Services which have been inaccurately reported or are found to be unsubstantiated.
- B. Any amounts paid by Contractor to a subcontractor not authorized in writing by Tribe.
- C. Any amounts paid by Tribe for which Contractor's books, records, and other documents are not sufficient to clearly substantiate that those amounts were used by Contractor to perform Covered Services.
- D. Any amounts paid or reimbursed in excess of the Contract Amount or service reimbursement ceiling.
- E. Any payments made for services rendered before the Contract start date or after the Contract termination date.
- F. Any expenses or costs incurred by Tribe or damages assessed by Tribe concerning Contractor's non-conforming performance or failure to perform the Contract, including expenses, overpayments, costs and damages.
- G. In the event the Contract has terminated and it is subsequently determined that Tribe has overpaid Contractor, or has incurred costs or damages caused by Contractor, Tribe is entitled to recover from Contractor the amount of such overpaid costs, or such damages.

21. CRITICAL PATH SCHEDULE: Contractor shall provide a Critical Path Schedule.

- A. Commencing on the effective date of this Agreement, Contractor shall provide to Tribe a Critical Path Schedule for all work and shall include allowances for periods of time required for Tribe's review and for approval of submissions by the Contracting Officer having supervisory authority over the Project.
- B. Time limits established by the Critical Path Schedule shall not be adjusted without the express written consent of the Contracting Officer.
- C. On a Click or tap here to enter timeframe. basis, Contractor shall update the Critical Path Schedule and shall provide such update to: (i) the Architect, (ii) the Engineer(s), if any, (iii) Tribe's Contracting Officer; (iv) Tribe's Project Manager(s), (v) the Owner's Rep., if any, and (vi) Tribe's Project Inspector(s). This requirement shall be in force until completion of the work and until all Punch List Repairs are completed.

22. CHANGE ORDERS:

- A. Prior to any deviation from the approved Plans and Specifications (a "Change Order"), Contractor shall submit the proposed Change Order to Architect, Tribe's Project Manager, Contracting Officer, Inspector, engineer (if applicable), and Owner's Rep (if applicable) for written approval, and shall not be reimbursed without first receiving such written Change Order with the requisite approvals. The Change Order must include a unit price for every activity. After Change Order is approved, Contractor shall modify pay application and Completion date as approved, provided the Change Order approval is in compliance with Tribe's laws. Contractor shall not be reimbursed for work performed on Change Orders that do not comply with Tribe's laws.
- B. Tribe retains the ability to request Change Order quotes from any subcontractor of Tribe's choice.
- C. Contractor will not be entitled to a Change Order or other modifications to the Contract Documents, or the requirements of the Contract Documents, for conditions about which Contractor knew or reasonably should have known by review of the Contract Documents or work site conditions prior to the execution of this Agreement.
- D. Contractor agrees that in the event, during the term of this Agreement, Contractor becomes aware of any conflicts, errors, ambiguities, or discrepancies in the Contract Documents and/or the work and/or the work site and/or the facility, Contractor will immediately notify Tribe in writing of such conflicts, errors, ambiguities or discrepancies. In the event Contractor fails to so notify Tribe of any conflicts, errors, ambiguities or discrepancies, and receive written instructions from Tribe prior to proceeding, Contractor will not be entitled to any Change Order, and will complete the Project without further payment resulting from additional costs or expenses related to such conflict, error, ambiguity or discrepancy.
- E. With respect to pricing Change Orders, the Maximum Markup Percentage Fee to be paid to any Contractor shall be a single markup percentage not to exceed ten percent (10%) of the net direct cost of (1) direct labor and allowable labor burden costs applicable to the change order or extra work; (2) the net cost of material and installed equipment incorporated into the change or extra

work, and (3) net rental cost of major equipment and related fuel costs necessary to complete the change in the Work.

The markup computed using the above formula shall be considered to be allocated 2/3 to cover applicable overhead costs directly attributable to the field overhead costs related to processing, supervising and performing, the change order work, and the remaining 1/3 to cover home office overhead costs and profit.

- F. With respect to pricing the portion of change order proposals involving work performed by lower tier contractors, the maximum Markup Percentage Fee allowable to the Contractor supervising the lower tier contractor's work shall not exceed five percent (5%) of the net of all approved change order work performed by all subcontractors combined for any particular change order proposal.

The markup computed using the above formula shall be considered to be allocated 2/3 to cover applicable overhead costs directly attributable to the field overhead costs related to processing, supervising and performing the change order work, and the remaining 1/3 to cover home office overhead costs and profit.

- G. As a further clarification, the agreed upon Markup Percentage Fee is intended to cover the Contractor's profit and all indirect costs associated with the change order work. Items intended to be covered by the Markup Percentage Fee include, but are not limited to: home office expenses, branch office and field office overhead expense of any kind; project management; superintendents, general foremen; estimating, engineering; coordinating; expediting; purchasing; detailing; legal, accounting, data processing or other administrative expenses; shop drawings; permits; auto insurance and umbrella insurance; pick-up truck costs; and warranty expense costs. The cost for the use of small tools is also to be considered covered by the Markup Percentage Fee. Small tools shall be defined as tools and equipment (power or non-power) with an individual purchase cost of less than \$750.

- H. Contractor shall not be entitled to Change Orders for material price escalation.

23. CONTRACTOR REPRESENTATIONS:

In order to induce Tribe to enter into this Agreement, Contractor makes the following representations:

- A. Contractor warrants and represents that Contractor is certified, licensed or specially qualified, as noted above, and that Contractor's AZ ROC License (ROC [Click or tap here to enter text.](#)) is active and in good standing.
- B. Contractor warrants and represents that Contractor has obtained and will maintain throughout the term of the Contract all licenses, permits, accreditation and certification required by law for Contractor to provide Covered Services. Contractor will provide current copies of applicable certifications, permits and licenses.
- C. Contractor represents and warrants that the information set forth herein (including all Attachments and Exhibits), and the information set forth in Contractor's application for

participation hereunder is true and correct. Contractor shall provide written notification to Tribe of any material changes in the information contained in Contractor's application within thirty (30) days of such change or in the event Contractor is subject to any investigation, disciplinary proceeding or sanction by any governmental authority, regulatory board or agency or professional society and shall provide relevant facts and circumstances, or if there are changes in the status of Contractor's insurance coverage or office address or other information contained in Contractor's application or representations.

- D. Contractor warrants and represents that it has examined and carefully studied this Agreement (including all Attachments and Exhibits) and is familiar with and has satisfied all Contract requirements.
- E. Contractor warrants and represents that it has, prior to or at the time of its bid, provided Tribe's Contracting Officer, Project Manager, and the Owner's Rep (if applicable) with written notice of all conflicts, errors, ambiguities, discrepancies or discoverable work site conditions relating to the Contract Documents, or the performance of Covered Services that Contractor has discovered, or should have reason to know about.
- F. Contractor warrants and represents that it is, or will become, familiar with the applicable federal, state, Tribal, and local laws, regulations, rules, codes, ordinances, and orders that may affect cost, progress, performance, and all other aspects of completing the Covered Services.
- G. Contractor warrants and represents that Contractor knows of no impediment to the execution of this Agreement and the performance of its provisions.
- H. Contractor warrants and represents that Contractor will devote the time, attention and energy necessary for the competent and effective performance of Contractor's duties hereunder.
- I. Contractor warrants and represents that Contractor will apply for and possess a current Pascua Yaqui Tribe Business License prior to beginning any Work.
- J. All representations herein shall survive the execution or termination hereof.

24. CONTRACTOR WARRANTIES:

- A. Contractor warrants that the materials provided by Contractor shall be:
 - 1. Of a quality to pass without objection in the trade.
 - 2. Fit for the intended purposes for which the materials are used.
 - 3. Within the variations permitted by the Contract Documents and are of even kind, quantity, and quality within each unit and among all units.

4. Adequately contained, packaged and marked as the Contract Documents may require.
 5. Conform to the written promises or affirmations of fact made by the Contractor.
 6. Free of liens.
- B. Contractor agrees to warranty all work for a period of Click or tap here to enter text. years from the date of final acceptance of the work. Contractor agrees to warranty all products for period of Click or tap here to enter text. years from the date of final acceptance of the work or for the period warranted by the manufacturer, whichever is longer. Contractor shall remedy at its own expense any defective work or unsuitable materials. Tribe shall notify Contractor, in writing, within a reasonable time after the discovery of any failure or defect. If Contractor fails to correct the failure or defect within a reasonable time after receipt of notice, Tribe may repair or remedy the failure or defect and charge Contractor for all costs and expenses related to the repair or remedy.
- C. Neither Tribe's final payment nor inspection approval shall relieve Contractor of liability with respect to any express or implied warranties for faulty workmanship or materials.
- D. Prior to the final inspection, Contractor shall provide to Tribe all manufacturer(s) and supplier(s) written guarantees and warranties covering materials and equipment furnished pursuant to the Contract.
- E. All warranties herein shall survive the execution or termination hereof.

25. STANDARD OF CARE & NOTIFICATION:

- A. Contractor will conduct its performance under the Contract with the level of care, skill and training expected by members of the profession practicing under the same or similar circumstances at the time performance is rendered. Contractor will exercise appropriate precautions according to industry and regulatory standards and any requirements contained in the Contract Documents. Tribe does not waive any rights it may have against Contractor to any claim or liability that may arise as a result of Contractor's performance hereunder.
- B. Contractor agrees to comply with and perform all work in accordance with the best modern practice, with new materials and workmanship of the highest quality, in compliance with applicable building codes; and tribal, federal, state and local laws, rules, regulations and standards, including those relating to safety, environmental protection, quality of workmanship and other standards. Contractor shall check and verify all dimensions, grades and levels before commencement of performance, and whenever necessary during the progress thereof. Contractor, in performing the Contract, is acting as an independent contractor, and will provide all labor, tools, scaffolding, equipment, supplies and supervision necessary for the complete and satisfactory performance of the Covered Services.
- C. Contractor hereby agrees that all work performed, whether by Contractor or any subcontractor, shall meet or exceed all uniform fire, building, plumbing, electrical and

mechanical codes as adopted by Tribe or other applicable governmental authorities (collectively, the "Codes"). In addition, Contractor warrants that all work completed, whether by Contractor or any subcontractor, shall meet the minimum workmanship standards as set forth by the Arizona Registrar of Contractors and the standards set forth herein (the "Standards"). Any work that is discovered to fall below the Codes or the Standards shall be deemed substandard and will require appropriate remedial measures; the expense of which shall be the direct and sole responsibility of Contractor.

- D. Clean Air and Water. If Project is on Tribe's Reservation, Contractor shall comply with applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. § 1857h-4 transferred to 42 U.S.C. § 7606), section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).
- E. Energy Efficiency. Contractor shall comply with the standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163 codified at 42 U.S.C.A. § 6321 et. seq.).

26. RISK OF LOSS:

- A. Contractor shall bear all loss of conforming material covered hereunder until received by authorized personnel at the location designated in the purchase order.
- B. Receipt of conforming materials does not constitute final acceptance.
- C. Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Covered Services, and shall provide all reasonable protection to prevent damage, injury, or loss to the work and materials and equipment to be incorporated therein, and other property at the site or elsewhere due to fire, theft, vandalism, or other casualty or cause until the work is fully completed and accepted by Tribe.
- D. Should Contractor sustain any damage through any act or omission of any other contractor having a contract with Tribe or through any act or omission of any sub-contractor of said other contractor, Contractor shall have no claim against Tribe for said damage.

27. INDEMNIFICATION:

Regardless of the merits, Contractor agrees to indemnify, hold harmless, and defend Tribe, its officers, and employees against any and all claims for damage, loss, demand, cause of action, liability, injury, punitive damages, costs and expense of every type, arising directly or indirectly from any act or omission of Contractor, Contractor's employees, associates, agents or representatives.

28. INSURANCE:

- A. Insurance Required. Contractor will provide and maintain at all times during the performance of the Contract the following insurance:
1. Comprehensive Commercial General Liability Insurance. Contractor shall obtain and maintain at its sole expense and require to be obtained and maintained by all subcontractors at their sole expense, a Comprehensive Commercial General Liability insurance policy in the amount of \$1 Million (\$1,000,000) combined single limit Bodily Injury and Property Damage and (\$2,000,000) annual aggregate. The Tribe, its officials, employees, agents and volunteers shall be named as an additional insured for all operations including products and completed operations within the scope of the Contract. Contractor shall also endorse their policy and require endorsement of subcontractors' policies that the Contractor's and subcontractors' coverage shall be primary and non-contributory to any other insurance available to cover Tribe. It is further agreed that Contractor's and all subcontractors' policies shall waive their subrogation rights against Tribe, its officials, agents, employees and volunteers.
 2. Umbrella Liability Insurance. Contractor shall obtain and maintain, and require to be obtained by all subcontractors, Umbrella Liability Insurance for a limit of not less than \$2,000,000 annual aggregate. The Contractor's and subcontractors' Umbrella Policies must also agree to name Tribe as an additional insured.
 3. Commercial or Business Automobile Liability. If Contractor is required to use Contractor's privately owned vehicle or any other vehicle within the scope of responsibilities and duties as required by the Contract, Contractor shall maintain Commercial or Business Automobile Liability coverage for owned, non-owned and hired vehicles used in the performance of the Contract with limits in the amount of \$1 Million (\$1,000,000) combined single limit, or \$1 Million (\$1,000,000) Bodily Injury, \$1 Million (\$1,000,000) Property Damage. Tribe shall be named as an additional insured for all operations performed within the scope of the Contract.
 4. Workers' Compensation Insurance. If Contractor is providing services through its employees, Contractor agrees to maintain and require all subcontractors to maintain Workers' Compensation insurance for all employees, if required by applicable law. Contractor's and subcontractors' Workers' Compensation carrier shall be required to waive any rights of subrogation against Tribe.
- B. Changes in Insurance. Contractor shall provide Tribe with a minimum of thirty (30) days prior written notice in the event any of the policies set forth in this Section are modified or canceled.
- C. Certificates of Insurance. Contractor shall provide and require all subcontractors to provide to Tribe, current certificates of insurance evidencing that the policies of insurance required hereunder are in full force and effect, and valid and existing in accordance with the provisions

of this Section. All certificates of insurance must provide for guaranteed thirty (30) days written notice of cancellation, non-renewal or material change to Tribe.

- D. Claims. Contractor shall provide immediate written notice to Tribe of any claims filed against Contractor or its employees, agents or representatives.
- E. Contractor and Subcontractor Floater Policies. Contractor shall and shall require all subcontractors to have all property floaters, installation floaters, and transit floaters, including Contractor's equipment floater policies, endorsed to waive subrogation rights against Tribe, its officials, employees, agents, and volunteers.

29. **INSPECTIONS:**

- A. Tribe's Facilities Management Department ("Project Inspector") will perform inspections and must provide final inspection approval prior to acceptance and final payment by Tribe. When the work is substantially completed, Contractor shall notify Tribe in writing that the work will be ready for final inspection on a definite and specific date.
- B. Neither the Project Inspector nor any other representative of Tribe can relieve Contractor from any requirements herein or responsibility for damages or losses.
- C. Neither the Project Inspector nor any other representative of Tribe is authorized to modify any term or condition of the Plans and Specifications without Tribe's written authorization.
- D. Contractor shall, without charge, promptly replace or correct all work determined by the Owner's Rep, Contracting Officer, Project Manager or Project Inspector not to conform to work requirements, unless Tribe agrees to accept the work with an appropriate adjustment in the Contract Amount. If the defective work is not promptly corrected, the Tribe may elect to correct the work and charge the cost to make the correction to Contractor, or Tribe may elect to terminate the Contract.
- E. If Tribe examines completed work by removing work completed by Contractor, Contractor shall promptly furnish all necessary facilities, labor and material. If the work is determined to be defective or nonconforming according to the terms of the Contract, Contractor shall pay for all costs of satisfactory reconstruction. However, if the work is determined to meet Contract requirements, Tribe shall adjust the Contract Amount to compensate for the additional services required to reconstruct the work and will grant an extension of time if Contractor's work was delayed due to Tribe's removal of work. Rejected work shall be corrected by Contractor immediately.
- F. Tribe's final acceptance of the work shall be final except for latent defects, fraud, gross negligence, and Contractor's warranties, representations and guarantees.
- G. Special Inspection by others for Tribe: [Click or tap here to enter text.](#)

30. SAFETY

- A. Contractor will maintain the work area, including any storage areas, free from waste and trash. Contractor shall remove waste and trash from the site daily. Upon final completion of the work, Contractor shall remove all debris, waste, trash, tools, and equipment from the site, leaving a clean, neat and orderly site. In the event Contractor fails to clean up the work site to the satisfaction of Tribe, Tribe will charge Contractor clean-up costs which amount may be off-set against the final payment.
- B. Contractor will keep the work site in a safe condition at all times, and will ensure that unsafe conditions are remedied immediately, and upon termination of the Contract as required by law or industry standards. Contractor shall maintain appropriate danger or warning signs at the construction site, which signs shall be visible to all individuals who enter the construction site.
- C. Contractor shall take prompt and appropriate remedial measures to protect health and safety in the event of the discovery of an unanticipated hazardous condition.
- D. Contractor shall be responsible for the prompt, appropriate and lawful reporting to the appropriate governmental authorities of the discovery of, or release of, any hazardous or otherwise regulated substances. Contractor shall also provide immediate written notification to Tribe of the discovery of any hazardous materials or conditions. Tribe may require Contractor to notify surrounding property owners in the event that an actual or suspected hazardous or otherwise regulated substance or condition is encountered at the work site or otherwise in connection with the Contractor's performance of the work.
- E. Contractor will promptly notify Tribe of any suspected or other unanticipated conditions or potential conditions associated with Contractor's performance hereunder that become known to Contractor during or after completion of work.
- F. At Tribe's request, Contractor agrees to assist or report on behalf of Tribe, any disclosures required by law to the appropriate governing agencies. Tribe will hold Contractor harmless for any and all consequences of disclosures made by Contractor which are required by law.

31. NOTICES:

Except as set forth in Section 19, all notices to Tribe must be in writing. Payments, requests, demands or other communications required or permitted pursuant to this Agreement may be effected by: (a) personal delivery; (b) certified United States mail, return receipt requested, postage prepaid; or (c) overnight courier or delivery service which provides receipts or delivery notification, and properly addressed to the parties at the addresses listed immediately below. Notice to Tribe shall not be complete or proper unless given to all addresses. Notices shall be deemed communicated as of the date of actual receipt. Parties may designate a new address after providing actual written notice to the other party of such new address. All notices shall be delivered as follows:

To Tribe: Pascua Yaqui Tribe
Attn: Chairperson of the Tribe

7474 South Camino de Oeste
Tucson, Arizona 85757

With a copy to: Pascua Yaqui Tribe
Attorney General
7777 S. Camino Huivisim. Bldg. C
Tucson, Arizona 85757

With a copy to: Pascua Yaqui Tribe
Attn: Contracting Officer
7474 S. Camino de Oeste
Tucson, Arizona 85757

For Contractor: [Click or tap here to enter text.](#)
[Click or tap here to enter text.](#)
[Click or tap here to enter text.](#)

32. COMPLIANCE WITH RULES, REGULATIONS, POLICIES AND PROCEDURES:

- A. Contractor agrees to be bound by, give all notices required by, and comply with all applicable laws, ordinances, rules, regulations, policies, procedures, and orders of Tribe, the State of Arizona, and the Federal government. Contractor agrees to cooperate with any administrative procedures which may be adopted by Tribe regarding the performance of Covered Services hereunder.
- B. Contractor agrees to comply with all ordinances, rules, regulations, and orders of any public authority – federal, state, or tribal - bearing on the provision of the Covered Services.

33. HIRING OF PERSONNEL:

- A. If required by an outside funding source, such as the U.S. or the State of Arizona, except as otherwise provided herein, Contractor agrees to comply with the Equal Employment Opportunity requirements set forth in 41 CFR Part 60.
- B. TERO: Applicable because on-Reservation Project: Yes ☐; No ☐
If yes:
 - 1. Contractor agrees to give employment preference to Indians, pursuant to 25 U.S.C. 5307. As a condition of this Agreement, Contractor shall register with the TERO, and agrees to execute and comply with a Tribal Employment Rights Office ("TERO") agreement, hereinafter incorporated into the terms of this Agreement.
 - 2. The Pascua Yaqui Tribe is a right to work jurisdiction. Contractor will not require any person to become a member of a labor union or other association in order to work for Contractor in the provision of the Covered Services herein, and Contractor will assure that no subcontractor of Contractor requires an employee of the subcontractor to become a member

of a labor union or other association in order to work for the subcontractor in the provision of the Covered Services herein.

- C. If required by an outside funding source, such as the U.S. or the State of Arizona, except as otherwise provided herein, Contractor agrees to comply with applicable provisions of the Davis-Bacon Act, as amended (40 U.S.C. 3141-3148) and implementing regulations.
- D. If required by an outside funding source, such as the U.S. or the State of Arizona, Contractor agrees to comply with applicable provisions of the Copeland "Anti-Kickback" Act (40 U.S.C. 3145) and implementing regulations.
- E. If required by an outside funding source, such as the U.S. or the State of Arizona, except as otherwise provided herein, Contractor agrees to comply with applicable provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) and implementing regulations.

34. DRUG FREE WORKPLACE:

Contractor and Contractor's agents and representatives agree to comply with a drug free workplace policy as established by Tribe or Contractor.

35. OWNERSHIP OF WORK PRODUCT:

- A. All tangible work product produced by Contractor in the performance of this Agreement is specially ordered by Tribe and shall be deemed to be "work-made-for-hire" and shall be the exclusive and unrestricted property of Tribe.
- B. In the event of termination of this Agreement, all materials produced by and in the possession of Contractor shall be returned to Tribe. Contractor relinquishes all reserved rights, including patents, trademarks, copyrights, title, and trade secrets.
- C. In the event Contractor acquires any rights to any work product, Contractor hereby grants to Tribe an irrevocable license of unlimited duration for the possession, use and control of the work product for any commercial or non-commercial purpose.

36. OWNERSHIP OF MATERIALS AND INFORMATION; DOCUMENT RETENTION AND ACCESS.

- A. All reports, maps, plans, topographical surveys, photographs, boring logs, field data, field notes, soil, rock and water samples and documentation thereof, laboratory test data, calculations, estimates and any other data, documents or materials of any nature pertaining to services performed pursuant to this Agreement (whether prepared by Contractor or provided to Contractor by Tribe or any other entity) are the proprietary materials of Tribe and shall remain the property of Tribe. All costs for reproduction of any documents, unless specifically identified in Contractor's proposal and accepted in writing by Tribe, shall be the responsibility of Contractor. The obligations of Contractor and the rights of Tribe described in this paragraph shall be in addition to and shall not in any respect diminish the obligations and rights set forth in the paragraph entitled "Confidentiality".

- B. Contractor shall retain all photographs, surveys, any other data, documents or materials of any nature pertaining to services performed pursuant to this Agreement for the greater of either seven (7) years after completion of the work or as otherwise required by industry standards, during which time the records will be made available to Tribe at any time and without charge. Contractor shall not destroy or otherwise transfer such items without prior written authorization from Tribe.
- C. If required by an outside funding source, such as the U.S. or the State of Arizona, Contractor agrees to comply with applicable governmental requirements governing the maintenance of documentation with respect to the cost of materials and services rendered hereunder.
- D. Access shall be given by Contractor to Tribe, the Comptroller General of the United States, or other federal agency, or any of their duly authorized representatives, to any books, documents, papers, and records of Contractor which are pertinent to the Agreement for the purpose of making an audit, examination, excerpts, and transcriptions. All required records shall be retained for five (5) years after Tribe makes final payment and all other pending matters are closed.
- E. If Contractor carries out any of Contractor's duties pursuant to this Agreement through a subcontract, with a value or cost of \$10,000.00 or more over a 12-month period, with a related organization (as that term is defined by relevant Federal statute, rule, or regulation), such subcontract shall contain a clause to the effect that subcontractor will also comply with applicable governmental requirements of the government funding the Project.

37. SUBCONTRACTS:

- A. In the event that Tribe authorizes Contractor to hire subcontractors, Contractor shall not subcontract with any subcontractor who is presently denied participation in a HUD program or who is presently suspended or barred from participating in contracting programs by any agency of the United States Government, the State of Arizona, or Tribe.
- B. Contractor will cause all applicable provisions of this Agreement to be inserted in all its subcontracts.

38. LICENSURE, ACCREDITATION AND CERTIFICATION:

If at any time during the term of this Agreement there shall be a voluntary or involuntary restriction, suspension, withdrawal or non-renewal of Contractor's license, certification or permit, or any of Contractor's employees', agents', subcontractors' or representatives' licenses, certifications or permits, or any formal charges against Contractor or Contractor's employees, agents, subcontractors or representatives, by any government agencies or any licensing authority that would, if sustained, materially impair Contractor's ability to comply with Contractor's duties or obligations hereunder, Contractor shall immediately notify Tribe of the issuance of such restriction, suspension, withdrawal, non-renewal, or formal charges.

39. CHANGE IN OWNERSHIP OR COMPOSITION OF CONTRACTOR:

Contractor shall provide Tribe with immediate written notice in the event of any change in composition or legal or beneficial ownership of Contractor.

40. CONFIDENTIALITY:

- A. Contractor acknowledges that all material and information acquired in connection with this Agreement, is confidential and proprietary data and shall not during and after the term of this Agreement, disclose, duplicate or utilize information without written consent of Tribe.
- B. Contractor shall hold material and information in the strictest of confidence and agrees not to use this information or material in any other manner, except for the performance and management of this Agreement.
- C. Contractor shall return all information, notes and compilations to Tribe immediately after the need for such information has expired.
- D. Tribe reserves the right to require that any employee, agent or subcontractor or any other person responsible for completion of Contractor's performance under this Agreement sign a confidentiality agreement.

41. CONFLICT OF INTEREST:

- A. During the term of this Agreement, Contractor will not enter into any activity, employment or business arrangement which conflicts, in the sole discretion of Tribe, with Tribe's interests or Contractor's obligations hereunder.
- B. Contractor agrees to advise Tribe of Contractor's position with respect to any activity, employment or business arrangement contemplated by Contractor, which might conflict or give the appearance of conflicting with the interests of Tribe.

42. GRATUITIES:

- A. Tribe may, by written notice, terminate this Agreement, in whole or in part, if Tribe determines that employment or a Gratuity was offered or made by Contractor or a representative of Contractor to any officer or employee of Tribe for the purpose of influencing the outcome of the procurement or securing of the Contract, an amendment to this Agreement, or favorable treatment concerning this Agreement, including the making of any determination or decision about performance hereunder.
- B. Tribe, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three (3) times the value of the Gratuity offered by Contractor.

43. TERMINATION: (Check All That Apply)

- A. Tribe shall have the right, in its sole and absolute discretion to terminate this Agreement without cause or for its convenience. If it does so, Contractor shall be entitled to be paid for the actual cost of work completed in accordance with the Contract to the date of the termination, plus its expected profit margin as applied to the work completed through the date of termination, but shall not be entitled to any extended project costs or the like. Tribe's termination shall be: ☐ immediate
☐ upon [Click or tap here to enter text.](#) days' written notice.
- B. Tribe may terminate this Agreement with cause with [Click or tap here to enter text.](#) days' written notice to Contractor if Contractor breaches any Contract term, representation, warranty or covenant. If this Agreement is terminated for cause, Contractor shall be entitled to the cost of work completed in accordance with the Contract, less all damages, including consequential damages, caused by its breach of the Contract. In the event such damages exceed the amount which would otherwise be owed by Tribe, Contractor shall be liable to Tribe for the amount that said damages exceed the amount which Tribe would otherwise owe on the Contract.
- C. Contractor may terminate this Agreement with cause with [Click or tap here to enter text.](#) days' written notice to Tribe if Tribe materially breaches this Agreement. However, Tribe may cure the breach any time prior to the expiration of the required notice period.
- D. This Agreement will terminate upon the occurrence of any of the following events:
1. Automatically and without notice upon the cancellation or termination of Contractor's general or professional liability insurance;
 2. Subject to state and federal requirements applicable to continuation of services, automatically and without notice if either party becomes insolvent, or is adjudicated as bankrupt or its business comes into possession or control, even temporarily, of any trustee in bankruptcy, or a receiver is appointed for it, or it makes a general assignment for the benefit of creditors (in those instances no interest in this Agreement will be deemed an asset or liability of either party, nor will any interest in this Agreement pass by the operation of law without the consent of the other party).
 3. In the event Contractor, in the performance of the Contract, engages in any actions outside the scope of Covered Services as described in this Agreement.
- E. Upon notification by Tribe of termination, Contractor will immediately cease all work, unless otherwise directed by Tribe in the notice, and minimize further costs to Tribe.
- F. Contractor agrees that any Tribe decision to terminate this Agreement shall be final. Tribe shall not be bound by any financial obligation to Contractor upon termination of this Agreement, except for payments due in accordance with the terms of this Agreement for Covered Services provided prior to termination.

- G. Upon the termination or expiration of this Agreement, Contractor agrees to immediately return to Tribe, all property of Tribe, including, but not limited to manuals, forms, procedures and policies.
- H. Upon termination and prior to termination, all documents, data and reports prepared by Contractor pursuant to the Contract shall become the property of and be delivered to Tribe.

44. PARTIES REPRESENTED BY COUNSEL:

This Agreement is made and entered into voluntarily by Tribe and Contractor, free and clear from any duress or influence on either party by the other. Tribe and Contractor warrant that each has read this Agreement in its entirety. Tribe and Contractor have been advised fully and adequately by their respective legal counsel as to the character and legal effect of all terms and covenants contained herein. Tribe and Contractor further warrant that each fully understands the nature and effect of said terms and covenants prior to the execution of this Agreement.

45. AMENDMENTS:

- A. The terms and/or provisions of this Agreement may not be amended or modified unless mutually agreed upon, in writing, approved in accordance with the laws of the Tribe, and signed by both parties and attached to this Agreement.
- B. A copy of any fully executed Addendum or Amendment shall be incorporated into this Agreement and made a part hereof.

46. ASSIGNMENT AND DELEGATION:

- A. Contractor may not assign any of Contractor's rights or delegate any of Contractor's duties hereunder without the prior written consent of Tribe.
- B. Tribe may assign this Agreement or any of its rights or delegate its duties to any transferee or assignee of Tribe, upon written notice to Contractor.

47. BINDING EFFECT:

This Agreement shall be binding upon, and shall inure to the benefit of, the parties to it, and their respective heirs, legal representatives, successors and assigns.

48. INDEPENDENT CONTRACTOR STATUS:

- A. This Agreement is not intended to create any relationship between Tribe and Contractor, other than that of independent entities, contracting with each other, solely for the purposes of effecting the provisions herein.
- B. Tribe shall not be responsible for withholding or payment of taxes on any funds paid to Contractor.

- C. Contractor shall have no authority to incur indebtedness, commit or obligate Tribe as an agent, representative or employee of Tribe, unless such authority is authorized by Tribe in writing.
- D. Contractor shall maintain responsibility for hiring, supervising and paying assistants or other employees to perform Covered Services. However, all employees shall be subject to the terms of this Agreement.
- E. Contractor shall determine the order and sequence of Contractor's work.

49. LOBBYING:

During the term of this Agreement, Contractor agrees not to engage in any lobbying activity on behalf of Tribe.

50. NO WAIVER:

- A. Tribe's failure to take action for any breach of this Agreement shall not be deemed to be a waiver by Tribe, even if Tribe acquiesces to the nature of the performance and fails to object to it.
- B. Tribe's review, approval, acceptance of, or payment for Contractor's services shall not be construed as a waiver of any rights under this Agreement or of any cause of action for damages caused by contractor's negligent performance under this Agreement.
- C. Tribe's review, approval, acceptance of, or payment for Contractor's services shall not relieve Contractor of liability with respect to any express or implied warranties.
- D. Tribe's subsequent acceptance of partial performance under this Agreement shall not be deemed to be a waiver of any preceding breach by Contractor.
- E. In the event a condition is waived, all other terms and provisions shall remain in full force and effect.

51. NON-APPROPRIATION:

Notwithstanding any other provision herein, this Agreement may be terminated if, for any reason, there are insufficient appropriations and available monies.

52. NON-EXCLUSIVE CONTRACT:

- A. Contractor is not prohibited from performing or making Contractor's services available to the general public on a regular and consistent basis. Nor is Contractor restricted from seeking and performing other gainful work.
- B. Tribe may contract with additional contractors, subcontractors, and/or self-perform the Work or any portion of the Work contemplated in this Agreement.

53. NON-EXCLUSIVE REMEDIES:

The rights and remedies of Tribe hereunder are not exclusive.

54. ATTORNEYS' FEES:

In any action at law or in equity to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney fees, costs, expenses and necessary disbursements, in addition to other relief which may be granted, subject to Tribe's defense of sovereign immunity.

55. CONTRACT ORDER OF PRECEDENCE:

In the case of any inconsistency or conflict among the provisions of this Agreement and any other terms and conditions of any documents comprising the Contract Documents, the provisions of this Agreement shall control. Concerning the Contract Documents, the order of precedence shall be as follows: 1) this Agreement, including Amendments, Attachments, and Exhibits; 2) Change Orders; 3) Work Directives; 4) Field Orders; 5) the Solicitation Documents, including addenda.

56. CONDITIONS PRECEDENT:

This Agreement shall become effective only upon satisfaction of the following conditions precedent:

- A. Full execution of this Agreement;
- B. Tribe's receipt of the following in form and substance acceptable to Tribe, each of which shall be attached hereto as an Exhibit:
 - 1. Current Certificates of Insurance for all policies set forth herein;
 - 2. A fully completed Request for Taxpayer Identification Number and Certification, IRS Form W-9; and

57. ENTIRE AGREEMENT:

- A. This Agreement, including its Attachments and Exhibits, comprises the entire agreement between the parties and supersedes all prior written or oral agreements, representations and implied contracts.
- B. This Agreement, including its Attachments and Exhibits, is not conditioned on the performance of any other agreement. All prior and contemporaneous negotiations and understandings between the parties are embodied in this Agreement.
- C. Each Party acknowledges that no representations, enticements, promises or agreements, oral or otherwise, have been made on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise, not contained in this Agreement, its Attachments or Exhibits shall be valid or binding.

- D. Each Party acknowledges that it has had reasonable opportunity to consult with its own counsel regarding the Agreement, and that it fully understands all of the terms and provisions hereof and its rights and obligations hereunder.

58. SEVERABILITY:

- A. Provisions of this Agreement are severable.
- B. If any provision of this Agreement is determined to be void, invalid or unenforceable, it shall be considered deleted from this Agreement and the invalidity of such provision shall not affect the validity or enforceability of the remaining provisions, which shall continue in full force and effect without being invalidated.

59. EXECUTION:

- A. This Agreement shall not be valid or enforceable unless approved and executed in accordance with the requirements of Tribe's Constitution and laws, as they may exist from time to time.
- B. This Agreement is entered into and executed on the Pascua Yaqui Reservation.
- C. Each person executing this Agreement warrants to all parties hereto that such person is authorized to execute and deliver this Agreement on behalf of the party for which that execution occurs.
- D. This Agreement and any amendments may be executed in several counterparts. Each counterpart shall be deemed an original, but all counterparts shall constitute a single instrument.

60. CHOICE OF LAW, JURISDICTION, AND SOVEREIGN IMMUNITY:

- A. This Agreement is to be construed strictly according to Pascua Yaqui Tribal law. Any dispute concerning the validity, interpretation, effect, or alleged violation of this Agreement, including disputes arising out of the performance or lack of performance hereunder, shall be governed exclusively by the laws of the Pascua Yaqui Tribe, without giving effect to the conflict of laws.
- B. All disputes arising under this Agreement shall be resolved in the Pascua Yaqui Tribal Courts. Contractor, by signature below, consents to the exclusive jurisdiction of the Pascua Yaqui Tribal Court over all disputes arising under or relating in any way to this Agreement.
- C. By entering into this Agreement, Tribe does not waive any right, privilege, or status, including, but not limited to, sovereign immunity.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have caused their proper and duly authorized officers to execute this Agreement by affixing their signatures hereto on the dates set forth below.

TRIBE:
Pascua Yaqui Tribe
a federally recognized Indian Tribe

By: _____
Chairperson

Date: _____

CONTRACTOR:
Click or tap here to enter text.
an Arizona Company

By: _____

TIN: _____

Date: _____

SAMPLE