



SQUAXIN ISLAND TRIBE

RESOLUTION NO. 10- 77

of the

SQUAXIN ISLAND TRIBAL COUNCIL

WHEREAS, the Squaxin Island Tribal Council is the Governing Body of the Squaxin Island Tribe, its members, its lands, its enterprises and its agencies by the authority of the Constitution and Bylaws of the Squaxin Island Tribe, as approved and adopted by the General Body and the Secretary of the Interior on July 8, 1965; and

WHEREAS, under the Constitution, Bylaws and inherent sovereignty of the Tribe, the Squaxin Island Tribal Council is charged with the duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources and rights of the Tribe; and

WHEREAS, the Tribe is a federally-recognized Indian Tribe possessing reserved powers, including the powers of self-government; and

WHEREAS, the Squaxin Island Tribal Council has been entrusted with the creation of ordinances and resolutions in order to fulfill their duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources of the Tribe; and

WHEREAS, the Squaxin Island Tribal Council Chairman; and

WHEREAS, Staff has negotiated the terms of a contract for Improvements to Klah-Che-Min Drive with Rodarte Construction Inc. ("Contractor"), as is evidenced by the attached Contract; and

WHEREAS, in order to induce Contractor to complete and execute the Agreement for Construction Services and perform the same, it is necessary for the Tribal Council to ratify and approve the terms of the Agreement for Construction Services; to authorize execution of any and all documents required; to issue a limited waiver of sovereign immunity; to consent that the Tribe enter dispute resolution and/or be sued in Tribal and potentially federal courts in disputes related to the transaction; and to consent to the potential application of certain substantive laws of Washington.

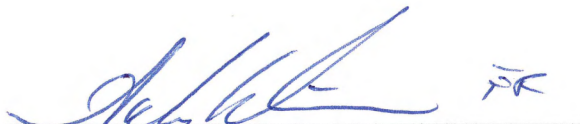
NOW THEREFORE BE IT RESOLVED, that the Squaxin Island Tribal Council hereby agrees to enter into the attached Contract.

NOW THEREFORE BE IT FURTHER RESOLVED, the Tribal Council specifically limits its waiver of sovereign immunity for the purposes of this Contract to the limited waiver as stated on pages 31-32 of the Contract; and

NOW THEREFORE BE IT FINALLY RESOLVED, that the Tribal Council hereby authorizes Ray Peters to do any and all accounts necessary to effect execution of the Contract.

CERTIFICATION

The Squaxin Island Tribal Council hereby certifies that the foregoing Resolution was adopted at the ^{special} ~~regular~~ meeting of the Squaxin Island Tribal Council, held on this 12 day of July, 2010, at which time a quorum was present and was passed by a vote of 5 for and 0 against, with 0 abstentions.

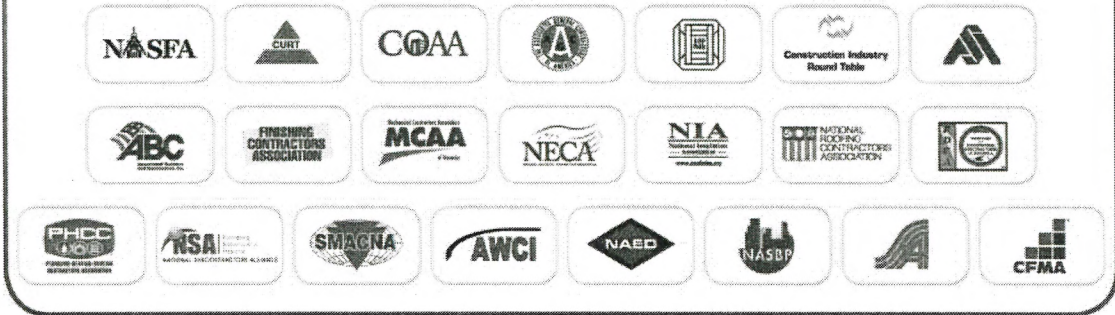

David Lopeman, Chairman

Attested by: 
Peter Kruger, Secretary


Arnold Cooper, Vice Chairman



ConsensusDOCS is proudly endorsed by the following



CONSENSUSDOCS 200 STANDARD AGREEMENT AND GENERAL CONDITIONS BETWEEN OWNER AND CONTRACTOR

(Where the Contract Price is based on a Schedule of Values)

TABLE OF ARTICLES

1. AGREEMENT
2. GENERAL PROVISIONS
3. CONTRACTOR'S RESPONSIBILITIES
4. OWNER'S RESPONSIBILITIES
5. SUBCONTRACTS
6. CONTRACT TIME
7. CONTRACT PRICE
8. CHANGES
9. PAYMENT
10. INDEMNITY, INSURANCE, WAIVERS AND BONDS
11. SUSPENSION, NOTICE TO CURE AND TERMINATION OF THE AGREEMENT

IMPORTANT: A vertical line in the margin indicates a change has been made to the original text. Prior to signing, recipients may wish to request from the party producing the document a "redlined" version indicating changes to the original text. Consultation with legal and insurance counsel and careful review of the entire document are strongly encouraged.

ConsensusDOCS 200 • STANDARD AGREEMENT AND GENERAL CONDITIONS BETWEEN OWNER AND CONTRACTOR (Where the Contract Price is a Lump Sum) Copyright © 2007, ConsensusDOCS LLC. YOU ARE ALLOWED TO USE THIS DOCUMENT FOR ONE CONTRACT ONLY. YOU MAY MAKE 9 COPIES OF THE COMPLETED DOCUMENT FOR DISTRIBUTION TO THE CONTRACT'S PARTIES. ANY OTHER USES, INCLUDING COPYING THE FORM DOCUMENT, ARE STRICTLY PROHIBITED.

12. DISPUTE RESOLUTION/LIMITED WAIVER OF SOVEREIGN IMMUNITY

13. MISCELLANEOUS PROVISIONS

14. CONTRACT DOCUMENTS

This Agreement has important legal and insurance consequences. Consultations with an attorney and with insurance and surety consultants are encouraged with respect to its completion or modification. Notes indicate where information is to be inserted to complete this Agreement.

ARTICLE 1 AGREEMENT

This Agreement is made this 22 day of July in the year 2010,

by and between the

OWNER

Squaxin Island Tribe, a federally recognized tribe

10 SE Squaxin Lane

Shelton, WA 98584

and the

CONTRACTOR

Rodarte Construction Inc

17 E Valley Highway

Auburn, WA 98092-5531

for services in connection with the following

PROJECT

Klah-Che-Min Drive: Road and Drainage Improvement

Notice to the Parties shall be given at the above addresses.

ARTICLE 2 GENERAL PROVISIONS

2.1 RELATIONSHIP OF PARTIES The Owner and the Contractor agree to proceed with the Project on the basis of mutual trust, good faith and fair dealing.

2.1.1 The Contractor shall furnish construction administration and management services and use the Contractor's diligent efforts to perform the Work in an expeditious manner consistent with the Contract Documents. The Owner and Contractor shall endeavor to promote harmony and cooperation among all Project participants.

2.1.2 The Contractor represents that it is an independent contractor and that in its performance of

the Work it shall act as an independent contractor.

2.1.3 Neither Contractor nor any of its agents or employees shall act on behalf of or in the name of Owner except as provided in this Agreement or unless authorized in writing by Owner's Representative.

2.1.4 The Owner and the Contractor shall perform their obligations with integrity, ensuring at a minimum that

2.1.4.1 Conflicts of interest shall be avoided or disclosed promptly to the other Party; and

2.1.4.2 The Contractor and the Owner warrant that they have not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including its agents, officers and employees, Subcontractors or others for whom they may be liable, to secure preferential treatment.

2.2 EXTENT OF AGREEMENT This Agreement is solely for the benefit of the Parties, represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement and each and every provision is for the exclusive benefit of the Owner and Contractor and not for the benefit of any third party except to the extent expressly provided in this Agreement.

2.3 ARCHITECT/ENGINEER The Owner, through its Architect/Engineer, shall provide all architectural and engineering design services necessary for the completion of the Work.: Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering except as otherwise provided in Paragraph 3.15.

2.4 DEFINITIONS

2.4.1 Agreement means this ConsensusDOCS 200 Standard Agreement and General Conditions Between Owner and Contractor (Where the Contract Price is a Lump Sum), as modified by the Parties, and exhibits and attachments made part of this Agreement upon its execution.

2.4.2 Architect/Engineer means the licensed Architect, Architect/Engineer or Engineer and its consultants, retained by Owner to perform design services for the Project. The Owner's Architect/Engineer for the Project is Pacific Survey and Engineering (PSE).

2.4.3 A Change Order is a written order signed by the Owner and the Contractor after execution of this Agreement, indicating changes in the scope of the Work, the Contract Price or Contract Time, including substitutions proposed by the Contractor and accepted by the Owner.

2.4.4 The Contract Documents consist of this Agreement, the drawings, specifications, addenda issued prior to execution of this Agreement, approved submittals, information furnished by the Owner under Paragraph 4.3, other documents listed in this Agreement and any modifications issued after execution.

2.4.5 The Contract Price is the amount indicated in Paragraph 7.1 of this Agreement.

2.4.6 The Contract Time is the period between the Date of Commencement and Final Completion. See Article 6.

2.4.7 The Contractor is the person or entity identified in Article 1 and includes the Contractor's Representative.

- 2.4.8 The term Day shall mean calendar day unless otherwise specifically defined.
- 2.4.9 Final Completion occurs on the date when the Contractor's obligations under this Agreement are complete and accepted by the Owner and final payment becomes due and payable, as established in Article 6. This date shall be confirmed by a Certificate of Final Completion signed by the Owner and the Contractor.
- 2.4.10 A Material Supplier is a person or entity retained by the Contractor to provide material or equipment for the Work.
- 2.4.11 Others means other contractors, material suppliers and persons at the Worksite who are not employed by the Contractor or Subcontractors.
- 2.4.12 The term Overhead shall mean 1) payroll costs and other compensation of Contractor employees in the Contractor's principal and branch offices; 2) general and administrative expenses of the Contractor's principal and branch offices including deductibles paid on any insurance policy, charges against the Contractor for delinquent payments, and costs related to the correction of defective work; and 3) the Contractor's capital expenses, including interest on capital used for the Work.
- 2.4.13 Owner is the person or entity identified in Article 1, and includes the Owner's Representative.
- 2.4.14 The Project, as identified in Article 1, is the building, facility or other improvements for which the Contractor is to perform Work under this Agreement. It may also include construction by the Owner or Others.
- 2.4.15 The Schedule of the Work is the document prepared by the Contractor that specifies the dates on which the Contractor plans to begin and complete various parts of the Work, including dates on which information and approvals are required from the Owner.
- 2.4.16 A Subcontractor is a person or entity retained by the Contractor as an independent contractor to provide the labor, materials, equipment or services necessary to complete a specific portion of the Work. The term Subcontractor does not include the Architect/Engineer or Others.
- 2.4.17 Substantial Completion of the Work, or of a designated portion, occurs on the date when the Work is sufficiently complete in accordance with the Contract Documents so that the Owner may occupy or utilize the Project, or a designated portion, for the use for which it is intended, without unscheduled disruption. The issuance of a certificate of occupancy is not a prerequisite for Substantial Completion if the certificate of occupancy cannot be obtained due to factors beyond the Contractor's control. This date shall be confirmed by a Certificate of Substantial Completion signed by the Owner and Contractor.
- 2.4.18 A Sub-subcontractor is a person or entity who has an agreement with a Subcontractor to perform any portion of the Subcontractor's Work.
- 2.4.19 Terrorism means a violent act, or an act that is dangerous to human life, property or infrastructure, that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion. Terrorism includes, but is not limited to, any act certified by the United States government as an act of terrorism pursuant to the Terrorism Risk Insurance Act, as amended.
- 2.4.20 Work means the construction and services necessary or incidental to fulfill the Contractor's obligations for the Project in conformance with this Agreement and the other Contract Documents. The Work may refer to the whole Project or only a part of the Project if work is also being performed

by the Owner or Others.

2.4.20.1 Changed Work means work that is different from the original scope of Work; or work that changes the Contract Price or Contract Time.

2.4.20.2 Defective Work is any portion of the Work that is not in conformance with the Contract Documents, as more fully described in Paragraphs 3.5 and 3.8.

2.4.21 Worksite means the geographical area at the location of the Project as identified in Article 1 where the Work is to be performed.

ARTICLE 3

CONTRACTOR'S RESPONSIBILITIES

3.1 GENERAL RESPONSIBILITIES

3.1.1 The Contractor shall provide all labor, materials, equipment and services necessary to complete the Work, all of which shall be provided in full accord with and reasonably inferable from the Contract Documents as being necessary to produce the indicated results.

3.1.2 The Contractor shall be responsible for the supervision and coordination of the Work, including the construction means, methods, techniques, sequences and procedures utilized, unless the Contract Documents give other specific instructions. In such case, the Contractor shall not be liable to the Owner for damages resulting from compliance with such instructions unless the Contractor recognized and failed to timely report to the Owner any error, inconsistency, omission or unsafe practice that it discovered in the specified construction means, methods, techniques, sequences or procedures.

3.1.3 The Contractor shall perform Work only within locations allowed by the Contract Documents, applicable permits and applicable local law.

3.2 COOPERATION WITH WORK OF OWNER AND OTHERS

3.2.1 The Owner may perform work at the Worksite directly or by Others. Any agreements with Others to perform construction or operations related to the Project shall include provisions pertaining to insurance, indemnification, waiver of subrogation, coordination, interference, cleanup and safety which are substantively the same as the corresponding provisions of this Agreement.

3.2.2 In the event that the Owner elects to perform work at the Worksite directly or by Others, the Contractor and the Owner shall coordinate the activities of all forces at the Worksite and agree upon fair and reasonable schedules and operational procedures for Worksite activities. The Owner shall require each separate contractor to cooperate with the Contractor and assist with the coordination of activities and the review of construction schedules and operations. The Contract Price and Contract Time shall be equitably adjusted, as mutually agreed by the Parties, for changes made necessary by the coordination of construction activities, and the Schedule of the Work shall be revised accordingly. The Contractor, Owner and Others shall adhere to the revised construction schedule until it may subsequently be revised.

3.2.3 With regard to the work of the Owner and Others, the Contractor shall (a) proceed with the Work in a manner which does not hinder, delay or interfere with the work of the Owner or Others or cause the work of the Owner or Others to become defective, (b) afford the Owner or Others reasonable access for introduction and storage of their materials and equipment and performance of their activities, and (c) coordinate the Contractor's construction and operations with theirs as required

by this Paragraph 3.2.

3.2.4 Before proceeding with any portion of the Work affected by the construction or operations of the Owner or Others, the Contractor shall give the Owner prompt written notification of any defects the Contractor discovers in their work which will prevent the proper execution of the Work. The Contractor's obligations in this Paragraph do not create a responsibility for the work of the Owner or Others, but are for the purpose of facilitating the Work. If the Contractor does not notify the Owner of patent defects interfering with the performance of the Work, the Contractor acknowledges that the work of the Owner or Others is not defective and is acceptable for the proper execution of the Work. Following receipt of written notice from the Contractor of defects, the Owner shall promptly inform the Contractor what action, if any, the Contractor shall take with regard to the defects.

3.3 RESPONSIBILITY FOR PERFORMANCE

3.3.1 In order to facilitate its responsibilities for completion of the Work in accordance with and as reasonably inferable from the Contract Documents, prior to commencing the Work the Contractor shall examine and compare the drawings and specifications with information furnished by the Owner pursuant to Paragraph 4.3, relevant field measurements made by the Contractor and any visible conditions at the Worksite affecting the Work.

3.3.2 If in the course of the performance of the obligations in Subparagraph 3.3.1 the Contractor discovers any errors, omissions or inconsistencies in the Contract Documents, the Contractor shall promptly report them to the Owner. It is recognized, however, that the Contractor is not acting in the capacity of a licensed design professional, and that the Contractor's examination is to facilitate construction and does not create an affirmative responsibility to detect errors, omissions or inconsistencies or to ascertain compliance with applicable laws, building codes or regulations. Following receipt of written notice from the Contractor of defects, the Owner shall promptly inform the Contractor what action, if any, the Contractor shall take with regard to the defects.

3.3.3 The Contractor shall have no liability for errors, omissions or inconsistencies discovered under Subparagraphs 3.3.1 and 3.3.2 unless the Contractor knowingly fails to report a recognized problem to the Owner.

3.3.4 The Contractor may be entitled to additional costs or time because of clarifications or instructions arising out of the Contractor's reports described in the three preceding Subparagraphs.

3.4 CONSTRUCTION PERSONNEL AND SUPERVISION

3.4.1 The Contractor shall provide competent supervision for the performance of the Work. Before commencing the Work, Contractor shall notify Owner in writing of the name and qualifications of its proposed superintendent(s) and project manager so Owner may review the individual's qualifications. If, for reasonable cause, the Owner refuses to approve the individual, or withdraws its approval after once giving it, Contractor shall name a different superintendent or project manager for Owner's review. Any disapproved superintendent shall not perform in that capacity thereafter at the Worksite.

3.4.2 The Contractor shall be responsible to the Owner for acts or omissions of parties or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

3.4.3 The Contractor shall permit only qualified persons to perform the Work. The Contractor shall enforce safety procedures, strict discipline and good order among persons performing the Work. If the Owner determines that a particular person does not follow safety procedures, or is unfit or unskilled for the assigned work, the Contractor shall immediately reassign the person upon receipt of the Owner's written notice to do so.

3.4.4 **CONTRACTOR'S REPRESENTATIVE** The Contractor's authorized representative is Dan Neelands. The Contractor's Representative shall possess full authority to receive instructions from the Owner and to act on those instructions. The Contractor shall notify the Owner in writing of a change in the designation of the Contractor's Representative.

3.5 **WORKMANSHIP** The Work shall be executed in accordance with the Contract Documents in a workmanlike manner. All materials used in the Work shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the Work and shall be new except such materials as may be expressly provided in the Contract Documents to be otherwise.

3.6 **MATERIALS FURNISHED BY THE OWNER OR OTHERS** In the event the Work includes installation of materials or equipment furnished by the Owner or Others, it shall be the responsibility of the Contractor to examine the items so provided and thereupon handle, store and install the items, unless otherwise provided in the Contract Documents, with such skill and care as to provide a satisfactory and proper installation. Loss or damage due to acts or omissions of the Contractor shall be the responsibility of the Contractor and may be deducted from any amounts due or to become due the Contractor. Any defects discovered in such materials or equipment shall be reported at once to the Owner. Following receipt of written notice from the Contractor of defects, the Owner shall promptly inform the Contractor what action, if any, the Contractor shall take with regard to the defects.

3.7 TESTS AND INSPECTIONS

3.7.1 The Contractor shall schedule all required tests, approvals and inspections of the Work or portions thereof at appropriate times so as not to delay the progress of the Work or other work related to the Project. The Contractor shall give proper notice to all required parties of such tests, approvals and inspections. If feasible, the Owner and Others may timely observe the tests at the normal place of testing. Except as provided in Subparagraph 3.7.3, the Owner shall bear all expenses associated with tests, inspections and approvals required by the Contract Documents, which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity retained by the Owner. Unless otherwise required by the Contract Documents, required certificates of testing, approval or inspection shall be secured by the Contractor and promptly delivered to the Owner.

3.7.2 If the Owner or appropriate authorities determine that tests, inspections or approvals in addition to those required by the Contract Documents will be necessary, the Contractor shall arrange for the procedures and give timely notice to the Owner and Others who may observe the procedures. Costs of the additional tests, inspections or approvals are at the Owner's expense except as provided in Subparagraph 3.7.3.

3.7.3 If the procedures described in Subparagraphs 3.7.1 and 3.7.2 indicate that portions of the Work fail to comply with the Contract Documents, the Contractor shall be responsible for costs of correction and retesting.

3.8 WARRANTY

3.8.1 The Contractor warrants that all materials and equipment shall be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. At the Owner's request, the Contractor shall furnish satisfactory evidence of the quality and type of materials and equipment furnished. The Contractor further warrants that the Work shall be free from material defects not intrinsic in the design or materials required in the Contract Documents. The Contractor's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by the

Owner or Others, or abuse. The Contractor's warranty pursuant to this Paragraph 3.8 shall commence on the Date of Substantial Completion.

3.8.2 The Contractor shall obtain from its Subcontractors and Material Suppliers any special or extended warranties required by the Contract Documents. All such warranties shall be listed in an attached Exhibit to this Agreement. Contractor's liability for such warranties shall be limited to the one-year correction period referred to in Paragraph 3.9. After that period Contractor shall assign them to the Owner and provide reasonable assistance to the Owner in enforcing the obligations of Subcontractors or Material Suppliers.

3.9 CORRECTION OF WORK WITHIN ONE YEAR

3.9.1 If, prior to Substantial Completion and within one year after the date of Substantial Completion of the Work, any Defective Work is found, the Owner shall promptly notify the Contractor in writing. Unless the Owner provides written acceptance of the condition, the Contractor shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible. If within the one-year correction period the Owner discovers and does not promptly notify the Contractor or give the Contractor an opportunity to test or correct Defective Work as reasonably requested by the Contractor, the Owner waives the Contractor's obligation to correct that Defective Work as well as the Owner's right to claim a breach of the warranty with respect to that Defective Work.

3.9.2 With respect to any portion of Work first performed after Substantial Completion, the one-year correction period shall be extended by the period of time between Substantial Completion and the actual performance of the later Work. Correction periods shall not be extended by corrective work performed by the Contractor.

3.9.3 If the Contractor fails to correct Defective Work within a reasonable time after receipt of written notice from the Owner prior to final payment, the Owner may correct it in accordance with the Owner's right to carry out the Work in Paragraph 11.2. In such case, an appropriate Change Order shall be issued deducting the cost of correcting such deficiencies from payments then or thereafter due the Contractor. If payments then or thereafter due Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

3.9.4 If after the one-year correction period but before the applicable limitation period the Owner discovers any Defective Work, the Owner shall, unless the Defective Work requires emergency correction, promptly notify the Contractor. If the Contractor elects to correct the Work, it shall provide written notice of such intent within fourteen (14) Days of its receipt of notice from the Owner. The Contractor shall complete the correction of Work within a mutually agreed timeframe. If the Contractor does not elect to correct the Work, the Owner may have the Work corrected by itself or Others and charge the Contractor for the reasonable cost of the correction. Owner shall provide Contractor with an accounting of correction costs it incurs.

3.9.5 If the Contractor's correction or removal of Defective Work causes damage to or destroys other completed or partially completed Work or existing buildings, the Contractor shall be responsible for the cost of correcting the destroyed or damaged property.

3.9.6 The one-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of the Contractor's other obligations under the Contract Documents.

3.9.7 Prior to final payment, at the Owner's option and with the Contractor's agreement, the Owner may elect to accept Defective Work rather than require its removal and correction. In such case the Contract Price shall be equitably adjusted for any diminution in the value of the Project caused by

such Defective Work.

3.10 CORRECTION OF COVERED WORK

3.10.1 On request of the Owner, Work that has been covered without a requirement that it be inspected prior to being covered may be uncovered for the Owner's inspection. The Owner shall pay for the costs of uncovering and replacement if the Work proves to be in conformance with the Contract Documents, or if the defective condition was caused by the Owner or Others. If the uncovered Work proves to be defective, the Contractor shall pay the costs of uncovering and replacement.

3.10.2 If contrary to specific requirements in the Contract Documents or contrary to a specific request from the Owner, a portion of the Work is covered, the Owner, by written request, may require the Contractor to uncover the Work for the Owner's observation. In this circumstance the Work shall be replaced at the Contractor's expense and with no adjustment to the Contract Time.

3.11 SAFETY OF PERSONS AND PROPERTY

3.11.1 SAFETY PRECAUTIONS AND PROGRAMS The Contractor shall have overall responsibility for safety precautions and programs in the performance of the Work. While this Paragraph 3.11 establishes the responsibility for safety between the Owner and Contractor, it does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with the provisions of applicable laws and regulations.

3.11.2 The Contractor shall seek to avoid injury, loss or damage to persons or property by taking reasonable steps to protect:

3.11.2.1 its employees and other persons at the Worksite;

3.11.2.2 materials and equipment stored at onsite or offsite locations for use in the Work; and

3.11.2.3 property located at the site and adjacent to Work areas, whether or not the property is part of the Work.

3.11.3 CONTRACTOR'S SAFETY REPRESENTATIVE The Contractor's Worksite Safety Representative is Bill Dodge, who shall act as the Contractor's authorized safety representative with a duty to prevent accidents in accordance with Subparagraph 3.11.2. If no individual is identified in this Paragraph 3.11, the authorized safety representative shall be the Contractor's Representative. The Contractor shall report immediately in writing to the Owner all recordable accidents and injuries occurring at the Worksite. When the Contractor is required to file an accident report with a public authority, the Contractor shall furnish a copy of the report to the Owner.

3.11.4 The Contractor shall provide the Owner with copies of all notices required of the Contractor by law or regulation. The Contractor's safety program shall comply with the requirements of governmental and quasi-governmental authorities having jurisdiction.

3.11.5 Damage or loss not insured under property insurance which may arise from the Work, to the extent caused by the negligent acts or omissions of the Contractor, or anyone for whose acts the Contractor may be liable, shall be promptly remedied by the Contractor.

3.11.6 If the Owner deems any part of the Work or Worksite unsafe, the Owner, without assuming responsibility for the Contractor's safety program, may require the Contractor to stop performance of the Work or take corrective measures satisfactory to the Owner, or both. If the Contractor does not adopt corrective measures, the Owner may perform them and deduct their cost from the Contract

Price. The Contractor agrees to make no claim for damages, for an increase in the Contract Price or for a change in the Contract Time based on the Contractor's compliance with the Owner's reasonable request.

3.12 EMERGENCIES

3.12.1 In an emergency, the Contractor shall act in a reasonable manner to prevent personal injury or property damage. Any change in the Contract Price or Contract Time resulting from the actions of the Contractor in an emergency situation shall be determined as provided in Article 8.

3.13 HAZARDOUS MATERIALS

3.13.1 A Hazardous Material is any substance or material identified now or in the future as hazardous under any applicable federal, state, or tribal law or regulation, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal or cleanup. The Contractor shall not be obligated to commence or continue work until any Hazardous Material discovered at the Worksite has been removed, rendered or determined to be harmless by the Owner as certified by an independent testing laboratory and approved by the appropriate government agency.

3.13.2 If after the commencement of the Work Hazardous Material is discovered at the Worksite, the Contractor shall be entitled to immediately stop Work in the affected area. The Contractor shall report the condition to the Owner, the Architect/Engineer, and, if required, the government agency with jurisdiction.

3.13.3 The Contractor shall not be required to perform any Work relating to or in the area of Hazardous Material without written mutual agreement.

3.13.4 The Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether the material requires corrective measures or remedial action. Such measures shall be the sole responsibility of the Owner, and shall be performed in a manner minimizing any adverse effects upon the Work. The Contractor shall resume Work in the area affected by any Hazardous Material only upon written agreement between the Parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency with jurisdiction.

3.13.5 If the Contractor incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, the Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Time.

3.13.6 MATERIALS BROUGHT TO THE WORKSITE

3.13.7.1 Material Safety Data (MSD) sheets as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by the Contractor, Subcontractors, the Owner or Others, shall be maintained at the Worksite by the Contractor and made available to the Owner, Subcontractors and Others.

3.13.7.2 The Contractor shall be responsible for the proper delivery, handling, application, storage, removal and disposal of all materials and substances brought to the Worksite by the Contractor in accordance with the Contract Documents and used or consumed in the performance of the Work.

3.13.7.3 To the extent caused by the negligent acts or omissions of the Contractor, its agents, officers, directors and employees, the Contractor shall indemnify and hold harmless the Owner, its agents, officers, directors and employees, from and against any and all claims, damages, losses, costs and expenses, including but not limited to attorneys' fees, costs and expenses incurred in connection with any dispute resolution procedure, arising out of or relating to the delivery, handling, application, storage, removal and disposal of all materials and substances brought to the Worksite by the Contractor in accordance with the Contract Documents.

3.13.7 The terms of this Paragraph 3.13 shall survive the completion of the Work or any termination of this Agreement.

3.14 SUBMITTALS

3.14.1 The Contractor shall submit to the Owner, and, if directed, to its Architect/Engineer, for review and approval all shop drawings, samples, product data and similar submittals required by the Contract Documents. Submittals may be submitted in electronic form if required in accordance with ConsensusDOCS 200.2 and Subparagraph 4.6.1. The Contractor shall be responsible to the Owner for the accuracy and conformity of its submittals to the Contract Documents. The Contractor shall prepare and deliver its submittals to the Owner in a manner consistent with the Schedule of the Work and in such time and sequence so as not to delay the performance of the Work or the work of the Owner and Others. When the Contractor delivers its submittals to the Owner, the Contractor shall identify in writing for each submittal all changes, deviations or substitutions from the requirements of the Contract Documents. The review and approval of any Contractor submittal shall not be deemed to authorize changes, deviations or substitutions from the requirements of the Contract Documents unless express written approval is obtained from the Owner specifically authorizing such deviation, substitution or change. To the extent a change, deviation or substitution causes an impact to the Contract Price or Contract Time, such approval shall be promptly memorialized in a Change Order. Further, the Owner shall not make any change, deviation or substitution through the submittal process without specifically identifying and authorizing such deviation to the Contractor. In the event that the Contract Documents do not contain submittal requirements pertaining to the Work, the Contractor agrees upon request to submit in a timely fashion to the Owner for review and approval any shop drawings, samples, product data, manufacturers' literature or similar submittals as may reasonably be required by the Owner.

3.14.2 The Owner shall be responsible for review and approval of submittals with reasonable promptness to avoid causing delay.

3.14.3 The Contractor shall perform all Work strictly in accordance with approved submittals. Approval of shop drawings is not authorization to Contractor to perform Changed Work, unless the procedures of Article 8 are followed. Approval does not relieve the Contractor from responsibility for Defective Work resulting from errors or omissions of any kind on the approved Shop Drawings.

3.14.4 Record copies of the following, incorporating field changes and selections made during construction, shall be maintained at the Project site and available to the Owner upon request: drawings, specifications, addenda, Change Order and other modifications, and required submittals including product data, samples and shop drawings.

3.14.5 No substitutions shall be made in the Work unless permitted in the Contract Documents and then only after the Contractor obtains approvals required under the Contract Documents for substitutions. All such substitutions shall be promptly memorialized in a Change Order no later than seven (7) Days following approval by the Owner and, if applicable, provide for an adjustment in the

Contract Price or Contract Time.

3.14.6 The Contractor shall prepare and submit to the Owner two (2) copies of the final marked up as-built drawings and a copy in electronic form, if available, in general documenting how the various elements of the work were actually constructed or installed.

3.15 PROFESSIONAL SERVICES The Contractor may be required to procure professional services in order to carry out its responsibilities for construction means, methods, techniques, sequences and procedures for such services specifically called for by the Contract Documents. The Contractor shall obtain these professional services and any design certifications required from licensed design professionals. All drawings, specifications, calculations, certifications and submittals prepared by such design professionals shall bear the signature and seal of such design professionals and the Owner and the Architect/Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of such design services. If professional services are specifically required by the Contract Documents, the Owner shall indicate all required performance and design criteria. The Contractor shall not be responsible for the adequacy of such performance and design criteria. The Contractor shall not be required to provide such services in violation of existing laws, rules and regulations in the jurisdiction where the Project is located.

3.16 WORKSITE CONDITIONS

3.16.1 WORKSITE VISIT The Contractor acknowledges that it has visited, or has had the opportunity to visit, the Worksite to visually inspect the general and local conditions which could affect the Work.

3.16.2 CONCEALED OR UNKNOWN SITE CONDITIONS If the conditions at the Worksite are (a) subsurface or other physical conditions which are materially different from those indicated in the Contract Documents, or (b) unusual or unknown physical conditions which are materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, the Contractor shall stop Work and give immediate written notice of the condition to the Owner and the Architect/Engineer. The Contractor shall not be required to perform any work relating to the unknown condition without the written mutual agreement of the Parties. Any change in the Contract Price or the Contract Time as a result of the unknown condition shall be determined as provided in Article 8. The Contractor shall provide the Owner with written notice of any claim as a result of unknown conditions within the time period set forth in Paragraph 8.4.

3.17 PERMITS AND TAXES

3.17.1 Contractor shall give public authorities all notices required by law and, except for permits and fees which are the responsibility of the Owner pursuant to Paragraph 4.4, shall obtain and pay for all necessary permits, licenses and renewals pertaining to the Work. Contractor shall provide to Owner copies of all notices, permits, licenses and renewals required under this Agreement.

3.17.2 Contractor shall pay all applicable taxes legally enacted when bids are received or negotiations concluded for the Work provided by the Contractor. Contractor, its subcontractors, and

Owner are eligible for an exemption from state and other taxes for goods and services provided to Owner in Indian Country as provided in WAC 458-20-192 and under federal law, including but not limited to state and local sales tax, Business & Occupation tax, and others. Contractor and its subcontractors shall comply with WAC 458-20-192 and any other procedural requirements to perfect any available exemption from taxation.

3.17.3 The Contract Price or Contract Time shall be equitably adjusted by Change Order for additional costs resulting from any changes in laws, ordinances, rules and regulations enacted after the date of this Agreement, including increased taxes.

3.18 CUTTING, FITTING AND PATCHING

3.18.1 The Contractor shall perform cutting, fitting and patching necessary to coordinate the various parts of the Work and to prepare its Work for the work of the Owner or Others.

3.18.2 Cutting, patching or altering the work of the Owner or Others shall be done with the prior written approval of the Owner. Such approval shall not be unreasonably withheld.

3.19 CLEANING UP

3.19.1 The Contractor shall regularly remove debris and waste materials at the Worksite resulting from the Work. Prior to discontinuing Work in an area, the Contractor shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste and surplus materials. The Contractor shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, the Contractor shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials and debris.

3.19.2 If the Contractor fails to commence compliance with cleanup duties within two (2) business Days after written notification from the Owner of non-compliance, the Owner may implement appropriate cleanup measures without further notice and the cost shall be deducted from any amounts due or to become due the Contractor in the next payment period.

3.20 ACCESS TO WORK The Contractor shall facilitate the access of the Owner, Architect/Engineer and Others to Work in progress.

3.21 CONFIDENTIALITY Unless compelled by law, a governmental agency or authority, an order of a court of competent jurisdiction, or a validly issued subpoena, the Contractor shall treat as confidential and not disclose to third persons, except Subcontractors, Sub-subcontractors and Material Suppliers as is necessary for the performance of the Work, or use for its own benefit, any of the Owner's confidential information, know-how, discoveries, production methods and the like that may be disclosed to the Contractor or which the Contractor may acquire in connection with the Work. The Owner shall treat as confidential information all of the Contractor's estimating systems and historical and parameter cost data that may be disclosed to the Owner in connection with the performance of this Agreement. The Owner and the Contractor shall each specify those items to be treated as confidential and shall mark them as "Confidential." In the event of a legal compulsion or other order seeking disclosure of any Confidential Information, the Contractor or Owner, as the case may be, shall promptly notify the other party to permit that party's legal objection, if necessary.

ARTICLE 4

OWNER'S RESPONSIBILITIES

4.1 INFORMATION AND SERVICES Any information or services to be provided by the Owner shall be provided in a timely manner so as not to delay the Work.

4.2 FINANCIAL INFORMATION This Project is funded partially or wholly by recovery funds appropriated to the Squaxin Island Tribe under the American Recovery and Reinvestment Act of 2009 ("ARRA") and Owner's performance is contingent on the receipt of such funds and Contractor's good faith obligation to assist in complying with the ARRA requirements.

4.3 WORKSITE INFORMATION Except to the extent that the Contractor knows of any inaccuracy, the Contractor is entitled to rely on Worksite information furnished by the Owner pursuant to this Paragraph 4.3. To the extent the Owner has obtained, or is required elsewhere in the Contract Documents to obtain, the following Worksite information, the Owner shall provide at the Owner's expense and with reasonable promptness upon Contractor's request:

4.3.1 information describing the physical characteristics of the site, including surveys, site evaluations, legal descriptions, data or drawings depicting existing conditions, subsurface conditions and environmental studies, reports and investigations;

4.3.2 tests, inspections and other reports dealing with environmental matters, Hazardous Material and other existing conditions, including structural, mechanical and chemical tests, required by the Contract Documents or by law; and

4.3.3 any other information or services requested in writing by the Contractor which are relevant to the Contractor's performance of the Work and under the Owner's control.

The information required by Paragraph 4.3 shall be provided in reasonable detail. Legal descriptions shall include easements, title restrictions, boundaries, and zoning restrictions. Worksite descriptions shall include existing buildings and other construction and all other pertinent site conditions. Adjacent property descriptions shall include structures, streets, sidewalks, alleys, and other features relevant to the Work. Utility details shall include available services, lines at the Worksite and adjacent thereto and connection points. The information shall include public and private information, subsurface information, grades, contours, and elevations, drainage data, exact locations and dimensions, and benchmarks that can be used by the Contractor in laying out the Work.

4.4 BUILDING PERMIT, FEES AND APPROVALS Except for those permits and fees related to the Work which are the responsibility of the Contractor pursuant to Subparagraph 3.17.1, the Owner shall secure and pay for all other permits, approvals, easements, assessments and fees required for the development, construction, use or occupancy of permanent structures or for permanent changes in existing facilities, including the building permit.

4.5 MECHANICS AND CONSTRUCTION LIEN INFORMATION Within seven (7) Days after receiving the Contractor's written request, the Owner shall provide the Contractor with the information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include the Owner's interest in the real property on which the Project is located and the record legal title.

4.6 CONTRACT DOCUMENTS Unless otherwise specified, Owner shall provide 1 (one) hard copy of the Contract Documents to the Contractor without cost.

4.6.1 DIGITIZED DOCUMENTS If the Owner requires that the Owner, Architect/Engineer and Contractor exchange documents and data in electronic or digital form, prior to any such exchange, the Owner, Architect/Engineer and Contractor shall agree on a written protocol governing all exchanges in ConsensusDOCS 200.2 or a separate Agreement, which, at a minimum, shall specify: (1) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (2) management and coordination responsibilities; (3) necessary equipment, software and services; (4) acceptable formats, transmission methods and verification procedures; (5) methods for maintaining version control; (6) privacy and security

requirements; and (7) storage and retrieval requirements. Except as otherwise agreed to by the Parties in writing, the Parties shall each bear their own costs as identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

4.7 OWNER'S REPRESENTATIVE The Owner's authorized representative is Dan Neelands. The representative shall be fully acquainted with the Project, and shall have authority to bind the Owner in all matters requiring the Owner's approval, authorization or written notice. If the Owner changes its representative or the representative's authority as listed above, the Owner shall immediately notify the Contractor in writing.

4.8 OWNER'S CUTTING AND PATCHING Cutting, patching or altering the Work by the Owner or Others shall be done with the prior written approval of the Contractor, which approval shall not be unreasonably withheld.

4.9 OWNER'S RIGHT TO CLEAN UP In case of a dispute between the Contractor and Others with regard to respective responsibilities for cleaning up at the Worksite, the Owner may implement appropriate cleanup measures after two (2) business Days' notice and allocate the cost among those responsible during the following pay period.

4.10 COST OF CORRECTING DAMAGED OR DESTROYED WORK With regard to damage or loss attributable to the acts or omissions of the Owner or Others and not to the Contractor, the Owner may either (a) promptly remedy the damage or loss or (b) accept the damage or loss. If the Contractor incurs additional costs or is delayed due to such loss or damage, the Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Time.

ARTICLE 5

SUBCONTRACTS/PREFERENCE IN HIRING

5.1 SUBCONTRACTORS The Work not performed by the Contractor with its own forces shall be performed by Subcontractors.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 As soon after the award of this Agreement as possible, the Contractor shall provide the Owner and if directed, the Architect/Engineer with a written list of the proposed Subcontractors and significant material suppliers. If the Owner has a reasonable objection to any proposed Subcontractor or material supplier, the Owner shall notify the Contractor in writing. Failure to promptly object shall constitute acceptance.

5.2.2 If the Owner has reasonably and promptly objected as provided in Subparagraph 5.2.1, the Contractor shall not contract with the proposed Subcontractor or material supplier, and the Contractor shall propose another acceptable Subcontractor to the Owner. To the extent the substitution results in an increase or decrease in the Contract Price or Contract Time, an appropriate Change Order shall be issued as provided in Article 8.

5.3 BINDING OF SUBCONTRACTORS AND MATERIAL SUPPLIERS The Contractor agrees to bind every Subcontractor and Material Supplier (and require every Subcontractor to so bind its subcontractors and material suppliers) to all the provisions of this Agreement and the Contract Documents as they apply to the Subcontractor's and Material Supplier's portions of the Work.

5.4 PREFERENCE IN HIRING During any period when a Tribal Employment Rights Ordinance (TERO) is in place, Contractor shall comply with the TERO. When no TERO is in effect, the Contractor shall give

preference to individual Tribal members and Indian-owned companies in hiring and subcontracting under this Agreement as follows: Contractor shall coordinate with Owner's Human Resources department and make meaningful efforts to hire tribal members and tribal subcontractors. When a subcontract bid offered by a Native American bidder is within five (5) percent of the low bid, and meets all other bid requirements, Contractor shall select the Native American bidder. Contractor shall comply with all federal Disadvantaged Business Enterprise Requirements as specified in the Contract Documents.

5.5 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.5.1 If this Agreement is terminated, each subcontract agreement shall be assigned by the Contractor to the Owner, subject to the prior rights of any surety, provided that:

5.5.1.1 this Agreement is terminated by the Owner pursuant to Paragraphs 11.3 or 11.4; and

5.5.1.2 the Owner accepts such assignment after termination by notifying the Subcontractor and Contractor in writing, and assumes all rights and obligations of the Contractor pursuant to each subcontract agreement.

5.5.2 If the Owner accepts such an assignment, and the Work has been suspended for more than thirty (30) consecutive Days, following termination, if appropriate, the Subcontractor's compensation shall be equitably adjusted as a result of the suspension.

ARTICLE 6 CONTRACT TIME

6.1 PERFORMANCE OF THE WORK

6.1.1 DATE OF COMMENCEMENT The Date of Commencement is the date of this Agreement as first written in Article 1 unless otherwise set forth below: (Insert here any special provisions concerning notices to proceed and the Date of Commencement):

6.1.2 TIME Substantial Completion of the Work shall be achieved in Forty (40) Days from the Date of Commencement. Unless otherwise specified in the Certificate of Substantial Completion, the Contractor shall achieve Final Completion within Five (5) Days after the date of Substantial Completion, subject to adjustments as provided for in the Contract Documents.

6.1.3 Time limits stated above are of the essence of this Agreement.

6.1.4 Unless instructed by the Owner in writing, the Contractor shall not knowingly commence the Work before the effective date of insurance that is required to be provided by the Contractor and Owner.

6.2 SCHEDULE OF THE WORK

6.2.1 Before submitting the first application for payment, the Contractor shall submit to the Owner, and if directed, its Architect/Engineer, a Schedule of the Work that shall show the dates on which the Contractor plans to commence and complete various parts of the Work, including dates on which information and approvals are required from the Owner. On the Owner's written approval of the Schedule of the Work, the Contractor shall comply with it unless directed by the Owner to do otherwise or the Contractor is otherwise entitled to an adjustment in the Contract Time. The

Contractor shall update the Schedule of the Work on a monthly basis or at appropriate intervals as required by the conditions of the Work and the Project.

6.2.2 The Owner may determine the sequence in which the Work shall be performed, provided it does not unreasonably interfere with the Schedule of the Work. The Owner may require the Contractor to make reasonable changes in the sequence at any time during the performance of the Work in order to facilitate the performance of work by the Owner or Others. To the extent such changes increase Contractor's time and costs the Contract Price and Contract Time shall be equitably adjusted.

6.3 DELAYS AND EXTENSIONS OF TIME

6.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by any cause beyond the control of the Contractor, the Contractor shall be entitled to an equitable extension of the Contract Time. Examples of causes beyond the control of the Contractor include, but are not limited to, the following: acts or omissions of the Owner, the Architect/Engineer or Others; changes in the Work or the sequencing of the Work ordered by the Owner, or arising from decisions of the Owner that impact the time of performance of the Work; transportation delays not reasonably foreseeable; labor disputes not involving the Contractor; general labor disputes impacting the Project but not specifically related to the Worksite; fire; terrorism, epidemics, adverse governmental actions, unavoidable accidents or circumstances; adverse weather conditions not reasonably anticipated; encountering Hazardous Materials; concealed or unknown conditions; delay authorized by the Owner pending dispute resolution; and suspension by the Owner under Paragraph 11.1. The Contractor shall submit any requests for equitable extensions of Contract Time in accordance with the provisions of Article 8.

6.3.2 In addition, if the Contractor incurs additional costs as a result of a delay that is caused by acts or omissions of the Owner, the Architect/Engineer or Others, changes in the Work or the sequencing of the Work ordered by the Owner, or arising from decisions of the Owner that impact the time of performance of the Work, encountering Hazardous Materials, or concealed or unknown conditions, delay authorized by the Owner pending dispute resolution or suspension by the Owner under Paragraph 11.1, the Contractor shall be entitled to an equitable adjustment in the Contract Price subject to Paragraph 6.6.

6.3.3 NOTICE OF DELAYS In the event delays to the Work are encountered for any reason, the Contractor shall provide prompt written notice to the Owner of the cause of such delays after Contractor first recognizes the delay. The Owner and Contractor agree to undertake reasonable steps to mitigate the effect of such delays.

6.4 NOTICE OF DELAY CLAIMS If the Contractor requests an equitable extension of Contract Time or an equitable adjustment in Contract Price as a result of a delay described in Subparagraphs 6.3.1 and 6.3.2, the Contractor shall give the Owner written notice of the claim in accordance with Paragraph 8.4. If the Contractor causes delay in the completion of the Work, the Owner shall be entitled to recover its additional costs subject to Paragraph 6.6. The Owner shall process any such claim against the Contractor in accordance with Article 8.

6.6 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES Except for damages mutually agreed upon by the Parties as liquidated damages in Paragraph 6.5 and excluding losses covered by insurance required by the Contract Documents, the Owner and the Contractor agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement, except for those specific items of damages excluded from this waiver as mutually agreed upon by the Parties and identified below. The Owner agrees to waive damages including but not limited to the Owner's

loss of use of the Project, any rental expenses incurred, loss of income, profit or financing related to the Project, as well as the loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this Project, loss of reputation, or insolvency. The Contractor agrees to waive damages including but not limited to loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this Project, loss of bonding capacity, loss of reputation, or insolvency. The following items of damages are excluded from this mutual waiver:

6.6.1 The provisions of this Paragraph shall also apply to the termination of this Agreement and shall survive such termination. The Owner and the Contractor shall require similar waivers in contracts with Subcontractors and Others retained for the project.

ARTICLE 7

CONTRACT PRICE

7.1 CONTRACT PRICE DETERMINED UNDER A SCHEDULE OF VALUES. As full compensation for performance by the Contractor of the Work in conformance with the Contract Documents, the Owner shall pay the Contractor an amount determined under the schedule of values based on separately identified items of work and the actual quantity of such items as certified by the Architect / Engineer. This amount shall not exceed \$189,305.00. Such amount is hereinafter referred to as the Contract Price, which shall be subject to increase or decrease as provided in Article 8.

7.2 ALLOWANCES

7.2.1 All allowances stated in the Contract Documents shall be included in the Contract Price and accounted for in the Schedule of Values. While the Owner may direct the amounts of, and particular material suppliers or subcontractors for, specific allowance items, if the Contractor reasonably objects to a material supplier or subcontractor, it shall not be required to contract with them. The Owner shall select allowance items in a timely manner so as not to delay the Work.

7.2.2 Allowances shall include the costs of materials, supplies and equipment delivered to the Worksite, less applicable trade discounts and including requisite taxes, unloading and handling at the Worksite, and labor and installation, unless specifically stated otherwise. The Contractor's Overhead and profit for the allowances shall be included in the Contract Price, but not in the allowances. The Contract Price shall be adjusted by Change Order to reflect the actual costs when they are greater than or less than the allowances.

ARTICLE 8

CHANGES

Changes in the Work that are within the general scope of this Agreement shall be accomplished, without invalidating this Agreement, by Change Order, and Interim Directed Change.

8.1 CHANGE ORDER

8.1.1 The Contractor may request or the Owner may order changes in the Work or the timing or sequencing of the Work that impacts the Contract Price or the Contract Time. All such changes in the Work that affect Contract Time or Contract Price shall be formalized in a Change Order. Any such requests for a change in the Contract Price or the Contract Time shall be processed in accordance with this Article 8.

8.1.2 The Owner and the Contractor shall negotiate in good faith an appropriate adjustment to the Contract Price or the Contract Time and shall conclude these negotiations as expeditiously as possible. Acceptance of the Change Order and any adjustment in the Contract Price or Contract Time shall not be unreasonably withheld.

8.2 INTERIM DIRECTED CHANGE

8.2.1 The Owner may issue a written Interim Directed Change directing a change in the Work prior to reaching agreement with the Contractor on the adjustment, if any, in the Contract Price or the Contract Time.

8.2.2 The Owner and the Contractor shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the Contract Price or the Contract Time arising out of an Interim Directed Change. As the Changed Work is performed, the Contractor shall submit its costs for such work with its application for payment beginning with the next application for payment within thirty (30) Days of the issuance of the Interim Directed Change. If there is a dispute as to the cost to the Owner, the Owner shall pay the Contractor fifty percent (50%) of its estimated cost to perform the work. In such event, the Parties reserve their rights as to the disputed amount, subject to the requirements of Article 12.

8.2.3 When the Owner and the Contractor agree upon the adjustment in the Contract Price or the Contract Time, for a change in the Work directed by an Interim Directed Change, such agreement shall be the subject of a Change Order. The Change Order shall include all outstanding Interim Directed Changes on which the Owner and Contractor have reached agreement on Contract Price or Contract Time issued since the last Change Order.

8.3 DETERMINATION OF COST

8.3.1 An increase or decrease in the Contract Price or the Contract Time resulting from a change in the Work shall be determined by one or more of the following methods:

8.3.1.1 unit prices set forth in this Agreement or as subsequently agreed;

8.3.1.2 a mutually accepted, itemized lump sum;

8.3.1.3 costs calculated on a basis agreed upon by the Owner and Contractor plus _____% Overhead and _____% profit; or

8.3.1.4 if an increase or decrease cannot be agreed to as set forth in Clauses .1 through .3 above, and the Owner issues an Interim Directed Change, the cost of the change in the Work shall be determined by the reasonable actual expense and savings of the performance of the Work resulting from the change. If there is a net increase in the Contract Price, the Contractor's Overhead and profit shall be adjusted accordingly. In case of a net decrease in the Contract Price, the Contractor's Overhead and profit shall not be adjusted unless five percent (5%) or more of the Project cost is deleted. The Contractor shall maintain a documented, itemized accounting evidencing the expenses and savings.

8.3.2 If the character or quantity of the unit items as originally contemplated in the Schedule of Values is so different from the actual character or quantity that the original unit prices will cause substantial inequity to the Owner or the Contractor, such unit prices shall be equitably adjusted.

8.3.3 If the Owner and the Contractor disagree as to whether work required by the Owner is within the scope of the Work, the Contractor shall furnish the Owner with an estimate of the costs to perform the disputed work in accordance with the Owner's interpretations. If the Owner issues a

written order for the Contractor to proceed, the Contractor shall perform the disputed work and the Owner shall pay the Contractor fifty percent (50%) of its estimated cost to perform the work. In such event, both Parties reserve their rights as to whether the work was within the scope of the Work, subject to the requirements of Article 12. The Owner's payment does not prejudice its right to be reimbursed should it be determined that the disputed work was within the scope of Work. The Contractor's receipt of payment for the disputed work does not prejudice its right to receive full payment for the disputed work should it be determined that the disputed work is not within the scope of the Work.

8.4 CLAIMS FOR ADDITIONAL COST OR TIME Except as provided in Subparagraph 6.3.2 and Paragraph 6.4 for any claim for an increase in the Contract Price or the Contract Time, the Contractor shall give the Owner written notice of the claim within fourteen (14) Days after the occurrence giving rise to the claim or within fourteen (14) Days after the Contractor first recognizes the condition giving rise to the claim, whichever is later. Except in an emergency, notice shall be given before proceeding with the Work. Thereafter, the Contractor shall submit written documentation of its claim, including appropriate supporting documentation, within twenty-one (21) Days after giving notice, unless the Parties mutually agree upon a longer period of time. The Owner shall respond in writing denying or approving the Contractor's claim no later than fourteen (14) Days after receipt of the Contractor's claim. Any change in the Contract Price or the Contract Time resulting from such claim shall be authorized by Change Order.

ARTICLE 9

PAYMENT

9.1 SCHEDULE OF VALUES The Schedule of Values shall be the document submitted as such with the Contractor's bid and attached as Exhibit A (Contractor's bid proposal) to this Contract.

9.2 PROGRESS PAYMENTS

9.2.1 APPLICATIONS The Contractor shall submit to the Owner and the Architect/Engineer a monthly application for payment no later than the 5th Day of the calendar month for the preceding thirty (30) Days. Contractor's applications for payment shall be itemized and supported by the Schedule of Values and any other substantiating data required by this Agreement. Payment applications shall include payment requests on account of properly authorized Change Orders or Interim Directed Change. The Owner shall pay the amount otherwise due on any payment application, as certified by the Architect/Engineer, no later than twenty (20) Days after the Contractor has submitted a complete and accurate payment application, or such shorter time period as required by applicable state statute. The Owner may deduct from any progress payment amounts as may be retained pursuant to Subparagraph 9.2.4.

9.2.2 STORED MATERIALS AND EQUIPMENT To the extent provided in the Schedule of Values and the Contract Documents, applications for payment may include materials and equipment not yet incorporated into the Work but delivered to and suitably stored onsite or offsite including applicable insurance, storage and costs incurred transporting the materials to an offsite storage facility. Approval of payment applications for stored materials and equipment stored offsite shall be conditioned on submission by the Contractor of bills of sale and proof of required insurance, or such other procedures satisfactory to the Owner to establish the proper valuation of the stored materials and equipment, the Owner's title to such materials and equipment, and to otherwise protect the Owner's interests therein, including transportation to the site.

9.2.3 LIEN WAIVERS AND LIENS

9.2.3.1 PARTIAL LIEN WAIVERS AND AFFIDAVITS If required by the Owner, as a prerequisite for payment, the Contractor shall provide partial lien and claim waivers in the amount of the application for payment and affidavits from its Subcontractors, and Material Suppliers for the completed Work. Such waivers shall be conditional upon payment. In no event shall the Contractor be required to sign an unconditional waiver of lien or claim, either partial or final, prior to receiving payment or in an amount in excess of what it has been paid.

9.2.3.2 RESPONSIBILITY FOR LIENS If Owner has made payments in the time required by this Article 9, the Contractor shall, within thirty (30) Days after filing, cause the removal of any liens filed against the premises or public improvement fund by any party or parties performing labor or services or supplying materials in connection with the Work. If the Contractor fails to take such action on a lien, the Owner may cause the lien to be removed at the Contractor's expense, including bond costs and reasonable attorneys' fees. This Clause shall not apply if there is a dispute pursuant to Article 12 relating to the subject matter of the lien.

9.2.4 RETAINAGE From each progress payment made prior to Substantial Completion the Owner may retain Five percent (5 %) of the amount otherwise due after deduction of any amounts as provided in Paragraph 9.3, and in no event shall such percentage exceed any applicable statutory requirements. If the Owner chooses to use this retainage provision:

9.2.4.1 the Owner may, in its sole discretion, reduce the amount to be retained at any time;

9.2.4.2 the Owner may release retainage on that portion of the Work a Subcontractor has completed in whole or in part, and which the Owner has accepted.

In lieu of retainage, the Contractor may furnish a retention bond or other security interest, acceptable to the Owner, to be held by the Owner.

9.3 ADJUSTMENT OF CONTRACTOR'S PAYMENT APPLICATION The Owner may adjust or reject a payment application or nullify a previously approved payment application, in whole or in part, as may reasonably be necessary to protect the Owner from loss or damage based upon the following, to the extent that the Contractor is responsible therefor under this Agreement:

9.3.1 the Contractor's repeated failure to perform the Work as required by the Contract Documents;

9.3.2 loss or damage arising out of or relating to this Agreement and caused by the Contractor to the Owner or to Others to whom the Owner may be liable;

9.3.3 the Contractor's failure to properly pay Subcontractors and Material Suppliers following receipt of such payment from the Owner;

9.3.4 rejected, nonconforming or defective Work not corrected in a timely fashion;

9.3.5 reasonable evidence of delay in performance of the Work such that the Work will not be completed within the Contract Time, and

9.3.6 reasonable evidence demonstrating that the unpaid balance of the Contract Price is insufficient to fund the cost to complete the Work.

9.3.7 third party claims involving the Contractor or reasonable evidence demonstrating that third party claims are likely to be filed unless and until the Contractor furnishes the Owner with adequate security in the form of a surety bond, letter of credit or other collateral or commitment which are sufficient to discharge such claims if established.

No later than seven (7) Days after receipt of an application for payment, the Owner shall give written notice to the Contractor, at the time of disapproving or nullifying all or part of an application for payment, stating its specific reasons for such disapproval or nullification, and the remedial actions to be taken by the Contractor in order to receive payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be promptly made for the amount previously withheld.

9.4 ACCEPTANCE OF WORK Neither the Owner's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of Work not complying with the Contract Documents.

9.5 PAYMENT DELAY If for any reason not the fault of the Contractor the Contractor does not receive a progress payment from the Owner within seven (7) Days after the time such payment is due, as defined in Subparagraph 9.2.1, then the Contractor, upon giving seven (7) Days' written notice to the Owner, and without prejudice to and in addition to any other legal remedies, may stop Work until payment of the full amount owing to the Contractor has been received, including interest from the date payment was due in accordance with Paragraph 9.9. The Contract Price and Contract Time shall be equitably adjusted by a Change Order for reasonable cost and delay resulting from shutdown, delay and start-up.

9.6 SUBSTANTIAL COMPLETION

9.6.1 The Contractor shall notify the Owner and, if directed, its Architect/Engineer when it considers Substantial Completion of the Work or a designated portion to have been achieved. The Owner, with the assistance of its Architect/Engineer, shall promptly conduct an inspection to determine whether the Work or designated portion can be occupied or utilized for its intended use by the Owner without excessive interference in completing any remaining unfinished Work by the Contractor. If the Owner determines that the Work or designated portion has not reached Substantial Completion, the Owner shall promptly compile a list of items to be completed or corrected so the Owner may occupy or utilize the Work or designated portion for its intended use. The Contractor shall promptly complete all items on the list.

9.6.2 When Substantial Completion of the Work or a designated portion is achieved, the Contractor shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, and the respective responsibilities of the Owner and Contractor for interim items such as security, maintenance, utilities, insurance and damage to the Work. In the absence of a clear delineation of responsibilities, the Owner shall assume all responsibilities for items such as security, maintenance, utilities, insurance, and damage to the Work. The certificate shall also list the items to be completed or corrected, and establish the time for their completion or correction. The Certificate of Substantial Completion shall be submitted by the Contractor to the Owner for written acceptance of responsibilities assigned in the Certificate.

9.6.3 Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or a designated portion.

9.6.4 Upon acceptance by the Owner of the Certificate of Substantial Completion, the Owner shall pay to the Contractor the remaining retainage held by the Owner for the Work described in the Certificate of Substantial Completion less a sum equal to two hundred percent (200%) of the estimated cost of completing or correcting remaining items on that part of the Work, as agreed to by the Owner and Contractor as necessary to achieve final completion. Uncompleted items shall be completed by the Contractor in a mutually agreed upon timeframe. The Owner shall pay the Contractor monthly the amount retained for unfinished items as each item is completed.

9.7 PARTIAL OCCUPANCY OR USE

9.7.1 The Owner may occupy or use completed or partially completed portions of the Work when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) consent to the occupancy or use, and (c) appropriate public authorities authorize the occupancy or use. Such partial occupancy or use shall constitute Substantial Completion of that portion of the Work.

9.8 FINAL COMPLETION AND FINAL PAYMENT

9.8.1 Upon notification from the Contractor that the Work is complete and ready for final inspection and acceptance, the Owner with the assistance of its Architect/Engineer shall promptly conduct an inspection to determine if the Work has been completed and is acceptable under the Contract Documents.

9.8.2 When Final Completion has been achieved, the Contractor shall prepare for the Owner's acceptance a final application for payment stating that to the best of the Contractor's knowledge, and based on the Owner's inspections, the Work has reached Final Completion in accordance with the Contract Documents.

9.8.3 Final payment of the balance of the Contract Price shall be made to the Contractor within twenty (20) Days after the Contractor has submitted a complete and accurate application for final payment, including submissions required under Subparagraph 9.8.4, and a Certificate of Final Completion has been executed by the Owner and the Contractor.

9.8.4 Final payment shall be due on the Contractor's submission of the following to the Owner:

9.8.4.1 an affidavit declaring any indebtedness connected with the Work, e.g. payrolls or invoices for materials or equipment, to have been paid, satisfied or to be paid with the proceeds of final payment, so as not to encumber the Owner's property;

9.8.4.2 as-built drawings, manuals, copies of warranties and all other close-out documents required by the Contract Documents;

9.8.4.3 release of any liens, conditioned on final payment being received;

9.8.4.4 consent of any surety; and

9.8.4.5 any outstanding known and unreported accidents or injuries experienced by the Contractor or its Subcontractors at the Worksite.

9.8.5 If, after Substantial Completion of the Work, the Final Completion of a portion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the balance due for portion(s) of the Work fully completed and accepted. If the remaining contract balance for Work not fully completed and accepted is less than the retained amount prior to payment, the Contractor shall submit to the Owner, and, if directed, the Architect/Engineer, the written consent of any surety to payment of the balance due for portions of the Work that are fully completed and accepted. Such payment shall not constitute a waiver of claims, but otherwise shall be governed by these final payment provisions.

9.8.6 OWNER RESERVATION OF CLAIMS Claims not reserved in writing by the Owner with the making of final payment shall be waived except for claims relating to liens or similar encumbrances, warranties, Defective Work and latent defects.

9.8.7 CONTRACTOR ACCEPTANCE OF FINAL PAYMENT Unless the Contractor provides written

identification of unsettled claims known to the Contractor at the time of making application for final payment, acceptance of final payment constitutes a waiver of such claims.

9.9 LATE PAYMENT Payments due but unpaid shall bear interest from the date payment is due at the statutory rate at the place of the Project.

ARTICLE 10

INDEMNITY, INSURANCE, WAIVERS AND BONDS

10.1 INDEMNITY

10.1.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, the Owner's officers, directors, members, consultants, agents and employees, the Architect/Engineer and Others (the Indemnitees) from all claims for bodily injury and property damage, other than to the Work itself and other property insured under Subparagraph 10.3.1, including reasonable attorneys' fees, costs and expenses, that may arise from the performance of the Work, but only to the extent caused by the negligent acts or omissions of the Contractor, Subcontractors or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. The Contractor shall be entitled to reimbursement of any defense costs paid above Contractor's percentage of liability for the underlying claim to the extent provided for under Subparagraph 10.1.2.

10.1.2 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, its officers, directors, members, consultants, agents, and employees, Subcontractors or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable from all claims for bodily injury and property damage, other than property insured under Subparagraph 10.3.1, including reasonable attorneys' fees, costs and expenses, that may arise from the performance of work by Owner, Architect/Engineer or Others, but only to the extent caused by the negligent acts or omissions of the Owner, Architect/Engineer or Others. The Owner shall be entitled to reimbursement of any defense costs paid above Owner's percentage of liability for the underlying claim to the extent provided for under Subparagraph 10.1.1.

10.1.3 NO LIMITATION ON LIABILITY In any and all claims against the Indemnitees by any employee of the Contractor, anyone directly or indirectly employed by the Contractor or anyone for whose acts the Contractor 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 under Workers' Compensation acts, disability benefit acts or other employment benefit acts.

10.2 INSURANCE

10.2.1 Prior to the start of the Work, the Contractor shall procure and maintain in force Workers' Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance (CGL). The CGL policy shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, contractual liability, and broad form property damage. The Contractor's Employers' Liability, Business Automobile Liability, and Commercial General Liability policies, as required in this Subparagraph 10.2.1, shall be written with at least the following limits of liability:

10.2.1.1 Employers' Liability Insurance

- a. \$1,000,000
Bodily Injury by Accident
Each Accident
- b. \$1,000,000
Bodily Injury by Disease
Policy Limit
- c. \$1,000,000
Bodily Injury by Disease
Each Employee

10.2.1.2 Business Automobile Liability Insurance

- a. \$500,000
Each Accident

10.2.1.3 Commercial General Liability Insurance

- a. \$1,000,000
Each Occurrence
- b. \$500,000
General Aggregate
- c. \$1,000,000
Products/Completed
Operations Aggregate
- d. \$1,000,000
Personal and Advertising
Injury Limit

10.2.2 Employers' Liability, Business Automobile Liability and Commercial General Liability coverage required under Subparagraph 10.2.1 may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by Excess or Umbrella Liability policies.

10.2.3 The Contractor shall maintain in effect all insurance coverage required under Subparagraph 10.2.1 with insurance companies lawfully authorized to do business in the State of Washington. If the Contractor fails to obtain or maintain any insurance coverage required under this Agreement, the Owner may purchase such coverage and charge the expense to the Contractor, or terminate this Agreement.

10.2.4 The policies of insurance required under Subparagraph 10.2.1 shall contain a provision that the coverage afforded under the policies shall not be cancelled or allowed to expire until at least thirty (30) Days' prior written notice has been given to the Owner. The Contractor shall maintain

completed operations liability insurance for one year after acceptance of the Work, Substantial Completion of the Project, or to the time required by the Contract Documents, whichever is longer. Prior to commencement of the Work, Contractor shall furnish the Owner with certificates evidencing the required coverage.

10.3 PROPERTY INSURANCE

10.3.1 Before the start of Work, the Owner shall obtain and maintain a Builder's Risk Policy upon the entire Project for the full cost of replacement at the time of loss. This insurance shall also name the Contractor, Subcontractors, Sub-subcontractors, Material Suppliers and Architect/Engineer as insureds. This insurance shall be written as a Builder's Risk Policy or equivalent form to cover all risks of physical loss except those specifically excluded by the policy, and shall insure at least against the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft (except aircraft, including helicopter, operated by or on behalf of Contractor) and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, debris removal, flood, earthquake, earth movement, water damage, wind damage, testing if applicable, collapse however caused, and damage resulting from defective design, workmanship or material, and material or equipment stored offsite, onsite or in transit. The Owner shall be solely responsible for any deductible amounts or coinsurance penalties. This policy shall provide for a waiver of subrogation in favor of the Contractor, Subcontractors, Sub-subcontractors, Material Suppliers and Architect/Engineer. This insurance shall remain in effect until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property to be covered by this insurance, whichever is sooner. Partial occupancy or use of the Work shall not commence until the Owner has secured the consent of the insurance company or companies providing the coverage required in this Subparagraph 10.3.1. Prior to commencement of the Work, the Owner shall provide a copy of the property policy or policies obtained in compliance with this Subparagraph 10.3.1.

10.3.2 If the Owner does not intend to purchase the property insurance required by this Agreement, including all of the coverages and deductibles described herein, the Owner shall give written notice to the Contractor and the Architect/Engineer before the Work is commenced. The Contractor may then provide insurance to protect its interests and the interests of the Subcontractors and Sub-subcontractors, including the coverage of deductibles. The cost of this insurance shall be charged to the Owner in a Change Order. The Owner shall be responsible for all of Contractor's costs reasonably attributed to the Owner's failure or neglect in purchasing or maintaining the coverage described above.

10.3.2.1 If the Owner does not obtain insurance to cover the risk of physical loss resulting from Terrorism, the Owner shall give written notice to the Contractor before the Work commences. The Contractor may then provide insurance to protect its interests and the interests of the Subcontractors and Sub-subcontractors against such risk of loss, including the coverage of deductibles. The cost of this insurance shall be charged to the Owner in a Change Order.

10.3.3 Owner and Contractor waive all rights against each other and their respective employees, agents, contractors, subcontractors and sub-subcontractors, and the Architect/Engineer for damages caused by risks covered by the property insurance except such rights as they may have to the proceeds of the insurance and such rights as the Contractor may have for the failure of the Owner to obtain and maintain property insurance in compliance with Subparagraph 10.3.1.

10.3.4 To the extent of the limits of Contractor's Commercial General Liability Insurance specified in Subparagraph 10.2.1 or One million Dollars (\$1,000,000), whichever is more, the Contractor shall

indemnify and hold harmless the Owner against any and all liability, claims, demands, damages, losses and expenses, including attorneys' fees, in connection with or arising out of any damage or alleged damage to any of Owner's existing adjacent property that may arise from the performance of the Work, to the extent caused by the negligent acts or omissions of the Contractor, Subcontractor or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

10.3.5 RISK OF LOSS Except to the extent a loss is covered by applicable insurance, risk of loss or damage to the Work shall be upon the Contractor until the Date of Substantial Completion, unless otherwise agreed to by the Parties.

10.4 OWNER'S INSURANCE

10.4.1 BUSINESS INCOME INSURANCE The Owner may procure and maintain insurance against loss of use of the Owner's property caused by fire or other casualty loss.

10.4.2 OWNER'S LIABILITY INSURANCE The Owner shall either self-insure or obtain and maintain its own liability insurance for protection against claims arising out of the performance of this Agreement, including without limitation, loss of use and claims, losses and expenses arising out of the Owner's errors or omissions.

10.5 ADDITIONAL LIABILITY COVERAGE

10.5.1 The Owner _____ shall/X shall not (indicate one) require Contractor to purchase and maintain liability coverage, primary to Owner's coverage under Subparagraph 10.4.2.

10.5.2 If required by Subparagraph 10.5.1, the additional liability coverage required of the Contractor shall be

(Designate required coverage(s)):

_____.1 Additional Insured. Owner shall be named as an additional insured on Contractor's Commercial General Liability Insurance specified for operations and completed operations, but only with respect to liability for bodily injury, property damage or personal and advertising injury to the extent caused by the negligent acts or omissions of Contractor, or those acting on Contractor's behalf, in the performance of Contractor's Work for Owner at the Worksite.

_____.2 OCP. Contractor shall provide an Owners' and Contractors' Protective Liability Insurance ("OCP") policy with limits equal to the limits on Commercial General Liability Insurance specified, or limits as otherwise required by Owner.

Any documented additional cost in the form of a surcharge associated with procuring the additional liability coverage in accordance with this Subparagraph shall be paid by the Owner directly or the costs may be reimbursed by Owner to Contractor by increasing the Contract Price to correspond to the actual cost required to purchase and maintain the additional liability coverage. Prior to commencement of the Work, Contractor shall obtain and furnish to the Owner a certificate evidencing that the additional liability coverages have been procured.

10.6 ROYALTIES, PATENTS AND COPYRIGHTS The Contractor shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by the Contractor and incorporated in the Work. The Contractor shall indemnify and hold the Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection.

10.7 BONDS

10.7.1 Performance and Payment Bonds

(Mark one only)

are X / are not _____

required of the Contractor. Such bonds shall be issued by a surety admitted in Washington State and must be acceptable to the Owner. Owner's acceptance shall not be withheld without reasonable cause. The penal sum of the Payment Bond and of the Performance Bond shall each be 100% of the original Contract Price. Any increase in the Contract Price that exceeds 10% in the aggregate shall require a rider to the Bonds increasing penal sums accordingly. Up to such 10% amount, the penal sum of the bond shall remain equal to 100% of the Contract Price. The Contractor shall endeavor to keep its surety advised of changes potentially impacting the Contract Time and Contract Price, though the Contractor shall require that its surety waives any requirement to be notified of any alteration or extension of time. The Contractor's Payment Bond for the Project, if any, shall be made available by the Owner for review and copying by the Subcontractor.

10.8 PROFESSIONAL LIABILITY INSURANCE To the extent the Contractor is required to procure design services under this Agreement, in accordance with Paragraph 3.15, the Contractor shall require the designers to obtain professional liability insurance for claims arising from the negligent performance of professional services under this Agreement, with a company reasonably satisfactory to the Owner, including coverage for all professional liability caused by any of the Designer's(s') consultants, written for not less than \$_____ per claim and in the aggregate with the deductible not to exceed \$_____. The deductible shall be paid by the Designer.

ARTICLE 11

SUSPENSION, NOTICE TO CURE AND TERMINATION OF THE AGREEMENT

11.1 SUSPENSION BY OWNER FOR CONVENIENCE

11.1.1 OWNER SUSPENSION Should the Owner order the Contractor in writing to suspend, delay, or interrupt the performance of the Work for such period of time as may be determined to be appropriate for the convenience of the Owner and not due to any act or omission of the Contractor or any person or entity for whose acts or omissions the Contractor may be liable, then the Contractor shall immediately suspend, delay or interrupt that portion of the Work as ordered by the Owner. The Contract Price and the Contract Time shall be equitably adjusted by Change Order for the cost and delay resulting from any such suspension.

11.1.2 Any action taken by the Owner that is permitted by any other provision of the Contract Documents and that results in a suspension of part or all of the Work does not constitute a suspension of Work under this Paragraph 11.1.

11.2 NOTICE TO CURE A DEFAULT If the Contractor persistently refuses or fails to supply enough properly skilled workers, proper materials, or equipment, to maintain the approved Schedule of the Work in accordance with Article 6, or fails to make prompt payment to its workers, Subcontractors or Material Suppliers, disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement, the Contractor may be deemed in default. If the Contractor fails within seven (7) Days after receipt of written notification to commence and continue satisfactory correction of such default with diligence and promptness, then the Owner shall give the Contractor a second notice to correct the default within a three (3) Days period. If the

Contractor fails to promptly commence and continue satisfactory correction of the default following receipt of such second notice, the Owner without prejudice to any other rights or remedies may:

11.2.1 supply workers and materials, equipment and other facilities as the Owner deems necessary for the satisfactory correction of the default, and charge the cost to the Contractor, who shall be liable for the payment of same including reasonable Overhead, profit and attorneys' fees;

11.2.2 contract with Others to perform such part of the Work as the Owner determines shall provide the most expeditious correction of the default, and charge the cost to the Contractor;

11.2.3 withhold payment due the Contractor in accordance with Paragraph 9.3; and

11.2.4 in the event of an emergency affecting the safety of persons or property, immediately commence and continue satisfactory correction of such default as provided in Subparagraphs 11.2.1 and 11.2.2 without first giving written notice to the Contractor, but shall give prompt written notice of such action to the Contractor following commencement of the action.

11.3 OWNER'S RIGHT TO TERMINATE FOR DEFAULT

11.3.1 TERMINATION BY OWNER FOR DEFAULT If, within seven (7) Days of receipt of a notice to cure pursuant to Paragraph 11.2, the Contractor fails to commence and satisfactorily continue correction of the default set forth in the notice to cure, the Owner may notify the Contractor that it intends to terminate this Agreement for default absent appropriate corrective action within fourteen (14) additional Days. After the expiration of the additional fourteen (14) Days period, the Owner may terminate this Agreement by written notice absent appropriate corrective action. Termination for default is in addition to any other remedies available to Owner under Paragraph 11.2. If the Owner's cost arising out of the Contractor's failure to cure, including the cost of completing the Work and reasonable attorneys' fees, exceeds the unpaid Contract Price, the Contractor shall be liable to the Owner for such excess costs. In the event the Owner exercises its rights under this Paragraph 11.3, upon the request of the Contractor the Owner shall furnish to the Contractor a detailed accounting of the cost incurred by the Owner.

11.3.2 USE OF CONTRACTOR'S MATERIALS, SUPPLIES AND EQUIPMENT If the Owner or Others perform work under this Paragraph 11.3, the Owner shall have the right to take and use any materials, supplies and equipment belonging to the Contractor and located at the Worksite for the purpose of completing any remaining Work. Immediately upon completion of the Work, any remaining materials, supplies or equipment not consumed or incorporated in the Work shall be returned to the Contractor in substantially the same condition as when they were taken, reasonable wear and tear excepted.

11.3.3 If the Contractor files a petition under the Bankruptcy Code, this Agreement shall terminate if the Contractor or the Contractor's trustee rejects the Agreement or, if there has been a default, the Contractor is unable to give adequate assurance that the Contractor will perform as required by this Agreement or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

11.3.4 The Owner shall make reasonable efforts to mitigate damages arising from Contractor default, and shall promptly invoice the Contractor for all amounts due pursuant to Paragraphs 11.2 and 11.3.

11.4 TERMINATION BY OWNER FOR CONVENIENCE

11.4.1 Upon written notice to the Contractor, the Owner may, without cause, terminate this Agreement. The Contractor shall immediately stop the Work, follow the Owner's instructions

regarding shutdown and termination procedures, and strive to minimize any further costs.

11.4.2 If the Owner terminates this Agreement pursuant to this Paragraph 11.4, the Contractor shall be paid:

11.4.2.1 for the Work performed to date including overhead and profit; and

11.4.2.2 for all reasonable demobilization costs and costs incurred as a result of the termination but not including overhead or profit on work not performed.

11.4.3 If the Owner terminates this Agreement pursuant to Paragraphs 11.3 or 11.4, the Contractor shall:

11.4.3.1 execute and deliver to the Owner all papers and take all action required to assign, transfer and vest in the Owner the rights of the Contractor to all materials, supplies and equipment for which payment has or will be made in accordance with the Contract Documents and all Subcontracts, orders and commitments which have been made in accordance with the Contract Documents;

11.4.3.2 exert reasonable effort to reduce to a minimum the Owner's liability for subcontracts, orders and commitments that have not been fulfilled at the time of the termination;

11.4.3.3 cancel any Subcontracts, orders and commitments as the Owner directs; and

11.4.3.4 sell at prices approved by the Owner any materials, supplies and equipment as the Owner directs, with all proceeds paid or credited to the Owner.

11.5 CONTRACTOR'S RIGHT TO TERMINATE

11.5.1 Upon seven (7) Days' written notice to the Owner, the Contractor may terminate this Agreement if the Work has been stopped for a thirty (30) Days period through no fault of the Contractor for any of the following reasons:

11.5.1.1 under court order or order of other governmental authorities having jurisdiction;

11.5.1.2 as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of the Contractor, materials are not available; or

11.5.1.3 suspension by Owner for convenience pursuant to Paragraph 11.1

11.5.2 In addition, upon seven (7) Days' written notice to the Owner, the Contractor may terminate the Agreement if the Owner:

11.5.2.1 assigns this Agreement over the Contractor's reasonable objection, or

11.5.2.2 fails to pay the Contractor in accordance with this Agreement and the Contractor has complied with the notice provisions of Paragraph 9.6, or

11.5.2.3 otherwise materially breaches this Agreement.

11.5.3 Upon termination by the Contractor in accordance with Paragraph 11.5, the Contractor shall be entitled to recover from the Owner payment for all Work executed and for any proven loss, cost

or expense in connection with the Work, including all reasonable demobilization costs.

11.6 OBLIGATIONS ARISING BEFORE TERMINATION Even after termination pursuant to Article 11, the provisions of this Agreement still apply to any Work performed, payments made, events occurring, costs charged or incurred or obligations arising before the termination date.

ARTICLE 12

DISPUTE RESOLUTION/LIMITED WAIVER OF SOVEREIGN IMMUNITY

12.1 WORK CONTINUANCE AND PAYMENT Unless otherwise agreed in writing, the Contractor shall continue the Work and maintain the Schedule of the Work during any dispute mitigation or resolution proceedings. If the Contractor continues to perform, the Owner shall continue to make payments in accordance with this Agreement.

12.3 INITIAL DISPUTE RESOLUTION If a dispute arises out of or relates to this Agreement or its breach, the parties shall endeavor to settle the dispute first through direct discussions. If the dispute cannot be settled through direct discussions, the parties shall endeavor to settle the dispute by mediation by Judicial Arbitration and Mediation Services (JAMS) before recourse to the dispute resolution procedures contained in this Agreement. The location of the mediation shall be the location of the Project. Once one party files a request for mediation with the other contracting party and with JAMS, the parties agree to conclude such mediation within sixty (60) days of filing of the request. Either party may terminate the mediation at any time after the first session, but the decision to terminate must be delivered in person by the party's representative to the other party's representative and the mediator.

12.4 MEDIATION If the dispute cannot be settled pursuant to Paragraph 12.2, the parties shall endeavor to settle the dispute by mediation by Judicial Arbitration and Mediation Services (JAMS) before recourse to any other dispute resolution procedures. Once one party files a request for mediation with the other party and with JAMS, the parties agree to conclude such mediation within sixty (60) days of filing of the request. Either party may terminate the mediation at any time after the first session, but the decision to terminate shall be delivered in person by the party's representative to the other party's representative and the mediator.

12.5 DISPUTE RESOLUTION If the dispute cannot be settled by mediation within sixty (60) days, action may be filed in the appropriate federal or tribal court located in Washington State.

12.6 MULTIPARTY PROCEEDING All parties necessary to resolve a matter shall be parties to the same dispute resolution procedure. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the joinder or consolidation of such dispute resolution procedures.

12.7 COST OF DISPUTE RESOLUTION The prevailing party in any dispute arising out of or relating to this Agreement or its breach that is resolved by the dispute resolution process pursuant to this Agreement shall be entitled to recover from the other party reasonable attorney's fees, costs and expenses incurred by the prevailing party in connection with such dispute resolution process after direct discussions and mediation.

12.8 LIMITED WAIVER OF SOVEREIGN IMMUNITY Owner expressly and irrevocably waives its sovereign immunity from suit for claims by Contractor with respect to the obligations and indebtedness that arise out of or relate to the Contract Documents and for the Contractor's claims for coverage, provided that:

12.8.1 The waiver of sovereign immunity expressed herein is limited to the Contractor and its successors and assigns;

12.8.2 The waiver of sovereign immunity expressed herein is limited to recovery of the contract price and reasonable attorney fees and costs associated with such recovery;

12.8.3 The waiver of sovereign immunity expressed herein is limited to the net unrestricted revenues of the Owner and insurance proceeds available from Owner's liability or property insurance hereunder; and

12.8.4 Owner consents to be sued in the Squaxin Island Tribal Court for the purposes of enforcement of this contract. If it is determined that the foregoing court does not enjoy proper jurisdiction, then Owner consents to be sued in the federal courts of the western district of Washington.

12.8 LIEN RIGHTS Nothing in this Article 12 shall limit any rights or remedies not expressly waived by the Contractor that the Contractor may have under lien laws.

ARTICLE 13

MISCELLANEOUS PROVISIONS

13.1 ASSIGNMENT Neither the Owner nor the Contractor shall assign their interest in this Agreement without the written consent of the other except as to the assignment of proceeds. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns and legal representatives. Neither Party to this Agreement shall assign the Agreement as a whole without written consent of the other except that the Owner may assign the Agreement to a wholly owned subsidiary of Owner when Owner has fully indemnified Contractor or to an institutional lender providing construction financing for the Project as long as the assignment is no less favorable to the Contractor than this Agreement. In the event of such assignment, the Contractor shall execute any consents reasonably required. In such event, the wholly-owned subsidiary or lender shall assume the Owner's rights and obligations under the Contract Documents. If either Party attempts to make such an assignment, that Party shall nevertheless remain legally responsible for all obligations under this Agreement, unless otherwise agreed by the other Party.

13.2 GOVERNING LAW This Agreement shall be governed by the laws of the Squaxin Island Tribe.

13.3 SEVERABILITY The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

13.4 NO WAIVER OF PERFORMANCE The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance or any other term, covenant, condition or right.

13.5 TITLES AND GROUPINGS The titles given to the articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose. The grouping of the articles in this Agreement and of the Owner's specifications under the various headings is solely for the purpose of convenient organization and in no event shall the grouping of provisions, the use of paragraphs or the use of headings be construed to limit or alter the meaning of any provisions.

13.6 JOINT DRAFTING The Parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

13.7 RIGHTS AND REMEDIES The Parties' rights, liabilities, responsibilities and remedies with respect to this Agreement, whether in contract, tort, negligence or otherwise, shall be exclusively those expressly set forth in this Agreement.

13.8 COMPLIANCE UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 ("ARRA").

13.8.1 IMPLEMENTATION OF SECTION 902 AND 1515(b)

This Project is funded partially or wholly by recovery funds appropriated to the Squaxin Island Tribe under the American Recovery and Reinvestment Act of 2009 (ARRA). ARRA requires Recipients of recovery funds such as the Squaxin Island Tribe to allow representatives of the United States Comptroller General and Office of Inspector General to examine records and interview persons of firms working on Contracts that use ARRA funds.

13.8.2 ARRA SECTION 902. COMPTROLLER GENERAL'S AUTHORITY.

Section 902 of the American Recovery and Reinvestment Act (ARRA) of 2009 requires that each contract awarded using ARRA funds must include a provision that provides the U.S. Comptroller General and his representatives with the authority to:

(1) to examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and

(2) to interview any officer or employee of the contractor or any of its subcontractors, or of any agency administering the contract, regarding such transactions."

Accordingly, the Comptroller General and his representatives shall have the authority and rights as provided under Section 902 of the ARRA with respect to this contract, which is funded with funds made available under the ARRA. Section 902 further states that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

13.8.3 ARRA SECTION 1515(b) OIG'S AUTHORITY.

Section 1515(b) of the ARRA provides that for "each contract or grant awarded using ARRA funds, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), has the authority to:

(1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract, that pertain to, and involve transactions relating to, the contract, subcontract, grant, or subgrant; and

(2) to interview any officer or employee of the contractor, [subcontractors], grantee, subgrantee, or any [state or local government] agency [administering the contract], regarding such transactions."

Accordingly, the Inspector General and any representatives of the Inspector General shall have the authority and rights as provided under Section 1515(b) of the ARRA with respect to this contract, which is funded with funds made available under the ARRA. Section 1515(b) further states that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an inspector general.

13.8.4 AUDITS. Nothing in this Subsection 13.8 limits the existing authority of the Federal Highway Administration or any other governmental entity to audit the contract.

13.8.5 DBE Requirements. Contractor shall comply with all federal Disadvantage Business Enterprise requirements as specified in the Contract Documents.

ARTICLE 14

CONTRACT DOCUMENTS

14.1 The Contract Documents in existence at the time of execution of this Agreement are as follows:

Bid Package

Contractor's Bid Submission, including completed Schedule of Values

Project drawings

14.2 INTERPRETATION OF CONTRACT DOCUMENTS

14.2.1 The drawings and specifications are complementary. If Work is shown only on one but not on the other, the Contractor shall perform the Work as though fully described on both consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

14.2.2 In case of conflicts between the drawings and specifications, the specifications shall govern. In any case of omissions or errors in figures, drawings or specifications, the Contractor shall immediately submit the matter to the Owner for clarification. The Owner's clarifications are final and binding on all Parties, subject to an equitable adjustment in Contract Time or Price pursuant to Articles 6 and 7 or dispute resolution in accordance with Article 12.

14.2.3 Where figures are given, they shall be preferred to scaled dimensions.

14.2.4 Any terms that have well-known technical or trade meanings, unless otherwise specifically defined in this Agreement, shall be interpreted in accordance with their well-known meanings.

14.2.5 In case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement; (b) this Agreement; (c) subject to Subparagraph 14.2.2 the drawings (large scale governing over small scale), specifications and addenda issued prior to the execution of this Agreement; (d) approved submittals; (e) information furnished by the Owner pursuant to Paragraph 4.3; (f) other documents listed in this Agreement. Among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. Information identified in one Contract Document and not identified in another shall not be considered a conflict or inconsistency.

This Agreement is entered into as of the date entered in Article 1.

ATTEST:

OWNER: _____

BY:

PRINT NAME _____

PRINT TITLE _____

ATTEST:

CONTRACTOR: _____

BY:

PRINT NAME _____

PRINT TITLE _____