

KARUK TRIBE HOUSING AUTHORITY

P.O. Box 1159 • 635 Jacobs Way
Happy Camp, CA 96039
Ph: (530) 493-1414 • Fax: (530) 493-1415



1836 Apsuun Street
Yreka, CA 96097
Ph: (530) 842-1644 • Fax: (530) 842-1646

NOTICE TO BIDDERS

Today's Date:	December 19, 2022
General Description:	<p>The Karuk Tribe Housing Authority (KTHA) over the past two years completed comprehensive scoping to reduce wildfire threats on the KTHA Yreka Housing Complex. KTHA assessed the technical feasibility, cost effectiveness, and environmental effects required to retrofit housing units with ignition resistant materials, provide housing units defensible space, and the Housing Complex woodlands hazard fuel reduction treatments.</p> <p>The structural mitigation retrofit siding and decking with Class A and Class B ignition resistant materials. Demolition activities include removing decking/ramps, and hauling disposal materials to a landfill off the Housing Complex. All the proposed activities are consistent with the FEMA Guide Wildland/Urban Interface/Home Builders Guide for Construction in Wildfire Zones and California building Codes Chapter 7A Materials and Construction Methods for Exterior Wildfire Exposure.</p>
Contact Information:	<p>Karuk Tribe Housing Authority 635 Jacobs Way, PO Box 1159 Happy Camp, CA 96039 Adia Supahan, (530) 493-1414, Extension 3110, asupahan@karuk.us</p>
Project Manager:	Doug Goodwin (530) 598-3911, dgoodwin2@karuk.us
Project Name:	Construction Manager
MANDATORY Site Visit:	If you haven't done a site visit for this project, schedule with: Doug Goodwin (530) 598-3911
Bid Submission Criteria:	<p>Hand/UPS/Fedex: 635 Jacobs Way, Happy Camp, CA 96039 USPS: PO Box 1159, Happy Camp, CA 96039 Faxes WILL NOT be accepted.</p> <p>Bids due by 2:00pm on Friday, January 6, 2023.</p>
Bid Opening:	2:00pm on Friday, January 6, 2023 635 Jacobs Way, Happy Camp, CA 96039

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Yreka Fire Safe and Ignition Resistance Mitigation Multiple Units in KTHA Complex Yreka, CA

**for the
Karuk Tribe Housing Authority
Siskiyou County, California**

Issued: December 19, 2022

**Karuk Tribe Housing Authority
635 Jacobs Way
PO Box 1159
Happy Camp, California 96039
Telephone: (530) 493-1414**

**Sara Spence
Executive Director
Telephone: (530) 493-1414
Fax: (530) 493-1416**

**Project Manager
Doug Goodwin
Construction Manager
Telephone: (530) 598-3911
Dgoodwin2@karuk.us**

**Prepared by
Adia Supahan
Executive Assistant**

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Site Visit

A site visit is required prior to submitting a bid. If you have not completed a site visit for this project, contact Doug Goodwin to schedule (530) 598-3911.

Questions:

Contact Doug Goodwin (530) 598-3911, dgoodwin2@karuk.us, with questions.

ADVERTISEMENT FOR BIDS

The Karuk Tribe Housing Authority (KTHA) requests sealed bids for all materials, labor, equipment, permits, and fees necessary for structural mitigation retrofit siding, decking, and fencing with Class A and Class B ignition resistant materials. Demolition activities include removing decking/ramps and hauling disposal materials to a landfill off the Housing Complex. Work site consists of multiple units located in the KTHA Housing complex in Yreka, California (Siskiyou County) as described in the related contract documents and specifications. Bids may be delivered by hand, FedEx, or UPS to the Happy Camp office of the KTHA located at 635 Jacobs Way or received via US Mail at PO Box 1159 both in Happy Camp, California until **2pm, Friday, January 6, 2023** at which time the sealed bids will be publicly opened and read aloud in the Conference Room of the KTHA Office located at 635 Jacobs Way, Happy Camp, CA 96039.

Site Visit Date: Per appointment for those that have not complete a site visit. Contact Doug Goodwin (530) 598-3911.

Preference in the award of this contract shall be given to qualified Indian-owned economic enterprises that are at least 51% Indian owned and controlled in accordance with KTHA's procurement policy. Any contractor claiming Indian preference shall complete and submit, with his bid, the form entitled "Statement of Qualifications, Alaska Native or Indian Owned Enterprise" which is included in the bidding package.

For more information contact:

Karuk Tribe Housing Authority
635 Jacobs Way
Happy Camp, California 96039
Telephone: (530) 493-1414
Email: asupahan@karuk.us
Website: <http://www.ktha.us/>

INFORMATION FOR BIDDERS

BID SUBMITTALS AND CONDITIONS

Bids may be delivered by hand, Fedex, or UPS to the Happy Camp office of the Karuk Tribe Housing Authority (KTHA, herein called the "Owner") located at 635 Jacobs Way or received via US Mail at PO Box 1159 both in Happy Camp, California until **2pm, Friday, January 6, 2023** at which time the sealed bids will be publicly opened and read aloud in the Conference Room of the KTHA Office located at 635 Jacobs Way, Happy Camp, CA 96039.

The following documents constitute a complete bid and are required to be submitted to form a responsive bid:

1. Form of Bid (C-1 through C-3)
2. Bid Bond (D1)
3. Contractor's Questionnaire (E-1)
4. Non-Collusive Affidavit (F-1)
5. Statement of Qualifications for Indian Preference (G-1 through G-5)
6. Tribal Employment Rights Office Compliance Plan (H-1 through H-3)

Each bid must be submitted in a sealed envelope, addressed to Adia Supahan, Executive Assistant, Karuk Tribe Housing Authority and either delivered by hand, FedEx, or UPS to 635 Jacobs Way or by US mail to PO Box 1159, both in Happy Camp, California 96039. The sealed envelope containing the bid must be plainly marked on the outside as bid for the **Yreka Fire Safe and Ignition Resistance Mitigation** and the envelope should also bear on the outside the name of the bidder, his address, and his license number.

If forwarded by mail, the bid must be received by the date and time of bid deadline. Any bids received after the time and date of opening resulting from untimely delay due to the mail system or other methods of conveyance will not be considered.

Bids received prior to the time of opening will be securely kept, unopened. The official who is to open the bids will decide when the specified time has arrived, and no bid received thereafter will be considered. No responsibility will attach to office personnel for the premature opening of a bid not properly addressed and identified. Telegraphic bids or modifications will not be considered.

Any bids may be withdrawn prior to the above scheduled time for the opening of bids or authorized postponement thereof.

All bids must be made on the required bid form. All blank spaces for bid prices must be filled in, in ink or typewritten, and the bid form must be fully completed and executed when submitted. A conditional or qualified bid will not be accepted. Each signature page must bear an original signature, whether within or separate from this document.

Bidders shall have a current California Contractors License appropriate for the nature of work to be performed. Bona fide bidders (Licensed and Bonded in accordance with current California State Contractor's Law) shall have either a General B Contractor's License or Specialty Contractor's License.

Karuk Tribal Wage Rates shall apply: See Section O

After bids have been submitted, the bidder shall not assert that there was a misunderstanding concerning the quantities of work or of the nature of the work to be done. No bidder may withdraw a bid within ten (10) days after the actual date of the opening thereof. Should there be reasons why the contract cannot be awarded within the specified period; the time may be extended by mutual agreement between the Owner and the bidder.

BID REVIEW AND AWARD

The Owner may waive any informalities or minor defects or reject any and all bids.

Award will be made to the lowest responsive, responsible bidder with due consideration for Indian Preference.

BIDDING INFORMATION

The Owner shall provide to bidders prior to bidding:

1. A package containing the bid and contract documents necessary to construct the project.
2. All information which is pertinent to, and delineates and describes the land owned and rights of way acquired or to be acquired.
3. A pre-bid site visit is mandatory. Bids will be accepted only from parties who have attended the pre bid site visit.

The contract documents contain the provisions required for the construction of the project. Information obtained from an officer, agent, or employee of the owner or any other person shall not affect the risks or obligations assumed by the contractor or relieve him from fulfilling any of the conditions of the contract.

Bidders must satisfy themselves as to the accuracy of the estimated quantities in the Bid Schedule (if any) by examining the site and reviewing the drawings and specifications including addenda (if applicable). The failure or omission to do this shall in no way relieve any bidders from any obligation in respect to his bid.

Requests for clarification must be in writing, addressed to the Owner, and received at least three working days prior to the bid opening date. Owner provided clarifications and supplemental instructions will be issued as addenda to the specifications and provided to all Plan Holders no later than two working days prior to the bid opening date.

QUESTIONNAIRE AND FINANCIAL STATEMENT FORM

Bidders must fill out, sign and submit this form as part of the proposal. Bidders must also, if required, present additional satisfactory evidence that they are fully prepared with the necessary experience, capital, machinery and materials to furnish the articles called for and to conduct the work as required by the drawings and specifications.

NON-COLLUSIVE AFFIDAVIT

Each person submitting a bid for any portion of the work contemplated by the bidding documents shall execute an affidavit, in the form provided by the Owner, to the effect that he has not colluded with any other person, firm or corporation in regard to any bid submitted. Such affidavit shall be attached to the bid.

INDIAN PREFERENCE

This Contract shall be executed in accordance with the Indian Preference Act 1934, 25 CFR Part 5 Preference in Employment and the Karuk Tribe Title 5 TERO Ordinance and the KTHA Procurement Policy. All bidders requesting Indian preference shall submit their request for Indian preference to the Karuk Housing Authority office at least one week before the bid submittal date for approval.

TRIBAL EMPLOYMENT RIGHTS ORDINANCE (TERO)

All bidders acknowledge that a 2% TERO fee will be imposed on the gross value of any contract initiated within the interior/exterior boundaries of the Karuk Ancestral Territory, provided that the total contract or annual gross revenues meet or exceed \$2,500. Contact Dion Wood at (530) 493-1600, extension 2030, for questions regarding TERO.

TRIBAL SALES TAX (Trust Land)

All bidders acknowledge that Karuk Tribal Sales Tax is 6% and will be paid for all materials purchased in conjunction with this contract and delivered to Karuk Tribal Trust Land. Contractor shall apply for and receive a California Seller's Permit (AKA: California State Board of Equalization Resale Number) prior to the

commencement of work under this contract. The requirement for the Seller's Permit is to allow the Contractor to obtain materials and fixtures from the supplier without paying tax. The Contractor may then resell the materials and fixtures to the Owner on Karuk Tribal Lands before installation. Nothing herein shall allow the Contractor to charge more than the actual price/value of the materials and fixtures provided. Title to the materials and fixtures transfers to the Owner (Karuk Tribe Housing Authority) on the Karuk Tribal Lands and prior to the installation of the materials by Contractor.

CULTURAL MONITORING (Trust Land)

Bidders shall include in the bid an allowance of **\$4,500** for employing a Cultural Monitor. This allowance will cover all necessary costs of employment such as insurances, taxes, etc. The Owner shall select and refer the monitor to the successful bidder after award. Cultural Monitors will be employees of KTHA, and will be billed to the allowance. Contractor must provide at least 72 hours' notice prior to digging in previously undisturbed soil for a monitor to be properly dispatched to the site.

BONDING REQUIREMENTS

Bid, Performance, and Payment bonds will be required for this project.

Bid bonds totaling 5% of the total bid and payable to the Owner shall accompany any bid. A cashier's check may be used in lieu of a bid bond. As soon as the bid prices have been compared, the Owner will return the bonds of all except the three lowest responsible bidders. When the Agreement is executed, the bonds of the two remaining unsuccessful bidders will be returned. The bid bond of the successful bidder will be retained until the Payment and Performance bonds have been executed and approved, after which it will be returned.

Performance and Payment bonds, each totaling 100% of the Contract price, with a corporate surety approved by the Owner, shall be provided to the Owner when the Agreement is executed.

Attorneys-in-fact who sign Bid, Payment, and Performance bonds must file with each bond a certified and effective dated copy of their power of attorney.

NOTICE OF AWARD

The Owner may make such investigations, as they deem necessary to determine the ability of the bidder to perform the work. Bidders shall be prepared to furnish such information and data for this purpose at the Owner's request. The Owner reserves the right to reject any bid if the evidence submitted by, or investigation of, such bidder fails to satisfy the Owner that such bidder is properly qualified to carry out the obligations of the Agreement and to complete the work contemplated therein.

The successful bidder will be required to execute an Agreement and obtain the Performance and Payment bond, if required, within ten calendar days from the date when the Notice of Award is delivered to the bidder. In case of failure of the bidder to execute the Agreement, the Owner may at their option consider the bidder in default, in which case any bid bond accompanying the proposal shall become the property of the Owner.

The Owner, within ten days of receipt of the Agreement and any required Performance and Payment bonds signed by the party to whom the Agreement was awarded, shall sign the Agreement and return to such party an executed duplicate of the Agreement. Should the Owner not execute the Agreement within such period, the bidder may by written notice withdraw his signed Agreement. Such notice of withdrawal shall be effective upon receipt of the notice by the Owner.

NOTICE TO PROCEED

The Owner will issue the Notice to Proceed within ten days after the Agreement is fully executed. Should there be reasons why the Notice to Proceed cannot be issued within such period; the time may be extended by mutual agreement between the Owner and Contractor. If the Notice to Proceed has not been issued within the ten day period or within the period mutually agreed upon, the Contractor may terminate the Agreement without further liability on the part of either party.

OTHER REQUIREMENTS

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

The successful bidder shall abide by the requirements under Executive Order 11246, as amended, including specifically the provisions of the equal opportunity clause set forth in the General Conditions.

The successful bidder shall supply the names and addresses of major material suppliers and subcontractors to the Owner within ten days of receipt of Notice to Proceed.

The successful bidder shall supply submittals information in accordance with the submittals section of the contract documents.

FEDERAL REQUIREMENTS

1. The work to be performed under this Contract is on a project subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e (b) which requires that to the greatest extent feasible: (a) preference and opportunities for training and employment shall be given to Indians; and (b) preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. The parties to this Contract shall comply with the provisions of section 7(b) of this Act. In connection with this Contract, the Contractor shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned Economic Enterprises, and preferences and opportunities for training and employment to Indians. The Contractor shall include this section 7(b) clause in every subcontract in connection with the Contract, and shall, at the direction of the Owner, take appropriate action pursuant to the subcontract upon a finding by the Owner or the U.S. Department of Housing and Urban Development (HUD) that the subcontractor has violated this section 7(b) clause of this Act. Furthermore, to the greatest extent feasible preference in the award of contracts and subcontracts shall be given to low income locals in accordance with section 3 of the Housing and Urban Development Act of 1968 but not in derogation of compliance with section 7(b). The section 3 requirements however apply only to projects or activities that exceed \$200,000.
2. Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of \$10,000).
3. Compliance with the Copeland "Anti-Kickback" Act 18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and sub grants for construction or repair).
4. Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of \$2,000 when required by Federal grant program legislation).
5. Compliance with the Work Hours and Safety Standards Act (40 U.S.C. 3702 and 3704) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of \$100,000 that involve the employment of mechanics or laborers).
6. Access to and retention of records for a period of three (3) years relating to this Project as required by 2 CFR Parts 200.333 and 200.336. Cooperation and provision of all necessary information and documentation as may be required for reporting relating to this project.
7. Affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible (2 CFR Part 200.321; E.O. 11625).
8. No award or subcontract at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Orders 12549 and 12689, "Debarment and Suspension".
9. Compliance with the provisions of the Hatch Act (5 U.S.C. 1501-1508) and the Intergovernmental Personnel Act of 1970 as amended by Title VI of Civil Service Reform Act (Pub. L. 95-454 Section 4728) prohibiting use of federally appropriated funds for influencing or attempting to influence the award of any federal monies and to make such reports and disclosures as are required there under. The signing of the contract in which this Attachment is referenced is a certification of agreed compliance.
10. Compliance with Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) (Contractors that that apply or bid for an award exceeding \$100,000 must file the required certification).
11. Compliance with Conflict of Interest requirements of 2 CFR Part 200.112. Owner will disclose in writing any potential conflicts of interest to Federal awarding agency or pass-through entity in accordance with applicable Federal awarding agency policy. Owner has established prohibition against personal or financial interest in or benefit from this contract obtained by certain affiliates, associates, board members or employees of Owner or its grantees, either from themselves or their families or business associates, during their tenure or for one year thereafter.
12. Compliance with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, et seq.) and implementing regulations at 24 CFR Part 570.608, as well as compliance with the requirements regarding asbestos of 40 CFR Part 61 and 40 CFR Part 763, as well as 29 CFR Parts 1910.1001 and 1926.58.
13. Compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).
14. Except as Indian Preference requirements and the provisions of the Native American Housing Assistance and Self-Determination Act (NAHASDA), 25 U.S.C. 1401, et seq. may supersede, compliance with prohibitions against discrimination as provided by Title VI of the Civil Rights Act of 1976 (Pub. L. 88-352) and related HUD regulations, Age Discrimination Act of 1975 and the implementing regulations at 24 CFR Part 146, Section 504 of the

Rehabilitation Act of 1973, as amended, 24 CFR Part 8, title VIII of the Civil Rights Act of 1968; 25 U.S.C. 1301-1303.

15. In part because of agreements regarding the monies utilized to fund this contract and federal requirements, the Owner and HUD have reserved certain rights to licenses and copyrights regarding work developed or purchases made relating to said funds.

BID

Proposal of _____

(hereinafter called "**Bidder**"), organized and existing under the laws of the State of _____, doing

business as _____

(a corporation, a partnership, an individual, etc.)

to the Karuk Tribe Housing Authority (hereinafter called "**Owner**").

In compliance with your Advertisement for Bids, bidder hereby proposes to perform all work to Work, Address as specified in the scope of work in strict accordance with the Contract Documents and Specifications within the time set forth therein, and at the prices stated in the Bid Schedule.

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

Bidder hereby agrees to commence work under this Contract within 10 calendar days of the issuance of a Notice to Proceed and to fully complete the Project within 600 consecutive calendar days following receipt of building permits (if permitted). Bidder further agrees to pay as liquidated damages, the sum of \$250.00 for each consecutive calendar day thereafter as provided in Section 25 of the General Provisions (Time for Completion and Liquidated Damages).

Bidder agrees to perform all the work described in the Contract documents for the unit prices or lump sum stated in the Bid Schedule.

Bidder acknowledges receipt of the following Addendum(s):
FEMA Homebuilders Guide to Construction in Wildfire Zones

BID SCHEDULE

PROJECT DESCRIPTION

This is a construction contract for mitigation retrofit siding and decking at multiple units in KTHA Housing Complex located in Yreka, California as specified in the scope of work and specifications. The Owner intends to contract with one bidder in a lump-sum contract for the complete scope of work OR with multiple bidders as separate bids per Activity as shown in these bid documents. Bidders must submit pricing for each component of work shown in the bid schedule, and the total of items must equal the total bid.

ACTIVITY 1 SIDING ONLY

No.	Description	Quantity	Cost
1	Mobilization and bonds	Lump Sum	
2	Demolition and Off Haul	Lump Sum	
3	Activity 1 (Siding): Labor	Lump Sum	
4	Activity 1 (Siding): Allowances	Lump Sum	
5	Cultural Monitor	Allowance	\$2,250
6	Subtotal	Lump Sum	
7	TERO Fee (2% of Subtotal)	2% of Subtotal	
8	Total Bid	Lump Sum	

Respectfully Submitted by,

Signature: _____

Name/Title: _____

Firm: _____

Address: _____

License Number: _____

Phone Number: _____

ACTIVITY 2 PAINTING ONLY

No.	Description	Quantity	Cost
1	Mobilization and bonds	Lump Sum	
2	Debris Off Haul	Lump Sum	
3	Activity 1 (Painting): Labor	Lump Sum	
4	Activity 1 (Painting): Allowances	Lump Sum	
5	Subtotal	Lump Sum	
6	TERO Fee (2% of Subtotal)	2% of Subtotal	
7	Total Bid	Lump Sum	

Respectfully Submitted by,

Signature: _____

Name/Title: _____

Firm: _____

Address: _____

License Number: _____

Phone Number: _____

ACTIVITY 3 DECKING ONLY

No.	Description	Quantity	Cost
1	Mobilization and bonds	Lump Sum	
2	Demolition and Off Haul	Lump Sum	
3	Activity 2 (Decking): Labor	Lump Sum	
4	Activity 2 (Decking): Allowances	Lump Sum	
5	Cultural Monitor	Allowance	\$2,250
6	Subtotal	Lump Sum	
7	TERO Fee (2% of Subtotal)	2% of Subtotal	
8	Total Bid	Lump Sum	

Respectfully Submitted by,

Signature: _____

Name/Title: _____

Firm: _____

Address: _____

License Number: _____

Phone Number: _____

SEAL – (if BID is by a corporation)

Respectfully Submitted:

Signature

Address

Title

Date

License No.

Expiration Date

BID BOND

Know all men by these presents, that we, the undersigned, _____
as Principal, and _____ as Surety, are hereby held and
firmly bound unto the Karuk Tribe Housing Authority, as Owner in the penal sum of \$_____ for payment
of which, well and truly to be made, we hereby jointly and severally bind ourselves, successors and assigns.

Signed, this _____ day of _____, 20_____.

The condition of the above obligation is such that whereas the Principal has submitted to the Owner a certain bid ,
attached hereto and hereby made a part hereof, to enter into a Contract in writing, to Work, Address as specified in
the scope of work, plans, and specifications.

Now, therefore,

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

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be
in no way impaired or affected by any extension of the time within which the Owner may accept such bid; and said
Surety does hereby waive notice of any such extension.

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

Principal

By: _____ (Seal)

Surety

By: _____ (Seal)

Important: Surety companies executing bonds must be authorized to transact business in the state where the project
is located.

CONTRACTOR QUESTIONNAIRE

Name: _____ Social Security Number: _____
D.B.A.: _____

Street address: _____

City: _____ Telephone: _____

State License Number: _____ Type: _____

Bank References: _____

List three most recent construction jobs by name and address:

- 1) _____
- 2) _____
- 3) _____

How long in business? _____ How many employees? _____

Are you an equal opportunity employer? _____

Are you eligible to perform federal government work? _____

Name and address of insurance carrier:

Conflict of Interest: Are you or any member of your family related to any employee of the Owner or member of the governing board of the Owner? No Yes If yes, please explain relationship:

Signature of License Holder Date: _____

Signature of Company Representative (if different) Date: _____

**NON-COLLUSIVE AFFIDAVIT
AFFIDAVIT**

State of _____

County of _____

_____, being first duly sworn, deposes and says:

That he is, _____ the party making the foregoing proposal for bid, and that:

- a) Such proposal or bid is genuine and not collusive or sham;
- b) Said bidder has not colluded, conspired, connived or agreed, directly or indirectly, with any bidder or person, to put in a sham bid or to refrain from bidding;
- c) Said bidder has not, in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to fix the bid price of affiant or of any other bidder, or to fix any overhead, profit or cost element of said bid price, or of that of any other bidder, or to secure any advantage against the Owner or any person interested in the proposed contract; and
- d) All statements in said proposal for bid are true.

Project Name: **Yreka Fire Safe and Ignition Resistance Mitigation**

Location: **Multiple units located in the KTHA Complex in Yreka, California 96097**

(Signature)

(Name and Title)

(Date)

(Signature Must be Notarized)

**STATEMENT OF QUALIFICATIONS
ALASKA NATIVE OR INDIAN OWNED ENTERPRISES**

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

- 1) Applicant wishes to qualify as an "Economic Enterprise" as defined in Section 3(e) of the Indian Financing Act of 1974 (P.L. 93-262); that is: "an Indian-Owned... commercial, industrial or business activity established or organized for the purpose of profit: Provided, that such Indian ownership shall constitute not less than 51 percent of the enterprise".

OR

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

1. Name of Enterprise or Organization: _____

Address: _____

Telephone No: _____

2. Check One:

- Corporation
 Joint Venture
 Partnership
 Sole Proprietorship
 Other (Specify) _____

3. If a Corporation, answer the following:

- a. Date of incorporation: _____
- b. State of Incorporation: _____
- c. Give the names and addresses of the officers of this corporation and establish whether they are Indian (I) or Non- Indian (NI).

Name and Social Security Number	Indian (I) Non Indian (NI)	Title	Address	% of Stock Ownership
		President		
		Vice President		
		Secretary or Clerk		
		Treasurer		

- d. Complete the following information on any stockholder who is not listed in C above, owning 51% or more of the stock. Establish whether they are Indian (I) or Non-Indian (NI).

Name and Social Security Number	Indian (I) Non Indian (NI)	Address	% of Stock Ownership

If a Sole Proprietorship or Partnership, answer the following:

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

Name and Social Security Number	Indian (I) Non Indian (NI)	Address	% of Stock Ownership

If a joint Venture, answer the following:

- a. Date of Joint Venture Agreement: _____
- b. Attach the information for each member of the joint venture prepared in the appropriate format given above.

4. Give the name, address, and telephone number of the principal spokesperson of your organization:

5. Will any officer or partner listed in Q4 be engaged in outside employment?

Yes No If Yes, complete the following:

Name and Title	Hours per week Outside of the Enterprise

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

Yes No If yes, complete the following:

Name and Address of Subsidiary/Affiliate/Concerns	Description of Relationship

7. Does this enterprise or any person listed in Q4 above have or intend to enter into any type of agreement with any other concern or person which relates to or affects the on-going administration, management or operations of this enterprise? These include but are not limited to management, and joint venture agreements and any arrangement or contract involving the provision of such compensated services as administrative assistance, data processing, management consulting of all types, marketing, purchasing, production and other type of compensated assistance.

Yes No

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

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

Name	Indian (I) Non Indian (NI)	Position Title	Hire Date

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

9. Attach evidence showing membership in a Tribe or other evidence of enrollment in a federally recognized Tribe or qualification as a California Indian according to federal law.
10. Attach a certified copy of the charter, articles of incorporation, by-laws, partnership agreement, joint venture agreement and/or other pertinent organizational documentation.

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

The persons signing below certify that all information in the statement, including exhibits and attachments, is true and correct.

Print or type name below all signatures.

If applicant is Sole Proprietor, sign below:

Name Date

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

Name Date

Name Date

If applicant is a corporation, affix corporate seal:

Name Date

By: _____
President's Signature

Attested by: _____
Corporate Secretary's Signature

**TRIBAL EMPLOYMENT RIGHTS OFFICE
COMPLIANCE PLAN FOR BIDDERS**

Bidder/Employer Name: _____

Mailing Address: _____

City, State and Zip Code: _____

Contact Person: _____ Phone Number: _____

E-mail: _____

Bid Amount: \$ _____ TERO Fee (2%): \$ _____

THIS IS AN AGREEMENT BETWEEN THE KARUK TRIBE'S TRIBAL EMPLOYMENT RIGHTS OFFICE (TERO) AND _____, HEREINAFTER KNOWN AS "EMPLOYER" CONDUCTING COMMERCE AND EMPLOYMENT ACTIVITY WITHIN THE ANCESTRAL TERRITORY OF THE KARUK TRIBE.

- Employer shall provide the completed compliance plan with the submission of bid.
- Upon notification of the award, Employer shall contact the TERO Office within ten (10) days prior to any work to be performed.
- Employer shall contact the TERO Office and Contract/Project Manager immediately, in writing, advising of any contract or sub-contractor changes to obtain approval prior to working on the job site.
- Employer understands and agrees to comply with the requirements and procedures in the selection of contractors, sub-contractors, employees and recruitment of viable Indian applicants in accordance with the Karuk Tribe's Employment Rights Ordinance and the Karuk Tribe's Workforce Protection Act (WPA).

By signing below the Employer certifies the position information is true and correct and there have been no omissions in the completion of the labor force projections. Falsification of the information provided will result in sanctions, penalties, fines and/or debarment with the Karuk Tribe.

Employer Signature

Date

PRE-AWARD LABOR FORCE PROJECTION

Core Crew: Is defined as a member of a business, Contractor or Subcontractor’s crew who is a regular employee and is in a supervisory or other key position such that the employer would face a serious financial loss if that position were filled by a person who had not previously worked for that employer.

All other positions will be filled by the TERO office unless sufficient justification can be made that they are not replaceable for the work that is to be done or unless TERO does not have an individual to refer.

List Core Crew (Full Name):	Job Title/ Years w/Company/Justification:

List Native American Contractors/Sub-contractors to be hired for this Project:

Contractor/Sub-contractor Contact Person, Phone # and E-mail:	Work to be Performed:

List Non-Native Contractor/Sub-contractors to be hired for this Project:

Contractor/Sub-contractor Contact Person, Phone # and E-mail:	Work to be Performed:

Open Positions: Employer agrees to hire 100% of all its open positions/Sub-contractors for this project through the TERO Skills Bank. If Employer is unable to hire 100% then company representatives will need to meet with the TERO Director. Failure to comply with this hiring requirement will result in sanctions and/or penalties.

Job Title/Sub-contractor Needed:	Skills Required:

Number of positions to be filled for this project: _____

Contact person/info for job referrals: _____

Date TERO referrals needed: _____ Job start date: _____

<p><u>For Internal Use Only:</u></p> <p>Contract Number #: _____ Project Manager: _____</p> <p>TERO Office Approval _____ Date: _____</p> <p><u>Comments:</u></p>

NOTICE OF AWARD

To: _____

PROJECT DESCRIPTION

This is a construction contract to Work, Address as specified in the scope of work, plans and specifications.

The Owner has considered the bid submitted by you for the above described work in response to its Advertisement for bids dated Date, and the contract documents package.

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

You are required to execute the Agreement and furnish Contractor’s Performance and Payment bonds to the Owner within ten calendar days from the date of this Notice to you. In addition, you are required to furnish certificates of insurance before the Notice to Proceed will be issued.

You are required to submit a plan for the maximum utilization of Indian and Alaska Native workers. Notice to Proceed will not be issued until the Owner has received and approved this plan and submitted the plan to the TERO Director. Reference General Conditions Clause 48 for preference plan requirements. If you need more information on Indian Employment, contact Dion Wood at (530) 493-1600 extension 2030.

If you fail to execute and furnish the Agreement and any required bonds within ten days from the date of this Notice, the Owner will be entitled to consider all your rights arising out of the Owner’s acceptance of your bid as abandoned and as a forfeiture of your bid bond. The Owner will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this Notice of Award to the Owner.

this the _____ day of _____, 20_____.

(Owner)

By _____

Title _____

ACCEPTANCE OF NOTICE

Receipt of the Notice of Award for mitigation retrofit roofs AND/OR siding AND/OR decking AND/OR fencing at multiple units in KTHA Housing Complex located in Yreka, California as specified in the scope of work is hereby acknowledged:

By _____
(Company Name)

this the _____ day of _____, 20_____.

By _____

Title _____

AGREEMENT

This Agreement, made this _____ day of _____, 20____, by and between the Karuk Tribe Housing Authority, hereinafter called "Owner"

and _____ hereinafter called "Contractor"

Witnesseth: That for and in consideration of the payments and agreements hereinafter mentioned:

1. The Contractor will commence and complete to Work, Address as specified in the contract documents and specifications.
2. The Contractor will furnish all of the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of the project described herein.
3. The Contractor hereby agrees to commence work under this Contract within 10 calendar days of the issuance of a Notice to Proceed and to fully complete the Project within 600 consecutive calendar days following receipt of building permits (if applicable) unless the period for completion is extended otherwise by the Contract Documents.
4. The Contractor agrees to perform all of the work described in the Contract documents and comply with the terms therein for the lump sum of \$_____ as shown in the bid schedule.
5. The term "Contract documents" means and includes the following:

Advertisement for Bids
Information for Bidders
Bid and Bid Schedule
Bid Bond
Contractor Questionnaire
Non-Collusive Affidavit
Statement of Qualifications, Alaska Native or Indian Owned Enterprise
Tribal Employment Rights Office Compliance Plan
Notice of Award
Agreement
Performance Bond
Payment Bond
Notice to Proceed
Change Order(s)
General Conditions
Karuk Tribal Employment Rights Ordinance
Karuk Tribe Prevailing Wage Rates
Labor Standards Attachment
Special Provisions
Technical Specifications
Drawings
Modifications/Additions

Addenda:
FEMA Homebuilders Guide to Construction in Wildfire Zones.

- 6. The Owner will pay to the Contractor in the manner and at such times as set forth in the General Provisions such amounts as required by the Contract documents.
- 7. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

In Witness Whereof, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in 2 (number) copies, each of which shall be deemed an original on the date first above written.

OWNER: Karuk Tribe Housing Authority

CONTRACTOR: _____

BY: _____

BY: _____

Name: Sara Spence

Name: _____

Title: Executive Director

Title: _____

(SEAL)

(SEAL)

ATTEST: _____

ATTEST: _____

Name: _____

Name: _____

Title: _____

Title: _____

PAYMENT BOND

Know all Men by These Presents that:

(Name and Address of Contractor)
and _____, hereinafter called Principal,
(Corporation Partnership or Individual)
and _____, hereinafter called Surety, are
(Name and Address of Surety)

held and firmly bound unto the Karuk Tribe Housing Authority, 635 Jacobs Way, Happy Camp, California 96039, hereinafter called Owner, in the penal sum of \$ _____, in lawful money of the United States, for the payment of which sum will and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such that whereas, the Principal entered into a certain Contract with the Owner, dated the _____ day of _____ 20____, a copy of which is hereto attached and made a part hereof to Work, Address as specified in the contract documents and specifications.

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

Provided further, that the said Surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed there under or the Technical Specifications accompanying the same shall in any wise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the Technical Specifications.

Provided further, that no final settlement between the Owner and the Principal shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

In Witness Whereof, this instrument is executed in _____ (number) counterparts, one of which shall be deemed an original, this the _____ day of _____, 20____.

(SEAL) BY:

(Name of Principle)

(Signature for Principal)

(Address)

ATTEST:

(Principal Secretary)

WITNESS:

(Witness as to Principal)

(Address)

(SEAL) BY:

(Attorney-in-Fact)

ATTEST:

(Surety Secretary)

WITNESS:

(Witness as to Principal)

(Address)

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

IMPORTANT: Surety companies executing bonds must be authorized to transact business in the State where the project is located.

PERFORMANCE BOND

Know all Men by These Presents that:

_____ (Name and Address of Contractor)

and _____, hereinafter called Principal,
(Corporation Partnership or Individual)

and _____, hereinafter called Surety, are
(Name and Address of Surety)

are held and firmly bound unto the Karuk Tribe Housing Authority, hereinafter called Owner, in the penal sum of \$ _____ in lawful money of the United States, for the payment of which sum will and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such that whereas, the Principal entered into a certain Contract with the Owner, dated the _____ day of _____, 20____, a copy of which is hereto attached and made a part hereof to Work, Address as specified in the contract documents and specifications.

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

Provided further, that the said Surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the Technical Specifications accompanying the same shall in any wise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the Technical Specifications.

Provided further, that no final settlement between the Owner and the Principal shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

In Witness Whereof, this instrument is executed in _____ (number) counterparts, one of which shall be deemed an original, this the _____ day of _____, 20_____.

(SEAL) BY:

(Name of Principle)

(Signature for Principal)

(Address)

ATTEST:

(Principal Secretary)

WITNESS:

(Witness as to Principal)

(Address)

(SEAL) BY:

(Attorney-in-Fact)

ATTEST:

(Surety Secretary)

WITNESS:

(Witness as to Principal)

(Address)

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

IMPORTANT: Surety companies executing bonds must be authorized to transact business in the State where the project is located.

NOTICE TO PROCEED

To: _____
(Contractor)

Date: _____

(Address)

Project:

You are hereby notified to commence work in accordance with the Agreement dated _____, 20____, on or before _____, 20____, and you are to complete the work within 600 consecutive calendar days following receipt of building permits (if applicable).

Prior to commencing work, you shall obtain Certificates of Insurance acceptable to the Owner and place them on file with the Owner (reference General Conditions section 16).

Within ten days of this notice, you shall provide a Construction Progress Schedule to the Owner through the Contract Manager for approval (reference Special Provisions section 5) as well as proof that necessary permits have been applied for (if applicable).

(Owner)

By: Sara Spence
Title: Executive Director, KTHA

ACCEPTANCE OF NOTICE

Receipt of the Notice to Proceed to Work, Address as specified in the contract documents is hereby acknowledged:

_____,

(Contractor)

this the _____ day, of _____, 20____.

By: _____

Title: _____

GENERAL CONDITIONS

1. Definitions
2. Additional Instructions, Detail Drawings
3. Reports and Records
4. Drawings and Specifications
5. Site Investigation & Conditions
6. Shop Drawings
7. Materials, Services and Facilities
8. Substitutions
9. Patents
10. Surveys, Permits, Regulations
11. Laws and Regulations Affecting Work
12. Taxes
13. Protection of Work, Property, Persons
14. Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements
15. Operations and Storage Areas
16. Insurance
17. Indemnification
18. Contract Security
19. Accident Prevention and Safety Program
20. Temporary Sanitary Facilities
21. Supervision by Contractor
22. Subcontracting
23. Separate Contracts
24. Days of Work, Hours of Work
25. Time for Completion and Liquidated Damages
26. Progress Schedules & Requirements for Compliance
27. Land and Rights-of-Way
28. Suspension of Work, Termination and Delay
29. Inspection and Testing
30. Correction of Work
31. Changes in the Work
32. Changes in Contract Price
33. Differing Site Conditions
34. Use and Possession Prior to Completion
35. Record Drawings
36. Cleanup and Finish Grading
37. Measurement and Payment
38. Variation in Estimated Quantities
39. Final Inspections
40. Payments to Contractor
41. Assignments
42. Guaranty
43. Acceptance of Final Payment as Release
44. Contract Manager's Role and Authority
45. Resolution of Disputes
46. Equal Employment Opportunity
47. Clean Air and Water
48. Indian Preference

1. DEFINITIONS

- 1.1 Wherever used in the contract documents, the following terms shall have the meanings indicated which shall be applicable to both the singular and plural thereof:
- 1.2 **Addenda:** Written or graphic instruments issued prior to the execution of the Agreement which modify or interpret the contract documents, drawings and technical provisions, by additions, deletions, clarifications or corrections.
- 1.3 **Bid:** The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the work to be performed.
- 1.4 **Bidder:** Any person, firm or corporation submitting a bid for the work.
- 1.5 **Bonds:** Bid, Performance, and Payment Bonds and other instruments of security, furnished by the Contractor and his surety in accordance with the contract documents.
- 1.6 **Change Order:** A written order to the Contractor authorizing an addition, deletion or revision in the work within the general scope of the contract documents, or authorizing an adjustment in the contract price or contract time.
- 1.7 **Contract Documents:** The contract, including Advertisement For Bids, Information For Bidders, Bid, Bid Bond, Agreement, General Provisions, Labor Provisions, Special Provisions, Payment Bond, Performance Bond, Notice of Award, Notice to Proceed, Change Order, Drawings, Technical Specifications, Submittal Requirements, and Addenda.
- 1.8 **Contract Price:** The total monies payable to the Contractor under the terms and conditions of the Contract Documents.
- 1.9 **Contract Time:** The number of calendar days stated in the Contract Documents for the completion of the work.
- 1.10 **Contract Manager:** The person with the owner organization who is authorized to administer the contract for the Owner.
- 1.11 **Contractor:** The person, firm or corporation with whom the Owner has executed the Agreement.
- 1.12 **Contract Manager Representative:** The representative of the Contract Manager authorized to deal with the Contractor at the site to administer the technical aspects of the Contract and to assure compliance with the Drawings and Specifications.
- 1.13 **Drawings:** The part of the contract documents which show the characteristics and scope of the work to be performed.
- 1.14 **Engineer:** The person, firm or corporation named as such in the contract documents.
- 1.15 **Field Order:** A written order effecting a change in the work not involving an adjustment in the contract price or an extension of the contract time, issued by the Owner or Contract Manager to the Contractor during construction.
- 1.16 **Notice of Award:** The written notice of the acceptance of the bid from the Owner to the successful Bidder.
- 1.17 **Notice to Proceed:** Written communication issued by the Owner to the Contractor authorizing him to proceed with the work and establishing the date of commencement of the work.
- 1.18 **Owner:** The Karuk Tribe Housing Authority (KTHA).
- 1.19 **Plans:** The part of the contract documents which show the characteristics and scope of the work to be performed and which have been prepared or approved by the Contract Manager. In as far as these contract documents are concerned; the terms Drawings and Plans are synonymous.
- 1.20 **Project:** The undertaking to be performed as provided in the contract documents.
- 1.21 **Shop Drawings:** All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the Contractor, a subcontractor, manufacturer, supplier or distributor, which illustrate how specific portions of the work shall be fabricated or installed.
- 1.22 **Specifications:** A part of the contract documents consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship. In as far as these contract documents are concerned; the terms Technical Provisions and Specifications are synonymous.
- 1.23 **Subcontractor:** An individual, firm or corporation having a direct contract with the Contractor or with any other subcontractor for the performance of a part of the work at the site.

- 1.24 **Substantial Completion:** That date as certified by the Contract Manager when the construction of the project is sufficiently completed in accordance with the contract documents, so that the project or specified part can be utilized for the purposes for which it is intended.
- 1.25 **Special Provisions:** Modifications and additions to General Conditions which may be required by a federal agency for participation in the project, or such requirements that may be imposed by applicable state or local laws, or the Owner's contracting practices.
- 1.26 **Supplier:** Any person or organization who supplies materials or equipment for the work, including that fabricated to a special design, but who does not perform labor at the site.
- 1.27 **Technical Specifications:** A part of the contract documents consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship. In as far as the contract documents are concerned, the terms Technical Specifications and Technical Provisions are synonymous.
- 1.28 **Work:** All labor necessary to produce the construction required by the contract documents and all materials and equipment incorporated or to be incorporated in the project.
- 1.29 **Written Notice:** Any notice to any party of the Agreement relative to any part of this Agreement in writing and considered delivered and the service thereof completed, when posted by certified or registered mail to the said party at his last given address, or delivered in person to said party or his authorized representative on the work.

2. ADDITIONAL INSTRUCTIONS, DETAIL DRAWINGS ORDER OF PRECEDENCE

- 2.1 The Contractor may be furnished additional instructions and detail drawings, by the Contract Manager as necessary to carry out the work required by the contract documents.
- 2.2 The additional drawings and instruction thus supplied will become a part of the contract documents. The Contractor shall carry out the work in accordance with the additional detail drawings and instructions.
- 2.3 In the event of an inconsistency between provisions of this contract, the inconsistency shall be resolved by giving precedence in the order given in the Special Provisions section of these documents.

3. REPORTS AND RECORDS

- 3.1 The Contractor shall submit to the Contract Manager such schedule of quantities and costs, payrolls, reports, estimates, records and other data where applicable as are required by the contract documents for the work to be performed.
- 3.2 The Owner, HUD, the Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this Contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this Contract for the purpose of making audit, examination, excerpts, and transcriptions.
- 3.3 The Contractor agrees to include in all subcontracts under this Contract at any tier a clause substantially the same as paragraph 3.2 above.
- 3.4 The periods of access and examination in paragraphs 3.2 and 3.3 above for records relating to (1) appeals under the Disputes clause of this Contract, (2) litigation or settlement of claims arising from the performance of this Contract, or (3) costs and expenses of this Contract to which the Owner, HUD or the Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions, or until the end of the 3-year period in paragraph 3.2, whichever is later.

4. DRAWINGS AND TECHNICAL SPECIFICATIONS

- 4.1 The intent of the drawings and technical provisions is that the Contractor shall furnish all labor, materials, tools, equipment, and transportation necessary for the proper execution of the work in accordance with the contract documents and all incidental work necessary to complete the project in an acceptable manner, ready for use, occupancy or operation by the Owner.
- 4.2 In case of conflict between the drawings and technical specifications, the technical specifications shall govern. Figure dimensions on drawings shall govern over scale dimensions, and detailed drawings shall govern over general drawings.

- 4.3 Any discrepancies found between the drawings and technical specifications and site conditions or any inconsistencies or ambiguities in the drawings or technical specifications shall be immediately reported to the Contract Manager, in writing, who shall promptly correct such inconsistencies or ambiguities in writing. Work done by the Contractor after his discovery of such discrepancies, inconsistencies or ambiguities shall be done at the Contractor's risk.

5. SITE INVESTIGATION AND CONDITIONS

- 5.1 The Contractor will take steps necessary to ascertain the nature and location of the work, and investigate the general and local conditions which can affect the work or its cost, including but not limited to:
- a) conditions bearing upon transportation, disposal, handling, and storage of materials;
 - b) the availability of labor, water, electric power, and roads;
 - c) uncertainties of weather, river stages, tides, or similar physical conditions at the site;
 - d) the conformation and conditions of the ground; and
 - e) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also will observe and determine the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Owner, as well as from the drawings and technical specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Owner.
- 5.2 The Owner assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Owner. The Owner does not assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its representatives before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

6. SHOP DRAWINGS

- 6.1 The Contractor shall provide shop drawings as may be necessary for the prosecution of the work as required by the contract documents. The Contract Manager will have the drawings promptly reviewed and will recommend approval or disapproval of all shop drawings. Approval of any shop drawing shall not release the Contractor from responsibility for deviations from the contract documents. The approval of any shop drawing which substantially deviates from the requirement of the contract documents shall be evidenced by a change order.
- 6.2 When submitted for review and approval, shop drawings shall bear the Contractor's certification that he has reviewed, checked and approved the shop drawings and that they are in conformance with the requirements of the contract documents.
- 6.3 Portions of the work requiring a shop drawing or sample submission shall not begin until the shop drawing or submission has been approved by the Contract Manager. A copy of each approved shop drawing and each approved sample shall be kept in good order by the Contractor at the site and shall be available to the Owner.

7. MATERIALS, SERVICES AND FACILITIES

- 7.1 It is understood that, except as otherwise specifically stated in the contract documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the work within the specified time.
- 7.2 Materials and equipment shall be so stored as to insure the preservation of their quality and fitness for the work. Stored materials and equipment to be incorporated in the work shall be located so as to facilitate prompt inspection.
- 7.3 Manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.

- 7.4 Materials, supplies and equipment shall be in accordance with samples submitted by the Contractor and approved by the Contract Manager.
- 7.5 Materials, supplies or equipment to be incorporated into the work shall not be purchased by the Contractor or the subcontractor subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.
- 7.6 The Contractor shall promptly remove from the premises all materials rejected by the Contract Manager for failure to comply with the contract documents. The Contractor shall promptly replace the materials with acceptable materials without expense to the Owner.

8. SUBSTITUTIONS

- 8.1 Whenever a material, article or piece of equipment is identified on the drawings or technical specifications by reference to brand name or catalogue number, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function shall be considered. The Contractor may recommend the substitution of a material, article, or piece of equipment of equal substance and function for those referred to in the contract documents by reference to brand name or catalogue number, and if, in the opinion of the Contract Manager, such material, article, or piece of equipment is of equal substance and function to that specified, the Contract Manager may approve its substitution and use by the Contractor. Any cost differential shall be deductible from the contract price and the contract documents shall be appropriately modified by change order. The Contractor warrants that if substitutes are approved, no major changes in the function or general design of the project will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the Contractor without a change in the contract price or contract time.

9. PATENTS

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

10. SURVEYS, PERMITS, REGULATIONS

- 10.1 The Owner shall furnish all boundary surveys and establish all base lines for locating the principal component parts of the work together with a suitable number of bench marks adjacent to the work as shown in the contract documents. From the information provided by the Contract Manager, unless otherwise specified in the contract documents, the Contractor shall develop and make all detail surveys needed for construction such as slope stakes, batter boards, stakes for pile locations and other working points, lines, elevations and cut sheets.
- 10.2 The Contractor shall carefully preserve bench marks, reference points and stakes and, in case of willful or careless destruction, he shall be charged with the resulting expense and shall be responsible for any mistakes that may be caused by their unnecessary loss or disturbance.
- 10.3 Permits and licenses of a temporary nature necessary for the prosecution of the work shall be secured and paid for by the Contractor unless otherwise specified in the contract documents. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the Contractor, unless otherwise specified. The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the Contractor observes that the contract documents are at variance therewith, he shall promptly notify the Contract Manager in writing, and any necessary changes shall be adjusted as provided in Section 31 - "Changes in the Work".

11. LAWS AND REGULATIONS AFFECTING WORK

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

12. TAXES

12.1 All materials incorporated into the work are subject to California state sales or use tax.

12.2 When materials are delivered to and consumed on Tribal Trust Land, Karuk Tribal Sales tax at the current rate shall be due to the Tribe.

13. PROTECTION OF WORK, PROPERTY AND PERSONS

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

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

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

14.2 The Contractor shall protect from damage all existing improvements and utilities:

a) at or near the work site, and

b) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor.

14.3 The existence and location of utilities are not guaranteed by the Owner and shall be investigated and verified in the field by the Contractor before commencing construction activities in any particular area. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contract Manager may have the necessary work performed and charge the cost to the Contractor.

15. OPERATIONS AND STORAGE AREAS

15.1 The Contractor shall confine all operations (including storage of materials) to areas authorized or approved by the Contract Manager. The Contractor shall hold and save the Owner and its representatives free and harmless from liability of any nature occasioned by the Contractor's performance.

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

15.3 The Contractor shall use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contract Manager. In such case, the Contractor shall minimize disruption and delays to traffic in the affected areas. When materials are transported in prosecuting the work,

vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

16. INSURANCE

- 16.1 The Contractor shall purchase and maintain such insurance as will protect him from claims set forth below which may arise out of or result from the Contractor's execution of the work, whether such execution be by himself or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:
- a) Claims under workmen's compensation, disability benefit and other similar employee benefit acts;
 - b) Claims for damages because of bodily injury, occupational sickness or disease, or death of his employees;
 - c) Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;
 - d) Claims for damages insured by usual personal injury liability coverage which are sustained
 - i. by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or
 - ii. by any other person; and
 - e) Claims for damages because of injury to or destruction of tangible property, including loss of use resulting there from.
- 16.2 Certificates of Insurance acceptable to the Contract Manager shall be filed with the Contract Manager prior to commencement of the work. These Certificates shall contain a provision that coverage's afforded under the policies will not be canceled unless at least fifteen (15) days prior written notice has been given to the Contract Manager.
- 16.3 The Contractor shall procure and maintain, at his own expense, during the contract time, liability insurance as hereinafter specified;
- 16.3.1 Contractor's General Public Liability and Property Damage Insurance including vehicle coverage issued to the Contractor and protecting him from all claims for personal injury, including death, and all claims for destruction of or damage to any property, arising out of or in connection with any operations under the contract documents, whether such operations be by himself or by any subcontractor under him, or anyone directly or indirectly employed by the Contractor or by a subcontractor under him. Insurance shall be written with a limit of liability of not less than \$500,000 for all damages arising out of bodily injury, including death, at any time resulting there from, sustained by any one person in any one accident; and a limit of liability of not less than \$1,000,000 aggregate for any such damages sustained by two or more persons in any one accident. Insurance shall be written with a limit of liability of not less than \$200,000 for all property damage sustained by any one person in any one accident; and a limit of liability of not less than \$500,000 aggregate for any such damage sustained by two or more persons in any one accident.
- 16.3.2 The Contractor shall acquire and maintain, if applicable, Fire and Extended Coverage insurance upon the project to the full insurable value thereof for the benefit of the Owner, the Contractor, and subcontractors as their interest may appear. This provision shall in no way release the Contractor or Contractor's surety from obligations under the contract documents to fully complete the project.
- 16.4 The Contractor shall procure and maintain, at his own expense, during the contract time, in accordance with the provisions of the laws of the state in which the work is performed, Workmen's Compensation Insurance, including occupational disease provisions, for all of his employees at the site of the project and in case any work is sublet, the Contractor shall require such subcontractor similarly to provide Workmen's Compensation Insurance, including occupational disease provisions for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. In case any class of employees engaged in hazardous work under this contract at the site of the project is not protected under Workmen's Compensation statute, the Contractor shall provide, and shall cause each subcontractor to provide, adequate and suitable insurance for the protection of his employees not otherwise protected.

16.5 The Contractor shall secure "All Risk" type Builder's Risk Insurance for work to be performed. Unless specifically authorized by the Contract Manager, the amount of such insurance shall not be less than the contract price totaled in the bid. The policy shall cover not less than the losses due to fire, explosion, hail, lightning, vandalism, malicious mischief, wind, collapse, riot, aircraft, and smoke during the contract time, and until the work is accepted by the Contract Manager. The policy shall name as the insured the Contractor and the Owner.

17. INDEMNIFICATION

17.1 The Contractor will indemnify and hold harmless the Owner, his agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the work, provided that any such claims, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting there from; and is caused in whole or in part by any negligent or willful act or omission of the Contractor, and subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

17.2 In any and all claims against the Owner or any of his agents, or employees by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under workmen's compensation acts, disability benefit acts or other employee benefits acts.

17.3 The obligation of the Contractor under this paragraph shall not extend to the liability of the Owner, his agents, or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or technical specifications.

18. CONTRACT SECURITY

18.1 If required in the contract documents, the Contractor shall within ten days after the receipt of the Notice of Award furnish the Contract Manager with a Performance Bond and a Payment Bond in penal sums equal to the amount of the contract price, conditioned upon the performance by the Contractor of all undertakings, covenants, terms, conditions and agreements of the contract documents, and upon the prompt payment by the Contractor to all persons supplying labor and materials in the prosecution of the work provided by the contract documents. Such bonds shall be executed by the Contractor and a corporate bonding company licensed to transact such business in the state in which the work is to be performed. The expense of these bonds shall be borne by the Contractor. If at any time a surety on any such bond is declared as bankrupt or loses its right to do business in the state in which the work is to be performed, the Contractor shall within ten days after notice from the Contract Manager to do so, substitute an acceptable bond (or bonds) in such form and sum and signed by such other surety or sureties as may be satisfactory to the Contract Manager. The premiums on such bond shall be paid by the Contractor. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable bond to the Contract Manager.

19. ACCIDENT PREVENTION AND SAFETY PROGRAM

19.1 The Contractor shall be solely and completely responsible for conditions of the job site, including safety of all persons, including employees, and property during performance of the work. This requirement shall apply continuously and not be limited to normal working hours. Safety provisions shall conform to U.S. Department of Labor (OSHA), and all other applicable federal, state, county, and local laws, ordinances, codes, the requirements set forth below, and any regulations that may be detailed in other parts of these documents. Where any of these are in conflict, the more stringent requirement shall be followed. The Contractor's failure to thoroughly familiarize himself with the aforementioned safety provisions shall not relieve him from compliance with the obligations and penalties set forth herein.

19.2 The Contract Manager will notify the Contractor of any observed non-compliance with the foregoing provisions and the action to be taken. The Contractor shall, upon receipt of such notice, immediately take corrective action. If the Contractor fails or refuses to comply promptly, the Contract Manager may issue an

order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop orders shall be made the subject of claims for extension of time, or for excess costs or damages by the Contractor.

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

20. TEMPORARY SANITARY FACILITIES

- 20.1 The Contractor shall provide and maintain necessary sanitary conveniences for the use of those employed on or about the work properly secluded from public observation in such a manner and at such points as shall be approved by the Contract Manager and their use shall be strictly enforced.

21. SUPERVISION BY CONTRACTOR

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

22. SUBCONTRACTING

- 22.1 The Contractor may utilize the services of specialty subcontractors on those parts of the work which, under normal contracting practices, are performed by specialty subcontractors.
- 22.2 The Contractor shall not award work to subcontractor(s) in excess of 67% of the contract price, without prior written approval of the Contract Manager.
- 22.3 The Contractor shall be fully responsible to the Owner for the acts and omissions of his subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.
- 22.4 The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the Contractor by the terms of the contract document insofar as applicable to the work

of subcontractors and to give the Contractor the same power as regards terminating any subcontract that the Contract Manager may exercise over the Contractor under any provision of the contract documents.

22.5 Nothing contained in this contract shall create any contractual relation between any subcontractor and the Owner.

23. SEPARATE CONTRACTS

23.1 The Owner reserves the right to let other contracts in connection with this project. The Contractor shall afford other Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate his work with theirs. If the proper execution or results of any part of the Contractor's work depends upon the work of any other Contractor, the Contractor shall inspect and promptly report to the Contract Manager any defects in such work that render it unsuitable for such proper execution and results.

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

23.3 If the performance of additional work by other Contractors or the Owner is not noted in the contract documents prior to the execution of the contract, written notice thereof shall be given to the Contractor prior to starting any such additional work. If the Contractor believes that the performance of such additional work by the Owner or others involves him in additional expense or entitles him to an extension of the contract time, he may make a claim therefore as provided in Sections 31 and 32.

24. DAYS OF WORK, HOURS OF WORK

24.1 Regular work shifts shall be eight hours daily Monday through Friday, except on holidays indicated below. Time of beginning and ending the day's work shall be approved by the Contract Manager. The Contract Manager, when in his opinion it is justified, may grant the Contractor permission to work overtime upon written request by the Contractor. When for good reason short periods of overtime work are required, the Contract Manager may give approval without advance written notice.

24.2 Construction work will not be permitted on Saturdays, Sundays, nor on New Years Day, Martin Luther King Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day and Christmas Day, nor any other holidays declared by the Tribe or federal government. When any of the above holidays falls on Saturday and the preceding Friday is established as a holiday or when any of the holidays fall on Sunday and the following Monday is established as a holiday, no construction will be permitted on those days. The Contract Manager, when in his opinion it is justified, may grant the Contractor permission to work on any of the above days upon written application by the Contractor. Approval shall be required at least 48 hours in advance.

25. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

25.1 The time for completion of the work is an essential condition of the contract documents. The time for completion appears in the Agreement. The work embraced shall be commenced on a date specified in the notice to proceed.

25.2 The Contractor will proceed with the work at such rate of progress to insure full completion within the time for completion. It is expressly understood and agreed, by and between the Contractor and the Owner, that time for completion of the work under the contract is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the work.

25.3 It is recognized and agreed by the Owner and the Contractor that it is extremely difficult to measure the harm to the Owner resulting from delayed completion of the work. Potential damages include costs for: the temporary relocation of and alternate housing for residents of the work, similar difficulties in calculating damages. Accordingly, the Owner and the Contractor agree that the Contractor shall have assessed against it and shall pay to the Owner liquidated damages as follows. If the Contractor fails to complete the work within the time specified in the contract, or any extension, as specified in the clause entitled Default of this

contract, the Contractor shall pay to the Owner as liquidated damages, the sum of **\$250.00 for each calendar day of delay** that the work shall be incomplete after the date established as the date of completion under the contract. If different completion dates are specified in the contract for separate parts or stages of the work, the amount of liquidated damages shall be assessed on those parts or stages which are delayed. To the extent that the Contractor's delay or nonperformance is excused under another clause in this contract, liquidated damages shall not be due the Owner. The Contractor remains liable for damages caused other than by delay.

25.4 The Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due to the following, and the Contractor has promptly given written notice of such delay to the Contract Manager.

25.4.1 To any preference, priority or allocation order duly issued by the Contract Manager.

25.4.2 To unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, or of the public enemy, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and abnormal and unforeseeable weather; or to any delays of subcontractors occasioned by any of the causes specified in paragraphs 25.4.1 and 25.4.2 of this article.

26. PROGRESS SCHEDULES AND REQUIREMENTS FOR COMPLIANCE

26.1 The Contractor shall, within ten days of receipt of notice to proceed, submit to the Contract Manager for approval a practicable schedule, showing the order in which the Contractor proposes to carry on the work, the dates on which he will start the major items of work (including procurement of materials, plant and equipment) and the contemplated dates for completing the same.

26.2 If, in the opinion of the Contract Manager, the Contractor falls behind the progress schedule, the Contractor shall take such steps as may be necessary to assure performance within the allowable time for completion. The Contractor may propose for approval by the Contract Manager measures such as increasing number of workers, number of shifts, or overtime operations, days of work, or the amount of construction plant, or all of them. The Contract Manager may require the Contractor to submit for approval such supplementary schedule or schedules necessary to demonstrate that the work shall be performed within the allowable time for completion, all without additional cost to the Owner.

26.3 Failure of the Contractor to comply with the requirements of this provision shall be grounds for determination that the Contractor is not prosecuting the work with such diligence as will insure completion within the specified time for completion. Upon such determination the Contract Manager may terminate the Contractor's right to proceed with the work, or any separable part thereof in accordance with Section 28 entitled "Suspension of Work, Termination and Delay".

27. LAND AND RIGHTS-OF-WAY

27.1 Prior to issuance of notice to proceed, the Owner shall obtain all land and rights-of-way necessary for carrying out and for the completion of the work to be performed pursuant to the contract documents, unless otherwise mutually agreed.

27.2 The Contract Manager shall provide to the Contractor information which delineates and describes the lands owned and rights-of-way acquired.

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

28. SUSPENSION OF WORK, TERMINATION AND DELAY

28.1 The Contract Manager may suspend the work or any portion thereof for a period of not more than 90 days or such further time as agreed upon by the Contractor, by written notice to the Contractor which notice shall fix the date on which work shall be resumed. The Contractor will resume that work on the date so fixed. The Contractor may be allowed an increase in the contract price or an extension of the contract time, or both, directly attributable to any suspension.

- 28.2 If the Contractor is adjudged as bankrupt or insolvent, or if he makes a general assignment for the benefit of his creditors or if a trustee or receiver is appointed for the Contractor or for any of his property, or if he files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or if he repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if he repeatedly fails to make prompt payments to subcontractors or for labor, materials or equipment or if he disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the work or if he disregards the authority of the Contract Manager, or if he otherwise violates any provision of the contract documents, then the Contract Manager may, without prejudice to any other right or remedy and after giving the Contractor and his surety a minimum of ten days from delivery of a written notice, terminate the services of the Contractor and take possession of the project and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor, and finish the work by whatever method he may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price exceeds the direct and indirect costs of completing the project, including compensation for additional professional services, such excess shall be paid to the Contractor. If such costs exceed such unpaid balance, the Contractor will pay the difference to the Owner. Such costs incurred by the Owner will be determined by the Contract Manager and incorporated in a change order.
- 28.3 Where the Contractor's services have been so terminated by the Contract Manager, said termination shall not affect any right of the Owner against the Contractor then existing or which may thereafter accrue. Any retention or payment of monies by the Owner due the Contractor will not release the Contractor from compliance with the contract documents.
- 28.4 After ten days from delivery of a written notice to the Contractor, the Contract Manager may without cause and without prejudice to any other right or remedy, elect to abandon the project and terminate the contract. In such case, the Contractor shall be paid for all work executed and any expense sustained plus reasonable profit.
- 28.5 If, through no act or fault of the Contractor, the work is suspended for a period of more than 90 days by the Contract Manager or under an order of court or other public authority, or the Contract Manager fails to act on any request for payment within 30 days after it is submitted, or the Owner fails to pay the Contractor substantially the sum approved by the Contract Manager or awarded by arbitrators within 30 days of its approval and presentation, then the Contractor may, after ten days from delivery of a written notice to the Contract Manager, terminate the contract and recover from the Owner payment for all work executed and all expenses sustained. In addition and in lieu of terminating the contract, if the Contract Manager has failed to act on a request for payment or if the Owner has failed to make any payment as aforesaid, the Contractor may, upon ten days written notice to the Contract Manager, stop the work until he has been paid all amounts then due, in which event and upon resumption of the work, change orders shall be issued for adjusting the contract price or extending the contract time or both to compensate for the costs and delays attributable to the stoppage of the work.
- 28.6 If the performance of all or any portion of the work is suspended, delayed, or interrupted as a result of a failure of the Contract Manager to act within the time specified in the contract documents, or if no time is specified, within a reasonable time, an adjustment in the contract price or an extension of the contract time, or both, shall be made by change order to compensate the Contractor for the costs and delays necessarily caused by the failure of the Contract Manager.

29. INSPECTION AND TESTING

- 29.1 All materials and equipment used in the construction of the project shall be subject to adequate inspection and testing in accordance with generally accepted standards, as required and defined in the contract documents.
- 29.2 The Owner shall provide any inspection and testing services beyond those required by the contract documents.
- 29.3 The Contractor shall provide at his expense the testing and inspection services required by the contract documents.

- 29.4 If the contract documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any work to specifically be inspected, tested, or approved by someone other than the Contractor, the Contractor will give the Contract Manager timely notice of readiness. The Contractor will then furnish the Owner the required certificates of inspection, testing or approval.
- 29.5 Inspections, tests or approvals by the Contract Manager or others are for the sole use of the Owner and shall not relieve the Contractor from his obligations to perform the work in accordance with the requirements of the contract documents.
- 29.6 The Contract Manager and his representatives will at all times have access to the work. In addition, authorized representatives and agents of any participating federal or state agency shall be permitted to inspect all work, materials, payroll, records of personnel, invoices of materials, and other relevant data and records. The Contractor will provide proper facilities for such access and observation of the work and also for any inspection, or testing thereof.
- 29.7 If any work is covered contrary to the written instructions of the Contract Manager it must, if requested by the Contract Manager, be uncovered for his observation and replaced at the Contractor's expense.
- 29.8 If the Contract Manager considers it necessary or advisable that covered work be inspected or tested by others, the Contractor, at the Contracting Manager's request, will uncover, expose or otherwise make available for observation, inspection or testing-that portion of the work in question, furnishing all necessary labor, materials, tools and equipment. If it is found that such work is defective, the Contractor will bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction. If, however, such work is not found to be defective, the Contractor will be allowed an increase in the contract price or an extension of the contract time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction and an appropriate change order shall be issued.

30. CORRECTION OF WORK

- 30.1 The Contractor shall promptly remove from the premises all work rejected by the Contract Manager for failure to comply with the contract documents, whether incorporated in the construction or not, and the Contractor shall promptly replace and re-execute the work in accordance with the contract documents and without expense to the Owner and shall bear the expense of making good all work of other Contractors destroyed or damaged by such removal or replacement.
- 30.2 All removal and replacement work shall be done at the Contractor's expense. If the Contractor does not take action to remove such rejected work within 10 days after receipt of written notice, the Owner may remove such work and store the materials at the expense of the Contractor.

31. CHANGES IN THE WORK

- 31.1 The Contract Manager may at any time, as the need arises, order changes within the scope of the work without invalidating the Agreement. If such changes increase or decrease the amount due under the contract documents, or in the time required for performance of the work, an equitable adjustment shall be authorized by change order.
- 31.2 The Contract Manager also may, at any time, by issuing a field order, make changes in the details of the work. The Contractor shall proceed with the performance of any changes in the work unless the Contractor believes that such field order entitles him to a change in contract price or time, or both, in which event he shall give the Contract Manager written notice thereof within seven days after the receipt of the ordered change. Thereafter the Contractor shall document the basis for the change in contract price or time within 30 days. The Contractor shall not execute such changes pending the receipt of an executed change order or further instruction from the Contract Manager.

32. CHANGES IN CONTRACT PRICE

- 32.1 The contract price may be changed only by a change order. All change orders are to be approved by KTHA in advance of the work. All change orders will be subject to the 2% TERO fee. The value of any work covered by a change order or of any claim for increase or decrease in the contract price shall be determined by one or more of the following methods in the order of precedence listed below:

- a) Unit prices previously approved.
- b) An agreed lump sum.
- c) The actual cost for labor, direct overhead, materials, supplies, equipment, and other services necessary to complete the work. In addition there shall be added an amount to be agreed upon but not to exceed 15% of the actual cost of the work to cover the cost of general overhead and profit.

33. DIFFERING SITE CONDITIONS

- 33.1 The Contractor shall promptly, and before such conditions are disturbed, except in the event of an emergency, notify the Contract Manager by written notice of:
- 33.1.1 Subsurface or latent physical conditions at the site differing materially from those indicated in the contract documents; or
 - 33.1.2 Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract documents.
- 33.2 The Contract Manager shall promptly investigate the conditions, and if he finds that such conditions do so materially differ and cause an increase or decrease in the cost of, or in the time required for, performance of the work, an equitable adjustment shall be made and the contract documents shall be modified by a change order. Any claim of the Contractor for adjustment hereunder shall not be allowed unless he has given the required written notice; provided that the Contract Manager may, if he determines the facts so justify, consider and adjust any such claims asserted before the date of final payment.

34. USE AND POSSESSION PRIOR TO COMPLETION

- 34.1 The Owner shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contract Manager shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the Owner intends to take possession of or use. However, failure of the Contract Manager to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The Owner's possession or use shall not be deemed an acceptance of any work under the contract.
- 34.2 While the Owner has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting directly from the Owner's possession or use. If prior possession or use by the Owner delays the progress of the work or causes additional expense to the Contractor, an adjustment shall be made in the contract price, the time of completion or both, and the contract shall be modified in writing accordingly.

35. RECORD DRAWINGS

- 35.1 Record Drawings shall be prepared by the contractor and shall include: all information shown on the Contractor's drawings and all deviations, modifications or changes from those drawings, however minor, which were incorporated in the work; all additional work not appearing on the contract drawings; and any changes made after the final inspection.
- 35.2 Record drawing shall be kept current and available on the job site at all times. No construction work shall be concealed until the necessary data has been recorded.
- 35.3 Record drawings will be jointly inspected for accuracy and completeness by the Contract Manager or his representative at, or just prior to, the contractor submitting requests for payment. Incomplete drawings will be corrected before payment approval is recommended (Reference section 40, "Payments to Contractor").
- 35.4 Record drawings shall accurately show, using details, notes, etc., the following information:
- a) The project number, contract number, community name, and other relevant general information.
 - b) The location and description of any utility lines or other installations of any kind or description known to exist within the construction area. The location includes dimensions to permanent features.
 - c) The location and dimensions of any changes from the contract drawings.

- d) Changes in design details or additional information obtained from working drawings specified to be prepared and/or furnished by the Contractor including but not limited to fabrication, erection, installation plans, and placing details, pipe sizes, insulation materials, dimensions or equipment foundations, etc.
- e) The location and description of all buried facilities installed by the contractor including at least two ties to permanent features and bury depth of major components, fittings, appurtenances, and change of direction of pipelines.
- f) All changes or modification which results from the final inspection.
- g) All information as required in the technical specifications.

35.5 One copy of the Record Drawings shall be delivered to the Contract Manager with the Contractor's written request for final inspection. The Contract Manager will expedite drawings review and will provide written approval or disapproval prior to the final inspection. If the Record Drawings are disapproved, they will be returned to the Contractor for further work and re-submittal. Final payment will not occur until an approved set of drawings is received.

36. CLEANUP AND FINISH GRADING

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

37. MEASUREMENT AND PAYMENT

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

38. VARIATION IN ESTIMATED QUANTITIES NOT USED

39. FINAL INSPECTION

39.1 Final inspection will be made by the Owner when the Contractor advises that all materials have been furnished, all the work has been performed, and all the construction provided for by the contract has been completed in accordance with its terms. The Contractor shall submit a written request to the Owner at least five working days before the requested final inspection date.

39.2 If a re-inspection or re-test is required because of uncompleted work, the Owner may charge the Contractor for re-inspection costs.

39.3 The Owner will provide written acceptance when all materials, work or other requirements of the drawings, specifications and contract are furnished or completed. The written acceptance will include the date the work is determined to be complete, and until such acceptance, the Contractor will be responsible for all work performed and materials delivered.

40. PAYMENTS TO CONTRACTOR

40.1 Payment requests shall be made on a monthly interval unless otherwise designated by the Contract Manager. The Contractor will submit to the Contract Manager a partial payment request filled out and signed by the

Contractor covering the work performed during the period covered by the partial payment estimate and supported by such data as the Contract Manager may reasonably require. The request for payment may also include an allowance for the cost of such major materials and equipment which are suitably stored either at or near the site. If payment is requested on the basis of materials and equipment not incorporated in the work but delivered and suitably stored at or near the site, the partial payment estimate shall also be accompanied by such supporting data, satisfactory to the Contract Manager, as will establish the Owner's title to the material and equipment and protect his interest therein, including applicable insurance. The Contract Manager will, within ten days after receipt of each partial payment estimate, either approve payment and present the partial payment estimate to the Owner, or return the partial payment estimate to the Contractor indicating in writing his reasons for refusing to approve payment. In the latter case, the Contractor may make the necessary corrections and resubmit the partial payment estimate. The Owner will, within 20 days of presentation to him of an approved partial payment estimate, pay the Contractor a progress payment on the basis of the approved partial payment estimate. The Owner shall retain 10% of the amount of each payment and 2% TERO tax until final completion and acceptance of all work covered by the contract documents. The Owner at any time, however, after 50% of the work has been completed, if he finds that satisfactory progress is being made, may reduce retainage to 5% on the current and remaining estimates. When the work is substantially complete (operational or beneficial occupancy), the retained amount may be further reduced below 5% to only that amount necessary to assure completion. On completion and acceptance of a part of the work on which the price is stated separately in the contract documents, payment may be made in full, including retained percentages less authorized deductions.

- 40.2 Upon completion and acceptance of the work, the Contract Manager shall issue a certificate attached to the final payment request that the work has been accepted by him under the conditions of the contract documents. Within 30 days of completion and acceptance of the work, the Owner shall pay the entire balance found to be due the Contractor including the retained percentages, but except such sums as may be lawfully retained by the Owner.
- 40.3 The Contractor will indemnify and save the Owner or the Owner's agents harmless from all claims growing out of the lawful demands of subcontractors, laborers, workmen, mechanics, material men, and furnishers of machinery and parts thereof, equipment, tools, and all supplies, incurred in the furtherance of the performance of the work. The Contractor shall, at the Contract Manager's request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If the Contractor fails to do so the Contract Manager may, after having notified the Contractor, either arrange payment for unpaid bills or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Contractor shall be resumed, in accordance with the terms of the contract documents, but in no event shall the provisions of this sentence be construed to impose any obligations upon the Owner to either the Contractor, his Surety, or any third party. In paying any unpaid bills of the Contractor, any payment so made by the Owner shall be considered as a payment made under the contract documents by the Owner to the Contractor and the Owner shall not be liable to the Contractor for any such payments made in good faith.
- 40.4 If the Owner fails to make payment 30 days after approval by the Contract Manager, in addition to other remedies available to the Contractor, there shall be added to each such payment interest at the maximum legal rate commencing on the first day after said payment is due and continuing until the payment is received by the Contractor.

41. ASSIGNMENTS

- 41.1 Neither the Contractor nor the Owner shall sell, transfer, assign or otherwise dispose of the contract or any portion thereof, or of his right, title or interest therein, or his obligations thereunder, without written consent of the other party.

42. GUARANTY

- 42.1 The Contractor shall guarantee all materials and equipment furnished and work performed for a period of one year from the date of substantial completion of the system that the completed system is free from all

defects due to faulty materials or workmanship and the Contractor shall promptly make such corrections as may be necessary by reason of such defects including the repairs of any damage to other parts of the systems resulting from such defects. The Contract Manager will give notice of observed defects with reasonable promptness. In the event that the Contractor should fail to make such repairs, adjustments, or other work that may be made necessary by such defects, the Owner may do so and charge the Contractor the cost thereby incurred. The performance bond, if required, shall remain in full force and effect through the guarantee period.

43. ACCEPTANCE OF FINAL PAYMENT AS RELEASE

43.1 THE ACCEPTANCE BY THE CONTRACTOR OF FINAL PAYMENT SHALL BE AND SHALL OPERATE AS A RELEASE TO THE OWNER OF ALL CLAIMS AND ALL LIABILITY TO THE CONTRACTOR OTHER THAN CLAIMS IN STATED AMOUNTS AS MAY BE SPECIFICALLY ACCEPTED BY THE CONTRACTOR FOR ALL THINGS DONE OR FURNISHED IN CONNECTION WITH THIS WORK AND FOR EVERY ACT AND NEGLIGENCE OF THE OWNER AND OTHERS RELATING TO OR ARISING OUT OF THIS WORK. ANY PAYMENT, HOWEVER, FINAL OR OTHERWISE, SHALL NOT RELEASE THE CONTRACTOR OR HIS SURETIES FROM ANY OBLIGATIONS UNDER THE CONTRACT DOCUMENTS OR THE PERFORMANCE BOND AND PAYMENT BONDS.

44. CONTRACT MANAGER'S ROLE AND AUTHORITY

44.1 The Contract Manager or his designee shall act as the Owner's representative during the construction period. He shall decide questions which may arise as to quality and acceptability of materials furnished and work performed. He shall interpret the intent of the contract documents in a fair and unbiased manner. The Contract Manager will make visits to the site and determine if the work is proceeding in accordance with the contract documents.

44.2 The Contractor will be held strictly to the intent of the contract documents in regard to the quality of materials, workmanship and execution of the work. Inspections may be made at the factory or fabrication plant of the source of material supply.

44.3 The Contract Manager will not be responsible for the construction means, controls, techniques, sequences, procedures, or construction safety.

44.4 The Contract Manager does not have authority to obligate the Owner to change in the terms of the contract without the approval of the Owner.

45. RESOLUTION OF DISPUTES

45.1 All claims, disputes and other matters in question arising out of, or relating to, the contract documents or the breach thereof, except for claims which have been waived by the making and acceptance of final payment as provided by Section 43, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in any court having jurisdiction thereof.

45.2 Notice of the demand for arbitration shall be filed in writing with the other party to the contract documents and with the American Arbitration Association. Demand for arbitration shall in no event be made on any claim, dispute or other matter in question which would be barred by the applicable statute of limitations.

45.3 The Contractor will carry on the work and maintain the progress schedule during any arbitration proceedings, unless otherwise mutually agreed in writing.

45. RESOLUTION OF DISPUTES

45.1 "Claim" as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of Contract terms, or other relief arising under or relating to the Contract. A claim arising under the Contract, unlike a claim relating to the Contract, is a claim that can be resolved under a

Contract clause that provides for the relief sought by the claimant. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim by complying with the requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

- 45.2 Except for disputes arising under the clauses entitled Labor Standards and Labor Standards - Nonroutine Maintenance herein, all disputes arising under or relating to this Contract, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved exclusively under this clause.
- 45.3 The details and supporting documents of all claims by the Contractor for additional compensation, or for an extension of time of performance, or for any dispute regarding a question of fact, or for interpretation of the Contract, shall be made in writing and submitted to the Contract Manager for a written decision within ten (10) calendar days from the date of the occurrence of the dispute. The Contractor agrees that unless these written notices are provided, the Contractor will have no entitlement to additional time or compensation for such act, event or condition and such failure to provide such notice shall constitute a waiver of the claims. All claims by Owner against the Contractor shall be made in writing and submitted to the Contractor within ten (10) calendar days from the date of the occurrence of the dispute.
- 45.4 Presenting Claim. In presenting the claim and supporting documentation, the Contractor shall specifically include, to the extent then possible, the following:
- a) Certification signed by the Contractor that the claim is made in good faith, that the supporting data is accurate and complete to the best of the Contractor's knowledge and belief, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes Owner is liable.
 - b) A narrative which describes the facts and outlines the analysis of responsibility and causal connection of the claim including: (i) A brief summary of the claim and the facts pertinent to the claim; (ii) The specific Contract provisions on which the claim is based; (iii) A description of the relative responsibilities of each party giving rise to the claims; (iv) A description of the cause and effect relationship between the relevant acts and omissions of the specific responsible parties and the damages or additional costs claimed; (v) Documentation which supports the narrative including schedules, graphs, charts, photographs, and any other pertinent documents or information; (vi) Quantitative analysis and presentation of requested additional compensation and/or the additional time including: (A) A summary of additional compensation and/or additional time requested; (B) Supporting calculations, subcalculations, cost data and documents including proof of expenditures to support the claimed additional compensation and/or additional time.
- 45.5 All claims by the Contractor shall be made in writing and submitted to the Contract Manager for a written decision. A claim by Owner against the Contractor shall be subject to a written decision by the Contract Manager.
- 45.6 The Contract Manager shall, within _____ (60 unless otherwise indicated) days after receipt of the request, decide the claim or notify the Contractor of the date by which the decision will be made.
- 45.7 The Contract Manager's decision shall be final unless the Contractor appeals in writing to a higher level in the Owner in accordance with the Owner's applicable policy and procedures for such appeals, if any. In the event that the Owner does not have a policy and procedures for such an appeal, an appeal may be made to the governing body of the Owner. Such appeal must be made within _____ (10 unless otherwise indicated) days after receipt of the Contract Manager's decision.
- 45.8 The Contractor shall proceed diligently with performance of this Contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the Contract, and comply with any decision of the Contract Manager.
- 45.9 Nothing in this Contract, or any action taken by the Owner or any of its agents or employees in connection with this Contract shall be deemed to be a waiver of the sovereign immunity of the Owner or the Tribe.
- 45.10 Contractor hereby acknowledges and irrevocably consents to the exclusive personal and subject matter jurisdiction of the Tribal Court or other Tribal dispute resolution entity or mechanism of the Tribe over

any dispute, suit or other legal action that may be filed relating to the Contract, provided that this provision shall not be deemed to be a waiver of the sovereign immunity of the Tribe or Owner, which immunity is hereby expressly asserted, and provided further that any order, judgment or award of such Court or dispute resolution entity or mechanism in favor of the Owner and against the Contractor may be registered or enforced in any court of competent jurisdiction.

46. EQUAL EMPLOYMENT OPPORTUNITY

- 46.1 During the performance of this contract, except as allowed by the Tribal Employment Rights Ordinance, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 46.2 The Contractor shall take affirmative action to ensure the applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- 46.3 The Contractor agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- 46.4 The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 46.5 The Contractor shall send, to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' representative of the Contractor's commitment under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- 46.6 The Contractor shall comply with all provisions of Executive Order No. 11246, as amended, and the rules, regulations, and relevant orders of the Secretary of Labor.
- 46.7 The Contractor shall furnish to the Contract Manager, all information required by Executive Order No. 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. Standard Form 100 (EEO - 1), or any successor form, is the prescribed form to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.
- 46.8 The Contractor shall permit access to its books, records, and accounts by the Owner, Owner's representatives or the Office of Federal Contract Programs (OFCCP) for the purposes of investigation to ascertain compliance with the applicable rules, regulations, and orders.
- 46.9 If the OFCCP determines that the Contractor is not in compliance with this clause or any rules, regulations, and orders of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further contracts.
- 46.10 The Contractor shall include the terms and conditions of this section in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order No. 11246, as amended, so that such provisions will be binding upon each subcontractor or vendor.
- 46.11 The Contractor shall take such action with respect to any subcontract or purchase order as the Contract Manager may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Contract Manager, the Contractor may request the Owner and the United States to enter into such litigation to protect the interests of the United States.

47. CLEAN AIR AND WATER

- 47.1 The Contractor agrees to comply with all applicable requirements of the Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended, and all applicable implementing regulations.
- 47.2 The Contractor agrees that no portion of the work required by this prime contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of the facility from the listing.

- 47.3 The Contractor agrees to use best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed.
- 47.4 The Contractor agrees to insert the substance of this clause into any nonexempt subcontract, including this subparagraph 47.4.

48. INDIAN PREFERENCE

- 48.1 The Contractor agrees:
- 48.1.1 To give preference in employment opportunities under this contract to the greatest extent feasible to Indians who can perform required work, regardless of age (subject to existing laws and regulations), sex, religion, or Tribal affiliation. To the maximum extent feasible and consistent with the efficient performance of this contract, the Contractor further agrees to give preference to the greatest extent feasible in employment and training opportunities under this contract to Indians who are not fully qualified to perform regardless of age (subject to existing laws and regulations), sex, religion, or tribal affiliation.
- 48.1.2 The Contractor also agrees to give preference to Indian Organizations and Indian-owners economic enterprises in the awarding of any subcontracts to the greatest extent feasible and consistent with the efficient performance of this contract. The Contractor shall maintain statistical records as are necessary to indicate compliance with this paragraph.
- 48.2 In connection with the Indian employment preference requirements of this clause, the Contractor shall provide opportunities for on-the-job training incident to such employment that will increase the vocational effectiveness of an Indian employee.
- 48.3 If the Contractor is unable to fill its employment and training opportunities after giving full consideration to Indians as required by this clause, those needs may be satisfied by selection of persons other than Indian in accordance with applicable fair employment practices.
- 48.4 If no Indian organizations or Indian-owned economic enterprises are available under reasonable terms and conditions, including price, for awarding of subcontracts in connection with the work performed under this contract, the Contractor agrees to comply with the provisions of this contract by applying fair, competitive contracting practices.
- 48.5 As used in this clause:
- a) The term "Indian" means a person who is a member of an Indian Tribe or qualifies as a California Indian according to federal law. If the Contractor has reason to doubt that a person seeking employment preference is an Indian, the Contractor shall grant the preference but shall require the individual to provide evidence within 30 days from start of employment.
 - b) The term "Indian Tribe" means an Indian Tribe, pueblo, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 16311) which is recognized as eligible for the special programs and services provided by the United States to Indian because of their status as Indians.
 - c) The term "Indian Organization" means the governing body of any Indian Tribe or entity established or recognized by such governing body in accordance with the Indian Financing Act of 1974 (88 Stat. 77; 25 U.S.C. 1451); and,
 - d) The term "Indian-owned Economic Enterprise" means any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, provided that such Indian ownership shall constitute not less than 51% of the enterprise, and that ownership shall encompass active operation and control of the enterprise.
- 48.6 Tribal Employment Rights Office or Ordinance (TERO). Contractor acknowledges and understands that, as part of this contract, he/she must comply with the TERO Laws, Regulations or Ordinances, if any, currently in effect for the Tribe. Contractor further understands that the TERO Laws are a supplement or an addition to the Indian Preference Provisions contained herein. Consequently, Contractor shall contact the Tribe's TERO Office to determine how he/she must comply with the duties and requirements contained in the TERO and in the Tribal and Indian Preference Requirements set out in this clause.
- 48.7 If the Tribe has established its own Tribal employment and contracting preference law or regulation

pursuant to section 101(k) of NAHASDA, such law or regulation, and all related Tribal and Owner policies, shall apply in lieu of the remainder of this clause. If the Tribe has not established such Tribal employment and contracting preference law or regulation, then subparagraph 48.8 of this clause shall apply. Contractor is required to make inquiries to determine whether the Tribe has established such Tribal employment and contracting preference law or regulation and to comply with such law or regulation.

- 48.8 If the Tribe has not established its own Tribal employment and contracting preference law or regulation pursuant to section 101(k) of NAHASDA , then the work to be performed under this Contract is on a project subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. §450e(b)) --
- a) Section 7(b) requires that to the greatest extent feasible (i) preferences and opportunities for training and employment shall be given to Indians; and (ii) preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.
 - b) The parties to this Contract shall comply with the provisions of Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)).
 - c) In connection with this Contract, the Contractor shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned economic enterprises, and preferences and opportunities for training and employment to Indians.
 - d) The requirements of this subparagraph 48.8 are in addition to, and not in lieu of, any other requirements of this Clause 48.
- 48.9 Upon a finding by the Owner that the Contractor is not in compliance with any applicable provision of this Clause 48 or with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)), the Contractor shall, at the direction of the Owner, take appropriate remedial action.
- 48.10 The Contractor shall include this Clause 48 in every Subcontract in connection with the Project, and shall at the direction of the Owner, take appropriate action pursuant to the Subcontract upon a finding by the Owner that the Subcontractor has violated any applicable provision of this Clause or section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)).
- 48.11 Upon a finding by the Owner that a subcontractor is not in compliance with any applicable provision of this Clause 48 or with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)), the Contractor shall direct the Subcontractor to take appropriate remedial action.

Tribal Employment Rights Ordinance and Workforce Protection Act
Approved June 8, 2015

SECTION 2 - Administration of TERO Ordinance

Section 2.1 **The TERO Commission**

- (a) Establishment. There is hereby created a Tribal Employment Rights Commission.

- (b) Number, Tenure, Nomination and Qualifications of the Commissioners. The Board shall consist of six (6) Commissioners. A Commissioner shall be a person of at least twenty-one (21) years of age, and a majority of the Commissioners shall be enrolled Tribal Members. No employee of the TERO Office and no owner or employee of a Certified Business shall be eligible to serve on the Commission. The Tribal Council shall designate two (2) Tribal Council members as its representatives on the TERO Commission; the designated Tribal Council representatives shall serve for the duration of their term unless removed by the Tribal Council prior to completing their term. All other Commissioners shall be appointed by the Tribal Council for staggered four (4) year terms, and each Commissioner appointed shall hold office until such Commissioner's successor is appointed. Commissioners shall be from each tribal district when possible.

- (c) Vacancies; Removal. Any vacancy occurring in the Commission due to the removal or resignation of a Commissioner shall be filled by the Tribal Council in a manner prescribed by the Tribal Council following the advertisement of the position. Any Commissioner may be removed from office at any time by the Tribal Council for cause, subject to notice and opportunity for a hearing before the Council. Upon a Commissioner's resignation, death, or disability, the Tribal Council shall act to fill the position. If the vacancy was left by a Commissioner who was a designated Tribal Council member, then such vacancy must be filled with a new Tribal Council member.

- (d) Conflicts of Interest. Situations which result in actual or even potential conflicts of interest must be avoided. Personal, social and economic relationships which may impair a Commissioner's ability to exercise good judgment on behalf of the Tribe, or which give the appearance of such impairment, create an actual or potential conflict of interest. Any Commissioner involved in such a relationship must immediately and fully disclose the nature of the relationship to the full Commission so a determination can be made as to whether an actual or potential conflict exists, and if so, how to correct the situation.

- (e) Compensation. Commissioners shall receive a stipend for the following purposes as consideration for their time in conducting Karuk Tribal business, when funds exist.
 - 1) Regular and Special Meetings of the TERO Commission,
 - 2) Attendance at off-site meetings when attending on behalf of the TERO Commission,
 - 3) Participation as a panel member for interviews,
 - 4) Required Hearings of the TERO Commission,
 - 5) Attendance at Training Sessions on behalf of the TERO Commission.

- (f) Mileage. Commissioners shall be reimbursed in accordance with current Federal reimbursement rates for privately owned vehicle use to conduct TERO business based upon the shortest route to the destination, when funds exist.

Section 2.2 Powers and Duties of Commission

The TERO Commission shall report directly to the Tribal Council. The TERO Commission shall have the following powers and duties:

- (a) To develop an annual operating budget for the necessary implementation and enforcement of this Act.
- (b) To hire staff; to secure and obligate funding from the Tribal Council and all other sources as necessary to carry out its duties.
- (c) To issue rules, regulations, interpretations, and guidelines for Indian preference as is necessary to implement and enforce this Act. Such rules and regulations shall become effective upon written approval of the Tribal Council.
- (d) To establish a Tribal Skills Bank as a means of providing qualified Indian employees to employers doing business with the Tribe.
- (e) To certify Karuk Indian Firms, for purposes of Indian preference, minority business contract eligibility, and other purposes.
- (f) To ensure that that all employers doing business with the Tribe are registered with the TERO Office. To be registered, a business must have an Indian Preference plan.
- (g) To investigate complaints regarding any violation of this Act. The Commission shall also investigate possible violations on its own initiative
- (h) To hold hearings on and determine any matter under its authority, including hearings necessary to the issuance, modification, and revocation of any permit or license, as well as any hearing regarding violations of this Act. The Commission shall develop procedures to govern its hearings, and is authorized to issue compliance orders and sanctions for violations of this Act.
- (i) To enter into cooperative agreements with state and federal agencies in order to implement the intent of this Act. Any such agreements must be approved by Tribal Council prior to taking effect.
- (j) To establish policies and procedures governing all activities of the TERO Commission and the TERO Office,
- (k) To hold public hearings on tribal employment rights issues.
- (l) To hold hearings to adjudicate complaints and appeals from the actions of the TERO Director using the procedures set forth in this Act.

Section 2.3 Establishment of the TERO Office

- (a) Establishment. There is hereby created a Tribal Employment Rights Office. The TERO Director shall oversee this Office.

- (b) Supervision. The Tribal Chairperson shall have supervisory authority to direct the TERO Director with respect to administrative duties.
- (c) Qualifications. The TERO Director shall have such administrative ability, education, and training as the Tribal Council determines, with advice from the TERO Commission.

Section 2.4 Powers and Duties of the TERO Office

The TERO Director shall have the authority to carry out the day-to-day operations of the TERO Office, to enforce this Act, and to employ and supervise staff of the TERO Office and such other authority as is convenient or necessary to the efficient administration of this Act.

In addition, the TERO Director shall have the following powers and duties:

- (a) To establish procedures, forms and internal policies necessary to carry out the purposes of this Act;
- (b) To maintain a current list of Certified Indian Owned Businesses;
- (c) To coordinate training and mentorship programs for Tribal Members, Indians, and Certified Businesses;
- (d) To hire staff; to secure and obligate funding from the Tribal Council and all other sources as necessary to carry out the duties of the TERO Director.
- (e) To maintain a Tribal Skills Bank;
- (f) To investigate complaints alleging violations of this Act;
- (g) To make recommendations to the TERO Commission regarding issuance of orders and assessments of penalties to remedy violations of this Act, and to represent the TERO Office at hearings and appeals before the TERO Commission, any court or other adjudicatory body, and any proceedings before the Tribal Council; and
- (h) To ensure that the TERO Fee is assessed and recovered on applicable contracts.

Section 2.5: Tribal Employment Rights Fee

A tribal employment rights fee is imposed as follows:

- (a) Employers. Every employer with a contract or agreement in the amount of \$2,500.00 or more shall pay a fee of two percent (2%) of the total amount of the contract, regardless of where the work is performed. This applies to all employers doing business with the Tribe or one of its affiliated tribal entities. The Tribal Council at its discretion may exempt an employer from this requirement.
- (b) Non-Tribal Businesses on Tribal Lands. All non-tribal businesses with a place of business on tribal lands and annual net income shall pay an annual fee of two percent (2%) of annual net income to the TERO Office.

Section 2.6: Fee Collection and Expenditure

The TERO fee shall be collected by the Tribe's Fiscal Department and credited to the TERO Account.

Section 2.7 Certification of Businesses

(a) Business Categories

An applicant may seek to be certified for preference in one of the following two categories:

- (1) *Tribal Business.* A Tribal Entity must own, operate, manage and control 100% of the day-to-day operations of the business.
- (2) *Tribal Member Business.* Enrolled Karuk Tribal Members must own, operate, manage and control at least 51% of the day-to-day management and operations of the business.

(b) Requirements for Certification

The TERO Office will evaluate the application for certification based on factors, including, but not limited to, the following:

(1) *Ownership*

The firm must be 51% or more enrolled Karuk Tribal Member-owned. The applicant must demonstrate the following:

- (a) Formal Ownership. That the enrolled Karuk Tribal Member own(s) 51% or more of the partnership, corporation, or other arrangement for which the application is being submitted. Such ownership must be embodied in the firm's Originating documents, such as its stock ownership or partnership agreement. Ownership includes:
 - (b) Assets. The enrolled Karuk Tribal Member owns 51% or more of the assets and equipment, will receive 51% or more of the firm's assets upon dissolution, and will receive 51% or more of the profits, and interest.
 - (c) Control. The enrolled Karuk Tribal Member's 51% or more ownership provides him or her with a majority of voting rights or other decisional authority and that all decisions of the firm are to be made by a majority vote except where otherwise required by law.
 - (d) Value. The enrolled Karuk Tribal Member provided real value for his or her 51% or more ownership by providing capital, equipment, real property, or similar assets commensurate with the value of his or her ownership share. It will not be considered "real value" if the enrolled Karuk Tribal Member purchased his or her ownership share, directly or indirectly, through a promissory note, the ultimate creditor of which is the non-Karuk Tribal Member owner of the firm or an immediate relation thereof, or any similar arrangement, unless a convincing showing can be made that the enrolled Karuk Tribal Member brought such special skills, marketing connections, or similar benefits to the firm that there is a good reason to believe the arrangement would have been entered into even if there was no Tribal preference program in existence. Where the enrolled Karuk Tribal Member participant can demonstrate that he or she could not pay good value for his or her 51% or more Indian ownership because the normal capital sources were closed to him or her because he or she is an Indian, that person may satisfy this requirement by demonstrating further that he or she extended his or her capital-raising capability as far as possible, such that the enrolled Karuk Tribal Member participant clearly is at risk in the business in relationship to his or her means.

- (e) Profit. The enrolled Karuk Tribal Member owner(s) will receive 51% or more of all profits. If there is any provision that gives the non-Karuk owner a greater share of the profits, in whatever form and under whatever name, such as through management fees, equipment rental fees, or bonuses tied to profits, certification will be denied. Salary scales will be reviewed to ensure the relative salaries being paid Indian and non-Indian owners are consistent with the skills of the parties and are not being used to circumvent the requirement that enrolled Karuk Tribal Member owners receive 51% or more of the profits.

(2) *Management and Control*

The firm must be under significant Indian management and control. The firm must be able to demonstrate that: one or more of the Indian owners must be substantially involved, as a senior level official, in the day-to-day management of the firm as his or her primary employment activity.

The Indian owner does not have to be the "Chief Executive Officer."

However, he or she must, through prior experience or training, have substantial occupational ties to the area of business in which the firm is engaged such that he or she is qualified to serve in the senior level position and is sufficiently knowledgeable about the firm's activities to be accountable to the Tribe for the firm's activities.

This provision may be waived when:

- (a) The firm is 100% Indian owned and the Chief Executive Officer is the spouse and/or parent of the owner(s), the family lives on or near the Tribe's service area, and the majority of employees are Indian; or
- (b) The firm is modeled on a publicly-held corporation such that it is owned by 10 or more persons, is at least 70% Indian-owned, the Chief Executive Officer and the highest-salaried employee in the firm is/are Indian, and a majority of the employees are Indian.

(3) *Integrity of Structure*

There must be good reason to believe that the firm was not established solely or primarily to take advantage of the Indian preference program. In evaluating an applicant under this criterion the TERO will consider the factors set out below. The TERO shall exercise broad discretion in applying these criteria in order to preserve the integrity of the Indian preference program and in questionable cases shall deny certification.

- (a) History of the Firm: Whether the history of the firm provides reason to believe it was established primarily to take advantage of the Tribal preference program, and in particular whether the firm, a portion of the firm, or key actors in the firm originally were associated with a non-Indian owned business that gained little of business value in terms of capital, expertise, equipment, etc., by adding ownership or by merging with an Indian firm.
- (b) Employees: Whether key non-Indian employees of the applicant are former employees of a non-Indian firm with which the Indian firm is or has been affiliated, through a joint venture or other arrangement, such that there is reason to believe the non-Indian firm is controlling the applicant. Whether Indians are employed in all or most of the positions for which qualified Indians are available. A high percentage of non-Indian employees in such positions will provide reason to believe the firm was established primarily to benefit non-Indians.

- (c) Relative Experience and Resources: Whether the experience, expertise, resources, etc., of the non-Indian partner(s) is so much greater than that of the Indian(s) that there is little sound business reason for the non-Indian to accept a junior role in the firm other than to be able to take advantage of the Indian preference program.

(4) *Brokers*

Brokers will be certified only if they are dealers who own, operate, or maintain a store, warehouse, or other establishment in which the commodities being supplied are bought, kept in stock, and sold to the public in the usual course of business; provided, that this requirement shall not apply where the applicant demonstrates that it is customary and usual in the area of trade for a broker/dealer not to maintain an establishment and to keep the commodities in stock.

(5) *Manufacturing Companies*

In determining whether or not a manufacturing firm is 51% Indian- owned and controlled, the Commission shall be guided by the Small Business Administration Standard Operating Procedures on certifying firms as eligible for the 8(a) program.

Section 2.8 Application Procedures

- (a) Application for Certification: A business seeking certification as a Certified Business or registration for a particular category of business shall submit a completed application to the TERO Office on a form provided by the TERO Office.
- (b) Issuance of Certification: The TERO Director shall exercise broad discretion in reviewing the application and supporting documents in order to preserve the integrity of the Tribal preference program. If the TERO Director has any question as to the applicant's fulfillment of one of the requirements, the TERO Director may deny the application and refuse to submit the application to the TERO Commission for final approval.
- (c) Appeal of Denial of Application: The applicant may request a hearing before the TERO Commission to appeal a denial of an application. The principal(s) of the business shall be present at the hearing and shall have the opportunity to present evidence in support of their case. The decision of the TERO Commission shall be final and binding and not subject to any further appeal.
- (d) Businesses Certified Prior to the Adoption of these Criteria:
- (1) Each business granted Tribal preference certification by the Tribe prior to the effective date of this Act shall submit a new application to the TERO Office within ninety (90) days to be recertified. If the TERO Director denies recertification, the business may appeal the decision to the TERO Commission.
 - (2) Change in Status and Annual Updates: Each Certified Business shall be in compliance with all certification requirements at all times during the solicitation, evaluation, and awarding of contracts and shall report in writing to the TERO Office any changes in its responses to the certification application and/or supporting documents within sixty (60) days after such changes have occurred. Each Certified Business shall update the information provided in its initial application paperwork on an annual basis.

Section 2.9 Withdrawal of Certification

- (a) Initiation of Proceedings: The TERO Director may initiate proceedings to withdraw or suspend the certification of any businesses as warranted. The TERO Director shall provide written notice to the business that its Certification is being re-evaluated. The business shall have ten (10) days in which to respond and provide additional documentation.
- (b) Finding: The TERO Director shall prepare a Recommendation to the TERO Commission regarding whether the business continues to meet the eligibility requirements for certification and make a determination of withdrawal or suspension of certification based on the available information. The Recommendation shall be submitted to the TERO Commission for a final determination. The TERO Commission shall provide the business a written notice of its decision.
- (c) Request for Reconsideration: Upon receiving the Notice of Decision from the TERO Commission, a business shall have ten (10) days in which to make a request that the Commission reconsider its decision. To be considered, any Request for Reconsideration must be accompanied by additional evidence not already before the Commission.

SECTION 3 - Indian Preference

Section 3.1 Findings and Intent

A principal goal of the Karuk Tribe is to promote the general welfare of all Karuk people by providing employment preference to tribal members and their descendants.

It shall be the policy of the Tribe to affect a program of preferential treatment for Karuk Tribal Members, their descendants, Indians, and enterprises which are owned and controlled by Tribal Members and/or Indians in order to:

- (a) Provide employment opportunities for Tribal Members, Enrolled Descendant Tribal Members, and Indians,
- (b) Promote sound and productive free enterprise,
- (c) Provide maximum contracting and subcontracting opportunities for enterprises which are owned and controlled by Tribal Members and/or Indians, and
- (d) Provide the Tribe quality goods and services that are fair, reasonable and cost effective.

Section 3.2 Hiring Preference in Employment

- (a) All Employers working for or on behalf of the Karuk Tribe and its affiliated Tribal Entities must follow these hiring preferences:
 - (1) In the event that more than one applicant meets the threshold for a position as defined in this Act, preference shall be given in the following order:
 - (a) Enrolled Karuk Tribal Member
 - (b) Enrolled Karuk Descendent Member
 - (c) Spouse of an Enrolled Karuk Tribal Member or Parent of a Enrolled Karuk Tribal Member who is under the age of 18.

(d) Enrolled Member of another Federally Recognized Tribe.

(e) Veterans

(f) Non-Indian

(2) In the event that a position of employment is funded in whole or in part by any federal grant and/or contract or other public funding where Tribal Preference is not allowed, preference shall be given to Indians over Non-Indians.

(c) Job Qualifications and Business Necessity. No employer shall use any threshold, job qualification criteria, or other personnel requirements that serve as barriers to Tribal Preference in employment, as determined by TERO, unless the Employer can demonstrate that such criteria or requirements are required by business necessity.

Section 3.3 Preference for Indian Owned Business

All employers shall give preference to certified Indian owned businesses. If there are no qualified certified Indian owned businesses, then a non-Indian owned business may be used.

KARUK TRIBAL WAGE RATES	
Updated April 2011	
Position:	Rate:
CARPENTER	17.00
CEMENT MASON	16.00
ELECTRICIAN	18.00
LABORER	12.00
PAINTER	13.00
PLUMBER	18.00
ROOFER	14.00
SHEET METAL WORKER	18.00
BRIDGE BUILDER	17.00
PILE DRIVER	23.00
MILLWRIGHT	18.00
LINE CONSTRUCTION	22.00
COMMUNICATION SYS	18.00
HEAVY EQUIP OPERAT	16.00
IRON WORKERS	17.00
PLASTERER	16.00
BRICK TENDER	16.00
LANDSCAPE/GARDEN	12.00
DRYWALL FINISHER	16.00
GLAZIER	14.00
SOFT FLOOR LAYER	15.00
TRUCK DRIVER	13.00
TILE SETTER	15.00
BRICK LAYER	17.00

SPECIAL PROVISIONS

Scope of Work Activity 1, Siding

- 1.1 Successful bid shall include all necessary labor and equipment to remove existing exterior trim boards and install new **Class A rated** trim and **Class A rated** lap siding over existing T-111 siding and repaint exterior on **15** four plex and **1** three plex apartment buildings and **30** single family homes located on Tribal Trust lands in Yreka, California (Siskiyou County).

All work to comply with **FEMA Home Builder's Guide to Construction in Wildfire Zones** and **California Building Code, Chapter 7, Materials and Construction Methods for Exterior Wildfire Exposure**.

- 1.2 Bidder is responsible for estimating all quantities of materials required to complete project and providing list to KTHA for procurement and purchase of materials.
- 1.3 Bid shall include removing all existing exterior trim boards, repairing any existing damage to existing T-111 siding to allow for the proper installation of new lap siding over existing T-111 siding, and installing a weatherization membrane over existing siding prior to installing lap siding.
- 1.4 Bid shall include installing **Allura brand**, or approved equal, **5/4 primed reversible trim**, 5/4 X 4 around windows and doors, 5/4 X 6 on front and back corners, with 5/4 x 4 on the left and right corners, 5/4 X 6 belly bands at gable ends, and 3/4 X 3 trim as needed at soffits or beams. All trims will have head flashing installed as needed.

Bid shall include installing **Allura brand** or approved equal **Primed 8 1/4" traditional Texture** lap siding with a 7" exposure on all exterior walls. Bid shall include installing **Allura brand** or approved equal **7" Primed Shake Select Staggered 16" X 48"** panels on all gable ends above belly bands. Bid shall include installing **Allura brand** or approved equal **traditional soffit** at carports and eaves as required by code. Soffit size to be determined by application area being covered.

- 1.5 Bid shall include installing **Vulcan brand**, or approved equal, ember resistant ventilation in soffits and gable ends as required by **California Building Code, Chapter 7, Materials and Construction Methods for Exterior Wildfire Exposure**.
- 1.6 Bidder shall ensure that all debris is removed from site to be properly disposed of and that site is clean upon completion.

Scope of Work
Activity 2, Painting

- 2.1 Bid shall include caulking all exterior siding as needed in preparation for painting with **Dap brand** or approved equal **Dynaflex Ultra Advanced Exterior sealant**.
- 2.2 Bid shall include painting the exterior with a three-color scheme (body, gable, and trim) using **Sherwin-Williams Brand** or approved equal exterior grade paint. Colors and sheen to be selected by owner.
- 2.3 Bid shall include pressure washing and painting elevated deck framing as needed.
- 2.4 Bidder shall ensure that all landscaping features, personal property, windows and doors are protected from paint overspray and that access to the residence is provided to the tenants.

**Scope of Work
Activity 3, Decks**

- 3.1 Successful bid shall include all necessary labor and equipment to retro fit existing decks, ramps, and railing with **Class B** materials on 15 four plex apartment units, 1 three plex apartment unit, and 15 manufactured homes located on Tribal Trust lands in Yreka, California (Siskiyou County). All work to comply with **FEMA Home Builder's Guide to Construction in Wildfire Zones** and **California Building Code, Chapter 7, Materials and Construction Methods for Exterior Wildfire Exposure**.
- 3.2 Bidder is responsible for estimating all quantities of materials required to complete project and providing KTHA with list for procurement and purchase of materials.
- 3.3 Bid shall include removing all decking and railing down to deck framing and removing debris for proper disposal.
- 3.4 Bid shall include labor to install flashing over deck framing and between all home to deck connection points.
- 3.5 Bid shall include labor to install **K.D. Cedar Decking**, with Behr Brand semi-transparent stain or approved equal on all decks and ramps. Decking to be installed using **#8 stainless steel 3 1/8"** fasteners.
- 3.6 Bid shall include labor to install **RDI Avalon Aluminum Railing system with Modern Cable infill** system, or approved equal, at all deck and ramp locations. Color to be **Black**.
- 3.7 Bidder will be responsible for providing temporary ramps or alternative access to homes during construction.

4. SITE CONDITIONS

- 4.1 The work shall be performed in Yreka, CA, Siskiyou County.
- 4.2 The Contractor shall determine actual site conditions with regard to surface vegetation, trees, stumps, and other miscellaneous obstacles to construction. The Contractor shall perform, at no additional cost, all necessary clearing, grubbing, and disposal of these and other obstacles including existing abandoned utilities in order to do work required by the contract.
- 4.3 Locations, materials, and sizes of any utilities shown are approximate only and are not meant to be a complete representation of all utilities actually present. The Contractor shall determine exact locations and details from the responsible utility authority.

5. CONTRACT DOCUMENTS

- 5.1 A maximum of three sets of contract drawings and specifications (if applicable) will be furnished without charge to the Contractor at award of this contract.

6. PRE-CONSTRUCTION CONFERENCE AND PROJECT MEETINGS

- 6.1 Prior to commencing work, the Contractor shall be required to participate in a pre-construction conference with the Owner, Engineer, and other representatives designated by the owner (if necessary). The purpose of this conference will be to discuss the authorities, duties, and responsibilities of parties involved and to plan operating procedures mutually satisfactory to those involved. It will also present an opportunity to resolve any questions regarding performance under the contract, which have not been previously resolved.

- 6.2 To enable orderly review of progress during construction and to provide for systematic discussion of problems, the Owner may conduct project meetings throughout the construction period. In general project meetings may be held as needed in accordance with a mutually acceptable schedule. The purpose of the meetings is to analyze problems that might arise between the community, the Tribe, and the Contractor, relative to execution of the work.
- 6.3 Persons designated by the Contractor to attend and participate in project meetings shall have all required authority to commit the Contractor to solutions as agreed upon in the project meetings. The agenda shall be made available to all parties at least 24 hours in advance of the meeting. To the maximum extent practicable, project meetings shall be held at the job site.

7. CONTRACT PROGRESS SCHEDULE

- 7.1 The Contractor shall prepare three copies of a Contract Progress Schedule in accordance with these instructions and submit to the Owner as required.
- 7.2 The Schedule shall show:
- a) the Contractor's name and address;
 - b) the Project Name and number as shown on the Contract;
 - c) the Starting Date, and Completion Date as shown on the contract;
 - d) the calendar weeks (i.e., 1/1/13) for those weeks that work is scheduled.
- 7.3 Every major item of work shall be listed in logical sequence and in sufficient detail to identify the element. Each item shall have an allotted duration of weeks shown by a solid line. Below this line there shall be space to chart the actual progress of the work.
- 7.4 The progress schedule shall be updated weekly and submitted to the Contract Manager.
- 7.5 In the event the contract is modified, changing the progress of the work, adding or deleting work, or changing the original completion date, a revised progress schedule will be prepared and submitted to the Contract Manager.
- 7.6 Care should be taken to plan the work in such a manner that it can be accomplished as stated in this schedule. If for any reason it becomes known that any part of the progress will be delayed, this fact should be reported to the Contract Manager.

8. MEASUREMENT AND PAYMENT

- 8.1 Payment shall be based on the actual quantities completed and shall represent full compensation under the contract. The price for the completed item of work shall also include all applicable state and local sales or other taxes. TERO tax equaling 2% of the total contract price shall be deducted in its entirety from the initial pay request or incrementally from payment.
- 8.2 Items of work listed in the Bid Schedule may include but not be limited to the following items:
- a) **Mobilization And Bonds:** Measurement and payment for mobilization and bonds shall be on a lump sum basis. Partial payment for mobilization and bonds shall be made upon the percent complete of the total project at the time of partial payment request.
 - b) **Site Clearing and Grubbing:** Measurement and payment for site clearing and grubbing shall be on a lump sum basis. The price paid shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals necessary to do all the work involved in site clearing and grubbing, removal of existing concrete and AC slabs, and removal of existing abandoned utilities, and as directed by the Engineer.
 - c) **Removal of Topsoil, Grading of Building Pads & Driveways:** Measurement and payment for stripping of topsoil, site grading of building pads and driveways shall be on a lump sum basis. The price paid shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals necessary to do all the work involved in site clearing and grubbing, stripping and stockpiling topsoil, excavation and disposal of unsuitable native material, removal of existing concrete and AC slabs, removal of existing abandoned utilities, import of suitable backfill material and compaction as specified in the contract documents, provide and install drainage appurtenances, and as directed by the Engineer.
 - d) **Installation of Electrical Utilities:** Measurement and payment for installation of electrical utilities shall be on a lump sum basis. The price paid shall include full compensation for furnishing all labor, materials, tools,

equipment, and incidentals necessary to do all the work involved in supplying and installing the utilities including excavation and shoring of trenches, disposal of excess or unsuitable native material, installation of transformers, street lights, and conduit, testing, connection of services to main supply, backfill and compaction as specified in the contract documents, and as directed by the Engineer.

- e) **Installation of Sewer & Water Utilities:** Measurement and payment for installation of water and sewer utilities shall be on a lump sum basis. The price paid shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals necessary to do all the work involved in supplying and installing the utilities including excavation and shoring of trenches, disposal of excess or unsuitable native material, installation of pipe work or conduit, testing and disinfection, connection of services to main supply, backfill and compaction as specified in the contract documents, and as directed by the Engineer.

9. CONTRACT SUBMITTAL REQUIREMENTS

- 9.1 The Contractor shall furnish material submittals, shop drawings operation and maintenance manuals, and as-built drawings in accordance with any requirements detailed in the Technical Specifications.

10. LAWS AND PERMITS AFFECTING WORK

- 10.1 The Contractor shall at all times observe and comply with Federal, State, City, and County Laws, Tribal ordinances and regulations (including requisition of the Tribal Historical Preservation Officer (THPO) clearance and Tribal Employment Rights Ordinance) which in any manner affect the conduct of the work, and all such orders and decrees as exist at the present and which may be enacted later by legislative bodies or tribunals having legal jurisdiction or authority over the work all other required permits, certificates and licenses shall be obtained by and at the expense of the Contractor. No pleas of misunderstanding or ignorance thereof will be considered. The Contractor shall be wholly responsible for any claim or liability arising from or based on the violation of any such law, ordinance, regulations, order or decree.

11. MAINTENANCE OF UTILITIES AND SITE FACILITIES

- 11.1 The Contractor is responsible to determine the exact location of any and all utilities not specifically located on the plans and to protect them from damage during construction. Should any utility be damaged or disturbed, the Contractor shall immediately notify the Owner and the owner of the damaged utility. Any and all damage that results from work under the contract shall be promptly repaired at the expense of the Contractor.
- 11.2 During the progress of work, the Contractor shall protect all existing vegetation, structures, sidewalks, streets, mailboxes, ditches, culverts, signposts, fences, driveways, and similar items. If the Contractor must remove or disturb these facilities, provision shall be made to maintain a temporary facility serving the same purpose as that which it was intended to replace. Damage caused by the Contractor's negligence, over excavation or any of the Contractor's operations to vegetation, structures, sidewalks, streets, mailboxes, ditches, culverts, signposts, fences, driveways and similar items shall be promptly restored at the Contractor's expense. Upon completion of the work, the Contractor shall restore all such facilities to a condition at least equal to that existing prior to construction. The Contractor shall not obstruct access to the site.
- 10.3 The Contractor shall perform his work at all times in a manner to ensure minimal obstruction to traffic and minimal inconvenience to the general public.

12. NOTIFICATION AND INSPECTION

- 12.1 Final inspection will be made by the Owner when requested and when the Contractor advises that all the materials have been furnished, all the work as been performed, and all the construction provided for by the contract has been completed in accordance with its terms.
- 12.2 Request for final inspection shall be submitted in writing by the Contractor to the Owner at least five working days prior to the requested date of final inspection to allow sufficient preparation and scheduling by Owner.
- 12.3 The Contractor may be charged with additional cost of re-inspection when the work is not ready at the time specified by the Contractor and re-inspection or re-test is necessary. Acceptance will be made by the Owner

on the date when all materials, work or other requirements of the drawings, specifications and contract are furnished or completed. The Contractor will be advised in writing of the date the work is determined to be completed and accepted and until such acceptance the Contractor will be responsible for all work performed and materials delivered.

13. CLEANUP AND FINISH GRADING

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

14. ORDER OF PRECEDENCE

- 14.1 In the event of an inconsistency between provisions of this contract, the inconsistency shall be resolved by giving precedence in the following order:
- a) Bid Schedule, and Terms and Conditions of Contract.
 - b) Written bidding instructions.
 - c) Special Provisions.
 - d) General Provisions.
 - e) Submittals.
 - f) Technical Specifications.
 - g) Drawings.

TECHNICAL SPECIFICATIONS

1. FEMA Homebuilders Guide to Construction in Wildfire Zones.
https://defensiblespace.org/wp-content/uploads/2021/01/FEMA_2008_P-737-Home-Builders-Guide-to-Construction-in-Wildfire-Zones.pdf

DRAWINGS

1. None.

MODIFICATIONS AND ADDITIONS

1. ATTACHMENT 1: BONDING ALTERNATIVES

ATTACHMENT 1

ELECTRONIC CODE OF FEDERAL REGULATIONS

e-CFR Data is current as of November 25, 2013

Title 24: Housing and Urban Development
PART 1000—NATIVE AMERICAN HOUSING ACTIVITIES
Subpart A—General

§1000.26 What are the administrative requirements under NAHASDA?

(a) Except as addressed in §1000.28, recipients shall comply with the requirements and standards of OMB Circular No. A-87, “Principles for Determining Costs Applicable to Grants and Contracts with State, Local and Federally recognized Indian Tribal Governments,” and with the following sections of 24 CFR part 85 “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.” For purposes of this part, “grantee” as defined in 24 CFR part 85 has the same meaning as “recipient.”

(1) Section 85.3, “Definitions.”

(2) Section 85.6, “Exceptions.”

(3) Section 85.12, “Special grant or subgrant conditions for ‘high risk’ grantees.”

(4) Section 85.20, “Standards for financial management systems,” except paragraph (a).

(5) Section 85.21, “Payment,” except that HUD shall not require a recipient to expend retained program income before drawing down or expending IHBG funds.

(6) Section 85.22, “Allowable costs.”

(7) Section 85.26, “Non-federal audits.”

(8) Section 85.32, “Equipment,” except in all cases in which the equipment is sold, the proceeds shall be program income.

(9) Section 85.33, “Supplies.”

(10) Section 85.35, “Subawards to debarred and suspended parties.”

(11)(i) *General.* Section 85.36 of this title, “Procurement,” except paragraph (a), subject to paragraphs (a)(11)(ii) and (a)(11)(iii) of this section.

(ii) *Bonding requirements.* There may be circumstances under which the bonding requirements of §85.36(h) are inconsistent with other responsibilities and obligations of the recipient. In such circumstances, acceptable methods to provide performance and payment assurance may include:

(A) Deposit with the recipient of a cash escrow of not less than 20 percent of the total contract price, subject to reduction during the warranty period, commensurate with potential risk;

(B) Letter of credit for 25 percent of the total contract price, unconditionally payable upon demand of the recipient, subject to reduction during any warranty period commensurate with potential risk; or

(C) Letter of credit for 10 percent of the total contract price unconditionally payable upon demand of the recipient, subject to reduction during any warranty period commensurate with potential risk, and compliance with the procedures for monitoring of disbursements by the contractor.

(iii) *De minimis procurement.* A recipient shall not be required to comply with §85.36 of this title with respect to any procurement, using a grant provided under NAHASDA, of goods and services with a value of less than \$5,000.

(iv) *Utilizing federal supply sources in procurement.* In accordance with Section 101(j) of NAHASDA, recipients may use federal supply sources made available by the General Services Administration pursuant to 40 U.S.C. 501.

(12) Section 85.37, "Subgrants."

(13) Section 85.40, "Monitoring and reporting program performance," except paragraphs (b) through (d) and paragraph (f).

(14) Section 85.41, "Financial reporting," except paragraphs (a), (b), and (e).

(15) Section 85.44, "Termination for convenience."

(16) Section 85.51 "Later disallowances and adjustments."

(17) Section 85.52, "Collection of amounts due."

(b)(1) With respect to the applicability of cost principles, all items of cost listed in Attachment B of OMB Circular A-87 which require prior Federal agency approval are allowable without the prior approval of HUD to the extent that they comply with the general policies and principles stated in Attachment A of this circular and are otherwise eligible under this part, except for the following:

(i) Depreciation methods for fixed assets shall not be changed without specific approval of HUD or, if charged through a cost allocation plan, the Federal cognizant agency.

(ii) Fines and penalties are unallowable costs to the IHBG program.

(2) In addition, no person providing consultant services in an employer-employee type of relationship shall receive more than a reasonable rate of compensation for personal services paid with IHBG funds. In no event, however, shall such compensation exceed the equivalent of the daily rate paid for Level IV of the Executive Schedule.

[63 FR 12349, Mar. 12, 1998, as amended at 77 FR 71523, Dec. 3, 2012]

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