

CONTRACT FOR CONSTRUCTION SERVICES

This Contract is between the CONFEDERATED TRIBES OF THE COLVILLE INDIAN RESERVATION, with headquarters at Nespelem, Washington, hereinafter referred to as "CCT" and _____ hereinafter referred to as the "Contractor." This Contract shall take effect upon signing by the authorized representatives of both parties.

1.0 Description of Work and Contract Documents

- 1.1 This Contract consists of this written agreement and all attached "contract documents" CONTRACTOR shall perform the following described work in accordance with this written agreement and the attached contract documents (do not leave blank): _____.
- 1.2 As part of Contract Documents, required attachments include at a minimum, the RFP/RFQQ or Sealed Bid for the Project, Bidder's Response, and a Certification Regarding Debarment by any Tribal government, Federal agency or State government.
- 1.3 These contract documents together form the Contract for the work herein described. The parties intend that the documents include provisions for all labor, materials, equipment, supplies, and other items necessary for the execution and completion of the work by the CONTRACTOR, and all terms and conditions of payment. The documents also include a requirement to perform all work and procedures not expressly indicated herein, but which are necessary for the proper execution of the project. In case of a conflict between this written agreement and any document attached to it, the terms of this written agreement shall govern.

2.0 Contract Price

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

3.0 Payments

- 3.1 Up front costs are not paid on this contract. All payments will be based on invoicing after work begins.
- 3.2 Payment shall be made by the Tribes within thirty days of review and approval of Contractor's monthly billing, minus any amount retained in accordance with this written agreement. Payment shall be made for accepted work completed according to the approved "Schedule of Values" which is the written and approved estimates of costs of material, equipment, and/or labor necessary to complete the work required by this Contract

3.3 Progress payments may be withheld and this Contract may be terminated if:

- 3.3.1 Work is found to be defective and not remedied;
- 3.3.2 CONTRACTOR does not make prompt and proper payments to subcontractors;
- 3.3.3 CONTRACTOR does not make prompt and proper payments for labor, materials, or equipment furnished to him;
- 3.3.4 Another CONTRACTOR is damaged by an act for which CONTRACTOR is responsible;
- 3.3.5 Claims or liens are filed on the job;
- 3.3.6 In the opinion of the Contract Officer Representative, CONTRACTOR's work is not progressing in a satisfactory manner.

4.0 Final Payment

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

5.0 Claims

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

6.0 Starting and Completion Dates

CONTRACTOR's work under this Contract shall begin on _____, and shall be completed by _____. The Contractor and or Contractors surety, if any will be liable for and pay CCT \$200.00, not as a penalty, for each calendar day of delay after 50 days from the notice to proceed date until the work is substantially complete.

7.0 Work Changes

- 7.1 CCT reserves the right to order work changes in the nature of additions, deletions, or modifications to this Contract, without invalidating the Contract, and agrees to make corresponding adjustments in the Contract Price and time for completion as are then agreed to by the parties. Any such changes will be authorized by a written Change Order, which must be signed by the CCT Contract Officer, designated in Section Ten below. The Change Order will include conforming changes in the Contract and completion time.
- 7.2 The scope of work shall be changed, and the Contract Price and completion time shall be modified only as set out in the written Change Order. Any adjustment in the Contract Price resulting in a credit or a charge to CCT shall be determined by the mutual agreement of the parties to this Contract before starting the work involved in the change.

8.0 Default and Termination

- 8.1 This Contract may be terminated by either party without prejudice to any other remedy that the non-defaulting party may have if the other party defaults in performance of any provision of this Contract. The non-defaulting party shall give the defaulting party **10** days' written notice of the non-defaulting party's intention to terminate this Contract, within which time the defaulting party may cure the default condition to the satisfaction of the non-defaulting party. Should the defaulting party be CONTRACTOR, CCT may, pursuant to Section 3 of this Contract, withhold any portion of the Contract Price still owing at the time of default.
- 8.2 CCT may also terminate this Contract for its convenience without cause. Should CCT elect to terminate under this subparagraph, CCT shall give the CONTRACTOR **10** days' written notice of the termination. CCT shall pay for all work completed and building materials purchased for the project up to the effective date of the termination. CONTRACTOR shall have no additional rights as against CCT except for the payment provided under this subparagraph.
- 8.3 This Contract is funded from appropriated funds or federal funds. Should those funds be reduced or eliminated, CCT may terminate or modify this Contract to reflect the change in funding. If this Contract is terminated under this subparagraph, CONTRACTOR shall be paid for all work properly completed and building materials purchased up to the effective date of termination. Any work changes required, as a result of the provisions of this Section shall be processed as provided under herein.

9.0 Contract Officer/Contract Officer Representative/Contractor Representative

- 9.1 Dorthey Zacherle is the designated Contract Officer (CO) for the purpose of this Contract and shall provide general administration of the Contract as CCT's representative.
- 9.2 The designated Contract Officer Representative (COR) for the purpose of this Contract shall be _____ . The Contract Officer Representative shall

provide specific administration of the Contract as CCT's representative, and shall have authority to initiate Change Orders, including approval of compensation and expense payments.

- 9.3 CONTRACTOR's representative for this project is _____ who shall be responsible for the conduct of the work completed hereunder, and who shall have signature authority for the CONTRACTOR for all matters related to this Contract.

10.0 Authorities

10.1 The duties and authority of the CCT CO and COR shall be as follows:

10.1.1 Specific Administration of Contract: COR

10.1.2 Inspections and Instructions: COR

The COR shall keep familiar with the progress and quality of the work by making periodic visits to the work site. The COR will make general determinations as to whether the work is proceeding in accordance with the contract. Neither CCT nor the COR will be responsible for the means of construction or for CONTRACTOR's failure to perform the work properly and in accordance with the contract documents. Any instructions given the CONTRACTOR by CCT shall be given through the COR or his or her designate. The COR/designate has the authority to reject work not in compliance with this Contract.

10.1.3 Access to Worksite for Inspection: COR

The COR shall be given free access to the work at all times during the contract period. However, the COR is not required to make exhaustive or continuous onsite inspections to perform the duty of checking and reporting on work progress.

10.1.4 Interpretation of Contract Documents: CO/ORA

The CO in consultation with the Office or Reservation Attorney will interpret the contract documents requirements and make decisions on claims and disputes between the CONTRACTOR and CCT. The COR does not have the authority to make decisions on these matters.

10.1.5 Rejection and Stoppage of Work: COR

The COR shall have authority to reject work which in his or her opinion does not conform to the contract documents, and in this connection, to stop the work or a portion thereof when necessary to insure CONTRACTOR's performance is in accordance with the terms of this Contract.

11.0 Rights of CCT

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

12.0 Responsibilities of Contractor

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

12.1.1 Responsibility for and Supervision of Construction:

CONTRACTOR represents that he or she has inspected and is familiar with the work site and the local conditions under which the work is to be performed. CONTRACTOR shall be solely responsible for all construction under this Contract, including the techniques, sequences, procedures, and means for coordination of all work. CONTRACTOR shall properly supervise and direct the work of his or her employees and subcontractors, and shall give all attention necessary for such proper supervision and direction.

12.1.2 Discipline and Employment:

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

12.1.3 Furnishing of Labor, Materials, etc.:

CONTRACTOR shall provide and pay for all labor, materials and equipment, including but not limited to tools, construction equipment, and machinery, utilities including water, transportation, and all other facilities and services necessary for the proper completion of the work on the project in accordance with the contract documents.

12.1.4 Payment of Taxes, Procurement of Licenses and Permits:

CONTRACTOR shall pay any taxes required by law in connection with work on the project and shall secure all licenses and permits necessary for proper completion of the work, paying the fees therefore.

12.1.5 Compliance with Laws and Regulations:

CONTRACTOR shall comply with all applicable laws, ordinances, and rules, regulations, or orders of all public authorities relating to the performance of the work herein. If any of the contract documents are at variance therewith, he or she shall notify the Contract Officer promptly on discovery of such variance.

12.1.6 Responsibility for Negligence of Employees and Subcontractors:

CONTRACTOR assumes full responsibility for acts, negligence or omissions of all his or her employees on the project, for those of his or her subcontractors and their employees, and for those of all other persons doing work under a contract with him.

12.1.7 Warranty of Fitness of Structures, Work Equipment and Materials:

CONTRACTOR represents and warrants to CCT that all structures constructed and work done under this Contract and equipment and materials used in the work and made a part of any structure, or placed permanently in connection with any structure, will be new unless otherwise specified in the contract documents, of good quality, free of defects, and in conformity with

the contract documents. It is understood between the parties hereto that all equipment and materials that are not so in conformity are defective. Upon completion of the project which is the subject of this Contract, the Contractor shall provide valid written warranties for all materials and equipment provided which will remain on site; such warranties shall be in force for at least year or per the manufacturer's warranty period, whichever is longer.

12.1.8 Furnishing of Samples, Shop Drawings and As-Built Drawings:

CONTRACTOR agrees to furnish the CCT COR, upon request, all samples and shop drawings for consideration and approval as to conformance with the specifications of the contract documents and concepts of design called for therein.

12.1.9 Clean Up: CONTRACTOR agrees to keep the work premises and adjoining ways free of waste materials and rubbish caused by his or her work or that of subcontractors. He or she further agrees to remove all such waste materials and rubbish caused by his or her work or that of subcontractors, and to dispose of such materials only at approved landfill sites or collection stations as approved by a valid solid waste permit issued to Contractor or his/her subcontractor(s). He or she further agrees to remove all such waste materials and rubbish on termination of the project, together with all CONTRACTOR's tools, equipment, machinery, and surplus materials. CONTRACTOR agrees on terminating work at the site to conduct general clean up operations of any and all areas affected by the work, including the cleaning of all glass surfaces, paved streets and walks, steps, and interior floors and walls.

12.1.10 Indemnity and Hold Harmless Agreement:

CONTRACTOR agrees to indemnify and hold harmless CCT, and its agents and employees from and against all claims, damages, losses, and expenses including reasonable attorney's fees in case it shall be necessary for CCT to commence or defend an action arising out of or associated in any way with performance of the work herein which is

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

b) Caused in whole or part by CONTRACTOR's negligent act or omission, or that of a subcontractor, or that of anyone employed by them or for whose acts CONTRACTOR or subcontractor may be liable.

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

CONTRACTOR agrees to pay all royalties and license fees necessary for the work and to defend all actions and settle all claims for infringement of copyright or patent rights, and to save CCT harmless therefrom.

12.1.12 Safety Precautions and Programs:

CONTRACTOR has the duty of providing for and overseeing all safety orders, precautions, and programs necessary to the reasonable safety of the work and will comply with all applicable CCT and federal laws, rules, and

regulations, including CCT's TOSHA statute/rules. In this connection CONTRACTOR shall take reasonable precautions for the safety of all work employees and other persons whom the work might affect, all work and materials incorporated in the project, and all property and improvements on the construction site and adjacent thereto, complying with all applicable laws, ordinances, rules, regulations, and orders.

12.1.13 Drug and Alcohol Free Workplace:

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

13.0 Time of Essence/Extension of Time

All times for performance set out in the Contract Documents are deemed to be of the essence. The CONTRACTOR will schedule and perform all work under this Contract to complete the work within the time required by this Contract. Contract times may only be extended by a written Change Order from the Contract Officer issued to the CONTRACTOR prior to the expiration of the original date for performance of this Contract or any of its parts. Contract times may be extended by a Change Order from the CCT Contract Officer for such reasonable time as the Contract Officer may determine when in his or her opinion CONTRACTOR is delayed in work progress by Change Ordered, labor disputes, fire, prolonged transportation delays, injuries, or other causes beyond CONTRACTOR's control or which justify the delay. CCT reserves the absolute right to refuse to permit an extension of the contract except in case of Change Orders issued by CCT.

14.0 Subcontractors

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

15.0 Insurance

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

15.1 CONTRACTOR's Liability Insurance:

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

15.2 Builder's Risk Insurance:

Builder's Risk Insurance is not required for work on structures currently insured by the CCT. However, CONTRACTOR further agrees to purchase and maintain in full force and effect during the entire period of construction a policy of Builder's Risk Insurance for the benefit of CCT in the amount equal to the cost of the project which provides insurance coverage for CCT against any claim or lawsuit against CCT for bodily injury, illness or death, or for property damage, including loss of use, or any other damage, which is caused in whole or in part by CONTRACTOR's negligent act or omission or that of a subcontractor.

16.0 Performance/Payment Bond (select one)

Contractor shall provide a performance and payment bond for the full Contract price, and any increase in that price authorized by a Change Order, guaranteeing the faithful performance of this Contract.

17.0 Correcting Work

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

certificate of substantial completion by the Contract Officer, or within such longer period as may be prescribed by law or as may be provided for by applicable special guarantees in the contract documents.

18.0 Possession upon Substantial Completion

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

19.0 Jurisdiction

CCT and CONTRACTOR agree that sole and exclusive jurisdiction over disputes arising from this Contract shall be in the Tribal Courts of the Colville Confederated Tribes.

20.0 Tribal Employment Rights Ordinance

The Colville Tribal Employment Rights Ordinance (TERO), including the 5% TERO fee, shall apply to this Contract to the extent any of the work to be performed under this Contract is performed on or near the Colville Reservation. No work shall take place until a TERO Utilization Plan has been signed, approved, and filed with the TERO Office. The 5% TERO fee applies to all contracts over \$5,000 where CONTRACTOR is not a preference-certified entity.

21.0 Reporting

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

22.0 Independent Contractor

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

23.0 Proprietary Rights

CONTRACTOR agrees that all proprietary rights, including patents and copyrights, contracted for or otherwise created for or on behalf of CCT shall be owned by the Confederated Tribes of the Colville Reservation.

24.0 Records

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

25.0 Embezzlement

The CONTRACTOR agrees to insert this clause in all subcontracts:

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

26.0 Certification of Non-Segregated Facilities

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

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

27.0 Warranty of Special Expertise

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

28.0 Compliance with Applicable Laws

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

IN WITNESS WHEREOF, the parties have executed this Contract at Nespelem, Washington, on the date herein indicated.

DATE

AUTHORIZED REPRESENTATIVE

ORA CONSTRUCTION CONTRACT 2016

COLVILLE CONFEDERATED TRIBES

DATE

AUTHORIZED COMPANY REPRESENTATIVE

Contract Number: _____