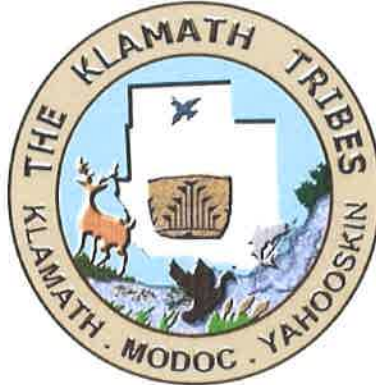


# THE KLAMATH TRIBES

## Pre-Fab/Modular/Mobile Solutions



# REQUEST FOR PROPOSALS

**RFP 19-24**

ISSUED: THURSDAY APRIL 25, 2024

CLOSES: 2:00 PM TUESDAY MAY 14, 2024



**REQUEST FOR PROPOSAL  
FOR  
Prefab/Modular/Mobile Solutions**

**PROPOSAL COVER SHEET**

(Builder) Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

DUNS #: \_\_\_\_\_

EID or Federal ID #: \_\_\_\_\_

❖ **Number of Homes Proposed for Construction:** \_\_\_\_\_

❖ **Properties for which this Proposal is Submitted:**

(If you are proposing plans and providing a General Contracting crew please include general contractors bid on separate line items. For General Contractors that would be available to perform the site work please provide the following items on the submission checklist: 1, 2a, 2b, 2c, 5a, 5b, 5c, 6, 7a, 7b.)

55 – Acres 16 Homes

Public Safety Building/Police Station

Fire Station and Engine Bay

General Contractor Included/Separate Bid/Line Item Provided

General Contractor Bid

❖ **Home Plans Submitted as Part of this Proposal (by name or number):**

Plan: \_\_\_\_\_

Plan: \_\_\_\_\_

Plan: \_\_\_\_\_

Plan: \_\_\_\_\_

Plan: \_\_\_\_\_

Plan: \_\_\_\_\_

Plan: \_\_\_\_\_

Plan: \_\_\_\_\_

Plan: \_\_\_\_\_

Plan: \_\_\_\_\_

**The undersigned acknowledges and agrees that:**

1. He/She is authorized to submit the attached proposal on behalf of the Builder entity, and is fully informed as to the preparation and contents of the attached proposal and all pertinent circumstances respecting such proposal;
2. The terms of the proposal are fair and proper and not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the proposing entity, or any of its agents, representatives, owners, employees, or parties in interest;
3. If selected, Builder and its representative(s) will negotiate in good faith to enter into a Contract for participation in the Project and that the proposal, along with all supplemental materials submitted and modifications mutually agreed through the course of the selection process, will form the basis for said Contract; and
4. The Klamath Tribes reserves the right to reject and/or table any or all proposals received, to enter into negotiations with more than one prospective Project participants prior to selection, and to engage in subsequent written proposal rounds with fewer than all submitted proposals considered.

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Signature

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Title

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Printed

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Date

**SUBMISSION CHECKLIST:**

- Proposal Cover Sheet (this document) (1)
- Narrative of Experience (2.a.)
- (3) References (2.b.)
- 2019 -2024 Home Construction Activity (2.c.)
- Evidence of Financial/Construction Capacity (3)
- 2-4 Proposed Home Plans & Specifications (4)
- Base and Line-Item Option Pricing (5.a.)
- Commitment that prices submitted will remain in effect through 2025 (5. b.)
- Schedule of Draws/Progress Payments (5.c.)
- Compliance (6.)
- Copy of Contractor's License (7.a.)
- Proof of Contractor's Risk & Workman's Compensation Insurance (7.b.)
- Warranty Information (7.c.)
- Separate Sealed Pricing Proposals, (bid)
- Copies of WBE/MBE/VBE and Other Certifications (if applicable)

## I. Overview

The Klamath Tribes is using a competitive Request for Proposals process to identify qualified companies for the construction of: 1 Police Station, 1 Fire Station with an additional 3-door engine bay, and 16 new homes. It is The Klamath Tribes intend to begin immediately upon award, to accomplish a completion date of November of 2024.

## II. PROPOSALS

### **IMPORTANT:**

**All proposals must conform to the prescribed format and contain all required information and materials as outlined.**

All questions must be in writing and directed to the procurement specialist. The interested party must confirm telephone conversations in writing.

Two types of questions generally arise. One may be answered by directing the questioner to a specific section of the RFP. These questions may be answered over the telephone. Other questions may be more complex and may require a written amendment to the RFP. The Procurement Specialist will make that decision.

### 1. Cover Sheet

All proposals must include a completed and signed Proposal Cover Sheet (attached herewith), and a separate sealed bid. It is the responsibility of the proposer to clearly mark and identify what portion/project they are bidding on.

### 2. Experience

- a) Provide a written narrative (3 pages max.) describing your company, its history and ownership, and its Fire, Police and single-family residential construction and/or development experience, particularly highlighting, as applicable, any such experience with, Fire and Police Stations, grant- funded affordable housing, Tribal Project Experience, and NAHASDA.
- b) Provide three (3) client references with contact information.
- c) Provide a list of all Fire and Police Stations and single-family homes built/developed by your company from 2019 through 2024, including address, model name/number, size, construction price, completion date, and sales price/fair market value (if known). Optional: you may also attach up to twelve photos (4 sheets max) of homes constructed.

### 3. Capacity

- Indicate your normal construction time for a single home, from permitting to Certificate of Occupancy, what your production capacity is (i.e., how many homes can you have under construction at one time), and how your normal build time would be impacted if you did have multiple homes underway simultaneously.

- Provide corporate financial statements, letters of credit and/or other evidence that demonstrates your company's financial strength and capacity to participate in this initiative, undertaking construction type and/or of the number of homes proposed.

**4. Proposed "Plans"**

- Proposers must submit **between two (2) and four (4) sets** of home plans and specifications ("Plan") from which The Klamath Tribes may choose, on a lot-by-lot basis, for construction of planned new homes. (Up to 2 plans for each home Option).

**5. Pricing and Payment**

Provide a separate pricing sheet for each of the Plans submitted that includes the following

- a. A firm, fixed-price cost for construction of the base/standard Plan, as submitted, and a line item list of all options with option pricing.
- b. An indication that the cost/pricing will remain in effect through the end of 2024.
- c. A schedule of values for draws or progress payments during construction.  
Indicate if any portion of the final draw/payment upon completion of model/spec homes would be deferred until either sale of the home by TKT or for some set period of time, and whether such deferral would be made for all or only a set number of homes.

**6. Section 3 Compliance**

Explain how you will meet federal Section 3 requirements by seeking to provide job training, employment and contracting opportunities for low- or very-low income residents in connection with your involvement in this project.

**7. Attachments**

All proposals must contain the following as attachments:

- a. Copy of applicable license and/or certificate;
- b. Proof of General Liability, Risk, and Workers Compensation insurance coverage;
- c. Brochure or other materials providing an overview of the new home warranty to be provided (required) to the homebuyer upon sale of the home by TKT, and the name and contact information of the company providing the warranty, for verification purposes.

**III. SUBMISSION, REVIEW & SELECTION**

**A. Submission**

**Proposals are due by 2:00 pm, Tuesday, May 14, 2024.** It is the contractor's responsibility to submit a **sealed**, clearly marked, separate envelope, attachment or email.

All proposals to be submitted in person, through US Postal Service, by ground, or email delivery to:

The Klamath Tribes  
ATTN: Barbara Smedley, Procurement Specialist  
P.O. Box 436  
501 S. Chiloquin Blvd.  
Chiloquin, OR 97624  
[barbara.smedley@klamathtribes.com](mailto:barbara.smedley@klamathtribes.com)

If submitting a proposal via email, the technical proposal and cost proposal must be saved as separate PDF documents and emailed to **BARBARA.SMEDLEY@KLAMATHTRIBES.COM** as separate, clearly labeled attachments, such as "Vendor A – Technical Proposal.pdf" and "Vendor A – Cost Proposal.pdf" (Vendor A is the name of the offeror). The email must contain the RFP number in the subject line.

The **maximum** size of a single email (including all text and attachments) that can be received by the Klamath Tribes is **20mb (megabytes)**. If the email containing the proposal exceeds this size, the proposal must be sent in multiple emails that are each less than 20 megabytes and each email must comply with the requirements described above.

Please note that email transmission is not instantaneous. Similar to sending a hard copy proposal, if you are emailing your proposal, The Klamath Tribes recommends sending it with enough time to ensure the email is delivered by the deadline for receipt of proposals.

It is the offeror's responsibility to contact the issuing agency at **541-783-2219 EXT 110** to confirm that the proposal has been received. The Klamath Tribes is not responsible for unreadable, corrupt, or missing attachments.

#### **B. Review**

1. All accepted proposals will be thoroughly reviewed by TKT and will be considered on a variety of factors, including, but not limited to:
  - The architectural compatibility of the Plans submitted with the surrounding neighborhood housing/buildings;
  - The range of features, options, styles, sizes, and price points contained within the collective set of Plans submitted;
  - Any "green" or sustainable building features of the proposed homes;
  - The quality of the proposed building to be built;
  - The pricing (cost to TKT) and value;
  - Any deferral or final payment on model/spec homes;
  - The experience and track record of the builder, overall and specifically in the development of police stations;
  - The builder's financial strength and resource;
  - The builder's production and financial capacity to undertake construction of multiple homes/buildings at one time;
  - Commitment and past successes; and
  - Professional certifications (as applicable).
2. Proposers may be contacted by TKT for additional information, may be invited to meet with TKT representatives, and may be asked to revise plans or other materials submitted, as part of TKT review & selection process.

#### **C. Selection**

1. Final selection is anticipated on or about May 17, 2024.
2. TKT intends to contract with the selected bidder for immediate construction.

**IMPORTANT:** Late or incomplete submissions, and submissions by facsimile will not be accepted. TKT reserves the right to engage in discussions or negotiations with none, any, or all proposing builders as part of the review and selection process, to select or reject any or all proposals, and if deemed necessary, to engage in subsequent builder proposal rounds with fewer than all submitted proposals considered.

## □ Housing Department 16 Homes

- Option 1 :
  - 1 stories
  - 1500-1800 square feet
  - 3 bedrooms
  - 2 bathrooms
  - Foundation in place
  - 2-car concrete parking pad, connected to the house.
  - Front foundation landscaping bed
  - Suitable for a one acre lot
- Option 2:
  - 1 stories
  - 1700-2000 square fee
  - 4 bedrooms
  - 2 bathrooms
  - Foundation in place
  - 2 car garage
  - Front foundation landscaping bed
  - Suitable for a one acre lot
- The following are desirable features that might be included as standard or as options in the Plans submitted:
  - 2-car garage with electricity and door opener
  - High-efficiency furnaces and water heaters
  - Fixture, lighting, door, cabinetry and flooring upgrade(s)
  - Alternative roof line/orientation
  - Contemporary exterior design alternative
  - Full front porch
  - Rear engineered wood deck
  - Privacy fencing
  - Landscaping upgrade
  - "Green" or sustainable package that exceeds standard Building Code
  - The home Plans submitted must be distinctly different. Plans differentiated only by a varied roofline, porch size, window style, or interior finish levels, for instance, will not be considered to have met this requirement. (Offering these and other items as options or alternatives to the various standard Plans is encouraged.)
- The home Plans submitted should take into account, and be compatible with, the physical and design context of the existing neighborhood housing stock
- Included for each Plan submitted must be a floorplan, with dimensions, elevation drawings of all four sides, a list of standard features, and construction specifications.
  - Only one set of garage plans is required if offered as a standard feature or an option for *all* homes to be built.
  - Only one set of construction specifications required if they are the standard specifications for *all* homes to be built.

- Home construction specifications shall conform with the attached Construction Requirements and Standards. All deviations in the construction specifications submitted from the TKT Construction Standards & Specifications shall be itemized in a separate document and ATTACHED TO THE Specifications submitted.



**2024 REQUEST FOR PROPOSALS  
FOR  
CONSTRUCTION OF 16 SINGLE-  
FAMILY HOMES**

**CONSTRUCTION REQUIREMENTS AND STANDARDS**

Builder is responsible for all construction and physical development homes as specified in this document and in conformance with all plans, designs, and specifications submitted as part of this Proposal/Bid process. This proposal/bid submission for home construction services shall constitute agreement in total by Builder to the requirements and standards contained herein by The Klamath Tribes (TKT).

**1. General Conditions**

- 1.1. Home plans are to be compatible in design and style with the existing housing stock in the area. TKT reserves the right to make such determination, and to reject any architectural plans or design proposals determined incompatible.
- 1.2. All plans submitted must include a minimum of three (3) bedrooms, two (2) bathrooms, and between 1,500-2,000 square feet of finished interior space. Bedrooms will be no smaller than ninety (90) square feet in size, excluding closet area, with the smallest room dimension no less than nine (9) feet. Each bedroom shall have a closet no smaller than six (6) square feet in size.
- 1.3. Home plans submitted must be suitable for on acre lots and adhere to side setback regulations. Front setback shall be similar to the homes on either side of the property.
- 1.4. Builder shall submit all architectural and engineering plans and copies thereof as requested by TKT. Plans must include room and overall home dimensions.
- 1.5. All requirements and standards must be included in a FIRM FIXED CONSTRUCTION PRICE submitted by Builder with Proposal/Bid, and shall become part of a NO-LIEN CONSTRUCTION AGREEMENT between TKT and Builder. Builder may not assign construction agreement to another party.
- 1.6. TKT shall select interior and exterior color schemes including, but not limited to, such items as paint, roofing, siding, trim, gutters, accents, carpet, and flooring within the range of choices provided for in Builder's plans and specifications submitted with Proposal/Bid. Builder shall deliver samples for such selections to the TKT office upon award.
- 1.7. Builder shall consult with, and have approval from, TKT as to style and material choice before ordering or installing any item for which options or a range of selections are available in Builder's submitted plans and specifications.
- 1.8. Builder shall provide TKT a detailed list of all individuals and entities that have a contract with Builder to perform any portion of work at the site ("Subcontractor"), including names, addresses, Federal ID numbers, and dollar amount of subcontracts, with or prior to submission of final progress draw request.
- 1.9. Final payment will only occur after Builder and TKT sign the Certificate of Completion of Work Specifications.

- 1.10. Builder is responsible for exact measurements, materials, material quantities, and labor needed for bidding purposes. Bids must include all labor and materials to complete the job in a workmanship-like manner.
- 1.11. All costs to complete the Work described in these specifications and included on any drawings or plans should be included in these line items. Any scope of work Builder does not believe is covered, but is needed for a workman-like completion of the Work, should be discussed with TKT before submitting a Proposal/bid.
- 1.12. All materials used are to be new, of first quality and without defects, except in the case of repurposed, salvaged, or recycled materials used in finishes, trim, etc., which have been approved by TKT.
- 1.13. Change orders are for unforeseen circumstances or substantial changes to the Scope of Work only. All reasonable costs to complete the Work in the manner outlined in this document and submitted with Builder's Proposal/Bid are assumed to be included in the original contract.
- 1.14. TKT and applicable inspectors must approve all change orders before additional Work is started.
- 1.15. Builder is TKT "partner in the field" and Builder will work closely with TKT/homeowner to resolve any defects in materials or workmanship. Builder agrees to remedy any defect due to faulty material or workmanship and pay for all damage to other work resulting therefrom, which appear within one year from final payment.
- 1.16. Builder must apply for, and obtain, all required Permits. TKT shall ensure proper zoning of building lot to allow permitting to proceed. Builder must comply with all rules of the permitting process as established by the MOA with the City of Klamath .
- 1.17. All work shall be performed in the manner outlined and comply with any and all applicable Federal, State and local Codes and Ordinances.
- 1.18. Builder to provide all relevant home warranty information. Builder to assemble and collect applicable warranty information for all products installed by Builder. Such warranty information to be provided to TKT at final inspection or sales transaction closing, whichever occurs first.

## **2. Site Work**

- 2.1. Builder will provide a plot plan based upon the footprint provided by a qualified Site/Survey Plan provider and will provide staking of such footprint. Builder is responsible for reviewing and staking house on the lot per approved plat plan.
- 2.2. Builder is responsible for provision of drainage information and obtaining needed building permits. Builder shall provide final grade and seeding to achieve positive drainage away from structure and conform to approved drainage plan.
- 2.3. Property shall be kept free of debris during the construction process.
- 2.4. After final/finish grading install landscaping to be min. 6 shrubs 12" in height with min 3' mulch strip across front perimeter.

## **3. Concrete**

- 3.1. Builder shall provide a spread footer (min. 16" x 8") including rebar reinforcement.
- 3.2. Builder shall provide a minimum of 20" x 24" reinforced concrete parking pad, with proper concrete footers to facilitate use of pad for construction of a 2- car detached garage. Pad shall have a gravel apron.

- 3.3. All steps at entries are to be concrete with a min. of a 3' x 3' landing at all entries. An engineered wooden stoop or small deck may be substituted at either entry with the approval of TKT.
- 3.4. Builder shall provide concrete sidewalks that are a minimum of 36" wide and 4" thick from front entry/porch to city sidewalk and from rear entry to parking pad.

#### **4. Masonry**

- 4.1. Bids should include one and one-half courses of block (or approx. 12") above grade. Adjustments to price shall be made if stipulated by TKT that more courses (exposure) are appropriate. Above-grade exposure may be adjusted according to neighborhood context and neighborhood design.
- 4.2. Builder is responsible for footer inspection.

#### **5. Wood and Plastics**

- 5.1. Builder is to supply and install a pressure treated sill plate per code (including sill sealer). Builder shall supply a letter to TKT that such lumber was in fact installed.
- 5.2. All framing to be done per code and must be inspected by a code compliance inspector prior to gypsum wallboard (drywall) installation.
- 5.3. Trim package shall include paint grade wood trim throughout entire house, including closets and workrooms. All base trim to be a min. of 3-1/2" in height and all door/window casing to be a min. of 2 3/4" wide. All windows are to have a wood sill with return.
- 5.4. All windows and doors shall have exterior trim to create a positive protrusion beyond siding; Installed and caulked to be weatherproof. All fascia/gutter boards are to be wood with aluminum wrap, or of a composite/fiber-cement material.
- 5.5. All exterior steps with three or more risers shall have a decorative handrail per code.
- 5.6. Porch columns shall be a minimum of 6: diameter round or square posts, primed and painted to match color scheme.
- 5.7. Builder shall provide and install wooden or wire shelving with clothes rods in all closets including a shelf over the washer and dryer area and appropriate shelving in any linen closets.

All bathrooms receiving (sheet) vinyl flooring shall have appropriate underlayment installed per manufacturer's specifications. Install a minimum of 4' x 4' area at front and rear entries.

#### **6. Thermal and Moisture Protection**

- 6.1. Builder to provide min. of R-30 insulation in the attic and a min. of R-13 insulation at all exterior wall conditions. Builder shall install a vapor barrier.
- 6.2. House shall have solid 1/4" sheathing (OSB or plywood) on all exterior walls. All exterior walls shall have either a Tyvec style air barrier or fanfold insulation installed per manufacturer's specifications prior to siding installation.
- 6.3. Builder shall install fire stop/caulk as required by code at all penetrations throughout house.
- 6.4. Builder to install minimum of 25-year asphalt shingles with appropriate vents for roof. Shingle style and color selection by owner. Install roof "boots" as required at all roof penetrations.

#### **7. Doors and Windows**

- 7.1. Exterior doors to be prefinished, metal- or vinyl-clad, insulated doors with deadbolt. Front

and rear door locks to be keyed alike. Owner's choice of half-light or solid 6-panel with peepsight. Builder to provide color/style option that match/complement exterior color scheme and owner to select color/style.

- 7.2. All interior doors to be six-panel doors with appropriate locksets and door stopes. No bi-fold or by-pass doors will be used without TKT approval.
- 7.3. Windows shall be for new construction with integral nail fins and have fully-fused, welded joints on both sash and frame. All windows to have energy-efficient 7/8" double pane glazing and screen. All bedroom windows shall meet egress requirements by code. Install windows with tempered glass as required per code. Windows installed in bathrooms shall have opaque glass.

## **8. Interior Finishes**

- 8.1. All locksets to be Kwik Set or equal.
- 8.2. Install ½" gypsum wallboard (drywall) on all walls and ceilings. Drywall to be smooth finished on all walls, including closets. Provide/apply a lightly textured finish on all ceilings except bathrooms. Water-resistant drywall to be used where appropriate in all bathrooms.
- 8.3. All faucets to be Delta or equal with chrome finish. Quality to be approved by owner.
- 8.4. Kitchen sink to be stainless steel finish. Quality to be approved by owner.
- 8.5. Paint shall be white on all other walls and ceilings, including closets, with final shade selection upon construction meeting.
- 8.6. Builder to bid waterproof flooring for all bathrooms, laundry areas and kitchens, including a minimum of 4' x 4' area at front and rear entry. Owner's choice of style and color.
- 8.7. All other areas to receive carpet and pad. Builder shall bid medium grade FHA approved carpet and pad, owner's choice of color Builder to provide and install all termination strips.
- 8.8. Minimum builder appliance package included in Proposal/Bid to include Energy Star recirculating range hood, and garbage disposal.

## **9. Specialties**

- 9.1. House numbers shall be installed on a 1" x 8" exterior grade board. House numbers to be appropriately-sized at front and rear entries as required per city ordinance.
- 9.2. All bathrooms to have a minimum of 2 towel bars, toilet paper holder, and shower curtain rod (all accessories are to have chrome finish). Towel bar to be attached to a 1" board that has been primed, painted and securely attached to framing members. Provide mirror above vanity in each bathroom.
- 9.3. Medicine cabinet to be a minimum of 16" x 20" with 3 shelves. If medicine cabinet has a power outlet, it must be GFCI protected.

## **10. Furnishings**

- 10.1. All cabinets shall have solid wood fronts. All cabinets shall be composed of solid wood.
- 10.2. All countertop surfaces shall be Formica (unless otherwise requested by TKT) or equal with backsplash. Builder to provide three (3) color/finish choices to TKT for selection. All countertops and backsplashes shall be neatly caulked at wall conditions.
- 10.3. Builder shall supply and install vinyl mini-blinds, cut to size, in all windows, including entry doors if glass option is used.

## **11. Mechanical**

- 11.1. All water supply lines shall be appropriately sized copper or PVC piping, with ball type, "1/4

- turn" shut-off valves accessible at all plumbing fixtures. A main shut-off for the entire house shall be conveniently located in the utility room with a full-flow ball type shut-off valve
- 11.2. All plumbing fixtures shall be metal-bodied Delta or equal with chrome finish.
  - 11.3. Builder to install a 40 gallon 80 % high efficiency power vent water heater with overflow plan, as required by code.
  - 11.4. Gas lines shall be run to all appliances in house to include, but not limited to stove, furnace, water heater, and dryer with appropriate drip legs per code.
  - 11.5. Builder shall include in total price the cost of installing a new sewer and water supply lateral as a line-item cost in Proposal/Bid submitted, and provide for cost reduction or credit should lateral replacement not be required. No change orders for lateral replacement shall be approved.
  - 11.6. Builder to provide new meter pit for water service and exterior clean out for sewer service.

#### **HVAC**

- 11.7. HVAC system shall have rigid/metal duct supplies with return air ducts at each room. Ducts in the crawlspace are to be insulated. Ductless mini-splits are acceptable with heat units in each main space.
- 11.8. Builder to supply and install 90% AFUE gas furnace appropriately sized for the house. Furnace is to be vented as required per code and meet combustion air requirements.
- 11.9. Builder to supply and install air conditioner appropriately sized for the house. Air conditioner condensing unit shall be bolted securely to a concrete pad and a locking cage is to be included. Builder will not install unit until directed by TKT in conjunction with sales transaction.

#### **12. Electrical**

- 12.1. Builder to wire house to current National Electric Code and State of Oregon Code.
- 12.2. Builder to provide co-axial cables complete with connection in master bedroom, and living room.
- 12.3. Builder to provide one (1) overhead light or fan/light fixture controlled by a switch in each room.
- 12.4. Builder to provide one (1) exhaust fan/light combination fixture in each bathroom.
- 12.5. Builder to provide one (1) wall-mounted light fixture over vanity in each bathroom
- 12.6. Builder to provide a doorbell at front and rear entries to the house.
- 12.7. Builder to provide an exterior light at front and rear entries. Light to be installed on latch side of entry door(s).



## MAP OF SURVEY FOR THE KLAMATH TRIBES IN GOVERNMENT LOTS 23, 24, 25 & 26 IN THE SE¼ OF SECTION 8, T35S, R7E11M KLAMATH COUNTY, OREGON



LEGEND

- SET 5/4" PIPE WITH RED PLASTIC CAP
- FOUND 5/4" PIPE WITH YELLOW PLASTIC CAP
- FOUND 5/4" PIPE WITH RED PLASTIC CAP
- FOUND 5/4" PIPE WITH YELLOW PLASTIC CAP
- FOUND 5/4" PIPE WITH PLASTIC CAP
- (DIP) RECORD DATA PER C.L. 2004
- (DIP) RECORD DATA PER C.L. 2010
- (DIP) RECORD DATA PER C.L. 742

### LEGEND

- SET 5/4" PIPE WITH RED PLASTIC CAP
- FOUND 5/4" PIPE WITH YELLOW PLASTIC CAP
- FOUND 5/4" PIPE WITH RED PLASTIC CAP
- FOUND 5/4" PIPE WITH YELLOW PLASTIC CAP
- FOUND 5/4" PIPE WITH PLASTIC CAP
- (DIP) RECORD DATA PER C.L. 2004
- (DIP) RECORD DATA PER C.L. 2010
- (DIP) RECORD DATA PER C.L. 742

LINE DATA

LINE NO.	START STATION	END STATION	DESCRIPTION
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2	301+00	301+00	START OF LINE
3	301+00	301+00	START OF LINE
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97	301+00	301+00	START OF LINE
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- NOTES**
1. CORNER FALLS R. STORMW. SET BY TOWN OF KORNWATER ON L&E TO CORNER FROM CORNER
  2. SURVEYED ADJACENT TO L&E TO CORNER FROM CORNER

MADE AND FILED  
 IN KLAMATH COUNTY, OREGON  
 THIS 15th DAY OF JULY  
 2012  
 J. B. Hill

**ADKINS**  
ENGINEERS & SURVEYORS  
INC.

2500 Shields Way Month Lake, Oregon 97030 (503) 884-0800 FAX (503) 884-3328  
www.adkinsinc.com

JULY 2012

**Public Safety Building Project:**

**Background:** The Klamath Tribes Public Safety Department is searching for a qualified firm that can design, manufacturer, and install a high-quality modular building that will be located at 320 S. Chiloquin Blvd, Oregon 97624. The following information can be used to provide a preliminary cost estimate that will be used to select and award a qualified company.

**Lot Size:** 1.75 Acres approximate. Engineering firm developing full infrastructure plans

**Floor Plan:**

1. Offices: 6 minimum – Submit 2 designs configuring best practices for office space layout for the following positions.
  - a. Police Chief
  - b. Deputy
  - c. Game Worden 1 & Game Worden 2
  - d. Office Manager
  - e. Emergency Manager
  - f. Receptionist
  - g. 2 extra offices

Estimated Minimum Square Ft = 2500 square feet.

2. Other Room Types:
  - a. Conference Room,
  - b. Interview Room,
  - c. Records/Evidence Room,
  - d. Storage Room,
  - e. IT Room,
  - f. Men's Bathroom, Women's Bathroom,
  - g. Dispatch Room,
  - h. Lobby Area,
  - i. Open Room for work stations/Squad Room,
  - j. Locker Room &
  - k. Break Room.
  - l. Sallyport

**Design Standards:**

1. Include ADA accessible ramp entry way
2. Must align with Oregon Structural Specialty Code
3. Must align with Oregon Energy Efficiency Specialty Code
4. Adequate natural lighting.
5. Sound control
6. Efficient Heating/Cooling System
7. Back Up Generator with a minimum of 24 hour run time, propane preferable .

**Call-Outs:**

1. Provide in detail the level of mechanical, plumbing, electrical, and final finishes of the building.
2. Types of materials used in the manufacturing of the building.
3. Fire Safety Rating.



4. Building accessories: Cabinets, built in shelving, rain gutters, blinds, etc.
5. Delineate level of installation of building (Delivery cost, site work, commissioning, etc.) responsible by the company and the responsibility of the owner.
6. Energy or Green Certificates

**2024 REQUEST FOR PROPOSALS  
FOR  
PUBLIC SAFETY BUILDING/POLICE STATION**

**CONSTRUCTION CONSIDERATIONS**

Builder is responsible for all construction and physical development as specified in this document and in conformance with all plans, designs, and specifications submitted as part of this Proposal/Bid process. This proposal/bid submission for construction services shall constitute agreement in total by Builder to the requirements and standards contained herein by The Klamath Tribes (TKT).

**1. General Conditions**

- 1.1. Plans are to be compatible in design and style with the existing building stock in the area. I.E., Fitness Center, Day Care and Wellness Center. TKT reserves the right to make such determination, and to reject any architectural plans or design proposals determined incompatible.
- 1.2. All plans submitted must include a minimum of 6 offices for the following positions; Police Chief, Office Manager/Receptionist, Dispatch, Deputy, 2 Game Worden, Emergency Manager, 2 additional offices
- 1.3. Other rooms; Conference room, interview room, records/evidence, storage, IT, Men's bathroom, Women's bathroom, Lobby Area, Open area for work stations, Squad room, Locker room and break room.
- 1.4. Estimated square feet 2500 minimum. TKT would like to get as large of a station within plot location.

**2. Space and Design Considerations**

**Public Counter**

Once inside the lobby, most visitors interact with police staff through a public reception counter. Regardless of which space is designed on the other side of the public counter, it is vital that everyone in that space be protected. The glass between the public and restricted sides of the counter should be ballistic resistant and the walls should include ballistic-resistant materials.

The entire lobby should be visible from the restricted side of the public counter; a bay-style window can help provide the visual coverage. The window should have no openings. Communications between the public and counter staff should be through a telephone or microphone/speaker only.

**Secure Walls and Doors**

Similar to the interior vestibule wall, all walls between the lobby and any restricted spaces of the police station should be constructed of concrete or concrete block strength material, and should extend to the structure above. Doors into restricted areas from the lobby need to be secure, preferably by using electronic access control devices, such as a proximity card-reader door lock. These locks should also be operable from the station's central control room.

**Electronic Security**

The public lobby should have full CCTV coverage with no blind spots or obstructions. This would likely require multiple cameras. Additionally, each door from the lobby into the rest of the police station and the main

entrance doors should be on door position switches that report back to the central control center. There should be an alert created automatically when doors are held open too long.

### **Ancillary Spaces/Lobby**

Police stations are part of the community, and it is a good idea to include ancillary spaces that can support members of the public. Consider having a community room located directly off the lobby. This space would be a multipurpose room that could double as a training and event room for the police. It's also a good design practice to include public restrooms adjacent to the lobby. The restrooms should have enough fixtures not only to support those who may be in the lobby waiting to speak to police staff, but to support the needs of users of the community room as well. The doors to the restrooms and community room should not be able to be locked from the inside. This is to prevent a person from barricading themselves inside.

Another space that could be considered ancillary to the lobby is witness/victim interview rooms, sometimes called soft interview rooms. These rooms are designated areas where witnesses, individuals involved in traffic incidents, or even victims of crimes meet with law enforcement officers. There should be free access from the lobby to this suite of rooms in order to provide a reassuring feeling to witnesses or victims. Sound proof materials to be used on conjoined spaces.

### **Sallyport**

It is critical to transport individuals who are in custody into or out of a police station in a manner that is safe and secure for all parties. Achieving this requires a proper enclosed space, or police station sally port, in which the prisoner or detainee can be transferred to and from a police vehicle. A police sally port is defined as a secure entryway into the police station through which access is controlled by a series of doors. This access control helps ensure that there are layers of protection during prisoner transfer.

### **Size and Layout**

The sally port should be configured with a separate vehicular entrance and exit, commonly known as a "pull through" style. If the sally port is meant to accommodate one vehicle, it should be at least 800 square feet with approximate proportions of 40' long by 20' wide.

### **Walls, Ceiling, and Floor**

The walls of the sally port need to provide a high degree of durability to protect against impact resistance and should be easily washable. A recessed, covered water hose connection should also be included in the sally port. The walls should run from slab to the underside of the floor or roof deck above.

If there is a ceiling, it should be solid gypsum wall board. Adding acoustical tiles adhered directly to the gypsum board can help with sound deadening. A suspended ceiling should not be used in this space. Alternately, there could be no ceiling and the joists and deck could be left exposed. If the ceiling is left exposed, it should be painted white to help reflect light and to keep the space bright. The clear height should be 14'-0" to the ceiling, exposed structure, or any other ceiling features.

Similar to the walls, the floor of the sally port should also be washable. The drain will funnel away the water being used to wash the floor and walls and will carry away rain and snow brought in with the vehicles. Consider using a trench drain, also called a channel drain, which is a long drain that can run along the center of the sally port floor or along the inside of the overhead doors. If a trench drain is chosen, make sure it is the drive-over variety.

### **CCTV and Electronic Security**

There should be complete CCTV camera coverage of the sally port, and the coverage should be viewable from the security monitors in the central control post. This second camera should provide views of a detainee being taken out of the vehicle without the vehicle's open door obstructing the view.

Duress alarms should be provided in the sally port. Activated duress alarms should be heard within the police station and should be integrated with the security console in the central control post. The number and location will depend on the specific layout of the space. The duress alarms should have a lift-up cover to prevent accidental activation.

### **Doors**

Two vehicular doors should be provided at opposite ends of the sally port - one entrance and one exit. The doors should be sized to accommodate a prisoner transport van. The doors should be automatic and fast acting, opening or closing in three seconds or less. The vehicular doors should have a "time-out" feature so that they automatically close after a given amount of time, and the capability to override the time-out feature.

The vehicular entrance doors should be operable three ways: from a proximity card reader on a drive-up pedestal/stanchion outside the entrance door, from a proximity card reader inside the sally port, and from the police station's central control post. The exit door should be operable from a card reader inside the sally port and from the central control post.

An audio-video intercom should be provided on the drive-up pedestal outside the sally port, with a connection to the central control post.

No outside pedestrian doors leading to the exterior. A peephole should be provided from the inside, or better yet, a wide-angle door viewer should be provided so police personnel can ensure that the area outside the door is clear of unauthorized individuals before opening.

The door from the sally port into the police station should be controlled by proximity cards on both sides to prevent unauthorized use of the door. A peephole or wide-angle door viewer should be included to provide views into the facility from the sally port. A best practice is to place a TV monitor above or beside the door inside the station hooked up to a camera with views inside the sally port.

Pedestrian doors should have automatic closers to ensure they close and latch. Doors should also have electronic position indicators to alert the central control post if a door is left open or does not latch properly. Overhead doors also require position indicators integrated with the central control post.

### **Location and Adjacencies**

The door from the sally port leading to the police station should open into secure circulation - separate from the rest of the restricted parts of the police station, and part of the secure prisoner processing area, holding cell, and interview rooms. In many cases, station policy is that officers cannot bring weapons into the secure prisoner processing area or cellblock. Therefore, gun lockers should be provided inside the sally port for officers to store weapons prior to entering the secure prisoner areas.

**The exterior of the sally port** should be within the police station's secure area of the site, which should be protected by a fence and gates. The sally port should be located so there are no clear views of it from public roadways or public parking areas. In addition, there should not be any views from the entrance to the sally port to the secure parking for police personnel, the police personnel entrance, or the fueling depot, if one is present. The areas immediately outside the sally port entrance and exit should be well-lighted (at least 2

foot-candles).

**Proper ventilation** to remove the vehicle exhaust fumes is a must and should be done through mechanical means such as fans and ducts at a minimum. The amount of ventilation needs to be in accordance with local building codes. In addition, a carbon dioxide sensor should be provided with alarms that sound within the sally port and at the central control post.

**Site Location and Layout.** Location and layout are also important aspects of a secure parking area. Sightlines from public areas into the parking lot should be prevented. The parking should be situated in the rear of the police facility, or on the side. It should not face any uphill areas, higher-rise buildings, or other elevated areas that could provide an opportunity for a shooter to see over the perimeter fence. If there are buildings or high ground with a view over the fence, those views should be blocked with tall plantings, such as arborvitae trees, or with screen walls strategically placed to block the views.

#### **Gates and Access.**

Two controlled access points should be provided into the parking lot. This way, if one access point is blocked (whether unintentionally or intentionally), the other can be used. Both access points should be controlled by automatic gates.

The gates should be high speed, such as those manufactured by Wallace Perimeter Security or similar, and should have an open and close cycle time of seven seconds or less. This short cycle time is needed to prevent piggybacking or tailgating – i.e., when one car follows another through a gate. The gates should be operated by an electronic control device, such as a license plate reader, camera and intercom system, or similar secure access control system. The gates should be integrated with the facility's main control post so that they can be locked down or held open if needed, depending on the circumstances.

A pedestrian gate with electronic access control should also be provided with each vehicle gate. The vehicle and pedestrian gates should have a maximum of six inches between the grade and bottom of the gate to prevent anyone from crawling under the gate to gain access into the secure parking area.

**Lighting and Security Cameras.** The secure parking area for police personnel must be well lit. The average lighting level in the parking area should be no less than two foot-candles. The lighting should not trespass onto adjoining sites and should be shielded toward the sky to avoid light pollution. Automatic dimmable lights on photosensors should be provided at the exterior doors of the facility leading to the parking lot. Excessively bright lighting outside the door can obscure vision as personnel exit the building at night, making it difficult to see a potential threat in the parking area beyond.

The secure parking area should have total CCTV coverage with the camera feed monitored live in the facility's main control post. The use of 360-degree cameras or pan-tilt-zoom (PTZ) cameras are also recommended so that personnel monitoring the parking area from the control post can concentrate on areas of interest. All exterior cameras should have infrared technologies for night use.

Cultural Resources Survey and Inventory for the  
Klamath Modular Building Project in Chiloquin, Klamath County, Oregon

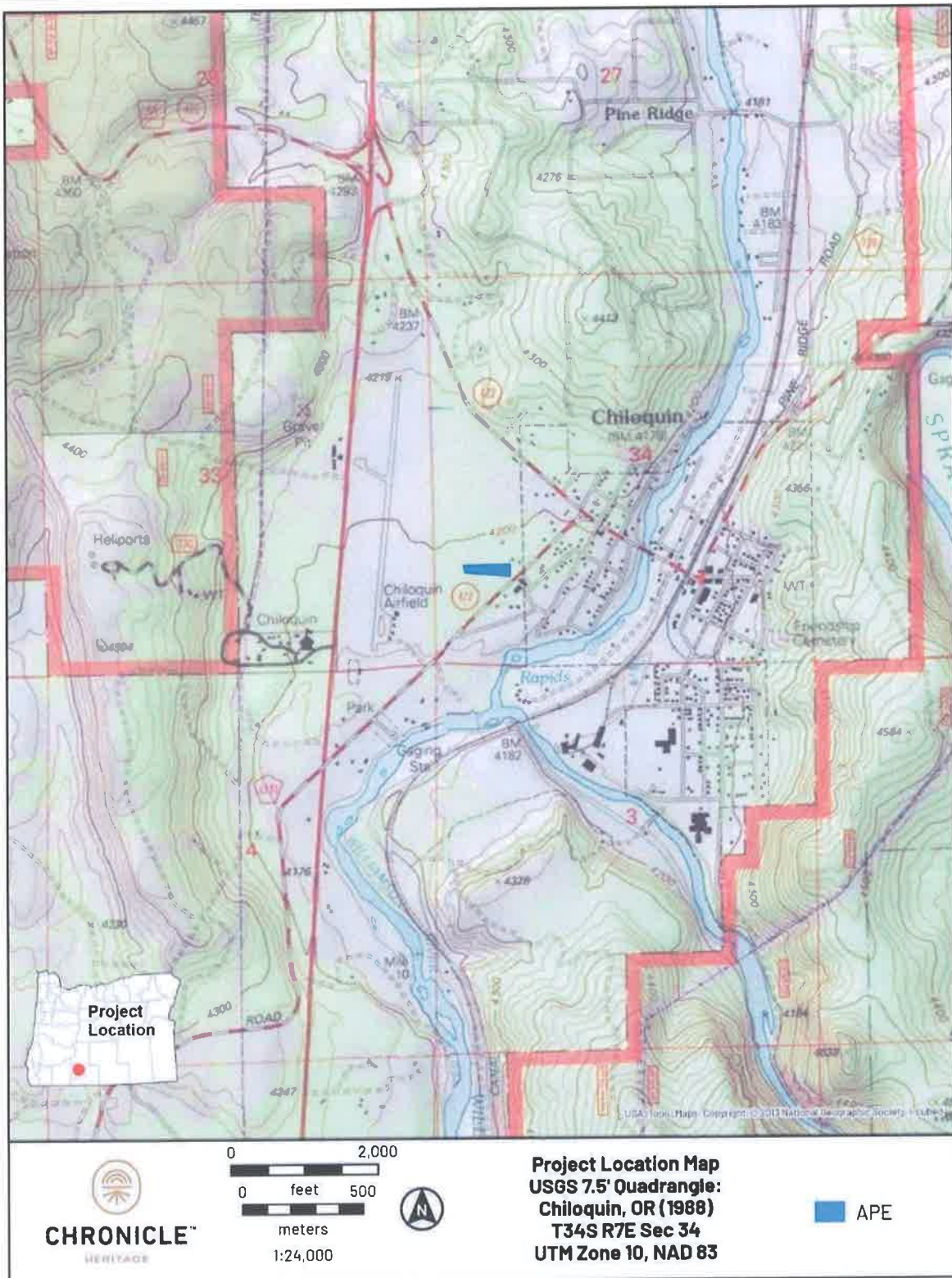


Figure 1-1. Project location map.

Cultural Resources Survey and Inventory for the Klamath Modular Building Project in Chiloquin, Klamath County, Oregon

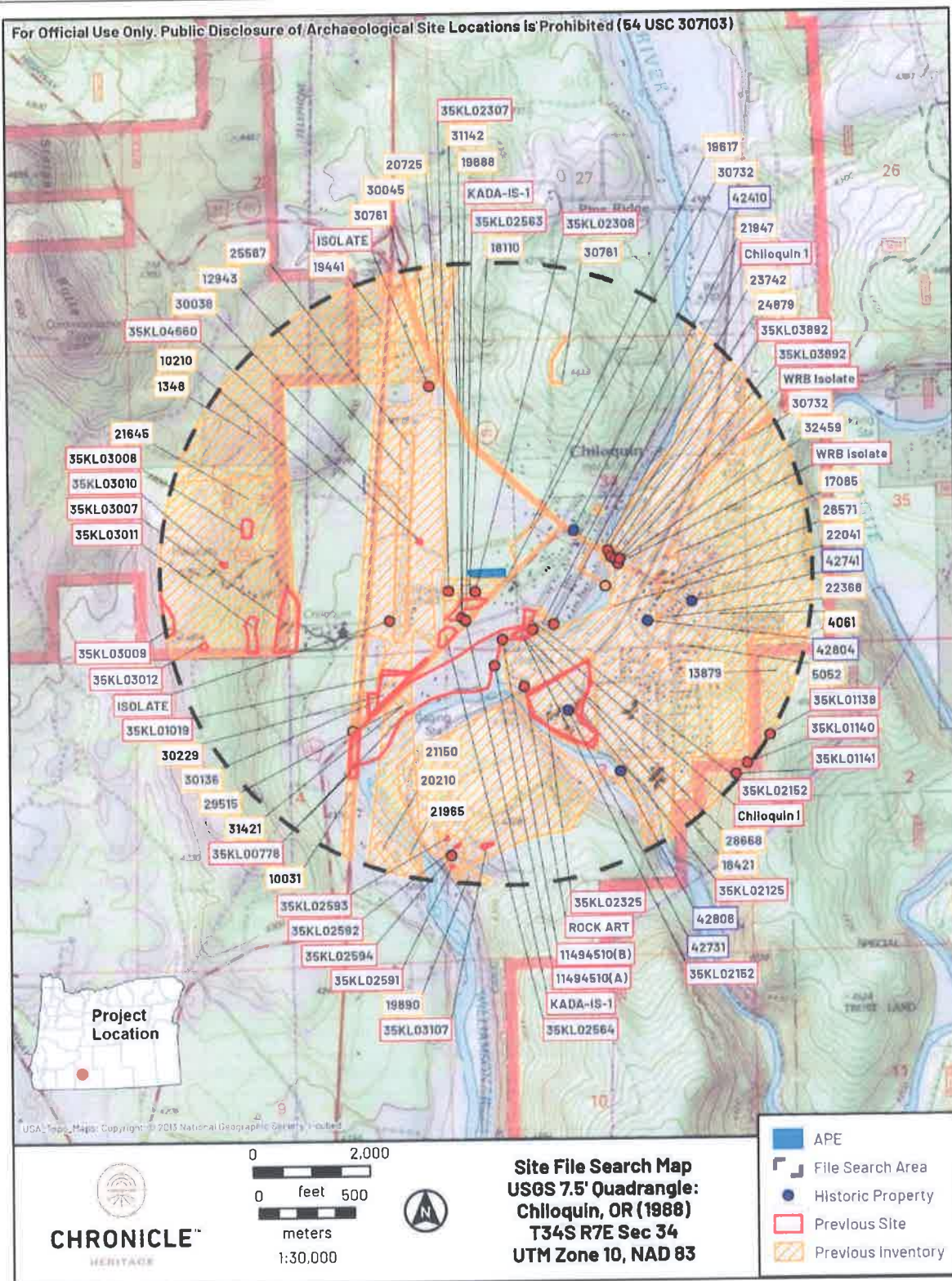
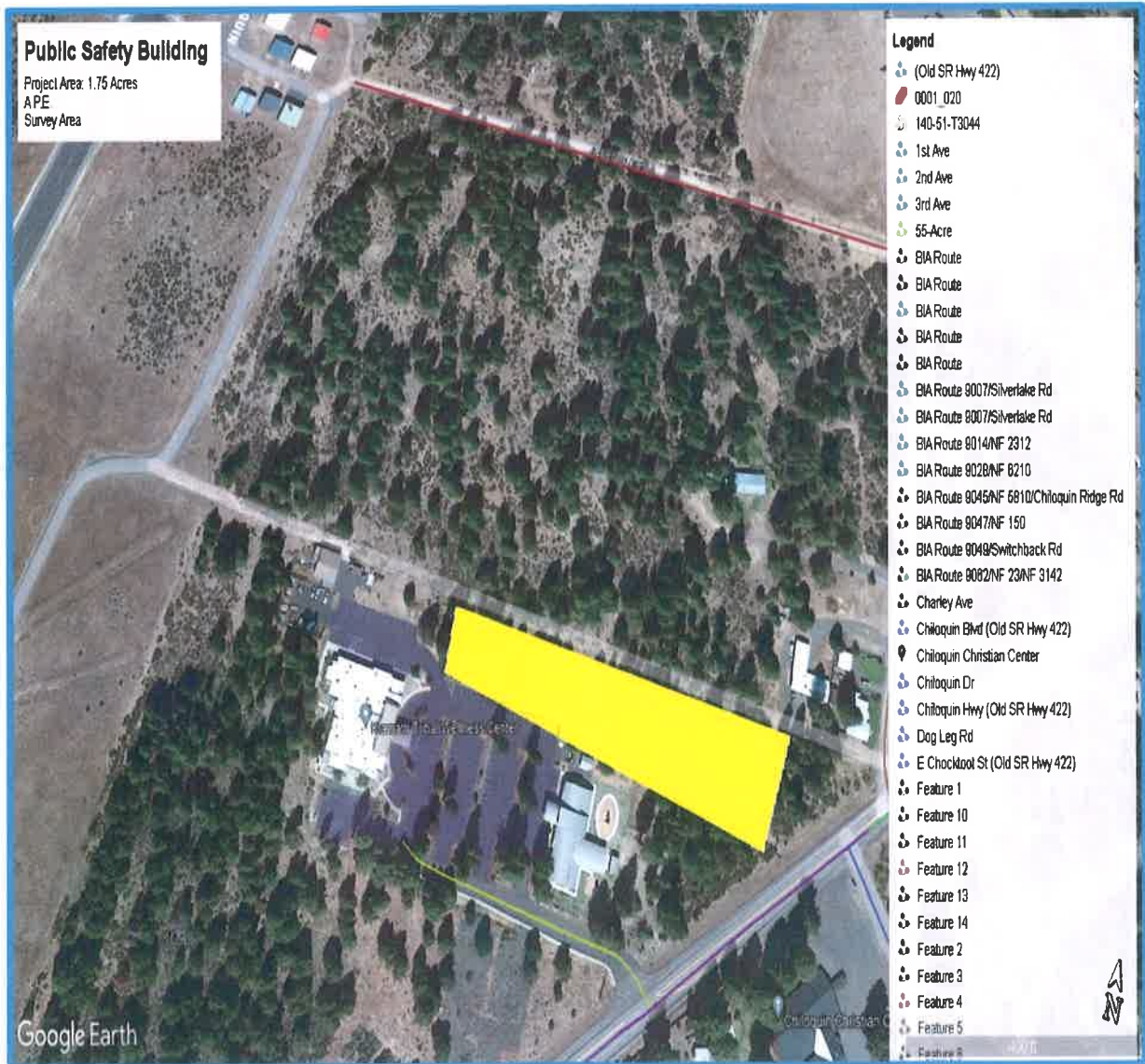


Figure 4-1. Site file search results.

## Project Area Map





Cultural Resources Survey and Inventory for the  
Klamath Modular Building Project in Chiloquin, Klamath County, Oregon



Figure 1-2. Project detail map.

Cultural Resources Survey and Inventory for the  
Klamath Modular Building Project in Chiloquin, Klamath County, Oregon

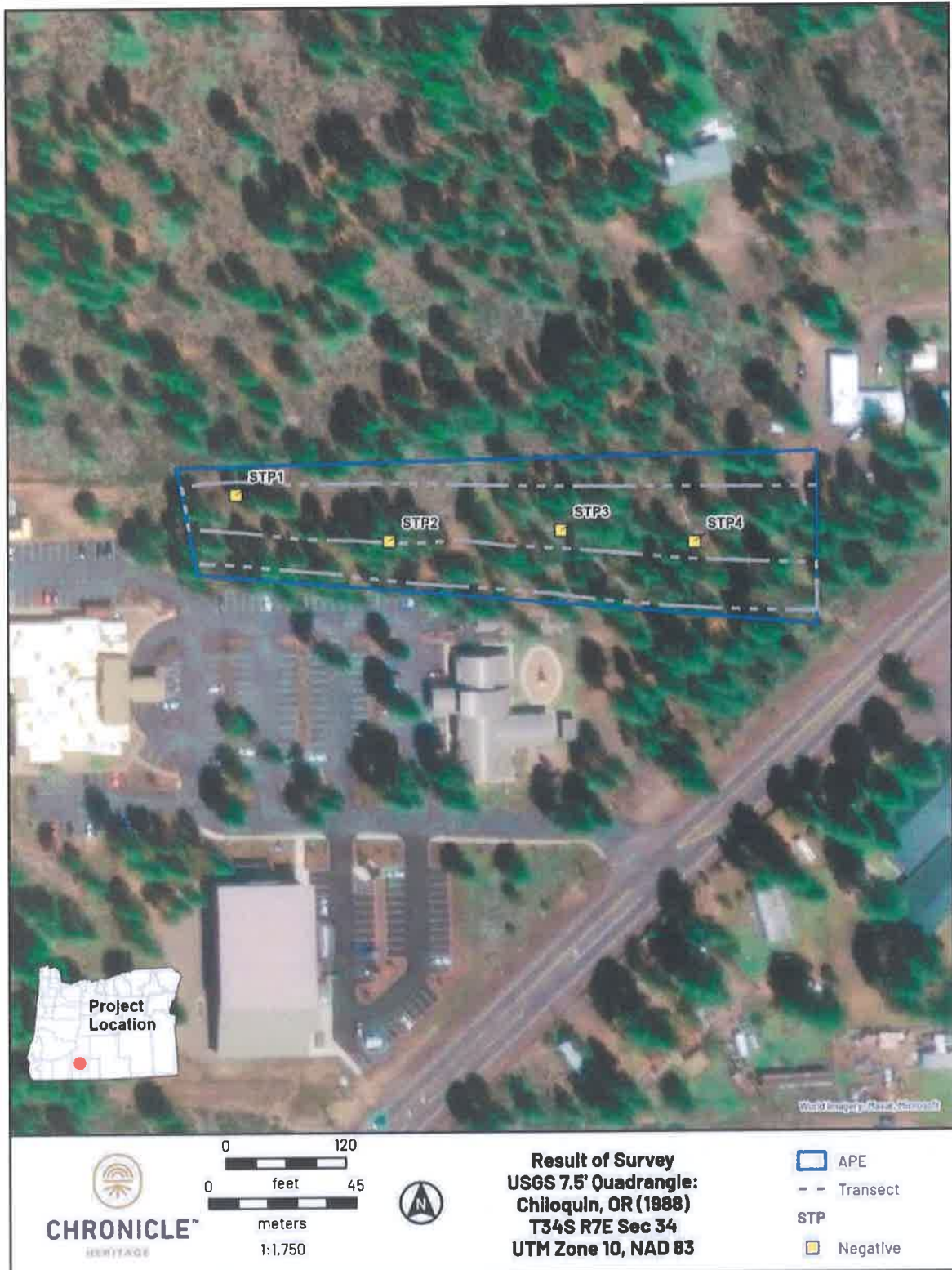


Figure 5-5. Results of survey map.

**Natural Resources Building Project:**

**Background:** The Klamath Tribes Natural Resources Department is searching for a qualified firm that can design, manufacturer, and install a high-quality semi-permeant building that will be in Chiloquin Oregon 97624. The following information can be used to provide a preliminary cost estimate that will be used to select and award a qualified company. Natural Resources would like two building that are connected with a passthrough if at all possible. Please add the trailer pads option as a separate additional cost.

**Lot Size:** 5+ Acres approximate. Engineering firm developing full infrastructure plans

**Floor Plan:**

Submit 2 designs for each building to include:

**BUILDING 1**

Number of employees: 17

Single story building in Chiloquin, OR land location TBD

**Floor Plan :**

1. 10 Offices at 10x10 each
2. 1 Conference/training room at 30x40 with 8-12 floor electrical plugs and covers
3. 1 Workout room at 30x30
4. 1 kitchen/breakroom at 12x15
5. 1 shower in each restroom. Restroom size commensurate with the number of employees.
6. 1 storage closet 10x10
7. 1 mail/copy/printer room 10x10
8. 3 engine bays at 25x30 each for a total size of 25x60 with proper HVAC and ventilation system with floor drains
9. Each engine bay has a roll up door with a width of 14 feet and height of at least 14 feet.
10. Washbasin in the engine bay and plumbed for ice machine

**Design Standards:**

1. Include ADA accessible ramp entry way
2. Roof Snow Load in alignment with Oregon building codes
3. Must align with Oregon Structural Specialty Code
4. Must align with Oregon Energy Efficiency Specialty Code
5. Adequate natural lighting
6. Efficient Heating/Cooling System
7. Security system with key fob entry, cameras, security lighting, full network environment including network with wireless access points and possible perimeter security fence
8. Parking lot to accommodate a minimum of 50 vehicles plus public parking
9. 2-4 full service trailer pads
10. Vehicle washing pad that is up to environmental requirements

**Call-Outs:**

1. Provide in detail the level of mechanical, plumbing, electrical, and final finishes of the building.
2. Types of materials used in the manufacturing of the building.

3. Building accessories: Cabinets, built in shelving, rain gutters, blinds, etc.
4. Delineate level of installation of building (Delivery cost, site work, commissioning, etc.) responsible by the company and the responsibility of the owner.

## **BUILDING 2**

Number of employees: 30

Single story building in Chiloquin, OR land location TBD

### **Floor Plan:**

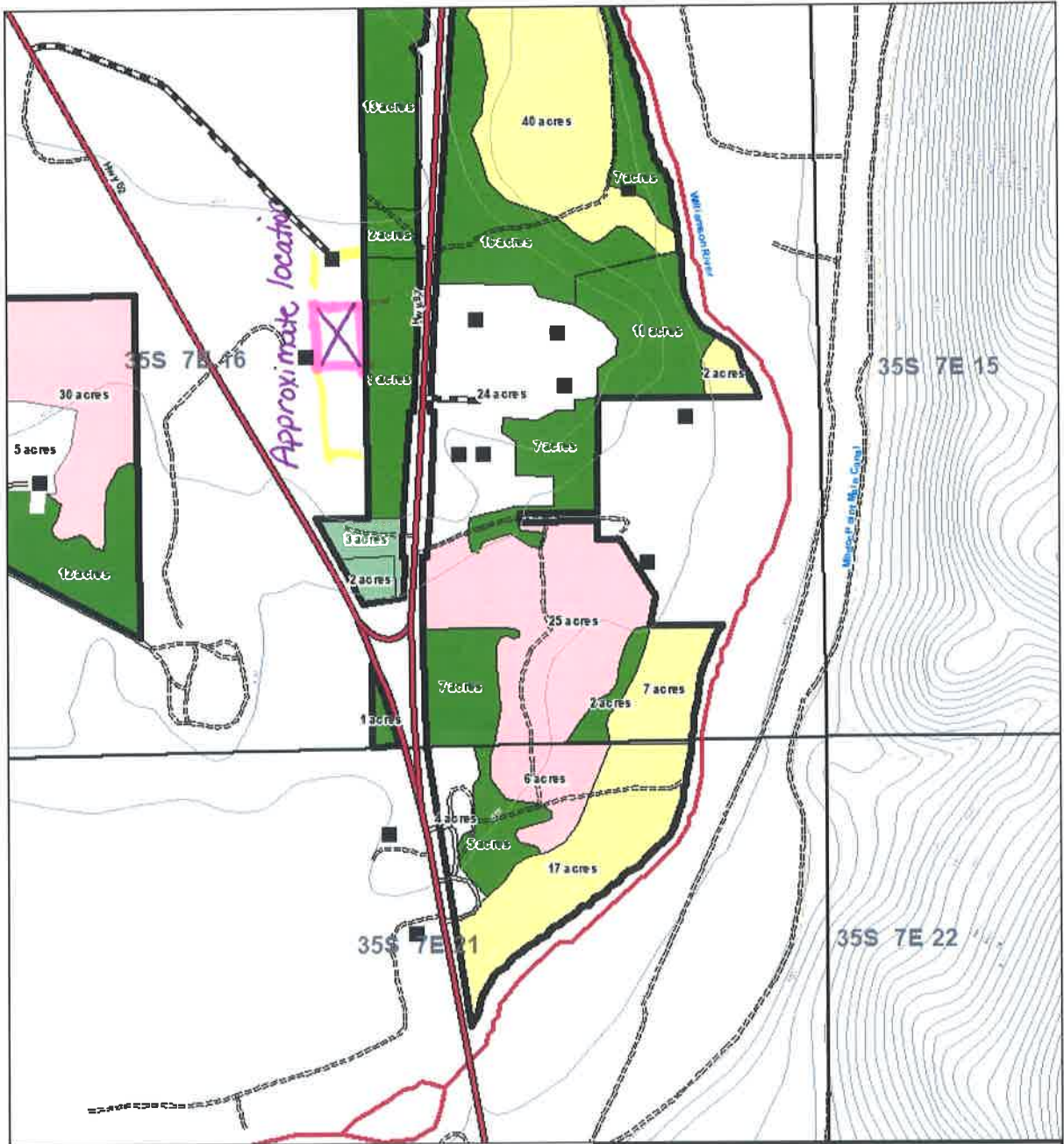
1. 17 Offices at 10x10 each
2. 1 Conference/training room at 30x40 with 8-12 floor electrical plugs with covers
3. 1 Workout room at 30x30
4. 1 kitchen/breakroom at 12x15
5. 1 shower in each restroom. Restroom size commensurate with the number of employees.
6. 2 storage closets 10x10
7. 1 mail/copy/printer room 10x10
8. 3 engine bays at 25x30 each for a total size of 25x60 with floor drains
9. Each engine bay has a roll up door with a width of 14 feet and height of at least 14 feet.
10. Washbasin in the engine bay and plumbed for an ice machine

### **Design Standards:**

1. Include ADA accessible ramp entry way
2. Roof Snow Load in alignment with Oregon building codes
3. Must align with Oregon Structural Specialty Code
4. Must align with Oregon Energy Efficiency Specialty Code
5. Adequate natural lighting
6. Efficient Heating/Cooling System
7. Security system with key fob entry, cameras, security lighting, full network environment including network with wireless access points and possible perimeter security fence
8. Parking lot to accommodate a minimum of 50 vehicles plus public parking
9. 2-4 full service trailer pads
10. Vehicle washing pad that is up to environmental requirements

### **Call-Outs:**

1. Provide in detail the level of mechanical, plumbing, electrical, and final finishes of the building.
2. Types of materials used in the manufacturing of the building.
3. Fire Safety Rating.
4. Building accessories: Cabinets, built in shelving, rain gutters, blinds, etc.
5. Delineate level of installation of building (Delivery cost, site work, commissioning, etc.) responsible by the company and the responsibility of the owner.



Map 7:  
"Casino"  
South Area

0 375 750 1,500 Feet  
Contour Interval = 20ft

Tribes, Fee & Trust Lands		Restoration Treatment		Streams_ODF	
Structure	Dry Mature Forest	Forested Wetland	Large, Fish	Large, Nonfish	Large, Unknown
Roads	Dry Young Forest	Moist Forest	Medium, Fish	Medium, Nonfish	Medium, Unknown
Highway	Wet Meadow	Dry Meadow	Small, Fish	Small, Nonfish	Small, Unknown
Paved	Scrubland	None (Development)			
Aggregate					
Natural					

SMALL PURCHASE CONTRACT BETWEEN KLAMATH TRIBES AND CONTRACTOR FOR  
CONSTRUCTION WORK WITH PROGRESS PAYMENTS

(Federal Funds)

Contract #

THIS CONTRACT is entered into on the Klamath Tribes Reservation on this X day of XX, 2023, by and between the Klamath Tribes (hereinafter the "Tribes"), and XX, licensed contractor number (hereinafter the "Contractor.")

The Tribes and Contractor agree as set forth below:

**Article 1. SCOPE OF WORK.**

1.1 The scope of work ("Work") for this Contract is xx .

1.2 A contracting officer ("Contracting Officer") shall be appointed by the Tribes to monitor the performance of the Contract and to communicate with the Contractor on behalf of the Tribes regarding all aspects of the Contract and any Work arising thereunder.

1.3 The Tribes hereby gives and grants to the Contractor the right to enter into and upon the lands located in those areas identified in Exhibit A and to perform work on such lands during the term of this Contract for the purposes of fulfilling the obligations set forth herein. The Tribes reserves the sovereign right to restrict Contractor's access to certain roads or rights-of-way when, in the Tribes' opinion, continued use of such roads or rights-of-way would cause them unreasonable damage or for other good cause.

**Article 2. TIME OF COMPLETION.**

2.1 The work to be performed under this Contract shall begin on or before xx, 2023 and shall be substantially completed on or before xx, 2023. Time is of the essence. "Substantial Completion" means that the Tribes has, in its sole discretion, found the Work to be accessible, operable, and useable by the Tribes, subject only to minor corrective work.

2.2 The Tribes' Contracting Officer shall meet periodically with the Contractor to discuss the Contractor's progress in fulfilling Contractor's obligations under this Contract and to determine whether the Contractor is on schedule for completion of the Work.

2.3 If Contractor knows or has reason to believe that the Work will be delayed or other serious problems may interfere with the Substantial Completion of the Work under the terms of this Contract, the Contractor must notify the Tribes and contact the Tribes' legal counsel to prepare a notice to the bonding company thereof.

**Article 3. FIXED MAXIMUM PRICE.**

3.1 The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed xx dollars and 00/100 (\$xx.00) subject to additions and deductions pursuant to any authorized written change orders as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Fixed Maximum Price. Costs that would cause the Fixed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Tribes.

3.2 The term "Cost of the Work" shall mean costs necessarily incurred by the Contractor in the proper performance of the Work, including payments made by Contractor to subcontractors in accordance with the requirements of the subcontracts.

3.3 Contractor shall procure and pay for all licenses, permits, approvals, certificates, and authorizations necessary to the prosecution and completion of the Work and deliver evidence of same to the Tribes unless otherwise noted. Contractor shall promptly notify the Contracting Officer and the respective departments or official bodies when its Work is ready for inspection and shall, at once, do all work required to remove any violations or to comply with such inspections, without additional charge to the Tribes.

3.4 Progressive construction cleanup and disposal of the Work site of Contractor's waste materials is to be performed by Contractor. If the Contractor fails to perform cleanup of its Work within twenty-four (24) hours of notification by the Contracting Officer, the Tribes shall proceed to have the cleanup performed for Contractor and the cost for doing so will be assessed against the Contractor and deducted from the amount to be paid to the Contractor for the Work.

3.5 The Contractor shall be responsible for coordinating his work with that of other trades. In the event that the completed work of any trade has to be removed, replaced, or modified due to the Contractor's negligence in

completing his work within a reasonably scheduled period, or due to lack of coordination on the part of the Contractor, the cost of removing, replacing, and modifying such work will be assessed against the Contractor and deducted from the amount to be paid to the Contractor for the Work.

3.6 Contractor shall at all times during the progress of the Work have an authorized representative of its company at the Work site who can receive orders and has full authority to make decisions regarding the Work to be performed hereunder and who has complete responsibility for the Work insofar as this Contract is concerned. The Contractor shall provide the name and emergency or home telephone number of the corporate or company officer, general superintendent, and the project superintendent or foreman.

3.7 All traffic control of Contractor's own operations including that of his suppliers is included in Contract Price. This includes flagmen, barricades, permits, etc., as may be required by any legal agency having jurisdiction over the Work.

3.8 Contractor shall cooperate with the Tribes and other contractors and subcontractors to coordinate space requirements required by each contractor's equipment and material storage. Hoisting of Contractor's materials and equipment, if necessary, will be at Contractor's expense.

3.9 Contractor shall perform the Work under the general direction and oversight of the Tribes, and shall comply with any instructions given by the Contracting Officer. Contractor shall perform the Work in a good and workmanlike manner, consistent with the highest standards of the industry, and in strict accordance with the Contract Documents and all applicable building codes and regulations.

3.10 Reports shall be submitted daily to the Contracting Officer, no later than 9:00 a.m. the following day indicating the number of personnel working on the Work site the previous day along with a description of activities and equipment used in the conduct of the Work. This provision may be waived at the sole discretion of the Contracting Officer.

3.11 Contractor shall prosecute the Work in a prompt and diligent manner with adequate manpower whenever such Work, or any part of it, becomes available or at such other times as the Tribes may direct, and so as to promote the general and uninterrupted progress of the construction of the Project. Contractor shall cooperate with related work and shall not interfere in any manner with the work of the Tribes or other contractors or subcontractors. If Contractor fails to initiate or complete any portion of the Work by the time specified in the Contract Documents, or if it becomes apparent to the Tribes that the Work will not be completed in a timely fashion, and if such failure is due in whole or in part to any fault of Contractor, then the Tribes may, in addition and without any prejudice to any other remedies it may have pursuant to other portions of this Contract or applicable law, require Contractor to take all steps necessary to perform the Work in a timely manner and consistent with the required quality of the Work, including but not limited to increasing or supplementing the working force and equipment and to performing the Work on an overtime or multiple shift basis. Any premium for such overtime or additional shifts, the cost of employing additional workers and equipment, together with any additional costs thereby incurred, shall be at Contractor's sole expense. Contractor shall furnish all submittals required by the Contract Documents or requested by the Tribes in a prompt and timely fashion so as to expedite the progress of the Work.

3.12 If any portion of the Work depends upon prior performance of any other activities of the Tribes, other contractors or subcontractors, or any other person or entity involved in the construction of the Project, then commencement by Contractor of that portion of the Work shall be deemed an acceptance by Contractor of the adequacy and completeness of such other activities.

3.13 Contractor shall fully protect all portions of the Work, including all materials and equipment to be furnished in connection with the Work, until the Work is fully completed and accepted by the Tribes. Until that final acceptance, all risk of loss with respect to the Work shall remain with the Contractor. Contractor will make good or replace, at no expense to the Tribes, any damage to the Work which occurs prior to that final acceptance. Contractor shall take necessary precautions to protect the activities of the Tribes, other contractors and subcontractors, and other persons and entities involved in the construction of the Project, from damages caused by performance of the Work or other operations of Contractor.

3.14 No materials, equipment, or other articles of personal property purchased by Contractor or any subcontractor for incorporation into the Work shall be purchased or installed under any Contract where the seller reserves or purports to reserve title or the right of removal or repossession, or the right to consider those items personal property after their incorporation into the Work, unless specifically authorized in advance by the Tribes in writing.

3.15 **Notice to Proceed.** The Contracting Officer shall issue a Notice to Proceed within fifteen (15) days of the date this Contract is executed, and Contractor shall commence the Work within seven (7) days of receiving the Notice to Proceed unless otherwise specified in writing by the Contracting Officer. A copy of the signed Notice to

Proceed shall be sent to the U.S. Department of Labor when issued in connection with any federally-funded contract in excess of \$2,000.00.

**3.16 Inspection.** The Contracting Officer or any delegate of his shall have the right to enter the Work site at any reasonable time to inspect the Work. If the Contracting Officer determines that any portion of the Work does not conform to the Contract Documents, or otherwise departs from the requirements of this Contract, the Contracting Officer may require Contractor – at Contractor’s sole expense – to immediately correct the Work. In such event, Contractor will correct the Work to the Contracting Officer’s satisfaction. However, nothing in this clause or this Contract shall require Contracting Officer to conduct such inspections or to point out any necessary corrections, and no default of Contractor shall be waived by any inspection by the Contracting Officer or by Contracting Officer’s failure to point out any non-conforming work. In no event will any inspection be deemed to be a representation by the Tribes that there has been or will be compliance with the Contract Documents or that the Work is free of defective materials or workmanship.

**3.17 Changes**

3.17.1 The Tribes may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this Contract in the services to be performed or supplies to be delivered.

3.17.2 If any such change causes an increase or decrease in the hourly rate, the not-to-exceed amount of the Contract, or the time required for performance of any part of the Work under this Contract, whether or not changed by the order, or otherwise affects the conditions of this Contract, the Tribes shall make an equitable adjustment in the not-to-exceed amount, the hourly rate, the delivery schedule, or other affected terms, and shall modify the Contract accordingly.

3.17.3 Contractor must assert its right to an equitable adjustment under this clause within ten (10) days from the date of receipt of the written order. However, if the Tribes decides that the facts justify it, the Tribes may receive and act upon a proposal submitted before Final Payment of the Contract.

3.17.4 Failure to agree to any adjustment shall be a dispute under the Disputes clause, herein. However, nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed. No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written consent of the Tribes.

3.17.5 This Contract may be extended under the original terms and prices listed in this Contract by written agreement, signed by the parties.

**Article 4. PROGRESS PAYMENTS.**

4.1 The Contractor shall submit to the Tribes an Application for Payment for every calendar month ending on the last day of each month. Each Application for Payment shall be based upon the Schedule of Values attached to this Contract as Exhibit B. The Schedule of Values shall be prepared in such form and be supported by such data to substantiate its accuracy as the Tribes may require.

4.2 Each monthly Application for Payment shall indicate the percent completed of the items stated on the Schedule of Values. Payment shall be made only after the Tribes’ Contracting Officer certifies the Application for Payment. Partial payment under this section shall not waive any rights that the Tribes may have against Contractor with respect to any defect or failure of the Contractor to complete any aspect of the Work according to the Contract Documents or in a workman-like fashion. Payment shall be made within twenty (20) days of the certification by the Tribes’ Contracting Officer.

4.3 The amount of each progress payment shall be computed as follows:

4.3.1 Take that portion of the Fixed Maximum Price properly allocable to completed work as determined by multiplying the share of the Fixed Maximum Price allocated to that portion of the work as set out in Exhibit B. Payment made for each item from Exhibit B shall be inclusive of all material and labor costs. If requested by the Tribes, Contractor shall provide an itemized list of all expenditures attributed to the item or items from Exhibit B for which payment is requested.

4.3.2 Deduct from the amount computed as owing under this section the retainage of ten (10) percent. Said retainage will be paid over to Contractor upon completion of all Work under this Contract and acceptance of the Work by the Tribes and compliance with the requirements of Article 5.

4.3.3 Notwithstanding any other provision of this Contract, the aggregate of all payments made to Contractor shall not exceed the amount set out in Article 3 above. Should work remain to be done after the payment of all funds under Article 3, the Contractor without further payment shall complete all remaining work. Cost over runs shall be the responsibility of the Contractor.

4.4 Contractor shall furnish the Tribes with releases or waivers of liens including materialman’s liens and



wage liens for all work performed or materials provided along with the Applications for Payment. No partial or full payment shall be made unless the Tribes is satisfied that all wages and material costs have been paid by the Contractor.

4.5 Payments, including the Final Payment, may be withheld by the Tribes for reasons including, but not limited to: (i) defective Work not remedied, (ii) claims filed by third parties, (iii) failure of the Contractor to make payments properly to subcontractors or for labor, materials, or equipment, (iv) reasonable evidence that the Work cannot be completed for the unpaid balance of the Fixed Maximum Price, (v) damage to the Tribes or another contractor, (vi) reasonable evidence that the Work cannot be completed within the Contract Time and that the unpaid balance of the Fixed Maximum Price would not be adequate to cover actual or liquidated damages for the anticipated delay, (vii) persistent failure to carry out the Work in accordance with the Contract Documents, and/or (viii) failure to comply with applicable regulations, laws, and standards, including but not limited to workplace safety, wage and hour provisions, health and safety requirements, and/or environmental laws.

4.6 No payment made to Contractor pursuant to the terms of this Contract, including the Final Payment, shall be construed as acceptance of any work or materials not in accordance with the Contract Documents.

4.7 Contractor shall not be entitled to any interest on any amount found to be due and owing under this Contract, but shall, at most, only be entitled to the amount specified in Article 3.

#### **Article 5. FINAL PAYMENT.**

5.1 Contractor shall submit an application for Final Payment, constituting the entire unpaid balance of the Contract, along with the certificate demonstrating that the Work is complete and this Contract fully performed. The Final Payment shall be made by the Tribes to Contractor within thirty (30) days after the Tribes' Contracting Officer has approved the application for Final Payment.

5.2 Tribes is not required to make Final Payment to Contractor until all of the following conditions are satisfied: (i) the Work has been fully performed in conformance with the Contract Documents and the Work has been accepted by the Tribes as complete; (ii) Contractor submits evidence satisfactory to the Tribes that all payrolls, bills for materials and equipment, and other indebtedness connected to the Work have been paid in full; (iii) Contractor has submitted releases of any and all liens or claims against the Tribes arising from this Contract to the Tribes, in a form satisfactory to the Tribes; (iv) any surety has consented to Final Payment; (v) Contractor is not in default of any provision of this Contract; (vi) none of the grounds for withholding payment set out in Section 4.5 above are present. Provided, however, that Final Payment by the Tribes does not indicate the Tribes' representation that these conditions have been satisfied, nor does Final Payment by the Tribes waive the Tribes' right to assert, at some future point, that one or more of these conditions has not been met if the Tribes discovers such non-compliance after making Final Payment.

#### **Article 6. EQUIPMENT.**

6.1 Unless otherwise agreed upon by the Parties, Contractor and all subcontractors shall provide all supervision, labor, materials, tools, equipment, and other items necessary for carrying out the Work under this Contract. Contractor and all subcontractors shall ensure that all such equipment remains in good repair and working order.

#### **Article 7. INDEMNITY.**

7.1 Contractor shall indemnify the Tribes against and hold the Tribes harmless from any and all claims, actions, damages, costs, expenses (including reasonable attorneys' fees), obligations, liabilities, and liens (including any of the foregoing arising or imposed under the doctrines of "strict liability" or "product liability" and including, without limitation, the cost of any fines, remedial action, damage to the environment and cleanup, and the fees and costs of consultants and experts), arising out of the services provided by Contractor pursuant to this Contract, or for any other activities of Contractor or Contractors' officers, agents, or employees, excluding, however, any of the foregoing resulting from the sole negligence or willful misconduct of the Tribes. Contractor agrees that upon written notice by the Tribes of the assertion of such a claim, action, damage, obligation, liability, or lien, Contractor shall assume full responsibility for the defense thereof. Contractor's choice of counsel shall be mutually acceptable to both the Tribes and Contractor. Contractor waives, as respects to the Tribes only, any immunity that would otherwise be available against such claims under ORS 30.785 as well as any similar coverage required for this work by applicable federal or other state's state law.

#### **Article 8. ASSIGNMENT AND DELEGATION.**

8.1 Neither party may assign this Contract or any interest in this Contract without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

8.2 Notwithstanding Section 8.1, the Tribes may assign its rights under this Contract without Contractor's consent to an affiliate of the Tribes. In the event of any such assignment by either party, that party's assignee shall have all the rights, powers, privileges, remedies, and obligations of the assigning party set forth in this Contract.

8.3 This Contract shall be binding upon and inure to the benefit of the Tribes and Contractor and their respective permitted successors and assigns.

8.4 The parties hereby agree that all or part of the Work to be performed pursuant to this Contract may not be delegated to a subcontractor or any other third party unless first authorized by the Tribes. The Tribes may attach any reasonable condition or limitation to the employment of any such subcontractor or third party.

#### **Article 9. REPRESENTATIONS AND WARRANTIES.**

9.1 Each party hereby represents and warrants to the other party that: (i) all action on the part of such party necessary for the execution, delivery, and performance of this Contract by such party has been taken, (ii) this Contract is a legal, valid, and binding obligation of such party, subject to laws of general application relating to bankruptcy, insolvency, and the relief of debtors and rules of law governing specific performance, injunctive relief or other equitable remedies, and (iii) the execution and delivery of, and the performance of the obligations under, this Contract by such party does not and will not contravene or result in any breach of any law or of any regulation, order, writ, injunction, or decree of any court, tribunal, governmental body, authority, agency, or instrumentality, nor does or will such execution, delivery, or performance violate, conflict with, or result in (or with notice or lapse of time or both result in) a breach of or a default under any term or provision of any Contract, oral or written, to which such party is a party or is bound.

9.2 Contractor warrants that Contractor has the necessary qualifications to perform the Work under this Contract. Contractor warrants that it has sufficient experience and competence to perform the Work and that all Work shall be completed in a professional and workmanship like manner and in compliance with industry standards, Klamath Tribal codes, standards, and laws, American Public Works Association engineering standards/codes, and other applicable laws. Contractor shall indemnify and hold the Tribes harmless from any and all costs, liabilities, or obligations by reason of the failure of Contractor or his or her employees, agents, subcontractors, or assigns to comply with any applicable law.

9.3 Contractor represents and warrants to the Tribes that: (i) Contractor is financially solvent, able to pay all debts as they mature, and possesses sufficient working capital to complete the Work and perform all obligations under this Contract, (ii) Contractor is able to furnish the plan, tools, materials, supplies, equipment, and labor required to complete the Work, and (iii) Contractor is authorized to do business for the Tribes and also in the State of Oregon and is properly licensed by all necessary governmental and public authorities having jurisdiction over the Contractor and the Work.

9.4 Contractor warrants that Contractor shall: (i) confine all operations (including storage of materials) on the Tribes' premises to areas authorized or approved by the Contracting Officer; (ii) at all times keep the work areas, including storage areas, free from accumulations of waste materials; (iii) lay out the Work from base lines and benchmarks indicated on the drawings and be responsible for all lines, levels, and measurements of all Work executed under this Contract; (iv) directly superintend the Work performed under this Contract; (v) be responsible for all damages to persons or property that occur as a result of Contractor's fault or negligence; and (vi) after completing the Work: (A) remove from the premises all scaffolding equipment, tools, and materials that are not property of the Tribes and all rubbish caused by Contractor's Work, (B) leave the area in a clean, neat, and orderly condition, and (C) perform all specified tests, if any.

#### **Article 10. TERMINATION.**

10.1 Termination for Cause. Either party may terminate this Contract for cause upon written notice provided to the other party specifying the cause of said termination. "For cause" means a breach of or default under any material provision of this Contract. Failure to terminate for one instance of breach or default shall not be deemed a waiver of the right to terminate for a subsequent occurrence of the same or another breach or default. The failure by Contractor to perform any of its obligations hereunder, which failure continues uncured for a period of seven (7) days following the Tribes' written notice to Contractor thereof, shall constitute an "Event of Default by Contractor" under this Contract. After any Event of Default by Contractor, Contractor shall reimburse the Tribes for all reasonable costs and expenses (including attorneys' fees) of enforcement of the Tribes' rights and remedies under this Section.

10.2 Termination for Convenience by the Tribes. Notwithstanding any other provision of this Contract, the

Tribes may terminate this Contract in whole or in part when it determines that continuing the Contract is no longer in the best interest of the Tribes. Such termination will be effected by the delivery of written notice to the Contractor of a Notice of Termination, which shall specify the effective date of the termination. If the Tribes terminates for convenience under this clause, the Tribes shall pay to Contractor all reasonable and proper payment for services adequately performed up to the date of the termination. Contractor shall submit an invoice to the Tribes in writing with appropriate documentation.

10.3 Remedies for Violation or Breach. In part because of federal regulations (2 C.F.R. Part 200), this Contract has administrative, contractual, or legal remedies for instances where the Contractor violates or breaches the terms of this Contract, and provides for such sanctions and penalties as may be appropriate.

#### **Article 11. NO GENERAL WAIVER OF SOVEREIGN IMMUNITY.**

11.1 Tribes enters into this Contract pursuant to its governmental authority and nothing herein shall be deemed to be a general waiver of the Tribes' sovereign immunity, which immunity is hereby expressly asserted. This Contract has been entered into within the jurisdiction of the Klamath Tribes and is subject to the laws of the Klamath Tribes.

#### **Article 12. APPLICABLE LAW.**

12.1 Contractor and all subcontractors and their employees shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of the Klamath Tribes and the United States governing performance of the Work. This Contract is subject to applicable governing law, which includes, but is not limited to:

##### 12.2 Indian or Tribal Preference.

12.2.1 Contractor shall comply with the Tribes' employment and contracting preferences, if any.

12.2.2 Indian Preference (Section 7(b)) Clause: If the Tribes does not have Tribal employment and contracting preferences, and only until such time as the Tribes adopts such preferences through law or regulation, the following Indian preference provisions shall apply. 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. § 5307(b), formerly codified at 25 U.S.C. § 450e(b)) (the "Indian Act"). Section 7(b) requires that to the greatest extent feasible: (A) Preferences 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 the Indian 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 and Alaska Natives. The Contractor shall include this section 7(b) clause in every subcontract in connection with the project, and shall, at the direction of the Tribes take appropriate action pursuant to the subcontract upon a finding by the Tribes that the subcontractor has violated the section 7(b) clause of the Indian Act.

12.3 The laws, policies, and regulations of the Klamath Tribes.

12.5 Such other federal law as may be applicable.

12.6 In the absence of applicable Klamath Tribal law, then the parties shall apply federal law and then Oregon State law as guidance for the Court in that order, provided that nothing in this Contract shall be deemed to bring the Tribes or the Klamath Tribes under the jurisdiction of the State of Oregon, its agencies, or its courts.

12.7 Certain claims and remedies otherwise available under the Federal Tort Claims Act do not extend to any subcontractor that renders services as part of or in relation to a self-determination contract entered into pursuant to the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§ 5301 et seq., in accordance with 25 C.F.R. § 900.183.

12.8 Any Project or work carried out as a tribal self-governance construction project under 25 U.S.C. § 5389 shall not be subject to any provision of the Office of Federal Procurement Policy Act and the Federal Acquisition Regulations issued pursuant thereto, nor any other law or regulation pertaining to Federal procurement (excluding Executive Orders) unless otherwise agreed to in writing by the Tribes.

#### **Article 13. INSURANCE.**

13.1 Contractor's Insurance. Contractor warrants that it is adequately insured for injury to its employees and others incurring loss or injury as a result of the acts of Contractor, its employees, its agents, or its subcontractors. Contractor agrees to keep in force during its acts under this Contract a comprehensive ISO-compliant general liability insurance policy with a minimum limit of \$1,000,000, and minimum carrier rating of AM Best A-VII. If Contractor is providing professional services, Contractor shall carry professional liability insurance in an amount

appropriate for like professionals in Klamath County, Oregon. Contractor's policies shall be primary and non-contributory with any similar insurance maintained by the Tribes. Prior to beginning the work, Contractor shall provide a certificate of insurance to the Tribes demonstrating that Contractor has the insurance described. Contractor shall require insurer to notify the Tribes forty-five (45) days prior to cancellation of said policy. Unless waived in writing by the Tribes, Contractor shall name the Tribes as an additional insured. Contractor shall also maintain in full force and effect worker's compensation coverage for Contractor and its agents, employees, and staff that the Contractor may employ, and provide proof to the Tribes of such coverage; or proof that such worker's compensation insurance is not required under the circumstances. Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the services are performed the types of insurance policies and in the following amounts, which shall cover the Work and related activities of Contractor and any subcontractor, and such policies shall name the Tribes as an additional insured:

- (i) General Liability Insurance – \$1,000,000 per occurrence unless otherwise indicated.
- (ii) Comprehensive Automobile Liability – \$1,000,000 per occurrence unless otherwise indicated.
- (iii) Worker's Compensation – As required by applicable law [or other amount as determined by the Tribes].

13.2 Evidence of Insurance. Contractor shall, upon the request of the Tribes, provide the Tribes with certificates of insurance or, if requested, copies of actual policies, evidencing the insurance coverage required by this Article 13, which shall state that a 30-day notice of cancellation or change will be provided to the Tribes during the period of coverage required under this Contract.

13.3 Maintenance of Insurance. Contractor shall pay all premiums when due for policies Contractor is required to carry under this Article 13 so as to avoid any lapse in coverage.

#### **Article 14. DISPUTE RESOLUTION.**

14.1. "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.

14.2. 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.

14.3. The Tribes and Contractor hereby agree that they will engage in good faith efforts to resolve all disputes arising under or relating to this Contract through alternative dispute resolution mechanism prior to the undertaking of any legal action.

14.4. The details and supporting documents of all claims by 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 Contracting Officer for a written decision within ten (10) calendar days from the date of the occurrence of the dispute. Contractor agrees that unless these written notices are provided, 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 the Tribes against Contractor shall be made in writing and submitted to Contractor within ten (10) calendar days from the date of the occurrence of the dispute.

14.5. Presenting Claim. In presenting the claim and supporting documentation, Contractor shall specifically include, to the extent then possible, the following:

14.5.1. Certification signed by Contractor that the claim is made in good faith, that the supporting data is accurate and complete to the best of Contractor's knowledge and belief, and that the amount requested accurately reflects the Contract adjustment for which Contractor believes the Tribes is liable.

14.5.2. 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.

14.6. All claims by Contractor shall be made in writing and submitted to the Contracting Officer for a written decision.

14.7. The Contracting Officer shall, within 60 unless otherwise indicated days after receipt of the request, decide the claim or notify Contractor of the date by which the decision will be made.

14.8. The Contracting Officer's decision shall be final unless Contractor appeals in writing to a higher level in the Tribes in accordance with the Tribes' applicable policy and procedures for such appeals, if any. In the event that the Tribes does not have a policy and procedures for such an appeal, an appeal may be made to the governing body of the Tribes. Such appeal must be made within 10 unless otherwise indicated days after receipt of the Contracting Officer's decision.

14.9. 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 Contracting Officer.

14.10. The Tribes reserves the right to withhold some or all of any payment which has been invoiced in the case of a dispute or discrepancy until the dispute or discrepancy is settled. In such a case the Tribes shall inform the Contractor, in writing, of the sums withheld, the reasons thereof and the work or actions necessary to cure the problem.

14.11. Nothing in this Contract, or any action taken by the Tribes 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 Tribes.

14.12. Contractor hereby acknowledges and irrevocably consents to the exclusive personal and subject matter jurisdiction of the Klamath Tribal Court or other Tribal dispute resolution entity or mechanism of the Tribes 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 Tribes, 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 Tribes and against Contractor may be registered or enforced in any court of competent jurisdiction.

#### **Article 15. MISCELLANEOUS.**

15.1 Survival. The obligations set forth in Articles 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 17 hereof, and this Article 15 shall survive any termination of this Contract for any reason.

15.2 Notices. Any notice, request, demand, statement, authorization, approval, or consent required or permitted under this Contract shall be in writing and shall be made by, and deemed duly given upon, (i) deposit in the mail, postage prepaid, registered or certified, return receipt requested, (ii) personal delivery, (iii) delivery to an overnight courier of recognized reputation, or (iv) facsimile transmission (with confirmation by mail), as follows, or to such other address and/or such additional parties as either party may specify by written notice given in accordance with this section:

#### If to Contractor:

Phone:  
Telefax:  
Attention:

If to Tribes: Klamath Tribes  
P.O. Box 436  
501 Chiloquin Blvd.  
Chiloquin, OR 97624  
Phone: (541) 783-2219  
Telefax: (541) 783-2029  
Attention: Contracting Officer

The Tribes Contracting Officer is: **Jana DeGarmo**

The Tribes Project manager is: **x x**

All such notices and communications hereunder shall be deemed given upon personal delivery, seven (7) business days after deposit in the mail, two (2) business days following deposit with any international courier service of recognized reputation, or one (1) business day after transmission by telefax.

15.3 Entire Contract. This Contract, including the Contract Documents, constitutes the entire Contract between the parties with respect to the subject matter covered by this Contract and supersedes all previous discussions, negotiations, oral or written, representations, statements, arrangements, contracts, and understandings, if any, by and between the parties with respect to the subject matter covered by this Contract other than those herein, and any such discussions, negotiations, oral or written, representations, statements, arrangements, contracts, and understandings are hereby canceled and terminated in all respects. This Contract may not be amended, changed, or modified except by a writing duly executed by the parties hereto or their duly authorized representatives. The parties have made no representations or warranties not expressly set forth in this Contract. If there are any documents attached to this Contract (including but not limited to proposals, bids, specifications, etc.), to the extent that such documents are inconsistent with this Contract, the terms of this Contract shall govern and shall supersede any inconsistent provisions in such attachments.

15.3.1 The Tribes shall require the consent of the Klamath Tribes Tribal Council for any contract amendment on a contract worth \$75,000 or more. Further, Tribal Council consent is required for any amendment to a contract that would exceed the total contract award amount or the amount budgeted for the project.

15.4 Severability. In the event any provision of this Contract or the application thereof to any circumstance shall be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, it shall be construed to be limited or reduced so as to be enforceable to the maximum extent allowed by applicable law as it shall then be in force, and if such construction shall not be feasible, then such provision shall be deemed to be deleted herefrom in any action before that court, and all other provisions of this Contract shall remain in full force and effect.

15.5 Remedies. All rights and remedies of the parties are separate and cumulative, and no one of them, whether exercised or not, shall be deemed to be to the exclusion of or to limit or prejudice any other legal or equitable rights or remedies which the parties may have. The parties shall not be deemed to waive any of their rights or remedies under this Contract unless such waiver is in writing and signed by the party to be bound. No delay or omission on the part of either party in exercising any right or remedy shall operate as a waiver of such right or remedy or any other right or remedy unless and only to the extent expressly provided otherwise in this Contract. A waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any future occasion.

15.6 Headings. The headings contained in this Contract are for convenience only and are not a part of this Contract, and do not in any way interpret, limit, or amplify the scope, extent or intent of this Contract, or any of the provisions of this Contract.

15.7 Counterparts. This Contract may be executed in counterparts, each of which shall constitute an original, but which together shall constitute one and the same Contract.

15.8 Expenses. Except as otherwise expressly provided for in this Contract, each of the parties shall pay its own expenses in connection with the negotiation, preparation, and execution of this Contract or other related documents and the consummation of the transactions consummated herein and therein.

15.9 Choice of Law and Forum. The rights and obligations of the parties hereto shall be construed and enforced in accordance with and governed by the internal laws and regulations of the Klamath Tribes. Contractor hereby expressly and irrevocably consents to the exclusive jurisdiction of the Tribal Court of the Klamath Tribes for the resolution of any disputes pertaining to or arising out of this Contract, consistent with Article 14 of this Contract. Contractor hereby waives the right to object to such location on the basis of venue or forum non conveniens.

15.10 No Third Party Beneficiaries. Neither this Contract nor any provision hereof, nor any document or instrument executed or delivered pursuant hereto, shall be deemed to create any right in favor of or impose any obligation upon any person or entity other than the parties hereto and their respective permitted successors and assigns, except for those provisions which recognize the rights of certain agencies of the United States.

15.11 Legal Advice and Construction of Contract. Each party represents that it has received independent legal advice with respect to the preparation of, and the advisability of, entering into this Contract and neither has been entitled to rely upon nor has in fact relied upon the legal or other advice of the other party or such other party's counsel in entering into this Contract. Each party has participated in the drafting and preparation of this Contract, and, accordingly, in any construction or interpretation of this Contract, the same shall not be construed against either party by reason of the source of drafting.

15.12 Parties' Understanding. Each party represents that it has carefully read this Contract, that this Contract

has been fully explained to it by its attorney, that it fully understands the final and binding effect of this Contract, that the only promises made to it to sign this Contract are those stated above, and that it is signing this Contract voluntarily.

15.13 Force Majeure. No party hereto shall be deemed in default if its performance of obligations hereunder is delayed or becomes impossible or impractical by reason of any act of God, war, fire, earthquake, strike, civil commotion, epidemic, or any other cause beyond such party's reasonable control.

15.14 Limitation of Damages. Except as expressly set forth herein, in any action or proceeding arising out of, relating to, or concerning this Contract, including, without limitation, any claim of breach of contract, the Tribes' liability shall be limited to compensatory damages proximately caused by such breach and the Tribes shall not, under any circumstances, be liable to Contractor for consequential, incidental, indirect, or special damages, including but not limited to lost profits or income, even if such party has been apprised of the likelihood of such damages occurring.

15.15 Use of Debarred, Suspended, or Ineligible Subcontractors. Contractor will comply with the prohibitions set out in 2 C.F.R. Parts 180 and 200, 24 C.F.R. Part 24, Executive Orders 12549 and 12689, and 7 C.F.R. § 3016.35, as well as any Tribal requirements, with regard to the use of debarred, suspended, or ineligible subcontractors. Contractor certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. Contractor will not contract with any consultant for this project if it or its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. Necessary certification forms shall be provided by the Tribes.

15.16 Drug-Free Workplace. Contractor will comply with the Drug-Free Workplace Act of 1988.

15.17 Equal Employment Opportunity. Contractor will comply 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 U.S. Department of Labor regulations contained at 41 C.F.R. Part 60, to the maximum extent consistent with, but not in derogation of, compliance with the Indian preference requirements set out in Section 12.2, above.

15.17.1 The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that 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:

15.17.1.2 Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

15.17.2 The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

15.17.3 The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

15.17.4 The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

15.17.5 The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

15.17.6 The Contractor will furnish all information and reports required by Executive Order 11246

of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

15.17.7 In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or Federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

15.17.8 The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

15.17.8.1 Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

15.18 Independent Contractor. The parties intend that each of them is and shall remain independent contractors with respect to services and items being provided hereunder. The Contractor is not an employee of the Tribes, but an independent contractor. Contractor shall be free from the direction and control of the Tribes over the means and manner of performing work under this Contract, subject to the right of the Tribes to specify the desired results. Accordingly, the Contractor is responsible for paying all employment taxes and related employment expenses and shall not receive any benefits that are paid to the Tribes' employees. Tribes shall have no duty with respect to the Contractor other than to provide the Payment set out in Section 4 above, unless additional duties are expressly set out in this Contract. This Contract is not intended to create a partnership or joint venture between the parties, and nothing in this Contract shall be construed as creating a relationship of employer and employee between the parties. No agent, employee, or representative of any party shall be construed or deemed an agent, employee, or representative of the other.

15.19 Ownership of Deliverables. Any and all reports, data, findings, or other materials or deliverables under this Contract shall become the property of and remain under the sole proprietorship of the Tribes. Material created by Contractor and paid for by the Tribes shall be owned by the Tribes, and shall be a "work for hire" as defined by the United States Copyright Act of 1976. This material includes, but is not limited to, plans, drawings, documents, computer programs, pamphlets, reports, studies, video production, audio reproduction, surveys, and materials in any other medium. Contractor for itself and any artists engaged by Contractor to perform work under this Contract, specifically waives any and all rights granted pursuant to the Visual Artists Rights Act of 1990. Where applicable, the Contractor and any artists engaged by the Contractor will enter into a written agreement identifying the artwork and the uses of that artwork prepared, developed, created, or otherwise formed under or relation to this Contract and waiving the artist's or artists' property rights and moral rights in said artwork prior to the commencement of any artistic work under or in relation to this Contract. Contractor shall provide a copy of the signed agreement to the Tribes. Material that Contractor uses to perform the Contract but is not created for or paid for by the Tribes is not owned by the Tribes, however, Contractor shall arrange for the Tribes to have a perpetual license to this material for the Tribes' internal purposes at no charge to the Tribes.

15.19.1 Intellectual Property.

15.19.1.1 If this Contract involves performance of experimental, developmental, or research work funded in whole or in part by the Federal government, Contractor and the Tribes shall comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

15.19.1.2 Except as provided in Section 15.19.1.1, above, Contractor agrees that ownership of all materials developed under this Contract shall be in the Tribes.

15.19.1.3 Contractor may retain all personal notes relating to Work under this Contract, and may retain copies of documents generated by Contractor pursuant to this Contract; provided, however, that copies of all notes and ORIGINAL copies of all documents created in the performance of this Contract, shall be provided to the Tribes.



15.20 Copyrights and Rights in Data. The relevant federal funding agency reserves an irrevocable, non-exclusive, and royalty-free license to reproduce, publish, or otherwise use, for Federal Government purposes only and to the extent otherwise permitted by law (i) the copyright in any work developed under a grant or subgrant, or contract under a grant or subgrant, and (ii) any rights of copyright to which a grantee, subgrantee, or contractor purchases ownership with grant support.

15.21 Examination and Retention of Contractor's Records.

15.21.1 Contractor and all subcontractors shall maintain accurate records detailing the costs which constitute the cost of the services provided, and shall make such records available to the Tribes, upon reasonable notice and at reasonable times, for audit, such audit to be at the Tribes' expense. The Tribes and the Comptroller General of the United States, and any of their duly authorized representatives, shall, until three (3) years after Final Payment is made under this Contract, have access to and the right to examine and audit any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this Contract, for the purpose of making audits, examinations, excerpts, and transcriptions.

15.21.2 The Contractor agrees to include in all subcontracts under this Contract at any tier a clause substantially the same as subparagraph 15.21.1 above.

15.21.3 The periods of access and examination in subparagraphs 15.21.1 and 15.21.2 above for records relating to: (i) appeals under the Disputes clause of this Contract, (ii) litigation or settlement of claims arising from the performance of this Contract, or (iii) costs or expenses of this Contract to which the Tribes or the Comptroller General or any of their duly authorized representatives have taken exception shall continue until the disposition of such appeals, litigation, claims, or exceptions, or until the end of the three (3) year period in subparagraph 15.21.1, whichever is later.

15.22 Environmental Laws. Contractor and all subcontractors shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. §§ 7401 et seq.), section 508 of the Clean Water Act (33 U.S.C. § 1368), the Federal Water Pollution Control Act (33 U.S.C. § 1251, et seq.), Executive Order 11738, and Environmental Protection Agency regulations (40 C.F.R. Chapter I). Contractor and all subcontractors and their employees shall not cause or permit any hazardous substances to be brought upon, used, kept, or stored in or on the Work site without the prior written consent of the Tribes, which the Tribes shall not unreasonably withhold as long as Contractor demonstrates to the Tribes' reasonable satisfaction that such hazardous substances are necessary or useful to the Contractor in carrying out the Work under this Contract and will be used, kept, and stored in a manner comporting with this clause and applicable Tribal law. Contractor shall immediately notify the Tribes of any spill, release, or disposal of hazardous wastes and any order, notice of violation, fine, penalty, or other similar action relating to hazardous wastes at or in connection with the Work site. Violations of this clause must be reported to the relevant federal funding agency and the Regional Office of the Environmental Protection Agency.

15.23 Energy Efficiency. Contractor and all subcontractors shall comply with all applicable mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

15.24 Restrictions on Lobbying. Contractor and all subcontractors shall certify to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Certifications and disclosures are forwarded from tier to tier up to the Tribes. Necessary certification and disclosure forms shall be provided by the Tribes.

15.25 No Liens. The property on which services will be performed is located on the reservation of the Klamath Tribes. As such, the property cannot be subject to any mechanic's or other lien, and this Contract does not create or grant any such right. Contractor shall not attempt to assert or perfect any such lien, nor permit any subcontractors to do so. Contractor and all subcontractors shall ensure that no mechanic's or other liens are filed against the Tribes' property arising out of work performed under this Contract or for any other purpose. In the event that a lien is filed against the Tribes' property, Contractor and all subcontractors shall, at the Tribes' request, at any time that Contractor is disputing the validity or amount of such lien, provide a bond or other security reasonably acceptable to the Tribes in the amount of such lien. Without regard to any other duty or requirement under this Contract, Contractor shall assure that all liens of whatever nature shall be resolved prior to payment of the Final Payment under this Contract.

15.26 Safety. Contractor and all subcontractors shall take necessary precautions for the safety of its

employees and shall comply with all applicable provisions of federal and tribal safety laws, including but not limited to the laws and regulations of the Occupational Safety and Health Administration ("OSHA"), to endeavor to prevent accidents or injury to persons on, about, or adjacent to the locations where services are performed. Contractor, however, shall not be responsible for the elimination or abatement of safety hazards created or otherwise resulting from work carried on by the Tribes or its separate contractors, or their respective employees, agents, contractors, or tenants. The Tribes agrees to cause its employees, agents, separate contractors, and tenants to abide by and fully adhere to all applicable provisions of federal and tribal safety laws and regulations.

15.27 Warranty of Work and Materials. Contractor warrants that all materials and equipment incorporated in the services provided under this Contract will be new unless otherwise specified and that the work performed will be free from faults and defects unless otherwise specifically provided in this Contract or the Tribes has previously given Contractor an acceptance of such condition. For a period of one (1) year after the date of Contractor's completion of Work, Contractor warrants to the Tribes that Work performed under this Contract conforms to the Contract requirements and is free of any defect in equipment, material, or workmanship performed by Contractor or any subcontractor or supplier at any tier. Contractor shall remedy, at Contractor's expense, any defect or failure to conform and any damage caused to real or personal property of the Tribes caused by such defect or failure to perform. Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not done by Contractor, improper or insufficient maintenance, improper operation, normal wear and tear under normal usage, or the acts or omissions of the Tribes, its employees, agents, contractors, and all those claiming by, through, or under them. Contractor and all subcontractors shall, upon final completion of any specific project and upon receipt by Contractor of the Final Payment, assign to the Tribes all warranties for materials and equipment incorporated in the Work, to the extent such warranties are assignable.

15.28 Licenses and Permits. Contractor hereby represents and warrants that all of its employees, officers, and agents possess the licenses and permits necessary under applicable law to perform the scope of services under this Contract. The Contractor, at its own cost and expense, shall obtain all governmental permits necessary for such activities prior to commencing any Work under this Contract.

15.29 Copeland Anti-Kickback Act. Contractor and all subcontractors shall comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145 and 18 U.S.C. § 874) as supplemented in U.S. Department of Labor regulations (29 C.F.R. Part 3). Any violations of this clause shall be reported to the relevant federal funding agency.

15.30 Contract Work Hours and Safety Standards Act. Contractor and all subcontractors shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3702, 3704, formerly cited as 40 U.S.C. §§ 330, 333) as supplemented by U.S. Department of Labor regulations (29 C.F.R. Part 5).

15.31 Subcontracting with Small and Minority Firms, Women's Business Enterprise, and Labor Surplus Area Firms. In accordance with federal regulations (2 C.F.R. § 200.321), Contractors shall take the following steps to ensure that when possible, subcontracts are awarded to small and minority business firms, women's business enterprises, and labor surplus area firms: (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists; (ii) Ensuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources; (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises; (iv) Establishing delivery schedules, where the requirements of the Contract permit, which encourage participation by small and minority businesses and women's business enterprises; and (v) Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and State and local governmental small business agencies.

15.32 Central Contractors Registry. Contractor and any subcontractors shall be registered with the Central Contractors Registry. The Central Contractors Registration clause (48 C.F.R. § 4.1105) is hereby incorporated by reference into the Contract in its entirety.

15.33 Employee Background Checks. Contractor shall conduct background checks on prospective employees of Contractor who will provide services under this Contract to ensure that employees of Contractor do not have a criminal record or other background that would call into question their trustworthiness. Contractor may, at Contractor's option, request that the Tribes submit any prospective employee's name through the background check process used by the Tribes, provided that Contractor will be charged the cost of such background check and such cost will be deducted from payments to be made to Contractor.

15.34 Disputes Concerning Labor Standards. Disputes arising out of the labor standards provisions of this Contract shall be subject to the general Disputes clause set forth at Article 14, except that disputes related to the Copeland Anti-Kickback Act and the Contract Work Hours and Safety Standards Act shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 C.F.R. Parts 3, 5, 6, and 7. Disputes within the

meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the Tribes, the relevant federal funding agency, the U.S. Department of Labor, or their employees or representatives.

**15.35 Certification of Eligibility.**

15.35.1 By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person nor firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. § 5.12(a)(1).

15.35.2 No part of this Contract shall be subcontracted to any person or firm ineligible for the award of a United States Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. § 5.12(a)(1).

15.35.3 The penalty for making false statements or claims is prescribed at 18 U.S.C. § 1001 and 31 U.S.C. § 3729.

**15.36 Further Certification of Contractor.** The Contractor certifies that the Contractor has never been sanctioned, suspended, disbarred, or been the subject of any other disciplinary action in any jurisdiction or by any federal or state agency, or by any Indian tribe, agency of an Indian tribe, or tribal organization.

**15.37 Prohibition on Conflicts of Interest.**

15.37.1 Based on the federal regulations set forth at 2 C.F.R. § 200.318, and where those regulations apply, no employee, officer, or agent of the Tribes shall participate in the selection, award, or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: (i) the employee, officer, or agent; (ii) any member of his or her family; (iii) his or her partner; or (iv) an organization that employs, or is about to employ, any of the above has a financial or other interest in the firm selected for the award. The grantee's or subgrantee's officers, employees, or agents will neither solicit nor accept gratuities, favors, or anything of monetary value from Contractor or parties to sub-agreements. Grantees and subgrantees may set minimum rules where the financial interest is not substantial or the gift is unsolicited item of nominal intrinsic value. To the extent permitted by the State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by Contractor or its agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

15.37.2 Neither the Tribes nor any of its Contractors or their subcontractors shall enter into any contract, subcontract, or agreement, in connection with any project or any property included or planned to be included in any project, in which any member, officer, or employee of the Tribes, or any member of the governing body of the Tribes, or in any other public official of such locality or localities who exercises any responsibilities or functions with respect to the project during his/her tenure or for one (1) year thereafter has any interest, direct or indirect. If any such present or former member, officer, or employee of the Tribes, or such governing body member or such other public official of such locality or localities involuntarily acquires or had acquired prior to the beginning of his/her tenure any such interest, and if such interest is immediately disclosed to the Tribes and such disclosure is entered upon the minutes of the Tribes, the Tribes, with the prior approval of the relevant federal funding agency, may waive the prohibition contained in this subsection: Provided, that any such present members, officers, or employees of the Tribes shall not participate in any action by the Tribes relating to such contract, subcontract, or arrangement.

15.37.3 No member, officer, or employee of the Tribes, no member of the governing body of the Tribes, and no other public official of such locality or localities who exercise any functions or responsibilities with respect to the project, during his/her tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in this Contract or the proceeds thereof.

**15.38 Interest of Members of Congress.** No member of or delegate to the United States Congress or resident commissioner thereof shall be admitted to any share or part of this Contract or to any benefit to arise from it.

**15.39 Non-Federal Prevailing Wage Rates.** Any prevailing wage rate (including the basic hourly pay rate and any fringe benefits) determined under State law to be prevailing with respect to any employee in any trade or position employed under this Contract is inapplicable to the Contract and shall not be enforced against the Contractor or any subcontractor with respect to employees engaged under this Contract whenever such non-federal prevailing wage rate exceeds: (i) The applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. §§ 3141 et seq.) to be prevailing in the locality with respect to such trade; (ii) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the U.S. Department of Labor ("DOL") or a DOL-recognized State Apprenticeship Agency; or (iii) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program.

15.40 E-Verify. Contractor and any subcontractors shall register and utilize the Department of Homeland Security's E-Verify employee verification system to confirm employment eligibility.

15.41 Payroll Records. Contractor and all subcontractors shall maintain, for a period of three (3) years after Final Payment by the Tribes, payrolls and basic records for all laborers and mechanics working at the Work site. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Contractor shall submit to the Contracting Officer each week during the Work a copy of all such payrolls, along with a certification of compliance signed by the Contractor or subcontractor that such payrolls are complete and accurate, that each laborer or mechanic employed on the Work site has been paid the full weekly wages earned by that laborer or mechanic, subject only to those deductions permitted by applicable law, and that each laborer or mechanic has been paid at least the applicable prevailing wage rate for his or her job classification..

15.42 Confidentiality. All information, reports, papers and other materials of whatever nature accumulated, generated, completed, or prepared under this Contract and specifically identifying the Tribes, its officers, agents, or employees, shall be deemed to be confidential and the Contractor shall not disclose the same without the express written authorization of the Tribes or as may be otherwise required under applicable law.

15.43 Subject to Available Funds. Any rights of the Contractor are subject to the limitations on and availability of such funds to the Tribes.

15.44 Taxes. Contractor and any subcontractor shall be liable for the payment of all applicable taxes incurred in connection with this Contract.

15.45 Procurement of Recovered Materials. Contractor and all subcontractors must comply with the procurement of recovered materials requirements set out in 2 C.F.R. 200.323.

15.46 Prohibition on certain telecommunications and video surveillance services or equipment. Contractor and all subcontractors must comply with the prohibitions set out in 2 C.F.R. 200.216.

15.47 Domestic preferences for procurements. Contractor and all subcontractors must comply with the domestic preferences for procurement requirements set out in 2 C.F.R. 200.322.

## **Article 16. PREVAILING WAGE RATES.**

16.1 [Reserved].

16.2 Minimum Wages. All laborers and mechanics employed under this Contract in the construction or development of the project(s) involved will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Anti-Kickback Act (29 C.F.R. Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 C.F.R. § 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the regular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 C.F.R. § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 C.F.R. § 5.5(a)(1)(ii)) and the Davis-Bacon Poster WH-1321 shall be posted at all times by the Contractor and its subcontractors at the Work site in a prominent and accessible place where it can be easily seen by the workers.

16.2.1 Any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under this Contract shall be classified in conformance with the wage determination. The relevant federal funding agency shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met: (i) The work to be performed by the classification requested is not performed by a classification in the wage determination; (ii) The classification is

utilized in the area by the construction industry; and (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

16.2.2 If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the relevant federal funding agency or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action shall be sent by the relevant federal funding agency or its designee to the Administrator of the Wage and Hour Division, Employee Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the relevant federal funding agency or its designee or will notify the relevant federal funding agency or its designee within the 30-day period that additional time is necessary.

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

16.2.4 The wage rate (including fringe benefits where appropriate) determined pursuant to this clause shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

16.3 Whenever the minimum wage rate prescribed in this Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

16.4 If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; *provided*, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

16.5 Withholding of Funds. Tribes shall, upon its own action or upon written request of an authorized representative of the U.S. Department of Labor, withhold or cause to be withheld from the Contractor under this Contract or any other federal contract with the same Contractor, or any other federally-assisted contract subject to the Davis-Bacon Act's prevailing wage requirements, which is held by the same Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by this Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working in the construction or development of the project, all or part of the wages required by this Contract, the relevant federal funding agency or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. The relevant federal funding agency or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

#### 16.6 Payrolls and Basic Records.

16.6.1 Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the Work and preserved for a period of three (3) years thereafter for all laborers and mechanics working in the construction or development of the project. Whenever the Secretary of Labor has found, under 29 C.F.R. § 5.5(a)(1)(iv), that the wages of any laborer or mechanic include the amount of costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

16.6.2 The Contractor shall submit weekly for each week in which any Work is performed under this Contract a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and

completely all of the information required to be maintained under subparagraph 16.6.1 of this clause and 29 C.F.R. § 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. This information may be submitted in any form desired. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under this Contract and shall certify the following: (i) That the payroll for the payroll period contains the information required to be maintained under this clause and that such information is correct and complete; (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed under this Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 C.F.R. Part 3; and (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into this Contract.

16.6.3 The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. § 1001 and 31 U.S.C. § 3729.

16.6.4 The Contractor or subcontractor shall make the records required under this clause available for inspection, copying, or transcription by authorized representatives of the Tribes, the relevant federal funding agency or its designee, the Contracting Officer, or the U.S. Department of Labor, as appropriate, and the Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Tribes or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment proceedings pursuant to 29 C.F.R. § 5.12.

#### 16.7 Apprentices.

16.7.1 Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services ("OATELS"), or with a State Apprenticeship Agency recognized by OATELS, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

16.7.2 The allowable ratio of apprentices to journeymen on the Work site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the Work site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where the Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman's hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

#### 16.8 Trainees.

16.8.1 Except as provided in 29 C.F.R. § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, as evidenced by formal certification by the U.S. Department of Labor,

Employment and Training Administration. The ratio of trainees to journeymen on the Work site shall not be greater than permitted under the plan approved by OATELS.

16.8.2 Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman's hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is a training program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for trainees. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the Work site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

16.9 Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and supplemented by 41 C.F.R. Part 60 and 29 C.F.R. Part 30, to the maximum extent consistent with, but not in derogation of, compliance with the Indian preference requirements set out in Section 12.2, above.

16.10 Compliance with the Davis-Bacon Act and Related Acts. All rulings and interpretations of the Davis-Bacon Act and related Acts contained in 29 C.F.R. Parts 1, 3, and 5 are herein incorporated by reference in this Contract. Any violations of this clause shall be reported to the relevant federal funding agency.

16.11 Subcontracts. The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this clause, and such other clauses as the relevant federal funding agency or its designee may by appropriate instructions require and a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these provisions.

16.12 Contract Termination; Debarment. A breach of the labor standards clauses in this Contract may be grounds for termination of this Contract and for debarment as a Contractor and a subcontractor as provided in 29 C.F.R. § 5.12.

#### **Article 17. PROTECTION OF TRIBAL PATRIMONY.**

17.1 A Klamath Tribes Tribal Historic Preservation Officer ("THPO") or other duly appointed cultural observer of the Tribes shall be present during all stages of construction, including the initial siting process, for the purpose of ascertaining compliance with the National Historic Preservation Act, Native American Graves Protection and Repatriation Act of 1990, and any applicable Tribal law regarding the disturbance, excavation, removal, interment, or preservation of human remains or cultural, historical, and archaeological artifacts.

17.2 In the event that any human remains or cultural, historical, or archaeological artifacts are found during construction by the Contractor, any subcontractor, or any of their employees, all work in the immediate area of the uncovered artifact shall immediately cease until the Tribes' THPO or duly appointed cultural observer inspects the site and determines the appropriate course of action with the approval of the Tribes and written notification to the Secretary of the Department of the Interior and the relevant federal funding agency. Any costs of delay in construction that are necessarily incurred by the Contractor under this Article shall be equitably assessed with an adjustment to the Fixed Maximum Price, hourly rate, delivery schedule, or other affected terms of this Contract as appropriate and pursuant to the Tribes express written agreement.

**IN WITNESS WHEREOF, the parties have executed this CONSTRUCTION SERVICES CONTRACT:  
effective as of the following date: xx, 2023**

CONTRACTOR:

Date: \_\_\_\_\_

by: \_\_\_\_\_

its: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

S.S. # or IRS #: \_\_\_\_\_

Klamath Tribes:

Date: \_\_\_\_\_

by: \_\_\_\_\_

its: xxDirector

Telephone: 541-783-2219

Date: \_\_\_\_\_

by: \_\_\_\_\_

its: Chief Finance Officer

Telephone: 541-783-2219

Date: \_\_\_\_\_

by: \_\_\_\_\_

its: General Manager

Telephone: 541-783-2219

Date: \_\_\_\_\_

by: \_\_\_\_\_

its: Tribal Chairman

Telephone: 541-783-2219