

## The Tulalip Tribes of Washington

### CONTRACT FORM

1. This agreement is entered into this \_\_\_th day of \_\_\_ 2010, between the Tulalip Tribes of Washington and Consolidated Borough of Quil Ceda Village, 8802-27<sup>th</sup> Avenue NE, Tulalip, WA 98271, hereinafter referred to as the TULALIP TRIBES and \_\_\_\_\_ <Insert name, physical address, telephone number and facsimile number of CONSULTANT / INSPECTOR> hereinafter referred to as CONSULTANT / INSPECTOR. The TULALIP TRIBES and CONSULTANT / INSPECTOR hereby agree that the CONSULTANT / INSPECTOR shall provide services to the TULALIP TRIBES for a specified period of time on a Unit Price basis with a not-to-exceed amount as stated herein.

2. The period of time for this agreement **shall begin the \_\_\_th day of \_\_\_, 2010 and shall be complete by the \_\_st day of \_\_\_ 2010.**

3. Project Name and Location: Project No. QCV – CP – 10-003 – OLIVE GARDEN SITE UTILITIES, Bid Package No. 10-003.01 – Special Inspection Services Work, located at 10326 34<sup>th</sup> Ave NE, Tulalip, WA 98271

4. Compensation: Payment for services under this agreement shall be on a Unit Price reimbursable basis for requested and authorized work as setforth in the following schedule:

DESCRIPTION	EST'D QTY	U of M	BID UNIT PRICE(s)	EST'D NTE AMOUNT
1. Geotechnical consulting and Professional Engineer review	Twenty-Four (24)	Hours	\$_____ per HR	\$_____ .00
2. Compaction testing of soils, subgrade observation, proof rolling.	Twenty (20)	Hours	\$_____ per HR	\$_____ .00
3. Compaction testing of soils, subgrade observation for trench subgrades and engineered fill.	Sixty (60))	Hours	\$_____ per HR	\$_____ .00
4. Nuclear densometer usage.	Seventeen (17)	Each	\$_____ per EA	\$_____ .00
5. Proctor / gradation of fill materials.	Four (4)	Each	\$_____ per EA	\$_____ .00
6. Gradation of fill materials.	Three (3)	Each	\$_____ per EA	\$_____ .00
7. Sand equivalent of fill materials.	Two (2)	Each	\$_____ per EA	\$_____ .00
8. Observation and compaction testing of hot mix asphalt.	Four (4)	Hours	\$_____ per EA	\$_____ .00
9. Asphalt extraction / gradation of hot mix asphalt.	Two (2)	Each	\$_____ per EA	\$_____ .00
10. Rice density of hot mix asphalt.	One (1)	Each	\$_____ per EA	\$_____ .00
11. Fracture count of hot mix asphalt aggregate.	Two (2)	Each	\$_____ per EA	\$_____ .00

12. Concrete inspection for placement of cast-in-place concrete.	Twenty-Four (24)	Hours	\$_____ per HR	\$_____ .00
13. Concrete compression test cylinders.	Sixteen (16)	Each	\$_____ per EA	\$_____ .00
14. Project Management.	Sixteen (16)	Hours	\$_____ per HR	\$_____ .00
15. Reimbursable travel mileage.	500	Miles	\$_____ per Mile	\$_____ .00
16. Report distribution.	One (1)	Lump Sum	Lump Sum	\$_____ .00

Payment for the completed Contract shall not exceed <Insert Not-to-Exceed amount of Contract in words> dollars (\$xx,xxx.00). All costs related to mobilization and demobilization of equipment, stand-by time or other associated costs shall be incidental to and included in Bid Unit Price(s).

5. The TULALIP TRIBES' Construction Manager authorized to implement the terms and conditions of this agreement is designated as Mr. Nick Gobin – Construction Manager.

6.a. The Contract documents includes the following, which are incorporated by reference as if fully set forth herein (not in order of precedence), on which the agreement between the TULALIP TRIBES and the CONSULTANT / INSPECTOR is based upon:

- a) This Agreement;
- b) Proposal (Form of Bid);
- c) Table of Contents;
- d) Division 0 – Bidding Requirements, Contract Forms, and Conditions of the Contract complete;
- e) Division 1 – General Requirements complete;
- f) Technical Specifications complete;
- g) Plans as listed in the Table of Contents on the Restaurant Utilities Plan Set Cover Sheet complete;
- h) Geotechnical Engineering report prepared by AMEC Earth & Environmental, Inc., 1-91M-13973-0, dated June 15, 2001 related to the adjacent Tulalip Casino project. This is for reference use only and is provided solely to share information available to the Tulalip Tribes of Washington and any use of, or reliance upon, such items by the CONSULTANT / INSPECTOR is at the risk of the CONSULTANT / INSPECTOR;
- i) Tribal Employment Rights Office (TERO) Ordinance Nos. 60 and 89; and
- j) Addendum No. \_\_\_\_\_ dated \_\_\_\_\_, 20\_\_\_\_\_.

6.b. These Contract documents together form the Contract for the Work herein described. The parties intend that the documents include provisions for all management, labor, tools, equipment, supplies, facilities and financing necessary to perform and to fully complete the Work, as well as, all work incidental thereto and all terms and conditions of payment. The documents also include all work and procedures not expressly indicated therein which are necessary for the proper execution of the Project.

7.a. The TULALIP TRIBES shall make payment for a phase to the CONSULTANT / INSPECTOR no later than thirty (30) days after the TULALIP TRIBES' accounting department begins processing CONSULTANT / INSPECTOR's invoice for that work. Such processing shall begin after CONSULTANT / INSPECTOR presents the invoices and deliverables to the TULALIP TRIBES' authorized representative and the authorized representative submits written approval to the accounting department for payment based on an inspection of the work. Payment by the TULALIP TRIBES does not constitute a waiver of any claims by the TULALIP TRIBES against CONSULTANT /

INSPECTOR concerning or arising out of this agreement. Acceptance of final payment by CONSULTANT / INSPECTOR constitutes a waiver of all claims by CONSULTANT / INSPECTOR.

7.b. CONSULTANT / INSPECTOR agrees to maintain for inspection by the TULALIP TRIBES for three years after final payment all books, records, documents, and other evidence pertaining to the costs and expenses of this agreement, hereinafter collectively called, "records", to the extent and in such detail as will properly reflect all net costs, direct and indirect, of labor, supplies, and services, and other costs of whatever nature for which reimbursement is claimed under the provisions of this agreement.

8. Any and all reports, data, findings or other materials or deliverables under this agreement shall become the property of and remain under the sole proprietorship of the TULALIP TRIBES. CONSULTANT / INSPECTOR will keep all information learned under this agreement confidential and will not release any such information, either orally or in writing, to parties other than the TULALIP TRIBES, its agents, CONSULTANT / INSPECTORS or employees without the express written permission of the TULALIP TRIBES.

9. The TULALIP TRIBES and CONSULTANT / INSPECTOR each binds themselves and their partners, agents, assigns, successors and legal representatives of such other party to this agreement and to the partners, successors and legal representatives of such other party with respect to all terms and conditions of this agreement.

10. Neither the TULALIP TRIBES nor CONSULTANT / INSPECTOR shall delegate, assign, sublet or transfer their duties or interest in this agreement without the written consent of the other party. Any such assignment, sublet, delegation or transfer shall be subject to the same terms and conditions as this agreement.

11. This agreement, including its referenced exhibits, represents the entire and complete agreement between the parties and supersedes all prior negotiations, representations, or agreements either written or oral and may be amended or modified only in writing signed by both parties. Nothing whatsoever in this agreement constitutes or shall be construed as a waiver of the TULALIP TRIBES' sovereign immunity. This agreement shall not be valid unless each and every TULALIP TRIBES signature designated below is affixed.

12. Services under this agreement are provided by CONSULTANT / INSPECTOR acting in a consulting or personal services capacity and not as a TULALIP TRIBES employee. CONSULTANT / INSPECTOR is not entitled to any payments not expressly stated herein for any fringe benefit whatsoever. CONSULTANT / INSPECTOR acknowledges that CONSULTANT / INSPECTOR is responsible for all applicable federal and state taxes, unemployment and labor and industries coverage. CONSULTANT / INSPECTOR certifies that CONSULTANT / INSPECTOR: (a) possesses all of the skills and tools necessary to perform services; and (b) will comply with specific hours developed by the Tulalip Tribes for performing services.

13. In the event payment for services under this agreement is made from federal or state funds, CONSULTANT / INSPECTOR shall abide by all applicable federal and state laws and regulations governing such funds which laws and regulations are hereby incorporated by reference. Any rights of the CONSULTANT / INSPECTOR are subject to the limitations on and availability of such funds to the TULALIP TRIBES. The CONSULTANT / INSPECTOR shall, whether or not federal or state funds are involved, without additional expense to the TULALIP TRIBES, comply with all applicable laws and

obtain all required licenses and permits necessary to execute the provisions of this agreement. CONSULTANT / INSPECTOR shall file all required returns and notices. When working on the TULALIP Indian Reservation, CONSULTANT / INSPECTOR shall comply with all Tribal laws. Before commencing work, CONSULTANT / INSPECTOR shall obtain all required Tribal licenses and permits. CONSULTANT / INSPECTOR shall indemnify and hold the TULALIP TRIBES and the Tulalip Tribes of Washington harmless from any and all costs, liabilities, or obligations by reason of the failure of CONSULTANT / INSPECTOR or his or her employees, agents, sub-consultant(s) or assigns to comply with any applicable law.

14. CONSULTANT / INSPECTOR shall not discriminate against any employee or applicant for employment on the basis of race, color, religion, age, sex, national origin, or handicap, with regard to employment "upgrading, demotion, transfer, recruitment, advertising, layoff, termination, rates of pay, or other forms of compensation and selection for training. Notwithstanding the foregoing, the CONSULTANT / INSPECTOR shall provide preference in employment and subcontracting to enrolled members of TULALIP and members of the TULALIP community as well as enterprises or businesses wholly-owned by TULALIP or its members in accordance with TERO Ordinance # 60 and Ordinance #89 as it now exists or may be hereafter amended.

15. CONSULTANT / INSPECTOR shall defend, indemnify and hold harmless the TULALIP TRIBES, its employees and agents against all loss, damage, liability, claims, lawsuits demands, or costs arising in connection with this agreement. CONSULTANT / INSPECTOR shall reimburse the TULALIP TRIBES for all costs reasonably incurred to defend the TULALIP TRIBES against such claims through attorneys of the TULALIP TRIBES' choice.

16. CONSULTANT / INSPECTOR shall promptly notify the TULALIP TRIBES of any litigation arising from or affecting its operations under this agreement, including any bankruptcy or insolvency proceedings of CONSULTANT / INSPECTOR or of its assignees or sub-consultant(s). The CONSULTANT / INSPECTOR shall not assign its rights under this agreement without first obtaining the TULALIP TRIBES' written approval.

17. CONSULTANT / INSPECTOR shall not be entitled to any interest on any amount found due and owing hereunder, whether before or after judgment, but shall, at most, only be entitled to the amount specified in paragraph number four.

18. The negotiation and execution of this agreement shall be deemed by the parties to have occurred within the TULALIP Indian Reservation and any interpretation thereof shall be in accordance with the laws of the TULALIP TRIBES.

19. The TULALIP TRIBES may terminate this agreement on ten days written notice and in such case CONSULTANT / INSPECTOR shall only be entitled to payment for work performed prior to receipt of said notice. Additionally, the TULALIP TRIBES may immediately suspend operations under this agreement by written notice of any breach. Suspension shall continue until the TULALIP TRIBES' authorized representative certifies in writing that the breach is remedied. If CONSULTANT / INSPECTOR is still in breach after seven days from the notice of suspension, the TULALIP TRIBES may, without further notice, terminate all rights of CONSULTANT / INSPECTOR under this agreement.

20. Any failure by the TULALIP TRIBES to suspend or terminate this agreement in case of breach shall not waive CONSULTANT / INSPECTOR's duty to perform strictly in accordance with this

agreement. Failure by CONSULTANT / INSPECTOR to perform on its part any duty, term or condition herein shall constitute a breach.

21. Any notice sent under paragraphs 18 - 19 may either be sent by personally giving a copy thereof to CONSULTANT / INSPECTOR or its agents, employer or CONSULTANT / INSPECTORS or mailing a copy to the address set forth below.

22. The failure of the TULALIP TRIBES to assert any claim or right at any time under this agreement shall not waive its right to assert any claim or right at a later time.

23. The TULALIP TRIBES' authorized representative shall be allowed to observe any work done by the CONSULTANT / INSPECTOR which is covered by this agreement.

24. CONSULTANT / INSPECTOR'S LIABILITY INSURANCE

24.1 The CONSULTANT / INSPECTOR shall purchase and maintain such liability and other insurance as will protect the Tulalip Tribes of Washington and the CONSULTANT / INSPECTOR from claims or losses which may arise out of or result from the CONSULTANT / INSPECTOR's performance or obligations under the Contract Documents, whether due to action or inaction by the CONSULTANT / INSPECTOR or any person for whom the CONSULTANT / INSPECTOR is responsible.

24.2 A Commercial General Liability insurance policy and Business Automobile Liability insurance policy to provide insurance coverage and limits as indicated below. Automobile liability insurance coverage shall include owned, non-owned and hired automobiles. An Umbrella or Excess Liability policy may be used to reach such limits.

Policy Limits – Commercial General Liability

\$2,000,000	General Aggregate
\$2,000,000	Products/Completed Operations Aggregate
\$1,000,000	Occurrence Limit
\$1,000,000	Personal and Advertising Injury Limit
\$ 100,000	Fire Legal Liability Limit
\$ 10,000	Medical Payments
\$1,000,000	Employer's Liability

Policy Limits – Business Automobile Liability

\$1,000,000	Combined Single Limit
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24.2.1 There shall be no residential construction or subsidence coverage exclusions or other coverage limitations without specific disclosure and approval of the Tulalip Tribes of Washington.

25. CONSULTANT / INSPECTOR'S WORKER'S COMPENSATION

25.1 All employees of CONSULTANT / INSPECTOR and Sub-consultant(s) are to be insured, including qualified self insured plans, under Washington State Industrial Insurance as well as in compliance with any Federal workers compensation regulations including USL&H and Jones Act Coverages. Employees not subject to the State Act

are to be insured under Employer's Contingent Liability (Stop Gap) \$1,000,000 on accident and aggregate.

- 25.2 Such evidence of insurance shall be in the form of an Insurance Certificate issued by the State of Washington Department of Labor and Industries or an insurer satisfactory to the Tulalip Tribes of Washington and shall provide for not less than 30 days prior written notice to the Tulalip Tribes of Washington of cancellation or reduction in coverage.

## 26. BUILDER'S RISK

- 26.1 The Tulalip Tribes of Washington shall provide and maintain, during the progress of the Work and until the execution of the certificate of Contract Completion, a Builder's Risk Insurance policy to cover all on-site Work in the course of construction including false work, temporary buildings and structures and materials used in the construction process. The amount of coverage is based upon the total completed value of the project (including the value of permanent fixtures and decorations.) Such insurance shall be on a special cause of loss form and may include such other coverage extension as the Tulalip Tribes of Washington deem appropriate. Unless otherwise provided for through agreement, the CONSULTANT / INSPECTOR experiencing any loss claimed under the Builder's Risk policy shall be responsible for up to \$10,000 of that loss. CONSULTANT / INSPECTOR may provide its own builder's risk or installation insurance coverage for amounts up to the \$10,000 deductible. CONSULTANT / INSPECTOR is responsible for insuring their property in transit, in temporary storage away from the site as well as their own tools, equipment and any employee tools.

26.1.1 Incidents related to pollution and contamination are specifically excluded from the Builders Risk Insurance policy.

26.1.2 To be eligible to make a claim under the Tulalip Tribes of Washington's Builders Risk Insurance policy, CONSULTANT / INSPECTOR shall be responsible to secure all materials and or equipment stored on the project site in a secured fenced area.

## 27. INSURANCE POLICY REQUIREMENTS

- 27.1 Each policy of insurance required to be purchased and maintained by the CONSULTANT / INSPECTOR shall name the Tulalip Tribes of Washington and The Consolidated Borough of Quil Ceda Village and its members as primary and non-contributory additional insureds using the ISO general liability form CG 2010 11/85 edition or equivalent to include products and completed operations for all CONSULTANT / INSPECTORs and Sub-consultant(s) work. Each policy and respective Certificate of Insurance shall expressly provide a provision wherein no less than 30 days or 10 days in the event of cancellation for non-payment prior written notice shall be given to the Tulalip Tribes of Washington in the event of cancellation, non-renewal, expiration or material alteration of the coverage contained in such policy or evidenced by such Certificate of Insurance.

- 27.2 At least five (5) days prior to commencement of the Work or any portion thereof, and prior to the performance of any services hereunder, CONSULTANT / INSPECTOR shall, for the purposes of protecting Owner against any claims, damages or expenses as a consequence of any acts and omissions on the part of CONSULTANT / INSPECTOR and any of its Sub-consultant(s) of any tier in performing the Work,

procure or cause or cause to be procured the following insurance coverage with insurance carriers (with an A.M. Best rating of A-VII or better) in form acceptable to Owner and shall maintain all such coverage in full force and effect through the term of this Agreement.

- 27.3 The CONSULTANT / INSPECTOR, if requested, shall furnish the Tulalip Tribes of Washington a certified copy of any insurance policy or additional insured endorsement required to be purchased or maintained by the Contract Documents. In no event shall any failure to demand a certified copy of any required insurance or insured endorsement be construed as a waiver of the obligation of the CONSULTANT / INSPECTOR to obtain insurance required to be purchased or maintained by the Contract Documents.
- 27.4 The CONSULTANT / INSPECTOR shall maintain all insurance in the required amounts, without interruption, from the date of the execution of the Contract until three (3) years after the date of approval of the certificate of Contract Completion by the Tulalip Tribes of Washington. Failure to maintain the required insurance during the time specified shall be cause for termination of the Contract.
- 27.5 Insurance policies required to be purchased and maintained by the CONSULTANT / INSPECTOR may include a reasonable loss deductible, which shall be the responsibility of the CONSULTANT / INSPECTOR to pay in the event of loss.
- 27.6 The prompt repair or reconstruction of the Work as a result of an insured loss or damage shall be the CONSULTANT / INSPECTOR's responsibility and shall be accomplished at no additional cost to the Tulalip Tribes of Washington.

## 28. WAIVERS OF SUBROGATION

- 28.1 The Tulalip Tribes of Washington and the CONSULTANT / INSPECTOR waive all rights against each other for damages caused by fire or other perils to the extent of actual recovery of any insurance proceeds under any property insurance obtained pursuant to this Article or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Tulalip Tribes of Washington as fiduciary.

## 29. OTHER PROVISIONS

- 29.1 Neither the Tulalip Tribes of Washington nor CONSULTANT / INSPECTOR shall be liable to the other party or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to any building, structure or tangible personal property of the other occurring in or about the Work, if such loss or damage is covered by insurance benefiting the party suffering such loss or damage or was required to be covered by insurance under terms of the Agreement. Each party shall cause each insurance policy obtained by it to contain the waiver of subrogation clause.
- 29.2 CONSULTANT / INSPECTOR shall indemnify, defend and hold the Tulalip Tribes of Washington harmless from all losses, damages, liabilities, fines penalties, costs (including clean-up costs) and expenses (including attorneys' fees) arising from hazardous, toxic or harmful wastes, materials or substances, as defined by applicable law, deposited on or about the Project site by CONSULTANT / INSPECTOR, Sub-consultant(s), suppliers or materialmen or its or their agents or employees. Should any material that exhibits hazardous or toxic characteristics as defined in applicable law be

brought onto the Project site by CONSULTANT / INSPECTOR, Sub-consultant(s), suppliers or materialmen or its or their agents or employees, that material will be handled, stored, transported and disposed of by CONSULTANT / INSPECTOR in accordance with respective regulations and the best available technology. Should any such material be found on the Project site that was not brought onto the Project site by CONSULTANT / INSPECTOR, Sub-consultant(s), suppliers or materialmen or its or their agents or employees, CONSULTANT / INSPECTOR shall immediately notify the Tulalip Tribes of Washington through the Construction Manager.

- 29.3 In the event CONSULTANT / INSPECTOR fails to maintain any and all insurance required by this Contract during the entire life of this Contract, the Tulalip Tribes of Washington may at its option, and without waiver of other available remedies, purchase such insurance in the name of CONSULTANT / INSPECTOR and deduct the cost of same from payments due CONSULTANT / INSPECTOR.
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**IN WITNESS WHEREOF**, the parties hereto have executed this Contract.

**CONSULTANT / INSPECTOR**

\_\_\_\_\_ Date: \_\_\_\_\_, \_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
(Print Name & Title)

By: \_\_\_\_\_  
(Authorized Signature)

**THE TULALIP TRIBES OF WASHINGTON**

\_\_\_\_\_ Date: \_\_\_\_\_, \_\_\_\_\_  
Quil Ceda Village General Manager

\_\_\_\_\_  
(Print Name)