The Yurok Tribe

REQUEST FOR QUALIFICATIONS

Architecture & Engineering Services

Project: Awok Bonnie Green Campus

Release Date
March 23, 2022

Qualifications Due Date
May 6, 2022, by 3:00pm PDT

Electronic Submission of PDF Document to:
CommunityDevelopment@yuroktribe.nsn.us
I. INTRODUCTION

Request for Qualifications

The Yurok Tribe seeks a qualified firm to provide architecture and engineering (A&E) services for the Awok Bonnie Green Campus located in Humboldt County, California.

This is a request for firms to submit a written statement of their qualifications.

The Tribe will evaluate each written statement inviting the top firm(s) for a site tour prior to their submission of a proposal which includes project approach, detailed scope of work and labor hours estimate.

Detailed information about the project and site will be provided to shortlisted firms only.

Critical Dates and Submission Instruction

The following is the anticipated schedule for selection and project delivery:

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
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<tbody>
<tr>
<td>Statement of Qualifications Due</td>
<td>May 6, 2022, by 3:00pm PDT</td>
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<tr>
<td>Shortlisted Firm(s) Notified &amp; Site Data Provided</td>
<td>May 11, 2022</td>
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<tr>
<td>Site Tour</td>
<td>May 13, 2022</td>
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<tr>
<td>Proposal Due</td>
<td>May 20, 2022</td>
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<tr>
<td>Selection Made</td>
<td>May 27, 2022</td>
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<tr>
<td>Contract Negotiations</td>
<td>May 27-June 14, 2022</td>
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<td>Contract Approval by Tribal Council</td>
<td>July 7, 2022</td>
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<tr>
<td>Project Kick-Off</td>
<td>July 8, 2022</td>
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<tr>
<td>Project Completion (to be negotiated in final contract)</td>
<td>September 30, 2022</td>
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</table>

One (1) electronic PDF file shall be submitted by email with the subject heading of “Statement of Qualifications for Awok Bonnie Green Campus Project - <insert firm name>” to:

CommunityDevelopment@yuroktribe.nsn.us

Statements must be received on or before 3:00 PM PDT, May 6, 2022, for consideration.

Statements received after the submission deadline will not be considered.
II. BACKGROUND

Site

The Awok Bonnie Green Campus, formerly known as Worthington Elementary School, was built by the Eureka Unified School District in 1955. Located at 3400 Erie Street, just outside of the Eureka city limits within the Myrtleton neighborhood in unincorporated Humboldt County, the site (APN: 016-151-015) is approximately 5.56 acres.

The project site fronts on the south side of Erie Street, which provides primary ingress/egress. Secondary ingress/egress is available from the north side of Myrtle Avenue.

Approximately 2.0 miles southeast of downtown Eureka along Myrtle Avenue, commercial and multi-family residential development has worked its way into this area from downtown along Myrtle Avenue and numerous single-family residences have been converted into small offices. Properties with frontage along Myrtle Avenue are zoned Commercial General, which allows for a variety of professional and medical offices, automotive and repair, light industrial, storage, warehousing, and retailing uses. In general, the area to the north and northeast of the project site is residential housing, predominantly single-family and is zoned accordingly.
Need

The Awok Bonnie Green Campus currently accommodates a mix of educational and essential services programming; however, there are educational, assembly and recreational programming needs that are unmet due to various site constraints.

III. SCOPE OF WORK

Objective

Working closely with Tribal staff; drawing on local knowledge, ideas, and aspirations; soliciting community input, as appropriate, to best understand the real and perceived opportunities and constraints of the site; the selected firm will combine their local knowledge with a strong understanding of entitlement issues, review processes, and local ordinances, as well as permitting and environmental review expertise to achieve innovative results and cost savings for the Yurok Tribe at the project site.

General Scope of Work

Draft tasks include: (in no particular order)

- **Facilities Condition Assessment** – Structural and MEP evaluation; hazardous materials survey; ADA compliance survey; utility study (inclusive of telecommunications); and any other analysis needed to determine current condition and cost to remedy.
- **Zoning Review** – Verify as-of-right development assumptions; and as needed, advise on the possible permitting/entitlement pathways to support programming objectives.
- **Design Charrette** – With input from Tribal community stakeholders, generate conceptual design alternatives (including rough space allocations and architectural motifs) showing building uses, locations, site circulation and parking plans to meet programming objectives and sustainability goals.
- **Decision Matrix** – Develop a robust framework to help Tribal staff objectively evaluate and compare alternative approaches for improving the site, synthesizing data from the “Facilities Condition Assessment” “Zoning Review” and “Design Charrette” to offer a realistic assessment of cost, permitting/entitlement risk, and accommodations for continuity of current services and operations.
- **Grant Support** – For the selected approach, work products needed to support EDA and other grant application(s): (including but not limited to)
  - Conceptual Design
  - Cost Estimates
Shortlisted firms will be asked to expand on, or modify these draft tasks, as part of their final proposal which is to include project approach, detailed scope of work and labor hours estimates.

Available Documents

The Yurok Tribe will make available to shortlisted firms all relevant site plans, studies, and data files to avoid replication of past and present planning efforts, and to avoid unnecessary costs.

The Yurok Tribe expects the shortlisted firms to keep all project files confidential as part of this Request for Qualifications.

IV. STATEMENT OF QUALIFICATIONS

The statement will be evaluated using a qualifications-based selection method.

The Yurok Tribe discourages overly lengthy statements. The written statement should include the components outlined below. Failure to include the requested information in the requested format may result in a determination that the statement is non-responsive.

Cover Letter (1 pg. maximum)

Transmittal letter for the statement and expression of interest in the project. The Firm’s complete name, business address, telephone number and website URL and the name and telephone number of person the Tribe should contact regarding this proposal. The letter must be signed by the company officer(s) empowered to bind the firm, with their title(s) (e.g., president, general partner).

Statement

Section I: Organization and Staffing (2 page maximum, excluding resumes)

Please include in this section a team and staff organization chart proposed for this project. The project manager who will be the Tribe’s point of contact on the project should be clearly identified.

Include resumes of the project manager, key project personnel, and resumes of key sub-consultant personnel (if any) that will participate on the project (no more than 2 pages per resume) in an appendix to the proposal. This section should clearly define the roles and responsibilities of each member of the team proposed for this project as listed in the organization chart.
Section II: Experience and Qualifications (3 pages maximum)

Please describe firm and team’s relevant experience including five similar projects. This section should include a narrative and the following set of information:

- **Project Title**
- **Client Name**
- **Client Contact (name, phone, email) (for reference check)**
- **Project Completion Date**
- **Project Contract Amount**
- **Team members that worked on this project and their role**

Section III: Additional Services (1 page maximum)

Please identify your firm’s capabilities in additional services that will be required to manage and deliver this project. The Tribe will consider awarding the selected firm additional phases of work dependent on performance and qualifications.

Selection Criteria

The ideal firm and project manager will have extensive experience assisting public entities with the delivery of a range of projects, including site assessments (both vertical and horizontal infrastructure), master planning, environmental permitting, and design charrettes, as well as familiarity with federal grant funding requirements.

Written statements will be evaluated and scored from 0 to 100 points by a selection panel comprised of staff from the Community Development Division based on the following:

- Firm qualifications (25 points)
- Project Manager qualifications and experience (30 points)
- Team organization and experience (40 points)
- Native owned business (5 points)

Any firms seeking Native owned business preference must provide evidence that it is not less than 51% Native owned and controlled. Pre-qualification is required and due by 3:00 PM (PDT) on May 2, 2022. Please contact Manual Sanchez, TERO Director, at (707) 482-1350, ext. 1388 or msanchez@yuroktribe.nsn.us for an application. If a Native owned business was previously qualified, please notify the TERO Director by the pre-qualification due date if there are any updates since your last application.

This project is subject to the Tribe’s employment rights laws and policies, and a 1% TERO tax shall be included in the final contract cost.
V. INSURANCE REQUIREMENT

Selected firm will be required to maintain adequate insurance as specified by the Tribe throughout the entire term of the project including comprehensive general liability, professional liability, auto liability, workers compensation and employer’s liability insurance. Selected firm will provide the Tribe with certificates of insurance demonstrating the insurance is in effect.

V. DISCLAIMERS

The Yurok Tribe is not responsible for any costs incurred in the preparation of Qualifications and/or any work rendered by a firm prior to the contract award.

The Yurok Tribe reserves the right at any time and for any reason to cancel this solicitation, to reject any or all Qualifications, to supplement, add to, delete from, or otherwise alter this Request for Qualifications if the conditions so dictate. The Yurok Tribe may seek clarification from a potential firm at any time and failure to respond promptly may be cause for rejection.

The Yurok Tribe reserves the right, at its sole discretion, to use without limitation, concepts and data submitted in response to this Request for Qualifications or derived by further investigation thereof.

VI. SAMPLE CONTRACT

Tribe will negotiate with selected firm using the contract template on the next page.
CONTRACT AGREEMENT

THIS CONTRACT AGREEMENT IS BETWEEN

Yurok Tribe
PO Box 1027
190 Klamath Boulevard
Klamath, California 95548
(707) 482-1350

AND

[contractor name]
[contractor business name]
[contractor address]
[contractor city, state, zip]
[(xxx) xxx-xxxx]

****************************************************************

FOR THE YUROK TRIBE

Department:

Contact Person:

Phone Number:

****************************************************************

Brief Description of Contract:

Contract Provisions At-a-Glance

Contract Amount: _____________ Contract Time Frame: _____________
Department Code: _____________ Project Code: _____________
Account Code: _____________ Agenda Item No.: _____________
TERO Permit #: _____________

Department Review (please submit to departments in order listed):

Department Director: ______________________________ Date: ______

1) COMPLIANCE: ______ Date: ______
2) TERO: ______ Date: ______
3) LEGAL: ______ Date: ______
4) FISCAL: ______ Date: ______
5) EXECUTIVE: ______ Date: ______
INDEPENDENT CONTRACTOR AGREEMENT

This Agreement, entered into as of the date of last signature (“Effective Date”), is between YUROK TRIBE and [CONTRACTOR NAME] ("Contractor") (collectively, "the Parties").

The Parties agree as follows:

1. **Contract Type.** The Parties enter into this Agreement, which is best described as a bilateral [fill in]contract.[Please see page 29 of the Procurement Policy (2017) for more information on types of contracts, including fixed price contracts, time and material (T&M) contracts, cost-reimbursement contracts, and cost plus percentage/percentage of cost contracts. All contracts shall be bilateral.]

2. **Project Covered.** Yurok Tribe hereby engages Contractor to provide ________________ (“the Project”). [Please fill in the blank with a brief description of the services to be provided. Requests for proposals, the proposal for services, the bid documents, or other documents specifying the services to be provided should be attached to the agreement. Specify the geographical area to be covered the contract. If appropriate, include the following sentence: Services will be provided as detailed in the Project request for proposals and Contractor’s proposal for services, which are attached and incorporated into this Agreement.]

3. **Taxpayer Identification Number.** Prior to commencing the Project, Contractor shall provide Yurok Tribe with a duly executed IRS Form W-9 and obtain an Employer Identification Number (EIN) from the IRS and an EDD registration number. Where an EIN is not provided, contractor shall provide his/her Social Security Number (SSN).

4. **No Training or Instructions.** Yurok Tribe enters into this Agreement based on Contractor's demonstrated ability to perform the type of services that it believes, and that Contractor has represented, are needed to accomplish the Project. Consequently, Yurok Tribe does not contemplate providing Contractor with any training or instructions with respect to the Project.

5. **Intent of Independent Contractor Relationship.**
(a) The Parties intend that the relationship created by this Agreement shall be that of service recipient and independent contractor.

(b) For all purposes, including but not limited to the Federal Insurance Contributions Act ("FICA"), the Social Security Act, the Federal Unemployment Tax Act ("FUTA"), income tax withholding requirements, California Personal Income Tax Withholding ("PIT"), California Unemployment taxes ("UI"), California Disability Insurance ("SDI"), and all other federal, state and local laws, rules and regulations, Contractor (and all Contractor's respective employees, if any) shall be treated as an independent contractor and not as an employee with respect to Yurok Tribe.

6. No Benefits. None of the benefits that are provided by the Yurok Tribe to its employees shall be available to Contractor (or Contractor’s employees, if any, which for purposes of this paragraph shall be included in the term "Contractor"). Contractor's exclusion from benefit programs maintained by Yurok Tribe is a material term of the terms of compensation negotiated by the Parties, and is not premised on Contractor's status as a non-employee with respect to Yurok Tribe. To the extent that Contractor may become eligible for any benefit programs maintained by Yurok Tribe (regardless of the timing of or reason for eligibility), Contractor hereby waives all rights to participate in these programs. Contractor's waiver is not conditioned on any representation or assumption concerning Contractor's status under the common law test. Contractor agrees that, consistent with his independent contractor status, Contractor will not apply for any government-sponsored benefits that are intended to apply to employees, including, but not limited to, unemployment benefits.

7. Tax Reporting and Filing. Contractor acknowledges and agrees that Contractor shall be responsible (as a self-employed individual) for filing all tax returns, tax declarations, and tax schedules, and for the payment of all taxes required, when due, with respect to all compensation earned by Contractor under this Agreement. Yurok Tribe will not withhold any employment taxes from compensation it pays Contractor. Rather, Yurok Tribe will report the amount it pays Contractor on IRS Forms 1099, to the extent required to do so under applicable Internal Revenue Code provisions and state or local law.

8. Compensation. Contractor's compensation for the Project shall not exceed $________, payable upon completion of the Project.
Contractor shall be solely responsible for all costs incurred in connection with the accomplishment of the Project. Upon receiving each invoice for this contract, the Yurok Tribe Fiscal Department shall have thirty (30) working days to process payment. Final payment of the contract shall not be paid until the contract has been completed and approved by Yurok Tribal Council. [Generally, this section should include a provision indicating a maximum, do not exceed amount and state how compensation shall be paid, such as upon completion or monthly invoices. The maximum, total contract amount stated should include any TERO fee. It should also state whether travel expenses are included in the stated contract amount and if not, the maximum allowable travel amount. If appropriate to the contract, this section may also include the following sentence: Project costs shall not exceed the amount identified in this section unless agreed to in advance in writing by the Director of the [Insert contracting department name].]

9. **Liability Insurance.** [Generally, $1,000,000 is an appropriate liability insurance amount. If the contracting department is unsure of what, if any, insurance is required, contact the Office of the Tribal Attorney and/or the Fiscal Department for help determining an appropriate amount.] Liability insurance in the amount of $1,000,000 is required to be obtained by the Contractor no less than five (5) days prior to commencement of this project. A certificate of insurance naming the Yurok Tribe as additionally insured shall be filed with the Yurok Tribe at the same time. The Tribe will assume no liability based upon negligence or intentional acts of the Contractor and should such negligence or intentional acts occur, Contractor agrees to assume full liability and indemnify and hold Yurok Tribe harmless for all such actions.

10. **Equipment and Tools.** Contractor shall provide and be responsible for maintaining any equipment and tools that Contractor uses, or determines is necessary, to accomplish the Project.

11. **Manner, Time, and Location.** [A detailed description of the scope of work/services is required for all Contracts. Expert assistance in developing the scope of work may be requested by a separate Contract agreement, more common for Construction Contracts. The scope of work/services shall show the sequence in which the contract is to be handled and shall indicate at what point preliminary or partial work is to be completed, and the type and number of reports to be delivered, the exact material to be used, and work to be accomplished. If attached as an addendum to
12. **Personnel.** Contractor shall have or shall secure sufficient personnel to complete the requirements under this Agreement. No Tribal employees shall be hired by the Contractor or his/her representatives for work under this Agreement.

13. **Right to Engage Assistants.** Contractor shall have the right to engage others to assist in the accomplishment of the Project. Contractor shall be solely responsible for paying all compensation owed to any assistants engaged and for paying, and/or withholding and remitting to the appropriate government agency, any applicable employment taxes that might be owed with respect to this compensation. Contractor also shall indemnify and hold Yurok Tribe harmless against any and all liabilities attributable to the obligations imposed on Contractor under this Paragraph 13. The Parties acknowledge that Contractor shall retain the exclusive right to determine which workers Contractor shall engage for these purposes. Contractor agrees to provide proof of Workers’ Compensation insurance coverage for all assistants he engages.

14. **Tribal Employment Rights Ordinance (TERO).** Contractor acknowledges that Contractor has had the opportunity to read the Yurok Tribe TERO Ordinance, is fully aware of the legal effects of the TERO Ordinance on this agreement, and agrees to comply with the TERO Ordinance, including payment of all applicable TERO fees. The TERO fee of ________ will be automatically deducted upon receipt of any invoice. [Fill in the TERO fee percentage. The TERO Ordinance calls for a one-time fee of 3% of the total contract for construction contracts or ½ of 1% for all other contracts. Education, cultural, child care, fiscal, and TERO contracts are exempt from the TERO fee. If the contracting department is unsure of what the appropriate TERO fee percentage or amount should be, contact the TERO Office.]

15. **Performing Services for Others.** Yurok Tribe agrees that Contractor may perform services for others, so long as the performance of these services does not interfere with the completion of the Project.

16. **Oversight and Status Reports.** The Yurok Department of [Fill in appropriate Yurok Department] is charged with the administration and reporting responsibilities necessary to meeting the general and special provision of this Agreement. Any questions regarding Agreement compliance should we directed to [Fill in
17. **Confidentiality.** Contractor agrees that it obtains only the right to use any data and information provided by the Yurok Tribe, its agents, or its representatives or developed by Contractor for the sole purpose of completing the Project. Data is a generic term to cover technical data, computer software, and special works, etc. Contractor agrees that no right, title, or interest in or to any copyrights, trademarks, or other proprietary rights relating to the data or information is transferred or licensed from the Yurok Tribe to Contractor. This Agreement does not grant Contractor the right to reveal, discuss, or transfer any data to third parties, other than as provided in this Agreement. Contractor understands and agrees that, despite any wording to the contrary in this Agreement, it shall not transfer cultural data to third parties without written authorization from the Yurok Tribe. The provisions of this section will survive the expiration or termination of this Agreement.

Drafter’s Note to Section 17: (to be deleted in the final Agreement) The Tribe sometimes gives or obtains data right to use technical data, computer software, or special works. If so, put that in this Section of the Agreement. The Tribe, under this Section, may also give or receive licenses (on how it may use and to whom it may give such rights) of varying scope for the use of recorded information, software, and special works, etc. If that is intended, please outline in this Section.

18. **Cultural Clearance.** Part of the mission of the Yurok Tribe is to restore and preserve Tribal traditions, customs, language and ancestral rights. The following provisions are identified to protect and promote cultural items as applicable: [fill in]

19. **Ownership of Information and Documents.** Any and all data, information, discussions, memoranda, presentations and documents developed or prepared by Contractor for the Project shall be held in strict confidence and shall not be used by Contractor for any other work unless approved by the Yurok Tribal Council in writing prior to any disclosure of such information. The Yurok Tribe may require all such information to be marked with the legend “Property of the Yurok Tribe – Confidential – Do Not Disclose.” Immediately upon expiration, suspension, or termination of this agreement, Contractor agrees to provide the Yurok Tribe all such data,
documents, and other information, whether generated by Contractor or received by Contractor from the Yurok Tribe that is in Contractor’s possession or under its control. This shall not preclude disclosure of information pursuant to judicial or administrative processes of the Yurok Tribal Court or other court with competent jurisdiction. The provisions of this section will survive the expiration or termination of this Agreement.

20. Term; Completion Date. The starting date of this Project is __________. Contractor agrees to complete the Project by no later than __________, 20___. The Contractor represents that it has sufficient resources to guarantee start and completion of the contract within the specified time period. Failure to complete the Project by __________, 20__ shall subject Contractor to a financial obligation of $150 per day. This Agreement shall expire upon completion of the Project unless otherwise terminated pursuant to the terms of this Agreement.

21. Termination For Cause. In the case of a material breach of this Agreement by one Party, the other Party shall have the right to terminate this Agreement with no advance notice if, after providing the breaching Party with notice of the breach, the breaching Party fails to cure the breach within ten (10) days after receipt of the notice of breach. In such case, the Yurok Tribe may complete the Project by whatever method the Yurok Tribe deems expedient.

22. Termination by the Yurok Tribe for Convenience. The Yurok Tribe reserves the right to terminate the Agreement at any time upon determination of the Tribal Council that it is in the best interest of the Yurok Tribe. The Yurok Tribe shall provide Contractor notice specifying the date of termination. All finished or unfinished work and materials previously paid for shall, at the option of the Yurok Tribe, become the Yurok Tribe’s property. Contractor shall be paid for all costs incurred for work provided up to the date of termination.

23. Sovereign Immunity. Nothing in this agreement shall be deemed or construed to be a waiver of the sovereign immunity of the Yurok Tribe or Yurok Tribal officials or employees acting within their official or individual capacities.

24. Drug and Alcohol Policy. Contractor and all employees or subcontractors of Contractor working on Tribal property are subject to the Yurok Tribe's Drug and Alcohol Free Workplace Policy.
25. **Equal Employment Opportunity.**

   a. 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: 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 by the contracting officer setting forth the provisions of this nondiscrimination clause.

   b. 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.

   c. 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.
d. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

e. 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.

f. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

g. In the event of the Contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such 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 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.

h. The Contractor will include the provisions of paragraphs (a) through (h) 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 may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for
noncompliance: *Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.*

Drafter’s Note to Section 25: (to be deleted in the final Agreement) Delete the Section 25 if project is NOT a “Federally assisted construction contract”- where construction work is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government.

26. **Compliance with Davis Bacon and Related Act Requirements.**
   a. **Minimum Wages.**
      i. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), 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 Act (29 CFR 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 paragraph (a)(1)(iv) of this section; 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 particular 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 on
the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 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 paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

ii.

1. The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
   a. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
   b. The classification is utilized in the area by the construction industry; and
   c. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

2. If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour
Division, 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 contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

4. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, 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.

iii. Whenever the minimum wage rate prescribed in the 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.

iv. 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.

b. **Withholding.** The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime 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 the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the Contractor, sponsor, applicant, or owner, 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.

c. **Payrolls and basic records.**

i. 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 years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wage paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-
Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any 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. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

ii.

1. The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at [http://www.dol.gov/esa/whd/forms/wh347instr](http://www.dol.gov/esa/whd/forms/wh347instr).
The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime Contractor to require a subcontractor to provide addresses and social security numbers to the prime Contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

2. 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 the contract and shall certify the following:
   a. That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
   b. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the 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 Regulations, 29 CFR part 3;
c. 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 the contract.

3. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (a)(3)(ii)(B) of this section.

4. The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

iii. The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and 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 Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, 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 action pursuant to 29 CFR 5.12.

d. Apprentices and trainees –

i. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed 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, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 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 the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job 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 above, 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 job 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 a 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 journeymen 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 determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of
Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, 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.

ii. Trainees. Except as provided in 29 CFR 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, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. 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 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 on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. 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 on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job 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. 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.

iii. **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

e. **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the [write in the name of the Federal agency] may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

f. **Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.

g. **Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

h. **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

i. **Certification of eligibility.**

   i. By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
ii. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

iii. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

Drafter’s Note to Section 26: (to be deleted in the final Agreement) This Section 26 only applies for all prime construction contracts in excess of $2,000 awarded by non-Federal entities. If not, remove this Section.

27. **Compliance with Copeland Anti-Kickback Act.**

   a. Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Contract.

   b. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

   c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 C.F.R. § 5.12.

Drafter’s Note to Section 27: (to be deleted in the final Agreement) This Section 27 only applies for all prime construction contracts in excess of $2,000 awarded by non-Federal entities. If not, remove this Section.

28. **Clean Air Act.** Contractor and all employees or subcontractors of Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 40 U.S.C. 7401 et seq. The Contractor further agrees to report each violation to the Yurok Trial Environmental Program (“YTEP”) and understands and agrees that YTEP will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (“FEMA”), and the appropriate
Environmental Protection Agency Regional Office. The Contractor agrees to include these requirements in each subcontract exceeding $100,000.00 financed in whole or in part with Federal assistance provided by FEMA.

Drafter’s Note to Section 28: (to be deleted in the final Agreement) Delete/remove this Section 28 if contract amount in Section 8 is $150,000.00 or less.

29. Federal Water Pollution Control Act. Contractor and all employees or subcontractors of Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Act, as amended, 33 U.S.C. 1251 et seq. The Contractor further agrees to report each violation to the Yurok Trial Environmental Program (“YTEP”) and understands and agrees that YTEP will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (“FEMA”), and the appropriate Environmental Protection Agency Regional Office. The Contractor agrees to include these requirements in each subcontract exceeding $100,000.00 financed in whole or in part with Federal assistance provided by FEMA.

Drafter’s Note to Section 29: (to be deleted in the final Agreement) Delete/remove this Section 29 if contract amount in Section 8 is $150,000.00 or less.


a. Overtime Requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

b. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such
District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.

c. Withholding for unpaid wages and liquidated damages. The Yurok Tribe shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section. No Contractor and all employees or subcontractors of Contractor are subject to the Contract Work Hours and Safety Standards Act (40 U.S.C. §§3701-370), as amended.

Drafter’s Note to Section 30: (to be deleted in the final Agreement) Delete/remove the Section 30 if contract amount in Section 8 is $100,000 or less OR contract does not involvement employment of “mechanics or laborers”.

31. Rights to Inventions Made Under Contract or Agreement.

Drafter’s Note to Section 30: (to be deleted in the final Agreement) If the Federal award meets the definition of “funding agreement” under 37 CFR 401.2(a) and the recipient or subrecipient wished to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement” this Contract Agreement must contain this clause. “Funding agreement” means any contract, grant, or cooperative agreement entered into between any Federal agency and any contractor for the performance of experimental, developmental, or research work funding in whole or in party by the Federal government. See 2 CFR 200.326.
a. Definitions

i. **Invention** means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

ii. **Subject invention** means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

iii. **Practical Application** means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.

iv. **Made** when used in relation to any invention means the conception or first actual reduction to practice of such invention.

v. **Small Business Firm** means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 133-8 and 13 CFR 121.3-12, respectively, will be used.

vi. **Nonprofit Organization** means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.
b. Allocation of Principal Rights. The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.


i. The Contractor will disclose each subject invention to the Federal Agency within two months after the inventor discloses it in writing to contractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

ii. The Contractor will elect in writing whether or not to retain title to any such invention by notifying the Federal agency within two years of disclosure to the Federal agency. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.
iii. The Contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The contractor will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

iv. Requests for extension of the time for disclosure, election, and filing under subparagraphs (1), (2), and (3) may, at the discretion of the agency, be granted.

d. **Conditions When the Government May Obtain Title.** The contractor will convey to the Federal agency, upon written request, title to any subject invention—

i. If the **contractor** fails to disclose or elect title to the subject invention within the times specified in (c), above, or elects not to retain title; provided that the agency may only request title within 60 days after learning of the failure of the contractor to disclose or elect within the specified times.

ii. In those countries in which the contractor fails to file patent applications within the times specified in (c) above; provided, however, that if the contractor has filed a patent application in a country after the times specified in (c) above, but prior to its receipt of the written request of the Federal agency, the contractor shall continue to retain title in that country.

iii. In any country in which the **contractor** decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

e. **Minimum Rights to Contractor and Protection of the Contractor Right to File**

i. The Contractor will retain a nonexclusive royalty-free license throughout the world in each
invention to which the Government obtains title, except if the contractor fails to disclose the invention within the times specified in (c), above. The contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the contractor is a party and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Federal agency except when transferred to the successor of that party of the Contractor's business to which the invention pertains.

ii. The Contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

iii. Before revocation or modification of the license, the funding Federal agency will furnish the contractor a written notice of its intention to revoke or modify the license, and the contractor will be allowed thirty days (or such other time as may be authorized by the funding Federal agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and agency regulations (if any) concerning the licensing of Government-owned inventions, any decision
f. **Contractor Action to Protect the Government's Interest**  
   
i. The Contractor agrees to execute or to have executed and promptly deliver to the Federal agency all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the contractor elects to retain title, and (ii) convey title to the Federal agency when requested under paragraph (d) above and to enable the government to obtain patent protection throughout the world in that subject invention.

   ii. The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the contractor each subject invention made under contract in order that the contractor can comply with the disclosure provisions of paragraph (c), above, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by (c)(1), above. The contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

   iii. The Contractor will notify the Federal agency of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.

   iv. The **contractor** agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, “This invention was made with government support under (identify the contract) awarded by...
(identify the Federal agency). The government has certain rights in the invention.”

g. **Subcontracts**

i. The Contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the contractor in this clause, and the contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

ii. The Contractor will include in all other subcontracts, regardless of tier, for experimental developmental or research work the patent rights clause required by [cite section of agency implementing regulations or FAR].

iii. In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the agency, subcontractor, and the contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

h. **Reporting on Utilization of Subject Inventions.** The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the contractor, and such other data and information as the agency may reasonably specify. The contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), the agency agrees it will not disclose such
information to persons outside the government without permission of the contractor.

i. Preference for United States Industry. Notwithstanding any other provision of this clause, the contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency upon a showing by the contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

j. March-in Rights. The Contractor agrees that with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request the Federal agency has the right to grant such a license itself if the Federal agency determines that:

   i. Such action is necessary because the contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.

   ii. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the contractor, assignee or their licensees;

   iii. Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the contractor, assignee or licensees; or

   iv. Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of
the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

k. Special Provisions for Contracts with Nonprofit Organizations. If the Contractor is a nonprofit organization, it agrees that:

i. Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Contractor;

ii. The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

iii. The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and

iv. It will make efforts that are reasonable under the circumstances to attract licensees of subject invention that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Contractor. However, the Contractor agrees that the Secretary may review the Contractor's licensing program and decisions regarding small business applicants, and the contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary when the Secretary's
review discloses that the contractor could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4).

1. Communication. The central point of contact for communications on matters relating to this clause shall be the Yurok Tribal General Counsel, who can be reached by calling (707) 482-1350.


33. Access to and Retention of Records. The following access to records requirements apply to this contract:

a. The contractor agrees to provide the Yurok Tribe, the Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity (PTE) or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

b. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

c. The Contractor agrees to provide the Yurok Department Lead or his/her authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

d. Financial records, supporting documents, statistical records, and all other Tribal records pertinent to a Federal award must be retained for a period of three (3) years from the date of submission of the final
expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or PTE in the case of the subrecipient. Should Contractor have any questions regarding the length of required document retention, they are to contact the Tribe immediately.

34. **Indemnification.** Contractor indemnifies and holds harmless Yurok Tribe from and against any and all liabilities, losses, damages, claims or causes of action, and any connected expenses (including reasonable attorneys' fees) that are caused, directly or indirectly, by or as a result of the performance by Contractor or its employees or agents of the Project. The Yurok Tribe indemnifies Contractor for any and all claims resulting from the Yurok Tribe’s use of data, documents, or other information prepared by the Contractor for the Project for purposes beyond those of this Agreement.

35. **Performance Bond.** The Tribe reserves the right to require that a bond satisfactory to the Approving officer in an amount equal to the value of this contract be delivered before a notice to proceed is issued.

36. **Notices.** Any notice under this Agreement must be in writing and shall be effective upon delivery by hand or three (3) business days after deposit in the United States mail, postage prepaid, certified or registered, and addressed to Yurok Tribe or to Contractor at the corresponding address below. Contractor shall be obligated to notify Yurok Tribe in writing of any change in his address. Notice of change of address shall be effective only when done in accordance with this Paragraph.

Yurok Tribe's Notice Address:

[tribal contact person]
[tribal department]
Yurok Tribe
PO Box 1027
190 Klamath Boulevard
Klamath, California  95548
(707) 482-1350

Contractor's Notice Address:
37. **Integration.** This Agreement is intended to be the final, complete, and exclusive statement of the terms of Contractor's engagement by Yurok Tribe. This Agreement supersedes all other prior and contemporaneous agreements and statements, whether written or oral, express or implied, pertaining in any manner to the engagement of Contractor, and it may not be contradicted by evidence of any prior or contemporaneous statements or agreements. To the extent that the practices, policies, or procedures of Yurok Tribe, now or in the future, apply to Contractor and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control.

38. **Amendments; Waivers.** This Agreement may not be amended except by an instrument in writing, signed by each of the Parties. Failure to exercise any right under this Agreement shall not constitute a waiver of such right.

39. **Assignment; Successors and Assigns.** Neither Yurok Tribe nor Contractor shall assign any rights or obligations under this Agreement.

40. **Severability.** If a court or arbitrator holds any provision of this Agreement to be invalid, unenforceable, or void, the remainder of this Agreement shall remain in full force and effect, however, nothing in this section shall be construed to waive the Yurok Tribe’s sovereign immunity.

41. **Account Number.** Payment for services rendered by Contractor shall be made from account number [Insert project number].

42. **Bid Protest and Contract Claims.** The Tribe alone shall be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the Tribe of any contractual responsibilities under this Agreement. A federal awarding agency will not substitute its judgment for that of the Tribe unless the matter is primarily a Federal concern. Violations
of law will be referred to the Tribal, local, State, or Federal authority having proper jurisdiction.

43. **Dispute Resolution.** In the event of any dispute between the Parties, Contractor will not stop work but will continue to diligently complete the Project in the manner directed by the Yurok Tribe.

44. **Interpretation.** This Agreement shall be construed as a whole, according to its fair meaning, and not in favor of or against any Party. By way of example and not in limitation, this Agreement shall not be construed in favor of the Party receiving a benefit nor against the Party responsible for any particular language in this Agreement. Captions are used for reference purposes only and should be ignored in the interpretation of the Agreement.

45. **Contractor Acknowledgment.** Contractor acknowledges that Contractor has read and understands this agreement and has had the opportunity to consult legal counsel in regard to this Agreement. Contractor further acknowledges that Contractor has entered into it freely and voluntarily and based on Contractor’s own judgment and not on any representations or promises other than those contained in this Agreement and further agrees to submit to the jurisdiction of the Yurok Tribal Court for all actions arising out of this Agreement.

The Parties have duly executed this Agreement as of the date of last signature.

[INSERT NAME OF CONTRACTOR]

______________________________   Date: _____________
[Authorized signer name]
[Authorized signer’s position with Contractor]

YUROK TRIBE

______________________________   Date: _____________
[Department manager name]
[Tribal Department]

__________________________________   Date: _____________
Joseph L. James, Chair
Yurok Tribe

**Brief Description of Contract:**

[Copy and paste brief description from page 1 here]