

AMENDMENT #7 TO THE
FY 2021 FUNDING AGREEMENT EXTENDED
THROUGH 2025
BETWEEN THE MATCH-E-BE-NASH-SHE-WISH BAND
OF POTTAWATOMI INDIANS (GUN LAKE TRIBE)
AND THE
UNITED STATES OF AMERICA

Under the provisions of Section 8 of the Self-Governance Funding Agreement (FA) and in accordance with 25 U.S.C. §5367(g), the Match-E-Be-Nash-She-Wish Band of Pottawatomis Indians ("Tribe") and the Secretary of the Department of the Interior ("Secretary") agree to extend the FA through Fiscal Year 2025.

Further, the parties agree to incorporate the attached construction project addendum for the Tribal Climate Resilience (TCR) – "Gun Lake Tribe Electric Infrastructure Implementation Project" into the MFA in the amount of \$2,350,000.00. The assigned AOTR for this project is Zachary Jorgenson (zachary.jorgenson@bia.gov).

Funding for the TCR project can only be provided on a one-time-only basis for this year and such funding is not guaranteed to be funded in subsequent years.

This amendment shall be effective upon the signature of both parties. All other provisions of this Agreement remain the same.

**Match-E-Be-Nash-She-Wish Band of
Pottawatomis Indians (Gun Lake Tribe)**

By: Bue Potts
Chairman

Date: 12-13-24

United States of America

By: Sharee M. Freeman
Director, Office of Self Governance

Date: DEC 16 2024

**OFFICE OF SELF GOVERNANCE
WASHINGTON, D.C.**

**25 USC 5367(g) FIXED PRICE CONSTRUCTION PROJECT
ADDENDUM TO FUNDING AGREEMENT**

BY AND BETWEEN THE

**UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR
OFFICE OF SELF GOVERNANCE**

AND

**MATCH-E-BE-NASH-SHE-WISH BAND
OF POTTAWATOMI INDIANS (GUN
LAKE TRIBE)**

**APPROVED TRIBAL CLIMATE RESILIENCE PLAN FOR THE GUN LAKE
ELECTRIC INFRASTRUCTURE IMPLEMENTATION PROJECT**

**ADDENDUM TO AMENDMENT #7
DECEMBER 2024**

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SECTION A – AUTHORITY AND PURPOSE

This addendum is hereby executed as a **CONSTRUCTION Agreement (Agreement)** between the authorized representative for the Office of Self Governance (OSG) and the **Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians (TRIBE)**. This Agreement requires that a CONSTRUCTION package be furnished to OSG by the **TRIBE** for the Production of Plans, Permits, and Engineer's estimate for the Construction Project. Tribal Climate Resilience (TCR) Program funds are hereby provided for the purpose to include Inflation Reduction Act (IRA) funds authorized under the Indian Self-Determination and Education Act with the **TRIBE** and includes all requirements reflected herein.

The **CONSTRUCTION PROJECT** is identified by the **Bureau of Indian Affairs Branch of Tribal Climate Resilience**. This Agreement is entered into by the OSG, on behalf of the United States pursuant to the Infrastructure and Investment and Jobs Act (Public Law 117-58), the Further Extending Government Funding Act (Public Law 117-70), Consolidated Appropriations Act of 2023 (P.L. 117-328) 25 U.S.C. 2, and the Snyder Act (25 U.S.C 13) and by the authority of the **TRIBE**.

Each provision of the Indian Self-Determination and Education Act (25 U.S.C. 5301 et seq. "ISDEAA" or the "Act"), and each provision of this Agreement shall be liberally construed for the benefit of the **TRIBE** to transfer the funding and the following related functions, services, activities, and programs (or portions thereof) that are otherwise contractible under 25 U.S.C. 5302(a), 5324(a)(3)(A), 5363(b)(1), 5363(e), and 5367 of such Act, including all related administrative functions, along with funding in the amount identified in item 1A in the Table of Contents.

The resolution of the **TRIBE** authorizing the operation of programs, services, functions, and activities identified in this Agreement is incorporated herein as **Attachment No. 1**.

SECTION B – SUPPLIES OR SERVICES

B.1 REQUIREMENTS

The **TRIBE** agrees to furnish the necessary qualified personnel including State of Michigan licensed engineers and surveyors, and other related CONSTRUCTION professionals to fulfill the requirements of this Agreement for the TCR projects in Shelbyville, MI

B.2 ESTIMATED TOTAL COST

The estimated total cost for this Agreement is \$2,350,000.00 of IRA Funds obligated to this Agreement and may be subject to the availability of appropriations and Congressional actions. Expenditures for CONSTRUCTION activities will be identified and reported separately by the Tribe.

B.3 AGREEMENT PRICE SCHEDULE

The Agreement Price Schedule (Budget) is encompassed within the attached budget and narrative. **Attachments No. 2 and No. 3** for CONSTRUCTION activities are authorized by this Agreement. The amounts appearing in the Award are constrained by the **TRIBE's** TCR funds.

B.4 AGREEMENT TYPE

This is a 25 USC 5367(g) FIXED PRICE CONSTRUCTION project.

B.5 SELF-CERTIFICATION

The **TRIBE** is assuming responsibility to review and approve Plans, Specifications, and Estimate (PS&E) prepared under this Agreement. The **TRIBE** agrees that: (1) A Michigan-licensed professional engineer will supervise CONSTRUCTION and approve the PS&E package by applying a current licensed engineer's seal issued by the State of Michigan to the cover pages of the plans, the cover page of the specifications, and the cover page of the estimate. (2) A Michigan-licensed professional engineer will certify by formal letter the PS&E meets or exceeds the CONSTRUCTION, health, and safety standards., and (3) The **TRIBE** will provide a copy of the certification and approved PS&E package to the Awarding Official (AO) for approval and a copy to the Awarding Official's Technical Representative (AOTR) and TCR Specialist before the solicitation of the project or Notice-to-Proceed, subject to the terms cited in Section D.3, Submittals of this Agreement.

SECTION C – TERM OF AGREEMENT

The term of this Agreement shall become effective from the date of execution by the **TRIBE** and OSG and continues for a period through **December 31, 2029**, subject to extensions as may be authorized by the terms of the Agreement and the specifications contained herein. Construction is authorized to begin within **TEN (10) calendar days** upon issuance of the official NOTICE-TO-PROCEED (NTP) to the **TRIBE** by the Awarding Official.

Note: Actual construction performance times to be determined upon completion of project CONSTRUCTION and will be incorporated by modification.

SECTION D – PERFORMANCE SCHEDULE

D.1 SPECIAL AGREEMENT REQUIREMENTS

Ultimate responsibility and accountability of the project resides with the **TRIBE**. By signing this Agreement, the **TRIBE** certifies that its purchasing, financial and property systems and staffing (including management and architectural/engineering resources) are adequate to satisfactorily perform the work required under this construction project. This certification does not limit the OSG's authority to review the adequacy of the **TRIBE's** purchasing, financial, and property systems.

FEDERAL REVIEW AND VERIFICATION

In General—On a schedule negotiated by the Secretary and the **TRIBE**—

1. The Secretary shall review and verify, to the satisfaction of the Secretary, that project planning and design documents prepared by the **TRIBE** in advance of initial construction are in conformity with the obligations of the **TRIBE** under 25 U.S.C. 5367(d); and
2. Before the project planning and design documents are implemented, the Secretary shall review and verify to the satisfaction of the Secretary that subsequent document amendments which result in a significant change in construction are in conformity with the obligations of the **TRIBE** under 25 U.S.C. 5367(d).

TRIBAL OPTION TO CARRY OUT CERTAIN FEDERAL ENVIRONMENTAL ACTIVITIES

1. Subject to agreement from the Secretary, the **TRIBE** may, under 25 U.S.C. 5367(b-c) assume some Federal responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq., "NEPA"), the National Historic Preservation Act (division A of subtitle III of title 54, 54 U.S.C. §§ 300101 et seq., "NHPA") and related provisions of other law and regulations that would apply if the Secretary were to undertake the construction project.
2. To assume such Federal responsibilities the **TRIBE** must adopt a resolution:
 - a. designating a certifying Tribal officer to represent the **TRIBE** and to assume the status of a responsible Federal official under those Acts, laws, or regulations; and
 - b. accepting the jurisdiction of the United States courts for the purpose of enforcing the responsibilities of the certifying Tribal officer assuming the status of a responsible Federal official under those Acts, laws, or regulations.
3. Nothing in this Agreement authorizes the **TRIBE** to assume any responsibilities of the Secretary under NEPA, NHPA, and related provisions of other law and regulations that are inherent Federal functions. 25 U.S.C. 5367(c).
4. Alternatively, the **TRIBE** may elect to carry out some or all activities involving development and preparation of applicable documentation under NEPA, NHPA and related provisions of other law and regulations for final review and approval by the Secretary.
5. Any environmental responsibilities assumed by the **TRIBE** under this 25 U.S.C. 5367(b) must be identified in writing and negotiated with the AO and AOTR and included in this Agreement. No employee of the Department is authorized to delegate to the **TRIBE** inherent Federal functions involving final review and approval of documentation for compliance with NEPA, NHPA, and related provisions of other law and regulations including, but not limited to, those identified in Section G, below.

D.2.a CONSTRUCTION PHASE:

The **TRIBE** will provide the services of a registered professional engineer who will perform the duties of all CONSTRUCTION criteria. The CONSTRUCTION for each project identified will comply with all existing State of Michigan and federal regulations.

The following is a list of CONSTRUCTION criteria, which will govern the CONSTRUCTION of the project:

1. Budget/Narrative (**Attachments No. 2 and No. 3**)
2. The Americans with Disabilities Act (ADA PL 101-366) as set forth within the guidelines "ANSI A117.1-1992"

The work required in the CONSTRUCTION phase will include:

1. Plans and Specifications
2. Engineer's Estimate
3. Permits
4. National Environmental Policy Act (NEPA) documents, as necessary
5. National Historic Preservation Act (NHPA) documents, as necessary
6. Archaeological Resources Protection Act (ARPA) documents, as necessary
7. Native American Graves Protection and Repatriation Act (NAGPRA) documents, as necessary.

Refer to the detailed description of required work incorporated herein as **Attachment No. 2**, Statement of work.

D.2.b MONITORING PHASE:

The **TRIBE** shall be responsible for monitoring the administrative oversight of the Agreement to ensure compliance with the Agreement to include any subcontracts awarded to complete this CONSTRUCTION project.

D.3 SUBMITTALS OF THIS AGREEMENT

The work required in the CONSTRUCTION phase will include:

1. Plans and Specifications
2. Engineer's Estimate
3. Permits
4. National Environmental Policy Act (NEPA) documents, as necessary
5. National Historic Preservation Act (NHPA) documents, as necessary
6. Archaeological Resources Protection Act (ARPA) documents, as necessary
7. Native American Graves Protection and Repatriation Act (NAGPRA) documents, as necessary.

Refer to the detailed description of required work incorporated herein as **Attachment No. 2**, Statement of work.

SECTION E – AGREEMENT ADMINISTRATION DATA

E.1 GOVERNMENT ADMINISTRATION PERSONNEL

Not later than the effective date of this Agreement, the OSG provides designation to the **TRIBE** of a senior official to serve as representative for notices, proposed amendments of the Agreement, and other purposes for this Agreement: Sharee Freeman, Director, Office of Self-Governance, 1849 C Street NW MIB 3624, Washington DC 20240, telephone (202) 219-0244 sharee.freeman@bia.gov. The **TRIBE** shall provide a written designation of a senior official to serve as representative for notices, proposed amendments to the Agreement, and other purposes for this Agreement. All correspondence will be addressed to the Awarding Official, with a concurrent copy provided to the Awarding Official's Technical Representative (AOTR), Zachary Jorgenson (Zachary.jorgenson@bia.gov).

SECTION F – PROGRAM STANDARDS

F.1 The **TRIBE** agrees to administer the program, services, functions and activities (or portions thereof) for this Agreement in conformity with the developed plans and specifications and all applicable Federal, State, Local, Tribal or other engineering and construction standards, codes and Federal guidelines, applicable health and safety standards. 25 USC Sec. 5367(d).

F.2 **MANAGEMENT SYSTEMS:** The **TRIBE'S** financial management system shall assure to the following elements:

1. Financial Reports: Accurate, current, and complete disclosure of the financial results of the TCR construction activities. This includes providing the Secretary of the United States Department of the Interior, (may be referred in this Agreement as the "Secretary") a completed

Financial Status Report, SF-425 on a quarterly basis, as negotiated and agreed to in this Agreement.

2. Accounting Records: Maintain records sufficiently detailed to identify the source and application of TCR funds received by the **TRIBE**. The system shall contain sufficient information to identify contract awards, obligations and unobligated balances, assets, liabilities, outlays, or expenditures and income.
3. Internal Controls: Maintain effective control and accountability for all TCR received and for all Federal real property, personal property, and other assets furnished for use by the **TRIBE** under this Agreement.
4. Budget Controls: Permit the comparison of actual expenditures or outlays with the amounts budgeted by the **TRIBE** for this Agreement.
5. Allowable Costs: Sufficient to determine the reasonableness, allowability and applicability of TCR costs based upon the terms of this Agreement and the **TRIBE'S** applicable OMB cost principles (2 CFR Part 200 Subpart E).
6. Source Documentation: Contain accounting records that are supported by source documentation, e.g., canceled checks, paid bills, payroll records, time and attendance records, contract award documents, purchase orders, and other primary records that support TCR fund expenditures.
7. Cash Management: Provide for accurate, current, and complete disclosure of cash revenues disbursements, cash-on-hand balances, and obligations by source and application for the **TRIBE**, and subcontractor(s) if applicable, so that complete and accurate cash transactions may be prepared as required by this Agreement.

SECTION G – FEDERAL REQUIREMENTS COMPLIANCE

By signing this Agreement, the **TRIBE** is certifying its compliance with the listed laws and regulations. The **TRIBE** may be required to certify its compliance with other statutes not listed herein which may be determined generally applicable to this Agreement.

- G.1 National Environmental Policy Act of 1969 (NEPA), Public Law 91-190 (42 USC 4321);
- G.2 National Historic Preservation Act (NHPA), Public Law 89-665 (16 USC 470), as amended by Public Law 94-422 and Public Law 96-515;
- G.3 Endangered Species Act of 1973, Public Law 93-204;
- G.4 Archaeological Resources Protection Act (16 USC 470aa, et seq.);
- G.5 Native American Graves Protection and Repatriation Act (25 USC 3001-3013);
- G.6 Historical and Archaeological Data Protection Act (16 USC 469, et seq.);
- G.7 Federal Water Pollution Control Act and Clean Water Act (33 USC 1251);
- G.8 Clean Air Act (42 USC 7401);
- G.9 Environmental Protection Agency regulations (40 CFR 15);
- G.10 Farmland Protection Policy Act (7 CFR 658);
- G.11 Occupational Safety and Health Act (OSHA), Title 29 CFR Part 1926.20, Public Law 91-596, OSHA Section 4 and 5;
- G.12 Procedures for Abatement of Highway Traffic Noises and Construction Noises (23 CFR 772);
- G.13 Air Quality Conformity and Priority Procedures for use in Federal-aid Highway and Federally-Funded Construction Programs (40 CFR 93);

- G.14 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313 (including revisions adopted during the term of the Agreement) for any hazardous materials to be utilized under this Agreement;
- G.15 Protection of Historic Properties (36 CFR 800);
- G.16 Applicable Tribal/State laws;
- G.17 Freedom of Information Act
- G. 18 Buy America Act (48 CFR 52.225)
- G. 19 Federal Acquisition Regulation (48 CFR 52.246-13)
- G. 20 Other applicable State and Federal laws and regulations

SECTION H – FUNDING LIMITATION

H.1 AVAILABILITY OF FUNDS

The Government's obligation under this Agreement is contingent upon the availability of appropriated funds.

SECTION I – PAYMENT

I.1 Advance Payments have been negotiated and approved in accordance with 25 U.S.C. 5367(f).

1. The Secretary shall provide a lump sum payment for the construction of this project in accordance with 25 U.S.C. 5367(f), subject to the availability of funds, and in accordance with the Prompt Payment Act, 31 U.S.C. 1301 et seq.
2. A total amount of **\$2,350,000.00** has been approved for this project and the Secretary shall provide this amount for the project.
3. The **TRIBE** will submit to the AOTR (designated in Section E.1 of this Agreement) on a semi-annual basis a written progress report which shall contain the information cited in Section L of this document.
4. Only those direct and indirect costs that are allowable and allocable to this project will be accepted for liquidation of any advance. The total of those costs is not to exceed the total budgeted amount of this Agreement.
5. The **TRIBE** will provide any documentation required by the AOTR to support the **TRIBE's** expenditures.

I.2 Upon final acceptance and verification final pay records and receipt and acceptance of the CONSTRUCTION project activities and deliverables, the Awarding Official will modify the contract to reflect the final quantities of a Fixed Price type contract. This modification and a Release of Claims document will be sent to the **TRIBE** for signature. The **TRIBE** executes and returns both documents.

SECTION J – PROCUREMENT

J.1 PROCUREMENT SCHEDULE

The **TRIBE's** purchases and/or contracts shall be made with responsible State of Michigan professionally licensed subcontractors possessing the ability to perform successfully under the terms and conditions of the

proposed procurement. Consideration shall be given to such matters as subcontractor integrity, compliance with public policy, record of past performance, and financial and technical resources. The **TRIBE** shall not make an award to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, Debarment and Suspension. The **TRIBE** shall provide the Government with notification of proposed subcontractors prior to award of such subcontract and may utilize SF-1413, Statement and Acknowledgement, incorporated herein as **Attachment No. 8**, or provide such information of a form currently in use by the **TRIBE**.

The **TRIBE** is solely responsible, in accordance with good administrative practice, integrity, and sound business judgment, for the settlement of all contractual and administrative issues arising out of its procurement. These issues include but are not limited to, source selection, protests, change orders, disputes, prompt payment and claims.

The **TRIBE** shall maintain a code of standards for conduct and ethics to ensure that no employee, officer or agent of the **TRIBE** participates in selection, award, or administration of a subcontractor if a conflict of interest (actual or apparent) exists.

The **TRIBE** shall ensure that personnel selected to perform or manage the construction project are qualified in accordance with generally accepted professional standards of the industry. Architects, engineers, surveyors and other related CONSTRUCTION and construction professionals and related trade and craft practitioners shall be licensed under applicable state law or work under the direction of licensed engineers, architects, and surveyors, and meet appropriate qualifications and experience requirements for the type of work involved.

J.2 COMPETITION

Unless a preference is permitted by the **TRIBE** for a Tribal or Indian subcontractor, all major procurement transactions will be conducted in a manner which provides for maximum practicable competition in order to obtain fair and reasonable costs or pricing.

J.3 REQUIREMENTS

Each contract entered into under the Act by the **TRIBE** with a third party in connection with performing the obligations of the **TRIBE** under this Agreement shall at a minimum:

1. Be in writing;
2. Identify the interested parties their authorities and the purposes of the contract;
3. State a contract price;
4. State the work to be performed under the contract;
5. Specify a beginning and end date for completion of the contract work;
6. State the process for making any claim, the payments to be made, and the terms of the contract, which shall be **fixed price**; and
7. Be subject to 25 U.S.C. 5307(b) and (c) of the Act.

J.4 REASONABLENESS OF PRICE

In order to determine price reasonableness, the **TRIBE** shall ensure the reasonableness of price for every procurement action, including subcontract modifications.

J.5 INDIAN PREFERENCE

Pursuant to 25 U.S.C. 5307(b) of the Act, to the greatest extent feasible, this Agreement and any subcontract(s) awarded shall require Indian preference and opportunities for training and employment in connection with the administration of such contract/subcontract. In addition, preference in the award of subcontracts shall be given to Indian organizations and to Indian-owned economic enterprises. Pursuant to 25 U.S.C. 5307(c) of the Act, the tribal employment or contract preference laws adopted by such **TRIBE** shall govern with respect to the administration of the contract or portions of the contract.

J.6 SUBCONTRACT PROVISIONS

The **TRIBE** will use its own procurement systems and procedures to ensure that each subcontract includes clauses required by Federal statutes and executive orders and their implementing regulations and State and local laws and regulations. The subcontract provisions are contained in **Attachment No. 6**.

SECTION K – RECORDS AND MONITORING

The **TRIBE** will maintain a record keeping system, and upon reasonable advance request, provide access to such records by OSG. At a minimum, such records shall include completed reports of CONSTRUCTION activities, contract and financial records, and CONSTRUCTION deliverables. The **TRIBE** shall be responsible for managing the day-to-day operations conducted under this Agreement and for monitoring activities conducted under this Agreement to ensure compliance with the Agreement and applicable Federal requirements. With respect to the monitoring activities of the Secretary, the monitoring visits/inspections shall include those jointly determined to be necessary to ensure compliance with the Agreement, including structural integrity of the project and compliance with safety, health, and environmental standards or requirements. Prior to beginning of construction, the **TRIBE** and the Secretary will agree upon the process for monitoring the project activities.

The **TRIBE** shall maintain on the jobsite or project office, and make available to the Secretary during monitoring visits, contracts, major subcontracts, modifications, construction documents, change orders, shop drawings, equipment cut-sheets, inspection reports, testing reports, and current redline drawings.

Note: The Secretary and the **TRIBE** agree to onsite visits, as needed and/or requested by the **TRIBE** during the construction of the project. Official monitoring sessions shall be scheduled in advance of the visit.

K.1 SINGLE AUDIT ACT

The **TRIBE** shall comply with 25 U.S.C. 5305 of the Act for submission of Single Agency Audit Reports to the U.S. Office of Inspector General, and the U.S. Department of Interior's Office of Audit and Evaluation, financial management reports, and any supplemental requirements as mutually agreed by the **TRIBE** and the OSG.

K.2 RELEASE OF CLAIMS

Upon completion and acceptance of Agreement deliverable(s), the **TRIBE** will request release of further obligations under the terms of this Agreement by submitting the **DI-137, Release of Claims form**.

SECTION L – REPORTING

L.1 For **CONSTRUCTION** services, the **TRIBE** shall provide the reports identified in CFR 1000.243(d); the **TRIBE** shall provide to the Secretary, progress and financial reports:

1. The reports shall be Semi-Annually, and shall contain a narrative of the work accomplished, including but not limited to, descriptions of contracts, major subcontracts, and modifications implemented during the report period and A/E service deliverables, the percentage of the work completed, a report of funds expended during the reporting period, and total funds expended for the project.
2. Copies for the information of the Secretary, of an initial schedule of values and updates as they may occur.
3. Semi-Annually report of TCR.

L.2 Semi-Annually REPORTS

Federal Financial Report SF-425: The **TRIBE** agrees to submit an original report to the Awarding Official, through the designated Awarding Official's Technical Representative (AOTR). This report shall be used to monitor expenditures incurred during semi-annual operations. Included with the SF-425 shall be the itemized breakdown of costs incurred. The reports shall be submitted within 30 days after the dates shown below. The Final SF-425 shall be submitted with the Semi-Annually Report (See Semi-Annually Reports):

SEMI-ANNUALLY Narrative Reports: The **TRIBE** shall submit Semi-Annually narrative reports to the Awarding Official, through the designated Awarding Official's Technical Representative (AOTR) and the TCR Specialist. Each report shall include a brief description of all activities, progress made, and meetings attended under the Agreement and a summary of problems encountered. The report shall be submitted within 30 working days after March 31 and September 30, along with a Semi-Annually SF-425.

Semi-Annually Reports: The brief Semi-Annually Report shall be submitted **90 days** after closure of each Agreement funding period such as: FY 2025, FY 2026, FY 2027, FY 2028, FY 2029. The report shall include the conduct of program and activities in:

1. Accomplishments of the project(s).
2. Description of any significant problems encountered.
3. Any changes required to the Agreement.

The AOTR will notify the **TRIBE** and TCR Specialist of delinquent report(s) and suggest the due date that the OSG must receive the delinquent report(s). If the **TRIBE** fails to submit the overdue report(s) by the established deadline, the AOTR will notify the AO. The AO and the **TRIBE** will then take appropriate action to ensure compliance with the terms, conditions and general agreement provisions of the Agreement. All reports shall be sent directly to the AO with a concurrent copy to the AOTR.

SECTION M – OTHER PROVISIONS

M.1 CHANGES

Because the **TRIBE** has elected self-certification, the **TRIBE** will oversee and direct technical changes to the plans or specifications under this Agreement upon obtaining the concurrence of the AO. Changes that require an increase to the negotiated Agreement budget or an increase in the negotiated performance period or are a significant departure from the scope or the objective of the project shall require approval of the AOTR and AO, with a copy sent to the TCR Specialist.

M.2 AGREEMENT MODIFICATION

Agreement modifications shall be in writing and signed by the **TRIBE** and the AO.

M.3 DISPUTES

This Agreement is subject to 25 U.S.C. 5331. In addition to, or alternatively, remedies and procedures prescribed by 25 U.S.C. 5331, the parties to the Agreement may jointly agree to follow the procedures identified in 25 CFR 1000, Subpart R, as amended by 25 U.S.C. 5375:

1. Submit disputes under this Agreement to a third-party mediation;
2. Use the alternative dispute resolution process authorized in subchapter IV of Chapter 5 of title 5, United States Code.

The Secretary shall be bound by decisions made pursuant to the procedures set forth above (1-4), except that the Secretary shall not be bound by any decision that significantly conflicts with the interest of Indians or the United States.

M.4 TECHNICAL ASSISTANCE

Should performance deficiencies or disagreement arise during the performance of this Agreement, the AO and the AOTR may oversee and shall provide technical assistance to the **TRIBE** to resolve any such occurrences prior to taking any action for termination of work.

M.5 SUSPENSION OF WORK (25 CFR Part 1000.244)

The Secretary can require a **TRIBE** or tribal organization to suspend work under this Agreement in accordance with this paragraph. The Secretary may suspend this Agreement for up to 30 days if the **TRIBE** or tribal organization has failed to correct the reason(s) for the suspension or if the cause of the suspension cannot be resolved through either the efforts of the Secretary or the **TRIBE** or tribal organization.

The following are reasons the Secretary may suspend work under this Agreement:

1. Site conditions adversely affect health or safety.
2. Work in progress or completed fails to substantially carry out the terms of this Agreement without good cause.

The Secretary may suspend only work directly related to the criteria specified in M.5 above unless other reasons for suspension are specifically negotiated in this Agreement.

Unless the Secretary determines that a health and safety emergency requiring immediate action exists, before suspending work the Secretary must provide to the **TRIBE**:

1. A 5 working days written notice; and
2. An opportunity for the **TRIBE** to correct the problem.

M.6 TERMINATION OF WORK FOR CAUSE

The Secretary may reassume the construction portion of this Agreement if there is a finding of:

1. A significant failure to substantially carry out the terms of this Agreement without good cause; or

2. Imminent jeopardy to a physical trust asset, to a natural resource, or that adversely affects public health and safety, as provided in 25 CFR Part 1000, Subpart M.

Except when the Secretary makes a finding of imminent jeopardy to a physical trust asset, a natural resource, or public health and safety, as provided in 25 CFR Part 1000, Subpart M a finding of significant failure to substantially carry out the terms of this Agreement without good cause must be processed under the suspension of work provision in Section M.5 (Suspension of Work).

If the substantial failure to carry out the terms of this Agreement without good cause is not corrected or resolved during the suspension of work, the Secretary may initiate a reassumption at the end of the 30-day suspension of work if an extension has not been negotiated. Any unresolved dispute will be processed in accordance with the Contract Disputes Act of 1978, 41 U.S.C. 601, *et seq.*

M.7 OFFICIALS NOT TO BENEFIT

No member of Congress, or resident commissioner, shall be admitted to any share or part of any contract executed pursuant to this Agreement, or to any benefit that may arise from such contract. This paragraph may not be construed to apply to any subcontract with a third party entered into under this Agreement if such subcontract is made with a corporation for the general benefit of the corporation.

M.8 COVENANT AGAINST CONTINGENT FEES

The parties warrant that no person or selling agency has been employed or retained to solicit or secure any contract executed pursuant to this Agreement upon an agreement or understanding for commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the **TRIBE** for the purpose of securing business.

SECTION N – SPECIAL CONTRACT REQUIREMENTS

N.1 MANAGEMENT SYSTEMS

Ultimate responsibility and accountability for the contracted project resides with the **TRIBE**. By signing this Agreement, the **TRIBE** certifies that its purchasing, financial and property systems fully meet the standards prescribed by 25 CFR Part 1000.396, and that staffing (including Project Management and engineering resources) is adequate to satisfactorily perform the work required under this construction project. This certification does not limit the Secretary's authority to review the adequacy of **TRIBE's** purchasing, financial, and property systems.

N.2 FINANCE SYSTEM CERTIFICATION

By signing this Agreement, the **TRIBE** certifies that the bookkeeping and accounting procedures it presently uses meets the standards of 25 CFR Part 900, Subpart F. The bookkeeping and accounting system shall provide for the accumulation of costs throughout the Agreement term or performance period in such a manner as to facilitate audit or review of the financial records.

N.3 RECORDKEEPING

The **TRIBE** agrees to keep such records as required pursuant to Sec. 5365(g) of the Act, as amended, to make reports required by 25 U.S.C. 5305(a)(1) and (2) and to make such information and reports available

as required by Sec. 5(c), of the Act, as amended. The **TRIBE** shall be required to maintain a recordkeeping system that will allow for the maintenance of records to facilitate termination for convenience or termination for cause. Such a records system, as a minimum, shall:

1. Provide for the creation, maintenance and safeguarding of records of lasting value, including those involving individual rights, such as, employee social security numbers, and dates of birth.
2. Provide for orderly retirement of records used or created under this Agreement. Such records shall be returned to the Bureau for disposition according to the General Records Schedules and the Bureau Records Control Schedule.

N.4 PRIVACY ACT REQUIREMENTS

When the **TRIBE** operates a system of records to accomplish a Bureau function, the **TRIBE** shall comply with Subpart D of 43 CFR Part 2 that implements the Privacy Act (5 U.S.C. 552a).

N.5 FREEDOM OF INFORMATION

1. Unless otherwise required by law, the Secretary shall not place restrictions on the **TRIBE** that will limit public access to the **TRIBE's** records except when records must remain confidential.
2. A request to inspect or copy records and information shall be in writing and must reasonably describe the reports and information requested. The request may be delivered or mailed to the **TRIBE**. Within ten (10) working days after receiving the request, the **TRIBE** shall determine whether to grant or deny the request. The requester shall be notified immediately of the determination.
3. The time for making a determination may be extended up to an additional ten (10) working days for good reason. The requester shall be notified in writing of the extension, reasons for the extension, and the date on which the determination is expected to be made.

N.6 DRUG-FREE WORKPLACE

In the performance of this Agreement, the **TRIBE** shall certify to a drug-free workplace pursuant to the Drug-Free Workplace Act of 1988 (P.L. 100-689), for all contracts in excess of \$25,000.00. *See Section O, Attachment No. 7.*

N.7 DRIVING POLICY

In the performance of this Agreement, the **TRIBE** shall provide certification to the OSG of its intention to self-administer and ensure compliance with the requirements of the Driving Policy. The **TRIBE** is to carefully consider whether duties and responsibilities assigned to an employee require the operation of a government-leased motor vehicle, commercial motor vehicle, rental motor vehicle, or privately-owned or privately-leased motor vehicle in the performance of official or contractual duties, responsibilities or activities, including duties of record and other duties assigned or historically assigned to such position or activities and assure its employees operating a motor vehicle possess a valid driver's license that indicates State authorization to operate the class of vehicle required in the performance of duties. Ensure that no Motor Vehicle Operator is permitted to operate a government-leased motor vehicle, commercial motor vehicle, rental motor vehicle and/or privately owned or leased motor vehicle in the performance of official duties while: (a) intoxicated by ingesting controlled substances or consuming intoxicating beverages,

including any impairment resulting from the use of prescription or over-the-counter drugs; or (b) impaired by a medical or physical condition, or other factor that affects his/her motor skills, reaction time, or concentration.

N.8 INDIAN PREFERENCE REQUIREMENTS

This Agreement requires, and any subcontract shall require, that to the greatest extent feasible: Preference and opportunities for training and employment in connection with the administration of the contract or subcontract shall be given to Indians.

1. Preference in the award of a subcontract, contract, or sub-grant in connection with administration of the contract shall be given to Indian organization and economic enterprises.
2. The **TRIBE** may develop its own Indian preference requirements to the extent that such requirements are not inconsistent with the purpose and intent of 25 U.S.C. 5307 (a) and (b).

N.9 INVESTMENT OF FUNDS

Interest or Other Income in accordance with 25 U.S.C. 5368(j)

1. In General – The **TRIBE** may retain interest or income earned on any funds paid under this Agreement to carry out governmental purposes.
2. No Effect on Other Amounts – The retention of interest or income under paragraph (1) shall not diminish the amount of funds the **TRIBE** is entitled to receive under a self-governance funding agreement in the year the interest or income is earned or in any subsequent fiscal year.
3. Investment Standard – Funds transferred under this title shall be managed by the **TRIBE** using the prudent investment standard, provided that the Secretary shall not be liable for any investment losses of funds managed by the **TRIBE** that is not otherwise guaranteed or insured by the Federal Government.

N.10 FEDERAL TORT CLAIMS ACT (FTCA)

1. FTCA Coverage: For purpose of FTCA coverage, the **TRIBE** and its employees (including individuals performing personal service contracts with the **TRIBE** to provide health care services) are deemed to be employees of the Federal government while performing work under this Agreement. This status is not changed by the source of the funds used by the **TRIBE** to pay the employee's salary and benefits unless the employee receives additional compensation for performing covered services from anyone other than the **TRIBE**.
2. FTCA Liaison: In accordance with the requirement in 25 CFR, Part 1000, Subpart L, subsection 1000.277(a) the **TRIBE** agrees to designate an individual to serve as tort claims liaison with the Federal government. *See Attachment No. 9*. The designated tort claims liaison shall provide the assistance specified in 25 CFR, Part 1000, and Subpart L. subsection 1000.277(c).

N.11 INSURANCE COVERAGE

The **TRIBE** is strongly encouraged to obtain insurance coverage from an insurance provider licensed by the State Insurance Commission or State Insurance Board in the State of Michigan in which the **TRIBE** is located and where the work is to be performed. The **TRIBE**'s direct or indirect costs associated with the

purchase of insurance may be *disallowed* if the insurance is purchased from an unlicensed insurance carrier and paid for with Federal funds.