

Solicitation of Design Services for Retainer

PROJECT:
REQUEST FOR QUALIFICATIONS

LOCATION:
OKLAHOMA

DATE:
December 6, 2023



CITIZEN POTAWATOMI NATION
SOLICITATION OF DESIGN SERVICES FOR RETAINER



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CITIZEN POTAWATOMI NATION SOLICITATION OF DESIGN SERVICES FOR RETAINER



DESIGN FIRM REQUEST FOR QUALIFICATIONS

DUE DATE: JANUARY 5, 2024

OWNER: CITIZEN POTAWATOMI NATION

PROJECTS: WORK TO BE PERFORMED IN OKLAHOMA

INFORMATION AND INSTRUCTIONS TO DESIGN FIRMS

GENERAL INFORMATION

The Citizen Potawatomi Nation (Owner) is soliciting qualifications from qualified firms for Engineering and Landscape Architecture. Firm(s)/Companies will be placed on Retainer for future Citizen Potawatomi Nation projects located in Oklahoma.

BRIEF DESCRIPTION

Projects will vary in size and complexity.

At time of project occurrence, Owner will select Firm(s)/Companies from Retainer list to work with Owner's Architect.

Scope, schedule, and fees will be defined and negotiated at the time of project occurrence with selected Firm(s)/Companies.

Firms/Companies will assist the Owner in accordance with Standard form of Agreement between Owner and Firm/Company per Exhibit B.

ANTICIPATED SCOPE OF WORK

Scope of work, schedule, and fees will be defined at the time of project occurrence.

Scope of Work may vary from project to project but will generally consist of industry standard design services including but not limited to.

Master Planning, Predesign, Schematic Design, Design Development, and Construction Documents.

Attend/participate in routine project review meetings. Meetings may be in person or via video conferencing as appropriately needed.

Prepare specifications as appropriate for your discipline and the project needs.

Assist Owner with cost savings suggestions and best value recommendations as it relates to your discipline.

CITIZEN POTAWATOMI NATION SOLICITATION OF DESIGN SERVICES FOR RETAINER



Assist with cost estimating input per your discipline as it relates to project budget.

Assist Owner with standard Bidding services as it relates to your discipline for RFI's, bid reviews. In some cases, it may be necessary for assistance with Prebid conference to provide an overview of your discipline scope.

Assist Owner with standard Construction Administration services as it relates to your discipline for RFI's, ASI's, shop drawing reviews, submittal reviews, periodic site observations/reports, prefinal and final punch list.

STATEMENT OF QUALIFICATIONS

Utilize Exhibit A to provide your Firm/Company's qualifications.

Firm/Company interested in providing design services will utilize the form of agreement in Exhibit B.

SCHEDULE

December 11, 2023	Request for Qualifications Solicitation.
January 5, 2024	Request for Qualifications Due to Owner.
January 8-12, 2024	Owner to review submissions.
January 15, 2024	Owner to notify those Firms/Companies placed on Retainer.

SUBMISSION

The Statement of Qualifications (SOQ's) must be received on January 5, 2024. Digital copies shall be submitted to the following:

David Oman, AIA
Citizen Potawatomi Nation
Director of Planning, Design, and Engineering
o: 405.878-4829
c: 405.919.1518
e: david.oman@potawatomi.org

End of RFQ

EXHIBIT A - DESIGN SERVICES QUALIFICATION QUESTIONNAIRE

The Citizen Potawatomi Nation (hereinafter referred to as “Owner”) is soliciting information in this questionnaire to assist in the initial stages of selecting Firm(s)/Company(s) for Retainer of Design Services in Oklahoma. Services will include those typical of industry standard engineering, landscape, and door hardware design services associated with Pre-Design, Design, Bidding, and CA services. Scope and fees will be determined under each project occurrence. Receipt of your completed questionnaire does not commit Owner to award your Firm/Company an Interview opportunity of Contract.

Firm/Company Contact Information	
Name	
Address	
Telephone	
Website	
Currently Registered in the State of Oklahoma (Required for Selection)	
Indicate contact person whom Owner can call upon concerning your qualifications or setting dates for meetings.	

Principal(s) of the Firm/Company (Resume is encouraged)	
Contact Information:	
Name	
Telephone	
Email	
Experience:	
Length of Time with Firm/Company	
Length of Career in Field	
Number of Municipality Clients	

Additional Project Team Members and their Assigned Roles (Resumes are encouraged)	
Contact Information:	
Name	
Telephone	
Email	
Experience:	
Length of Time with Firm/Company	
Length of Career in Field	
Number of Municipality Clients	

Additional Project Team Members and their Assigned Roles (Resumes are encouraged)	
Contact Information:	
Name	
Telephone	
Email	
Experience:	
Length of Time with Firm/Company	
Length of Career in Field	
Number of Municipality Clients	

EXHIBIT A - DESIGN SERVICES QUALIFICATION QUESTIONNAIRE

Firm/Company Qualifications	
<i>(Note: If a firm has more than one location, respond for the office or branch proposed to be on this account)</i>	
General Information:	
Date Founded/Opened	
Total Number of Employees	
Attach organizational chart	
Is the Firm/Company or staff a Tribal member?	
Firm/Company Experience:	
Does your firm have Native American project experience?	
Provide list of markets your firm has experience with.	
Provide general list of projects types your firm has completed.	
Qualifications:	
Does the Firm/Company anticipate any mergers, transfer of organization ownership, management reorganization, or departure of key personnel within the next twelve (12) months that may affect the organization's ability to carry out design work?	
Is your Firm/Company, its affiliates and/or subsidiaries subject to any contract that creates a conflict of interest with and/or prohibits you, your firm/company, its affiliates and/or subsidiaries from providing design services to OWNER ?	
Is Firm/Company authorized and/or licensed to do business in Oklahoma?	
Provide copies of professional/business licenses	
Has the Firm/Company or any of its principals been debarred or suspended from contracting with any public entity? If "Yes", identify the public entity and the name and current phone number of a representative of the public entity familiar with the debarment or suspension, and state the reason for or circumstances surrounding the debarment or suspension, including but not limited to the period of time for such debarment or suspension.	
Has the Firm/Company ever been declared bankrupt or filed for protection from creditors under state or federal proceedings? If "Yes", state the date, court, jurisdiction, cause number, amount of liabilities and amount of assets.	
Has the Firm/Company ever received any disciplinary action, or any pending disciplinary action, from any regulatory bodies or professional organizations? If "Yes", state the name of the regulatory body or professional organization, date and reason for disciplinary or impending disciplinary action.	
Litigation Disclosure: <i>Failure to fully and truthfully provide the information requested may result in the disqualification of your questionnaire from consideration or termination of the contract, if awarded.</i>	
Have you or any member of your Firm/Company or Team to be assigned to this engagement ever been indicted or convicted of a felony or misdemeanor greater than a Class C in the last five (5) years?	
Have you or any member of your Firm/Company or Team to be assigned to this engagement been terminated (for cause or otherwise) from any work being performed for any Federal, State, or Local Government, or private entity?	
Have you or any member of your Firm/Company or Team to be assigned to this engagement been involved in any claim or litigation with any Federal, State, or Local Government, or private entity during the last ten (10) years?	1.

EXHIBIT A - DESIGN SERVICES QUALIFICATION QUESTIONNAIRE

Timeline	
Completed Responses due to Owner by:	January 5, 2024

All responses relative to this Questionnaire shall become the property of Owner and are non-returnable. Any and all costs associated with the preparation of any questionnaire and/or proposal shall be borne by the Firm/Company. Firm/Company acknowledges that all information submitted would be retained by Owner. This Questionnaire does not commit Owner to award an Interview opportunity, does not commit Owner to enter into a contract, or provide reimbursement of any costs associated with this overall selection process. Final award of any contract is subject to Owner approval.

TO THE BEST OF MY KNOWLEDGE, THE ABOVE INFORMATION IS TRUE AND CORRECT.

Name and Signature of Principal

Title of Principal

Title of Company:

Date:

AGREEMENT

This Agreement ("Agreement") is made and entered into on the ____ day of _____ by and between the Citizen Potawatomi Nation ("CPN") and _____ Firm/Company name _____, _____ address _____, _____ City, State, Zip Code _____, (the "Engineer").

1. **The Services.** CPN has requested the Engineer to provide design, bidding and construction administration services for new _____ Project Name _____ to be located at the _____ Project _____ Location _____. The project has been derived from ongoing Master Plan. Basic Services as described herein and in Attachment "A" hereto pursuant to the progress payments.
2. **Commencement and Completion.** The date of commencement shall be the last date that appears on the signature page of this Agreement, unless a different date is established by a writing signed by both parties. The Engineer shall perform all of the Services as expeditiously as is consistent with the Standard of Care (defined below) and the orderly progress of the Services, and the Engineer shall keep the CPN apprised of all progress of the Services.
3. **Consideration/Design Fees.**
 - a. For all Basic Services, the Design Fees paid by CPN to the Engineer for the Project shall be defined by scope and project requirements for Services provided. The Design Fees shall be paid monthly for portions of work completed. Upon any adjustment (increase or decrease) to the Project Construction Costs as contemplated by the definition of "Project Construction Costs" set forth below, including but not limited to any adjustment made at such time as construction contracts are entered into, the Engineer's total compensation for Basic Services for the Project shall also be reviewed for adjustments, including retroactively for Basic Services already performed and payments already made. Such adjustments may be made by the CPN by either (a) adjusting any future payment due or (b) issuing a revision notice to Engineer that either tenders any additional payment owed or demands reimbursement from the Engineer of any overpayment to date as determined by both parties.
 - b. As used in this Agreement, the term "Project Construction Cost" shall mean the estimate of total construction costs for the Project as initially submitted by the Engineer under this Agreement and accepted by the CPN, and as subsequently revised as follows: (a) revised by changes to the Project Construction Costs approved by the CPN in writing; (b) revised at the time the CPN enters a construction contract for the Project, to equal the construction contract amount, (c) increased by the dollar amounts of all approved additive contract change order items; and (d) decreased by the dollar amounts of all approved deductive contract change order items.
 - c. For all Additional Services, compensation shall be a fee to be agreed upon by the parties in writing prior to performance of such services by Engineer. Unless expressly stated in the written authorization to proceed with the additional services, the fee for such additional services shall be an amount computed by multiplying the hours to be worked by Engineer's staff or Engineer's consultants by their standard billing rates as attached in Attachment "B", or as otherwise specifically approved in writing in advance by the CPN.
 - d. Based upon applications for payment, the CPN shall make timely payments on account of the

Design Fees to the Engineer as provided herein. Payments by CPN to Engineer shall not be unreasonably delayed, withheld, or conditioned by CPN.

- e. Final payment, constituting the entire unpaid balance of the Design Fees, shall be made by the CPN to the Engineer when the Services have been completed to the reasonable satisfaction of the CPN and the Agreement fully performed.

4. Engineer.

a. Basic Services of Engineer.

1. The Engineer shall perform the Services using the Engineer's professional skill and attention. The Engineer shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences, and procedures or for coordinating all portions of the construction under any construction contract. Engineer shall not be responsible for the failures to comply with the drawings or specification, or for safety or security in relation to the Project.
2. Unless otherwise provided, the Engineer shall provide and pay for labor, equipment, tools, and other facilities and services necessary for the proper execution and completion of the Services.
3. The Engineer shall enforce discipline and good order among the Engineer's employees and other persons carrying out the Services. The Engineer shall not permit employment of unfit persons or persons not skilled in tasks assigned to them as part of the Services.
4. The Engineer shall perform the Services in accordance with the standard of professional care and skill ordinarily practiced by engineers performing similar Services in the place the Services are performed and at the time the Services are performed by Engineer ("Standard of Care").
5. The Engineer shall, in accordance with the Standard of Care, comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on performance of the Services.
6. The Engineer shall be responsible to the CPN for the negligent acts and omissions of the Engineer's employees and other persons performing portions of the Services under a contract with the
7. When professional certification of performance criteria of materials, systems or equipment is required, the CPN shall be entitled to rely upon the accuracy and completeness of such certifications.
8. The Engineer shall provide the CPN with access to the Services in preparation and progress wherever located.
9. For any major revisions to the Project ordered in writing by the CPN in the Project, a supplemental agreement for additional payment shall be entered into between the parties hereto. For any major revision in the character or scope of the Project in design ordered in writing by the CPN after performance of a substantial amount of Services on the designs, a supplemental agreement will be negotiated on the

basis of all costs related to the salaries of employees for the time directly chargeable to the Agreement, the salaries of principals for the time they are productively engaged in work necessary to fulfill the term of the Agreement, direct non-salary cost incurred in fulfilling the terms of the Agreement and the Engineer's overhead or indirect costs to the extent they are properly allowable to the Agreement plus a lump sum for profit.

10. To the fullest extent permitted by law, the Engineer shall indemnify and hold harmless the CPN and CPN's agents and employees ("Indemnitees") from and against third-party claims, damages, losses, and expenses, including but not limited to attorneys' fees recoverable under applicable law, arising out of or resulting from performance of the Services, provided that such claims, damage, loss, or expenses are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Project itself), but only to the extent caused by negligent acts or omissions of the Engineer or anyone for whose acts Engineer is liable. Engineer's obligations under this subparagraph shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person otherwise described herein.
 11. In claims against any "Indemnitee" under the subparagraph immediately above by an employee of the Engineer or anyone for whose acts Engineer is be liable, the indemnification obligation under this paragraph shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Engineer under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.
 12. CPN and Engineer waive consequential, punitive, and special damages for claims or disputes arising out of or relating to this Agreement.
- b. **Schematic Design Phase.** After written authorization to proceed, and as may be set forth in one or more Addenda, the Engineer shall:
1. Consult with the CPN to further clarify the detailed scope of Services and review available data.
 2. Provide a general economic analysis of CPN's requirements applicable to any various alternatives that the Engineer identifies which could benefit the CPN.
 3. The Engineer shall proceed with all field surveys as necessary to develop preliminary plans and specifications.
 4. Prepare Schematic Design documents with appropriate exhibits indicating clearly the considerations involved and the alternative solutions available to the CPN and setting forth the Engineer's findings and recommendations with opinions of estimated probable costs.
 5. Furnish three (3) copies of the draft submittal and present and review it in person with CPN.
 6. Furnish five (5) copies of the approved final submittal. This bound report shall

be comprehensive with high quality text and graphics. CPN may purchase additional copies, if desired, at actual cost incurred by Engineer.

- c. **Design Development Phase.** After written authorization to proceed with the Design Development Phase, and as may be set forth in one or more Addenda, the Engineer shall:
 1. In consultation with the CPN and on the basis of the detailed scope of services (Attachment "A") and the accepted Schematic Design submittal, prepare Design Development documents consisting of design criteria, preliminary drawings and outline specifications.
 2. Based on the information contained in the Design Development documents, submit a revised opinion of probable cost for the project including construction cost, contingencies, and compensation for all professionals and consultants, (all of which are hereinafter called "Project Costs").
 3. Furnish three (3) copies of the above Design Development documents and present and review it in person with the CPN.
- d. **Construction Documents Phase.** After written authorization to proceed with the Construction Documents Phase, and as may be set forth in one or more Addenda, the Engineer shall:
 1. On the basis of the accepted Design Development documents, prepare for incorporation in the construction contracting documents to be used in and for bidding and construction of the Project, final construction drawings, to show the character and scope of the work to be performed by construction contractors on the Project.
 2. Furnish to CPN such documents and design data as may be required for, and assist in the preparation of, the required documents so that CPN may obtain approvals of such governmental authorities as have jurisdiction over design criteria applicable to the Project and assist in obtaining such approvals by participating in submissions to and negotiations with appropriate authorities.
 3. Advise CPN of any adjustments to its latest opinion of probable Project costs caused by changes in design requirements or construction costs and furnish a revised opinion of probable Project costs based on the drawings and specifications.
 4. Prepare bid forms, notice to bidders, instruction to bidders, general conditions and supplementary conditions and assist in the preparation of other related documents.
 5. Furnish three (3) copies of the above documents and present and review them in person with CPN.
 6. Furnish five (5) copies of the approved final design documents to the CPN.
 7. Assist CPN in acquisition of the required local, State and Federal government permits (Health Department, ODOT, etc.) and private permits (railroad, utility, etc.). The Architect shall at no additional cost to CPN provide sets of drawings and specifications as may be necessary for application of such permits.

- e. **Bidding Phase.** After written authorization to proceed with the Bidding Phase, and as may be set forth in one or more Addenda, the Engineer shall:
1. Assist CPN in obtaining bids for the construction contract(s). The Engineer shall work with the CPN to develop select bid list of three to five interested contractors and provide electronic copy of contract documents.
 2. Conduct the Pre-Bid Conference to review the Project requirements, including the bidding process and answering questions from potential bidders.
 3. Consult with and advise the CPN as to the acceptability of contractors, subcontractors, and other persons or organizations proposed by the contractor(s) (hereinafter called "Contractor(s)") for those portions of the Project construction work as to which such acceptability is required by the construction contract documents.
 4. Consult with and advise the CPN as to the acceptability of substitute materials and equipment proposed by contractor(s), when substitution is permitted by the construction contract documents.
 5. Assist the CPN in evaluating bids or proposals, provide written recommendations to the CPN regarding award of contracts, and in assembling contracts.
 6. The Engineer shall be responsible for providing electronic copy of drawings and specifications to prospective bidders.
- f. **Construction Phase.** During the Construction Phase, and as may be set forth in one or more Addenda, the Engineer shall:
1. Consult with and advise the CPN and act as its representative. All of the CPN's instructions to contractor(s) will be issued through the CPN.
 2. Make periodic visits to the Project to observe as an experienced and qualified design professional the progress and quality of the executed work and to determine in general if the work is proceeding in accordance with the construction contract documents; Engineer shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of work; Engineer shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by construction contractor(s) or the safety and security precautions and programs incident to the work of Contractor(s). Engineer's efforts will be directed toward providing assurance for the CPN that the completed Project will conform to the construction contract documents; but it shall not be responsible for the failure of construction contractor(s) to perform construction work in accordance with the construction contract documents. During such visits and on the basis of its on-site observances, Engineer shall provide the CPN with written reports on the progress, performance and quality of the work, shall endeavor to guard the CPN against defects and deficiencies in the work of construction contractor(s) and may recommend to the CPN the disapproval or rejection of work as failing to conform to the construction contract documents.

3. Review and approve shop drawings and samples, the results of tests and inspections and other data which any construction contractor is required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the construction contract documents; determine the acceptability of substitute materials and equipment proposed by construction contractor(s); and receive and review (for general content as required by the specifications) maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection which are to be assembled by construction contractor(s) in accordance with the construction contract documents.
 4. Conduct, when notified by Contractor, a final inspection of the Project and provide the CPN a written report indicating the Engineer's opinion as to the conformance of the completed work to the construction contract documents, quality of the work performed, performance of the construction contractor(s) and a list of any deficient items.
 5. Perform such additional services as may be set forth in a Change Order and/or one or more Addenda.
 6. The CPN has made known pre-existing hazardous and or toxic materials present in the existing project facility. The Engineer shall rely on the CPN provided report and survey and reference such report and survey in construction documents for removal of hazardous and or toxic materials by a contractor as part of the project guidelines for removal of such hazardous and or toxic materials shall be defined under State and other regulatory guidelines and not the sole responsibility of the Engineer.
 7. In consultation with the CPN, prepare routine change orders as required; require, if deemed appropriate, special inspection or testing of the work; act as interpreter of the requirements of the construction contract documents and judge of the performance thereunder by the parties thereto and shall make decisions on all claims of the CPN and contractor(s) relating to the execution and progress of the work and all other matters and questions related thereto.
 8. In consultation with the CPN, and based on on-site observations and Project observation reports, review Contractor's monthly Progress Payments and determine the amounts owing to contractor(s).
5. CPN Responsibilities. CPN shall:
- a. Provide full information as to its requirements for the Project.
 - b. Assist the Engineer by placing at Engineer's disposal all available information pertinent to the Project including previous reports and any other data relative to design and construction of the Project.
 - c. Examine all studies, reports, sketches, estimates, specifications, drawings, proposals, and other documents presented by the Engineer and render in writing decisions pertaining within a reasonable time so as not to delay the services of the Engineer.

- d. Pay all advertising costs incident to obtaining bids or proposals from contractor(s).
 - e. Return to the Engineer submitted Project documents for CPN's review on which the Architect has not substantially addressed previously noted provisions and comments. The Engineer's contract time will not be suspended for submission of project documents which do not contain substantial revisions.
 - f. Provide a testing firm and pay all costs for testing, as required for construction of the Project, unless specified otherwise.
 - g. Designate in writing a person to act as the CPN's representative with respect to the Services to be performed under this Agreement. Such person shall have complete authority to transmit instructions, receive information and interpret and define the CPN's policies and decisions with respect to materials, equipment, elements and systems pertinent to Engineer's services.
 - h. Issue all instructions to the Engineer; act as interpreter of the requirements of the construction contract documents and judge of the performance thereunder by the parties thereto and shall make decisions on all claims of the Engineer relating to the execution and progress of the work and all other matters and questions related thereto.
 - i. The CPN shall provide hazardous and/or toxic substance report and survey for location and quantity of such hazardous and/or toxic substance to Engineer for any pre-existing conditions to the Project.
 - j. Assist the Engineer with inspection to determine if the Project is substantially complete and a final inspection to determine if the Project has been completed in accordance with the construction contract documents and if each construction contractor has fulfilled all of its obligations thereunder so that the CPN may approve, in writing, final payment to each construction contractor.
6. Subcontracts.
- a. A Consultant is a person or entity who has a direct contract with the Engineer to perform a portion of the Services relating to the Project.
 - b. Unless otherwise stated herein or in the bidding requirements, the Engineer, as soon as practicable after the date of this Agreement, shall furnish in writing to the CPN the names of the Consultants for each of the principal portions of the Services. The Engineer shall not contract with any Consultant to whom the CPN has made reasonable and timely objections. The Engineer shall not be required to contract with anyone to whom the Architect has made reasonable objections. Contracts between the Engineer and Consultants shall (1) require each Consultant, to the extent of the Services to be performed by the Consultant, to be bound to the Engineer by the terms of this Agreement, and to assume toward the Engineer all the obligations and responsibilities which the Engineer, by this Agreement, assumes toward the CPN, and (2) allow to the Consultant the benefit of all rights, remedies, and redress afforded to the Engineer by this Agreement.
7. Changes in/Additions to the Services.
- a. Without invalidating the Contract, the CPN may request changes in the Services consisting of additions, deletions, or modifications, the Design Fees and Contract Time being adjusted

accordingly. Such changes in the Services shall be authorized by written Change Order signed by the CPN and the Engineer, or by written Construction Change Directive signed by the CPN ("Change Order").

- b. The Design Fees and Contract Time shall be changed only by Change Order.
- c. The cost or credit to the CPN from a change in the Services shall be determined by mutual agreement and shall be specified in a Change Order.

8. Time.

- a. Time limits/schedule specified in Attachment "A" to this Agreement ("Contract Time") are of the essence. By executing this Agreement, the Engineer confirms that the Contract Time is a reasonable period for performing the Services.
- b. If the Engineer is delayed at any time in progress of the Services by changes ordered in the Services, by any event of force majeure, including fire, unusual delay in deliveries, abnormal adverse weather conditions that could not have been reasonably anticipated, unavoidable casualties or any causes beyond the Engineer's control, or by other causes that the CPN determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the CPN may determine in its reasonable discretion.

9. Payments and Completion.

- a. Payments to Engineer may be withheld by the CPN on account of (1) defective Services not remedied, (2) indemnifiable claims filed by third parties for which Indemnitees might reasonably be liable, (3) failure of the Engineer to make payments properly to Consultants or for labor, materials, or equipment, (4) reasonable evidence that the Services cannot be completed for the unpaid balance of the Design Fees, (5) actual damage to the CPN caused by the negligence or willful act or omission of Engineer, (6) reasonable evidence presented to Engineer that the Services will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay, (7) persistent failure to properly carry out the Services, or (8) failure to comply with all applicable federal labor, wage and record keeping standards as required by the federal programs contributing to the funding of this project.
- b. The Engineer shall provide monthly invoices to the CPN by the 10th of each month and the CPN shall pay said invoices by the 10th of the following month.

10. Protection of Persons.

- a. The Engineer, in accordance with the Standard of Care, shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to, Engineer's employees relating to the Services.

11. Insurance.

- a. The Engineer shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located insurance for protection from claims under workers' or workmen's compensation acts and other employee benefit acts that are applicable, claims for damages because of bodily injury, including death, and from claims for damages for which Engineer has liability. This insurance shall be written for an amount equal to, or greater than, the limits required by the State of Oklahoma and shall include

contractual liability insurance applicable to the Engineer's obligations previously described herein. Certificates of such insurance shall be filed with the CPN prior to the commencement of the Services.

12. Correction of Services.

- a. The Services will be reviewed by the CPN and, if performed properly, will be accepted by the CPN. The CPN shall conduct its acceptance review in a manner so as to identify whether the Services materially fail to conform to the requirements of the Project. The CPN will notify the Engineer in writing of material failures of a Service to conform to the requirements of the Project ("Notice of Nonconformity"), specifying how the Service materially fails to meet the requirements of the Project. Within five (5) business days of Notice of Nonconformity, Engineer shall give the CPN notice of either: (a) the correction of the Nonconformity and the nature of the correction; (b) a written proposal for corrective action correcting the Nonconformity; or (c) its disagreement as to the nature or scope of the Nonconformity and the reasons therefor. Within ten (10) business days of notice of the Engineer's reply, the CPN will either accept or reject the Engineer's reply (with or without modifications from the CPN) and provide Engineer notice of the CPN decision and proposed remedy, if any.
- b. If the Engineer fails to correct Services not in accordance with the requirements of this Agreement, or persistently fails to carry out the Services in accordance with this Agreement, the CPN, by a written order, may order the Engineer to stop the Services, or any portion thereof, until the cause for such order has been eliminated; however, the right of the CPN to stop the Services shall not give rise to a duty on the part of the CPN to exercise this right for the benefit of the Engineer or any other person or entity.

13. Miscellaneous Provisions.

- a. The Project may be partially funded by federal grants and entered into within the territorial jurisdiction of the Citizen Potawatomi Nation. As such, all contractors shall comply with federal laws applicable to the project and shall be governed by all applicable federal and tribal laws, ordinances and resolutions, including, but not limited to the registration of sexual offenders in compliance with the Adam Walsh Act. This Agreement shall not be interpreted in a manner that would require any party to the agreement to violate tribal, federal, or state law.
- b. Nothing contained herein is intended to be nor shall it be construed as a waiver of the sovereignty of the CPN as a federally-recognized Indian tribe.
- c. Notice for all purposes of this Agreement shall be given to the person at the address shown in the signature blocks below.
- d. This Agreement shall not be construed to create a contractual relationship of any kind (1) between the CPN and a contractor or subcontractor or (2) between any persons or entities other than the CPN and Engineer.
- e. The Engineer shall ensure the CPN that it is not debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs. If at any time the CPN receives notification that the Engineer has provided false information regarding its debarment or suspension, this Agreement shall be terminated.
- f. The Services to be performed under this Agreement is on a project subject to Section 7(b) of

the Indian Self-Determination and Education Assistance Act (25 USC 450c(b) Indian Act). Section 7 (b) requires that to the greatest extent feasible (1) preferences and opportunities for training and employment shall be given to members of the CPN and (2) preferences in the award of contracts and subcontracts shall be given to individuals, organizations and economic enterprises of the CPN or its members.

- g. There are no third-party beneficiaries to this Agreement.
- h. This Agreement may only be modified or amended in writing duly-executed by an authorized representative of each party.
- i. Each party to this Agreement represents and warrants that this Agreement is duly authorized and the person executing the Agreement on its behalf is duly authorized to bind such party to this Agreement.
- j. This Agreement and the contract documents set forth below constitute the full and final form of this Agreement and there are no prior verbal or written agreements or representations relating to this Agreement not set forth herein.

14. Termination.

- a. If the CPN fails to make payment thereon for a period of 30 days, the Engineer may, upon seven days' written notice to the CPN terminate the Agreement and recover from the CPN payment for Services executed and for proven loss with respect to the purchase or leasing of materials, equipment, tools, construction equipment and machinery that has been necessarily obtained to satisfy the Project.
- b. If the Engineer defaults or persistently fails or neglects to carry out the Services in accordance with this Agreement or fails to perform a provision of the Agreement, the CPN, after seven days' written notice to the Engineer and without prejudice to any other remedy the CPN may terminate this Agreement without prejudice to any rights the CPN may have at law.

15. Contract Documents.

- a. The contract documents which comprise the agreement between the CPN and the , includes the documents identified below:
 - 1. Work Orders
 - 2. Authorizations to Proceed
 - 3. Change Orders
 - 4. Addenda (as provided for herein)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first hereinabove written.

FIRM / COMPANY

John A. Barrett, Jr., Tribal Chairman
Citizen Potawatomi Nation

Owner / Principal

Date: _____

Date: _____

EXAMPLE