

Request for Proposal (RFP):
Fiber Optic Broadband Network Aerial Construction – Hwy151

Issued by: Southern Ute Indian Tribe | Shared Services | March 2023

RFP Deadline Dates:

- Open Date: **March 31, 2023**
- Questions Due Date: **April 25, 2023**
- Proposal Deadline: **April 28, 2023**

Contact Information:

- Primary RFP Point of Contact: **Sara Spain, Senior IT Contracts and Procurement Specialist**
- Email: susscontracts@southernute.com
- Phone: **(970) 563-5083**
- Project Information Site: <https://www.southernute-nsn.gov/broadband-modernization-project>

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PURPOSE:

The Southern Ute Indian Tribe (Tribe) is accepting proposals for fiber optic network construction services for the expansion of its broadband network. As explained below, the Tribe has a three-phase plan to construct middle-mile, distribution lines, and drops to the homes of residents within the Southern Ute Indian Reservation (Reservation). The purpose of this proposal is to award an aerial fiber construction contractor to extend the Tribe's network from Allison Colorado to Pagosa Springs Colorado.

Phase I (Under Construction) - The Tribe has secured funding for the first phase that includes 52-miles of middle-mile fiber that is considered the new “backbone” routes for the Tribe. Currently, this 52-mile fiber network is under construction and includes placing a conduit with seven micro-ducts in the ground and filling one of the micro-ducts with 144 strand fiber.

Phase II – Recently, the Tribe was awarded a grant through the National Telecommunications and Information Administration’s (NTIA) Tribal Broadband Connectivity Program that will be used to fund Phase II. The Tribe completed all design and engineering work that was the basis of the NTIA application for this phase. Phase II will expand the backbone network from Phase I to build a fiber-to-the-home (FTTH) network reaching most of the native American households within the Reservation (i.e., approximately 1,798 homes).

The network has been designed with a microduct and microfiber approach. This allows a multiduct system to be placed across the Reservation and future-proof the network by providing six additional ducts for future fiber or leasing/IRU options for the Tribe. This design is a passive optical network (PON), which is a point-to-multipoint network. The PON protocol will be XGS-PON (ITU-T G.9807.1), which has 10 Gbps downstream bandwidth and 10 Gbps upstream. Compared to the GPON protocol (ITU-T G.984.2) XGS-PON has 4 times more downstream bandwidth and 8 times more upstream bandwidth. We will use a 64-way split, which will allow us to offer symmetric services of 1000-Mbps/1000-Mbps and 2000-Mbps/2000-Mbps. Our minimum residential Internet offering will be 250-Mbps downstream and 250-Mbps upstream. Underground construction will take place unless opportunistic aerial routes are identified during permitting and construction planning.

This specific RFP will be an expansion route to the NTIA award noted above. The Tribe has been working in cooperation with La Plata Electric Association (LPEA), La Plata County, and Archuleta County to expand the Tribe's network to Pagosa Springs. The four regional entities have collaborated with Region 10 League for Economic Assistance and Planning to seek grant funds from the Colorado Department of Local Affairs (DOLA) to design and construct this new fiber segment. A DOLA grant has been awarded to La Plata County for acquiring indefeasible rights of use in a fiber path between Durango and Pagosa Springs, Colorado. Part of the path has already been constructed by the Tribe. The Tribe anticipates granting IRUs to the other entities and using the IRU fee, in part, to fund construction of the segment from La Plata County Road 330 along State Highway 151 to Arboles, Colorado, and then to the LPEA Ponderosa substation off U.S. Highway 160, 8.9 miles east from the Hwy151/US160 intersection. The Tribe desires an accurate estimate for all costs to build this segment to determine if the DOLA award is sufficient. LPEA is separately analyzing all poles along this route to determine the make-ready cost to ensure the electrical poles can support, in the communications space, the added weight of the new fiber/conduit to be installed.

The Tribe will separately estimate the costs for environmental studies, cultural resources protection, permitting, rights-of-way, and other authorizations necessary before construction can occur.

The complete details of this project segment is included in the Scope of Work section of this document.

Phase III – The Tribe will explore additional funding through NTIA's Broadband Equity, Access, and Deployment program to cover additional middle-mile and/or tower infrastructure to connect lower density and remote areas. The Tribe's application will request funding to cover fiber drops to the homes of non-Indian residents within the Reservation.

SHARED SERVICES ORGANIZATIONAL OVERVIEW

The Reservation is in the southwest corner of the state of Colorado, just south of Durango and Pagosa Springs, along the New Mexico border. The Reservation is home to a diverse mix of residents including tribal members, non-member Indians, and non-Indians. The total population of the Reservation is over 13,000. The Tribe has approximately 1,500 members, about 1,140 of whom reside on the Reservation.

The subdivisions of the tribal organization include the Permanent Fund (i.e., the tribal government), the Southern Ute Indian Tribe Growth Fund (i.e., the Tribe's business arm), Sky Ute Casino Resort, and the Southern Ute Indian Tribe Shared Services (Shared Services). Shared Services is the information technology service provider for the tribal organization. Shared Services' duties include responsibility for the overall tribal network and telecommunication infrastructure. The selected contractor will interface directly with the Shared Services Chief Information Officer, the Broadband Manager, the Business Operations Manager, and the Permitting Project Manager to ensure proper coordination and execution of the project.

SCOPE OF WORK:

The RFP respondent that is awarded the aerial fiber construction contract will provide construction services as directed and authorized by Shared Services. Responsibilities include, but are not necessarily limited to:

- Engineering and design. Design prints to be provided to the Tribe by the winning respondent.
- Aerial conduit and microfiber.
 - Provide a material estimate for the optimum design:
 - Aerial conduit with at least two-microducts.
 - One microduct filled with 144 strand microfiber line.
 - Provide exact conduit and fiber specifications to be used by LPEA for pole load analysis.
 - Provide a secondary material estimate for the minimum design:
 - 72-strand aerial microfiber line.
 - Provide exact conduit and fiber specifications to be used by LPEA for pole load analysis.
 - Total footage equals 174,000 ft and this include 5% sag between structures.
- Pole attachment count is 626 poles. Bid not to include the LPEA pole attachment fee, these will be paid for separately. There is a segment from US160/Hwy151 to the Ponderosa substation (approx. 9 miles) where the fiber will be on LPEA transmission poles where tight coordination with LPEA will be needed for fiber installation in the electrical space.
- 40 fiber optic service loops to be installed as access points along the route. Exact pole numbers/locations to be provided upon award of the RFP.
- Include any required electronics needed to light the fiber. This line will be connected to lit fiber at the CR330/Hwy151 junction and dark fiber at the LPEA Ponderosa substation.
- Include any required fiber electronics huts to be located at the Ponderosa and Pagosa Springs LPEA substations (see maps included at the end of this document). Will require conversations with LPEA to determine if these huts are needed.
- Minor materials and consumables. Minor materials include bolts, nuts, clamps/brackets, washers, and any misc. removal – all to be supplied by the RFP respondent.
- Project managers, including on location project oversight.
- Assist as requested by the Tribe in any required permitting duties like drafting, for the Tribe's review, and, when authorized to do so by the Tribe, submitting ditch crossing applications, pole attachment agreements, CDOT utility permit applications, and other necessary permitting documents. Project Managers will attend weekly project and permitting meetings to ensure proper coordination of deliverables.
- Construction inspectors for quality control/quality assurance.
- Communication including PSAs and onsite collaboration with area residents.
- Project performance tools will need to be used throughout the project giving the Tribe ongoing visibility of project status during the construction process. Desired information includes a project status dashboard, financial overview, and construction progress. This will give the Tribe

complete visibility into the project and allows the team to mitigate any future issues or concerns.

- Bonding - The selected contractor will be required to furnish performance and payments bonds, each in an amount at least equal to the contract price as security for the faithful performance and payment of all contractor's obligations under the construction agreement. These bonds shall remain in effect at least until one year after the date when final payment becomes due.
- Provide warrantee work as directed for defects or incomplete services.
- Compliance with all applicable telecommunication industry regulatory requirements.
- Financial tracking and forecasting of budget versus actuals.
- Traffic control lead to ensure development and approval of a robust traffic control plan to maximize crew safety and the safety of the general public.

PROPOSAL REQUIREMENTS:

EXPERIENCE

The Tribe seeks an experienced aerial fiber construction contractor with a proven track record that has the knowledge and expertise to successfully install the Tribe's expanded fiber-optic network. Respondents should have knowledge and experience in all matters and governmental requirements for constructing a fiber-optic network. Respondents should detail their level of knowledge and experience, including any experience that they have working with Indian tribes.

CURRENT ENVIRONMENT/BACKGROUND OF TRIBE'S NEEDS

The Tribe's governing body, the Southern Ute Indian Tribal Council, has made narrowing the digital divide on the Reservation a top priority.

Construction of Phase I is underway. Phase II is funded and in the planning phase. For this segment the Tribe is seeking a contractor specifically for the construction of the Highway 151 aerial segment.

PROPOSAL CONTENT

Proposals should include concise, but complete information about your company, emphasizing why you believe your company to be best qualified to furnish services in support of the Tribe's fiber network construction needs.

At a minimum, the Proposal should include:

- Transmittal Letter (REQUIRED) - Provide an introductory letter that states:
 - Full name and address of your company.
 - Number of years you have been in business under your present firm or trade name.
 - Name, telephone number and email address of the contact person for the submission.
 - Succinctly highlight your understanding of our desired construction services, and the benefits of accepting your proposal. Explain the value that you would provide to the Tribe by being selected as our construction contractor.
 - Total construction cost estimate, including contingencies.
- Appendix A (REQUIRED) – A summary of your company's experience constructing fiber-optic networks.
 - Describe your:
 - Construction approach.
 - Safety management practices.

- Approach to project performance management and monitoring.
 - Quality management practices.
 - Knowledge of compliance with all applicable telecommunication industry regulatory requirements.
- Provide details of your organization's employee or contractor footprint in southwestern Colorado and any specific experience working with Indian tribes.
- Appendix B (REQUIRED) – A summary of business and/or governmental references that can attest to the quality and professionalism of your company's operation.
- Exceptions Letter (OPTIONAL) – Should you take exception to any requirements, terms and conditions identified in this RFP, a letter must be submitted with your response identifying all exceptions. Any exceptions will be part of the evaluation process. At the time of contract negotiations, the Tribe will not entertain any exceptions not previously submitted with the respondent's response.

SUBMISSION INSTRUCTIONS

The Q&A period for this opportunity is **April 3, 2023 to April 25, 2023**.

We will not commit to answering questions submitted after **5:00 PM (MDT) on April 25, 2023**.

Questions may be submitted to Sara Spain, Senior IT Contracts and Procurement Specialist, at susscontracts@southernute.com. Questions will be documented, and an addendum will be issued with the Tribe's responses.

Your proposal must be submitted via email or parcel delivery by **5:00 PM (MDT) April 28, 2023**.

You will receive an email confirmation receipt once you submit your proposal.

It is the sole responsibility of the respondent to see that its proposal is received in the proper time. Proposals received after the specified time will not be considered.

Adherence to the rules set forth in this RFP is mandatory to ensure a fair and objective analysis of all proposals. Failure to comply with or complete any portion of this request may result in rejection of a submitted proposal.

Submission of a proposal to the Tribe confers no rights upon the respondent nor obligates the Tribe in any manner.

PRESENTATION, DEMONSTRATION, AND INTERVIEW

Selected respondents may be invited to make presentations to tribal personnel. Representative(s) attending/hosting these presentations must be qualified to respond to questions related to any component of the proposal.

REVIEW AND EVALUATION

The Tribe will use a proposal evaluation team composed of project stakeholders and other tribal personnel to review all proposals received as part of a documented evaluation process.

Respondent submissions will be evaluated based on their experience, the completeness of their RFP, and the clarity of their proposal. In evaluating the proposals, Shared Services will comply with the Tribe's Tribal Employment Rights Code and preference will be given to certified Indian owned businesses.

- **Evaluation Criteria** - The proposal evaluation criteria should be viewed as standards that measure how well a respondent's approach meets the desired requirements and needs of the Tribe. The criteria that will be used to evaluate proposals may include, but are not limited to the following:

- Cost – The estimated cost to complete the scope of work. Sufficient contingencies should be in place to minimize any budgetary surprises based on the volatility of the fiber construction market.
- Experience, Qualifications, and Quality References - Respondent's experience and suitability in providing services and deliverables as requested in the RFP; including, but not limited to quality of references/reference checks and the moral/business integrity to assure good faith performance.
- Capacity & Efficacy – Respondent's demonstrated capacity, capability and skill to meet the Tribe's requirements and provide the services identified in the RFP.
- Acceptance of the Tribe's contracting requirements and Shared Services' preferred terms.

The Tribe reserves the right to determine the suitability of proposals on the basis of any or all of these criteria or other criteria not included in the above list. This detailed evaluation process may result in one or more finalists. The Tribe may request presentations by finalists and may carry out contract negotiations for the purpose of obtaining best and final offers.

- **Validity of Proposals** - Proposals are to be good for 90 days from the proposal due date. The Tribe may hold the proposals for 90 days after the proposal due date and may award a contract at any time during that period. Should there be reasons why a contract cannot be awarded within the specified period; the time may be extended by mutual agreement between the Tribe and the selected respondent.
- **Contract Negotiations/Award** - The Tribe reserves the right to (a) reject any or all proposals, or to make no award, (b) request modifications to initial proposals or (c) make partial or multiple awards. In addition, the Tribe reserves the right to obtain other supplemental information concerning the respondents. The Tribe further reserves the right to excuse technical defects in a proposal when, in its sole discretion, such excuse is beneficial to the Tribe. The Tribe may award based on initial proposals received, without discussion of such proposals.

PROCUREMENT SCHEDULE (PLANNED)

- RFP Open Date 3/31/2023
- Deadline for Submission of Written Questions 4/25/2023
- Proposals Due 4/28/2023
- Presentations/Interviews (if needed) Week of 5/1/2023
- Evaluation of Proposals Week of 5/8/2023
- Contract Negotiations/Award Week of 5/15/2023
- Commencement of Services - TBD (based on final funding approvals, Intergovernmental Agreement approvals, and LPEA Make-ready construction timing). LPEA Construction timing projected to start in 2024 with completion in early 2025.

RIGHT OF REFUSAL

The Tribe reserves the right to reject any and all proposals in their entirety or to select certain components of a proposal and offer a partial award. The Tribe reserves the right to award a contract in any manner deemed in the best interest of its members.

PUBLIC RECORDS

All respondents are hereby notified that all bids, proposals, quotations, RFI responses, agreements, invoices, correspondence, and any other documents submitted to the Tribe are not subject to public disclosure.

EXPENSE OF PREPARING RESPONSES

The Tribe accepts no responsibility for any expenses incurred by the responders to this RFP; including costs associated with RFP responses and presentations. Such expenses are to be borne exclusively by the responders.

TRIBAL TERO REQUIREMENTS & NATIVE AMERICAN PREFERENCE

- A. The Southern Ute Indian Tribe has adopted an Employment Rights Code (TERO), which is to be observed by all Covered Employers operating on the Southern Ute Indian Reservation.
- B. This RFP is a restricted solicitation; however, Indian preference will be given to qualified Indian owned economic enterprises and Indian organizations. Respondents desiring Native American preference for selection **must be certified through the Southern Ute Indian Tribe's TERO Office as an Indian-owned business.** For those respondents seeking Native American preference, this is a mandatory requirement, regardless of any other registration or certification that may exist with other tribal TERO offices, agencies, or affiliations.
- C. The TERO Code's preference requirements must be applied to your selection of consultants and/or sub-contractors that would be involved in carrying out responsibilities under your proposal.
- D. The respondent awarded the contract will be responsible for paying TERO contract and annual payroll TERO fees, as specified in Article 8 of the Tribe's TERO, to the extent that such fees are applicable to the respondent's services and work. (i.e., 4% of any portion of the contract that is attributable to building construction or oil and gas field work and, if respondent has 20 or more employees or gross revenues of \$500,000 or more, an annual fee of 4% of the annual payroll of those employees of the respondent who perform work principally on the Southern Ute Indian Reservation). These fees should be included in your fee proposal.
- E. The respondent awarded the contract and all subcontractors will be responsible for obtaining and paying for crossing permits for the duration of the services, which should be included in your fee proposal. For more information about crossing permits please contact the Southern Ute Lands Division at (970) 563-0126.
- F. For more information contact Hilda Burch at:
Southern Ute Indian Tribe TERO Office
71 Mike Frost Way
P.O. Box 737
Ignacio, CO 81137
(970) 563-0117
E-mail: hburch@southernute-nsn.gov

CONTRACT REQUIREMENTS:

The selected respondent to the RFP will be required to enter into a professional services agreement with the Tribe (or a statement of work if the respondent already has a master services agreement with the Tribe). The professional services agreement attached as Exhibit A sets forth the Tribe's required terms and conditions. Shared Services requires each respondent either to accept those terms and conditions affirmatively as presented or to clearly state in writing required modifications, additions, or substitutions (collectively "Exceptions"). Every respondent must review the terms and conditions in Exhibit A and must set forth all Exceptions, if any, in the form of proposed alternative language or identify specific terms to be deleted and must disclose any impact on proposed fees if Shared Services rejects the Exceptions.

Shared Services may disqualify and terminate negotiations with any respondent that did not identify an Exception to a given provision in the terms and conditions shown in Exhibit A in its proposal and subsequently attempts to do so during negotiations. Further, Shared Services reserves the right to disqualify any respondent with whom Shared Services is unable to negotiate a definitive agreement following notification of intended selection. Therefore, it is in the respondent's best interest to have the Exhibit A terms and conditions reviewed by counsel before submission of its proposal in response to this RFP. The number and extent of Exceptions to the Agreement will be factored into the evaluation of the respondent's proposal. Submittal of the respondent's form agreement in response to the requirements of this section of the RFP shall be deemed non-responsive.

EXHIBIT SUMMARY:

- Exhibit A - Professional Services Agreement
- Exhibit B - Process to onboard a new subcontractor
- Exhibit C - Notice to Proceed form
- Exhibit D – Performance and Payment Bonds

HIGH-LEVEL PROJECT MAP



PONDEROSA SUBSTATION



PAGOSA SUBSTATION



Exhibit A
Professional Services Agreement for
Construction Services for the Hwy151 Aerial Segment of the
Southern Ute Indian Tribe's Broadband Project
(Cost of the Work Plus a Fee with GMP)

This agreement is between the Southern Ute Indian Tribe dba Southern Ute Indian Tribe Shared Services (“**Tribe**” or “**Shared Services**”) and NAME (“**Contractor**”). The Tribe wishes to hire Contractor to provide construction and services necessary for the Hwy 151 aerial segment of the Tribe’s broadband modernization project (“**Project**”) and the Contractor agrees to provide the construction and services under the terms set forth herein. The parties therefore agree as follows:

Article 1 General Provisions

1.1 Parties’ Relationship - Independent Contractor. Contractor is an independent contractor and, as such, the Tribe has no right to direct or control the details and means by which Contractor provides the services. Contractor and its agents, employees, and representatives are not tribal employees and, therefore, are not subject to the personnel policies of the Tribe and are not entitled to employee benefits. Contractor and its agents, employees, and representatives are not authorized to bind the Tribe in contract without the Tribe’s written permission. Nothing in this agreement creates a joint venture relationship between Contractor and the Tribe.

1.2 Contract Documents: The parties agree that the following documents comprise the Contract Documents to which the Contractor and Work will adhere:

- 1) This agreement and the Scope of Work attached as Exhibit A;
- 2) Performance bond (in the form attached hereto and made a part hereof);
- 3) Payment bond (in the form attached hereto and made a part hereof); and
- 4) Change Orders, interim directives, and amendments issued in accordance with this agreement and this agreement.

If there is any conflict between the terms of this agreement and any exhibit or other Contract Document, the terms of this agreement will control.

Article 2 Services

2.1 Scope. Contractor will provide construction and services necessary or incidental to fulfill Contractor’s obligations for the Project, as specified in the attached Exhibit A (Scope of Work), in accordance with and reasonably inferable from the Contract Documents (“**Work**”).

2.2 Professional Skill. Contractor will perform the construction and services to the reasonable satisfaction of the Tribe in a timely manner and consistent with the professional skill and care that other similar companies provide in the same or similar locality under similar circumstances, in good quality, free from defects, and in compliance with all applicable laws.

Article 3 Contractor's Responsibilities

3.1 Diligent Efforts. Contractor shall use its diligent efforts to perform the Work in an expeditious manner consistent with the Contract Documents. Such Work includes furnishing construction administration and management services.

3.2 Labor, Materials, Equipment, and Services. Contractor shall provide all labor, materials, equipment, (except materials and equipment that are supplied by the Tribe) and services necessary to complete the Work, all of which shall be provided in full accord with the Contract Documents and shall include any Work reasonable inferable for the Contract Documents.

3.3 Familiarity with Type of Work Required. Contractor represents that it is familiar with the type of work required by this agreement.

3.4 Construction Means and Methods. Contractor shall be responsible for the supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures utilized. When following construction means, methods, techniques, sequences, or procedures instructed by the Contract Documents, Contractor is not liable to the Tribe for damages resulting from compliance with such instructions unless (a) Contractor recognized and (b) failed to timely report to the Tribe any error, inconsistency, omission, or unsafe practice that it discovered in such requirements.

3.5 Comply with Applicable Laws. Contractor shall perform Work only within locations allowed by the Contract Documents, applicable permits, and in compliance with applicable federal, state, local and tribal laws and regulations that pertain to the services in this agreement, including the Southern Ute Tribal Employment Rights Code (TERO Code). Contractor may obtain TERO Code compliance information from the Tribe's TERO office at 970-563-0117.

3.6 Crossing Permits. Before working or entering any tribal lands, Contractor shall obtain and comply with crossing permits from the Tribe's Department of Natural Resources.

3.7 Cooperation and Coordination with Work of the Tribe and Others.

3.7.1 Coordination. Contractor must coordinate Contractor's services with the Southern Ute Broadband Manager and report discrepancies, questions, or concerns directly to the Broadband Manager or the Tribe's Chief Information Officer.

3.7.2 The Tribe may perform work at the worksite directly or by others. Any agreements with others to perform construction or operations related to the Project shall include provisions pertaining to insurance, indemnification, waiver of subrogation,

consequential damages, coordination, interference, cleanup, and safety that are customary and appropriate for the type of work to be performed.

3.7.3 If the Tribe elects to perform work at the worksite directly or by others, the Parties shall coordinate the activities of all forces at the worksite and agree upon fair and reasonable schedules and operational procedures for worksite activities. The Tribe shall require each separate contractor to cooperate with Contractor and to assist with the coordination of activities and the review of construction schedules and operations. In accordance with §6.3, Contract Price and Contract Time may be equitably adjusted for changes resulting from the coordination of construction activities, and the Schedule of the Work shall be revised accordingly.

3.7.4 With regard to the work of the Tribe and others, Contractor shall: (a) proceed with the Work in a manner that does not hinder, delay, or interfere with the work of the Tribe or others or cause the work of the Tribe or others to become defective; (b) afford the Tribe and others reasonable access for introduction and storage of their materials and equipment and performance of their activities; and (c) coordinate Contractor's Work with theirs.

3.7.5 Before proceeding with any portion of the Work affected by the construction or operations of the Tribe or others, Contractor shall give the Tribe prompt written notification of any defects Contractor discovers in their work which will prevent the proper execution of the Work. Contractor's obligations in this subsection do not create a responsibility for the work of the Tribe or others but are for the purpose of facilitating the Work. If Contractor does not notify the Tribe of defects interfering with the performance of the Work, Contractor acknowledges that the work of the Tribe or others is not defective and is acceptable for the proper execution of the Work. Following receipt of written notice from Contractor of defects, the Tribe shall promptly issue a Change Order informing Contractor what action, if any, Contractor shall take with regard to the defects.

3.8 Contract Document Review and Worksite Inspection.

3.8.1 Before commencing the Work, Contractor shall examine and compare the drawings and specifications with information furnished in the Contract Documents, relevant field measurements made by Contractor, and any visible conditions at the worksite affecting the Work. Any changes made in the field must be modified in the final engineering prints and reflected in the final data submitted to Colorado 811 for utility locates.

3.8.2 Should Contractor discover any errors, omissions, or inconsistencies in the Contract Documents, Contractor shall promptly report them to The Tribe. It is recognized, however, that Contractor is not acting in the capacity of a licensed design professional, and that Contractor's examination is to facilitate construction and does not create an affirmative responsibility to detect errors, omissions, or inconsistencies or to ascertain compliance with a law, building code, or regulation. Following receipt of written notice from Contractor of errors, omissions, or inconsistencies, The Tribe shall promptly inform Contractor what action, if any, Contractor shall take with regard to the errors, omissions, or inconsistencies; but The Tribe's directive shall not relieve Contractor of the responsibility to use professional judgment and continue to inform the Tribe of any errors, omissions, or inconsistencies it discovers.

3.8.3 In accordance with this agreement, Contractor may be entitled to adjustments of the Contract Price or Contract Time because of clarifications or instructions arising out of Contractor's reports described in this Section 3.8.

3.8.4 Nothing in this Section 3.8 shall relieve Contractor of responsibility for its own errors, inconsistencies, or omissions.

3.9 Permits and Taxes.

3.9.1 Contractor agrees to coordinate with and provide the services requested by Shared Services to assist in obtaining the necessary authorizations for placement of Tribe-owned fiber optic lines in the Hwy151 project scope. Such assistance may include applying for LPEA Pole Attachment approvals, CDOT utility permits on behalf of the Tribe, consulting with the Tribe regarding placement of fiber drops from the communications space, or other authorizations as needed. Contractor agrees that it will not submit any permit request or make any representations to federal, state, or local governmental or non-governmental authorities (e.g., CDOT, La Plata County, Archuleta County, the Bureau of Indian Affairs, or any other State or Federal agency) on behalf of the Shared Services without Shared Services' express written authorization.

3.9.2 Contractor shall pay applicable taxes for the Work provided by Contractor. Before making purchases and paying any taxes for which Contractor will claim reimbursement from the Tribe, however, Contractor shall consult with the Tribe. The Parties agree and understand that all sales of tangible personal property or services delivered to the Tribe at its place of business on the Southern Ute Indian Reservation are exempt from state sales and use taxation, as required by federal law and as codified in Colorado law at § 39-26-727, C.R.S. Contractor shall deliver its products and services to the Tribe on the Reservation. If, in accordance with the Tribe's direction, Contractor claims an exemption for taxes, the Tribe shall indemnify and hold Contractor harmless from any liability, penalty, interest, fine, tax assessment, attorneys' fees, or other expense or cost incurred by Contractor as a result of any such claim.

3.10 Construction Personnel and Supervision.

3.10.1 Contractor shall provide competent supervision for the performance of the Work. Before commencing the Work, Contractor shall notify the Tribe in writing of the name and qualifications of its proposed superintendent(s) and project manager so the Tribe may review their qualifications. If, for reasonable cause, the Tribe refuses to approve an individual, or withdraws its approval after once giving it, Contractor shall name a different superintendent or project manager for the Tribe's review. Any disapproved superintendent shall not perform in that capacity thereafter at the worksite.

3.10.2 Contractor shall be responsible to the Tribe for acts or omissions of a person or entity performing on behalf of Contractor or any of its Subcontractors and Suppliers.

3.10.3 Contractor shall permit only qualified persons to perform the Work. Contractor shall enforce safety procedures, strict discipline, and good order among persons performing the Work. If the Tribe determines that a particular person does not follow safety procedures, or is unfit or unskilled for the assigned Work, Contractor shall immediately reassign the person upon receipt of the Tribe's request to do so.

3.10.4 Contractor's Representative. Contractor's authorized representative is:

[REDACTED], Project Manager
[REDACTED]
[REDACTED]
[REDACTED], [REDACTED]

Contractor's Representative shall possess full authority to receive instructions from the Tribe and to act on those instructions. If Contractor changes its representative or the representative's authority, Contractor shall immediately notify the Tribe in writing.

3.11 Guaranteed Maximum Price ("GMP")

3.11.1 The GMP is the maximum amount the Tribe shall pay to Contractor for the performance of the Work and shall include the estimated Cost of the Work as defined in Article 7 and Contractor's Fee as defined in Article 6. The GMP shall be subject to modification as provided in Article 8. Contractor does not guarantee any specific line item provided as part of the GMP but agrees that it will be responsible for paying all costs of completing the Work that exceed the GMP, as adjusted in accordance with this agreement. The Tribe and Contractor agree that the GMP is identified in an amendment attached hereto or shall be determined in accordance with Section 3.11.2 below.

3.11.2 Basis of Guaranteed Maximum Price. If the GMP has not been established prior to execution of this agreement as identified in Section 3.11.1 above, Contractor shall prepare for the Tribe a GMP Proposal. Contractor shall include as part of the GMP Proposal a written statement of its basis, which, to the extent deemed necessary by the Tribe or Contractor, shall include:

3.11.2.1 a list of the drawings and specifications, including all addenda, which were used in preparation of the GMP Proposal;

3.11.2.2 a list of allowances and a statement of their basis;

3.11.2.3 a list of the assumptions and clarifications made by Contractor in the preparation of the GMP Proposal to supplement the information contained in the drawings and specifications;

3.11.2.4 a date of substantial completion and date of final completion upon which the GMP is based, and the schedule of Work upon which date of substantial completion and date of final completion are based;

3.11.2.5 a schedule of applicable alternate prices;

3.11.2.6 a schedule of applicable unit prices;

3.11.2.7 a statement of additional services included, if any;

3.11.2.8 a statement of Contractor's contingency, if any, as either a lump sum or as a percentage of the initial estimated Cost of the Work; and

3.11.2.9 a statement of any work to be self-performed by Contractor.

3.11.3 Contractor shall meet with the Tribe to review the GMP Proposal. If the Tribe discovers any inconsistencies, inaccuracies, or omissions in the information presented, it shall promptly notify Contractor, who shall make appropriate adjustments to the GMP. The Tribe shall then give prompt written approval of the GMP Proposal at which time it becomes incorporated herein as Exhibit B.

3.11.4 The Tribe and Contractor shall cause the Contract Documents to be revised to the extent necessary to reflect the clarifications, assumptions, and allowances on which the GMP is based. Revised drawings and specifications shall be furnished to Contractor in accordance with the current Schedule of the Work, unless otherwise agreed by the Tribe and Contractor. Contractor shall promptly notify the Tribe if the revised drawings and specifications are inconsistent with the GMP's clarifications, assumptions, and allowances.

3.11.5 If the Contract Documents are not complete at the time the GMP Proposal is submitted to the Tribe, Contractor shall provide in the GMP for further development of the Contract Documents. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

3.11.6 Allowances shall include the costs of materials, supplies, and equipment delivered to the worksite less applicable trade discounts and taxes, if applicable, unloading and handling at the worksite, and labor and installation, unless specifically stated otherwise. Contractor's overhead and profit for the allowances shall be included in the GMP, but not in the allowances. The GMP shall be adjusted by Change Order to reflect the actual costs when they are greater than or less than the allowances.

3.11.7 Failure to Accept the GMP Proposal. Unless the Tribe accepts the GMP Proposal in writing on or before the date specified in the GMP Proposal for such acceptance and so notifies Contractor, the GMP Proposal shall not be effective. If the Tribe fails to accept the GMP Proposal, or rejects the GMP Proposal, the Tribe shall have the right to:

3.11.7.1 suggest modifications to the GMP Proposal. If such modifications are accepted in writing by Contractor, the GMP Proposal shall be deemed accepted in accordance with Section 3.11.3 at which time it becomes an amendment to this agreement. If such modifications are not accepted, Contractor may either offer a new GMP Proposal, or terminate the agreement with the parties to bear their own costs except as otherwise provided in Section 14.4.2; or

3.11.7.2 terminate the agreement for convenience in accordance with Section 14.4.

3.11.8 If the Tribe does not either (a) accept the GMP Proposal in writing, (b) suggest modifications in accordance with Section 3.11.7.1, or (c) terminate the agreement for convenience as contemplated by Section 3.11.7.2 on or before the date specified in the GMP Proposal for such acceptance, Contractor may terminate the agreement with the parties to bear their own costs except as otherwise provided in Section 14.4.2.

3.11.9 Pre-GMP Work. Prior to the Tribe's acceptance of the GMP Proposal, Contractor shall not incur any cost to be reimbursed as part of the Cost of the Work, except as provided in this agreement or as the Tribe may specifically authorize in writing.

3.12 Workmanship. The Work shall be executed in accordance with the Contract Documents in a workmanlike manner. All materials used in the Work shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the Work and shall be new except as otherwise provided in the Contract Documents.

3.13 Materials Furnished by the Tribe or Others. If the Work includes installation of materials or equipment furnished by the Tribe or others, it shall be the responsibility of Contractor to examine the items so provided and thereupon handle, store, and install the items, unless otherwise provided in the Contract Documents, with such skill and care as to provide a satisfactory and proper installation. Loss or damage due to acts or omissions of Contractor shall be the responsibility of Contractor and may be deducted from any amounts due or to become due Contractor. Any defects discovered in such materials or equipment shall be reported at once to the Tribe. Following receipt of written notice from Contractor of defects, the Tribe shall promptly inform Contractor what action, if any, Contractor shall take with regard to the defects, but the Tribe's directive shall not relieve Contractor of its duty to exercise professional judgment and continue to inform the Tribe of any defects or inconsistencies it discovers with respect to such materials. The Tribe has in place a Construction and Storage Yard for material and equipment storage for the duration of the construction project to the awarded Contractor. The Contractor will need to provide appropriate temporary construction trailers to be included in the GMP estimate.

3.14 Tests and Inspections.

3.14.1 Contractor shall schedule all required tests, approvals, and inspections of the Work or portions thereof at appropriate times so as not to delay the progress of the Work or other work related to the Project. Contractor shall give proper notice to all required parties of such tests, approvals, and inspections. If feasible, the Tribe and others may timely observe

the tests at the normal place of testing. Except as provided in Section 3.14.3, the Tribe shall bear all expenses associated with tests, inspections, and approvals required by the Contract Documents, which shall be conducted by an independent testing laboratory or entity retained by the Tribe. Unless otherwise required by the Contract Documents, required certificates of testing, approval, or inspection shall be secured by Contractor and promptly delivered to the Tribe.

3.14.2 If the Tribe or appropriate authorities determine that tests, inspections, or approvals in addition to those required by the Contract Documents will be necessary, Contractor shall arrange for the procedures and give timely notice to the Tribe and others who may observe the procedures. Costs of the additional tests, inspections, or approvals are at the Tribe's expense except as provided in the subsection below.

3.14.3 If the procedures described in the two subsections immediately above indicate that portions of the Work fail to comply with the Contract Documents, Contractor shall be responsible for costs of correction and retesting.

3.15 Warranty. Contractor warrants to the Tribe that it, or its contractors, subcontractors and consultants, have expertise in the construction of fiber-optic infrastructure. Contractor further warrants that all materials and equipment furnished under this agreement will be of good quality and new. The Contractor further warrants that the construction Work will conform to the requirements of the engineered Design Documents and will be free from defects. Work, materials and equipment not conforming to these requirements will be considered defective. Contractor guarantees and warrants Contractor's construction work against all defects in materials and workmanship for one year after the Tribe accepts it. If any defect arises within the one-year warranty period, Contractor must correct it, at Contractor's sole expense, within ten days of receiving written notice. If Contractor fails to correct the defect, the Tribe may contract with another, at Contractor's sole expense, to correct it. This is in addition to such other remedies that the Tribe may have.

3.16 Work Safety. Contractor, Contractor's employees, and subcontractors, must safely conduct work consistently with the best safety practices to prevent injuries at the job site to employees, visitors, the public, and adjacent property, including training all workers, warning everyone at the job site of potential hazards, and providing proper safety equipment. Before providing services under this agreement, Contractor must provide the Tribe with the environmental health and safety program that Contractor follows. Contractor must review the services to be provided and identify potential hazards that may arise when Contractor provides the service or performs the work. While providing services or performing the work, Contractor must monitor the safety of the job site, comply with all applicable federal, state, and local laws, and follow safe work practices. And even if not applicable, Contractor will follow all federal environmental health and safety regulations issued by the Occupational Safety and Health Administration and the Environmental Protection Agency. All construction activities need an approved traffic control plan to protect all workers and the general public.

3.17 Site Conditions. Contractor shall keep the premises and surrounding area free from accumulation of waste, materials and rubbish. Upon completion of the Work, Contractor will remove all waste materials, rubbish, tools, equipment, machinery and surplus materials.

3.18 Nonconforming Work. When the Tribe determines that any work under this agreement does not conform to the terms of this agreement, including any defects caused by faulty performance, Contractor must correct the work to conform at Contractor's expense.

3.19 Assume Responsibility. Contractor assumes sole responsibility for the acts or omissions of Contractor's employees, agents, subcontractors, their employees and agents, and all others doing work for Contractor or on Contractor's behalf.

3.20 Confidential Information. Contractor may use confidential information about the Tribe only to provide the specific services and work under this agreement. Generally, confidential information is any information that is not known to Contractor or the public before entering into this agreement, including written or verbal information and any information that Contractor may receive under this agreement. Contractor must always maintain the confidentiality of such information, even after this agreement expires or is terminated, unless the Tribe consents in writing to disclose such information or if legally required. Contractor may not copy any confidential information. Any confidential information that Contractor gets must be returned to the Tribe, including notes, immediately after the need for such information ends.

3.21 Document Use and Retention. Contractor agrees that the information for this agreement is only for the Tribe's use and that any documents generated pursuant to this agreement are the Tribe's work product and property. Contractor must not reveal such documents or the information contained in them to a third-party without the Tribal Chairman's written permission. Contractor may retain copies of all documents that Contractor prepares, but may use them only in accordance with specific written instruction from the Tribe and any document requested by the Tribe shall be returned to the Tribe upon such request.

3.22 Tax Information. Before the Tribe can pay Contractor, Contractor must give the Tribe Contractor's IRS tax form W-9, which must include Contractor's federal tax identification number or, if Contractor is a sole proprietorship, Contractor's social security number.

3.23 Right to Audit and Records Retention.

3.23.1 Record retention. Contractor must maintain accurate and complete records for 3 years after final payment. Records include, but are not limited to the following: accounting records; written policies and procedures; subcontractor files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursements supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; backcharge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence.

3.23.2 Right to Audit. Upon request, Contractor must allow the Tribe and its authorized representatives the right to audit, to examine, and to copy all records (in any form) relating to this agreement that Contractor keeps or controls, including those by employees, agents, assigns, successors, and subcontractors. During this agreement and for 3 years after final payment, Contractor must maintain such records. Upon the Tribe's request, Contractor must make such records available for inspection and audit (including copies and extracts of records as required) by the Tribe. Inspections will occur during normal business hours at the Contractor's place of business or at an agreed upon time and location that is convenient for the Tribe. Contractor must ensure the Tribe may exercise these rights and Contractor must

include these rights in any subcontracts or agreements relating to Contractor's obligations under this agreement.

3.23.3 Reasonable audit costs will be borne by the Tribe, unless certain exemption criteria are met. If the audit identifies overpricing or overcharges (of any nature) by the Contractor to Tribe in excess of 0.5% of the total contract billings, the Contractor shall reimburse Tribe for the total costs of the audit. If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, Contractor must pay the costs of the audit. Any adjustments that Contractor must pay as a result of any such audit shall be made within a reasonable amount of time not to exceed 90 days from presentation of Tribe's findings to Contractor.

3.24 Reservation Safety. Contractor understands that it is working on the Southern Ute Indian Reservation (the "Reservation"), the home of the Tribe. Contractor will be working in close proximity to residential areas, schools, community centers, and places of cultural and archaeological significance. Therefore, it has a duty to take reasonable measures to protect the tribal members, children, employees, and others located on the Reservation with the permission of the Tribe (the "Tribe's members and guests") as well as the Tribe's property from harm. These measures include:

3.24.1 Performing background checks on all employees to ensure that they pose no danger or risk of harm to the Tribe's members and guests and the Tribe's property.

3.24.2 Requiring that such a background check be performed on all employees of any subcontractor and verifying that such background check is performed.

3.24.3 Requiring that, while located on the Reservation, that employees of Contractor and those of any subcontractor stay solely within the designated work zone.

3.24.4 Requiring that all employees of Contractor and those of any subcontractor wear distinctive clothing identifying themselves as being associated with the Contractor or subcontractor.

3.24.5 Ensuring that no employee of Contractor and those of any subcontractor bring any gun or other weapon or any illegal controlled substance on to the Reservation.

3.25 Reliance on work of Contractor. The Tribe is entitled to place complete reliance on the work provided by Contractor under the terms of this agreement and is under no independent duty to ensure that the services provided were properly performed.

3.26 Existing underground utilities, fences, driveways, and ditches. Contractor shall make all arrangements to locate or otherwise ascertain the location of underground utilities. Contractor shall be responsible for any damage to same, as well as to any fences, driveways, ditches, and other existing facilities.

3.27 Concealed or unknown conditions. Contractor represents that, in advance of execution of this SOW it has thoroughly reviewed the existing site conditions and that it has no reason to believe those conditions are not suitable for the Work contemplated herein. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those expected; or (2) unknown physical conditions of an

unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for, the Contractor shall promptly provide written notice to Shared Services before conditions are disturbed and in no event later than 7 days after first observance of the conditions. The Tribe and Contractor will promptly investigate such conditions and, if Shared Services and Contractor determine that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the contract sum or contract time, or both. If Shared Services determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of this SOW is justified, Shared Services shall promptly notify the Contractor in writing, stating the reasons. If the Contractor disputes Shared Services' determination or recommendation on this issue, the Contractor may submit a claim for equitable adjustment to Shared Services.

3.28 Discovery of cultural items. If, in the course of the Work, the Contractor encounters historic properties, archeological sites, human remains or recognizes the existence of burial markers, other cultural items not previously reported, or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify Shared Services. Upon receipt of such notice, Shared Services shall promptly take any action necessary to obtain governmental authorization and all necessary approvals required to resume the operations. The Contractor shall continue to suspend such operations in the immediate vicinity of the properties, resources, remains, or items until otherwise instructed by Shared Services but shall continue with all other operations that do not affect those remains or features. Requests for equitable adjustments in the service fees and construction timeline (i.e., a Change Order Request) arising from the existence of such remains or features may be made, if applicable.

3.29 Inspection. Shared Services and its authorized agents shall, at all times, have access to the Work during its construction for inspection, and shall be furnished with every reasonable facility for ascertaining that the workmanship and materials used and employed, are in accordance with the requirements and intentions of the specifications and Contract Documents. All Work done and all materials furnished shall be subject to inspection and approval. The inspection of the work shall not relieve the Contractor of any of its obligations to fulfill this agreement as prescribed and defective work shall be made good and unsuitable materials shall be rejected, notwithstanding that such defective work and materials have been previously overlooked and accepted on estimates for payment. All Work shall be tested to the satisfaction of Shared Services before acceptance. Additionally, upon request by Shared Services, Contractor shall make appropriate records, reports, or information available for inspection and duplication. Failure by Contractor to cooperate with such a request may, in the Tribe's discretion, be treated as an agreement violation.

Article 4 Tribe's Responsibilities

4.1 Information and Services. The Tribe's responsibilities under this section shall be fulfilled with reasonable detail and in a timely manner.

4.2 Worksite Information. To the extent the Tribe has obtained, or is required to obtain the following worksite information, then the Tribe shall provide Contractor the following:

4.2.1 information describing the physical characteristics of the worksite, including surveys, worksite evaluations, legal descriptions, data or drawings depicting existing conditions, subsurface conditions, and environmental studies, reports, and investigations, known to the Tribe;

4.2.2 tests, inspections, and other reports dealing with environmental matters, Hazardous Material and other existing conditions, including structural, mechanical, and chemical tests, required by the Contract Documents or by law;

4.2.3 any other information or services requested in writing by Contractor which are required for Contractor's performance of the Work and under the Tribe's control.

4.3 Permits, Fees, and Authorizations. The Tribe shall work cooperatively with and provide instructions to Contractor regarding the processes and procedures necessary to secure and pay for permits, approvals, easements, assessments, and fees required for the Work.

4.4 Contract Documents. Unless otherwise specified, the Tribe shall provide [] hard copies of the Contract Documents to Contractor without cost.

4.5 Tribe's Representative. The Tribe's representative is:

Chief Information Officer
Southern Ute Indian Tribe Shared Services
14929 Highway 172
P.O. Box 367
Ignacio, CO 81137
Office: 970.563.5205 / Mobile: 970.501.0518
jengman@southernute.com

The Tribe's representative shall be fully acquainted with the Project and shall have authority to bind Shared Services in some matters and, where necessary, shall be able to request approvals and authorizations needed from other authorized tribal representatives. If the Tribe changes its representative or its representative's authority, the Tribe shall immediately notify Contractor in writing.

4.6 Tribe's Right to Clean Up. In case of a dispute between Contractor and others with regard to respective responsibilities for clean up at the worksite, the Tribe may implement appropriate cleanup measures after two business days' notice and allocate the cost among those responsible during the following pay period.

4.7 Cost of Correcting Damaged or Destroyed Work. With regard to damage or loss attributable to the acts or omissions of the Tribe or others and not to Contractor, the Tribe shall either (a) promptly remedy the damage or loss (and assume affected warranty responsibilities),

(b) accept the damage or loss, or (c) issue a Change Order to remedy the damage or loss. If Contractor incurs costs or is delayed due to such loss or damage, Contractor may seek an equitable adjustment in the Contract Price or Contract Time under this agreement.

Article 5 Project Schedule and Milestones

5.1 It is anticipated that the Project will take approximately _____ to complete. Contractor will begin the Work once the necessary permitting is completed, Contractor has provided its payment and performance bonds and evidence of insurance to Shared Services, and Shared Services issues a written Notice to Proceed (in the form, or in a substantially similar form, as attached hereto and made a part hereof as Exhibit C). The Project schedule and milestones will be set forth in a Project timeline to which the parties mutually agree in writing and which the parties may modify from time to time. The Tribe may determine the sequence in which the Work shall be performed. The Tribe may require Contractor to make reasonable changes in the sequence at any time during the performance of the Work in order to facilitate the performance of work by the Tribe or others. All Work must be complete by the times set forth in the agreed-upon timeline.

This agreement will terminate upon the earlier of the completion of the Work, or the termination of this agreement as set forth herein.

Article 6 Compensation

6.1 The Tribe shall compensate Contractor for Work on the following basis:

6.1.1 Cost of the Work as allowed in Article 7; and:

6.1.2 Contractor's Fee paid in proportion to Work performed subject to adjustment as provided in Section 6.4.

6.1.3 If at Final Completion, Cost of the Work plus Contractor's Fee is less than the GMP, the difference shall be shared as follows: The savings, if any, shall accrue ____percent (%) to the Tribe and _____ percent (%) to Contractor. The shared savings shall be calculated and paid as part of final payment. Contractor shall not be entitled to any portion of the shared savings if either Party terminates this agreement except for a termination for convenience pursuant to section Section 14.4, Contractor's termination pursuant to Section 14.5, or, in the case of a termination for default under Section 14.3, if Section 14.3.3 applies.

6.2 Payment for Work performed shall be as set forth in Article 8.

6.3 Contractor's Fee. Contractor's Fee shall be as follows, subject to adjustment as provided in Section 6.4:

_____ % of the Cost of the Work, or;

\$ _____ a lump sum amount.

6.4 Adjustment in Contractor's Fee. Adjustment in Contractor's Fee shall be made as follows:

6.4.1 if Contractor performs changed work pursuant to Article 8 and if Contractor's Fee is a lump sum amount, Section 8.1.

6.4.2 if Contractor performs changed work pursuant to Article 8 and if Contractor's Fee is a percentage of the Cost of the Work, Contractor's Fees shall be calculated as a percentage of the total Cost of the Work, including changed work pursuant to Article 8.

Article 7 Cost of the Work

7.1 The Tribe agrees to pay Contractor for Cost of the Work as defined in this article. This payment shall be in addition to Contractor's Fee in Section 6.3. The Cost of the Work includes:

7.1.1 Labor wages directly employed by Contractor in the performing the Work.

7.1.2 Salaries of Contractor's employees when stationed at the field office to the extent necessary to complete the applicable Work, employees engaged on the road expediting the production or transportation of material and equipment, and supervisory employees from the principal or branch office as mutually agreed by the Parties in writing;

7.1.3 Cost of all employee benefits and taxes including but not limited to Workers' Compensation, unemployment compensation, Social Security, health, welfare, retirement, and other fringe benefits as required by laws, labor agreements, or paid under Contractor's standard personnel policy, insofar as such costs are paid to employees of Contractor who are included in the Cost of the Work above;

7.1.4 Reasonable transportation, travel, hotel, and moving expenses of Contractor's personnel incurred in connection with Work;

7.1.5 Cost of all materials, supplies, and equipment incorporated in the Work, including costs of inspection and testing if not provided by the Tribe, transportation, storage and handling;

7.1.6 Payments properly made by Contractor to Subcontractors for performed Work;

7.1.7 Cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities, and hand tools not owned by the workers that are used or consumed in the performance of Work, less salvage value or residual value; and cost less salvage value on such items used, but not consumed, that remain the property of Contractor;

7.1.8 Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at worksite, whether rented from Contractor or others, including installation, repair and replacement, dismantling, removal, maintenance, transportation, and delivery costs. Rental from unrelated third parties shall be reimbursed at actual cost. Rentals from Contractor or its affiliates, subsidiaries, or related parties shall be reimbursed at the

prevailing rates in the locality of worksite up to eighty-five percent (75%) of the value of the piece of equipment;

7.1.9 Cost for the premiums for all insurance and surety bonds, which Contractor is required to procure, pay or deems necessary, and approved by the Tribe, including any additional premium incurred as a result of any increase in the Cost of the Work;

7.1.10 Applicable sales, use, gross receipts or other taxes, tariffs, or duties related to Work for which Contractor is liable;

7.1.11 Permits, fees, licenses, and tests;

7.1.12 Losses, expenses or damages to the extent not compensated by insurance or otherwise, and the cost of corrective work before expiration of the one-year period following the date of substantial completion, provided that such losses, expenses, damages, or corrective work did not arise from Contractor's negligence;

7.1.13 Costs associated with establishing, equipping, operating, maintaining, and demobilizing the field office;

7.1.14 Water, power, and fuel costs necessary for the Work;

7.1.15 Cost of removal of all nonhazardous substances, debris, and waste materials;

7.1.16 Costs incurred due to an emergency affecting the safety of persons or property;

7.1.17 Costs directly incurred in performing the Work, or in connection with the Project, and not included in Contractor's Fee as set forth in Article 7, which are reasonably inferable from the Contract Documents.

7.1.18 Discounts. All discounts for prompt payment shall accrue to the Tribe to the extent such payments are made directly by the Tribe. To the extent payments are made with funds of Contractor, all cash discounts shall accrue to Contractor. All trade discounts, rebates, and refunds, and all returns from sale of surplus materials and equipment, shall be credited to Cost of the Work.

7.1.19 Financial Records. Contractor shall maintain complete, accurate, and current records that comply with generally accepted accounting principles and calculate the proper financial management with respect to the Project. The Tribe shall be afforded access to all of Contractor's records, books, correspondence, instructions, drawing, receipts, vouchers, memoranda, and similar data relating to this agreement. Contractor shall preserve all such records for a period of three years after the final payment or longer where required by law. Contractor agrees to use reasonable skill and judgment in the preparation of cost estimates but does not warrant or guarantee them.

Article 8 Change Orders

8.1 Shared Services may from time to time request changes to the Work or services (including, but not limited to, addition, deletion or modification of deliverables, changes in the specifications, and/or changes to any milestones) by issuing a written request, by email or otherwise, to Contractor (a “Change Order Request”). Contractor will promptly respond in writing to any Change Order Request, stating how such proposed modifications to the Work or services will affect the time or materials required for Contractor to perform the Work or services, as well as any proposed equitable adjustment in the cost of work (“Change Order Estimate”). If Shared Services agrees in writing to such Change Order Estimate, then such writing shall constitute confirmation of the agreed-upon changes.

Article 9 Payment

9.1 Due Date. The Tribe will pay Contractor no later than 30 days from the date of Contractor’s invoice.

9.2 Billing. To receive payment, Contractor must submit an invoice(s) to the Tribe, no more frequently than monthly, that itemizes the services or work performed and attach all supporting documentation. Invoices must include the time performing the services and the specific tasks performed.

9.3 Partial Lien Waivers and Affidavits. If required by the Tribe, as a prerequisite for payment, Constructor shall provide a partial lien and claim waiver in the amount of the application for payment and affidavits from its subcontractors and suppliers for the completed Work. Such waivers shall be conditional upon payment.

9.4 Deduction. The Tribe may deduct from any amounts due to Contractor an amount sufficient to protect itself from loss, including from defective work or untimely performance. The Tribe may deduct a sufficient amount for defective workmanship, equipment, or material that Contractor does not remedy within ten days upon receiving written notice of the defect from the Tribe. The Tribe may deduct a sufficient amount for not timely performing the work by the time in the work schedule.

9.5 Final Payment. When Contractor accepts the final payment, Contractor waives all claims against the Tribe, except those previously agreed in writing and that remain unsettled when Contractor accepts final payment.

Article 10 Subcontracts

10.1 Provide Subcontractor Information. The Tribe will decide whether or not to approve a subcontractor after Contractor provides the following six items to the Tribe’s representative:

1. a list of subcontractors;
2. the company’s name;
3. a contact person;
4. contact information (email, address, telephone, cell phone, and fax numbers);

5. the subcontractor's services; and
6. the cost for the services.

10.2 Duties. If Contractor subcontracts, Contractor must:

1. oversee all of the subcontractor's work;
2. follow the Tribe's Employment Rights Code in selecting subcontractors (as a courtesy, the Tribe is providing a "Process for General Contractor to Onboard a New Subcontractor on the Hwy 151 phase of the Broadband Project" attached hereto as Exhibit D;
3. ensure that subcontractors exercise their work with the same degree of skill and care required by the industry's customary professional practice;
4. pay any costs incurred for failing to meet these standards; and
5. require that subcontractors comply with all obligations in this agreement.

10.3 Right to Replace. The Tribe reserves the right to require Contractor replace any subcontractor. If the Tribe exercises this right, the Tribe will pay all reasonable costs for replacing subcontractors.

10.4 No Contractual Agreement with Tribe. Nothing in this agreement creates a contractual relationship between any subcontractor and the Tribe.

Article 11 Dispute Resolution

11.1 Non-binding mediation. The parties agree to first attempt to resolve any disputes under this agreement in good faith through non-binding mediation through JAMS.

11.2 Venue. The sole venue for the litigation of claims under this agreement is the Southern Ute Indian Tribal Court. Contractor hereby consents to the personal jurisdiction of the Tribal Court by entering into this agreement. Nothing in this agreement may be construed as a waiver of the Tribe's sovereign immunity.

11.3 Controlling Law. Southern Ute law and applicable federal law control this agreement.

11.4 Non-prevailing Party. If litigation is necessary to enforce this agreement, including collecting amounts owed, the non-prevailing party will pay all litigation costs, collection fees, and attorney's fees.

Article 12 Indemnity, Insurance, and Bonds

12.1 Indemnification by the Tribe. The Tribe agrees to hold Contractor harmless for any loss or damage, liabilities, or judgments sustained by third parties as a consequence of the negligent acts of the Tribe, its agents or employees.

12.2 Indemnification by Contractor. Contractor agrees to hold the Tribe harmless for any loss or damage, liabilities, or judgments sustained by third parties from Contractor's acts or omissions, including from Contractor's agents or employees. Contractor's indemnity obligations will survive after this agreement terminates or expires.

12.3 Contractor's Insurance Requirements. The Contractor shall provide evidence of the following insurance coverages to the Tribe. The Contractor shall not provide services or work for the Tribe until properly completed original certificates of insurance have been received and approved by the Tribe.

GENERAL LIABILITY INSURANCE - OCCURRENCE FORM

Commercial General Liability Insurance must be carried with at least the following limits of liability:

General Aggregate \$2,000,000
Products-Completed Operations Aggregate \$2,000,000
Personal & Advertising Injury \$1,000,000
Each Occurrence \$1,000,000

Required Endorsements:

1. Additional Insured status in favor of the Tribe and any other party as required by the Tribe, including both ongoing and completed operations, as applicable.
2. Primary and non-contributory endorsement.

Prohibited Exclusionary Endorsements
Contractual Liability

The General Liability policy shall be maintained for the applicable statute of limitations.

PROFESSIONAL LIABILITY INSURANCE

Contractor and all subcontractors providing professional services shall provide and maintain Professional Liability Insurance coverage. The policy coverage shall be effective (retroactively, if applicable) from the date of commencement of all professional activities in connection with this agreement.

Both Contractor and subcontractors shall have proof of professional liability coverage in the amount of:
\$2,000,000 each claim and \$2,000,000 aggregate with a maximum deductible of \$50,000 to be paid by Contractor.

The Contractor and subcontractor shall maintain professional liability coverage for the statute of limitations.

WORKERS' COMPENSATION INSURANCE

Worker's Compensation as required by Colorado law for all of the Contractor's employees and Employee's Liability Insurance with the following minimum limits:

Workers' Compensation Coverage Statutory Coverage as required by Colorado.

Employer's Liability Coverage

\$500,000 Limit of Liability Each Accident

\$500,000 Disease-Policy Limit

\$500,000 Disease-Each Employee.

AUTOMOBILE LIABILITY INSURANCE

Business auto policies are required to have: Any auto or owned, non-owned and hired automobile coverage:

Bodily Injury and Property \$1,000,000 Combined Single Limit

EQUIPMENT FLOATER

Contractor shall maintain at its sole cost and expense insurance to protect its own equipment, tools and materials against risk of loss with sufficient limits to cover the value of all of the equipment, tools and materials Contractor may use in performance of the work. Policy shall provide a waiver of subrogation in favor of the Tribe. Contractor is solely responsible for any deductibles, self-insured retentions or uninsured losses for any reason arising out of Contractor's obligations of this Section.

ADDITIONAL INSURED

The Tribe and all of its respective departments, divisions, affiliates, directors, officers, employees and agents and any other party as required by the Tribe must be endorsed on the Contractor's General Liability, Automobile Liability, and Umbrella Liability as an "additional insured." If applicable, coverage for additional insured under the General Liability policy must be both for ongoing and completed operations.

WAIVER OF SUBROGATION

All policies as required of Contractor shall provide a waiver of subrogation in favor of additional insured parties.

CERTIFICATES OF INSURANCE

The Contractor shall furnish an **original** certificate of insurance on ACORD form 25 as evidence that the above insurance is in force stating policy numbers, dates of expiration, limits of liability and coverages thereunder, the name of the project **or** "Any and All Operations." An original of such notice shall be sent via mail to certificate holder. If the Contractor fails to procure and maintain such insurance,

the Tribe shall have the right (but is not obligated) to procure and maintain the said insurance and the Contractor shall pay the cost thereof and provide all necessary information to affect such insurance. Maintenance of the foregoing insurance coverage shall in no way be interpreted as relieving the Contractor of any responsibility hereunder. The Contractor may secure, at the Contractor's own expense, such additional insurance as the Contractor deems necessary.

SPECIAL PROVISIONS

The Tribe reserves the right to review, approve and/or reject any and all certificates of insurance and required endorsements.

All policies are to be written through companies duly entered and authorized to transact that class of insurance in the state of Colorado. The Insurance Companies must have an A.M. Best rating of A-, VIII or better in the most recent Best's Key Rating Guide.

Approval, disapproval or failure to act by the Tribe regarding any insurance supplied by the Contractor shall not relieve the Contractor of full responsibility or liability for damages and accidents. Neither shall the bankruptcy, insolvency or denial of liability by the insurance carrier shall exonerate the Contractor from liability.

No special payments shall be made for any insurance that the Contractor may be required to carry; all are included in the contract price.

12.4 Bonds. Contractor shall furnish performance and payments bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all Contractor's obligations under this agreement. These bonds shall remain in effect at least until one year after the date when final payment becomes due.

Article 13 Office of Foreign Assets Control, Anti-Money Laundering Compliance

13.1 OFAC Compliance. Contractor is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended. Neither Contractor nor, to Contractor's actual knowledge, any Person (defined below) who owns a direct or indirect interest in Contractor (collectively, a "Contractor Party") is now nor shall be at any time during the term of this agreement an individual, corporation, partnership, joint venture, association, joint stock company, trust, trustee, estate, limited liability company, unincorporated organization, real estate investment trust, government or any agency or political subdivision thereof, or any other form of entity (collectively, a "Person") with whom a United States citizen, entity organized under the laws of the United States or its territories or entity having its principal place of business within the United States or any of its territories (collectively, a "U.S. Person"), including a United States Financial Institution as defined in 31 U.S.C. 5312, as periodically amended ("Financial Institution"), is prohibited from transacting business of the type contemplated by this agreement, whether such prohibition arises under United States law, regulation, executive orders and lists published by the Office of Foreign Assets Control, Department of the Treasury ("OFAC") (including those executive orders and lists published by OFAC with respect to Persons that have

been designated by executive order or by the sanction regulations of OFAC as Persons with whom U.S. Persons may not transact business or must limit their interactions to types approved by OFAC) or otherwise.

13.2 Anti-Money Laundering. Neither Contractor nor, to Contractor's knowledge, any Contractor Party, (i) is under investigation by any governmental authority for, or has been charged with, or convicted of, money laundering, drug trafficking, terrorist related activities, any crimes which in the United States would be predicate crimes to money laundering or any violation of any Anti-Money Laundering Laws or any violation of any Anti-Corruption Laws; (ii) has been assessed civil or criminal penalties under any Anti-Money Laundering Laws or under any Anti-Corruption Laws; or (iii) has had any of its funds seized or forfeited in any action under any Anti Money Laundering Laws or any Anti-Corruption.

13.3 Definitions. For purposes of this agreement, the following terms shall have the meanings set forth below:

1. "Anti-Money Laundering Laws" shall mean laws, regulations and sanctions, state and federal, criminal and civil, that (1) limit the use of and/or seek the forfeiture of proceeds from illegal transactions; (2) limit commercial transactions with designated countries or individuals believed to be terrorists, narcotics dealers or otherwise engaged in activities contrary to the interests of the United States; (3) require identification and documentation of the parties with whom a Financial Institution conducts business; or (4) are designed to disrupt the flow of funds to terrorist organizations. Such laws, regulations and sanctions shall be deemed to include the USA PATRIOT Act of 2001, Pub. L. No. 107-56, the Bank Secrecy Act, 31 U.S.C. Section 5311 et. seq., the Trading with the Enemy Act, 50 U.S.C. App. Section 1 et. seq., the International Emergency Economic Powers Act, 50 U.S.C. Section 1701 et. seq., the Money Laundering Control Act of 1986 and the sanction regulations promulgated pursuant thereto by the OFAC, as well as laws relating to prevention and detection of money laundering in 18 U.S.C. Section 1956 and 1957.
2. "Anti-Corruption Laws" shall mean any anti-corruption laws of any applicable jurisdiction including the U.S. Foreign Corrupt Practices Act, 15 U.S.C. Section 78dd-1, et seq.

13.4 Certification. Contractor shall deliver to the Tribe within five business days after receipt of a written request therefor, a written certification or such other evidence reasonably acceptable to the Tribe evidencing and confirming Contractor's compliance with Sections 10.1 and 10.2 hereof. If at any time the representations set forth in either Section 10.1 or 10.2 hereof become false, Contractor shall be deemed to be in default of this agreement and the Tribe shall have the right to exercise all of the remedies set forth in this agreement in the event of a Contractor default or to terminate this agreement immediately and collect damages as a result of such Contractor default.

13.5 Indemnification. Anything in this agreement or otherwise to the contrary notwithstanding, Contractor hereby agrees to defend, indemnify, and hold harmless the Tribe, its officers, members, managers, partners, directors, agents, employees and counsel from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorney's fees and costs) arising from or related to any breach of the representations, warranties and

covenants set forth in Sections 10.1 and 10.2 of this agreement.. The indemnity obligations of Contractor under this Section 10.5 shall survive the termination or expiration of this agreement.

Article 14 Suspension, Notice to Cure, and Termination

14.1 Suspension by the Tribe for Convenience. Should the Tribe order Contractor in writing to suspend, delay, or interrupt the performance of the Work for the convenience of the Tribe and not due to any act or omission of Contractor or any person or entity for whose acts or omissions Contractor may be liable, then Contractor shall immediately suspend, delay, or interrupt that portion of the Work for the time period ordered by the Tribe. Any action taken by the Tribe that is permitted by any other provision of the Contract Documents and that results in a suspension of part or all of the Work does not constitute a suspension of Work under this section.

14.2 Notice to Cure a Default. If Contractor persistently fails to supply enough qualified workers, proper materials, or equipment to maintain the approved schedule of the Work, or fails to make prompt payment to its workers, subcontractors, or suppliers, disregards an applicable law or requirement or orders of any authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this agreement, Contractor may be deemed in default.

14.2.1 After receiving the Tribe's written notice, if Contractor fails within seven days after receipt of written notice from the Tribe to commence and continue satisfactory correction of such default with diligence and promptness, then the Tribe shall give Contractor a second notice to correct the default within three business days after receipt. The second notice to Contractor, and if applicable, the surety, may include, that the Tribe intends to terminate this agreement for default absent appropriate corrective action.

14.2.2 If Contractor fails to promptly commence and continue satisfactory correction of the default following receipt of such second notice, the Tribe without prejudice to any other rights or remedies may: (a) take possession of the worksite; (b) complete the Work utilizing reasonable means; (c) withhold payment due to Contractor; and (d) as the Tribe deems necessary, supply workers and materials, equipment, and other facilities for the satisfactory correction of the default, and charge Contractor the costs and expenses, including reasonable overhead, profit, and attorneys' fees.

14.2.3 In the event of an emergency affecting the safety of persons or property, the Tribe may immediately commence and continue satisfactory correction of such default without first giving written notice to Contractor but shall give Contractor prompt written notice.

14.3 Tribe's Right to Terminate for Default.

14.3.1 Termination by the Tribe' for Default. Upon expiration of the second notice period to cure pursuant to Section 14.2 and absent appropriate corrective action, the Tribe may terminate this agreement by written notice. Termination for default is in addition to any other remedies available to the Tribe under Section 14.2. If the Tribe's costs arising out of Contractor's failure to cure, including the costs of completing the Work and reasonable attorneys' fees, exceed the unpaid Contract Price, Contractor shall be liable to the Tribe for such excess costs. If the Tribe exercises its rights under this section, upon the request of

Contractor, the Tribe shall furnish to Contractor a detailed accounting of the costs incurred by the Tribe.

14.3.2 Use of Contractor's Materials, Supplies, and Equipment. If the Tribe or others perform work under Section 14.2, the Tribe shall have the right to take and use any materials and supplies for which the Tribe has paid and located at the worksite for the purpose of completing any remaining Work. the Tribe and others performing work under Section 14.2 shall also have the right to use construction tools and equipment located on the worksite and belonging to the Contractor or subcontractors for the purpose of completing the remaining Work, but only after Contractor's written consent. If the Tribe uses Contractor's construction tools and equipment in accordance with this subsection, then the Tribe shall indemnify and hold harmless Contractor and applicable Subcontractors and the agents, officers, directors, and employees of each of them, from and against all claims, damages, losses, costs, and expenses, including but not limited to reasonable attorneys' fees, costs, and expenses incurred in connection with the Tribe's use of Contractor's or applicable subcontractor's construction tools and equipment. Immediately upon completion of the Work, any remaining materials, supplies, or equipment not consumed or incorporated in the Work shall be returned to Contractor in substantially the same condition as when they were taken, reasonable wear and tear excepted.

14.3.3 If Contractor files a petition under the Bankruptcy Code, this agreement shall terminate if: (a) Contractor or Contractor's trustee rejects the Agreement; (b) a default occurred and Contractor is unable to give adequate assurance of required performance; or (c) Contractor is otherwise unable to comply with the requirements for assuming this agreement under the applicable provisions of the Bankruptcy Code.

14.3.4 The Tribe shall make reasonable efforts to mitigate damages arising from Contractor default, and shall promptly invoice Contractor for all amounts due pursuant to Sections 14.2 and 14.3.

14.4 Termination by Tribe for Convenience.

14.4.1 Upon Contractor's receipt of the Tribe's written notice from the Tribe, the Tribe may, without cause, terminate this agreement. Contractor shall immediately stop the Work, follow the Tribe's instructions regarding shutdown and termination procedures, and strive to minimize any further costs.

14.4.2 If the Tribe terminates this agreement for convenience, Contractor shall be paid: (a) for the Work performed to date including overhead and profit; (b) for all reasonable documented demobilization costs and costs incurred resulting from termination, but not including overhead or profit on Work not performed; (c) reasonable costs related to the Work and incurred as a direct result of such termination.

14.4.3 If the Tribe terminates this agreement for any reason, Contractor shall:

14.4.3.1 execute and deliver to the Tribe all papers and take all action required to assign, transfer, and vest in the Tribe the rights of Contractor to all materials, supplies, and equipment for which payment has been or will be made in accordance with the Contract Documents and, if requested by the Tribe: all subcontracts, orders, and commitments which have been made in accordance with the Contract Documents;

14.4.3.2 exert reasonable effort to reduce to a minimum the Tribe's liability for subcontracts, orders, and commitments that have not been fulfilled at the time of the termination;

14.4.3.3 cancel any subcontracts, orders, and commitments as the Tribe directs; and

14.4.3.4 sell at prices approved by the Tribe any materials, supplies, and equipment as the Tribe directs, with all proceeds paid or credited to the Tribe.

14.5 Contractor's Right to Terminate.

14.5.1 Seven days after the Tribe's receipt of written notice from Contractor, Contractor may terminate this agreement if the Work has been stopped for a 60-day period through no fault of Contractor for any of the following reasons:

- (a) under court order or order of other governmental authorities having jurisdiction;
- (b) as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of Contractor, materials are not available; or
- (c) suspension by the Tribe for convenience pursuant to Section 14.1.

14.5.2 In addition, upon written notice to the Tribe and an opportunity to cure within 20 business days, Contractor may terminate this agreement if the Tribe:

14.5.2.1 fails to pay Contractor in accordance with this agreement and is not, in good faith, disputing a payment request; or

14.5.2.2 otherwise materially breaches this agreement.

14.5.3 Upon termination by Contractor in accordance with Section 14.5.2, Contractor is entitled to recover from the Tribe payment for all Work executed and for any proven loss, cost, or expense in connection with the Work, including all reasonable documented demobilization costs plus reasonable overhead and profit on Work not performed.

14.6 Obligations Arising Before Termination. Even after notice of termination, the provisions of this agreement still apply to any Work performed, payments made, events occurring, costs charged or incurred, or obligations arising before the effective termination date.

Article 15 Miscellaneous

15.1 Entire Agreement. This agreement constitutes the sole agreement of the parties with respect to its subject matter. It supersedes any prior written or oral agreements or communications between the parties. It may not be modified except in a writing signed by the parties.

15.2 No Assignment. Contractor may not assign this agreement without the Tribe's prior written consent. Contractor entering into contracts with subcontractors is not considered an assignment. However, a change of control of Contractor does constitute an assignment.

15.3 Waiver. If either party fails to require the other to perform any term of this agreement, that failure does not prevent the party from later enforcing that term. If either party waives the other's breach of a term, that waiver is not treated as waiving a later breach of the term.

15.4 Notices. All notices and other communications required or permitted under this agreement must be in writing and must be sent to the party at that party's address set forth in this contract:

If to the Tribe: Chief Information Officer
Southern Ute Indian Tribe Shared Services
14929 Hwy 172
P.O. Box 467
Ignacio, CO 81147

If to Contractor:

15.5 Severability. If any part of this agreement is for any reason held to be unenforceable, the rest of it remains fully enforceable.

15.6 "Including." Unless the context requires otherwise, the term "including" means "including but not limited to."

15.7 Headings. Headings are for convenience only and do not affect the interpretation of this agreement.

15.8 Counterparts and Electronic Signatures. This agreement may be signed in counterparts, each one of which is considered an original, but all of which constitute one and the same instrument. Faxed or electronic signatures have the same effect as original signatures.

AGREED TO AND APPROVED BY THE PARTIES ON THE SOUTHERN UTE INDIAN RESERVATION

SOUTHERN UTE INDIAN TRIBE

**NAME OF INDEPENDENT
CONTRACTOR**

Melvin J. Baker, Chairman
Southern Ute Indian Tribal Council

Insert Contractor's Name & Title

Date

Date

P.O. Box or Street Address

City, State Zip Code

**Exhibit A (Scope of
Work) to
Professional Services
Agreement for
Construction Services for the Hwy151 Aerial Segment of the
Southern Ute Indian Tribe's Broadband Project**

1. Project Overview.

The Project (i.e., Hwy151 aerial segment expansion of the Tribe's broadband modernization project) is to expand the backbone network from Phase I along Hwy151 to connect Arboles, Lake Capote, and Pagosa Springs.

The Phase I network has been designed with a microduct and microfiber approach. This design is a passive optical network (PON), which is a point-to-multipoint network. The PON protocol will be XGS-PON (ITU-T G.9807.1). For the Hwy151 aerial segment, the Tribe's desire is to install an aerial conduit with at least two-microducts. One microduct to be filled with 144 strand microfiber line, the second microduct is spare for future use.

Construction timing will depend on the timing to receive grant funds and LPEA's make-ready construction schedule to upgrade their poles to allow for a communications space for the new conduit and fiber.

2. Scope of Work.

The contractor will provide construction services as directed and authorized by Shared Services. Responsibilities will include, but not necessarily be limited to:

- Engineering and design. Design prints to be provided to the Tribe by the winning respondent.
- Aerial conduit and microfiber.
 - Provide a material estimate for the optimum design:
 - Aerial conduit with at least two-microducts.
 - One microduct filled with 144 strand microfiber line.
 - Provide exact conduit and fiber specifications to be used by LPEA for pole load analysis.
 - Provide a secondary material estimate for the minimum design:
 - 72-strand aerial microfiber line.
 - Provide exact conduit and fiber specifications to be used by LPEA for pole load analysis.
 - Total footage equals 174,000 ft and this include 5% sag between structures.
- Pole attachment count is 626 poles. Bid not to include the LPEA pole attachment fee, these will be paid for separately. There is a segment from US160/Hwy151 to the Ponderosa substation (approx. 9 miles) where the fiber will be on LPEA transmission poles where tight coordination with LPEA will be needed for fiber installation in the electrical space.
- 40 fiber optic service loops to be installed as access points along the route. Exact pole numbers/locations to be provided upon award of the RFP.
- Include any required electronics needed to light the fiber. This line will be connected to lit fiber at the CR330/Hwy151 junction and dark fiber at the LPEA Ponderosa substation.
- Include any required fiber electronics huts to be located at the Ponderosa and Pagosa Springs LPEA substations (see maps included at the end of this document). Will require conversations with LPEA to determine if these huts are needed.

- Minor materials and consumables. Minor materials include bolts, nuts, clamps/brackets, washers, and any misc. removal – all to be supplied by the RFP respondent.
- Project managers, including on location project oversight.
- Assist as requested by the Tribe in any required permitting duties like drafting, for the Tribe’s review, and, when authorized to do so by the Tribe, submitting ditch crossing applications, pole attachment agreements, CDOT utility permit applications, and other necessary permitting documents. Project Managers will attend weekly project and permitting meetings to ensure proper coordination of deliverables.
- Construction inspectors for quality control/quality assurance.
- Communication including PSAs and onsite collaboration with area residents.
- Project performance tools will need to be used throughout the project giving the Tribe ongoing visibility of project status during the construction process. Desired information includes a project status dashboard, financial overview, and construction progress. This will give the Tribe complete visibility into the project and allows the team to mitigate any future issues or concerns.
- Bonding - The selected contractor will be required to furnish performance and payments bonds, each in an amount at least equal to the contract price as security for the faithful performance and payment of all contractor’s obligations under the construction agreement. These bonds shall remain in effect at least until one year after the date when final payment becomes due.
- Provide warrantee work as directed for defects or incomplete services.
- Compliance with all applicable telecommunication industry regulatory requirements.
- Financial tracking and forecasting of budget versus actuals.
- Traffic control lead to ensure development and approval of a robust traffic control plan to maximize crew safety and the safety of the general public.

3. High-Level Schedule Estimation:

Task	Key Deliverables	Timeline
Finalize Funding and Inter-Governmental Agreement	<ul style="list-style-type: none"> • LPEA Make-Ready Cost Analysis • Construction RFP and Cost Analysis • Finalize Inter-Governmental Agreement • Project Go/no-go 	March 2023 to May 2023
Pole Make-Ready Phase	<ul style="list-style-type: none"> • Initiate Make-Ready Pole Upgrades • Identify Poles where a Communication Space is available • Determine when fiber construction can begin (“green-lit” segments) 	June 2023 to December 2024
Construction Planning and Installation	<ul style="list-style-type: none"> • Construction Planning • Construction on “green-lit” segments 	July 2023 to December 2024
Network Activation	<ul style="list-style-type: none"> • Activate the network by segment. • Test the network • Turn the network over to business operations 	May 2024 to December 2024

Exhibit B (Process to onboard a new subcontractor on the broadband project)

3/30/22 Reviewed by the Lands, SECMG, TERO, Legal, Shared Services and Contractor

1. Contractor runs the subcontractor selection process (in compliance with the TERO Code preferences in subcontracting requirements – See Art. 5, TERO Code)
 - a. Contractor requests the list of certified Indian owned businesses from the TERO Office.
 - i. Contractor sends the list to Leah Cleve to review and identify any certified Indian owned businesses that have had negative performance issues with Shared Services or Southern Ute Growth Fund entities.
 - ii. If there are no certified Indian owned businesses (“IOBs”) that are technically qualified to perform the work, Contractor emails confirmation of that determination to the TERO Office (e.g., Roland Nez).
 - iii. Contractor complies with other TERO Code requirements (e.g., provides info to technically unqualified IOBs; makes good faith effort to divide work into smaller contracts so an IOB can qualify).
 - b. Contractor solicits bids from multiple companies (minimum of three) and including any IOBs that are technically qualified to perform work.
 - i. Safety Prequalification (PQF) Review with SECMG
 1. Contractor has potential subcontractors fill out PQF (as provided by SECMG) as part of their bid package
 2. For contractors performing on-the-ground construction, Contractor sends the completed Safety PQF to SECMG for review.
 - a. NOTE: A review is not required for contractors providing offsite professional services nor for delivery vendors (e.g. waste management, storage container drop-off, etc.)
 3. Any follow-up questions from the review will be sent to the applicable Project Manager for Contractor.
 4. After completion of the review, SECMG will send an e-mail to the applicable Project Managers for Contractor and Maria Irwin indicating if the use of the contractor is recommended or not recommended.
 5. The status of the Contractor PQF Review will be tracked [here](#).
 - ii. Contractor complies with TERO Code requirements (e.g., gives preference to IOB as required under TERO Code; offers IOB single opportunity to resubmit a revised bid.
 - c. Contractor selects subcontractor
 - i. Have selected sub contact TERO Office (Roland Nez) to understand TERO compliance:
 1. Is selected sub a “Covered Employer”? (Yes, if doing business on Reservation, on land subject to jurisdiction of Tribe, and employs for wages five or more persons.)
 2. Will selected sub be hiring five or more persons for work on Reservation on land subject to jurisdiction of Tribe? (If yes, then must comply with TERO Code hiring preferences)

3. Does TERO contract fee apply? (No, unless performing building construction or oil and gas field work.)
 4. Does annual payroll fee apply? (No, and no payroll and salary information is required, unless 20 or more employees or gross revenues of \$500k or more, and some employees perform work on an annual basis principally on the Reservation on land subject to Tribe's jurisdiction)
- ii. Have selected sub submit Scope of Work (template provided by Contractor), cost estimate, schedule (i.e. bid package), to Contractor.
- iii. Contractor obtains a crossing permit for selected sub from Tribe's Lands Division (or sub obtains directly) – 1 day in person or 2 weeks via mail.
 1. Contractor requests crossing permit from Lands Division, pays with check
 2. Vehicle pass, pays with check, Contractor vehicle pass
- iv. TERO Compliance
 1. Selected sub sends TERO Compliance Plan Application directly to TERO Office (Roland Nez). Contractor project manager sends TERO Office associated subs Scope of Work (SOW) with Contractor.
 2. TERO Office processes application within 5 business days of receiving a completed TERO Compliance Plan Application, with requested attachments
 3. Contractor follows up with TERO Office (Roland Nez) for confirmation for completion, requests crossing permit from Tribe's Lands Division.
 4. TERO will send TERO compliance email to Contractor and Sub
2. Contractor requests Shared Services approval of sub via email, by emailing the subcontractors bid package to Shared Services (to Jeff, Leah and Delbert, cc Sam, Andy) to review, containing:
 - a. Name of subcontractor
 - b. Primary point of contact with contact information
 - c. Scope of Work
 - d. Key contract terms
 - i. As a Contractor subcontractor, _____ must comply with all of Contractor's obligations as set forth in that certain Master Services Agreement between the Southern Ute Indian Tribe dba Southern Ute Indian Tribe Shared Services ("Shared Services") and Contractor dated effective December 9, 2020.
 - e. Certificate of Insurance
 - f. Safety Prequalification Form with notes from SECMG
 - g. Cost
 - h. Written assurance of TERO compliance, one paragraph in an email to Shared Services explaining
 - i. Were there any certified Indian owned businesses that can provide services?
 - ii. Did Contractor use competitive bid procedures when selecting a subcontractor?
 - iii. Letter from TERO, if applicable.
3. Shared Services decides whether to approve the subcontractor, under Master Services Agreement, within 5 business days

- a. Reviews email package from Contractor
 - i. Sam assists review as requested
 - ii. Shared Services assures TERO compliance, as listed above
- b. Shared Services confirms objection or no objection to the use of the subcontractor, via an email back to Contractor (reserving right to require replacement)

DISCLAIMER: This process sheet is provided as a courtesy in an effort to streamline the subcontracting process on the Tribe's broadband project. It is not intended, does not constitute, and should not be construed or relied upon as legal advice regarding compliance with the Tribe's TERO Code or Contractor's obligations to comply with applicable law.

Note on service providers: updated 3/31/22

1. New service providers are subcontractors, and need to go through this process
2. Comply with TERO (may or may not be applicable)
3. Obtain a crossing permit (Seana looking into more flexible options for single-day delivery situation)
4. Service providers are not subject to SECMG review of the Safety Prequalification Form
5. Service providers are subs and therefore should be approved by Shared Services

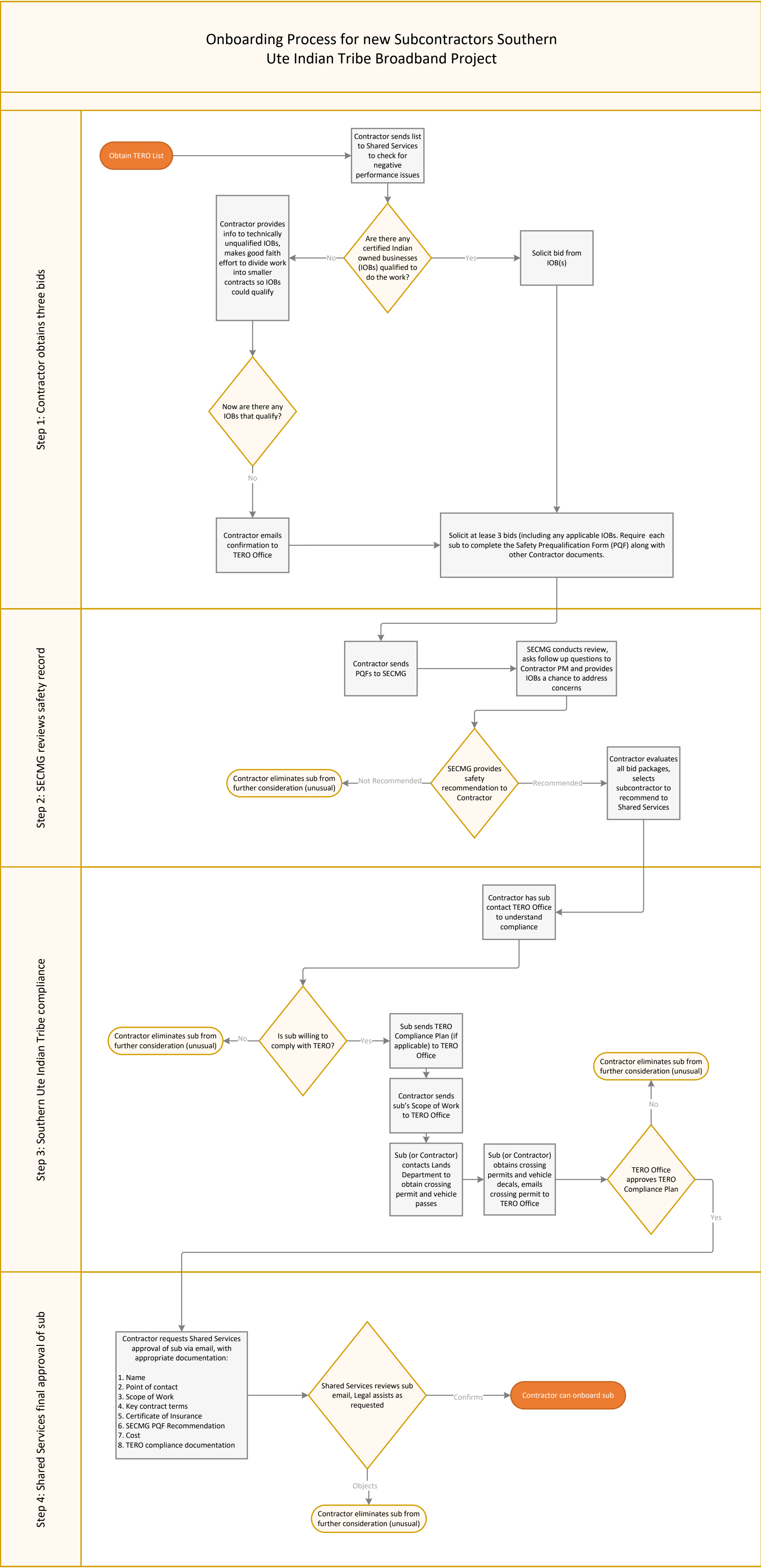


Exhibit C (Notice to Proceed)

NOTICE TO PROCEED

To: _____

Date: _____

Project: **Southern Ute Shared Services – Broadband Modernization Project (Hwy 151 Fiber Construction)**

You are hereby notified to commence WORK in accordance with the Agreement dated _____
_____, on or before _____, and you are to complete the WORK within the
time set forth in the Project Timeline. The date of completion of all WORK is therefore _____
_____.

Owner Southern Ute Indian Tribe Shared Services

By: _____

Title: _____

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE TO PROCEED is hereby acknowledged

By _____

this ____ day of _____, 2023

Exhibit D - PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS: that _____

(Name of Contractor)

(Address of Contractor)

a _____, hereinafter called Principal,
(Corporation, Partnership, or Individual))

and _____
(Name of Surety)

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto _____

(Name of Owner)

(Address of Owner)

hereinafter called OWNER, in the penal sum of 100% of the Total Contract Price equal to _____ Dollars \$(_____), in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the _____ day of _____, 20____, a copy of which is hereto attached and made a part hereof for the construction of:

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the OWNER, with or without notice to the Surety and during the one year guaranty period, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expenses which the OWNER may incur in making good any default, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to WORK to be performed hereunder or the SPECIFICATIONS accompanying the same shall in any wise affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration and addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in _____ counterparts, each one of which shall be deemed an original, this the ____ day of _____, 20 ____.

ATTEST: _____
(Principal)

(Principal Secretary)

(SEAL)

BY _____(s)

(Witness as to Principal)

(Address)

ATTEST: _____
(Surety)

(Surety's Secretary)

(SEAL)

BY _____(s)

(Attorney in Fact)

(Address)

(Witness as to Surety)

(Address)

NOTE: Date of BOND must not be prior to date of Contract. If CONTRACTOR is Partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must be authorized to transact business in the State where the PROJECT is located.

Exhibit D - PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS: that _____

(Name of Contractor)

(Address of Contractor)

a _____, hereinafter called Principal,
(Corporation, Partnership, or Individual))

and _____
(Name of Surety)

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto _____

(Name of Owner)

(Address of Owner)

hereinafter called OWNER, in the penal sum of 100% of the Total Contract Price equal to _____ Dollars \$(_____), in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the _____ day of _____, 20____, a copy of which is hereto attached and made a part hereof for the construction of:

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, SUBCONTRACTORS, and corporations furnishing materials for or performing labor in the prosecution of the WORK provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such WORK, and all insurance premiums on said WORK, and for all labor, performed in such WORK, whether by SUBCONTRACTOR or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any wise affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration and addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in _____ counterparts, each one of which shall be deemed an original, this the ____ day of _____, 20 ____.

ATTEST: _____
(Principal)

(Principal Secretary)

(SEAL)

BY _____(s)

(Witness as to Principal)

(Address)

ATTEST: _____
(Surety)

(Suretyl Secretary)

(SEAL)

BY _____(s)
(Attorney in Fact)

(Address)

(Witness as to Suretyl)

(Address)

NOTE: Date of BOND must not be prior to date of Contract. If CONTRACTOR is Partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must be authorized to transact business in the State where the PROJECT is located.