AIA® Document C103® – 2015

The Tribe's Standard Form of Agreement Between Owner and Consultant

without a Predefined Scope of Consultant's Services

AGREEMENT executed when both parties sign this agreement.
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address, and other information)

Southern Ute Indian Tribe
PO Box 737
356 Ouray Drive
Ignacio, CO 81137

and the Consultant:
(Name, legal status, address, and other information)

Consultant's discipline:

Building Commissioning

for the following Project:
(Name, location and detailed description. Time limits for bringing claims in Section 6.1.1 are tied to completion of the "Project." The "Project" may be limited to the scope of services to be provided by the Consultant, or the Consultant may be providing services for a "Project" involving design and construction of one or more structures. Care should be taken in describing or defining the Project.)

The Owner and Consultant agree as follows.

ADDITIONS AND DELETIONS:
The author of this document may have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document does not contain a description of the Consultant's scope of Services. This document is intended to be used in conjunction with AIA Standard Form of Consultant's Services documents.

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1:
(State below Initial Information, such as details of the Project's site and program; identity of the Architect, Owner's contractors and other consultants, and Consultants' subconsultants; anticipated procurement method; and other information relevant to the Consultant's Services.)

§ 1.2 Unless otherwise specifically defined in this Agreement, terms in this Agreement shall have the same meaning as those in AIA Document A201™–2007, General Conditions of the Contract for Construction.

§ 1.3 The Owner's anticipated design and construction schedule:

.1 Design phase milestones, if any:

.2 Date for commencement of construction:

.3 Substantial Completion date:

.4 Other milestone dates:

§ 1.4 The Owner and Consultant may rely on the Initial Information. Both parties, however, recognize that the Initial

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Information may materially change and, in that event, the Owner and the Consultant shall appropriately adjust the schedule, the Consultant's services, and the Consultant's compensation.

ARTICLE 2 CONSULTANT'S RESPONSIBILITIES

§ 2.1 The Consultant shall provide the following professional services:
(Describe the scope of the Consultant's services or identify an exhibit or scope of services document setting forth the Consultant's services and incorporated into this document in Section 11.2.)

§ 2.2 The Consultant shall perform its services consistent with the professional skill and care ordinarily provided by professionals in the same discipline practicing in the same or similar locality under the same or similar circumstances. The Consultant shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Consultant identifies the following representative who is authorized to act on behalf of the Consultant with respect to the Project.
(List name, address, and other information.)

§ 2.4 If required in the jurisdiction where the Project is located, the Consultant shall be licensed to perform the services described in this Agreement, or shall cause such services to be performed by appropriately licensed professionals.

§ 2.5 The Consultant shall coordinate its services with those services provided by the Owner and the Owner's other consultants. The Consultant may communicate with the Owner's other consultants for the purposes of performing its services on the Project. The Consultant shall keep the Owner reasonably informed of any such communications. The Consultant shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's other consultants. The Consultant shall provide prompt written notice to the Owner if the Consultant becomes aware of any error, omission, or inconsistency in such services or information.

§ 2.6 The Consultant shall keep the Owner reasonably informed of the progress of the Consultant's services.

§ 2.7 Insurance. The Consultant shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Consultant normally maintains, the Owner shall reimburse the Consultant for any additional cost as set forth in Section 8.6.3.

1 The Contractor and subcontractors shall maintain for the statute of repose, following completion of the project

2 Any erosion of insurance limits required will be reinstated to the required amounts prior to commencing the contracted work and if during the contracted period claims are made against the design professional's policy the necessary reduction of available limits will be repurchased to the contractually required amounts.

§ 2.7.1 Commercial General Liability with policy limits of not less than one million dollars ($ 1,000,000) for each occurrence and two million dollars ($ 2,000,000) in the aggregate for bodily injury and property damage.

§ 2.7.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Consultant with policy limits of not less than one million dollars ($ 1,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

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§ 2.7.3 The Consultant may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections 2.7.1 and 2.7.2

§ 2.7.4 Workers' Compensation at statutory limits and Employers' Liability with a policy limit of not less than one million dollars ($1,000,000) each accident, one million dollars ($ 1,000,000) each employee, and one million dollars($ 1,000,000) policy limit.

§ 2.7.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than one million dollars ($ 1,000,000) per claim and two million dollars ($ 2,000,000) in the aggregate..

§ 2.7.6 The Owner shall be an additional insured on the Consultant's primary and excess insurance policies. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations.

§ 2.7.7 The Consultant shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.7. The certificates will show the Owner as an additional insured on the Commercial General Liability, Automobile Liability, and any excess policies.

§ 2.7.8 All policies shall include a waiver of subrogation.

§ 2.8 Time. The Consultant shall provide its services within the time limits established in the Consultant's Schedule, or within the Deliverable(s) Time Limit(s) set forth below. The Consultant shall immediately inform the Owner of any circumstances which may cause a delay.
(Check one or both selections below.)

[X] Consultant's Schedule: As soon as practicable after the date of this Agreement, the Consultant shall submit, for the Owner's approval, a schedule for the performance of the Consultant's Services. If relevant to the Consultant's Services, the schedule initially shall include anticipated dates for design phase milestones, commencement of construction, and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Consultant or Owner.

[ ] Deliverable(s) Time Limit: The Consultant shall provide the following deliverable(s) within the time limit(s) set forth below. Unless otherwise indicated below, time shall be calculated based on calendar days from the date of this Agreement.

Deliverable(s) *(Describe the deliverable(s))*	**Time Limits** *(Insert number of calendar days and, where appropriate, if time is to be measured from a separate written authorization from the Owner)*

§ 2.9 Governing Code.

1. The Southern Ute Indian Tribe is a sovereign nation and, as such, is the Authority Having Jurisdiction for this

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project, dictates governing building codes through the below listed requirements, and requires that the consultant notify the Tribe of any instance where there may be a jurisdictional overlap.

a. Governing building code for this project shall meet or exceed all La Plata County, Colorado adopted codes and ordinances.
b. If a permit application is required at any point during the course of the project:
    i. The Southern Ute Indian Tribe does not concede that the land is subject to the permit providing jurisdiction or waive any legal arguments or remedies concerning the legal necessity for obtaining a permit for applicable scopes of work or other similar construction work on Tribal fee or trust land within the boundaries of the Southern Ute Indian Reservation; and
    ii. The language shown in 1.b.i above shall be appended to all permit applications, issued permit documents, and all other similar documents as necessitated by the project, approved by the Project Manager, and as may be required by jurisdictions other than the Tribe.

2. The Consultant is expected to apply all adopted codes and code compliance procedures, per the individual project, as would be typical in the adjacent jurisdiction of La Plata County, prior to commencing construction work.
3. Where governing code references a Building Official, and when action from such is needed, the Consultant shall interpret those responsibilities to be both filled and retained by the Tribe and shall request a response from the Project Manager who will facilitate an applicable response from the Tribe.
4. In lieu of typical permitting processes, the Tribe will ensure appropriate Plan Review and Code Compliance, primarily through contracted third-parties. Plan review and Compliance objectives are to:
    a. Enhance the level of compliance with codes; and
    b. Provide clear direction for the design team throughout the design process; and
    c. Use in answering questions raised during the construction phase; and
    d. Provide adequate information, on file, for future reference during future alterations and renovations.
5. The Southern Ute Indian Tribe's adopted and publicly issued Facility Standards may include references to codes or regulatory requirements that may conflict with above referenced adopted codes or other Federal requirements. In such instances:
    a. The Facility Standards are not intended to supersede local or national codes and standards.
    b. The Consultant is expected to make recommendations to the Project Manager to achieve both code compliance and the intent of the Facility Standards.
6. In the case of renovations, the renovated project area and systems are expected to meet current code and comply with current SUIT Facility Standards unless approved otherwise by the Tribe.

ARTICLE 3 ADDITIONAL SERVICES

§ 3.1 Additional Services may be provided after execution of this Agreement without invalidating the Agreement.

§ 3.2 The Consultant shall promptly notify the Owner upon recognizing the need to perform Additional Services. The Consultant, however, shall not proceed to provide such services until the Consultant receives the Owner's written authorization. Except for services due to the fault of the Consultant, any Additional Services provided in accordance with this Section 3.2 shall entitle the Consultant to compensation pursuant to Section 8.2.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project. Within 15 days after receipt of a written request from the Consultant, the Owner shall furnish the requested information as necessary and relevant for the Consultant to evaluate, give notice of, or enforce lien rights.

§ 4.2 The Owner identifies the following representative who is authorized to act on the Owner's behalf with respect to the Project.
(List name, address, and other information.)

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§ 4.3 The Owner shall render decisions and approve the Consultant's submittals, if any, in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Consultant's services.

§ 4.4 The Owner shall coordinate the services of its other consultants with those services provided by the Consultant. The Owner shall provide the Consultant with a list of other consultants on the Project whose services relate to the Consultant's services. The Owner shall also, upon written request, furnish the Consultant with copies of the scope of services in contracts between the Owner and such other consultants. The Owner shall require that its other consultants maintain professional liability insurance as appropriate to the services provided.

§ 4.5 The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Consultant to furnish them as an Additional Service, when the Consultant requests such services and demonstrates that they are reasonably required for the Consultant to be able to perform its services.

§ 4.6 The Owner shall provide prompt written notice to the Consultant if the Owner becomes aware of any fault or defect in the Project, including errors, omissions, or inconsistencies in the Consultant's Services.

ARTICLE 5 COPYRIGHTS AND LICENSES

§ 5.1 The Consultant and the Owner warrant that in transmitting Instruments of Service, or any other information, the copyright thereto shall not be affected thereby.

§ 5.2 The Consultant and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Consultant intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions or comply with protocols established for the Project, if any.

§ 5.3 The Owner is hereby deemed the Sole and Exclusive owner of all drawings, specifications and other documents, including those in electronic form, prepared by the Consultant and the Consultant's consultants for this Project (collectively, the "Documents"), and shall retain all legal, statutory and other reserved rights in those drawings, specifications, and other documents, including copyright and other protective rights applicable to the work product of the Consultants.

§ 5.4 The Consultant and its consultants shall provide all necessary documentation to transfer ownership of the Documents to the Owner and agrees upon request of the Owner to join in the execution of any additional documentation deemed necessary by the Owner to vest in Owner all of the rights and privileges of a copyright holder. Without limiting any of the foregoing, the Owner shall have the right to freely photograph or videograph all or any part of the Project and to use likenesses in any way.

ARTICLE 6 CLAIMS AND DISPUTES

§ 6.1 General

§ 6.1.1 The Owner and Consultant shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date the Project is sufficiently complete so that the Owner can utilize it for its intended use.

§ 6.1.2 To the extent damages are covered by property insurance, the Owner and Consultant waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance. The Owner or the Consultant, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 6.1.3 (a) To the maximum extent permitted by applicable law, the Consultant shall indemnify and hold the Owner and

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the Owner's officers, agents, consultants, and employees harmless from and against damages, fines, penalties, losses and liabilities and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by negligent acts or omissions of the Consultant, it's employees and it's consultants in the performance of professional services under this Agreement. The Consultant's indemnity obligations will survive after the Agreement terminates or expires. Consultant's obligations to indemnify shall not include an obligation to indemnify which is prohibited by applicable law. In the event of non—binding mediation or court of competent jurisdiction determines any of the indemnification obligations of this Agreement are unenforceable, in whole or in part, Consultant's obligation to indemnify shall be replaced with the strictest enforceable indemnification provision in the governing jurisdiction.
(b) In addition to the Consultant's indemnity obligations in § 8.1.3 (a), Consultant shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless the Owner, and the Owner's officers, agents, consultants, and employees from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused in whole or in part by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 8.1.3.

§ 6.1.4 The Consultant and Owner waive consequential damages for claims, disputes, or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7. Nothing contained in this Section 8.1.4 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 6.2 Non-binding Arbitration

§ 6.2.1

Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to non-binding arbitration as a condition precedent to dispute resolution. If such matter relates to or is the subject of a lien arising out of the Consultant's services, the Consultant may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by non-binding arbitration or by non-binding dispute resolution.

§ 6.2.2

The Owner and Consultant shall endeavor to resolve claims, disputes and other matters in question between them by non-binding arbitration, which, unless the parties mutually agree otherwise, shall be administered by JAMS. A request for non-binding arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the non-binding arbitration. The request may be made concurrently with the filing dispute resolution proceedings, but, in such event, non-binding arbitration shall proceed in advance of dispute resolution proceedings, which shall be stayed pending non-binding arbitration for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an **dispute resolution** proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the mediator and agree upon a schedule for later proceedings.

§ 6.2.3 The parties shall share the mediator's fee and any filing fees equally. The non-binding arbitration shall be held in the place where the Project is located, unless another location is mutually agreed upon.

§ 6.3Dispute Resolution

§ 6.3.1 The Agreement shall be governed by the law of the place where the Project is located, which is Southern Ute law and applicable federal law. To the extent that either Southern Ute law or applicable federal law do not directly address the matter, the parties may refer to applicable Colorado law as persuasive authority. The sole venue for the litigation of claims or disputes under this Agreement is the Southern Ute Indian Tribal Court. Consultant hereby consents to the personal jurisdiction of the Tribal Court by entering into this Agreement. Nothing in this Agreement may be construed

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as a waiver of the Owner/Tribe's sovereign immunity.

§ 6.3.4 Consolidation or Joinder

§ 6.3.4.1 Either party, at its sole discretion, may consolidate dispute conducted under this Agreement with any other to which it is a party provided that (1) the agreement governing the other dispute permits consolidation; (2) the dispute to be consolidated substantially involve common questions of law or fact; and (3) the dispute employ materially similar procedural rules and methods for selecting mediator(s).

§ 6.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in dispute resolution, provided that the party sought to be joined consents in writing to such joinder. Consent to dispute resolution involving an additional person or entity shall not constitute consent to non-binding arbitration or dispute resolution of any claim, dispute or other matter in question not described in the written consent.

§ 6.3.4.3 The Owner and Consultant grant to any person or entity made a party to an dispute conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Consultant under this Agreement.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 If the Owner fails to make payments to the Consultant in accordance with this agreement for work performed pursuant to the Consultant's obligations herein and which payment is not the subject of a bona fide dispute, such failure shall be considered substantial nonperformance if it continues after seven (7) days' written notice thereof to the Owner and shall thereafter be a cause for termination or, at the Consultant's option, cause for suspension of performance of services under this Agreement. If the Consultant elects to suspend services, the Consultant shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, authorized by this provision Section 9.1, the Consultant shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Consultant all sums due prior to suspension and any reasonable expenses incurred in the interruption and resumption of the Consultant's services.

§ 7.2 If the Owner suspends the Project for more than thirty (30) consecutive days through no fault of the Consultant, the Consultant shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the time schedule shall be equitably adjusted. If necessary, the Consultant and Owner shall execute a written Change Order to reflect the adjusted time schedule.

§ 7.3 If the Owner suspends the Project or the Consultant's services for more than 90 cumulative days for reasons other than negligence by or the fault of the Consultant, the Consultant may terminate this Agreement by giving not less than seven days' written notice.

§ 7.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 7.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Consultant for the Owner's convenience and without cause.

§ 7.6 In the event of termination not the fault of the Consultant, the Consultant shall be compensated for services performed prior to termination, together with Reimbursable Expenses incurred to the extent that is approved by the Tribe. In the event of termination as the result of a default by the Consultant of any of its duties and obligations under this Agreement, the Owner shall have all rights in connection therewith, at law or in equity, then due.

§ 7.8 The Owner's rights to use the Consultant's Instruments of Service in the event of a termination of this Agreement are set forth in Article 5 and Section 8.7.

ARTICLE 8 COMPENSATION

§ 8.1 The Owner shall compensate the Consultant for services described in Article 2 as follows and **include** Tribal Employment Right's Office (TERO) Fee *[4% fee estimated for the cumulative amount of the contract] which shall be calculated on a per-contract basis and paid before final payment is made to the Consultant but after any and all change*

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orders that may affect the contract price have been processed
(Insert amount of, or basis for, compensation)

§ 8.2 The Owner shall compensate the Consultant for Additional Services that may arise during the course of the Project as follows:
(Insert amount of, or basis for, compensation.)

§ 8.3 The hourly billing rates for services of the Consultant and the Consultant's subconsultants, if any, are set forth below. The rates shall be adjusted in accordance with the Consultant's and Consultant's subconsultants' normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category	Rate

§ 8.4 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Consultant's invoice. Amounts unpaid ( ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Consultant.
(Insert rate of monthly or annual interest agreed upon.)

percent (%)

§ 8.5 The Owner shall not withhold amounts from the Consultant's compensation to impose a penalty or liquidated damages on the Consultant, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Consultant agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 8.6 Reimbursable Expenses
§ 8.6.1 Reimbursable Expenses are in addition to compensation for the Consultant's professional services and include expenses incurred by the Consultant directly related to the Project, as follows:

- **.1** Transportation and authorized out-of-town travel and subsistence;
- **.3** Fees paid for securing approval of authorities having jurisdiction over the Project;
- **.4** Printing, reproductions, plots, standard form documents;
- **.5** Postage, handling and delivery;
- **.6** Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- **.7** Consultant's subconsultants expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Consultant's subconsultants;

- **.9** Other similar Project-related expenditures, if authorized in advance by the Owner.

§ 8.6.2 For Reimbursable Expenses the compensation shall be the actual expenses incurred by the Consultant subject to 8.6.1. .

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§ 8.7 Compensation for Use of Consultant's Instruments of Service

If the Owner terminates the Consultant for its convenience under Section 7.5, or the Consultant terminates this Agreement under Section 7.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Consultant's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

ARTICLE 9 MISCELLANEOUS PROVISIONS

§ 9.2 The Owner and Consultant, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Consultant shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 9.3 If the Owner requests the Consultant to execute certificates, the proposed language of such certificates shall be submitted to the Consultant for review at least 14 days prior to the requested dates of execution. If the Owner requests the Consultant to execute consents reasonably required to facilitate assignment to a lender, the Consultant shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Consultant for review at least 14 days prior to execution. The Consultant shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 9.4 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Consultant.

§ 9.5 Unless otherwise required in this Agreement, the Consultant shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site, except to the extent the same are discharged, released or otherwise brought onto the Project site by the Consultant, its employees, agents, or consultants

§ 9.6 Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential." If the Owner or Consultant transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 9.6.1.

§ 9.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants, and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Agreement.

§ 9.7 Office of Foreign Assets Control, Anti-Money Laundering Compliance.

§ 9.7.1 OFAC Compliance Consultant is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended. Neither Consultant nor, to Consultant's actual knowledge, any Person (defined below) who owns a direct or indirect interest in Consultant (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

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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.

§ 9.7.2 Anti-Money Laundering Neither Consultant nor, to Consultant '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.

§ 9.7.3 Definitions For purposes of this Agreement, the following terms shall have the meanings set forth below:

- 15.9.3.1 "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.

- 15.9.3.2 "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.

§ 9.7.4 Certification Consultant shall deliver to the Tribe/Owner within five (5) business days after receipt of a written request therefor, a written certification or such other evidence reasonably acceptable to the Tribe/Owner evidencing and confirming Consultant 's compliance with Sections 10.9.1 and 10.9.2 hereof. If at any time the representations set forth in either Section 10.9.1 or 10.9.2 hereof become false, Consultant shall be deemed to be in default of this agreement and the Tribe/Owner shall have the right to exercise all of the remedies set forth in this agreement in the event of a Consultant default or to terminate this Agreement immediately and collect damages as a result of such Consultant default.

§ 9.7.5 Indemnification Anything in this Agreement or otherwise to the contrary notwithstanding, Consultant hereby agrees to defend, indemnify, and hold harmless the Tribe/Owner, 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 10.9.1 and 10.9.2 of this agreement. The indemnity obligations of Consultant under this Section 10.9.5 shall survive the termination or expiration of this Agreement.

§ 9.8 Right to Audit and Records Retention

§ 9.8.1 Record retention. Consultant 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.

§ 9.8.2 Right to Audit Upon request, Consultant must allow the Tribe/Owner and its authorized representatives the right to audit, to examine, and to copy all records (in any form) relating to this Agreement that Consultant keeps or controls, including those by employees, agents, assigns, successors, and subcontractors. During this Agreement and for 3 years after final payment, Consultant maintain such records. Upon the Tribe's/Owner's request, Consultant must make such records available for inspection and audit (including copies and extracts of records as required) by the Tribe. Inspections

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will occur during normal business hours at the Consultant 's place of business or at an agreed upon time and location that is convenient for the Tribe/Owner. Consultant must ensure the Tribe/Owner may exercise these rights and Consultant must include these rights in any subcontracts or agreements relating to Consultant's obligations under this Agreement.

§ 9.8.3 Reasonable audit costs will be borne by the Tribe/Owner, unless certain exemption criteria are met. If the audit identifies overpricing or overcharges (of any nature) by the Consultant to Tribe/Owner in excess of 0.5% of the total contract billings, the Consultant shall reimburse Tribe/Owner for the total costs of the audit. If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, Consultant must pay the costs of the audit. Any adjustments that Consultant 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/Owner's findings to Consultant.

§ 9.9 In the event of a conflict, contradiction, or ambiguity between the terms and conditions of this Agreement and any attachments or exhibits to this Agreement, then the terms and conditions of this Agreement shall prevail and control.

§ 9.10 The transmission of the signature of any party to this Agreement or any of the Contract Documents by electronic transmission shall be considered for all purposes as an original signature, and shall be considered to have the same binding legal effect as an original thereof. Notwithstanding the foregoing, at the request of any party to this Agreement or any of the Contract Documents, any signature sent by electronic transmission shall be re-executed by each party in an original form.

ARTICLE 10 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

ARTICLE 11 SCOPE OF THE AGREEMENT

§ 11.1 This Agreement represents the entire and integrated agreement between the Owner and the Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Consultant. In the event of a conflict between the terms and conditions of this C103™–2015, The Tribe's Standard Form Agreement between Owner and Consultant and an attached exhibit, the terms and conditions of the C103–2015, Standard Form Agreement between Owner and Consultant shall take precedence.

§ 11.2 This Agreement is comprised of the following documents listed below:

.1 AIA Document C103™–2014, The Tribe's Standard Form of Agreement Between Owner and Consultant.

.2 AIA Document C203™-2017, The Tribe's Standard Form of Consultant's Services: Commissioning

.3 AIA Document E202™-2022, BIM Exhibit for Sharing Models with Project Participants, Where Model Versions May Not be Enumerated as a Contract Document, if completed, or the following:

Coordinate with Owner's other consultants and Contractor.

.3 Scope of Services Exhibit(s) listed in section 2.1

.4 Other documents:
(List other documents hereby incorporated into the Agreement.)

This Agreement entered into as of the day and year first written above.

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OWNER *(Signature)*

(Printed name and title)

CONSULTANT *(Signature)*

(Printed name and title)



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