

DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
EASTERN REGIONAL OFFICE

PUBLIC LAW 93-638, AS AMMENDED
SECTION 108 MODEL CONTRACT

ANNUAL FUNDING AGREEMENT

WITH THE
CAYUGA NATION
FOR
COMMUNITY SERVICES

CONTRACT NUMBER A19AV00072

ATTACHMENT 2

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Section A Definition of Terms

Sec. 1. **Definitions.** The following terms shall have the meanings set forth below throughout this contract:

1. **Act.** Means Public Law 93-638, The Indian Self-Determination and Education Assistance Act of 1975, as amended (25 USC 5301, 88 Stat. 2203).
2. **Annual Financial Audit.** Means an organization-wide audit as required by Public Law 104-156, The Single Audit Act Amendments of 1996, as implemented through Office of Management and Budget OMB Circular A-133.
3. **Approving Official.** Means Bureau line officers (i.e., Area Directors, Agency Superintendents, etc.).
4. **Awarding Official.** Means any person who by appointment or delegation in accordance with applicable regulations has the authority to enter into and administer contracts on behalf of the United States of America and make decisions and issue findings and determinations with respect thereto. Pursuant to the Act, this person can be any Federal official, including but not limited to, contracting officers.
5. **Awarding Official's Technical Representative (AOTR).** Means the authorized technical representative of an Awarding Official acting within the limits of his authority.
6. **Subordinate Awarding Official's Technical Representative (SAOTR).** Means the authorized technical representative of an Awarding Official acting within the limits of his authority that assists the AOTR.
7. **Cognizant Audit Agency.** Means the agency that funds the most in a given year.
8. **Construction Contract.** Means fixed-price or cost-reimbursement self-determination contract for a construction project, except that such term does not include any contract:

- (a) That is limited to providing planning services and construction management services (or a combination of such services);
 - (b) For the Housing Improvement Program or Roads Maintenance Program of the Bureau of Indian Affairs administered by the Secretary of the Interior; or
 - (c) For the Health Facility Maintenance and Improvement Program administered by the Secretary of Health and Human Services.
9. **Construction Programs.** Means programs for the planning, design, construction, repair, improvement, and expansion of buildings or facilities, including, but not limited to, housing, law enforcement and detention facilities, sanitation and water systems, roads, schools, administration and health facilities, irrigation and agricultural work, and water conservation, flood control, or port facilities.
10. **Contract.** Means a self-determination contract (or grant or cooperative agreement utilized in lieu of a contract under section 9 of the Act) entered into under Title I of the Act between a tribal organization and the Secretary for the planning, conduct and administration of programs or services which are otherwise provided to Indian tribes and their members pursuant to Federal law: *Provided, That, no contract (or grant or cooperative agreement utilized under section 9 of this Act) entered into under Title I of this Act shall be construed to be a procurement contract.*
11. **Contractor.** Means the recipient of a contract.
12. **Contract Modification.** A written change to the contract document which has been mutually agreed to by the Awarding Official and the Contractor.
13. **Contract Records.** Records maintained to support activity under the contract. Contract records shall include, but not be limited to, the following:
- (a) The contract award documents;
 - (b) Any and all modifications to the contract;

- (c) Financial records; and,
 - (d) Records created or maintained as a result of the contract.
14. **Days.** Means, unless otherwise specified in this contract, calendar days; except where the last day of any time period specified in this contract falls on a Saturday, Sunday, or a Federal holiday, the period shall carry over to the next business day unless otherwise prohibited by law.
 15. **Declination.** Means written notification by a Bureau Approving Official not to enter into a self-determination contract.
 16. **Indian Tribe.** Means any Indian Tribe, Band, Nation, or other organized group, or community, including Pueblos, Rancherias, Colonies and any Alaska Native Village, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.
 17. **Indian.** Means a person who is a member of an Indian tribe.
 18. **Indirect Costs.** Means costs incurred for a common or joint purpose benefitting more than one contract objective or which are not readily assignable to the contract objectives specifically benefitted without effort disproportionate to the results achieved.
 19. **Indirect Cost Rate.** Means the rate arrived at through negotiation between an Indian tribe or tribal organization and the appropriate Federal agency (Office of the Inspector General).
 20. **Mature Contract.** Means a contract that has been continuously operated by a tribal organization for three or more years, and for which there are no significant and material audit exceptions in the most recent annual financial audit of the tribal organization. A mature contract may be for a definite or an indefinite term as requested by the tribe or, to the extent not limited by tribal resolution, by the tribal organization.

21. **Program Records.** Records created or maintained to support activity within the contracted program. Program records shall include, but not be limited to, the following:
- (a) Application for assistance under the specific program;
 - (b) Case files, student files, etc.;
 - (c) Correspondence;
 - (d) Financial records; and,
 - (e) Any other records established under the P.L. 93-638 contract.
22. **Re-assumption.** Means rescission, in whole or in part, of a contract and assuming or resuming control or operation of the contracted program by the Secretary without consent of the Indian tribe or tribal organization pursuant to the notice and other procedures set forth in 25 CFR, Chapter V, Part 900, Subpart P.
23. **Recontracting.** Means the renewal of a contract with a tribal organization for the same program.
24. **Retrocession.** Means the voluntary return to the Secretary of a contracted program, in whole or in part, for any reason, before the expiration of the term of the contract.
25. **Secretary.** Means the Secretary, the Under Secretary, and Assistant Secretary, or any other head or assistant head of the Department of the Interior or his authorized representative(s); and, the term his duly authorized representative means any person or board (other than the Awarding Official) authorized to act for the Secretary.
26. **Subcontracts.** Except as otherwise provided in this contract, the term subcontracts includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.
27. **Term Contract.** Means a contract (other than a mature contract) which is for a specific period of time, not to exceed three years

unless otherwise agreed to by the Secretary and the Contractor. The term may not be longer than that provided by any applicable tribal resolution which limits the period of the Contractor's authority.

28. **Tribal Organization.** Means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided, that, in any case where a contract is let or a grant made to an organization to perform services benefitting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant.
29. **Tribal Resolution.** Means the formal manner in which the tribal organization expresses its legislative will in accordance with its organic documents. In the absence of such organic document, a written expression adopted pursuant to tribal practices will be acceptable.

Section B

Program and Budget

- Sec. 1. Program(s).** The Contractor shall perform that portion of the Bureau of Indian Affairs. Aid to Tribal Government (Community Services) Program described herein in accordance with the terms, provisions and conditions of this contract.
- Sec. 2. Contract Budget.** The budget for the services provided under this contract reflects the agreements reached during contract negotiations. The contract budget includes both direct and indirect costs.
- 1. The Contractor shall request prior approval for budget revisions whenever:**
 - (a) The budget revision results from changes in the scope or objective of the program;**
 - (b) The revision requires additional funding;**
 - (c) The revision causes a change in the amount of indirect cost for the contract; or,**
 - (d) The revision pertains to the addition of items requiring approval of the Bureau of Indian Affairs.**
 - 2. All other budget revisions do not require approval.**
 - 3. Incurrence of Cost: Contractor is authorized to be reimbursed for any reasonable, allowable and allocable costs incurred for the operation of the program(s) under this contract from January 1, 2018 to the date of the award of this contract.**
- Sec. 3. Contract Amount.** Amount of Funding to be provided by the Bureau of Indian Affairs under this Agreement for Fiscal Year 2019 starting October 1, 2018 is as reflected in the SF-26 Award and/or SF-30 Modification/Contract document.
- Sec. 4. Contract Support Costs (CSC).** CSC shall not be provided by the Bureau of Indian Affairs, subject to the availability of funding, in accordance with the Indirect Cost Negotiation Agreement between the Contractor and the National Business Center, and in accordance with Bureau of Indian Affairs policies and procedures pertaining to the distribution of CSC.

SECTION C
Statement of Work

Sec. 1. Scope of Bureau Program(s) to be Performed.

1. **Purpose.** To state the terms conditions, and work to be performed under the contract and the rights and responsibilities of each of the parties, to enable the Contractor to acquire and utilize all resources made available by the Bureau of Indian Affairs (BIA) for the delivery of services and programs specified herein, pursuant to Public Law 93-638, as amended, and other applicable Federal laws.
 - (a) The Contractor shall obtain from the BIA all such funds and other resources made available for the benefit of the tribe for all programs to be operated and services to be delivered by the Contractor through this contract on behalf of the BIA, except for Trust and executive functions of the BIA which are considered non-contractible.
 - (b) The BIA shall transfer to the Contractor all such funds and other resources made available for the benefit of the Tribe through this contract in the most expeditious manner authorized by law, and shall provide technical support and assistance at the request of the Contractor and as provided herein.
 - (c) The Contractor shall exercise full discretion over the funds made available subject only to the provisions of this contract and Federal law.
2. **Fair and Uniform Services.** The Contractor agrees that any services or assistance provided to Indians under the contract shall be provided in a fair and uniform manner.

Sec. 2. Statement of Work. The Contractor shall administer programs under this agreement in accordance with its own laws and policies which are incorporated herein by reference. The provisions of applicable Federal Regulations shall apply, unless such regulations have been waived by the Secretary. Such regulations are incorporated in this agreement by reference.

1. **Program(s) to be Performed by Contractor.** The Contractor shall conduct programs and services to address Tribal priorities and needs as determined by the Executive Committee. Programs to be conducted shall include any and all programs authorized by law, for which funds have been appropriated to the BIA or made available from other agencies through the BIA. Funds made available may not be utilized to acquire other resources to further the objectives of this agreement. The Contractor shall operate programs under the following categories:

Program to be performed by Contractor: Community Services Program: The Contractor shall conduct programs and services under this contract to address tribal priorities and needs as determined by the Tribal Council. Programs to be conducted shall include any and all programs authorized by law, for which funds have been appropriated to the Bureau of Indian Affairs (BIA). Funds made available may be utilized to acquire other resources to further the objectives of this agreement.

Plan of Operation The Contractor shall provide all labor, services, supplies, and materials to perform the Community Services Program.

Set forth below is a narrative description of the manner in which the Cayuga Nation of New York (the "Nation") intends to use the funds it receives for the first year of its three-year community services contract, which begins on October 1, 2018 and expires on September 30, 2021.

The Nation will use the funds provided under this contract to operate its government and administer certain programs and services for Nation citizens. Among other things, these moneys will be used to cover the facilities expenses (*i.e.*, rent, utilities, offices supplies, telephone service, office equipment, and employee salaries) at the Nation's government offices.

The compensation of two Nation employees will be paid, in part, from the funds received under this grant contract. The responsibilities of those individuals include: (i) performing administrative tasks at the Nation's main office, (ii) issuing hunting and fishing licenses, along with Cayuga Nation I.D. cards, to Nation citizens, (iii) providing certificates of enrollment and education, (iv) recording the births and deaths

of Nation citizens, (v) ensuring that all invoices are properly vouchered and timely paid, (vi) distributing information to Nation citizens regarding Indian child welfare, Nation enterprises, the status of Nation trust land applications, and Annuity Cloth distributions, and (vii) periodically updating the Nation's history.

The Nation's government office also provides critical information and services to Cayuga citizens regarding medical services available to them through the Seneca Nation Health Clinic.

A portion of the funds the Nation will receive under this community services grant will be used to distribute a periodic newsletter to Nation citizens most of whom do not reside within the borders of the Nation's reservation. A typical newsletter contains important information about the births, deaths and weddings of Nation members, educational and other accomplishments of Nation citizens, legal and economic developments affecting the Nation, and important Nation events and gatherings, such as the annual picnic.

In sum, the funding provided by the BIA under the community services grant program allows the Nation to render critical services to its citizens. The Nation Council: (i) oversees the operation of this program, (ii) ensures that the required financial and narrative reports are prepared and submitted each quarter, and (iii) draws down and disburses the funds appropriated to the Nation under this program. All of this is accomplished, in part, through the implementation of standard internal controls and protocols which, among other things, ensure the confidentiality of all personal financial information of Nation members obtained during the course of the administration of this grant contract, as required by law.

Sec. 3. Contract Term. This contract shall be for the term commencing October 1, 2018 and ending September 30, 2021. For incurrence of cost authorization see Incurrence of Cost provision Section B, Sec. 2.3.

Sec. 4. Non-Contracted Portions of the Bureau of Indian Affairs Program(s).
The Government, through the Bureau of Indian Affairs, shall:

1. **Technical Assistance.** Provide technical assistance and guidance, as needed, to the Contractor. The Awarding Official and/or his authorized representative will be available to provide assistance to the Contractor as needed, or upon written request of the Contractor.

2. **Monitoring.** The Awarding Official and/or his authorized representative will monitor Contractor performance under this contract. This monitoring function will include, but not be limited to, the following:
 - (a) **Periodic on-site visits, as needed and/or requested by the Contractor.**

 - (b) **Official Monitoring Sessions, these shall be scheduled in advance of the visit.**

SECTION D
Performance

Sec. 1. Reporting Requirement. The Contractor shall submit the following reports:

- 1. Quarterly Financial Status Report (SF-425).** These reports shall be submitted in accord with the calendar year, January 30, April 30, August 30, October 30, and/or final ninety (90) days after the conclusion of the contract.

- 2. Annual Narrative Reports.** Provide a brief annual narrative report. This report shall be submitted within thirty (30) days after the end of each Federal quarter and upon contract completion. The report shall include, but not be limited to, the following:
 - (a) Narrative Section.** Discuss progress toward accomplishment of the goals and objectives envisioned in the contract, comment on problems encountered, etc.

 - (b) Statistical Section.** Include any and all statistical information as may be required to support the Narrative Section.

 - (c) Financial Section.** Report on funding issues, total funds expended, balance remaining, status of payments. Comment on funding problems, budgeting problems, etc.

- 3. Submission of Reports.**
 - (a)** When the Contractor is the governing body of the Indian Tribe that requested the contract, the report shall be submitted directly to the Awarding Official.

 - (b)** When the Contractor is a tribal organization other than the governing body of the Tribe, if the tribal governing body that requested the contract has not specified a different procedure, the tribal organization shall submit the report directly to the Awarding Official.

 - (c)** When the contract benefits more than one tribe, and the tribes in their authorizing resolutions have not reserved the right to review and approve the final report prior to its

submission, the Contractor shall prepare the report and submit it to the Awarding Official.

4. **Single Audit Report.** For each fiscal year during which the Contractor receives or expends funds pursuant to this contract, the Contractor shall submit to the Secretary a single-agency audit report required by Chapter 75 of Title 31, United States Code.

Sec. 2. Audit Requirement.

1. The contractor agrees to arrange for, participate fully in, and respond promptly and fully to the recommendations of, an annual single organization-wide audit as prescribed by the Single Audit Act Amendments of 1996 (Pub. Law 104-156), as implemented by Office of Management and Budget (OMB) Circular A-133 (Revised June 24, 1997) and as required in Chapter 75 of title 31, United States Code. The costs of such audit are allowable charges only if made in accordance with the provisions of OMB Circular A-133 (Revised June 24, 1997). Small and minority business audit firms shall be afforded maximum practicable opportunity to participate in contracts awarded by the contractor to fulfill the requirements herein. The preference requirements of section 7(b), Public Law 93-638, shall apply and are to be enforced.
2. If the contractor fails to comply with the requirement for obtaining audits in accordance with the Single Audit Act Amendments of 1996 (Pub. Law 104-156), the Bureau of Indian Affairs may take one or more of the following actions, as appropriate in the circumstances:
 - (a) Temporarily withhold cash payments, indirect costs and/or contract support funds pending correction of the deficiency by the contractor or more severe enforcement action by the Bureau;
 - (b) Disallow (that is, deny use of funds) all or part of the cost of the activity or action not in compliance;
 - (c) Wholly or partly suspend the current contract for the contractor's program; or,
 - (d) Take other remedies that may be legally available.

3. The contractor may appeal the BIA decision for sanctions under the Disputes clause of the contract.
4.
 - (a) The Contractor shall submit one (1) copy of the final audit report with Form SF-SAC (Data Collection Form) within thirty (30) days after issuance to: Federal Audit Clearinghouse, U. S. Bureau of the Census, 1201 East Tenth Street, Jeffersonville, Indiana 47132, Attention: Single Audit Clearinghouse.
 - (b) The contractor shall also submit one additional copy of the final audit report to the Clearinghouse for each funding agency that has a finding, either current or prior year, related to the grant/contracts provided by them.
5. All contractors/grantees/Self-Governance Tribes must send two copies of their audit reports to the Office of Audit and Evaluation to meet the reporting requirements of the Indian Self-Determination and Education Assistance Act and the Tribally Controlled School Grants Act Interior. The address is: Office of Audit & Evaluation, 12220 Sunrise Valley Drive. Reston, VA 20191.

Sec. 3. Monitoring and Records Review.

1. The Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. The foregoing constitutes records for the purposes of this clause.
2. The Contractor's facilities, or such part thereof as may be engaged in the performance of this contract, and his records shall be subject at all reasonable times to inspection and audit by the Awarding Official or his authorized technical representatives.
3. The Contractor shall preserve and make available his records:
 - (a) Until the expiration of three years from the date of final payment under this contract, or of the time period for the

particular records specified in 41 CFR Part 1-20, whichever expires earlier; and,

(b) For such longer period, if any, as is required by applicable statute, or by other clauses of this contract, or by 3(b)(1) or (2) below:

(1) If the contract is completely or partially canceled, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.

(2) Records which relate to (i) appeals under the Disputes clause of this contract, (ii) litigation or the settlement of claims arising out of the performance of this contract, or (iii) costs and expenses of this contract as to which exception has been taken by the Awarding Official or any of his duly authorized technical representatives, shall be retained until such appeals, litigation, claims or exceptions have been disposed of.

4. The Contractor shall insert the substance of this clause, including the whole of this paragraph 4, in each subcontract hereunder that is not firm-fixed-price or fixed-price with escalation. When so inserted, changes shall be made to designate the higher-tier subcontractor at the level involved in place of the Contractor; to add of the Government prime contract after Awarding Official, and to substitute the Government prime contract in place of this contract in (B) of paragraph 3(b)(2) above.

Sec. 4. Examination of Records.

1. Examination of Records.

[This clause is applicable if the contract amount does not exceed \$10,000.]

(a) The Contractor agrees to maintain books, records, documents, and other evidence pertaining to the costs and expense of this contract (hereinafter collectively called records) to the extent and in such detail as will properly reflect all net costs, direct and indirect, of labor,

materials, equipment, supplies and services, and other costs of whatever nature for which reimbursement is claimed under the provisions of this contract.

- (b) The Contractor agrees to make available at the office of the Contractor at all reasonable times during a period of three years, after final payment under this contract, all records specified in paragraph (a), above, for examination and audit by designated representative of the Comptroller General, the Secretary of Interior, or the Awarding Official.
- (c) The Contractor further agrees that records which relate to claims, litigation, or to any costs or expenses of this contract to which exception has been taken by the Comptroller General, the Secretary of Interior, or the Awarding Official or any of their duly authorized representatives shall be retained by the Contractor until such appeals, litigation or exceptions have been disposed of.
- (d) The provisions of this clause shall be applicable to and included in any negotiated subcontract.

2. Examination of Records.

[This clause is applicable if the contract amount exceeds \$10,000.]

- (a) The Contractor agrees to maintain books, records, documents, and other evidence pertaining to the costs and expenses of this contract (hereinafter collectively called records) to the extent and in such detail as will properly reflect all net costs, direct and indirect, of labor, materials, equipment, supplies and services, and other costs and expenses of whatever nature for which reimbursement is claimed under the provisions of this contract.
- (b) The Contractor agrees to make available at the office of the Contractor at all reasonable times during the period set forth in subparagraph (d), below, any of the records for inspection, audit or reproduction by any authorized representative of the Comptroller General, the Secretary of Interior and the Awarding Official.

- (c) If the Comptroller General or any of his duly authorized representatives determines that his audit of the amounts reimbursed under this contract as transportation charges will be made at a place other than the office of the Contractor, the Contractor agrees to deliver, with the reimbursement voucher covering such charges or as may be otherwise specified within two years after reimbursement of charges covered by any such voucher, to such representatives as may be designated for that purpose through the Awarding Official, such documentary evidence in support of transportation costs as may be required by the Comptroller General or any of his duly authorized representatives.
- (d) Except for documentary evidence delivered to the Government pursuant to subparagraph (c), above, the Contractor shall preserve and make available his records:
- (1) Until expiration of three years after final payment under this contract; and,
 - (2) For such longer period, if any, as is required by applicable statutes, by any other clause of this contract, or by (i) or (ii) below:
 - (i) If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting settlement.
 - (ii) Records which relate to:
 - (A) Appeals under Disputes clause of this contract;
 - (B) Litigation or the settlement of claims arising out of the performance of this contract; or
 - (C) Costs and expenses of this contract to which exception has been taken by the Comptroller General, Secretary of the Interior or the Awarding Official, or any

of their duly authorized representatives, shall be retained by the Contractor until such appeals, litigation, claims or exceptions have been disposed of.

- (e) Except for documentary evidence delivered pursuant to subparagraph (c), above, and the records described in subparagraph (d)(2)(ii), above, the Contractor may in fulfillment of his obligation to retain his records as required by this clause substitute photographs, micro-photographs, or other authentic reproductions of such records, after the expiration of two years following the last days of the month of reimbursement to the Contractor of the invoice or voucher to which such records relate, unless a shorter period is authorized by the Awarding Official with the concurrence of the Comptroller General or his duly authorized representative.
- (f) The provisions of the paragraph (1), including this subparagraph (f) shall be applicable to and included in each subcontract hereunder which is on a cost, cost-plus-a-fixed-fee, time-and-material or labor-hour basis.
 - (1) The Contractor further agrees to include in each of his subcontracts hereunder, other than those set forth in paragraph 2(f), above, a provision to the effect that the subcontractor agrees that the Comptroller General, the Secretary of the Interior, and the Awarding Official, or any of their duly authorized representatives shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term "subcontract" as used in this paragraph (1) only excludes:
 - (i) Purchase orders not exceeding \$10,000; and,

- (ii) Subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

Sec. 5. Mature Contracts. [Reserve Mature Clause if Non-Mature]

1. This contract may be terminated through either:
 - (a) Retrocession as provided in Pub. Law 93-638, as amended, in section 105(e); (25 CFR, Chapter V, Part 900, Subpart P); or,
 - (b) Program reassumption as provided in Pub. Law 93-638, as amended, in section 109 (25 CFR, Chapter V, Part 900, Subpart P).
2. This contract will be modified to incorporate provisions of regulations promulgated to implement Pub. Law 93-638, as amended, 25 CFR, Chapter V, Part 900, Subparts A-P.

Sec. 6. Drivers License Requirements for Non-Federal Personnel. The contractor is responsible for motor vehicle operator licensing; Heavy Equipment Operator testing, licensing, and physical examinations as may be required for the type of equipment to be operated. The contractor is responsible for assuring that motor vehicle and heavy equipment operators have appropriate insurance coverage. This policy must meet or exceed the policy adopted by the Bureau of Indian Affairs that is attached to this AFA.

Sec. 7. Effect on Existing Rights.

1. Nothing in the contract shall be construed as:
 - (a) Affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian tribe; or,
 - (b) Authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people.

Sec. 8. Applicable Federal Regulations. The regulations promulgated to implement Pub. Law 93-638, as amended, 25 CFR, Chapter V, Part 900, Subparts A-P shall apply to this agreement.

SECTION E
Administration Data

Sec. 1. Awarding Official's Technical Representative (AOTR).
The Awarding Official's Technical Representative (AOTR) will be designated to be Ms. Becky Smith, Tribal Government Relations Specialist.

Sec. 2. Contract Payment. For performing this contract, the Contractor shall be reimbursed for its allowable direct and indirect costs, not to exceed the total budgeted amount of the contract. The total budget amount of this contract is stated in item 15F of the SF-26, Award/Contract (October 1983) or, if amended, as stated in item 14 of the SF-30, Amendment of Solicitation/Modification of Contract (October 1983).

1. **Payment System:** Contract payments shall be made to the Contractor through the Bureau of Indian Affairs P-638 ASAP Payment System.
2. **Advance Payment:** Notwithstanding any other provision of law, Contract payments shall be made in advance on a quarterly, semi-annual, or lump sum basis. Each quarterly payment shall be made on the first day of each quarter of each fiscal year, the first semi-annual payment shall be made on the first day of the first quarter of the contract year, the final semi-annual payment shall be made on the first day of the third quarter of the contract year, the lump sum payment shall be made on the first day of the first quarter of the contract year, except that in any case in which the contract year coincides with the Federal fiscal year, payment for the first quarter shall be made not later than the date that is ten (10) calendar days after the date on which the Office of Management and Budget apportions the appropriations for the fiscal year for the programs, services, functions, and activities subject to this contract.

Check one of the following:

- Quarterly Payments.
- Semi-Annual Payments.
- Annual Payments.
- Other.

3. **Use of Funds Advanced:** Funds advanced to the Contractor shall be used only for purposes authorized under this contract. The funds advanced cannot be used for any purpose other than an authorized Bureau program expenditure, even on a temporary basis. Further, funds advanced pending disbursement for a purpose authorized under this contract shall not be transferred to tribal accounts, lent to such tribal accounts, or expended for programs or purposes not specifically authorized under this contract. Funds advanced, pending expenditure under this contract, shall be placed in appropriate savings, checking, or investment accounts. Such funds when invested or deposited shall be subject to the following:
1. Advanced funds not immediately spent for program activities may be invested only in obligations of the United States or in obligations or securities that are guaranteed or insured by the United States;
 2. If not invested, advanced funds must be deposited into accounts that are insured by an agency or instrumentality of the United States or must be fully collateralized to ensure protection of the funds, even in the event of a bank failure;
 3. Interest and investment income that accrue on any funds provided for by contract become the property of the contractor;
 - (d) Invested only in obligations of the United States, or in obligations or securities that are guaranteed or insured by the United States, or mutual (or other) funds registered with the Securities and Exchange Commission and which only invest in obligations of the United States or securities that are guaranteed by the United States; or,
4. **Sanctions:** Failure to maintain the integrity of contract funds shall result in imposition of one or more of the following sanctions:
- (a) Pursuant to Section 5(d) of Pub. Law 93-638, as amended (25 USC 5305(d)), funds paid to the Contractor and not used for the purposes for which they were paid shall be repaid to the Treasury of the United States; and,

- (b) **Cancellation of Advance Payment methodology and invocation of other payment methodologies as provided in provision 2, above.**
- (c) **Sanctions shall remain in place until the Contractor provides assurance that the impropriety which resulted in the imposition of sanctions has been rectified and will not reoccur.**

Sec. 3. Submission of Invoices. The Contractor shall use the S.F. 425 - Financial Status Report as its invoice document. The Contractor shall submit such invoice to the Awarding Official on a quarterly basis in accordance with the schedule established for submission of the quarterly Financial Status Reports.

- 1. At any time or times prior to final payment under this contract, the Awarding Official may cause to be made, such audit of the invoices or vouchers and statements of costs as shall be deemed necessary. Each payment made before that time shall be subject to reduction to the extent that amounts included in the related invoice or vouchers and statement of cost are found by the Awarding Official not to constitute allowable cost, and shall also be subject to reduction for overpayment or to increase for underpayment on preceding invoices or vouchers.**
- 2. On receipt and approval of the voucher or invoice designated by the Contractor as the final voucher or final invoice and statement of costs, which shall be submitted by the Contractor as promptly as may be practicable following completion of the work under this contract, but no later than ninety (90) days or such longer period as the Awarding Official may in his discretion, approve in writing from the date of such completion, and following compliance by the Contractor with all provisions of this contract; the Government shall, as promptly as may be practicable, pay to the Contractor any balance of allowable cost.**
- 3. Any cost incurred by the Contractor under the terms of this contract which would constitute allowable cost under the provisions of this clause shall be included in determining the amount payable under this contract; notwithstanding any provisions contained elsewhere in this contract or other documents incorporated in this contract by reference, designating services to be performed or materials to be**

furnished by the Contractor at its expense or without cost to the Government.

Sec. 4. Contract Revision or Amendment.

1. This contract may be revised or amended as required to carry out the purpose of the program, project or function being contracted. The Contractor shall submit proposed revisions to the Awarding Official. The Contractor (if other than the tribal governing body) shall also send copies of the proposed revision to the designated representative of the tribal governing body at the same time as they are sent to the Awarding Official. The Awarding Official shall review the proposed revision in accordance with 25 CFR, Chapter V, Part 900, Subpart E.
2. When the Awarding Official recommends declination of a Contractor's request to amend the contract, the matter shall be resolved as prescribed in Pub. Law 93-638, as amended.

Sec. 5 Negotiated Indirect Cost Rates.

1. The allowable indirect costs under this contract shall be obtained by applying negotiated indirect cost rates to bases agreed upon by the parties, as specified below.
2. Negotiation of indirect cost rates by the Contractor and the cognizant audit agency shall be undertaken as promptly as practicable after receipt of the Contractor's indirect cost proposal.
3. Allowability of cost and acceptability of cost allocation methods shall be determined in accordance with OMB Circular A-87.
4. The results of each negotiation shall be set forth in an Indirect Cost Negotiation Agreement, such agreement shall become a part of this contract by reference. The agreement shall specify:
 - (a) The agreed indirect cost rate(s);
 - (b) The base to which the rate(s) apply;
 - (c) The periods for which the rate(s) apply; and,

(d) The specific items treated as exclusions or any changes in the items previously agreed to be treated as exclusions.

5. The Contractor is to be reimbursed for all allocable and allowable indirect costs incurred in performance of this contract, subject to any statutory limitations applicable.
6. Any failure by the parties to agree on any indirect cost rate(s) or applicability of the rate(s) to the bases under this provision shall be considered a dispute concerning a question of fact for decision by the Awarding Official within the meaning of the clause of this contract entitled Disputes.

Sec. 6. Billings for Indirect Cost. The contractor shall bill for Indirect Cost earned on his voucher\invoice showing the following, for the period covered by the voucher\invoice:

1. Total direct cost expenditures.
2. Less Exclusions.
3. Times Indirect Cost Rate.
4. Indirect Cost earned for the period covered.

(1) - (2) X (3) = (4).

Sec. 7. Disputes.

1. This contract is subject to the Contract Disputes Act of 1978 (41 USC 601-613) (the Act).
2. Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.
3. Claim, as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$50,000 is

not a claim under the Act until certified as required by subparagraph 4(b), below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

4. (a) A claim by the Contractor shall be made in writing and submitted to the Awarding Official for a written decision. A claim by the Government against the Contract shall be subject to a written decision by the Awarding Official.
 - (b) For Contractor claims exceeding \$50,000, the Contractor shall submit with the claim a certification that:
 - (1) The claim is made in good faith;
 - (2) Supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and,
 - (3) The amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable.
 - (c) (1) If the Contractor is an individual, the certification shall be executed by that individual.
 - (2) If the Contractor is not an individual, the certification shall be executed by:
 - (i) A senior company official in charge at the Contractor's plant or location involved; or
 - (ii) An officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.
5. For Contractor claims of \$50,000 or less, the Awarding Official must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$50,000, the Awarding Official must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

6. The Awarding Official's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.
7. The Government shall pay interest on the amount found due and unpaid from (a) the date the Awarding Official receives the claim (properly certified if required), or (b) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Awarding Official receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.
8. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Awarding Official.

Sec. 8. Payment of Interest on Contractor's Claim.

1. If an appeal is filed by the Contractor from a final decision of the Awarding Official under the disputes clause of this contract, denying a claim arising under the contract, simple interest on the amount of the claim finally determined owed by the Government shall be payable to the Contractor. Such interest shall be at the rate determined by the Secretary of the Treasury pursuant to Public Law 92-41 (85 Stat. 97), from the date the Contractor furnishes to the Awarding Official his written appeal under the disputes clause of this contract, to the date of:
 - (a) A final Judgment by a court of competent jurisdiction; or,
 - (b) Mailing to the Contractor of a supplemental agreement for execution either confirming completed negotiations between the parties or carrying out a decision of a board of contract appeals.
2. Notwithstanding 1, above:
 - (a) Interest shall be applied only from the date payment was due, if such date is later than the filing of appeal; and,

- (b) Interest shall not be paid for any period of time that the Awarding Official determines the Contractor has unduly delayed in pursuing his remedies before a board of contract appeals or a court of competent jurisdiction.

Sec. 9. Retrocession. The Contractor agrees to comply with the provisions of section 105(e) of the Act, as amended, and be guided by the procedures in 25 CFR, Chapter V, Part 900, Subpart P in the event of retrocession.

Sec. 10. Re-assumption.

The Contractor agrees to comply with the provisions of section 109 of the Act, as amended, and be guided by the procedures in 25 CFR, Chapter V, Part 900, Subpart P in the event of re-assumption.

Sec. 11. Federal Tort Claims Act (FTCA):

1. **FTCA Coverage:** For purposes of FTCA coverage, the Contractor and its employees (including individuals performing personal services contracts with the Contractor to provide health care services) are deemed to be employees of the Federal government while performing work under this contract. This status is not changed by the source of the funds used by the Contractor to pay the employee's salary and benefits unless the employee receives additional compensation for performing covered services from anyone other than the Contractor.

2. **FTCA Liaison:** In accordance with the requirement in 25 CFR, Part 900, Subpart L, subsection 900.188(a) the contractor agrees to designate an individual to serve as tort claims liaison with the Federal government. The tort claims liaison shall provide the assistance specified in 25 CFR, Part 900, Subpart L, subsection 900.188(c).

SECTION F
Special Requirements

Sec. 1. Management Systems. Provide copies of the most recent versions of the following management system Policies and Procedures Manuals:

1. Personnel Manual.

- (x) Previously submitted, and on file at the Bureau of Indian Affairs.**
- () Attached, see attachment ____.**

2. Property Manual.

- (x) Previously submitted, and on file at the Bureau of Indian Affairs.**
- () Attached, see attachment ____.**

3. Procurement Manual.

- (x) Previously submitted, and on file at the Bureau of Indian Affairs.**
- () Attached, see attachment ____.**

Sec. 2. Finance System Certification. Certification by a licensed accountant that the bookkeeping and accounting procedures which the tribal organization presently uses meet the standards of 25 CFR, Chapter V, Part 900, Subpart F. In place of the certification; the tribal organization may submit written agreement to establish a bookkeeping and accounting system that meets the standards of 25 CFR, Chapter V, Part 900, Subpart F, and to have the bookkeeping and accounting system certified before the Bureau of Indian Affairs disburses any funds under a contract awarded as a result of this funding agreement. The bookkeeping and accounting system shall provide for the accumulation of costs throughout the contract term or performance period in such a manner as to facilitate audit or review of the financial records.

Check one of the following:

- (x) Certification previously submitted, and on file at the Bureau of Indian Affairs.**

() Certification attached, see attachment ____.

Sec. 3. Record keeping. The Contractor agrees to keep such records as required pursuant to Sec. 108(c), Sec. 1(b)(7)(A) of the Act, as amended, to make reports required by Sec. 5(a)(1) and (2), of the Act, as amended, and to make such information and reports available to the Indian clients as required by Sec. 5(c), of the Act, as amended. The Contractor shall be required to maintain a record-keeping system which will allow for the maintenance of records to facilitate retrocession or reassumption. Such a records system, as a minimum, shall:

1. Provide for the creation, maintenance and safeguarding of records of lasting value, including those involving individual rights, such as permanent student records and transcripts.
2. Provide for orderly retirement of records used or created under the contract. Such records shall be returned to the Bureau for disposition according to the General Records Schedules and the Bureau Records Control Schedule.

Sec. 4. Privacy Act Requirements. When a tribal Contractor operates a system of records to accomplish a Bureau function, the Contractor shall comply with Subpart D of 43 CFR Part 2 which implements the Privacy Act (5 U.S.C. 552a).

Sec. 5. Freedom of Information.

1. Unless otherwise required by law, the Bureau shall not place restrictions on tribal Contractors which will limit public access to the tribal Contractor's records except when records must remain confidential.
2. The Contractor shall make all reports and information concerning the Contract available to the Indian people which the Contractor serves or represents.
3. A request to inspect or copy records and information shall be in writing and must reasonably describe the reports and information requested. The request may be delivered or mailed to the Contractor. Within ten (10) working days after receiving the request, the Contractor shall determine whether to grant or deny the request. The requester shall be notified immediately of the determination.

4. The time for making a determination may be extended up to an additional ten (10) working days for good reason. The requester shall be notified in writing of the extension, reasons for the extension, and the date on which the determination is expected to be made.