REQUEST FOR QUALIFICATIONS

FOR CONSTRUCTION MANAGER / GENERAL CONTRACTOR SERVICES

FOR THE TULALIP RESORT CASINO

PHASE 1 RENOVATION

FEBRUARY 6, 2023

1.0 INTRODUCTION

The Tulalip Tribes of Washington & the Tulalip Gaming Organization (TGO) are soliciting Statement of Qualifications ("SOQ's") from Tulalip Native American Owned Businesses (Tulalip-NAOB) and non-Native Contractors to submit qualifications for the Tulalip Resort Casino Phase 1 Renovation. It is the objective of the TGO to maximize the tribal member benefit through subcontracting and employment opportunities throughout this construction period. Tulalip-NAOB and contractors are referred to herein as "Construction Manager / General Contractor or "GCCM" as applicable. The anticipated project delivery method is Construction Manager as Constructor with a Guaranteed Maximum Price (GMP) established during the design phase for each project. The form of contract will be a revised AIA Document A133-2019 Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.

The submission (the "Submission") (SOQ) should focus upon the criteria set forth in this Request for Qualifications (RFQ), including, but not limited to experience in projects of similar scope and complexity, past working relationships of the GCCM's team members, and how the GCCM intends to meet Tulalip Tribes' NAOB participation requirements. The submission should also include a discussion on the procurement plan and how the GCCM proposes to address long lead items and supply chain issues to keep the project on schedule.

To receive the preferences set forth in this RFQ, Tulalip-NAOBs shall submit evidence of certification from the Tulalip Tribes' TERO (Tribal Employment Rights Ordinance) office as being a certified Native American Owned Business (NAOB).

GCCM's (Proposers) shall abide by The Tulalip Code, Chapter 9.05 – TERO Code and the orders of the TERO Commission which provides NAOB preference in contracting goods and services.

For more information about The Tulalip Code, Chapter 9.05 – TERO Code, contact:
The Tulalip Tribes' TERO Department
6406 Marine Drive
Tulalip, Washington 98271
Office (360) 716- 4747 or Facsimile (360) 716-0249
The Tulalip TERO Code is available for review on the Tulalip TERO website: www.tulaliptero.com

2.0 SUBMITTAL DEADLINE

Proposers shall submit the following:

1) Five (5) bound copies
2) One (1) pdf copy submitted on USB memory device

Sealed submissions containing the information and documentation requested in this RFQ must be received at the Tulalip Resort Casino Administrative Office's no later than 3:00 p.m. March 3, 2023. Submittals sent by mail or courier shall be sent to the address below. **Faxed or e-mailed submittals will not be accepted.**

Marci Fryberg, President & COO
Tulalip Gaming Organization
10200 Quil Ceda Blvd
Tulalip, WA 98271

Any addenda issued for this RFQ will be issued to those entities submitting a SOQ.

2.1 SUBMITTAL REQUIREMENTS

The body of the SOQ shall be organized in accordance with the Evaluation Criteria.

The body of the SOQ, when printed, shall be a maximum of 60 pages. A "page" shall be defined as (when printed) one single-sided piece of 8.5 x 11-inch paper that has words, charts, tables, pictures, or graphics. The font shall be no smaller than 10-point type.

Documents that are not included in the page count are limited to the following:

- Cover letter, which shall be limited to 2 pages
- Divider tabs and/or cover pages, if they contain no substantive content
- Exhibit A – General Contractors Estimated Fee Breakdown
- AIA 305 Contractor's Qualification Statement Form
- Record of claims and liquidated damages assessment information requested in Section 6.0 Submission Evaluation Criteria

SOQs that exceed the page limit may be rejected. The TGO, at its sole discretion, reserves the right to remove pages from the sections of any non-conforming SOQ submittals to bring each non-conforming SOQ submittal within the page count requirement.

3.0 PROJECT DESCRIPTION

The TGO seeks Construction Management services for the Phase 1 Casino Renovation.

The following projects (the "Projects") are currently in planning and design for renovation with construction anticipated to start on the first project(s) in the late third quarter or the early fourth quarter of 2023 with all Projects completed before the end of 2024:

Casino mechanical, electrical & low voltage systems infrastructure

Casino entrances

Gaming floor (complete)

Cashier

Center Bar

High Limits gaming area

Box Office

Blackfish Restaurant

Casino Restrooms

The Tulalip Gaming Organization reserves the right to modify the project list at their discretion based on availability of capital expenditure and TGO board approval. Estimated total construction cost is $54,000,000.

4.0 SCOPE OF SERVICES

The following outline of services for the Projects is not a complete listing of services. Except to the extent noted in writing as the responsibility of others, the selected GCCM shall be responsible for providing all necessary construction expertise and construction management services to the Tulalip Gaming Organization (TGO) (the "Owner") to ensure that the construction budget and the Project schedules are met. The Construction Manager / General Contractor shall closely collaborate and coordinate such work with the Owner, architect (the "Architect") and the other stakeholders to provide the following services, including but not limited to:

1. Pre-Construction / Construction Management Services including but not limited to;
    a. cost estimations and budget development
    b. constructability feasibility review
    c. project schedule, staging and phasing development
    d. competitive subcontractor identification
    e. value engineering and analysis
    f. site investigation of existing construction and systems
    g. development of a plan to maximize Tulalip NAOB and individual Tulalip Tribal members participation in the projects
2. Implementing safe work practices and requirements for construction;
3. Assessing and recommending site logistics requirements;
4. Establishing a GMP as early as possible per Project on an open book basis with robust cost-estimating and budgeting services. Once the GMP is agreed to, the GCCM shall be responsible for assuring that the drawings and specification prepared by the Architectural & Engineering consultants remain within the GMP Contract (defined herein). If unforeseen circumstances lead to an increase in the Contract amount, the GCCM will be required to meet with the Owner, Architect and Engineering consultants as soon as possible to discuss and resolve any cost increases.

5. Determining and reconciling constructability issues and performing constructability analysis of the design documents prior to subcontract procurement;
6. Assessing alternative design and construction options for cost savings. Note that all cost savings below the GMP will return to the Owner;
7. Development of a plan for product procurement so as to not negatively impact the project schedule. Note that the TGO has already purchased a portion of the finish materials for the Box Office which will be installed by the GCCM. TGO also intends to purchase the gaming carpet for installation by the GCCM. TGO intends to contract directly for food service equipment and certain specialty features design & construction.
8. Identifying products for Value Engineering (VE) and engineering systems for life cycle cost design considerations and recommending all work necessary to support their implementation;
9. Developing the subcontractor bid package plan in accordance with The Tulalip Code, Chapter 9.05 - TERO Code;
10. Submitting applicable Bid Packages for subcontracted work to the Owner for review and approval prior to advertising for bid; and
11. Submitting applicable subconsultant and subcontractor Qualifications to Owner for review and approval prior to award of subcontracted work.
12. Construction management and construction

In addition, the GCCM must be familiar with the local labor and subcontracting market and be capable of collaborating with subcontractors to generate viable pricing alternatives.

Key Principals and Approaches: The TGO has identified the following items as key elements for the Projects and expect the selected GCCM to implement these concepts and practices on the Projects. Proposers should take note of the emphasis placed upon these items.

1. TERO Participation: Native American participation in both employment and contracting on the Projects is paramount. The GCCM selected will be required to develop a plan for maximizing TERO Participation in subcontracting and employment and for monitoring and enforcing subcontractor TERO participation requirements during construction. The TERO contractor and Tulalip NAOB participation shall be a minimum of 15% of the GMP.

2. Self-Performed Work: GCCM's submitting their qualifications for consideration must clearly include their approach to self-performing work, whether through their existing resources or through employment of TERO contractors, Tulalip NAOBs and/or tribal members seeking employment and career development opportunities.
3. Cost Estimating: Early in the design phase, the GCCM will collaborate in the development of a cost model that will establish the initial budget parameters and controls for all the project components and systems. This will establish the baseline for all future cost estimating efforts and evaluation of the project design against the project budgets.
4. Scheduling, Staging and Phasing of Projects: it is of the utmost importance that the Tulalip Gaming Organization can fully operate 24/7 throughout construction with minimal impact to operations and guests. The GCCM must be able to develop schedules for construction, staging of subcontractors, and phasing methodologies that reduce the amount of negative impact to operations and the guest experience.

5.0 SELECTION AND AWARD PROCESS

The process for selection of the GCCM and negotiating the GMP Contract ("Contract") is anticipated to be as follows:

1. All proposing contractors must meet the minimum qualifications set forth in Section 6.0 below.
2. NAOB's submitting proposals shall submit evidence of certification from the Tulalip Tribes' TERO office as being a certified NAOB or Tulalip Tribal Member NAOB with their Submission in order to obtain the preferences provided for in this RFQ.
3. Proposing contractors submitting Qualifications will be scored and ranked based on the evaluation criteria set forth in this RFQ. A shortlist will be created and contractors will be invited to interview from this shortlist. The number of contractors interviewed will be determined by the Tulalip Gaming Organization after the receipt and review of the proposals.

4. If the Proposer seeks to contract via a limited liability company or joint venture, further assurances and corporate guarantees may be required from company or joint venture members.
5. The Tulalip Gaming Organization reserves the right to check references of the Proposer(s) at any time during the selection process. Should the information obtained during the reference checks cause concern regarding the proposing contractor's past performance or their ability to successfully perform the contract to be executed based on the requirements of this RFQ, the TGO has the sole discretion to determine whether a firm is qualified for the Projects. References checked by the Owner can include (i) The Tulalip Tribes (provided the firm has performed past project with the Tulalip Tribes); (ii) Tulalip Gaming Organization; and (iii) others (whether specifically listed by the proposing firm or not).
6. The Owner will initiate contract negotiations with the GCCM that the Owner in their sole discretion believes to be best able to meet the goals and objectives of the projects. Note that the final contract may contain certain provisions with respect to lender, insurer, or other requirements, insurance, security, and other provisions that are non-negotiable.
7. If a Contract cannot be mutually reached by both parties and contract negotiations are terminated, the Owner may initiate negotiations with the next most qualified Proposer. This process may continue until the Owner successfully negotiates a contract for the Projects or terminates the procurement process. Proposers shall not be entitled any compensation, damages or loss related to or arising out of this RFQ process.

6.0 SUBMISSION EVALUATION CRITERIA

All Submissions received by the date and time stated in this RFQ will be reviewed by a selection committee. For the purpose of selecting and evaluating proposers, the evaluation criteria will be given the following weights.

QUALIFICATIONS	**100 POINTS**
PERFORMANCE & BOND ABILITY	Mandatory
DEMONSTRATED HISTORY OF SUCCESSFUL PROJECTS COMPLETED ON TIME AND BUDGET, OF SIMILAR SCOPE AND COMPLEXITY	45
TEAM MEMBER EXPERIENCE	20
ESTIMATED COST FOR SERVICES, PROJECT CONTROLS, COST TRACKING & GMP DEVELOPMENT	25
TULALIP NAOB – ZERO POINTS WILL AWARDED IF PROOF OF NAOB STATUS IS NOT INCLUDED WITH THE RFQ SUBMISSION	5
EXPERIENCE MEETING TERO REQUIREMENTS AND PLAN OF MEETING NAOB PARTICIPATION GOALS	5

A. Statement of Proposer's Ability to Provide Performance and Payment Bond

a. Complete AIA Document A305 - Contractor's Qualification Statement

As a mandatory minimum requirement, the Proposer must have the ability to obtain a performance and payment bond in excess of the total anticipated GMP for all Projects in the aggregate. Proposer shall complete the AIA Document A305 in addition to providing financial references and GMP and bonding for projects listed in the experience portion of their SOQ. Any Proposer who fails to meet this mandatory minimum requirement will be considered non-responsive and will not be considered further by the Owner in this procurement process. Reference letters indicating "unlimited" bonding capability are not acceptable.

B. Proposer's Experience and Qualifications

The SOQ shall demonstrate the GCCM's ability to undertake the Projects by providing the following qualifications of the Proposer, Team Members, and individual Key Team Members. The inability to contact a reference may have a detrimental impact on the evaluating qualifications. Emphasis will be placed on experience and expertise in performing substantive work on projects that are of Similar Scope and Complexity (defined below).

1. Projects of Similar Scope and Complexity are defined as Projects that have completion dates within the last 8 years and that have many or all of the following characteristics and include GMP information and owner reference contact information:
    a. Projects for Native American Tribes and, more specifically, projects with TERO requirements;
    b. Complex renovation projects within fully operational 24/7 facilities of a similar level of finish, (4-Diamond resort properties preferred), including phasing and coordination with owner to remain fully operational during construction, minimizing impact to guests and team members;
    c. Projects of a similar size, level of finish and budget that include infrastructure upgrades, hotel, resort, food and beverage and casino scopes of work;
    d. Projects where the GCCM was selected prior to the establishment of the final price and schedule and where the GCCM collaborated with the Owner to develop the final price and schedule through construction management or preconstruction services;
    e. Demonstration of maintaining Key Team Members involved during the pre-construction construction management and construction portions of the Project:
    f. Provide a record of claims, litigation, or arbitration matters initiated by your firm or against your firm (in which you were a named party), any time in the last five (5) years. List the name of the project, the date of litigation, settlement details (to the extent allowable) and identify your involvement, i.e. defendant, plaintiff, claimant;

g. Identify whether liquidate damages have been assessed against your firm in the past five (5) years, along with the details surrounding such assessment; and
h. Long-term client relationships with ongoing projects and property renovations,

C. Team Organization & Experience

1. Team Organization Chart.
2. Provide resume and qualifications for all Key Team Members; resumes should be no longer than 1 page and should include the following information:
    a. Description of the individual's proposed Project role;
    b. Identification of employer and number of years employed by the firm;
    c. Educational background, professional licenses, and/or certifications;
    d. Description of the individual's experience on Projects of Similar Scope and Complexity and how their experience will benefit this Project;
    e. The individual's billable rate (for preconstruction services); and
    f. The process used to maintain Key Team Members involvement throughout pre-construction construction management and construction
3. Key Team Members, at minimum, are defined as:
    a. Person(s) responsible for leading coordination of participation of TERO and NAOB companies;
    b. Person(s) responsible for overall construction management and construction;
    c. Person(s) responsible for on-site field supervision, safety and direction of construction (Superintendent);
    d. Person(s) responsible for cost controls and budgeting;
    e. Person(s) responsible for sequencing, staging and scheduling; and
    f. Person(s) responsible for systems testing, configuration, and commissioning.

D. Project Controls, Cost Tracking and GMP Development

1. Describe the GCCM's processes and tools for monitoring, reporting, and managing cost, including, but not limited to:
    a Scope, cost, and schedule baseline development and management/change control processes and the participation and interaction among the scheduling and

estimating teams, project, design, construction, and operations management teams to execute these processes.

b. Cash flow reporting processes and basis for monthly cash flow estimated values.

2. Describe the GCCM's processes and tools for developing a GMP and addressing such issues as; optimum time to establish the GMP, methods of developing GMP, management of contingencies, allowances and escalation.
3. Provide anticipated percentage of construction cost fee (profit) and a list of general conditions with estimated costs as a percentage of construction based on anticipated project list included in Section 3.0 and exhibit of scoping documents.

E. Experience Mentoring Small Business Entities - TERO Participation

One of the goals of this Project is to provide opportunities for Tulalip NAOBs to participate in these projects and gain substantive experience with complex construction within a 24/7 4-Diamond environment.

1. Describe the GCCM's experience in collaborating with and mentoring NAOBs. Describe actions taken by the GCCM in the past 5 years to provide NAOB or small business entities with opportunities to compete for and work on projects managed and/or constructed by the GCCM.
    a. For each project (a) describe in detail the outreach process taken by the GCCM; (b) identify the percentage utilization of NAOB or small businesses; and (c) describe the approach to packaging subcontracted work, including the specific strategy that delivered those results.
2. Describe the GCCM's approach to providing such opportunities, including but not limited to the GCCM's plan to mentor NAOBs (Tulalip and other Tribes) and provide other employment and subcontracting opportunities for TERO preferred businesses on these projects.
3. Describe the proposed project team's experience working with TERO offices (Tulalip and other Tribes) on past projects.

7.0 INTERVIEW

After reviewing the Submissions, the selection committee will create a shortlist of the top scoring teams and will conduct interviews with the Proposers. Prior to the interview, references may be checked by the selection committee. Proposers should restrict the attendees to those people who will perform substantive work on the Project.

At a minimum, attendees should include the individuals with the responsibilities identified in Section 6.0, subsection C above. In addition to presenting their qualifications, experience, and approach to the project the Project Team will be expected to respond to questions from the selection committee regarding the Submission as well as additional questions which the selection committee may have. Oral responses during the interview are not binding on the Owner unless

followed up in writing. Proposers shall create meeting minutes for the Interview and submit such meeting minutes within 2 business days of the interview. The meeting minutes should be consistent with the type of communications the Owner should expect during the project.

8.0 FINAL SELECTION

The Tulalip Gaming Organization intends to select the GCCM that meets the criteria set above from the Submission and possible interview. Final selection must be approved by and shall be at the sole discretion of the Tulalip Gaming Organization's Executive Team. The Tulalip Gaming Organization reserves the right to select any responsive and responsible proposer they determine.

9.0 RESERVATION OF RIGHTS

The Tulalip Gaming Organization reserves without limitation and may exercise at its sole discretion, the following rights and conditions about this procurement process:

1. To cancel the procurement process and reject any and all SOQs and/or Proposals;
2. To waive any informality or irregularity;
3. To revise the procurement documents and schedule via an addendum;
4. To reject any Proposer that submits an incomplete or inadequate response or is not responsive to the requirements of this RFQ;
5. To require confirmation of information furnished by a Proposer, require additional information from a Proposer concerning its Submittal and require additional evidence of qualifications to perform the work described in this RFQ;
6. To provide clarifications or conduct discussions, at any time, with one or more Proposers;
7. To contact references that are not listed in the Proposer's Submittals and investigate statements on the SOQs and/or qualification of the Proposer and any firms or individuals identified in the SOQ;
8. To consider alternative technical concepts and/or approaches identified by Proposers; and
9. To take any action affecting the RFQ process or the Project that is determined to be in the Owner's best interests.

10.0 PRODUCT OWNERSHIP

Submitting contractors shall retain the ownership and property interests in any documents and electronic data that are furnished by any proposer to Owner pursuant to this RFQ, including but not limited to any intellectual property rights, copyrights and/or patents. All submittals will become the property of the Owner and not be returned.

11.0 NON-COLLUSIVE UNDERSTANDING

Each person and/or firm submitting a proposal thereby certifies that s/he has not colluded with any other person, firm or corporation regarding securing or providing the services being solicited.

12.0 DISCLOSURE OF INTERESTS

No commissioner, officer or employee of the Tulalip Tribes, the Casino, the governing body of the locality in which the Tribe is located and no other public official of any such loyalty who exercises any functions or responsibilities with respect to the Projects shall, during his/her tenure or for one year thereafter, have any interest, direct or indirect, in the Projects or in any property included or planned to be included in the Projects, or in any contract relating to the Projects.

13.0 LICENSING REQUIREMENTS

All individuals, businesses, entities, and organizations engaged in business activities on the Tulalip Indian Reservation shall obtain a Tulalip Tribal Business License. This applies to all contractors, subcontractors, materialmen, suppliers, and consultants, regardless of tier or location, working on the project.

14.0 TRIBAL SOVEREIGNTY & DISPUTE RESOLUTION PROVISIONS

By submitting a response to this RFQ, the Proposer agrees that they will agree to the Tribal Sovereignty & Dispute Resolution Provisions included in Exhibit B.

15.0 SUBMISSION DEVELOPMENT COSTS

The Owner accepts no liability for the costs and expenses incurred by firms in responding to this procurement. Each Proposer that enters the procurement process shall prepare the required materials, the SOQ and the Proposal at its own expense and with the express understanding that it cannot make any claims whatsoever for reimbursement from the Owner for the costs and expenses associated with the process.

16.0 SCHEDULE

The Tulalip Gaming Organization anticipates the GCCM selection schedule will be as follows:

RFQ Issued	February 6, 2023
Note: Invited non-NAOB GCCM's are required to provide confirmation of acceptance to pursue this RFQ to Rice Fergus Miller, Inc. no later than February 15, 2023	
RFQ Interest Meeting	February 10, 2023 10AM (optional, but recommended) Location: Tulalip Resort Casino Administration Conference Room
Questions Due	February 17, 2023
Response to Questions Issued by	February 22, 2023
Submissions Due	March 3, 2023
Interviews Week of	March 13, 2023
Recommendation for Award	March 22, 2023
Notice of Selection	March 24, 2023
Contract Negotiation & Execution	April 7, 2023

Questions must be delivered by electronic mail (e-mail). All requests for interpretation shall be brought to the attention of the Owner's primary point of contact in writing no later than Question Due date, indicated above.

Questions should be addressed to:
Rice Fergus Miller, Inc.
Jennifer Fleming, Principal
jfleming@rfmarch.com

ATTACHMENTS

Exhibit A: GCCM Estimated Fee Breakdown

Exhibit B: Contract Tribal Sovereignty & Dispute Resolution provisions

Exhibit C: Project Scoping Diagram

EXHIBIT A

CONSTRUCTION MANAGER / GENERAL CONTRACTORS ESTIMATED FEE BREAKDOWN

I, _____ of _____ certify that to the best of my ability the following is a reasonable estimate of the anticipated professional fees in accordance with this Request for Qualifications. It is noted that this is an estimate for proposal purposes only and will be subject to negotiation if we are selected.

1. Cost of Bond $_____

2. General Conditions / General Requirements (% of Construction) _____%
   (provide list of what is included in general conditions / general requirements)

3. Profit (fee %) _____%

4. Pre-construction services (estimated) $_____
   (include employee hourly rates with all mark-ups (health insurance, PTO, etc.)

5. Change Order Policy

6. Delay Day and/or Project Suspension Policy & Charges

EXHIBIT B

TRIBAL SOVEREIGNTY & DISPUTE RESOLUTION PROVISIONS

§ 14.3 Mediation

§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Judicial Arbitration and Mediation Services' (JAMS) Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administrating the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation 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 arbitration proceeding is stayed pursuant to this Section 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 14.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in accordance with applicable law. If the Tulalip Tribes of Washington is a party to such settlement agreement, enforcement shall be in accordance with applicable law in the Tribal Court of the Tulalip Tribes of Washington.

§ 14.4. Binding Dispute Resolution

§ 14.4.1. Any Claim arising out of or related to the Contract or the Work performed by the Contractor, except Claims waived as provided in this Agreement, shall be subject to this Section 14.4. Prior to seeking claim resolution through mediation, arbitration, or litigation, the Contractor shall proceed under the administrative procedures of Sections 14.1 through 14.3. The provisions of these sections must be complied with in full, as a condition precedent to the Contractor's right to seek claim resolution through arbitration or litigation.

§ 14.4.2 Any disputes in which the Tulalip Tribes of Washington is a party shall be decided by arbitration. Such arbitration shall be decided in accordance with the Tulalip Tribal Code and, unless the parties mutually agree otherwise, shall administered by JAMS or the American Arbitration Association, at the Owner's sole discretion. The demand for arbitration shall be filed in writing with the other party to the Contract and with entity administering the arbitration. Within five (5) days' receipt of a demand, the parties or their attorneys shall meet to discuss the arbitration process.

§ 14.4.2.1 Any such arbitration shall take place before a single arbitrator if the aggregate value of the Claim and any counterclaim is less than $2,000,000, exclusive of costs and attorney fees. The parties shall endeavor to mutually agree on the arbitrator. Unless otherwise agreed upon by the parties, the arbitrator shall be an attorney with at least fifteen years of experience in handling construction disputes and has a demonstrable understanding of the applicability of and interaction between federal law and tribal law. Such demonstrable understanding can be accomplished by admission to a tribal court bar, handling at least five (5) cases or disputes as judge or arbitrator with a Tribe as a party, significant experience representing tribal entities, negotiation of at least five (5) construction contracts or handling two (2) or more cases or disputes in which a Tribe is a party, or other similar substantive knowledge of Indian Country. If the parties are unable to agree upon the selection of an arbitrator within twenty (20) days of their first meeting, the parties shall each select an arbitrator and the two selected arbitrators shall together select a third arbitrator who alone shall decide the matter in dispute. For any Claim and counterclaim having an aggregate value of $2,000,000 or more, a panel of three (3) arbitrators shall be appointed unless both parties mutually agree to a single arbitrator. Each of the parties shall designate one arbitrator and the third arbitrator, who shall be a lawyer with at least fifteen years of experience in handling construction disputes and has a

demonstrable understanding of the applicability of and interaction between federal law and tribal law, shall be selected by the arbitrators designated by the parties. If the two selected arbitrators are unable to agree on a third arbitrator, the third arbitrator shall be appointed pursuant to applicable arbitration procedures. None of the arbitrators need to be JAMS or AAA panel members. All arbitrators shall be neutral.

§ 14.4.2.2 Following the initiation of arbitration, the parties shall cooperate in the exchange of information relating to the Claim. For those claims less than $200,000 in aggregate, the discovery shall be governed by JAMS Streamlined Arbitration Procedures. For claims greater than $200,000 in the aggregate, discovery shall be guided by the scope of the applicable rules of discovery under the Federal Rules of Civil Procedure for the Federal District Court for the Western District of Washington and JAMS Discovery Protocols. Discovery, however, shall not include interrogatories or requests for admission. The parties shall freely exchange documents relevant to the claim(s) and depositions shall be limited to those reasonably necessary for each party to prepare for or defend against the claim(s), subject to the limitations on e-discovery set forth in the JAMS Discovery Protocols. Disputes regarding discovery shall be resolved by the arbitrator or, where there is an arbitration panel, by the Chair.

§ 14.4.2.3 Arbitration may include by consolidation, joinder or in any other matter, any additional person or entity who is, or may be involved in, the Claim, including but not limited to the Contractor, Architect, Consultants, Subcontractors and/or suppliers retained by the Contractor. In order to effectuate the purposes of this Section 14.4.2.3, the Contractor shall incorporate by reference the provisions of this Section 14.4.2.3 in each Subcontract.

§ 14.4.2.4 In the event of arbitration between the parties hereto, declaratory or otherwise relating to the Contract, and notwithstanding any other provisions therein, (a) each party shall bear its own costs and attorneys' fees if the aggregate value of the Claim and any counterclaim is less than $200,000 and (b) the losing party shall pay all costs and attorneys' fees actually incurred by the substantially prevailing party if the aggregate value of the Claim and any counterclaim is $200,000 or more. The parties covenant and agree that they intend by clause (b) of this Section 14.4.2.4 to award the amount of attorney's fees actually incurred by the prevailing party, and that clause (b) of this Section shall constitute an instruction to the Arbitrator that such fees shall be deemed reasonable.

§ 14.4.3 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by this Agreement. For such purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 14.4.4 The award rendered by the arbitrator shall be final. Judgment on any arbitration award shall be entered in and enforced by the Tribal Court. The Contractor and the Owner shall comply with the arbitration award and shall not seek further remedy or appeal except as specially provided by the Tulalip Tribal Code.

§ 14.5 Any disputes where the Tulalip Tribes of Washington is not a party shall be decided by litigation in a court of competent jurisdiction and Washington state law shall apply.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

Except as specifically provided in Section 14.5, the Contract shall be governed by the laws of the Tulalip Tribes and all applicable federal laws and regulations. Should any conflict arise between such laws, the following precedence shall apply: (i) Tribal law then (ii) Federal law. The Owner does not hereby consent to jurisdiction under any tribal, state or federal law that would not otherwise apply to the Owner as a Tulalip Tribes governmental entity or activity occurring within Indian Country.

§ 15.1.2 Tribal Sovereign Immunity

Owner's Waiver of Limited Sovereign Immunity; Consent to Jurisdiction. By signing the Agreement the Owner neither waives, limits nor modifies its sovereign immunity from any lawsuit, except as expressly provided in this Section 15.1.2. The Owner hereby expressly and irrevocably waives its sovereign immunity (and any defense based thereon) for arbitration of Claims, demands or other disputes arising out of or related to the Agreement or the

Work, but only pursuant to this Section 15.1.2. This waiver includes Claims, demands or other disputes brought by Contractor for (a) monies or services owed; (b) any pass-through claims as defined by *Severin v. United States*, 99 Ct. Cl. 435 (1943), cert. denied, 322 U.S. 733 (1944), and progeny (to the extent endorsed by Contractor); (d) for judicial proceedings before the tribal court of the Tulalip Tribes ("Tribal Court") for the purposes of compelling arbitration of a Claim, confirming an arbitration award, or collecting sums due and owing pursuant to an arbitration award, and otherwise enforcing any award or judgement Sums due and owing pursuant to any award or judgement may be enforced and collected solely from amounts owing to or received by Owner from its casino and hotel operations from the Tulalip Resort Casino and Hotel. The Owner and Contractor hereby irrevocably consent to and submit to the jurisdiction of any arbitration proceeding convened pursuant to the terms of the Agreement, as well as to the jurisdiction of the Tribal Court.

§ 15.1.2.1 Owner represents and warrants to Contractor that the person signing this Agreement on behalf of Owner is fully authorized to sign on behalf of the Owner. Owner shall provide an executed resolution of the Owner's Tribal Council to Contractor, in a form reasonably acceptable to Contractor or its legal counsel, before Contractor shall be obligated to commence Work pursuant to this Agreement.

§ 15.1.2.3 This limited waiver of sovereign immunity is solely for the benefit of the Contractor (and Contractors or Subcontractors whose claims are sponsored by the Contractor, if any), and the Owner, by granting this limited waiver to the Contractor does not otherwise waive its sovereign immunity.