

**EWIIAAPAAYP BAND OF KUMEYAAY INDIANS (EBKI)**

**REQUEST FOR PROPOSAL 2024-01-IB**

**FOR**

**Ewiiapaayp Indian Reservation Environmental Services**

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The Ewiiapaayp Band of Kumeyaay Indians (EBKI) is a federally recognized Indian Tribe and Ewiiapaayp Indian Reservation.

Consistent with the EBKI's mandate to provide for the general welfare of its Tribal citizens and consistent with its inherent sovereign powers and within its aboriginal lands, as further articulated by its General Welfare Code Title 521, the EBKI is now soliciting proposals from qualified and licensed entities to provide environmental guidance, Federal and State compliance review, and environmental documentation. All proposals submitted in response to this solicitation must conform to the requirements and specifications outlined in this document.

**RFP-2024-01-IB Ewiiapaayp Indian Reservation Environmental Services  
RFP Information at a Glance**

EBKI's Contact Person: Will Micklin, CEO  
4054 Willows Road  
Alpine, CA 91901  
Tel: (619) 368-4382  
Email: ceo@ebki-nsn.gov

All requests for information must be submitted via email.

RFP information request deadline: September 1, 2024 at 2:00pm Pacific Time.

Project Site Visit: By appointment

Proposers visiting the Project Site must schedule the visit with the EBKI representative at least 48 hours prior to the proposed site visit. Proposers will be escorted by an EBKI representative at the Project Site. Proposers must use their own vehicles to visit the Project Site. Proposers are encouraged to use N95 respirators and maintain social distancing practices during the site visit.

PROPOSALS DUE: October 1, 2024, no later than 2:00 PM Pacific Time.

SUBMIT TO:

Will Micklin, CEO  
Ewiiapaayp Band of Kumeyaay Indians  
4054 Willows Road  
Alpine, CA 91901  
Tel: (619) 368-4382  
Email: ceo@ebki-nsn.gov  
Fax: (619) 445-9126

**Proposals may be sent by E-Mail, in Adobe PDF and/or Microsoft Excel format. Proposals received after the designated submission time will not be accepted.**

NOTE: (1) PLEASE SUBMIT PROPOSAL BY E-MAIL, IN ADOBE PDF AND/OR MICROSOFT WORD EXCEL FORMAT, BY October 1, 2024 NO LATER THAN 2:00 PM PACIFIC TIME.

(2) EMAILED SUBMISSIONS MUST BE SUBMITTED TO: ceo@ebki-nsn.gov.

(3) ALL INFORMATION INQUIRIES MUST BE SUBMITTED VIA EMAIL TO: ceo@ebki-nsn.gov.

The EBKI Tribal Code provides any contract, subcontract, or grant administered by EBKI shall require that, to the greatest extent feasible:

- Preference and opportunities for training and employment shall be given to American Indians / Alaska Natives (AI / AN), and
- Preference in the award of contracts and subcontracts shall be given to AI / AN organizations and Indian-owned economic enterprises.

**EBKI's RESERVATION OF RIGHTS NOTICE:**

1. The EBKI reserves the right to reject any or all proposals, to waive any informality in the RFP process, or to terminate the RFP process at any time, if deemed to be in its best interest.
2. The EBKI reserves the right not to award a contract pursuant to this RFP.
3. The EBKI reserves the right to terminate a contract awarded pursuant to this RFP, at any time for its convenience upon five (5) days written notice to the successful proposer.
4. The EBKI reserves the right to determine the days, hours, and locations that the successful proposer shall provide the services called for in this RFP.

5. The EBKI reserves the right to retain all proposals submitted and not permit withdrawal for a period of sixty (60) days subsequent to the deadline for receiving Proposals without the written consent of the EBKI's Chairman.
6. The EBKI reserves the right to negotiate the fees proposed by the proposer entity.
7. The EBKI reserves the right to reject and not consider any proposal that does not meet the requirements of this RFP, including but not necessarily limited to:
  - a. incomplete Proposals; and/or
  - b. Proposals offering alternate or non-requested services.
8. The EBKI shall have no obligation to compensate any proposer for any costs incurred in responding to this RFP.
9. The award from this RFP is dependent entirely upon tribal funding and may be withdrawn at any time prior or following award should federal funding be withdrawn. The RFP or award may be modified should federal funding be reduced.
10. The materials, supplies, consultation, and service activities shall be conducted in compliance with applicable and specified tribal, state, or federal codes, industry standards and best practices, and that provides best value to the EBKI, and all under the terms of the RFP.
11. The EBKI intends to make award of a contract to a successful proposer between October 15, 2024 and November 15, 2024.

**Ewiiapaayp Band of Kumeyaay Indians**

*signed*

Robert Pinto, Sr., Chairman

**1. PROJECT DESCRIPTION**

(a) The Ewiiapaayp Band of Kumeyaay Indians (EBKI), hereinafter the "Tribe" or "EBKI", is currently accepting responses to this Request for Proposal (RFP) for Environmental Services, with materials, supplies, and systems paid by EBKI, and labor and general contractor costs of the Contractor. Total Project Costs shall not exceed the award amount. The Contractor shall propose a Project Cost budget for any required fieldwork activities **at the Project Site**, and any and all documentation required by the funding agency, that shall in total be subject to the Total Project Cost that is the Total Project Award amount. The EBKI shall determine the allocation of Total Project Costs.

(b) EBKI will provide access to the Project Site.

(c) The Project Site is a proposed linear fiber route consisting of a southern route and a northern route. The southern route begins along a steeply graded dirt road at Interstate 8 in San Diego County at the Kitchen Creek/Cameron Road interchange via La Posta Truck Trail/Thing Valley Road and commencing north approximately 9.8 miles. The northern route is approximately 3.42 miles and runs from Sunrise Highway and Thing Valley Road east. The route will be a combination of aerial attachment and buried fiber. The distribution of the network in the reservation area will be approximately 3.8 miles. A KMZ file is provided that will indicate access and provide the paths out of the EBKI reservation. The alignment is indicated by dark blue and light blue lines in the KMZ file.

(d) The Project Site does not have utilities, including no electricity and no water. The Contractor must provide any materials and supplies necessary to conduct and complete all Project activities. The Contractor must provide a portable toilet in a number needed for use by Contractor personnel.

## **2. Scope of Work**

EBKI seeks qualified vendors to conduct a Complete Environmental Assessment for the EBKI Broadband Infrastructure Pre-Construction Project. Federal and potentially State of California funding of this project requires assessment under the National Environmental Policy Act of 1969 (NEPA) and the California Environmental Quality Act (CEQA). NEPA requires federal agencies to consider the effects of their actions on the environment, identify reasonable alternatives, and consider the input of interested parties and the public. The NEPA process is intended to help agencies make informed decisions that are based on an understanding of environmental consequences and take actions that protect, restore, and enhance the environment.

- The Scope of Work includes: Providing an environmental assessment document that clearly demonstrates the project's potential effect on the environment and complies with all NEPA and CEQA considerations (such as Section 106 of the Historic Preservation Act, Permitting, Endangered or Threatened Species, Tribal Lands, Floodplains, wetlands, etc.). The awardee will assist the Tribe in coordinating with SHPO/THPO and completing any necessary cultural impact assessments (e.g., identifying regional contacts, etc.) and consultations with neighboring tribes on the nearby lands of the Manzanita Reservation, the La Posta Reservation, and the Campo Indian Reservation.
- The following should be considered but is not an exhaustive list: NEPA, CEQA, any state and/or local entity requirements, NHPA; Section 106, Section 7 of the Endangered Species Act (ESA), National Pollutant Discharge Elimination System permits, and Section 404 of the Clean Water Act (CWA) permits.

- The project will be considered complete upon a finding of final determination from the funding agency, which has the ultimate authority for the project.

## **2. PROPOSAL FORMAT:**

EBKI intends to retain the successful Proposer as Contractor pursuant to a “Best Interest of the Tribe” basis, not a “Low Bid” basis, which means, but is not limited to, when an outcome is most favorable based on a balancing of interests undertaken in order to attain the highest and best economic interest of the Tribe and preserve the sovereignty of the Tribe. Therefore, so EBKI can properly evaluate the offers received, all proposals submitted in response to this RFP must be formatted in accordance with the following requirements:

### **Section 1: Proposal:**

Section 1 must contain the Proposer’s proposal pursuant to the RFP requirements. Proposer in his/her proposal shall:

- declare and affirm under the penalties of perjury that the contents of any affidavits are true and correct;
- agree to furnish and deliver the required materials and services at the price provided in this proposal and in full compliance with all terms, conditions, and requirements of this RFP, and in the various proposal documents;
- provide his/her Internal Revenue Service (IRS) Employer Identification Number (EIN) and State of California Secretary of State registration number;
- provide his/her License Number;
- provide proof of insurance; and
- provide COVID-19 best practices required of all Project Site personnel.

### **Section 2: Profile of Firm Form:**

Attachment B must contain the Proposer information pursuant to the RFP requirements.

### **Section 3: Proposed Services:**

As more fully detailed within Section 4, Proposal Requirements, the Proposer shall clearly detail the Proposer's knowledge, experience, technical competence, and capability to provide the services requested in this document.

### **Section 4: Proposed Cost Form:**

The Proposer must detail all prices, costs, and fees under his/her proposal. **The proposal must propose a maximum total cost of the Project Award.** Please note that EBKI reserves the right to negotiate all Project costs and fees prior to execution of the final agreement.

### **Section 5: Appendix A**

The Proposer must complete RFP Appendix A.

**Section 6: Appendix B**

The Proposer must propose a contract pursuant to the RFP Appendix B sample contract.

**Section 7: Client List**

The proposer must specify past and current clients and projects similar to the EBKI RFP.

**Section 8: Sample Design Standard**

The proposer must in his/her proposal indicate by a “yes” or “no” whether he/she meets all applicable codes, standards, and best practices, and COVID-19 orders; and if “no”, then indicate how the proposal differs.

**Section 9: Indian Preference Documentation**

The proposer must document his/her eligibility under Indian Preference, if any is claimed.

**Section 10: Section 3 Job Creation Documentation:** Proposers are to document the number of new positions that would be created as a result of being awarded this contract, if any. Proposers are advised that new job creation, i.e., jobs created in addition to the proposer’s existing core employees, will be considered in the evaluation and determination of “best value.”

**3. PROPOSAL EVALUATION CRITERIA:**

**(a) Evaluation Criteria:**

In awarding the contract resulting from this RFP, EBKI will take into consideration: skills, facilities, capacity, experience, abilities, responsibility, previous work, bonding capability, and financial standing. The necessity of a prompt and efficient completion of the work will also be a consideration. The following criterion will be utilized by EBKI to evaluate each proposal submitted:

35 points: Specialized knowledge, experience, and technical competence that the Proposer displays for the work required, based upon the work history, and the resumes submitted for the staff proposed to perform the work, including major subcontractors. The past performance of the proposer on prior work of the same or similar nature, based on the letters of reference and/or client lists submitted, and based upon the results of any consultation that EBKI chooses to conduct with such. The capability the Proposer displays, in that the proposal submittal shows: (a) a knowledge and understanding of the scope of the work to be performed; (b) a realistic proposal for work and approach to the performance of the required work on the Project Site in its existing condition; and (c) a work plan that is compliant with industry best practices, and applicable federal, state and Tribal ordinances.

10 points: Technical Approach: The proposed technical approach for fulfilling the scope of work must demonstrate a familiarity and proficiency in federal compliance consultations.

10 points: Suitability of Project work plan and Project timeline to EBKI requirements.

35 points: The proposed prices for a completed environmental assessment, including any and all documents as required the funding agency and the Tribe.

10 points: Indian Preference (Prime Proposer must be an Indian Owned enterprise to receive 10 points. Lesser points possible depending on Indian Business Enterprise subcontract participation).

100 points total.

**(b) Contract Award Procedure:**

If contract(s) are awarded pursuant to this RFP, the following procedure will be followed:

Upon completion of the Proposal Evaluation Process, the EBKI evaluation panel will forward its conclusions and recommendation to the EBKI Chairman. The EBKI panel may, at this point, recommend that EBKI conduct a "Best & Final" negotiation. Once the evaluation process is completed, and a final award recommendation(s) has been formulated, the EBKI panel will submit the final conclusion and recommendation to the EBKI Council. The EBKI Council will then make its determination. The successful proposer will receive an EBKI Notice of Contract Award. Contract price negotiations may, at EBKI's option, be conducted prior to or after the EBKI Council approval.

**4. PROPOSAL REQUIREMENTS**

**(a) Qualification Requirements:**

A. The list of qualifications should include:

- (1) Recent activities similar to the Project.
- (2) List of key staff members and their experience.
- (3) Contacts and Reference Lists.
- (4) Proof of insurance.
- (5) Signed Debarment and Suspension form attached in Appendix "A."

B. To be qualified and eligible for an award under this RFP, the Contractor must meet all of the following requirements:

- (1) Clear the federal debarment list under the U.S. System for Award Management (SAM). Federal debarment is checked for both the company and principal(s) of the company. More information is available at <https://www.sam.gov/portal/public/SAM/>.
- (2) Provide a valid Business License from applicable regulatory organization.

- (3) Provide a bid guarantee and a performance or payment bond, or request a bid and bond waiver with appropriate justification, pursuant to the following:
- (i) A bid guarantee equivalent to five percent of the bid price. The “bid guarantee” consists of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
  - (ii) A performance bond on the part of the contractor for one hundred percent (100%) of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
  - (iii) A payment bond on the part of the Contractor for ninety percent (90%) of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.
  - (iv) A waiver of the bid guarantee and/or bond requirement. A waiver to the bid guarantee, performance bond, or payment bond may be requested and approved by the EBKI.

(b) Conditions and Requirements

(1) The Proposer shall include in its proposal affirmation that, if successful, the resulting contract shall include the following conditions and requirements:

- A. Provide plans detailing Project activities by trade for all work proposed by the Contractor with a Project Cost budget.
- B. Provide a completed Environmental Assessment document consistent with requirements from the funding agency and meeting NEPA and CEQA requirements.
- C. Proposer will propose Project activities compliant with applicable codes, standards, and best practices, and include any required permit.
- D. Proposer must comply with the applicable Fire Code regulations if applicable to the Project activities.
- E. Provide submittal packages for approval by EBKI.
- F. Provide a change order process for EBKI approval of changes to the cost of the Project budget proposed that would exceed the total amount of Project Award.

The Project Site is a proposed linear fiber route consisting of a southern route and a northern route. The southern route begins along a steeply graded dirt road at Interstate 8 in San Diego County at the Kitchen Creek/Cameron Road interchange via La Posta Truck Trail/Thing Valley Road and commencing north approximately 9.8 miles. The northern route is approximately 3.42 miles and runs from Sunrise Highway and Thing Valley Road east. The route will be a



combination of aerial attachment and buried fiber. The distribution of the network in the reservation area will be approximately 3.8 miles. A KMZ file is provided that will indicate access and provide the paths out of the EBKI reservation. The alignment is indicated by dark blue and light blue lines in the KMZ file.

(2) There is no electricity or water at the Project Sites. There are no solid waste facilities at the Project Sites. The Contractor shall be responsible for furnishing all materials and labor, electricity, water, temporary bathroom facilities, solid waste disposal and transportation of such to and from the Project Sites necessary to complete the Project and shall coordinate all construction logistics and timelines with the EBKI representative.

(c) Submission Requirements

(1) The following must be submitted in response to this bid.

- A. Statement of the proposed scope of work and bidders understanding of project.
- B. Contract total price, including all materials and labor, for completing the Project, including all Project Site work and budgets, provision of materials, labor, sales tax, delivery charges, and permits.
- C. Schedule/Timeline.
- D. Previous experience with similar Project activities. Also please note any prior projects where you have experience working with Tribes, if applicable.
- E. Anticipated key project personnel and their related experience.
- F. At least three (3) references (from the last 3 years) with contact information

(2) Submit the bid in a format that can be signed by the EBKI as an acceptance of the proposal and agreement to complete the work. A Notice to Proceed will be issued upon approval of the agreement by the EBKI.

(3) Nothing herein is intended to convey any rights to individuals or entities to this Agreement. Further, nothing herein shall be construed to waive the EBKI's sovereign immunity from unconsented suit against any claims by any parties, including the Contractor of third parties.

(4) INDIAN AND OTHER FEDERAL PREFERENCE APPLICABLE. All EBKI RFPs are subject to EBKI Tribal Code that provides to the greatest extent feasible, preference and opportunities be given to American Indians / Alaska Natives and AI / AN owned business enterprises and requiring EBKI to take all available steps to assure minority firms, women's business enterprises, and labor surplus area firms are used when possible. For AI / AN Preference to be applied to American Indian / Alaska Native owned and controlled businesses, proof of American Indian / Alaska Native business ownership with more than 50% control must be submitted with the proposal.

(5) INDIAN EMPLOYMENT OF SUBCONTRACTS - INDIAN PREFERENCE. Pursuant to EBKI Tribal Code, to the greatest extent feasible, this RFP and any subcontracts awarded shall require Indian preferences and opportunities for training and employment in connection with the administration of such contract/subcontracts. Preference in the award of subcontracts shall be given to AI / AN organizations and to AI / AN owned enterprises.

(6) A submission in response to this RFP shall be considered as a representation that the proposer:

- A. Has carefully reviewed the terms and conditions of this RFP;
- B. Has carefully investigated all conditions which affect or may, at some future date, affect the performance of the services covered by the proposal;
- C. Is familiar with the area of the Project Sites to be serviced as described in the specifications;
- D. Has carefully reviewed all contract documents;
- E. Is fully informed concerning the conditions to be encountered, character, quality and quantity of work to be performed and materials to be furnished;
- F. Is familiar with all applicable County and State building codes, permit requirements, regulations, and ordinances that in any way affect the prosecution of the work or persons engaged or employed in the work specified herein.
- G. Agrees that the EBKI may copy the proposal to facilitate evaluation and/or responding to requests for public records; and
- H. Warrants that any copying of the proposal by the EBKI will not violate the rights of any third party.

(d) Fees and Insurance

(1) Proposals shall include the estimated fees to secure all required permits to complete the project as set forth above. Included are:

- A. Estimated schedules for all labor costs, materials, equipment, professional services, insurance, travel, profit, and other costs and expenses necessary to complete the proposed project.
- B. Submit an itemized fee schedule as a basis for all proposed services and any extra services not included in item one (1) above, if applicable.
- C. Provide proof of insurance coverage for proposed services including general liability and property damage insurance and automobile liability insurance in a combined single limit of not less than \$1 million dollars.
- D. Provide Professional Liability Insurance (E&O) coverage of \$1 million dollars.
- E. Provide proof of Workers Compensation coverage.
- F. The selected firm shall provide within ten (10) calendar days after the notice of award is issued, a copy of their existing liability insurance certificate with an Accord policy rider

naming the EBKI and its officials, officers, employees, and agents as an additionally named insured on said policies.

- G. All insurance coverage shall be maintained in full force and effect for the duration of the Contract in a form satisfactory to the EBKI.

(e) Proposal Submittal and Selection Requirements

- (1) All proposals must be delivered with the words:

**“Attention Will Micklin – Proposal to the EBKI for RFP-2024-01-IB”** clearly written in bold type and received no later than: [month] [xx], 2024 before 2 p.m. Late proposals will not be considered.

- (2) All proposal submissions shall be conveyed by E-Mail to:

Will Micklin, CEO  
RFP-2024-01-IB  
Ewiiapaayp Band of Kumeyaay Indians  
4054 Willows Road  
Alpine, CA 91901

Via E-mail should be sent to:  
ceo@ebki-nsn.gov

- (3) One complete set of documents is sufficient.
- (4) All correspondence or inquiries shall be directed to Will Micklin via E-mail at: ceo@ebki-nsn.gov.
- (5) All costs for preparation of proposals shall be borne by the proposer.
- (6) The proposal selected shall be the one most advantageous to the EBKI.
- (7) The EBKI may or may not decide to interview the recommended contractor prior to the award.
- (8) This request does not constitute an offer of employment or to contract for services.
- (9) The EBKI reserves the right to reject any and all submittals received in response to this RFP, wholly or in part.
- (10) The EBKI reserves the right to retain all proposals, whether selected or rejected.

(11) All proposals shall remain firm for sixty (60) working days following the closing date for receipt of proposals.

(12) The successful Contractor will be expected to enter into a contract of substantially the same format as the attached sample form Appendix "B".

(13) All requirements, provisions, terms, and conditions of the RFP shall be incorporated by reference into the Contract.

(14) EBKI reserves the right to award the contract to the Contractor that, in the sole judgment of EBKI, will best accomplish the desired results.

(15) Preference in the award of the contract shall be given to AI / AN organizations and enterprises. The EBKI may give preference to a fifty one percent (51%) Indian-owned economic enterprise so long as the bid by this enterprise does not exceed the lowest bid submitted by more than five (5) percent.

(16) The EBKI reserves the right to negotiate further with the successful contractor.

(f) Selection Criteria

(1) Selection criteria shall be in accordance with section 3.(a).

(2) Bids will be opened immediately after time for receipt of Bids by the EBKI at a location at the sole discretion of the EBKI.

(g) Documentation

(1) Failure to provide sufficient information for the evaluation criteria will result in being deemed unresponsive. EBKI reserves the right to verify the validity of all information provided.

(2) To aid companies in their response to this request, the following items are attached:

Appendix "A": Certification Regarding Debarment, Suspension, and Other Responsibility Matters. Proposer must complete and submit this form.

Appendix "B": Sample Contract. Proposer must propose a Contract pursuant to the sample contract in accordance with Section 2's Section 7.

Appendix "C": Universal Design. The proposer shall respond with a Total Project Cost proposal that shall separately specify (1) the proposed cost for each material, system, and supply necessary for the Project, and (2) the contractor's cost for labor, management, overhead, contingency, and profit. The Contractor Price is the Total Project Cost less any direct purchases by the Tribe under item #1 above.

(h) Total Project Cost and Project Site Budgets

(1) A responsive proposal to the RFP must propose a Project Award amount that is the Total Project Cost. The maximum cost for this project shall not be exceeded except by approval by the EBKI.

(2) The Contactor shall conduct all Project activities. A Proposer must submit a proposed budget for the Project and the Project costs in aggregate must not exceed the proposed Project Total Project Award amount. Appendix C lists the Project activities requested by EBKI for the Project Site. The proposer shall describe the budget for the Project Site and the cost of materials, labor, and fees, all pursuant to the Proposer's Site Visit. EBKI reserves the right to negotiate the proposal work and costs proposed with each Proposer and shall, at its sole discretion, select the Proposal that best responds to the desire of the EBKI for the Project Site according to the knowledge and expertise of the Proposer. EBKI shall evaluate proposals in order to determine the Proposal with the best value that satisfies the interests of the EBKI.

(3) The EBKI may, at its sole discretion, accept and include as amendments to the Contract other cost items including as options in the Appendix C Exhibits.

(i) Hold Harmless/Indemnification

(1) The Contractor shall indemnify and hold the EBKI harmless from and against all liability and expenses, including attorney's fees, howsoever arising or incurred, alleging damage to property or injury to, or death of, any person arising out of or attributable to the Contractor's performance of the contract awarded, provided that the Contractor shall not be responsible for acts of negligence or willful misconduct committed by the EBKI, its employees, agents, and officials.

(2) Any property or work to be provided by the Contractor under this contract will remain at the Contractor's risk until written acceptance by the EBKI; and the Contractor will replace, at Contractor's expense, all property or work damaged or destroyed by any cause whatsoever.

**APPENDIX A**

**EWIIAAPAAYP BAND OF KUMEYAAY INDIANS CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS**

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, Or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 U.S.C. Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

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Name of Firm Submitting Bid

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Signature and Title of Authorized Official

Date

I am unable to certify to the above statements. Attached is my explanation.

Prime or Subcontractor's Name: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Email: \_\_\_\_\_

Submit to: Will Micklin, CEO, Ewiiapaayp Band of Kumeyaay Indians, 4054 Willows Road, Alpine, CA 91901, Phone (619) 368-4382, E-mail: ceo@ebki-nsn.gov.

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**EWIIAAPAAYP BAND OF KUMEYAAY INDIANS**

**APPENDIX B**

**Ewiiapaayp RFP 2022-2**

***SAMPLE CONTRACT***

This contract for construction ("Contract") is made and entered into the \_\_ day of .  
by and between \_\_\_\_\_  
("Contractor") with principal place of business located at:

(address)

(City)

Business License No.:

and the Ewiiapaayp Band of Kumeyaay Indians (EBKI).

**GENERAL PROVISIONS**

Purposes of Contract. The Ewiiapaayp Band of Kumeyaay Indians (EBKI), hereinafter the "Tribe" or "EBKI", is currently accepting responses to this Request for Proposal (RFP) for: (1) the Project Site; and (2) Total Project Costs shall not exceed the proposed Project Award amount. The Contractor shall propose a Project Award amount, and that shall in total be subject to the Total Project Award amount.

Contract Price

Contractor shall be paid the amount the Contract Price of the Project Award amount for the performance of the Contract. The Contract Price is determined by the bid made by Contractor, and accepted by the EBKI, (hereinafter referred to as "Contractor's Bid and Proposal"), which is the Contract Award amount less any payments made directly by the Tribe to vendors for purchase of construction material, supplies, or systems. The Contract Price shall be paid to Contractor pursuant to Section 1.06 entitled "Method of Payment". If the Contract Price includes allowances, and the cost of performing the work is less than the allowance, the Contract Price shall be decreased accordingly through a written change order.

**SECTION 1 - TERMS AND CONDITIONS**

1.1 Statement of Work. Contractor shall furnish all management, engineering, labor, materials, supplies, systems, machinery, equipment, and services, less any materials, supplies, and systems purchased directly by the Tribe. Contractor shall perform and complete in a

satisfactory and workmanlike manner construction work on the Project Sites and Property as described in the Contract documents. Contractor shall manage, supervise, and direct the work and shall be fully responsible for all construction means, methods, techniques, sequences, and procedures and for the coordination of all portions of the Work under Contract. All materials shall be new, unless otherwise specified, and of good quality and title. All workers and subcontractors shall be skilled in their trades.

1.2 Notice to Proceed and Time for Completion of Work.

(a) A written "Notice To Proceed" must be issued by the EBKI or their designated representative prior to commencement of work.

Work shall not commence until Contractor has received this Notice. If such Notice is not issued within ninety (90) days from the date this contract is executed, Contractor has the option of withdrawing his/her Contract and Bid and Proposal, unless a written time extension is agreed to by both parties. Work under this Contract shall commence within ten (10) business days after the date the Notice To Proceed is issued and shall be completed within one hundred and eighty (180) calendar days after the date the Notice To Proceed is issued ("Contract Time").

(b) In agreeing to complete the work within the Contract Time, Contractor has taken into consideration and made allowance for ordinary delays and hindrances incident to such work, whether growing out of delays of common carriers, delays in securing materials or workers, changes, omissions, or otherwise.

(c) Contractor shall be excused for any delay in completion of the Contract caused by acts of Nature, acts of EBKI or EBKI's Agent, inclement weather, wet or muddy grounds, acts of public utilities, public bodies or inspectors, extra work, failure of EBKI to make progress payments promptly, or other contingencies unforeseen by Contractor and beyond the reasonable control of Contractor, except for ordinary delays specified in Section (b) above; provided, however, that contractor promptly (within two days) notifies EBKI, in writing, of the cause of the delay. If the facts show the delays to be excusable under the terms of the Contract, the time for completion shall be extended for a period equal to the amount of time lost due to such excusable delay.

(d) If completion of the Project is delayed beyond the completion date and some, or all of the delays are not excusable, the parties agree that Contractor shall reimburse EBKI for EBKI's actual damages for each day of delay which is not excusable.

(e) Time is of the essence in this Contract.

1.3 Contract Documents. This Contract shall consist of the general terms, conditions and references contained herein and the following documents ("Contract Documents"):

(a) EBKI's RFP;



(b) Contractor's Bid and Proposal;

(c) Work Write-Ups; standard specifications; any applicable plans and drawings prepared by Contractor;

(d) All modification and addenda included in or attached to these documents prior to the execution of this Contract.

#### 1.4 Method of Payment.

(a) Any request for payment, claim, or any other documentation submitted for the purpose of issuance of any payment, transfer, or allocation of funds under this contract or upon written request for payment submitted by Contractor and based on the progress of work and materials satisfactorily installed and in place at the time of the request for payment, as verified by EBKI and the EBKI's Representative. EBKI shall make, or cause to be made, progress payments to Contractor in accordance with the following:

- PRIOR written authorization and approval of EBKI's Representative.
- "Conditional Waiver and Release Upon Payment", from all subcontractors and persons supplying labor or materials to Contractor covered by the payment requested.

Contractor may receive up to (based on a thirty (30) day submission schedule or percentage (%) of completion) payments less retention followed by the release of retention payment after the filing of the Notice of Completion and subsequent thirty (30) day notice period.

Such payments shall at no time represent more than ninety percent (90%) of the value of the work performed. Davis Bacon and Related Acts ("DBRA") documentation and Conditional Labor and Material Releases from all subcontractors supplying labor or materials to Contractor must accompany each request for payment.

(b) Final progress payment and payment of retention shall be made according to the procedures in Section 4 Acceptance / Project Closeout.

1.5 Changes. The EBKI may change the scope of the work required by the Contract Documents by adding or deleting work or materials, and the contractor shall perform the work under this Contract thus modified. The Contract Price and Contract Time shall be equitably adjusted. No changes, additions, or deletions to the specifications for the work to be completed under this Contract, or Contract Price or Contract Time, shall be made without a prior written change order, signed by EBKI, or the EBKI's Designated Representative, and Contractor. Each change order shall include a detailed description of the labor and/or materials to be added or deleted and shall state any changes to the Contract Price or Contract Time.

1.6 Indemnification. Contractor agrees to investigate, defend, indemnify and hold harmless EBKI, their officers, employees and agents from any damage, liability, claims, demands, detriments, costs, charges, and expense (including reasonable attorney fees), and causes of action which the EBKI may incur, sustain or be subjected to on account of loss or damage to property or loss of use thereof, or for bodily injury to or death of any persons (including but not limited to property, employees, subcontractors, agents, and invitees of each party hereto) arising out of or in any way connected with the work to be performed under this agreement.

1.7 Conflict of Interest. The parties to this Contract state that no present or former member or officer of the EBKI, and no employee of the EBKI who formulates policy or influences decisions with respect to EBKI, had or will have any direct or indirect interest, during his or her tenure or for one year thereafter, in this Contract or in any proceeds or benefits arising from this Contract.

1.8 Termination

(a) EBKI may, because of breach of the Contract by Contractor, terminate this Contract at any time by written notice to Contractor, provided EBKI has given Contractor prior notice of the conditions causing the breach and has given Contractor a reasonable opportunity to correct the breach. Such termination shall be effective in the manner and upon the date specified in such notice and shall be without prejudice to any claims which EBKI may have against Contractor. Upon receipt of such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all work and the placing of all orders for materials, facilities, and supplies in connection with the performance of this Contract and shall promptly proceed to cancel all existing orders and terminate all subcontracts insofar as such orders and/or subcontracts are chargeable to this Contract.

(b) Upon EBKI's termination of this Contract for breach of the Contract by Contractor, the Contract price shall be reduced by the amount of any and all claims which EBKI may have against Contractor for damages incurred by EBKI as a result of the breach, including the cost to EBKI to have the work remaining under the Contract completed by another Contractor. Such damage shall also include any reasonable attorney's fees and other costs incurred by EBKI in effecting the termination of the Contract or completion of the performance of the contract work. Any Contract funds remaining, including amounts retained from progress payments, or other amounts otherwise earned by Contractor but not yet paid by EBKI on the date of the termination, may be applied by EBKI to the damages which it incurred as a result of Contractor's breach. The balance remaining, if any, after full completion of the Contract work shall be payable to Contractor. If Contract funds as indicated above are insufficient, Contractor shall be liable for any unpaid balance.

1.9 Written Notice. Written notice shall be deemed to have been duly served if sent by registered or certified mail AND by email to Contractor or EBKI at the appropriate address stated as follows:

CONTRACTOR

TBD

EBKI

By Mail:

Attn: Will Micklin, CEO  
Ewiiapaayp Band of Kumeyaay Indians  
4054 Willows Road  
Alpine, CA 91901

By Email: ceo@ebki-nsn.gov

1.10 Indian and Other Federal Preference Requirements

Pursuant to EBKI Tribal Code all contracts provide, to the greatest extent feasible, preference and opportunities will be given to American Indians / Alaska Natives and American Indian / Alaska Native owned business enterprises and require all available steps to assure minority firms, women's business enterprises, and labor surplus area firms are used when possible. For Indian Preference to be applied to American Indian / Alaska Native owned and controlled businesses, Contractor, subcontractors and suppliers must provide proof of American Indian / Alaska Native business ownership with more than 50% control must be submitted with the proposal.

1.11 Indian Employment of Subcontractors – Indian Preference

Pursuant to EBKI Tribal Code, to the greatest extent feasible, this RFP and any subcontracts awarded shall require American Indian / Alaska Native preferences and opportunities for training and employment in connection with the administration of such contract / subcontracts.

In addition, preference in the award of subcontracts shall be given to American Indian / Alaska Native organizations and to American Indian / Alaska Native owned economic enterprises. The tribal employment or contract preference laws adopted by such EBKI shall govern with respect to the administration of the contract or portions of the contract.

1.12 SOVEREIGN IMMUNITY. Nothing herein is intended to convey any rights to individuals or entities to this Agreement. Further, nothing herein shall be construed to waive the EBKI's

sovereign immunity from unconsented suit against any claims by any parties, including the Contractor of third parties.

## SECTION 2 - CONTRACTOR'S GENERAL OBLIGATIONS

Contractor shall be responsible for the following:

2.1 Insurance. As part of the consideration of this Agreement, Contractor agrees to purchase and maintain at its sole cost and expense during the life of this agreement insurance coverage as specified in "2.2", "2.3", and "2.4" described below. All insurance coverage shall be placed with insurers that have a Best rating of no less than B+: XII; and are admitted insurance companies in the State of California. All other insurers require prior approval of EBKI.

2.2 General and Automobile Liability. Combined single limits of not less than One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) aggregate of General Liability and One Million Dollars (\$1,000,000) per occurrence of Automobile Liability insurance, including Bodily Injury and Property Damage. Such insurance shall include the following seven (7) items.

(a) Extension of coverage to EBKI, their officers, employees and agents, as additional insureds, with respect to Contractor's liabilities hereunder in insurance coverage identified in item "2.1." above, but only as respects to the operations of the named insured. A copy of the Accord endorsement evidencing that the EBKI has been added as an additional insureds on the policy, must be attached to the certificate of insurance.

(b) A provision that coverage will not be cancelled or subject to reduction until at least thirty (30) days' prior written notice sent via certified mail has been given to EBKI.

(c) A provision that Contractor's insurance shall apply as primary, and not excess of, or contributing with the EBKI.

(d) Contractual liability coverage sufficiently broad so as to include the liability assumed by the Contractor in the indemnity or hold harmless provisions included in this Agreement.

(e) A Cross Liability clause, or equivalent wording, stating that coverage will apply separately to each named or additional insured as if separate policies had been issued to each.

(f) Broad form Property Damage Endorsement.

(g) Policy shall apply on an "occurrence" basis.

2.3 Workers' Compensation. In accordance with the provisions of the California Labor Code, Contractor is required to be insured against liability for Workers' Compensation or to undertake

self-insurance. Statutory Workers' Compensation and Employers' Liability of at least \$1,000,000 shall cover all Contractor's staff while performing any work incidental to the performance or this agreement. The policy shall provide that no cancellation, major change in coverage, or expiration shall be effective or occur until at least thirty (30) days after receipt of such written notice by EBKI.

2.4 Professional Liability. Professional Liability (Errors and Omission) insurance with limits of liability of not less than One Million Dollars (\$1,000,000) to cover all services rendered by the Contractor pursuant to this Agreement. Said policy shall provide that EBKI shall be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction in coverage.

Approval of the insurance by EBKI or acceptance of the certificate of insurance by EBKI shall not relieve or decrease the extent to which the Contractor may be held responsible for payment of damages resulting from Contractor's services or operation pursuant to this Agreement, nor shall it be deemed a waiver of EBKI's rights to insurance coverage thereunder.

Contractor must provide evidence that it has secured the required insurance coverage before execution of this agreement. Contractor shall exercise due diligence to require all subcontractors and all tiers of such subcontractors to provide General and Automobile Liability, Workers' Compensation, and Professional Liability insurance as set forth in "2.2", "2.3", and "2.4" of this section.

If, for any reason, Contractor fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. EBKI, at its sole option, may terminate this Agreement and obtain damages from the Contractor resulting from said breach. Alternately, EBKI may purchase such required insurance coverage, and without further notice to Contractor, EBKI may deduct from sums due to Contractor any premium costs advanced by EBKI for such insurance.

(a) Permits and Licenses. Obtain all permits and licenses and pay all fees and other charges necessary for the completion and execution of the work to be performed.

(b) Government Requirements. Perform all work in conformity with applicable federal and state laws and regulations and all applicable building codes whether or not covered by the Contract Documents. If Contractor discovers any discrepancy between such laws or codes and the Contract Documents, Contractor shall immediately notify EBKI.

(c) Maintenance of the Site. At all times keep the Project site free from accumulation of waste materials or rubbish caused by Contractor's operation. At the completion of the project, remove all waste materials, rubbish, tools, construction equipment and machinery and leave Project site in a neat and clean condition. All waste shall be properly disposed of at a legal dump site. Storage of Contractor's materials and equipment during the performance of this

Contract shall be under Contractor's responsible care and charge, and Contractor shall bear all loss to such materials and equipment except for loss caused by the willful acts of EBKI.

(d) Warranties. All materials and labor, including those of any subcontractor, shall be warranted for a period of one year from the date of the final progress payment provided for under Section 4; and Contractor shall provide EBKI with all manufacturers' and suppliers' written guarantees and warranties covering materials and equipment furnished under the Contract prior to the release of the final progress payment. Contractor warrants that all materials, fixtures, and equipment furnished by Contractor and its subcontractors shall be new, of good quality, and of good title, and that the work will be done in a neat and workmanlike manner. Neither any payment nor occupancy of the Property by EBKI shall constitute an acceptance of work not done in accordance with the Contract or relieve Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. Contractor shall promptly remedy any defects in the work and pay for any damage to other work resulting therefrom which may appear within a period of one year from the date of final acceptance of the work unless a longer period is specified. EBKI will give notice of observed defects with reasonable promptness.

(e) Recordkeeping. Contractor shall maintain adequate invoices, receipts, job records, disbursement journals and such other records for the Project as may be usually kept in conjunction with projects of this type. Such records shall be available for inspection by the EBKI or their authorized representatives, upon reasonable advance notice, during the period of this Contract. Contractor shall retain such records and make them available for audit by the EBKI for a period of three years from the final payment under this Contract.

(f) Inspections & Interviews. Permit the EBKI or their designees to examine, inspect the work under this Contract before and after completion and interview workers for compliance with Prevailing Wage determinations. Cooperate with EBKI in completing progress inspections, final inspection of the work and documentation of on-site job interviews.

(g) Payments and Lien Releases. Promptly pay all persons furnishing materials, labor, or services and deliver to EBKI a complete release of liens for all labor, materials, and services for which a lien could be filed under this Contract.

(h) Cooperation with EBKI. Contractor will not unreasonably inconvenience any occupants of the Property during the period of the Contract.

2.5 Equal Employment Opportunity (All Contracts). Contractor agrees that the following conditions apply during the performance of this Contract:

(a) Contractor will not discriminate against the employee or applicant for employment because of sex, race, religion, color or national origin, ancestry, marital status, mental or physical disability, age, sexual orientation, or genetics. Contractor will take affirmative action to ensure

that applicants are employed, and that employees are treated during employment, without regard to their sex, race, religion, color or national origin, ancestry, marital status, mental or physical disability, age, or sexual orientation. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment, recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

(b) Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to sex, race, religion, color or national origin, ancestry, marital status, mental or physical disability, age, or sexual orientation.

(c) Contractor will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that such provisions will be binding upon such subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

2.5 Davis-Bacon Requirements. Davis-Bacon requirements may be applicable to this Contract at the discretion of the Tribe.

### SECTION 3 – EBKI’S GENERAL OBLIGATIONS:

EBKI shall be responsible for the following:

3.1 Monitor all work performed under this Contract and inspect the work for acceptance prior to each progress payment and the final payment. EBKI shall disburse all required payments expeditiously. EBKI shall not permit any changes, additions, or deletions to this Contract or the Contract Documents without prior, written, mutual approval of Contractor and EBKI. Any change orders must be signed by EBKI and Contractor.

3.2 Cooperate with Contractor to facilitate the performance of work, including the removal and replacement of rugs, coverings, and furniture as necessary.

3.3 Permit Contractor to use, at no cost, existing utilities such as light, heat, power, and water necessary to carry out and complete the work.

3.4 The EBKI and Contractor will mutually agree whether housing units are to be occupied or unoccupied during the course of the work.

### 4. ACCEPTANCE / PROJECT CLOSEOUT

4.1 Inspection. Upon receipt of a notice from Contractor that the Project is completed and ready for final inspection and acceptance, Contractor and EBKI's Representative will meet at the Project Sites. If deficiencies are noted other than minor "punch list" corrections, Contractor shall be responsible for correcting or completing the items identified within five (5) business days and prior to EBKI filing of a Notice of Completion.

4.2 Notice of Completion. After EBKI determines that all materials to be installed and all work to be performed under the Contract has been completed, except for minor "punch list" corrections, EBKI will, upon written request of the Contractor, sign a Notice of Completion with the Contractor's State License Board and cause it to be filed with the County Recorder of San Diego County.

4.3 Final Progress Payment. When all work, except for minor "punch list" corrections, has been completed, Contractor shall submit a request for the final progress payment. EBKI shall approve a payment in an amount to bring the total payments to Contractor to ninety percent (90%) of the value of the work completed under the Contract to the satisfaction of EBKI, provided Contractor has provided the following:

(a) A signed "Unconditional Waiver and Release" form.

4.4 Release of Retentions. Payment of sums retained, except those retained for cause, shall be made to Contractor not sooner than thirty (30) days after recordation of the Notice of Completion, provided the following occur:

(a) Submission of a "CONTRACTOR'S WAIVER AND AFFIDAVIT" is received from Contractor,

(b) No claims against Contractor have been filed with EBKI prior to the expiration of the thirty days and;

(c) Contractor has fully complied with all RFP and Contract requirements. Until any such claims have been satisfied or released, sufficient funds shall be withheld from the sum due Contractor to satisfy such claims. If corrective or repair work remains or documentation is outstanding after such thirty (30) day period, EBKI may withhold sufficient amount to pay for completion of such work.

4.5 Payments by EBKI to Third Parties. If Contractor fails to make payments required under this Contract to suppliers of materials or labor, EBKI shall not be responsible for any claims against the Contractor; however, EBKI, at its sole discretion, may make such payments on Contractor's behalf, and Contractor shall reimburse EBKI on demand for the amount actually paid by EBKI. See Section 5 below.

## 5. DISPUTE RESOLUTION



Any dispute that arises under this Contract, and which remains unresolved for fifteen (15) working days after notice in writing of the dispute by either party, shall be settled by mediation between the parties.

## 6. COVID-19 PROVISIONS

6.1 Price Volatility and Increased Costs Due to COVID-19. The parties acknowledge that some of the materials and products to be used and installed in the construction of this project may become unavailable, delayed in shipment and/or subject to price increases due to circumstances beyond the control of the Contractor, including the COVID-19 pandemic. If a specified product is unavailable or shipment is delayed, Contractor shall provide to EBKI written notice within two (2) business days of occurrence and EBKI will consider additional time and substitute products and approval shall not be unreasonably withheld. If there is an increase in price of materials equipment or products between the date of this Contract and the time when the Project work for the installation of the affected material is subject to this provision.

6.2. Delays and Extensions of Time. Subject to timely written notice of the event causing the delay and information as to how an unexpected event beyond the Contractor's control is impacting the Contractor's ability to perform the work required under this Agreement. If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the EBKI, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, or other causes beyond Contractor's control; (4) by delay authorized by the EBKI due to an amendment to the Contract; (5) by delay authorized by the EBKI pending mediation and binding dispute resolution; or (6) by other causes that the Contractor asserts and determines justify delay, then the Contract time may be extended for such reasonable time as a mutual agreement between the EBKI and Contractor may determine.

6.2.1. Claims relating to time shall be submitted by Contractor to EBKI no later than three (3) business days following its occurrence.

6.2.3. This Section 6 does not preclude recovery of damages for delay by either party under other provisions of this Agreement.

## 6.3 OSHA REQUIREMENTS

6.3.1. For the purposes of this Agreement the Contractor shall be subject to the U.S. Occupational Safety and Health Administration (OSHA) OSHA's recordkeeping requirements for an employer's obligation to record work-related cases of COVID-19 on OSHA injury and illness logs. The Contractor must record a case of COVID-19 as job-related if:

- a. It is a confirmed case of the virus (a positive test);

- b. It is “work-related” in that an event or exposure in the work environment either contributed to or caused an employee to contract the virus; and
- c. It results in death, days away from work, restricted work or transfer, or medical treatment beyond first aid.

6.3.2. The Contractor is not expected to undertake extensive medical inquiries, given privacy concerns and most employers’ lack of medical expertise; however, in most circumstances, the Contractor should complete the following steps when aware of a COVID-19 case:

- a. Ask the employee how they believe they contracted the illness.
- b. Discuss with the employee, while respecting privacy concerns, the activities both inside and outside of work that may have led to the illness.
- c. Review the employee’s work environment for potential COVID-19 exposure.

## 7. FORCE MAJEURE

The parties acknowledge that the potential effects of the coronavirus disease (“COVID-19”) pandemic on the construction industry and the performance of construction projects are not yet fully known and are beyond the control of the parties. The effects of this pandemic may adversely affect the contractor’s workforce, the supply chain for materials, the delivery of materials and/or otherwise adversely impact the contractor’s ability to perform as planned, causing delays in the prosecution and completion of the work and the project. The parties agree that delays resulting from the effects of the COVID-19 pandemic are beyond the control of the parties, and if such delays occur, the contractor will be granted a reasonable extension of time and an equitable adjustment in the contract amount for the additional costs incurred by contractor resulting from the COVID-19 pandemic. Contractor shall give owner/general contractor written notice of delay it experiences due to the COVID-19 pandemic and any additional costs it incurs due to such delay.

## 8. MISCELLANEOUS PROVISIONS

8.1 Entire Agreement. The Contract Documents contain the entire agreement between the parties. No variations, modifications, or changes hereto shall be binding upon any party hereto unless set forth in a written document duly executed by Contractor and EBKI.

8.2 Waiver. No consent or waiver, express or implied, by either party to any breach by the other shall be deemed or construed to be consent or waiver to any other breach. Failure on the part of either party to complain of any act of the other party or to declare the other party in default, shall not constitute a waiver by such party of its rights hereunder. No payment under this Contract will be interpreted so as to imply that EBKI has inspected or approved the work performed by Contractor.

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8.3 Successors and Assigns. The provisions of the Contract bind both parties and their successors and assigns. Contractor shall not assign this Contract written notification to, and the written consent of EBKI.

8.4 Governing Law. This Contract and obligations of the parties hereunder shall be interpreted, construed, and enforced in accordance with the laws of the applicable laws of the Tribe, state, or federal government.

8.5 Bankruptcy. If Contractor becomes bankrupt, or makes an assignment for the benefit of creditors, EBKI has the right to cancel this Contract and have the work completed by others.

8.6 Donations of Materials and Labor. The Contractor agrees to use donated materials and volunteer labor where appropriate and providing it will not unduly compromise the quality of the finished product, and to reduce the bid/contract amount accordingly. The savings which result from using volunteer labor and donated goods and materials will be applied to the bid/contract amount.

8.7 Notice to EBKI: Contractors are required by law to be licensed and regulated by an applicable regulatory entity, which may include the Contractors' State License Board (<https://www.cslb.ca.gov/>, Contractors' State License Board, 9821 Business Park Drive, Sacramento, California, 95827. Mailing address: P.O. Box 26000, Sacramento, California 95826).

IN WITNESS WHEREOF, EBKI and Contractor have executed this Contract on the date first stated above.

CONTRACTOR:

\_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

EWIIAAPAAYP BAND OF KUMEYAAY INDIANS:

BY: \_\_\_\_\_

TITLE: Tribal Chairman

APPROVED AS TO FORM:

BY: \_\_\_\_\_

Secretary, Ewiiapaayp Band of Kumeyaay Indians

**APPENDIX C – EBKI BIDDER PROPOSALS**

**Bid Proposal Forms**

**RFP XXXX**