

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

**REQUEST FOR PROPOSAL 2025-01- PROTECT-ES**

**FOR**

**EBKI PROTECT Project 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 environment documentation. All proposals submitted in response to this solicitation must conform to the requirements and specifications outlined in this document.

**RFP-2025-01-PROTECT-ES EBKI 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](mailto:ceo@ebki-nsn.gov)

All requests for information must be submitted via email.

RFP information request deadline: September 25, 2025 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: September 26, 2025, 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](mailto: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.

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

(3) ALL INFORMATION INQUIRIES MUST BE SUBMITTED VIA EMAIL TO: [ceo@ebki-nsn.gov](mailto: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 bidder.
4. The EBKI reserves the right to determine the days, hours, and locations that the successful bidder 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 Total Project Cost proposed by the successful bidder.
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 bidder for any costs incurred in responding to this RFP.
9. The award from this RFP is dependent entirely upon EBKI 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 bidder on September 30, 2025.

**Ewiiapaayp Band of Kumeyaay Indians**

*signed*

Robert Pinto, Sr., Chairman

**1. PROTECT 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 “EBKI Environmental Services” for reconstruction by full depth reclamation (FDR) of the Big Ewiiapaayp section of the Ewiiapaayp Indian Reservation roads at the Project Site in compliance with the Department of Transportation (DOT) PROTECT program<sup>1</sup> grant award and Notice of Funding

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<sup>1</sup> The Promoting Resilient Operations for Transformative, Efficient, and Cost-Saving Transportation (PROTECT) Formula and Discretionary Grant Programs were established under section 11405 of the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. No. 117-58, November 15, 2021), also known as the “Bipartisan Infrastructure Law” (BIL), codified at 23 U.S.C. 176. See <https://www.fhwa.dot.gov/environment/protect/discretionary/>

Opportunity (NOFO)<sup>2</sup>. Total Project Costs shall not exceed the award amount except by mutual written agreement between the EBKI and Contractor. The Contractor shall propose a Total Project Cost for any and all required Contract related work, including, but not limited to, fieldwork activities at the Project Site and any and all documentation required by the DOT funding agency.

(b) The successful bidder/contractor will conduct Project activities between October 1, 2025 and March 1, 2026.

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

(d) The Project Site is the Big Ewiiapaayp section of the Ewiiapaayp Indian Reservation on and contiguous to the 3.79-mile dirt road, referred to as *Thing Valley Road* or *Long Canyon Road*. The Ewiiapaayp Band of Kumeyaay Indians, California (the “EBKI” or “Tribe”) is a federally recognized Indian tribe listed pursuant to 25 U.S.C. 479a-1 (Title 1 of Pub. L. 103-454, Nov. 2, 1994, 108 Stat. 4791), formerly known as the “Cuyapaipe Band of Mission Indians” or the “Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation of California”, located in east San Diego County, California. The EBKI’s Big Ewiiapaayp section of the Reservation is located in the Laguna Mountains between the federal public lands of the National Forest System (NFS) land of the Cleveland National Forest, Descanso Ranger District, situated to the west and south of reservation land, and the California Desert District public lands of the Bureau of Land Management to the north and east.

The EBKI Reservation is comprised of two land sections, referred to as “Big Ewiiapaayp” and “Little Ewiiapaayp”. Big Ewiiapaayp, is 5,460.13 acres, in the Laguna Mountains, 45 miles east of the City of San Diego, 12 miles north of Interstate 8 in San Diego County, and approximately 15 miles from the southern Mexican Border, with an elevation between 5,000 feet and 6,400 feet. (See Map, <https://goo.gl/maps/eDsKaKzxv8UKLHe9>). The Big Ewiiapaayp section of the Reservation is geographically remote and off-grid to all public utility infrastructure and services.

The successful Contractor activities shall be responsive to the EBKI PROTECT grant program award Project NEPA requirements, and shall be informed by the following:

- **Exhibit 1a** – 90% Engineering Plans (2011)
- **Exhibit 1b** – Engineering Cross Plan Sections (2011)
- **Exhibit 2** – EBKI BIA IRR TIP Strip Maps
- **Exhibit 3** – EBKI PROTECT Grant Program Award Scope of Work
- **Exhibit 4a** – LRTP Road Inventory
- **Exhibit 4b** – EBKI Master Road Inventory
- **Exhibit 5a to 5e** – Project Site Map

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<sup>2</sup> US Department of Transportation, Federal Highway Administration, Notice of Funding Opportunity for Fiscal Years 2024-2026 Promoting Resilient Operations for Transformative, Efficient, and Cost-Saving Transportation (PROTECT) Program. See: <https://grants.gov/search-results-detail/356840>

- **Exhibit 6** – EBKI WESTEC 1981 Report
- **Exhibit 7a & 7b** – Project Staging Area
- **Exhibit 8** – DOT Standard Specifications
- **Exhibit 9** – TTP Environmental Checklist

(e) 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.

## 2. Scope of Work

EBKI seeks qualified vendors to conduct a NEPA-compliant environment document for the EBKI PROTECT program grant Project. US Department of Transportation (DOT) PROTECT program grant funding of this Project requires evaluation under the National Environmental Policy Act of 1969 (NEPA). 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 Project Site to be assessed in the NEPA environment document will consist of each road segment available to this road project reconstruction activity. As a component of the grant agreement and the PROTECT program NOFO, an environment document pursuant to the National Environmental Policy Act (NEPA) is necessary. It is anticipated that a Categorical Exclusion (CE) may result.

The scope of work includes:

- Providing a NEPA environment document that clearly demonstrates the project's potential effect on the environment and complies with all NEPA 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 any necessary consultations.
- The following should be considered but is not an exhaustive list: NEPA, 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 DOT funding agency, which has the ultimate authority for the project.

Milestones and Deliverables are as follows:

- **Project Description and Alternatives** – The successful Contractor will prepare a written overview of the Project's TTP Environmental Checklist (see Exhibit 9) form for submission to:

FHWA Environmental Contacts:  
David Cremer,  
Environmental Protection Specialist  
202-236-7613  
[david.cremer@dot.gov](mailto:david.cremer@dot.gov)

Terry Schumann,  
Environmental Protection Specialist  
360-619-7607  
[terry.schumann@dot.gov](mailto:terry.schumann@dot.gov)

- The environmental document shall be responsive to and in compliance with the NEPA requirements of the PROTECT program grant (see <https://www.transportation.gov/rural/grant-toolkit/promoting-resilient-operations-transformative-efficient-and-cost-saving>). The environmental documents will involve the purpose and need, and Project scope and alternatives, to a level of detail sufficient to complete the NEPA environment document process. The Tribe provides Exhibits 1 to 9 to inform the successful Contractor activities. The successful Contractor will prepare and submit any additional information required to fully comply with applicable NEPA requirements. The NEPA document project description will align with the Exhibit information and with the Project design and engineering Project activities by the successful Contractor awarded the PROTECT program grant project for road design, engineering, and construction activities to be informed by the successful Contractor NEPA environmental document.
- **Proposed Action and Alternatives** - The environmental document will analyze potential environmental effects associated with the PROTECT Project pursuant to the PROTECT grant. The Administrative Draft environmental document will be submitted to the Tribe for review. The successful Contractor will revise the Administrative Draft environmental document based on comments from the Tribe. The draft environmental document will then be revised for submittal to the DOT.
- **Affected Environment** - Evaluation and documentation on the Project's potential impacts pursuant to NEPA, including environmental affects, consequences, consideration of potential cumulative effects, and any required mitigation measures on Land Resources, Water Resources, Air Quality, Noise, Biological Resources, Cultural Resources, Socioeconomic Resources/Environmental Justice, Resource Use Patterns, and other Values impacted by the Project.
- **Draft Environmental Document, Public Comment, Final Environmental Document** – Draft environmental document after review by the Tribe. Release a Tribal public circulation of a Notice of Availability as required by NEPA. Following the receipt of public comments, a Response to Comments will be coordinated with the DOT. Any subsequent Finding of Categorical Exclusion, No Significant Findings, and Final environmental document will be prepared and submitted.
- **Cultural Resource Study** – Exhibit 6 provides the EBKI 1981 Cultural Resources Report. The successful Contractor shall conduct a record search request to the Southern Coastal Information Center (SCIC) for a review of the National and California registers of historic

resources and previous archaeological survey and excavation reports, archaeological site records, historic maps, and formal property listings within 0.5 miles of the roadway center line, to obtain information regarding previously identified resources found on the landscape. Consultation with tribal members will be conducted to assess community concerns about the project and potential Traditional Cultural Properties that may be affected by the Proposed Project. An archaeologist will perform a pedestrian survey of the Project Site on each side of the road alignments. Changes will be documented, and any newly identified resources recorded and mapped. A Cultural Resource Report will if necessary identify appropriate mitigation measures.

- **Natural Features Inventory and Habitat Surveys and Reports-** A Site Survey will be prepared pursuant to NEPA, and may, if required, include identifying habitat types, special-status species, wetlands and waters, suitable habitat to support special-status species, and wildlife corridors. A map of wetland boundaries will be prepared using aerial maps and GPS equipment. Information regarding soils, hydrology, and plant species will be collected using USACE-paired data analysis techniques to identify the extent of wetland features. Based on the results of the survey, a Natural Features Inventory Report will be prepared and will include a section identifying aquatic habitats present on the Project Site and the potential for features to be jurisdictional. The Natural Features Inventory Report will also include a discussion of terrestrial habitats and the potential for special-status species to occur.
- **Permitting** - Coordinate with the Tribe, and as required, appropriate public agencies, which may include the U.S. Forest Service, San Diego County, and Bureau of Indian Affairs, as appropriate and as required, after natural and biological surveying, studies, assessments and mapping.

## **2. PROPOSAL FORMAT:**

EBKI intends to retain the successful Contractor pursuant to a “Best Interest of the Tribe” basis, not a “Low Bid” basis, which means an outcome most favorable for the Tribe 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:**

Appendix A 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 successful Contractor proposed cost shall become the Total Project Cost.** 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 bidder must specify past and current clients and projects similar to the EBKI RFP.

#### **Section 8: Sample Design Standard**

The bidder must in his/her proposal indicate by a "yes" or "no" whether they meet 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 bidder 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 bidder'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 bidder 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 bidder will negotiate a best and final Contract with EBKI. The best and final Contract shall be executed as the Contract Agreement and Contract Award by EBKI to the Contractor.

**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 for approval by the Tribe, 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 document consistent with requirements from the DOT PROTECT NOFO and meeting NEPA 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 the Tribe.
- F. Provide a change order process for approval by the Tribe of changes to the cost of the Project budget proposed that would exceed the total amount of Project Award.

(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 bidder:

- 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-2025-01-PROTECT-ES”** clearly written in bold type and received no later than the Proposal due date. Late proposals will not be considered.

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

Will Micklin, CEO  
RFP-2025-01-PROTECT-ES  
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 bidder.
- (6) The proposal selected shall be the one most advantageous to the EBKI.
- (7) The Tribe 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 Tribe 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) The Tribe reserves the right to award the contract to the Contractor that, in the sole judgment of the Tribe, will best accomplish the desired results.

(15) Preference in the award of the contract shall be given to AI / AN organizations and enterprises. The Tribe 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 Tribe 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 Tribe at a location at the sole discretion of the Tribe.

(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.

(h) Total Project Cost and Project Site Proposals

(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 bidder 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 Tribe for the Project Site according to the knowledge and expertise of the Proposer. The Tribe shall evaluate proposals in order to determine the Proposal with the best value that satisfies the interests of the EBKI.

(3) The Tribe 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, defend, and hold harmless the Authority from and against any claim of, or liability for, negligent acts, errors, and omissions of the Contractor under this contract.

Contractor agrees to investigate, defend, indemnify and hold harmless EBKI, their officers, employees and agents from and against 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 for negligent acts, errors, and omissions of the Contractor under this Contract, including 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.

The Contractor shall not be required to indemnify, defend, or hold harmless the EBKI for a claim of, or liability for, the independent negligent acts, errors, and omissions of the EBKI. If there is a claim of, or liability for, a joint negligent act, error or omission of the Contractor and EBKI, the indemnification, defense and hold harmless obligation of this provision shall be apportioned on a comparative fault basis. In this provision, "Contractor" and "EBKI" include the employees, agents and other contractors who are directly responsible, respectively, to each. In this provision, "independent negligent acts, errors, or omissions" means negligence other than in the EBKI's selection, administration, monitoring, or controlling of the Contractor and in approving or accepting the Contractor's work.

(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.

**EXHIBIT 1a**  
**90% ENGINEERING PLANS (2011)**

**EXHIBIT 1b**  
**ENGINEERING PLAN CROSS SECTIONS (2011)**

**EXHIBIT 2**  
**BIA EBKI IRR TIP Strip Maps**

**EXHIBIT 3**  
**EBKI PROTECT GRANT PROGRAM AWARD SCOPE OF WORK**

**EXHIBIT 4a**  
**EBKI Long Range Transportation Plan (LRTP)**

**EXHIBIT 4b**  
**EBKI Master Road Inventory**

**EXHIBIT 5a**  
**Project Site Maps**

**EXHIBIT 5b**  
**Project Site Maps**

**EXHIBIT 5c**  
**Project Site Maps**

**EXHIBIT 5d**  
**Project Site Maps**

**EXHIBIT 5e**  
**Project Site Maps**

**EXHIBIT 5f**  
**Project Site Maps**

**EXHIBIT 6**  
**EBKI 1981 WESTEC Report**

**EXHIBIT 7a**  
**Project Site Staging Area**

**EXHIBIT 7b**  
**Project Site Staging Area**

**EXHIBIT 8**  
**DOT Standard Specifications**

**EXHIBIT 9**  
**DOT TTP Environmental Checklist**

## APPENDIX A

### EWIIAAPAYP 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](mailto:ceo@ebki-nsn.gov).

## EWIIAAPAAYP BAND OF KUMEYAAY INDIANS

### APPENDIX B

#### Ewiiapaayp RFP 2022-2

#### **SAMPLE CONTRACT**

This contract ("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. The Contractor shall propose a Project Award amount, and that shall in total be the Total Project Cost, which shall not be exceeded by the Contractor unless otherwise agreed upon in writing by the EBKI and Contractor.

#### Contract Price

The Contractor performance shall satisfy the Scope of Work and not exceed the Total Project Costs, which are the Total Project Cost Amounts, which are specified in Appendix A. The Total Project Costs are determined by the bid made by Contractor, and accepted by the EBKI, (hereinafter referred to as "Contractor's Bid and Proposal"). Any payments made directly by the Tribe to vendors for purchase of Project construction material, supplies, or systems shall be subtracted from the Total Project Cost. The Total Project Cost shall be paid to Contractor pursuant to Section 1.4 entitled "Method of Payment". If the Total Project Cost 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) The EBKI shall award this Contract as a “master contract” to the Contractor with the potential for the EBKI to issue a Notice to Proceed for each of the Projects: the Solar System; the Septic System; and the Groundwater Well System. The EBKI shall award each of the Projects separately to the Contractor by written “Notice To Proceed”, which must be issued by the EBKI or their designated representative for each of the Projects of Solar System, Septic System, and Groundwater Well System prior to the Contractor’s commencement of work for the Projects and in accordance with the Total Project Costs for each of the Projects awarded under this master Contract by each separate Notice to Proceed.

Work shall not commence until Contractor and EBKI have executed the Contract and the Contractor has received a Notice to Proceed for Project(s). If Notices to Proceed are not issued within ninety (90) days from the date this Contract is executed, Contractor has the option of withdrawing his/her Contract, unless a written time extension is agreed to by both parties. Work under this Contract and a Notice to Proceeds shall commence within ten (10) business days after the date the Notice To Proceed is issued and shall be completed within one hundred and ninety-seven (151) calendar days after the date the Contract is executed ("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. The Contractor shall indemnify, defend, and hold harmless the Authority from and against any claim of, or liability for, negligent acts, errors, and omissions of the Contractor under this contract.

Contractor agrees to investigate, defend, indemnify and hold harmless EBKI, their officers, employees and agents from and against 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 for negligent acts, errors, and omissions of the Contractor under this Contract, including 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.

The Contractor shall not be required to indemnify, defend, or hold harmless the EBKI for a claim of, or liability for, the independent negligent acts, errors, and omissions of the EBKI. If there is a claim of, or liability for, a joint negligent act, error or omission of the Contractor and EBKI, the indemnification, defense and hold harmless obligation of this provision shall be apportioned on a comparative fault basis. In this provision, "Contractor" and "EBKI" include the employees, agents and other contractors who are directly responsible, respectively, to each. In this provision, "independent negligent acts, errors, or omissions" means negligence other than in the EBKI's selection, administration, monitoring, or controlling of the Contractor and in approving or accepting the Contractor's work.

(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.

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**

*Donald Diffenbaugh Construction*

By Mail:

TBD

By Email: TBD

**EBKI**

By Mail:

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 of 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 or as required by the funding department or agency.

2.6 BABAA Requirements. Contractor shall include Manufacturer's Certification for BABAA requirements with all applicable submittals. If a specific manufacture is used in the bidding, a statement that Manufacturer will comply with BABAA must be included with the bid submission. Contractor shall comply with BABAA requirements, including coordination with manufacturers, distributors, and suppliers to correct deficiencies in any BABAA documentation.

Engineer/Architect approval of shop drawings or samples shall include review of BABAA documentation. Contractor shall certify upon completion that all work and materials have complied with BABAA requirements.

For any change orders, Contractor shall provide BABAA documentation for any new products or materials required by the change.

Installation of materials or products that are not compliant with BABAA requirements shall be considered defective work. Contractor should ensure that Engineer/Architect has an approved Manufacturer's Certification or waiver prior to items being delivered to the project site.

By submitting an application for payment, based in whole or in part on furnishing equipment or materials, Contractor certifies that such equipment and materials, to contractor's knowledge, are compliant with BABAA requirements.

### 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.

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).

**SIGNATURE PAGE**

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

CONTRACTOR:

TBD

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

TITLE: Principle

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**