

RESOLUTION NO. 73 -21
OF THE GOVERNING BODY OF THE
YAVAPAI-APACHE NATION

**A Resolution Authorizing a Design-Build Agreement with I-5 Design-Build, Inc. for a
Remodel of the Nation's Cliff Castle Casino**

- WHEREAS:** The Yavapai-Apache Tribal Council ("Council") is authorized to represent the Yavapai-Apache Nation ("Nation") and act on all matters that concern the health and welfare of the Nation, and to make decisions not inconsistent with or contrary to the Constitution of the Yavapai-Apache Nation ("Constitution") as provided by Article V(a) of the Constitution; and
- WHEREAS:** The Council is authorized to "manage all tribal economic affairs and enterprises" and to "appropriate and regulate the use of tribal funds" as provided by Article V (i) and (k), respectively, of the Constitution; and
- WHEREAS:** The Nation owns and operates the Cliff Castle Casino as a Subordinate Economic Organization of the Nation and an important part of the Nation's economy (the "Casino"); and
- WHEREAS:** The Nation, on recommendation of the Casino's General Manager, is considering improvements to the Casino property facilities; including a complete remodel of the Casino's Gaming Floor and Porte Cochere; and
- WHEREAS:** I-5 Design-Build Inc. ("I-5") has submitted Conceptual Design Plans for a remodel of the Casino (the "Project"), and those conceptual plans have been reviewed and approved by the Council, including a 3-dimensional "virtual walk-through" of the Casino providing a visual representation of what the finished remodel project will look like, and the Council has decided to proceed to the next phase of the Project; including (1) preparation of final design plans and construction drawings, and (2) construction of the Project for the remodel of the Casino; and
- WHEREAS:** The Casino General Manager has recommended that the Nation contract with I-5 Design Build, Inc., to continue its work on the Project by completing the Project plans and drawings and implementing construction of the Project, and to do so in accordance with the terms and conditions of the Design-Build Agreement ("Agreement") attached to this Resolution as **Exhibit A**, under which I-5 will produce final design plans, drawings and construction documents for the Casino Remodel Project and will carry out construction of the Project as provided in the Agreement; and
- WHEREAS:** The Council, on recommendation from the Casino's General Manager, desires to retain the services of I-5 to prepare final design plans, drawings and construction documents and to implement construction of the Casino Remodel Project in accordance with the terms and conditions of the "Design-Build Agreement," a copy of which is attached to this Resolution as **Exhibit A** and incorporated herein by reference; and
- WHEREAS:** The Council has determined that execution of the above referenced Agreement with I-5 is in the best interests of the Nation.

NOW THEREFORE BE IT RESOLVED that the Yavapai-Apache Tribal Council, in Council assembled, at which a quorum is present, hereby authorizes the Yavapai-Apache Nation to enter into the above referenced Design-Build Agreement with I-5 Design Build, Inc., in accordance with the terms and conditions set out in the form of "Design-Build Agreement" attached to this Resolution as **Exhibit A**, which is hereby incorporated into this resolution by reference.

BE IT FURTHER RESOLVED that the Term of the Contract shall commence on April 22, 2021 and shall continue until the work is complete as provided in the Agreement.

BE IT FURTHER RESOLVED that Compensation to be paid to I-5 Design Build, Inc., under the Agreement is hereby authorized as follows:

- (1) Contract Sum – \$13,483,893.00
 - (2) Project Contingency - \$674,194.65 (to be used only if necessary and only as provided in the Agreement)
- Total Authorized Compensation - \$14,260,803.65**

BE IT FURTHER RESOLVED that the funds used to pay compensation to I-5 Design-Build, Inc., under the Agreement are hereby appropriated from the following sources:

- (1) The proceeds of the Construction Line of Credit established under the Loan Agreement between the Nation and BOKF NA, dba BOK Financial ("BOKF Loan Agreement"), as recently approved by the Nation under Tribal Council Resolution No. 69-21, said Construction Line of Credit in the principal amount of and not to exceed \$13,600,000; and
- (2) The Cliff Castle Casino's FY2021 Capital Improvements Budget shall be used for payment of any amount of funds payable to I-5 Design-Build, Inc., under the Agreement that exceeds the \$13,600,000 Construction Line of Credit authorized under the BOKF Loan Agreement; and

The Nation's Finance Director is authorized to draw upon the Construction Line of Credit established under the BOKF Loan Agreement for all payments arising under the Agreement with I-5 Design-Build, Inc., as approved by this resolution, in an amount up to but not to exceed \$13,600,000., and the Cliff Castle Casino, in coordination with the Nation's Finance Director, shall be responsible to pay all amounts in excess of that amount from the Casino's Council-approved FY2021 Capital Improvements Budget.

BE IT FINALLY RESOLVED that the Chairman, and Vice-Chairwoman, or either of them, are hereby authorized to execute the above referenced Agreement with I-5 Design-Build, Inc., on behalf of the Nation and to take such further action as deemed necessary to carry out the intent and purposes of this resolution.

CERTIFICATION

I hereby certify that the foregoing resolution was adopted by an affirmative vote of the Tribal Council, with a quorum in attendance, presented for approval on April 22 2021, by a vote of 7 7 in favor, 0 opposed and 0 abstaining, pursuant to the authority contained under the Constitution of the Yavapai-Apache Nation as cited above.



Jon Huey, Chairman

ATTEST:

Karla Reimer
Karla Reimer, Council Secretary

Approved as to Form:

Scott Carty
Office of the Attorney General

Design-Build Agreement Between Yavapai-Apache Nation & I-5 Design-Build, Inc.

This Design-Build Agreement ("Agreement" or "Contract") made this 22nd day of April 2021, by and between the Yavapai-Apache Nation, a federally recognized Indian Tribe, (hereinafter the "Owner" and/or "Nation"), whose address is 2400 West Datsi Street, Camp Verde, AZ 86322, and I-5 Design-Build, Inc. (hereinafter the "Design-Builder" or "I-5"), whose address is 8751 Commerce Place Drive NE, Lacey WA 98516, to perform design work, and provide certain labor and materials, all as specified herein, associated with the upgrade and remodel of the Gaming Floor and Porte Cochere located at the Nation's Cliff Castle Casino (the "Project"). The Owner and Design-Builder agree as follows:

SECTION 1. PROJECT SCOPE OF WORK

The Nation, under that certain contract dated August 17, 2020, has previously contracted with Design-Builder to provide Conceptual Design Services for the upgrade and remodel of the Gaming Floor, Sports Book, High Limit Gaming Area, and Porte Cochere within the Nation's Cliff Castle Casino. Design-Builder has completed the Conceptual Design Services, including a presentation of the design recommendations to the Nation's governing body, the Tribal Council and the Tribal Council has decided to proceed with final design of the Project, including final design, fabrication, pre-manufacture, transportation and installation of the component parts and systems to be incorporated into the Project as provided in this Agreement. Therefore, the Design-Builder agrees to furnish, in accordance with the terms and conditions of this Agreement, design and construction services, including supervision, labor, tools, equipment, material and supplies, coordination drawings and plans, and to perform the following Project work ("Work") described and depicted as follows:

- The narrative Project Scope of Work to be accomplished by Design-Builder and the work to be accomplished under separate contract by the Nation as "Owner's Responsibilities," both as described in the "PROJECT SCOPE OF WORK" ("Project Scope of Work") set forth in **Attachment A** to this Agreement.
- The conceptual design renderings dated 02.22.2021 collectively referred to as "Pre-Contract Design Build Program Renderings." (**Attachment B** to this Agreement)
- Design-Builder will provide for Owner's approval complete code compliant construction documents for the full scope of Work for this project prior to onsite construction. Construction documents shall comply with the 2012 ICC International Codes, 2012 NFPA Codes (Electrical, Fire Sprinkler, Fire Alarm), and 2010 ADA Standards for Accessible Design. Design-Builder shall be compensated for changes in the Work necessitated by Owner enactment or revisions of laws, regulations, or codes affecting the Work after the date of this Agreement.
- As part of Owner's plan approval process, Owner shall arrange and pay for a plan review by a consultant of its choosing. If code deficiencies are identified during the plan review process, Design-Builder shall revise the plans in conformance with code requirements. The Nation shall have the right to govern and enforce the codes listed immediately above and will issue final decisions if code interpretations and/or disagreements between the Nation's plan review consultant and Design-Builder occur. The Nation shall also arrange and pay for inspection of all work provided under this Agreement. Design-Builder shall construct the Project in accordance with owner-approved plans and shall correct any construction and code deficiencies identified by the Nation's plan review consultant and inspector.
- In the event of a conflict between the Project Scope of Work set forth in Attachment A and the Pre-Contract Design Build Program Renderings (Attachment B), the Project Scope of Work set forth in Attachment A shall control resolution of any such conflict.

8751 COMMERCE PLACE DRIVE NE
LACEY, WA 98516
WWW.I5DESIGN.COM

I-5 DESIGN|BUILD

SECTION 2. CONTRACT SUM AND PAYMENTS

- 2.1. **CONTRACT SUM:** In consideration of the satisfactory completion of the Work provided by Design-Builder under this Agreement, the Nation shall pay I-5 Design-Build, Inc. a fixed fee, lump sum contract amount of **\$13,483,893.00 (Thirteen Million, Four Hundred Eighty-Three Thousand, Eight Hundred Ninety-Three Dollars and Zero Cents)** (Contract Sum) in current U.S. funds, which Sum shall not be exceeded except as may be approved by Nation under the terms of this Agreement.
- 2.2. **DEPOSIT AND PROGRESS PAYMENTS:** Upon full execution of the Contract, an initial payment of 20% of the Contract Sum (\$2,696,778.60) to cover the costs of materials/procurement, initial offsite manufacturing, and architectural drawings shall be sent or wire-transferred to Design-Builder's designated bank account. Thereafter progress invoices shall be submitted by Design-Builder to Nation, and payments shall be made by Nation according to the attached "Construction & Payment Schedule" (Attachment C), including progress payments for procurement of materials, elements manufactured at Design-Builder's facility, equipment, and other pre-manufactured elements prior to shipping of said pre-manufactured elements. Design-Builder shall endeavor to expedite the Work and progress payments will be adjusted to reflect expedited progress. Upon receipt of each progress invoice by the Nation, there shall be a 5-day period for Owner's verification of progress stated in the progress invoice, followed by a 10-day period in which payment shall be made for all progress verified as being achieved. Payments will be sent or transferred by Nation to Design-Builder's designated bank account within fifteen (15) days from the date of the invoice. I-5 will provide weekly progress photos showing the custom décor elements in production at I-5's facility. In addition, representative(s) of the Nation may, at its option, visit the Design-Builder's manufacturing facility and/or attend video conference sessions with Design-Builder to review the Work progress as stated in the progress invoice, provided, however that such visit to Design-Builder's facility shall not be a requirement or pre-condition of payment.
- 2.3. **PROJECT CONTINGENCY:** The Nation has established a contingency fund of 5% of the Contract Sum (\$674,194.65), which is in addition to the Contract Sum referenced above ("Project Contingency"). I-5 Design will consult with the Casino General Manager prior to the use of the Contingency Fund. If the full amount of the Project Contingency were used in the construction of the Project, the total Contract Sum would be increased to \$14,260,803.65. The Project Contingency shall be available to the Design-Builder, if necessary, to cover costs associated with Work that is not a Scope Change, is not the basis for a Change Order in accordance with Section 7, or for any other purpose agreed to by the Parties. Use of the Contingency Fund shall occur only upon approval of the Casino General Manager. Any portion of the Project Contingency remaining at Final Completion shall revert to Owner.
- 2.4. **CONTRACT SUM AND SCOPE MODIFICATIONS:** The Contract Sum was agreed to before the final construction drawings and specifications have been completed by Design-Builder. The Owner understands that the Scope of the Project may require changes to accommodate existing conditions and revisions necessitated by unknown conditions at the time the Contract was executed. Prior to completion of the Project Plans, Design-Builder will perform a preliminary walk-through of the casino areas being remodeled and shall identify any reasonably apparent deficiencies in the existing structure or infrastructure systems which may affect the planned remodel work. Any such unforeseen conditions of which the Design-Builder becomes aware shall be communicated in writing to the Owner as soon as reasonably possible. Owner and Design-builder shall determine the appropriate solution for addressing the identified unforeseen conditions as needed to integrate the remodel work into the existing structure or infrastructure systems. Design Builder will thereafter incorporate the agreed upon solution into the Project Plans. Any additional costs associated with design of the proposed solution(s) shall be communicated to the Owner, and design of such solution(s) shall proceed only upon written agreement between the Parties. Owner reserves the right to have Owner's Plan Review Consultant participate in the walk-through. Owner and Design-Builder commit to work together cooperatively towards adjusting the

Scope of Work, the Contract Sum, and Project duration which may involve give-and-take and best-efforts negotiations. Both Owner and Design-Builder agree to negotiate in good faith to arrive at appropriate adjustments to the Contract Sum should it become necessary to change the Scope of Work.

- 2.5. **PAYMENT OF INVOICED AMOUNTS:** If Owner fails to pay Design-Builder all amounts due under an invoice, when all Work claimed by Design-Builder in the invoice has been verified by Nation as being satisfactorily completed, within 15 days of the date of the invoice as specified in Section 2.2, Design-Builder, upon five days written notice to Owner and failure by Owner to make such payment, may extend the schedule without penalty, and may also stop Work and recover from Owner payment for all Work performed and any loss sustained, as well as reasonable profit and other damages, until all payments are brought current.
- 2.6. **Withholding Payments.** The Owner may withhold or refuse payments for any of the reasons listed hereinbelow, provided Owner gives written notice to Design Builder of its intent to withhold payment and the basis therefore:
- (a) The Work is defective, or completed Work has been damaged by the Design-Builder or others for whom the Design-Builder is responsible, requiring correction or replacement;
 - (b) The Contract Sum has been reduced by Change Order;
 - (c) The Owner has been required to correct defective Work or complete any portion of Design Builder's Work;
 - (d) Previously approved Work has been shown by inspection or tests to be defective;
 - (e) Design Builder has failed to fulfill any of its obligations under any provision of this Agreement.

SECTION 3. STANDARD OF CARE

- 3.1. The standard of care for all professional design services performed in the execution of the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project.
- 3.2. The standard of care for all construction services performed in the execution of the Work shall be performance of the Work in strict accordance with the design.

SECTION 4. INSTRUMENTS OF SERVICE

- 4.1. **WORK PRODUCT:** All drawings, specifications and other documents and electronic data furnished by Design-Builder under this Agreement ("Work Product") are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests thereto, including copyrights thereto. Upon Owner's payment in full for all Work performed under this Agreement, Design-Builder shall grant Owner a limited license to use the Work Product in connection with Owner's occupancy of the Project, conditioned on Owner's express understanding and agreement that any modifications or use of the Work Product in a manner contrary to its intended use is at Owner's sole risk and without liability or legal exposure to Design-Builder.
- 4.2. **DERIVATIVE WORKS:** Owner may use, reproduce, or make derivative works from the Work Product for subsequent renovation and remodeling of the Project, but shall not use, reproduce or make derivative works from the Work Product for other projects (projects not owned by Nation). The Owner's use of the Work Product without Design-Builder's involvement or on other projects is at Owner's sole risk and Owner shall defend, indemnify, and hold Design-Builder harmless from and against any and all claims, damages, losses, costs and expenses arising out of or resulting from such use.

- 4.3. **PROMOTIONAL MATERIALS:** Design-Builder shall have the right to include photographic or artistic representations of the design and finished Project among Design-Builder's promotional and professional materials to be used in its marketing plans and efforts. Design-Builder shall be given reasonable access to the completed Project to make such representations.

SECTION 5. WARRANTY

All labor and materials furnished shall be of a quality, nature and within industry standards and tolerances. New materials shall be furnished unless otherwise agreed by Owner. For one year from the date of Substantial Completion, Design-Builder will repair or replace, at its option, at no charge to Owner, any component of the Project which is found to be defective. All claims for correction of defects must be made within the warranty period. This warranty is exclusive and in lieu of all other warranties, whether statutory, express or implied, including warranties of merchantability, fitness for a particular purpose and those arising from the course of dealing and usage of trade. Any other statements of fact or descriptions expressed in this Agreement shall not be deemed to constitute a warranty of the Work or any part thereof. Owner's sole and exclusive remedy for warranty non-conformities in the Work, no matter how arising, shall be for Design-Builder to repair or replace the non-conforming Work for the one-year period as provided above. Anything to the contrary in this Section 5 notwithstanding, Owner may bring a claim for a latent defect in the Work within the Arizona Statute of Repose.

SECTION 6. CONTRACT TIME AND PROJECT SCHEDULE

- 6.1. Attached to this Agreement is the schedule in which the Work will be performed setting forth the time for performance of the Work ("Construction & Payment Schedule") (Attachment C).
- 6.2. The Work shall commence immediately upon full execution of this Agreement, following the parties' exchange of Certificates of Insurance in accordance with Section 10. However, Owner acknowledges that Design-Builder has commenced Work on the design documents (drawings, specifications, and other design documents) prior to execution of the Agreement and all such work shall become part of the Work under the Agreement. Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the contract documents.
- 6.3. Interim milestones and/or Substantial Completion of identified portions of the Work shall be achieved by Design-Builder as follows:
- (a) Within 42 days following execution of this Agreement, I-5 shall provide submittals for the specialty materials and FF&E items included in the Project. Owner shall provide approval of these submittals within 5 days of receipt of complete documents for the submittals in question, upon which approval I-5 shall proceed with manufacture/procurement of the approved items.
 - (b) Complete and submit for Owner's review and approval interior design documents (drawings, specification and other documents needed to construct all interior aspects of the Project) no later than 112 days following execution of this Agreement;
 - (c) Complete and submit for Owner's review and approval Porte Cochere design documents (drawings, specification and other documents needed to remodel the Porte Cochere) no later than 126 days following execution of this Agreement;
 - (d) Based on execution of this Agreement on or before April 22nd, 2021, and approval of the Design documents submitted by Design-Builder within 14 days of receipt by the Owner, including any required approvals from any 3rd party plan review consultant retained by the Owner within this 14 day timeframe, Design Builder shall complete fabrication and pre-

manufacture of the Work and components identified for Design-Builder under Attachment A and said Work and components shall be delivered on-site to the Casino according to the dates indicated in the attached Construction & Payment Schedule (Attachment C).

- (e) Onsite Installation of the custom décor package provided by I-5 Design Build will take place according to the dates specified in Attachment C, subject to modification as provided for in this Agreement.
- (f) Subject to schedule modifications as provided for in this Agreement, I-5 Design Build shall achieve **Substantial Completion** of its scope of Work for the Project (as such date is determined in a mutually agreed upon written determination by Owner and Design-Builder) no later than May 11th, 2022, based on execution of this Agreement and receipt of the initial payment specified in Section 2 no later than April 22nd, 2021.
- (g) All the dates specified herein shall be subject to adjustment by mutual agreement of the Owner and Design-Builder set forth in a Change Order.

- 6.4. Owner shall facilitate achievement of the Project Schedule (attachment C) by providing Design-Builder with all requested information in Owner's possession concerning the Project site and otherwise cooperate with and accommodate Design-Builder's Work such that the Work can be constructed in a timely and efficient manner. Design-Builder shall be entitled to an extension in the Project Schedule without penalty and an equitable adjustment in the Contract Sum, including but not limited to increased cost of labor (including overtime), overhead, equipment, or materials, resulting from (a) any change of schedule (including late payment of owner-approved invoices), (b) acceleration, (c) out-of-sequence Work or (d) delay, provided that the preceding events (a) through (d) are caused by (i) an Owner's scope change issued by Change Order, (ii) others for whom Design-Builder is not responsible, or (iii) events beyond Design-Builder's control.
- 6.5. Design Builder shall fully cooperate with Owner in facilitating Owner's Work under attachment A and shall take no action to impede, delay or prevent Owner's timely completion of its Work under attachment A.
- 6.6. Liquidated Damages. Design Builder understands that if Substantial Completion is not achieved by the above-scheduled Substantial Completion date (Section 6.3(f), Owner will suffer damages, which are difficult to calculate and accurately specify. Owner agrees liquidated damages are Owner's sole and exclusive remedy if Design Builder fails to meet the Substantial Completion Date. Design-Builder agrees that if Substantial Completion is not achieved within seven (7) days of the above Substantial Completion date, Design-Builder shall pay Owner One Thousand Dollars (\$1,000) per day for each day that Substantial Completion extends beyond the Substantial Completion date. Design Builder's maximum liability under this clause shall be limited to \$39,000.

SECTION 7. CHANGES

- 7.1 CHANGE ORDERS: Any work not contained in the Scope of Work set forth in Section 1 shall be a change and shall be performed by Design-Builder only pursuant to a written Change Order to this Agreement as approved by Nation. Such Change Order may increase or decrease the Scope of Work and Contract Sum within the general scope of this Agreement. If the Change Order causes an increase in the Contract Sum, or the time required for the performance of the Work, Design-Builder shall be paid a lump sum as agreed in writing by both parties or granted an extension of time or both. If the Change Order causes a decrease in the Scope of Work, the Contract Sum shall be decreased by an amount agreed to in writing by both parties. Written notice by Design-Builder shall be given to Owner of any requested change in the Work by a written Change Order Request. All Change Order Requests submitted by Design-Builder shall be submitted to Owner in writing prior to commencement of the Work for which a Change is required and said Change Order must be

approved by Owner in writing prior to Design-Builder commencing the Work. Owner shall have no obligation to pay for Changed Work that has not been approved by Owner by written Change order. Minor changes in the Work that do not involve a change in the Contract Sum or the Contract Time, shall be accomplished by a simple written order signed by Owner and Design-Builder.

- 7.2 **REGULATORY CHANGES:** As provided under Section 1 above (Project Scope of Work), Design-Builder will provide complete code compliant construction documents for all new Work included as part of the Project. Construction documents shall comply with the 2012 ICC International Codes, 2012 NFPA Codes (Electrical, Fire Sprinkler, Fire Alarm), and 2010 ADA Standards for Accessible Design. Design-Builder shall be compensated for changes in the Work necessitated by Owner's enactment or revisions of laws, regulations, or codes affecting the Work after the date of this Agreement.
- 7.3 **UNKNOWN/CONCEALED CONDITIONS:** If Design-Builder encounters conditions at the site that were unknown at the time of signing this Agreement, are subsurface or otherwise concealed or previously unknown physical conditions that differ from those listed in Section 1, or if any other unforeseen site condition or change is encountered which will affect the overall cost and/or timeframe of the Project, the Design-Builder shall notify the Owner in writing and the Contract Sum and Project schedule shall be equitably adjusted by Change Order. Prior to completion of the Project Plans, Design-Builder will perform a preliminary walk-through of the casino areas being remodeled and shall identify any reasonably apparent deficiencies in the existing structure or infrastructure systems which may affect the planned remodel work. Any such unforeseen conditions of which the Design-Builder becomes aware shall be communicated in writing to the Owner as soon as reasonably possible. Owner and Design-builder shall determine the appropriate solution for addressing the identified unforeseen conditions as needed to integrate the remodel work into the existing structure or infrastructure systems. Design Builder will thereafter incorporate the agreed upon solution into the Project Plans. Any additional costs associated with design of the proposed solution(s) shall be communicated to the Owner, and design of such solution(s) shall proceed only upon written agreement between the Parties. Owner reserves the right to have Owner's Plan Review Consultant participate in the walk-through. Absent written agreement between the parties to a change in Contract Sum and/or Project Schedule, the Design-Builder shall not be required to perform such additional work or change to the Project Scope. If Design-Builder elects not to perform such additional work, the Owner may hire this work out separately from this Agreement. If an Agreement is not reached, the project schedule will be extended without penalty to the Design-Builder according to the time needed to arrive at a suitable Agreement between both parties.

SECTION 8. INDEMNIFICATION

- 8.1. **DESIGN-BUILDER'S INDEMNITY:** Design-Builder shall indemnify, defend and hold Owner, its employees, officers, directors and affiliates harmless from any loss, cost, expense or damage claimed by third parties for property damage and bodily injury or both, including death, to the proportionate extent such loss, cost, expense or damage arises from the negligence or willful misconduct of Design-Builder, its employees, officers or directors in connection with this Agreement.
- 8.2. **OWNER'S INDEMNITY:** Owner shall indemnify, defend and hold Design-Builder, its employees, officers, directors and affiliates harmless from any loss, cost, expense or damage claimed by third parties for property damage or bodily injury or both, including death, to the proportionate extent such loss, cost, expense or damage arises from the negligence or willful misconduct of Owner, its employees, officers or directors in connection with this Agreement.

SECTION 9. HAZARDOUS MATERIALS

- 9.1. **DEFINITION:** A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state or local law or regulation or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing the handling, disposal or cleanup or both.
- 9.2. **DISCOVERY OF HAZARDOUS MATERIALS:** If after commencement of the Work, Hazardous Material is discovered at the Project site, Design-Builder shall be entitled to immediately stop Work in the affected area. Design-Builder shall not be required to perform any Work relating to or in the area of the Hazardous Material without written mutual agreement. If Design-Builder incurs additional cost and/or is delayed due to the presence or remediation of Hazardous Material, Design-Builder shall be entitled to an equitable adjustment of the Contract Sum and Contract completion date through a written Change Order. Owner agrees it will defend, indemnify and hold Design-Builder, its employees, officers, directors, subcontractors, subconsultants and affiliates harmless from and against any claim, suit or proceeding and loss or liability associated with such Hazardous Material.

SECTION 10. INSURANCE

- 10.1. **PROFESSIONAL LIABILITY INSURANCE.** Design-Builder shall secure and maintain, at its sole cost and expense, Professional Liability Insurance with limits no less than \$1,000,000.00 for each claim, with a \$3,000,000 aggregate limit, to protect against loss resulting from design errors and omissions. The Professional Liability Insurance coverage shall extend beyond the date of the last final inspection of the Project for the period established by Arizona's statute of repose, ARS 12-552.
- 10.2. **GENERAL LIABILITY INSURANCE.** Design-Builder shall maintain or cause others to maintain General Liability Insurance on an occurrence basis against claims filed, in any court of competent jurisdiction, in the United States against the Design-Builder and each subcontractor for liability arising out of claims for bodily injury, personal injury and property damage. Such insurance shall provide coverage for blanket contractual, broad form property damage, personal injury insurance with a \$1,000,000.00 limit per occurrence, \$2 million aggregate for combined bodily injury and property damage provided that policy aggregates, if any, shall apply separately to claims occurring with respect to the Project.
- 10.3. **Automobile Insurance.** Design-Builder shall maintain automobile insurance covering all owned, rented, and non-owned vehicles operated by Design-Builder with policy limits of not less than \$1,000,000 combined single limit.
- 10.4. **WORKERS COMPENSATION.** Design-Builder shall maintain Workers Compensation Insurance as required by the law, as well as an Employers Liability policy with a limit of not less than \$1million Each Accident, \$1million Each Disease Each Employee, \$1 million Policy Limit.
- 10.5. **UMBRELLA/EXCESS LIABILITY INSURANCE.** Design-Builder shall maintain umbrella or excess liability insurance on an occurrence basis covering claims in excess of the underlying insurance described in the foregoing subsections (10.1 if applicable) (10.2) (10.3) and (10.4 - Employers Liability only), with a \$10,000,000 minimum limit per occurrence. This covers claims for bodily injury or property damage for customers, vendors or other third parties.
- 10.6. **General Requirements.** Owner shall be included under each of the policies listed in Sections 10.2, 10.3, 10.4, and 10.5 above, as an additional insured to the extent of liability assumed by Design-Builder, with coverage to be primary and not contributory with any such coverage maintained by Design-Builder. All deductibles and premiums associated with the above coverages of insurance shall be the sole responsibility of Design-Builder. The use of Umbrella or excess liability insurance to achieve the above required liability limits is permitted, provided that such umbrella or excess

insurance results in the same type and amounts of coverage as required under the required individual policies identified above.

- 10.7. Certificates of Insurance. Design-Builder shall provide to Owner, Design-Builder Certificates of insurance evidencing compliance with the above insurance requirements. All insurance required under this Section 10 shall be issued by insurance carriers licensed to do business in the state of Arizona and all such carriers shall be rated with an A.M. Best rating of no less than A (X).
- 10.8. OWNER'S PROPERTY INSURANCE: Owner shall obtain and maintain "All Risk" builder's risk insurance in a form acceptable to Design-Builder upon the entire Project for the full cost of the replacement at the time of any loss. This insurance shall include as named insured Owner: The Design-Builder, all Design-Builder's subcontractors, consultants, material suppliers, sub-subcontractors, and subconsultants shall be named as an additional insured. This insurance shall include physical loss or damage, including without duplication of coverage at least: "theft, vandalism, malicious mischief, transit, materials stored offsite, collapse, false work, temporary buildings, debris removal, flood, earthquake, testing, and damage resulting by peril from defective design, workmanship or material. The insurance shall be written without a co-insurance clause. Owner shall be solely responsible for any deductible or Self-Insured Retention (SIR).
- Owner, Design-Builder, the Design-Builder's subcontractors, consultants and any of their respective employees, agents, consultants, subcontractors, material suppliers, sub-subcontractors, and subconsultants of any tier waive all rights against each other for damages covered by insurance pursuant to this Section to the extent they are covered by insurance, except such rights as they may have to the proceeds of such insurance held by Owner and Design-Builder as trustees.
- 10.9. Design-Builder shall furnish a performance and payment bond covering faithful performance of the Contract and payment of obligations arising thereunder as required in the Contract.

SECTION 11. DISPUTE RESOLUTION

- 11.1. **Informal Negotiations.** Owner and Design-Builder agree to engage in informal negotiations to resolve any dispute arising under this Agreement. In the event that any dispute between Owner and Design-Builder is not resolved through informal negotiations, the Parties agree that, subject to the Limited Waiver of Sovereign Immunity provided by Owner in Section sub-paragraph (b) below, the dispute may be resolved through the Nation's Tribal Court. In any informal negotiation under this paragraph, the parties may by mutual agreement enlist the assistance of a mediator of the parties mutual choosing. Any such mediator shall be an attorney licensed in Arizona having a minimum of ten years of construction law experience.
- 11.2. **Limited Waiver of Sovereign Immunity.** The Yavapai-Apache Nation is immune from unconsented lawsuits. Except as provided in this sub-paragraph (b), nothing in this Agreement or other writing is or shall be deemed to be a waiver of the Yavapai-Apache Nation's sovereign immunity from suit, which immunity is hereby expressly asserted and affirmed. However, in order to provide for dispute resolution and the enforceability of this Agreement as provided in this paragraph, the Nation as Owner under this Agreement grants to Design-Builder a limited waiver of its sovereign immunity as follows: (1) Owner agrees that all unresolved disputes arising under this Agreement shall be submitted to the Yavapai-Apache Nation Tribal Court as provided under this sub-paragraph (b) and that such tribal court action shall be the exclusive means of dispute resolution under this Agreement; (2) Owner agrees that the Yavapai-Apache Nation Tribal Court shall have subject matter jurisdiction over the resolution of disputes arising under this Agreement, but only as to matters arising under this Agreement, and no other claim or dispute may be brought before the Tribal Court, and no other court or forum shall have jurisdiction to hear any claim or dispute arising under this Agreement; (3) it is acknowledged and agreed between Owner and Design-Builder that the limited waiver of sovereign immunity provided by this sub-paragraph (b), shall extend only to disputes

between Owner and Design-Builder and shall apply only to an action by Design-Builder for any claim for breach of the Agreement, and that this limited waiver shall therefore not extend to or be effective as to any claim or action against Owner by any party other than Design-Builder (including without limitation any purported third party beneficiary of the Agreement); (4) The liability of Owner for any recovery under this Agreement as provided for hereunder shall be limited to actual unpaid contractual obligations (compensatory damages) and/or specific performance, and shall not in any case include general, consequential, incidental, special, indirect, punitive or any other damages, whether in tort or contract, all of which are hereby expressly declared to be outside of the scope of the waiver of sovereign immunity provided for under this sub-paragraph (b), and Owner's total liability to Design-Builder for compensatory damages under any judgment entered by the Court as provided for herein shall in no case exceed earned but unpaid amounts owed by Owner to Design-Builder for the Work provided by Design-Builder under this Agreement up to but not exceeding the total Contract Sum, as said Sum may be adjusted by Change Order as provided under the Agreement (including any additional design work approved by Owner beyond the Agreement's original Scope of Work), and with the addition of any expenditure of contingency funding as provided for under the Agreement; (5) The Tribal Court's jurisdiction, as limited hereunder, shall not be construed to empower the Court to enter a judgment that reaches or encumbers the assets or property of the Yavapai-Apache Nation other than the financial assets of the Nation appropriated by the Tribal Council to pay amounts owed to Design-Builder under this Agreement; and (6) this limited waiver of sovereign immunity shall expire two (2) years after the termination, cancellation or completion of the Agreement, except that this limited waiver of sovereign immunity shall remain effective for any proceeding then pending and all appeals and enforcement proceedings therefore until the underlying legal claim or claims have been finally determined. The parties also agree that this limited waiver of sovereign immunity shall be strictly construed.

SECTION 12. GENERAL PROVISIONS:

12.1. REPRESENTATIONS AND WARRANTIES

(1) Design-Builder represents and warrants that it is a corporation or other business entity duly organized, validly existing and in good standing under the laws of the state of Washington, that it has full power and authority to enter into this Agreement and to perform as contemplated herein, and that this Agreement constitutes a valid, binding, legal obligation of the Design-Builder, and is enforceable against the Design-Builder in accordance with and pursuant to the terms and conditions herein contained.

(2) Nation represents and warrants that it is a federally recognized Indian Tribal Government ("Tribe") and has full power and authority under its Constitution to enter into this Agreement and to perform as contemplated herein for and on behalf of the Yavapai-Apache Nation, and that this Agreement constitutes a valid, binding, legal obligation of the Nation, and is enforceable against the Nation in accordance with and pursuant to the terms and conditions herein contained. Nation shall make no claim against the Design-Builder regarding monies that have been previously paid or that are due under this contract for work that has been previously performed or for Design-Builder's profit thereon, based on any claim that this agreement was entered into by the Owner without lawful authority, and the Owner expressly waives the right to make any such claim.

12.2. SUBSTANTIAL COMPLETION: As determined under Section 6.3 (f) above, the date of Substantial Completion of the Work of the Project or a designated portion thereof is the date when the construction is sufficiently complete in accordance with the Agreement that the Owner can occupy or utilize or, in fact, does occupy or utilize the Project or designated portion thereof for the use for which it was intended, whichever occurs first. Warranties established under this Agreement shall commence on the date of Substantial Completion of the Work or designated portion thereof.

- 12.3. **EXCUSABLE DELAY/FORCE MAJEURE:** Any delay or failure of Design-Builder in performing its obligations under this Agreement shall be excused to the extent caused by a force majeure event. A "force majeure event" means an event due to any cause(s) beyond Design-Builder's reasonable control, including but not limited to: acts of God; strike; labor dispute; terrorism; sabotage; war; embargo; explosion; fire; storm; flood; unusually severe weather; pandemic, national health care emergencies, accidents or delay in transportation; court-ordered injunction; delays by acts or orders of any governmental body; or the acts or omissions of Owner or its other contractors, vendors or suppliers. If a force majeure event delays Design-Builder's performance of the Work, and/or increases Design-Builder's cost to perform the Work or otherwise adversely affects Design-Builder's rights or obligations under this Agreement, then Owner and Design-Builder shall agree to amend the Contract Sum and/or extend Design-Builder's time for performance of the Work as necessary to overcome the adverse effects of such event on Design-Builder's rights or obligations
- 12.4. **TRANSFER OF TITLE:** Title to all materials and fixtures provided by Design-Builder to be incorporated into the Project shall pass to Owner upon delivery by Design-Builder to the Yavapai-Apache Nation Reservation and before being installed as part of the Project.
- 12.5. **ASSIGNMENT:** This Agreement may not be transferred, assigned or amended by any party, nor may any duty hereunder be delegated by any party, without written consent of both parties.
- 12.6. **MUTUALLY NEGOTIATED AGREEMENT:** The parties acknowledge this Agreement is a mutually-negotiated agreement and that the parties hereto have had an opportunity to have this Agreement reviewed by their respective legal counsel and the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.
- 12.7. **MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES:** Notwithstanding anything to the contrary in this Agreement, neither Party will be liable to the other Party for any special, indirect, incidental, punitive, exemplary or consequential damages or loss of revenue or profits of any kind arising from this Agreement, whether due to or based on delay, contract, tort, negligence, strict liability, warranty, indemnity, error and omission or any other cause whatsoever whether or not this Agreement is terminated and even if those damages were foreseeable or if the other Party has been advised of the possibility of those damages.
- 12.8. **LIMITATION OF LIABILITY:** Design-Builder's maximum aggregate liability for breach of any and all terms, conditions, representations, warranties, covenants, obligations or other provisions of the Agreement, or any and all claims arising out of the Project, whether arising in tort (including negligence), in contract (including breach of any provision hereof) or by reason of law, statute, strict liability or otherwise, will not individually or in the aggregate in any event or circumstance exceed: 1 - Design-Builder's available insurance limits as provided under Section 10 hereinabove, or; 2 - \$100,000 in total damages of any kind, when such damages are not covered by Design-Builder's insurance. These limitations of liability shall survive the completion or termination of this Agreement.
- 12.9. **COUNTERPARTS:** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. Any Party may execute this Agreement by facsimile or electronic signature and the other Party shall be entitled to rely on such facsimile or electronic signature as evidence that this Agreement has been duly executed by such Party. Any Party executing this Agreement by facsimile or electronic signature shall immediately forward to the other Parties an original signature page by overnight mail.
- 12.10. **INTEGRATION CLAUSE:** This Agreement contains all express or implied terms of the parties made in connection therewith, and no oral or other agreements or understandings, conflicting with or in addition to the provisions hereof, shall be of any effect unless in writing, signed by both parties hereto; and all alterations or changes to be made to this Agreement, if any, shall be subject to

further negotiations, and any such alterations or changes, if agreed upon, must be reduced to a writing signed by the parties.

- 12.11. **AUTHORITY TO ACT:** As a condition precedent to the effectiveness of this Agreement, Nation shall obtain any and all executed resolutions, approvals, and/or other actions of its Tribal Council which are or may be required to formally authorize, adopt and approve the provisions of this Agreement. Any such resolution, approval or other action shall be in written form acceptable to Design-Builder and Nation will provide Design-Builder with copies of such executed resolutions prior to execution of the Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and each hereby warrant and represent that their respective signatory whose signature appears below has been and is on the date of this Agreement duly authorized by all necessary and appropriate action to execute this Agreement which shall be effective as of the date first hereinabove written. It is the intention of all parties that this Agreement shall not be effective or binding upon, as against any other party, until signed by one of its duly authorized representatives.

I-5 Design-Build, Inc.	Yavapai-Apache Nation
Design-Builder	Nation/Owner
	
Signature	Jon Huey, Chairman
	Jon Huey
Printed Name	Printed Name
	4/22/21
Date	Date

ATTACHMENT A

PROJECT SCOPE OF WORK

1. Main Gaming and Tribal Heritage Display Areas:

- Design-Builder shall construct and install Custom Décor Features and Ceiling Structures as follows:
 - Illuminated ceiling feature designed exclusively for Cliff Castle Casino Hotel, to span over 100' in length above the gaming floor with internally illuminated acrylic on bottom face, and dark wood grain texture on sides. Ceiling feature also contains fully programmable color-changing lighting to highlight inner and outer soffits.
 - Central décor feature made up of eight decorative beams, a two-tiered octagon valance, dimensional native artwork panels, and a circular chandelier with reflective silver chain and color-changing lighting, all pre-manufactured in our state-of-the-art facility to ensure quality of final product and efficiency onsite.
 - Three-tiered square chandelier approximately 10' – 0" long with reflective silver chain located inside four-sided ceiling cove with cove lighting concealed in lower trim pieces.
 - Nine (9) specialty décor chandeliers, approximately 6' – 8" on each side, with custom acrylic faces and integrated color changing lighting system that ties in with the other ceiling features.
 - High-impact décor treatment for entry of remodeled non-smoking room, with 24' – 0" long specialty woodgrain header beam, supported by two decorative stone columns on either side of entry. Treatment also features mountain-themed display enhanced by premium bright-white LED lighting system for maximum impact.
 - Tribal heritage display area décor comprised of four (4) 9' – 10" stone columns, two (2) header beams with integrated lettering and lighting accents, and two (2) display cases to highlight the Yavapai-Apache Nation's heritage and achievements.
 - Approximately 11' – 6" tall by 11' – 6" wide, fully programmable 1.9mm resolution digital art feature at hotel entry to the gaming floor, creating an iconic view for this location that guests can capture and share.
 - Illuminated décor trellis system located above entry comprised of fifteen (15) individual cross beams with translucent amber acrylic on bottom face, six (6) multi-layered main beams light woodgrain accent, and one 38' – 0" long beam specialty woodgrain texture and integrated down-lighting to tie whole structure together.
 - Cashier area transformation, including overhead beam system with lettering, quartz countertops, custom casework finishes and lighting, stone columns, custom printed wall mural on upper soffit, and safety/germ barrier screens.
 - "Castle Club" area upgrade with stone columns, woodgrain header beam, illuminated acrylic lettering, and cove lighting to accent new custom printed tribal mural.
 - Internally illuminated signage throughout gaming space
- Premium wall coverings, new paint finishes, custom carpet flooring (including new custom carpet in "Club 52" to match new gaming floor carpet), acoustic ceiling, and custom designed printed wall murals throughout the remodeled gaming floor.
- Removal of existing soffits and walls as needed to complete renovation.
- All electrical wiring and hookup for LED screen displays, lighting, and illuminated signage and décor.
- Offsite pre-construction of architectural features and décor including application and pre-assembly of specialty finishes, and pre-integration of LED lighting systems for reduced onsite timeframes.
- Architectural drawings, expedited onsite implementation including general conditions, oversight and coordination of site activity, and overall project management.

2. Sportsbook Area:

- Design-Builder shall construct and install Custom Décor Features and Ceiling Structures as follows:
 - Entry Décor Valance with matte black painted finish on bottom face and specialty dark wood grain finish on sides spans over one hundred (100) linear feet, creating natural perimeter for new sports viewing area.
 - Nine (9) illuminated color-changing ceiling beams with custom programmable LED lighting creating a compelling and lively sportsbook atmosphere.
 - New entry column over 13' – 0" tall with illuminated "Sportsbook" lettering, custom printed mural, and painted trim.
 - 43' – 0" long décor valance at lower soffit along main viewing wall with woodgrain finish, also housing vibrant, high-impact LED lighting system.
 - Twenty (20) linear feet of new half wall railing system featuring custom geometric pattern placed along the perimeter of the redesigned space, separating the sportsbook from the main gaming area.
- Demolition and disposal of existing finishes.
- Complete lounge furniture package including luxury leather seating options.
- New paint finishes, premium wallcoverings, and carpet.
- Modifications to fire suppression system to accommodate new ceiling décor.
- Electrical hookup of all new decor, signage and lighting including power requirements for sportsbook remodel.
- Offsite pre-construction of architectural features and décor including application and pre-assembly of specialty finishes, and pre-integration of LED lighting systems for reduced onsite timeframes.
- Architectural drawings, expedited onsite implementation including general conditions, oversight and coordination of site activity, and overall project management.

3. High Limit Gaming Area:

- Design-Builder shall construct and install Custom Décor Features and Ceiling Structures as follows:
 - Entry décor valance with internally illuminated "High Limit Gaming" lettering and finishes of wood grain, painted matte black, and earth-toned dimensional tribal pattern enhanced by LED cove lighting system.
 - Seven (7) custom made accent columns, each 11' – 0" tall, on side walls of the high limit gaming area with integrated LED lighting to tie in with ceiling fixtures.
 - Three (3) illuminated ceiling beams with amber acrylic bottom face and wood grain finish on sides illuminated internally with high-impact LED lighting system. One beam to be 31' – 6" tall, with two larger beams measuring 42' – 6" long.
 - Three (3) square chandeliers with outer custom dyed translucent acrylic shade surrounding central lighting shade, approximately 4' – 8" wide, also illuminated with premium LED lighting system.
 - Five (5) 9' – 5" by 3' – 5" dimensional wall art panels positioned between columns featuring tribal pattern and stood off of walls to create artistic shadow.
- Modifications to existing soffits as necessary to complete new design.
- Demolition and disposal of existing finishes.
- Premium wall coverings, new paint finishes, acoustic ceiling, and custom carpet pattern to provide extensive floor to ceiling upgrade.
- Electrical wiring and hookup as required for lighting, new illuminated signage, and décor features.

- Offsite pre-construction of architectural features and décor including application and pre-assembly of specialty finishes, and pre-integration of LED lighting systems for reduced onsite timeframes.
- Architectural drawings, expedited onsite implementation including general conditions, oversight and coordination of site activity, and overall project management.

4. Porte Cochere Upgrade:

- Design-Builder shall construct and install Custom Décor Features and Structures as follows:
 - Dimensional mountain silhouette decor features backlit with RGB color changing exterior LED lighting system mounted along outside perimeter of the entry structure, as per the design renderings.
 - Three (3) sets of illuminated channel letters on each side of remodeled porte cochere, with two sides reading "Cliff Castle Casino" and face side reading "Casino". "Casino" lettering to be approximately 3' – 0" tall, with "Cliff Castle" lettering to be approximately 1' – 0" in height.
 - New bottom lighting trim and upper cap to follow the outside perimeter of the porte cochere, with the bottom trim to house RGB programmable exterior grade LED lighting system, and the upper cap creating a surface to catch the lighting
 - New lower soffit along inside perimeter of the entry area, with LED can lights integrated into bottom face of new structure to provide ambient lighting for guests as they arrive at the casino entry.
 - Large custom chandelier approximately 10' - 0" in length and width to be mounted centrally in the remodeled porte cochere, comprised of a matte black painted support frame, translucent acrylic faces, and an internal high-impact LED lighting system.
 - Sixteen (16) custom-made tapered beams, each over 17' in length, positioned on inside of each corner of new porte cochere
 - Dimensional lettering above casino entry painted earth-toned brown to match exterior finishes reading "Welcome to Cliff Castle Casino"
- Modifications and repair of existing EIFS to accommodate new finishes and textures
- New exterior-grade paint finishes and can lights complete upgrade of the exterior.
- Demolition and disposal of existing signage and finishes.
- Electrical wiring and hookup as required for lighting, new illuminated signage, and décor features.
- Offsite pre-construction of architectural features and décor including application and pre-assembly of specialty finishes, and pre-integration of LED lighting systems for reduced onsite timeframes.
- Architectural drawings, expedited onsite implementation including general conditions, oversight and coordination of site activity, and overall project management.
- Delivery of all pre-manufactured materials and components to the Project site, cliff Castle Casino, Camp Verde, Arizona.
- Onsite Installation of all listed components above is included by I-5 Design Build.

5. Design-Builder shall construct install an Upgrade of Existing 'Archway' Entrance Signage as follows:

- Existing archway signage to be upgraded including new, internally illuminated central signage display spanning approximately 45'-0" feet across the roadway at the approach to the property, as per design renderings. Internally illuminated lighting bands and dimensional lettering mounted to face and back of feature provide excellent impact and visibility for the upgraded signage. Earth-toned painted finishes to be applied to the main body of the feature with LED accent lighting system mounted to bottom trim piece.
- Demolition and disposal of existing signage and finishes.
- Electrical wiring and hookup as required for LED lighting and new illuminated signage.

- Offsite pre-construction of features including application and pre-assembly of specialty finishes, and pre-integration of LED lighting systems for reduced onsite timeframes.
- Architectural drawings, expedited onsite implementation including general conditions, oversight and coordination of site activity, and overall project management.

EXCLUSIONS FROM DESIGN BUILDER'S SCOPE OF WORK/OWNER RESPONSIBILITIES

1. **The following Work is not included in Design-Builder's Project Scope of Work and will be performed by the Owner at Owner's sole expense:**
 - Relocation/movement of gaming machines, including bar top slot machines, as required for the Project, including all needed electrical and data wiring and hookup, power-down and start-up of games as needed, and any other items or work pertaining to relocating/moving gaming machines or gaming equipment, including any regulatory requirements.
 - All work pertaining to surveillance system, ATM machines, POS units, computer systems, phone systems, speaker systems, gaming chairs (other than bar stools specifically listed in I-5 Design scope of Work under Section 1 above), any other systems under oversight of the casino or gaming commission, including any electrical or low voltage removal or hookup associated with changes needed for any of these systems.
 - TV displays and content distribution system for TVs to be by Owner.
 - Technology package for Sports Book to be by Owner / Owner's Sports Book vendor.
 - The Contract Sum is based on the existing electrical system/service being adequate for the new loads. Any additional service panels or upgrades to existing electrical system/service will be an additional cost to be provided by Owner. If additional design or engineering work is required to upgrade the electrical system due to unforeseen conditions, I-5 shall provide Owner with a proposal for such additional work, and shall proceed only upon written agreement between the parties covering any additional time and/or cost as a result of such additional work.
 - Any fees or costs associated with any required testing or inspections shall be paid by Owner.
 - Environmental checklist, environmental impact statement, or any hazardous material mitigation/site soils remediation.
 - Any TERO fees, TERO labor wages, Tribal taxes, or additional costs arising because of the requirement to use TERO subcontractors or labor for the project, shall be an additional cost to the Owner and are excluded.
 - The Contract Sum, as defined in the Agreement, is based on the Owner's tax-exempt status, and there will be no sales or use tax applicable to this Project. Any sales or use tax determined to be applicable for the Project, or any tax imposed by the Yavapai–Apache Nation, shall be an additional cost to the Owner.
 - Design-Builder's performance is conditioned on Owner fulfilling its Work responsibilities set forth in this Agreement.
 - Unforeseen or concealed site conditions, any changes, or any other services or work not specifically listed in the Scope of Work set forth in this Attachment.
2. The Contract Sum, as defined in the Agreement, is based on the understanding that since this Project is on sovereign tribal land, no permits are required for the Project. In the event that it is determined that any permits are required, the Contract Sum will be equitably adjusted to compensate the Design-Builder for any additional work or costs to comply, and the Project timeframe will be extended.

3. Any work to the casino's existing structural, mechanical, electrical, plumbing, fire protection, fire alarm, natural gas, propane, or other structural or infrastructure systems as may be required to accommodate and accept Design-Builder's Work is excluded from the Project Scope of Work under this Agreement. Any changes or upgrades to the existing structure or infrastructure systems, whether required by Owner or Owner's designated inspector, or needed to comply with code requirements as defined in this Agreement and/or by Owner's direction, whether or not necessitated by the Project, are not a part of this Contract and, if needed, shall be an additional cost or separately contracted and coordinated by the Owner or its representatives.
4. If the Owner has an inspection entity or uses an independent inspection service and requires inspection as part of the Project, any additional time or cost incurred because of inspection, or requirements which come from the inspection, whether part of the existing infrastructure or existing structure or brought about by the Project, shall be in addition to and separate from this Agreement. Delays caused by the inspection entity beyond the response time specified in their agreement directly with the Owner may as a result incur additional time or cost for the project. If there are any changes to the Project Scope of Work, whether as a result of any inspection requirement, or licensing requirement, or requested by Owner, or due to unforeseen site conditions, or project obstructions, or additional items brought up by the Owner, or necessitated by compliance for code standards, or changes or upgrades that are needed for the existing structure or infrastructure systems that are not specifically included in the Project Scope of Work set forth in this Attachment, or impediments to the Project, it is understood that the overall timeframe (Schedule) and Contract Sum will be adjusted equitably. Design-Builder will communicate with Owner in writing for approvals or cost changes (Change Order) prior to any additional work being performed. Any agreements reflecting changes in the Project Scope of Work, timeframes, and/or Contract sum shall be set forth in a Change Order.
5. The Project Scope of Work and Contract Sum do not include bringing the existing building's structural or infrastructure systems (such as existing civil, mechanical, electrical, fire safety, plumbing, natural gas, propane, or any other structural and infrastructure systems) into compliance with the current building or ADA codes or such code compliance as is required under the Agreement. If any upgrades or changes are needed to any existing building structure or infrastructure systems to bring them into compliance with any applicable code requirements (including requirements as specified under the Agreement), such upgrades or changes, including any costs associated therewith, shall be the sole responsibility of the Owner and Owner will hold Design-Builder harmless in connection with any such failure to conform to such code requirements. Design-Builder's scope of work does not include a review of the existing building's structural or infrastructure systems for conformance with applicable codes and Owner represents that these systems are code-compliant. However, prior to completion of the Project Plans, Design-Builder will perform a preliminary walk-through of the casino areas being remodeled and shall identify any reasonably apparent code deficiencies in the existing structure or infrastructure systems which may affect the planned remodel work. Any such code deficiencies of which the Design-Builder becomes aware shall be communicated in writing to the Owner as soon as reasonably possible. Owner and Design-builder shall determine the appropriate solution for addressing the identified deficiencies as needed to integrate the remodel work into the existing structure or infrastructure systems. Design Builder will thereafter incorporate the agreed upon solution into the Project Plans. Any additional costs associated with design of the proposed solution(s) shall be communicated to the Owner, and design of such solution(s) shall proceed only upon written agreement between the parties. Owner reserves the right to have Owner's Plan Review Consultant participate in the walk-through.
6. The Contract Sum assumes standard installation conditions with the porte cochere/entry area and portions of the gaming floor closed during the Project installation. It also assumes that the existing structure can support the additional weight of any new elements being added as part of the Project. I-5 will include approximate weights and structural information for the elements to be suspended as part of the project plans, which will be reviewed by Owners Plan Review Consultant. If additional

structural support is needed, Design-Builder will communicate the additional cost and time to the Owner prior to installation, and the Contract Sum and project schedule shall be equitably adjusted accordingly, without penalty to the Design-Builder.

7. Design-Builder shall have sole and exclusive control over means and methods of construction for I-5's Project Scope of Work. Design-Builder will select all colors, finishes, materials, and products needed as a part of I-5's Project Scope of Work consistent with the Pre-Contract Design Build Program Renderings (**Attachment B**) and shall provide the Owner with material samples of the project finishes for approval. No other samples, submittals or shop drawings other than these will be submitted for approval. Closeout for the Project will consist of a final walk through with the Owner upon Substantial Completion and delivery of an O&M manual including product information for the elements installed by I-5 Design Build as part of the Project.
8. Owner expressly authorizes and agrees Design-Builder may rely on the accuracy of any existing reports (including but not limited to surveys, engineering reports, as-built drawings, or other documentation indicating the present condition of Owner's casino building) furnished by Owner. However, such reliance shall not relieve Design-Builder of the responsibility to inspect the casino building to identify any conditions that will require modifications to accommodate and accept Design-Builder's Work.
9. Matching Existing Material: The Owner agrees that the Design-Builder is limited in matching existing materials such as stucco, dry wall, paint, wood, tile, flooring, concrete, roofing, interior woodwork and the like, and therefore, exact duplication and matching texture and color cannot be guaranteed. While Design-Builder will make every effort to provide the closest possible matching texture and color, variations within industry tolerance will be considered acceptable by Owner.
10. Cracking of Concrete, Stucco and Drywall: Design-Builder is not responsible for any surface cracking in new concrete, stucco, and/or drywall which develops after installation, provided proper installation procedures were followed. Any rework of these surfaces shall be billed to Owner on a time and materials basis.
11. Signs and Promotion: Design-Builder is authorized to display signs stating Design-Builder's identity and connection to the Project until final completion of the Work. Design-Builder is authorized to take and display photographs and video footage of the Project and use such photos and/or videos in its promotional material, as well as allow other clients to view the Project area for promotional purposes.
12. Access to the Work and Utilities: Consistent with Owner's COVID-19 health care requirements and restrictions, Owner shall grant free access to Work areas for workers and vehicles and shall allow storage of materials and construction debris. Owner shall supply all required utilities including but not limited to electric power to the job site at its expense.