



# Yavapai-Apache Nation

## Tribal Housing

P.O. Box 3310 - 1500 E. Cherry Creek Rd. – Camp Verde, AZ 86322

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### REQUEST FOR PROPOSAL (RFP) – CONSTRUCTION SERVICES FOR THE YAVAPAI-APACHE NATION LIMITED PARTNERSHIP #9 SHALLOW UTILITIES INSTALLATION

The Yavapai-Apache Nation Tribal Housing department (YANTH) is actively constructing new homes and community amenities. Limited Partnership #9 is a 38-unit new home project. YANTH is soliciting proposals from qualified firms/individuals for Construction Services related to the installation of the Shallow Utilities. The prepared APS and other conduit construction plans are available for review and/or pickup at the Tribal Housing office located at 1500 E. Cherry Creek Road in Camp Verde, AZ.

The background, proposal requirements, and timeline are as follows:

#### **I. PROJECT DESCRIPTION**

The housing project is located on the Yavapai-Apache Nation Reservation near the intersection of Hwy 260 and E. Cherry Creek Road in Camp Verde, AZ. More accurately, the homes will be adjacent to Limited Partnership #8, which is currently under construction. Funding for this project is being provided through our Low Income Housing Tax Credit #9 award. Construction for the shallow utilities is expected to begin in February of 2025.

#### **II. SCOPE OF WORK**

The submissions in response to the RFP (“the Proposal”) must meet the objectives and the functional requirements of the Scope of Work. Below is a basic list of objectives that must be minimally met.

1. Installation of conduit for both APS and Communications with one additional 2" conduit for future expansion of services
2. All transformer pads to be installed per drawings
3. Proposal to include all conduit needed to tie all power and communication services together
4. Must coordinate inspections with APS
  - a. Any deviation from the approved materials shall be approved in writing by YANTH, the Project Architect, or other designated entity.
7. Comply with all rules and regulations of health, public, and/or other authorities controlling or limiting the methods and materials to be used, or the actions of those engaged in this kind of work.
8. Contractor shall comply with all tribal and federal regulations applicable to project.

### **III. PROJECT CONSTRUCTION REQUIREMENTS**

This project has been designed and engineered prior to this advertisement and all drawings and specifications provided outline the necessary requirements to successfully complete the project.

All finishes will be contracted out to other contractors, so coordination with others may be required. YANTH's Project Manager or Site Foreman shall be responsible for ensuring communication between necessary parties.

**Please note that Yavapai-Apache Sand & Rock must be your sole source for concrete, shade and asphalt materials.**

### **IV. PROJECT TERMS & CONDITIONS**

Please see the sample Contract that is included with this RFP. This contract outlines the agreement between the contractor and YANTH, including but not limited to the Scope of Work, Duties, Rights, and Responsibilities, Contract Sum, Insurance requirements, Retainage, Governing Law, Warranty, and TERO compliance.

Note: The following items constitute a general description of the terms and conditions applying to this project:

- Native American Preference. Preference in the award of contracts shall be given to Indian-owned firms.

- Notice of Award. YANTH will issue a Notice to Proceed after terms and conditions are finalized and the contract is approved by Resolution.
- Performance and Payment Bonds: are not applicable to this project.
- Start Date and Final Completion Date. YANTH will include in the Notice to Proceed.
- Materials Submission. The Construction Contractor will be required to forward proposed material to YANTH for final approval.
- Project Retainage. Per the Financial Procedures of YANTH, 5% of all construction contract payments will be withheld as insurance of proper performance of the contract.
- Change Orders. All change orders, including time and material change orders, must be approved by YANTH and must be in written format.
- Davis Bacon Labor Rates are not applicable to this project.
- Tribal Employment Rights Ordinance. The Construction Contractor agrees to comply with procedures set forth in the Tribal Employment Rights Ordinance ("TERO") of the Yavapai-Apache Nation, a copy of which is attached to this RFP.
- Eligible Workers. The Construction Contractor shall ensure that all employees complete the I-9 form to certify that they are eligible for lawful employment under the Immigration and Nationality Act (8 USC 1324a) shall comply with regulations regarding certification and retention of the completed forms.

## **V. SELECTION & EVALUATION CRITERIA**

All bids will be opened by our staff at 9:00 am the day after the deadline for submission, with an impartial witness present. This will be a public opening, so attendance is optional. The location will be the Housing office located at 1500 E. Cherry Creek Road in Camp Verde, AZ. The lowest bid will then be qualified prior to the award announcement. Qualification will include Indian Preference (if applicable), references, history with tribal projects, and construction details (start date, length of construction, etc.)

For questions on the specs or drawings, please contact Dave Schreiner at 970-989-5537 or email at [dschreiner@yan-tribe.org](mailto:dschreiner@yan-tribe.org). You may also contact Sharie Benson at [sbenson@yan-tribe.org](mailto:sbenson@yan-tribe.org) or 928-830-2660.

## VI. SUBMISSION INFORMATION

Please follow the guidelines set forth below when submitting bids:

- Bids will be due at our Housing office, located at 1500 E. Cherry Creek Road in Camp Verde by Wednesday February 5, 2025 at 4:00 pm AZ time. Emailed bids will be accepted at the following email addresses:

[dschreiner@yan-tribe.org](mailto:dschreiner@yan-tribe.org) and [sbenson@yan-tribe.org](mailto:sbenson@yan-tribe.org)

**It is extremely important for you to confirm that we have received your email submission, as firewalls sometimes block emails from getting through.**

- Job title should be "Yavapai-Apache Nation Limited Partnership #9 – Shallow Utilities"
- Each division/trade must be bid separately and clearly marked as such (only when applicable)
- Do not include any sales tax in your costs – the Nation does not pay sales tax on jobs within its boundaries. AZ Form 5000 will be provided to those contractors receiving construction awards.
- If you would like to be considered for Indian Preference, please submit documentation showing that your business is Indian-owned. To qualify for this preference, 60% of your business must be Indian owned and documented through tax returns and CIB.
- Do not include TERO fees in your bid – this will be determined at a later date
- All bids are to be sealed and submitted with the following information included:
  1. Contact name, address, telephone number, and e-mail address.
  2. Detailed description of skills, experience, and ability to meet project requirements.
  3. Estimated quantities of materials being used
  4. Statement of acceptance, ability, and willingness to enter into a Construction Services Contract
  5. Estimated duration for project completion
  6. Total price with all labor, materials, and miscellaneous included
  7. Available to start date
  8. List of client references including project type, dates, and description

**CONSTRUCTION CONTRACT  
BETWEEN  
YAVAPAI-APACHE NATION TRIBAL HOUSING  
AND  
\_\_\_\_\_ (contractor name)  
\_\_\_\_\_ (Date)  
CONTRACT NUMBER: \_\_\_\_\_ (contract #)  
YAVAPAI-APACHE HOMES PROJECT**

THIS CONTRACT (hereinafter "Contract") is by and between the Yavapai-Apache Nation Tribal Housing, whose place of business is P.O. Box 3310, 1500 East Cherry Creek Road, Camp Verde Arizona, 86322 (hereinafter "YANTH"), and Contractor Name and address (hereinafter "Contractor").

**PROJECT DESCRIPTION:** \_\_\_\_\_

**PROJECT LOCATION:** Yavapai-Apache Nation Reservation \_\_\_\_\_

**CONTRACTOR AND CONTACT INFORMATION:** Contractor name, address, and \_\_\_\_\_

**RECITALS**

**WHEREAS:** YANTH is the General Contractor for the construction of XXXXXXXXXXXX as part of YANTH's XXXXXX Project (the "Project") within the Yavapai-Apache Nation's XXXXXX Community, Camp Verde Arizona; and

**WHEREAS:** Contractor has been selected by YANTH to provide Work for the Project as specified in this Contract.

NOW THEREFORE, in consideration of the recitals set forth above, which are hereby incorporated herein as part of this Contract, and the mutual covenants, terms, conditions, and undertakings hereinafter set forth, YANTH and Contractor agree as follows:

**ARTICLE 1  
THE CONTRACT DOCUMENTS**

1.1 The Contract Documents under this Contract consist of this Contract, Contractor's Bid Proposal dated MONTH, DATE, YEAR, and Schedules A, B, and C, which are attached hereto, incorporated herein and made a part of this Contract, as well as all addenda and modifications to this Contract entered into between YANTH and Contractor and agreed upon by the parties under Article 7 of this Contract. These Contract Documents form the Contract and are as fully a part of this Contract as if attached to this Contract or fully set forth verbatim herein. Any inconsistency between this Contract and Schedules A, B, and C shall be resolved exclusively by reference to this Contract.

A Modification is: (1) a written amendment to this Contract signed by both parties; (2) a Change Order; or (3) a Written Order for a Minor Change in the Work issued by YANTH under Article 7.

1.2 **Schedule A** sets forth a work plan and budget for the contract describing:

- (a) The type of work to be performed;
- (b) The quantity of work to be performed;

- (c) The unit cost for each type of work (if applicable);
  - (d) The maximum budget for work to be performed; and
  - (e) The schedule of payments to Contractor under this Contract
- 1.3 **Schedule B** consists of the Drawings and Specifications that the Contractor has fully examined and shall be relied on in completing the work to YANTH's satisfaction.
- 1.4 **Schedule C** sets forth the Special Conditions to this Contract (if any).
- 1.5 The parties intend that the Contract Documents include provisions for all labor, materials, and other items necessary for the execution and completion of the Work, and all terms and conditions of payment. The Contractor represents that it has carefully reviewed and examined all of the Contract Documents and that any and all errors, omissions, ambiguities, and inconsistencies have been reported to YANTH in writing and resolved to Contractor's satisfaction.
- 1.6 Nothing contained in the Contract Documents shall create any contractual relationship between YANTH and any of Contractor's materialmen, suppliers, subcontractors, or their agents and employees.

**ARTICLE 2**  
**SCOPE OF WORK**

- 2.1 **General Description of Work.** The Work to be provided by Contractor under this Contract includes all labor and materials to be incorporated into the Project as provided in the Contract Documents (the "Work"): \_\_\_\_\_ all as described in Contractor's Proposal of MONTH, DATE, YEAR and as required by the Drawings and Specifications incorporated under Schedule B of this Contract.
- 2.2 The Work comprises the completed Work as described under Section 2.1 above and related work required by the Contract Documents and includes all work specifically indicated by the Contract Documents, and all labor, materials and tools necessary to complete such work; and all materials and equipment incorporated, or which may become incorporated into the Work.
- 2.3 **General Contract Work.** Contractor shall perform, arrange for, supervise, and manage the Work, and further agrees to perform such other work as may be requested or assigned by YANTH as follows:
- (a) to undertake direct responsibility for the performance of the Work and to complete all Work as specified or indicated in the Contract Documents; and
  - (b) to provide directly, through subcontractors, or as otherwise permitted by this Contract, all labor, materials, equipment, supervision, and do all things necessary to assure proper performance of the Work; and
  - (c) to provide for review and payment of subcontractors' and material suppliers' and other related invoices.
- 2.4 **Additional Work.** Additional Work includes all types of work not described in Schedule A. Contractor will undertake additional work only upon direction from YANTH. Additional Work must be authorized by YANTH in writing as provided by Article 7 of this Contract.
- 2.5 Contractor represents that it has acquainted itself with the site plan, labor, and materials required

for the Work and that such plans, labor and materials are, or will be, available to Contractor when necessary for the performance of Contractor's Work.

### ARTICLE 3

#### **CONTRACTOR'S DUTIES, RIGHTS, AND RESPONSIBILITIES**

- 3.1 Contractor's principal contact information for the Project is:
- (a) Principal Contact: \_\_\_\_\_
  - (b) Address: \_\_\_\_\_
  - (c) Phone: Office: \_\_\_\_\_
  - (d) Email: \_\_\_\_\_
- 3.2 Contractor's general duties and rights in connection with this Contract are:
- (a) Contractor shall be solely responsible for all Work performed under this Contract, including the techniques, sequences, procedures, means, and coordination of all Work. Contractor shall supervise and direct the Work to the best of its ability and give it all the attention necessary for such proper supervision.
  - (b) Contractor shall at all times maintain responsibility for discipline among its employees and agrees to employ only persons fit and with sufficient skill to perform the job for which they are employed.
  - (c) Unless otherwise provided in approved subcontracts, Contractor shall provide and pay for all materials and equipment, including tools, construction equipment, and machinery as are necessary for the proper completion of the Work in accordance with the Contract Documents.
  - (d) Contractor shall obtain a certificate of compliance from its suppliers stating that the supplier's product meets or exceeds either standard specifications or any particular specifications as are specified in the Contract Documents.
  - (e) Contractor shall keep familiar with the progress and quality of the Work being done and will make general determinations as to whether the Work is proceeding in accordance with the Contract Documents. Contractor will be responsible for the means by which the Work is performed, and for the sequence, methods, and procedures used therein, so as to assure that all Work is performed in a professional workman-like manner.
  - (f) Contractor shall be responsible to YANTH for the acts and omissions of its employees, subcontractors, and their agents and employees, and other persons performing any of the Work under a contract with Contractor.
  - (g) The Contractor shall at all times keep the work-site free from accumulation of waste materials or rubbish caused by its operations. Such cleanup shall take place no less frequently than daily and shall include any material placed or discarded on adjacent work. Contractor shall be liable for any damages to adjacent surfaces caused by his Work, including the cleaning of his material from other surfaces. If Contractor fails to keep the premises clean in accordance with the requirements of this Section 3.2(g), YANTH may, at Contractor's expense, clean up Contractor's trash and debris and deduct the cost of said cleaning from the Contract amount. Contractor shall remove all trash and debris from the Project to an approved waste disposal facility or to an EPA approved waste facility in the case of all hazardous materials.

- (h) The Contractor is responsible for the hauling and disposal of all hazardous materials, chemicals, and toxic waste associated with its Work (if any) to proper facilities. **If hazardous materials are involved in the Work under this Contract**, the Contractor shall submit a draft Environmental Compliance Plan (“Plan”) to YANTH within 20 days of the receipt of the Notice of Award. The Environmental Compliance Plan will be discussed and will either be accepted or returned for revisions at a preconstruction conference. The Plan must detail the permits, testing, reports, and actions that Contractor proposes to do to comply with the applicable laws and regulations controlling pollution of the environment. The Contractor may contact the Nation’s Environmental Protection Office for more information at (928) 649-6953.
- (i) When the Contractor considers that the Work, or a designated portion thereof which is acceptable to YANTH, is substantially complete as defined in the Contract Documents, the Contractor shall prepare and submit to YANTH an initial list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents. Contractor shall promptly correct all deficiencies noted on its list and any list prepared by YANTH or by any of YANTH’s designated representatives.
- (j) Substantial completion means the time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of YANTH or its designated Engineer, the Work, (or a specified part thereof) is sufficiently complete, in accordance with the contract documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to substantial completion of such Work.
- 3.3 Record Keeping. Contractor shall keep files and records of work orders, work schedules, subcontracts, material, contractual invoices, certification of completed Work, and other data relevant to the performance of this Contract for three years after final payment and all other pending matters are closed. Contractor shall provide access to such books and records, during normal business hours, to officers and representatives of YANTH for examination and copying at YANTH’s cost.
- 3.4 Emergency Procedures. In any emergency affecting the immediate safety of persons or property, Contractor shall act, at its discretion, to prevent threatened damage, injury, or loss. Any additional compensation or extension of time claimed by Contractor on account of emergency work shall be determined as provided in Article 7 for changes in the Work.
- 3.5 Compliance with Laws and Regulations. Contractor shall comply with all laws, ordinances, rules, regulations, or orders of the Yavapai-Apache Nation and applicable Federal laws and regulations relating to the performance of the Work.
- 3.6 Safety precautions and Programs. Contractor has the duty of providing for and overseeing all safety orders, precautions, and programs necessary to the reasonable safety of person and property associated with the Work, including traffic control. Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including a listing of emergency facilities and telephone numbers, posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying YANTH and users of adjacent facilities and utilities. Contractor agrees to indemnify YANTH to the fullest



extent allowed by law for any and all claims arising out of the failure of Contractor to comply with this Section.

- 3.7 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

#### ARTICLE 4

##### **YANTH'S DUTIES, RIGHTS, AND RESPONSIBILITIES**

- 4.1 YANTH's Principal Contact with Contractor for the Project shall be YANTH's Project Manager as follows:
- (a) YANTH's Project Manager: David Schreiner
  - (b) Address: 1500 E. Cherry Creek Rd. – P.O. Box 3310  
Camp Verde, AZ 86322
  - (c) Phone: Office (928) 567-4191, Cell (970) 989-5537, Fax (928) 567-5310
  - (d) Email: dschreiner@yan-tribe.org
- 4.2 Information or services under YANTH's control and reasonably necessary to the completion of the Work shall be furnished to Contractor by YANTH with reasonable promptness to avoid delay in the orderly progress of the Work.
- 4.3 YANTH shall cooperate with Contractor in scheduling and performing its work to avoid conflicts or interference in Contractor's Work and shall expedite written responses to the submittals made by Contractor in accordance with this Contract. Contractor shall be notified promptly of any subsequent changes in the scheduled work and any additional scheduling details.
- 4.4 YANTH's Right to Cure Deficiencies. If Contractor defaults or neglects to carry out the Work in accordance with this Contract and fails within three working days after receipt of written notice from YANTH to commence and continue correction of such default or neglect with diligence and promptness, YANTH may, after three days following receipt by Contractor of an additional written notice, and without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payments then and thereafter due Contractor. In the event of an emergency or failure to perform emergency work, written notice shall be waived.
- 4.5 YANTH's Right to Perform Work and To Award Separate Contracts. YANTH reserves the right to perform work related to the Project with its own forces, and to award separate contracts in connection with other portions of the project or other work under these or similar conditions of the Contract. If Contractor claims that delay or additional cost is involved because of such action by YANTH, it shall make such claim as provided elsewhere in the Contract Documents. If any part of Contractor's Work depends for proper execution or results upon the work of YANTH or any separate contractor, Contractor shall, prior to proceeding with the Work, promptly report to YANTH any apparent discrepancies or defects in such other work that may render it unsuitable for such proper execution and results. Failure of Contractor to so report shall constitute an acceptance of YANTH's or the separate contractor's work as fit and proper to receive Contractor's Work, except as to defects that may subsequently become apparent in such work.

#### ARTICLE 5

##### **TIME OF COMMENCEMENT AND TERM**

- 5.1 Contractor agrees to commence Work on the project based on the **NOTICE TO PROCEED**. All Work will be performed on a scheduled, orderly basis, and shall be **substantially complete no later than the contract time set forth in the Notice to Proceed** (the "Contract Time").

- 5.2 Days of Work. Contractor shall not perform Work on Saturdays, Sundays, or any declared government holidays unless YANTH grants Contractor permission to work upon advance written application by Contractor.

**ARTICLE 6**  
**THE CONTRACT SUM**

As full compensation for Contractor's performance of the Work under this Contract, YANTH shall pay Contractor, inclusive of all fees and expenses and subject to additions or deductions by change order, **the sum not to exceed \$XXX,XXX.XX (the "Contract Sum")**.

- 6.1 The Contract Sum shall be paid in accordance with the Payment Schedule set out in Schedule A.
- 6.2 The Contract Sum may be increased or decreased for changes in the Work as provided in Article 7 below, in conformance with the Contract Documents.

**ARTICLE 7**  
**CHANGE ORDERS AND CONTRACT MODIFICATIONS**

- 7.1 Change Orders. A Change Order is a written order to Contractor signed by YANTH issued after execution of the Contract authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order. A Change Order signed by Contractor indicates its agreement therewith, including any adjustment in the Contract Sum or the Contract Time.

**All Change Orders shall be determined by mutual written agreement of YANTH and Contractor before commencement of the work involved in the change.**

- (a) Contractor may be ordered in writing by YANTH, without invalidating this Contract, to make changes in the Work within the general scope of this Contract consisting of additions, deletions, or other revisions; and the Contract Sum shall be adjusted accordingly. Contractor, prior to the commencement of such changed or revised work, shall submit promptly to YANTH written copies of any claim for adjustment to the Contract Sum and/or Contract Time for such revised Work in a manner consistent with the Contract Documents.
- (b) Contractor may issue Change Orders to subcontractors; however, such change orders shall not affect the Contract Sum and/or Contract Time unless they are ordered by YANTH as provided by this Article.
- (c) Contractor shall not be entitled to an adjustment in Contract Sum or Contract Time for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- (d) Contractor's entitlement to an adjustment of Contract Times or Contract Sum is limited as follows:
1. Contractor's entitlement to an adjustment of the Contract Time is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.

2. Contractor shall not be entitled to an adjustment in Contract Sum for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Time to which Contractor is otherwise entitled.

- 7.2 Claims for Additional Cost. If Contractor wishes to make a claim or request for an increase in the Contract Sum, it shall give YANTH written notice thereof, with a complete breakdown of how the costs were arrived at, within ten days after the occurrence of the event giving rise to such claim. The notice shall be given to YANTH by Contractor before proceeding to execute the Work, except in an emergency endangering life or property, in which case Contractor shall proceed in accordance with Article 3, Section 3.4. To be valid, any change in the Contract Sum resulting from such claim shall be authorized by YANTH by written Change Order. Contractor shall make all claims promptly to YANTH for additional cost and damages for delays or other causes in accordance with the Contract Documents.
- 7.3 Each Contractor request or Change Proposal seeking an increase in Contract Time or Contract Sum (a "modification") must be supplemented by supporting data that sets forth in detail the following:
1. The circumstances that form the basis for the requested modification;
  2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
  3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work; and
  4. The number of days' increase in Contract Time claimed as a consequence of each such cause of delay, disruption, or interference.
- 7.4 If it is necessary to modify the Work, Contractor will notify YANTH when such modifications are considered necessary; provided, however, that Contractor may not exceed the Contract Sum set forth in Article 6 without the prior written consent of YANTH set forth in a Change Order.
- 7.5 The cost or credit to YANTH resulting in a change or modification of the Work shall be determined in one or more of the following ways:
- (a) by mutual acceptance of a lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation;
  - (b) by unit prices stated in Schedule A or subsequently agreed upon; and/or
  - (c) by cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee.
- 7.6 Any Modifications must be agreed upon in writing by Contractor and YANTH and upon said mutual agreement, as set forth in a Change Order, will become a part of this Contract.

## ARTICLE 8 SUBCONTRACTS

- 8.1 Contractor shall not assign this Contract without the consent of YANTH, nor subcontract the whole of this Contract without the consent of YANTH, nor further subcontract portions of this

Contract without written notification to YANTH. Contractor shall not assign any amounts due or to become due under this Contract without written notice to YANTH. As soon as practicable after the execution of the Contract, Contractor shall furnish to YANTH in writing, the names of the persons or entities (including those who are to furnish materials or equipment) proposed for each portion of the Work. YANTH will, within five working days, reply to Contractor in writing stating whether YANTH after due investigation, has reasonable objection to any such proposed person or entity. Failure of YANTH to reply within five working days shall constitute notice of no reasonable objection.

- 8.2 Contractor retains the right to select and hire subcontractors. A subcontractor, for the purposes of this Contract, shall be a person with whom Contractor has a direct contract for work. Contractor agrees not to employ any subcontractor to whose employment YANTH reasonably objects, nor shall Contractor be required to hire a subcontractor to whose employment it reasonably objects.
- 8.3 All of Contractor's subcontractors shall be bound to Contractor by the terms of this Contract to the extent that provisions of the Contract Documents between YANTH and Contractor apply to the Work of the subcontractor as defined in this Contract. The subcontractor shall assume toward Contractor all the obligations and responsibilities which Contractor, by these documents, assumes toward YANTH, and shall have the benefit of all rights, remedies, and redress against Contractor which Contractor, by these documents, has against YANTH, insofar as applicable to this Contract, provided that where any provision of the Contract Documents between Contractor and the subcontractor is inconsistent with any provision of this Contract, this Contract shall govern.
- 8.4 Subcontractors may, at the discretion of Contractor or YANTH, be required to furnish performance and payment bonds as security for the faithful performance and payment of all obligations under the subcontract documents. These bonds shall be in amounts at least equal to the subcontract price and in such form and with such sureties as are acceptable to Contractor and YANTH. If bonds are required, the Contract Sum will be adjusted to include the cost of said bonds.
- 8.5 Nothing in this Article or in the Contract Documents shall be construed to create a contractual relationship or obligation between YANTH and any subcontractor, material supplier, or employee of contractor.

#### ARTICLE 9 PAYMENTS

- 9.1 An initial fixed working capital advance for mobilization and other costs as specified in **Schedule A**, may be made to the Contractor upon submission by Contractor to YANTH for approval of an estimate of costs for Project start-up. Such estimate, once approved by YANTH, shall be paid to Contractor in accordance with applicable YANTH policies and procedures. Any capital advance approved by YANTH, if any, will be included under **Schedule A** to this Contract.
- 9.2 Subsequent Payments shall be made to the Contractor on an actual expenditure basis in the following manner:
- (a) On a periodic basis, not more frequently than monthly, Contractor shall submit to YANTH a Request for Payment based on the percentage of Work completed by Contractor on such form as may be required by YANTH. Contractor agrees to provide YANTH with a Work Progress Schedule (Schedule of Values), which shall be used to show the percentage progress of the Work when requesting Payments from YANTH. YANTH shall approve any amendments to the Progress Schedule within five (5) working

days prior to the implementation of any changes to the payment schedule specified under **Schedule A.**

- (b) Consistent with applicable rules and regulations and the conditions set forth herein, YANTH shall review Contractor's Request for Payment and either approve or disapprove it within five (5) working days of receipt.
- (c) Within ten (10) working days of approval of a Request for Payment, YANTH shall cause the requested Payment, or any portion not disapproved by YANTH, to be paid to the Contractor.
- (d) In the event of YANTH's disapproval of a Request for Payment, or any portion thereof, YANTH shall notify the Contractor within five (5) working days of the disapproval. Such notice shall include the basis for disapproval. The Contractor shall have ten (10) working days to respond and correct the basis for disapproval. YANTH shall have five (5) working days to either accept or reject the Contractor's response.
- (e) Each Request for Payment submitted by Contractor to YANTH shall include:
  - i. The Project identification and the name, mailing address, and telephone number of the payee.
  - ii. The name, title, mailing address, telephone number, and signature of Contractor or Contractor's designee authorized to make the Request for Payment.
  - iii. Documentation supporting in sufficient detail and in accordance with YANTH's Policies and Procedures, the percentage of the Work Completed, (including materials on hand for which payment is due) for which Payment is to be made and reasonable justification of the relationship of the requested payment to the Project.
  - iv. Copies of payrolls, receipted invoices with copies of check vouchers attached, and any other evidence required by YANTH to demonstrate that cash disbursements made by Contractor on account of the cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the current Request for payment.
  - v. Such evidence as YANTH may require showing that Contractor has paid its subcontractors.
- (f) Within five (5) working days from the full execution of this Contract, YANTH shall cause the initial project capital advance (if any) to be paid to the Contractor.
- (g) Any changes to the information to be provided under this Section shall be furnished to YANTH in writing within twenty-four (24) hours of the change.
- (h) In accordance with the Contract Documents and applicable rules, policies, and regulations, YANTH will make payment to the Contractor based upon information submitted by Contractor and consistent with the approved Budget and Payment Schedule and Contractor's Request for Payment. Except for the initial capital advance (if any), YANTH will make all payments to Contractor based on a reimbursement basis for eligible expenses actually incurred by Contractor.
- (i) YANTH may delay payments if the Contractor is delinquent in submission of any documents required under this Contract. Payments will be suspended or terminated if YANTH takes action to suspend or terminate the Contract in accordance with Article 11.

- 9.3 Contractor shall promptly pay each subcontractor, upon receipt of payment from YANTH, out of the amount paid to Contractor on account of such subcontractor's work, the amount to which said subcontractor is entitled. Contractor shall, by an appropriate Contract with each subcontractor, require each subcontractor to make payments to his sub-subcontractors and suppliers in a similar manner. YANTH shall have no obligation to pay or to see to the payment of any funds to any subcontractor except as may otherwise be required by applicable law.
- 9.4 YANTH reserves the right to withhold payment or partial payment, in addition to any Payment withheld under Article 16 (Retainage), for work performed if:
- (a) The Work is found defective and not remedied;
  - (b) Contractor does not make prompt and proper payments to its employees, subcontractors and suppliers;
  - (c) Contractor does not make prompt and proper payments for materials furnished;
  - (d) The Work is not completed as applied for under the Payment Schedule;
  - (e) The Work is performed in an inadequate or untimely fashion;
  - (f) Third party claims have been filed or there is reasonable evidence indicating probable filing of such claims. A 20-day preliminary lien notice is not considered a third party claim and shall not be a reason to withhold payment.
  - (g) Contractor abandons the Project or fails to make adequate progress toward completion of the Work following Notice and a reasonable opportunity to bring the Work back into conformity with the Schedule.
- 9.5 Contractor warrants that title to all Work, materials and equipment covered by a Request for Payment will pass to YANTH either by incorporation in the Work or upon the receipt of payment by Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, and that no work, materials or equipment covered by a Request for Payment will have been acquired by Contractor or by any other person performing work at the site or furnishing materials and equipment subject to a Contract under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by Contractor or such other person.

#### ARTICLE 10

##### **FINAL PAYMENT TO CONTRACTOR**

- 10.1 Final payment of the Contract Sum, minus any retainage under Article 16 below, shall be due and payable in accordance with the Contract Documents and this Article 10, but not before the completion of a final inspection and a determination that the Contract Work is complete to the satisfaction of YANTH.
- 10.2 The final payment shall not become due until Contractor submits to YANTH (1) an affidavit that all payrolls, bills for materials and equipment and other indebtedness connected with the Work, for which YANTH might in any way be responsible, have been paid or otherwise satisfied; (2) consent of surety, if any, to payment; and (3) other data establishing payment or satisfaction of all such obligations, including but not limited to: receipts, releases and waivers of liens arising out of this Contract to the extent and in such form as may be required by YANTH. If any subcontractor

or materialman refuses to furnish a release or waiver required by YANTH to indemnify it against any such lien, Contractor may furnish a bond satisfactory to YANTH to indemnify it against any such lien. If any such lien remains unsatisfied after all payments are made, Contractor shall refund to YANTH all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

- 10.3 Upon YANTH's request, the Contractor shall deliver to YANTH a final accounting showing all amounts received and all disbursements made. The Contractor shall submit satisfactory evidence that all payrolls, materials bills, and other indebtedness connected with the Work have been paid or otherwise satisfied and shall deliver to YANTH its general lien waiver with respect to said items.

#### **ARTICLE 11** **SUSPENSION OF WORK AND TERMINATION**

- 11.1 Suspension by YANTH. YANTH may, with or without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as YANTH may determine. Contractor shall be allowed an adjustment in the Contract Sum or an extension of the Contract Time, or both, directly attributable to any such suspension that occurred through no fault of the Contractor if Contractor makes an approved claim therefore under Article 7.
- 11.2 Termination by YANTH for Cause. YANTH may, on seven days' written notice to the Contractor, terminate this Contract (without prejudice to any other remedy YANTH may have) when the Contractor defaults in the performance of any material provision herein, or fails to carry out the Work in accordance with the Contract Documents. If the unpaid balance on the Contract Sum at the time of such termination exceeds the expense of finishing the Work, YANTH will pay such excess to Contractor and Contractor shall have no further claim against YANTH arising out of the termination.
- 11.3 Any of the following shall constitute a material default by Contractor: (a) failure to commence Work within 5 days after issuance of a Notice to Proceed; (b) failure to provide bonds as required by this Contract; (c) failure to maintain any policy of insurance required by this Contract; (d) failure or inability to furnish materials, equipment and workmanship of the highest quality; (e) failure to initiate appropriate measures for the correction of faulty Work within three days after notice from YANTH to do so; (f) failure to pay payroll when due; (g) failure to pay any sums owed subcontractors, laborers, or suppliers for the project when due; (h) failure to maintain the construction schedule and failure to initiate appropriate measures to cure delays associated with Contractor's Work within three days of notice from YANTH to do so; (i) material failure to perform any other obligations of Contractor under the Contract Documents, and (j) the filing of voluntary or involuntary Bankruptcy Proceedings by or against Contractor.
- 11.4 Termination by YANTH for Convenience. YANTH may, on seven days written notice to the Contractor, terminate this Contract without cause and without prejudice to any other right or remedy of YANTH. In such case, YANTH shall reimburse the Contractor as follows:
- (a) For any unpaid, completed, and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination;
  - (b) For reasonable expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work; and

- (c) For reasonable claims, costs, losses, and damages incurred in settlement of terminated contracts with subcontractors, suppliers, and others.

Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

- 11.5 Termination or Work Stoppage by Contractor. If, through no act or fault of the Contractor, the Work is suspended for a period of more than ninety days by YANTH or under an order of court or other public authority, or YANTH fails to act on any Request for Payment within thirty days after it is submitted or YANTH fails for thirty days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days' written notice to YANTH, and provided YANTH does not remedy such suspension or failure within the seven days' time, terminate this Contract and recover from YANTH payment on the same terms as provided in Section 11.4. In lieu of terminating the Contract and without prejudice to any other right or remedy, if YANTH has failed to act on a Request for Payment within thirty days after it is submitted, or YANTH has failed for thirty days to pay Contractor any sum finally determined to be due, Contractor may upon seven days' written notice to YANTH stop the Work until payment of all such amounts due Contractor is made. The provisions of this Section 11.5 are not intended to preclude Contractor from making a claim under Article 7 for an increase in Contract Sum or Contract Time.

## ARTICLE 12

### MISCELLANEOUS PROVISIONS

- 12.1 Laws, Permits, Fees and Notices. Contractor shall give all notices to and comply with all laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the Work under this Contract. Contractor shall secure all permits and governmental fees, licenses, and inspections necessary for the proper execution and completion of the Work.
- 12.2 Hiring Preference: Unless prohibited by federal regulations, the Contractor shall give preference in all hiring for the project to local Indian residents in accordance with the Yavapai-Apache Nation Tribal Employment Rights Code ("TERO") and shall coordinate such hiring in cooperation with the Tribal Employment Rights Office.
- 12.3 Equal Opportunity Employment. Except as provided in Section 12.2 of this Article and during the performance of this Contract, Contractor agrees as follows:
  - (a) Contractor will not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin, or age. Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, sex, religion, national origin, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
  - (b) Contractor agrees to post in conspicuous places available to employees and applicants for employment, notices as may be required and to be provided by an appropriate agency of the Federal Government setting forth the requirements of these non-discrimination provisions.
  - (c) Contractor will state in all solicitations or advertisements for employees placed by or on



behalf of Contractor that all qualified applicants will receive consideration for employment without regard to race, color, sex, religion, national origin or age.

- 12.4 **Indemnification.** To the fullest extent permitted by law, Contractor shall indemnify and hold harmless YANTH and all its agents, representatives and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the Work under this Contract; provided that any such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, to the extent caused in whole or in part by any negligent act or omission of Contractor or anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable, including Contractor's employees, agents, guests and invitees, and regardless of whether it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party to this Contract.
- 12.5 **Bankruptcy.** In the event that Contractor enters into bankruptcy proceedings, whether voluntarily or involuntarily, Contractor agrees to furnish, by certified mail, written notification of the bankruptcy proceeding to YANTH. This notification shall be furnished within five days of the initiation of the proceedings and shall include the date on which the bankruptcy petition was filed and a listing of subcontractors and/or suppliers against which final payment has not been made. This obligation remains in effect until final payment under this Contract.
- 12.6 **Claims for Damages.** Should either YANTH or Contractor suffer injury or damage to person or property because of any act or omission of the other party or of any of its employees, agents, or others for whose acts it is legally liable; claim shall be made in writing to such other party within five working days after the first observance of such injury or damage.
- 12.7 **Communications.** Important communications shall be confirmed in writing. Other communications shall be confirmed on written request in each case.
- 12.8 **Liquidated Damages.** Subject to the provisions of the Contract Documents, YANTH shall be entitled to liquidated damages for failure of the Contractor to complete the Work within the specified Contract Time. The Contractor agrees to pay liquidated damages for compensation to YANTH for non-use of the completed Work, for inconvenience and delay resulting to the public and for expenses incurred by YANTH for unscheduled employment of an engineer during any Contract Time overrun. Liquidated damages shall be paid by deduction from progress payments in the final payment period. If the total amount of liquidated damages assessed against the Contractor exceeds deductions from progress payments in the final payment, Contractor shall be liable for the difference and shall immediately pay the same to YANTH. The amount agreed upon and established as liquidated damages up to the date of substantial completion is Five Hundred Dollars (\$ 500.00) per calendar day for each day that completion of the Work is delayed beyond the date set for Project Completion under Section 5.1 hereinabove.

### **ARTICLE 13** **WARRANTY**

- 13.1 Contractor warrants to YANTH that all materials and equipment furnished under the Contract will be new unless otherwise specified in the Contract Documents and that all installed Work will be of the highest quality, free from faults and defects and in strict conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions

not properly approved and authorized by YANTH, may be considered defective. If required by YANTH, the Contractor shall furnish satisfactory evidence as to the type and qualities of materials and equipment provided for the Work.

- 13.2 Contractor shall promptly correct all Work rejected by YANTH as defective or as failing to conform to the Contract Documents, whether observed before or after substantial completion and whether or not fabricated, installed, or completed. The Contractor shall bear all costs of correcting such rejected Work.
- 13.3 If within two years after the date of final acceptance of the Contract Work by YANTH or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, or provided by the Contractor, any of the Contractor's work is found to be defective or not in accordance with the Contract Documents, Contractor, at its sole expense, shall correct it promptly after receipt of a written notice from YANTH to do so. This obligation shall survive termination of the Contract.
- 13.4 Contractor shall assign to YANTH the Manufacturer's warranty on all equipment and parts installed by Contractor as part of the WORK.

#### ARTICLE 14

##### ASSIGNMENT AND GOVERNING LAW

- 14.1 Neither YANTH nor the Contractor shall assign their respective interests in this Contract without the written consent of the other except as to the assignment of proceeds. Any assignment or attempt to assign this Contract contrary to this Section 14.1 shall be void and of no effect and shall be cause to hold the offending party in breach of this Contract.
- 14.2 This Contract is made pursuant to, and, except as provided under Article 17.4 below, shall be construed and enforced in accordance with the laws of the Yavapai-Apache Nation and applicable Federal law.

#### ARTICLE 15

##### INSURANCE

- 15.1 Before commencing the Work, Contractor, and at the discretion of the Contractor, each of its subcontractors, shall provide insurance coverage against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the Work hereunder by the Contractor, its agents, representatives, employees, or subcontractors, and all such policies of insurance shall be maintained for the duration of the contract, *and for 5 years thereafter, and certificates of said policies shall be furnished to YANTH* showing that the following insurance is in force and will protect Contractor and YANTH from claims which may arise out of or result from Contractor's operations under this Contract, whether such operations be by Contractor or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:
- 15.2 MINIMUM SCOPE AND LIMITS OF INSURANCE

Coverage shall be at least as broad as:

- (a) **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01, including products and completed operations, with limits of no less than \$1,000,000 per

occurrence and \$2,000,000 aggregate for bodily injury, personal injury, and property damage (not to be written on a per-project basis).

- (b) **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering Symbol 1 (any auto), with limits of no less than \$1,000,000 (combined single limit) per accident for bodily injury and property damage, including uninsured/underinsured liability.
- (c) **Workers' Compensation** insurance with Statutory Limits as required by the State of Arizona, and **Employers' Liability** insurance with a limit of no less than \$1,000,000 per accident for bodily injury and \$1,000,000 for each disease and a 1,000,000-policy limit.
- (d) **Surety Bonds (if any)** as described below and as required under the Contract Documents.
- (e) **Environmental Liability.** If Contractor is performing any work involving remediation, removal or transportation of any hazardous materials or whose operations pose a risk of the release or exposure of workers, the public, or others to any toxic material or pollutant, then Contractor shall maintain a pollution liability policy with not less than \$5,000,000 limits per occurrence or per claim and in the aggregate. These coverage limits may be met by any combination of underlying and excess policies.

15.3 Other Insurance Provisions. The required insurance policies as specified above are to contain, or be endorsed to contain, the following provisions:

- (a) Yavapai-Apache Nation Limited Partnership IX, YANTH and the Yavapai-Apache Nation and their respective officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL and automobile liability policies with respect to liability arising out of work or operations performed by or on behalf of the Contractor, including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 23 37 forms if later revisions used).
- (b) For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects YANTH, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by YANTH, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- (c) Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with 30-days' written notice to YANTH.

15.4 Claims Made Policies. Except where such claims-made coverage is prohibited by these insurance provisions, if any coverage required hereunder is written on a claims-made coverage form:

- (a) The retroactive date must be shown, and this date must be before the execution date of this Contract or the beginning of contract Work.
- (b) Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of contract Work.
- (c) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work date, the

Contractor must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work.

(d) A copy of the claims reporting requirements must be submitted to YANTH for review.

15.5 Acceptability of Insurers

Insurance is to be placed with insurers that are licensed to do business in the State of Arizona and who have a current A.M. Best rating of no less than A-VIII, unless otherwise acceptable to YANTH.

15.6 Waiver of Subrogation

Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to establish this waiver of subrogation. The Workers' Compensation and Commercial General Liability policies shall be endorsed with a waiver of subrogation in favor of YANTH for all work performed by the Contractor, its employees, agents, and subcontractors.

15.7 Verification of Coverage

Contractor shall furnish YANTH with original certificates and amendatory endorsements, or copies of the applicable insurance language, affecting coverage required by this contract. All certificates and endorsements are to be received and approved by YANTH before the Work commences. However, failure to obtain the required documents prior to the Work beginning shall not waive the Contractor's obligation to provide them. YANTH reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

15.8 Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance meeting all the insurance requirements stated herein.

15.9 Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be declared to and approved by YANTH. YANTH may require Contractor to reduce or eliminate such deductibles or self-insured retentions as respects YANTH, its officers, officials, employees, and volunteers; or at YANTH's option, Contractor must provide a financial guarantee satisfactory to YANTH guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

15.10 Repairs and Claims. Contractor will repair all accidental damages arising out of the Contract Work or the work of any subcontractor and prepare and submit insurance claims and reports for such damage. In the event YANTH receives insurance payments for such claims YANTH shall forward said payment to Contractor.

15.11 Hold Harmless. Contractor agrees to hold YANTH, its officers, agents and employees harmless from any liability for damage or claim or damage for personal injury, including death, as well as from claims for property damage which may arise from the Work and activities of Contractor or Contractor's subcontractor's, agents or employees under this Contract.

**ARTICLE 16**  
**RETAINAGE**

- 16.1 YANTH will withhold and retain **Five Percent (5%)** of each of the Contractor's payments made by YANTH under Article 9, as a guarantee that the Work, Including any guarantee work and any other financial obligation of Contractor under the Contract Documents will be completed to YANTH's satisfaction. YANTH shall hold the total amount of said retainage for a period of one (1) year following final completion of the Work and YANTH shall then pay said retainage to Contractor if there is then no outstanding Work or Warranty Work under the Contract Documents.

**ARTICLE 17**  
**DISPUTE RESOLUTION**

- 17.1 Informal Negotiations. If any claim, dispute, or any other matter in question between the Parties arises under this Contract (a "dispute"), both Parties shall first attempt in good faith to resolve the dispute amicably through informal negotiations. If the Parties cannot settle the dispute through informal negotiations within 15 days of written notice from one party to the other of the existence of a dispute, either party may proceed to Tribal Court under Section 17.2 below.
- 17.2 Tribal Court. If any dispute is not resolved through informal negotiations as provided under Section 17.1, the Parties agree that, subject to the Limited Waiver of Sovereign Immunity provided by YANTH in Section 17.3 below, the dispute may be resolved through the Nation's Tribal Court.
- 17.3 Limited Waiver of Sovereign Immunity. Except as provided in this Section 17.3, nothing in this Contract or other writing is or shall be deemed to be a waiver of YANTH's or 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 Contract as provided in Section 17.2 above, YANTH agrees to a limited waiver of its sovereign immunity as follows: (1) YANTH agrees that all unresolved disputes arising under this Contract shall be submitted to the Yavapai-Apache Nation Tribal Court as provided above under Section 17.2 and that such tribal court action shall be the exclusive means of dispute resolution under this Contract; (2) YANTH agrees that the Yavapai-Apache Nation Tribal Court shall have subject matter jurisdiction over the resolution of disputes arising under the Contract but only as to matters which arise under this Contract, 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 Contract; (3) The waiver of sovereign immunity provided by YANTH hereunder shall not be construed to empower the Court to enter or enforce an award that reaches or encumbers the assets or property of YANTH in excess of the Contract Sum as defined under this Contract, and only the assets of YANTH up to the limit of the Contract Sum shall be liable for the satisfaction of any such Court award; (4) it is acknowledged and agreed between YANTH and Contractor that the limited waiver of sovereign immunity provided by this Section 17.3, shall extend only to disputes between YANTH and Contractor and shall apply only to an action by Contractor for any claim for breach of the Contract, and that this limited waiver shall therefore not extend to or be effective as to any claim or action against YANTH by any party other than Contractor (including without limitation any purported third party beneficiary of the Contract); (5) The liability of YANTH and Contractor for any recovery under this Contract 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 Section 17.3, and YANTH's total liability to Contractor 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 YANTH to Contractor for the Work provided by Contractor under this Contract up to but not exceeding the "Contract Sum" as defined under this Contract at Article 6 hereinabove; and (6) this limited waiver of sovereign immunity shall expire six (6) years after the termination, cancellation or completion of the Contract, 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.

- 17.4 Governing Law. This Contract shall be construed in accordance with the laws of the Yavapai-Apache Nation, and where applicable, the laws of the State of Arizona as limited by this paragraph. Arizona law shall apply, without giving effect to any conflicts of laws principles, regarding interpretation of this Contract where the laws of the Yavapai-Apache Nation are silent on such interpretation. The laws of the Yavapai-Apache Nation shall apply in all other instances.
- 17.5 No Waiver of Nation's Immunity to Unconsented Lawsuits. Except as expressly provided herein, nothing in this Contract shall be construed as a waiver of the sovereign immunity of YANTH or the Yavapai-Apache Nation or any entity, officer, or employee of the Yavapai-Apache Nation. Section 17.3 constitutes a Waiver of YANTH's Sovereign immunity only and in no respect shall Section 17.3 be construed as a waiver of the Yavapai-Apache Nation sovereign immunity of the.
- 17.6 Enforceability of Contract. The invalidity of unenforceability of any provision of this Contract shall not affect or impair any other provision. If any provision of this Contract is capable of two constructions, one of which would render the provision invalid and the other of which would make the provision valid, then the provision shall have the meaning that renders it valid.

**ARTICLE 18**  
**MERGER OF CONTRACTS**

- 18.1 This instrument contains the entire Contract between the parties. There are no promises, terms, conditions, or obligations other than those contained herein and no statement, promises, or inducements made by either party or agent of either party that is not contained in this written Contract shall be valid or binding, and this Contract shall supersede all previous communications, representations, or Contracts, either verbal or written, between the parties hereto. This Contract may not be enlarged, modified, or altered, except in writing signed by the parties.

**ARTICLE 19**  
**NOTICES**

- 19.1 All notices, consents, demands, and other communications required by this Contract shall be sent by one party to the other in writing and shall be deemed to have been fully given the fifth day after deposit in the United States mail, registered or certified, and addressed as follows:

TO YANTH AT:

Yavapai-Apache Nation Tribal Housing  
1500 E. Cherry Creek Road  
P. O. BOX 3310  
Camp Verde, AZ 86322

TO THE CONTRACTOR AT:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN WITNESS WHEREOFF, the parties have executed this Contract this \_\_\_\_ day of \_\_\_\_\_, 2025, (the "Effective Date") at the Yavapai-Apache Nation's Middle Verde Reservation, Camp Verde, Arizona.

**YANTH: Yavapai-Apache Nation Tribal Housing**

By: \_\_\_\_\_  
Sharie Benson, Executive Director

**CONTRACTOR:** \_\_\_\_\_

By: \_\_\_\_\_  
Owner/Representative

**CONSTRUCTION CONTRACT  
BETWEEN  
YAVAPAI-APACHE NATION TRIBAL HOUSING  
AND  
\_\_\_\_\_ (contractor name)  
\_\_\_\_\_ (date)  
CONTRACT NUMBER: \_\_\_\_\_ (contract #)  
YAVAPAI-APACHE HOMES PROJECT**

**SCHEDULE A  
WORK PLAN AND BUDGET**

- (a) **Description of the Work** to be performed by Contractor: The Work to be provided by Contractor under this Contract includes all labor and materials to be incorporated into the Project as provided in the Contract Documents (the "Work") for completion of \_\_\_\_\_ as described in Contractor's Proposal of \_\_\_\_\_, a copy of which is attached to this Schedule A and incorporated as part of the Contract Documents by reference, and as required by the Drawings and Specifications incorporated under Schedule B of this Contract.
- (b) **Maximum budget** (Contract Sum) for the Work to be performed: \$XXX,XXX.XX.
- (c) **Schedule of Payments.** YANTH will make payments to Contractor based on the monthly pay applications submitted by Contractor in accordance with Article 9 of the Contract. Contractor, on a monthly basis, will provide YANTH's Project Manager with an invoice, together with supporting receipts and documentation showing the percentage of Work completed and/or procurement of equipment and materials securely stored on site during the month for which the invoice is submitted. The chart set out below shows the expected cost for the framing Work at each of the lots included in the Project and will serve as a benchmark for determining the percentage of Work completed by Contractor and the amount of retainage withheld by YANTH. YANTH will complete an inspection of the Work and all materials securely stored on site and either approve or disapprove each invoice (in whole or in part) within 5 days of its receipt of the invoice. Once YANTH approves an invoice, YANTH will make payment to the contractor within 5 days. If a payment due date falls on a weekend or holiday, YANTH will issue payment on the previous business day.



**CONSTRUCTION CONTRACT  
BETWEEN  
YAVAPAI-APACHE NATION TRIBAL HOUSING  
AND**

**\_\_\_\_\_ (contractor name)**

**\_\_\_\_\_ (date)**

**CONTRACT NUMBER: \_\_\_\_\_ (contract #)  
YAVAPAI-APACHE HOMES PROJECT**

**SCHEDULE B**

**DRAWINGS AND SPECIFICATIONS**

- 1. Drawings and Specifications prepared by Perlman Architects.**



**TITLE 22  
YAVAPAI-APACHE NATION  
TRIBAL EMPLOYMENT RIGHTS OFFICE CODE**

**TABLE OF CONTENTS**

CHAPTER I	GENERAL PROVISIONS	1
Section A	Title	1
Section B	Purpose	1
Section C	Statement of Policy	1
Section D	Definitions	1
CHAPTER II	TRIBAL EMPLOYMENT RIGHTS OFFICE	3
Section A	TERO Office	3
Section B	TERO Officer/Duties and Responsibilities	3
CHAPTER III	TRIBAL EMPLOYMENT RIGHTS PROGRAM	4
Section A	Scope	4
Section B	Compliance Agreement	5
Section C	Job Qualifications and Personnel Requirements	5
Section D	TERO Skills Bank	5
Section E	Training	6
Section F	Unions	6
Section G	Contractors and Subcontractors	6
Section H	Preference in Contracting and Subcontracting	6
Section I	Promotions and Layoffs	7
Section J	TERO Compliance Fees	7
Section K	On-Site Inspections	8
Section L	Tribal Preference	8
CHAPTER IV	ENFORCEMENT PROCEDURES	8
Section A	Investigation by the TERO Officer	8
Section B	Informal Settlement/Voluntary Compliance	8
Section C	Issuance of Written Warnings/Citations	9
Section D	TERO Officer Hearing	9
Section E	Emergency Relief	9
Section F	Appeals	10
CHAPTER V	PENALTIES	10
Section A	Penalties for Violation	10
Section B	Monetary Fines	10
Section C	Enforcement	10
CHAPTER VI	JUDICIAL REVIEW	11

Adopted on 11/8/2007 by Resolution No. 122-07, as amended on 10/3/2013 by Resolution No. 173-13, 3/9/2017 by Resolution No. 42-17, 9/28/2023 by Resolution No. 161-23, and 10/26/23 by Resolution No. 173-23.

## **CHAPTER I. GENERAL PROVISIONS**

### **SECTION A. TITLE**

This Code shall be known as the Yavapai-Apache Nation Tribal Employment Rights Code.

### **SECTION B. PURPOSE**

The Yavapai-Apache Nation as a sovereign has the right to regulate employment opportunities on and near its land. This right is protected through this Code.

The purposes of this Code are:

1. To ensure compliance by Covered Employers on and near the Yavapai-Apache Lands with federal and tribal laws that are intended to prevent employment related discrimination against American Indians;
2. To ensure compliance by Covered Employers on the Yavapai-Apache Lands with federal and tribal laws that are intended to give preference and priority in employment, contracting and sub-contracting, and training to American Indians; and
3. To ensure the maximum utilization of American Indian workers in all employment opportunities on and near the Yavapai-Apache Lands.

Use of the term “on and near” the Yavapai-Apache Lands shall be construed to permit Indian preference to the fullest extent permitted under tribal and federal law.

### **SECTION C. STATEMENT OF POLICY**

The Tribal Council of the Yavapai-Apache Nation finds that:

1. Jobs in the private employment sector on and near the Yavapai-Apache Lands are an important resource for Indians residing on and near the Yavapai-Apache Lands and trust lands of the Yavapai-Apache Nation.
2. This Code is consistent with and supplemental to existing federal and tribal law prohibiting employment discrimination against Indians and providing for employment and contract preference to Indian employees and Indian-owned enterprises.
3. Indian unemployment on the Yavapai-Apache Nation continues to be a problem of sufficient magnitude to warrant the enactment and implementation of this Code which is designed to improve employment opportunities for Indians living on and near the Yavapai-Apache Lands and trust lands of the Yavapai- Apache Nation.

### **SECTION D. DEFINITIONS**

1. **CODE** means the Tribal Employment Rights Office Code of the Yavapai-Apache Nation.
2. **COMPLIANCE AGREEMENT** means a written agreement signed by Covered Employers and the Tribal Employment Rights Office in accordance with this Code.

3. COMPLIANCE FEE means a fee approved by the Yavapai- Apache Tribal Council, which fee shall be paid by the Covered Employer prior to commencing work on the Yavapai-Apache Nation Lands.
4. CORE CREW means the essential, permanent employees of a contractor who hold a high level supervisory position or perform a critical function such that the contractor would risk likely financial damage or loss if that employee's task(s) were assigned to a person unknown to the contractor. Core crew members cannot be laborers.
5. COUNCIL means the Yavapai-Apache Tribal Council.
6. COVERED EMPLOYER means any entity employing two (2) or more persons, who during any thirty (30) day consecutive period spend cumulatively forty (40) or more hours performing work within the jurisdiction of the Yavapai-Apache Nation.
7. ENTITY means any person, partnership, corporation, limited liability company, joint venture or any other natural or artificial person or organization.
8. INDIAN (or AMERICAN INDIAN) means any person enrolled in a federally recognized tribe and recognized by the United States pursuant to its trust responsibility to American Indians.
9. INDIAN OWNED BUSINESS means a firm or business that is certified by the TERO Office as eligible for Indian preference under this Code, provided that Indians hold at least fifty percent (50%) ownership interest in such firm or business and exercise majority management control.
10. INDIAN PREFERENCE means a preference for Indians, who meet the minimal qualifications for a position, in all aspects of employment, including but not limited to: hiring, training, promotions, layoffs, terminations, contracting and subcontracting for work within the Yavapai-Apache Nation Lands. Qualified, available Indians shall receive Indian preference according to negotiated Compliance Agreements.
11. LOCATED ON THE YAVAPAI-APACHE LANDS means a Covered Employer, if during any portion of a business enterprise or specific contract or subcontract, maintaining a temporary or permanent office or facility on the Yavapai-Apache lands.
12. NEAR THE YAVAPAI-APACHE LANDS means within reasonable daily commuting distance of Yavapai-Apache Nation lands.
13. SKILLS BANK means a tribal hiring hall that maintains a record of qualified, employable Tribal Members and other American Indians that is to be used by Covered Employers to fill vacancies.
14. TERO means the Yavapai-Apache Nation Tribal Employment Rights Office Code.
15. TERO OFFICE means the Yavapai-Apache Nation Tribal Employment Rights Office or other office or department designated by the Council as such to act as and perform the function of TERO from time to time.

16. TERO OFFICER means the individual, committee or department appointed by the Council from time to time to administer the TERO as set forth herein. The Council may appoint and remove the TERO Officer by Council Resolution.
17. TRIBAL MEMBERS means those persons enrolled in the Yavapai-Apache Nation.
18. TRIBAL PREFERENCE means a preference for Tribal Members who meet the minimal qualifications for a position, in all aspects of employment, including but not limited to hiring, training, promotion, layoffs, terminations, contracting and subcontracting, for work within the Yavapai-Apache Nation Lands. Qualified, available Tribal Members shall receive Tribal Preference, where allowed by law, according to negotiated Compliance Agreements.
19. TRIBAL COURT means the Yavapai-Apache Nation Tribal Court as established in the Yavapai- Apache Code, Chapter 3 Court Code.
20. YAVAPAI-APACHE LANDS means all lands within the territorial jurisdiction of the Yavapai- Apache Nation as that term is defined in Article I of the Nation's Constitution.

## **CHAPTER II. TRIBAL EMPLOYMENT RIGHTS OFFICE**

### **SECTION A. TERO OFFICE**

The Nation has established a TERO Office to implement the provisions of this Code. The TERO Office shall have such staff as is necessary to operate the TERO Office.

The TERO Office shall be subject to an annual budget approved by the Council each fiscal year.

### **SECTION B. TERO OFFICER/DUTIES AND RESPONSIBILITIES**

The Nation has delegated primary responsibility for running the TERO Office to the TERO Officer who shall be responsible for administering and ensuring compliance with the provisions of this Code. The TERO Officer shall report to the Human Resources Director of the Nation, or such other person as the Council shall direct.

The TERO Officer shall have the authority to:

1. Negotiate Compliance Agreements with Covered Employers before allowing such Covered Employers to commence work within the jurisdiction of the Nation;
2. Take on-site visits and investigate potential violations of this Code;
3. Impose penalties, within limits or schedules approved by the Council, on Covered Employers who violate the provisions of the Code;
4. Develop and promulgate regulations necessary to implement the provisions of this Code, subject to approval of the Council;
5. Develop and impose numerical hiring goals and timetables that reflect the available American Indian labor pool and other employment opportunities for each craft and skill category;

6. Require Covered Employers that have established training or apprentice programs to provide preference to American Indians or Tribal Members, as applicable;
7. Establish and maintain a tribal hiring hall that maintains a record of qualified, employable Tribal Members and other American Indians that is to be used by Covered Employers to fill vacancies;
8. Prohibit any Covered Employer from imposing employment qualification criteria that serve as barriers to American Indian employment unless the Covered Employer can demonstrate that such criteria are required by business necessity;
9. Work cooperatively with other tribal programs, i.e. job training programs, to establish counseling and support programs for Tribal Members workers to assist them in retaining employment;
10. Enter into cooperative agreements with federal and state agencies to minimize employment discrimination on the Yavapai-Apache Lands, to promote American Indian Preference in hiring, training, and contracting and to otherwise ensure compliance with this Code;
11. To obtain from Covered Employers subject to this Code certified payroll reports (“Certified Payroll Reports”) that contain information relevant to the TERO Officer’s enforcement authority herein.
12. To assess fees on Covered Employers, subject to the limits or schedules set forth in this Code or approved by the Council, to support the operations of the Tribal Employment Rights Office, including the authority to inquire about and obtain information necessary to make a determination on the source of funding for Covered Contracts as provided in Chapter III, Section J of this Code;
13. To carry out the day-to-day operations of the TERO, to enforce this Code and such other authority as is necessary to the efficient administration of this Code.

The TERO Officer shall not have the authority to waive sovereign immunity on behalf of the Yavapai-Apache Nation or any Yavapai-Apache Nation departments or entities.

All acts taken by the TERO Officer, the Nation, the Tribal Council, or any employee in furtherance of this Ordinance are taken in their official capacities.

### **CHAPTER III. TRIBAL EMPLOYMENT RIGHTS PROGRAM**

#### **SECTION A. SCOPE**

All Covered Employers shall give preference to American Indians in hiring, promotion, training, and all other aspects of employment, contracting and subcontracting, and business opportunities, and shall comply with the terms of this Code and its implementing regulations and any Compliance Agreement(s) executed under this Code.

## SECTION B. COMPLIANCE AGREEMENT

Each Covered Employer shall be required to meet with the TERO Officer at the TERO Office and negotiate and execute a "Compliance Agreement" which sets forth the Covered Employer's goals and objectives under this TERO Code. At a minimum, Compliance Agreements will include periodic reporting requirements and shall be reviewed annually and revised as necessary.

With respect to contractors and subcontractors, a list of proposed Core Crew members and their titles and responsibilities shall be provided and periodically reviewed and revised as necessary.

Every Compliance Agreement shall incorporate numerical goals based upon the TERO Officer's surveys of the available American Indian work force and of applicable projected employment opportunities on the Yavapai-Apache Lands.

No Covered Employer who intends to engage in temporary business on the Yavapai-Apache Lands shall commence work until a Compliance Agreement has been negotiated and signed by both the TERO Officer and the Covered Employer or Covered Employer's representative. A Covered Employer who has established a permanent place of business on the Yavapai-Apache Lands shall negotiate and execute a Compliance Agreement within thirty (30) days from the date the Covered Employer receives notification from the TERO Officer that a Compliance Agreement is required.

Any violation of an executed Compliance Agreement shall be a violation of this Code.

## SECTION C. JOB QUALIFICATIONS AND PERSONNEL REQUIREMENTS

A Covered Employer shall not use qualification criteria or other personnel requirements that serve as barriers to American Indian employment unless the Covered Employer is able to demonstrate that such criteria or requirements are required by business necessity. EEOC Guidelines shall be adopted on these matters to the extent that they are appropriate. The TERO Officer shall be guided by the guidelines but shall have the authority to impose additional requirements that are necessary in order to address employment barriers that are unique to American Indians.

Any Covered Employer who has a drug/alcohol policy may impose such requirements on employees referred by the TERO Office to the extent such requirements do not conflict with any Yavapai-Apache Nation tribal laws, regulations, or policies or procedures.

## SECTION D. TERO SKILLS BANK

1. The TERO Officer shall establish and maintain a TERO Skills Bank to assist Covered Employers in placing qualified American Indians in job positions.
2. A Covered Employer shall not hire a non-American Indian in violation of the Compliance Agreement until the TERO Officer has certified within a reasonable time that no qualified American Indian is available to fill the vacancy. For purposes of this section, "reasonable time" shall be defined as follows:
  - (a) Construction jobs-the TERO Officer shall have forty-eight (48) hours from time of notice of manpower needs, to refer a qualified American Indian from the TERO Skills Bank;



- (b) All other employment-the TERO Officer shall have five (5) working days to refer a qualified American Indian from the TERO Skills Bank.

The TERO Officer may grant a waiver of a time period upon a showing by the Covered Employer that such time period imposes an undue burden upon the Covered Employer or his business.

#### SECTION E. TRAINING

1. The TERO Officer shall identify training programs necessary in order to increase the pool of qualified American Indians for employment on the Yavapai-Apache Lands.
2. The TERO Officer may seek out grants for the purposes of establishing training programs to assist American Indians in acquiring skills for employment.
3. The TERO Officer may initiate and sponsor training programs for Covered Employers to participate in, or the TERO Officer may work with Covered Employers to establish and sponsor their own training programs to assist American Indians to become qualified in the various job classifications used by Covered Employers.

#### SECTION F. UNIONS

Covered Employers with collective bargaining agreements with a union are responsible for informing such unions of this Code and TERO rules and regulations. Unions will give absolute preference to American Indians in job referrals regardless of which referral list they are on. Temporary Work Permits will be granted American Indians who do not wish to join a union. Nothing herein shall constitute official tribal recognition of any union or tribal endorsement of any union activities on the Yavapai-Apache Lands.

#### SECTION G. CONTRACTORS AND SUBCONTRACTORS

The Indian Preference requirements contained herein shall apply to all contractors and subcontractors of a Covered Employer. The Covered Employer shall have the initial and primary responsibility for ensuring that all contractors and subcontractors comply with these requirements and both the Covered Employer and his contractors and subcontractors shall be subject to the penalties set forth herein for failure to comply with the Code requirements.

#### SECTION H. PREFERENCE IN CONTRACTING AND SUBCONTRACTING

Irrespective of the qualifications of any non-Indian contractor or subcontractor, any American Indian contractor or subcontractor who demonstrates the minimum qualifications to perform a contract on the Yavapai-Apache lands and is certified by the TERO Office shall be given preference by the entity awarding such contract or subcontract by using the following priorities subject to federal laws:

1. Certified Yavapai-Apache firms whose principal place of business is located on the Yavapai-Apache Lands;
2. Certified Yavapai-Apache firms whose principal place of business is not located on the Yavapai- Apache Lands;

3. Certified American Indian owned firms;
4. Non-certified firms with some American Indian ownership;
5. All other firms.

The TERO Officer shall maintain a list of American Indian-owned businesses which list shall be supplied to the Covered Employers upon request.

#### SECTION I. PROMOTIONS AND LAYOFFS

Each Covered Employer shall to the extent permitted under federal law, give American Indians preferential consideration for all promotion opportunities and shall encourage American Indians to seek such opportunities.

In all layoffs and reductions in force, no American Indian worker shall be terminated if a non-American Indian worker in the same job classification is still employed. The non-American Indian shall be terminated first if the American Indian possesses threshold qualifications for the job classification. If a Covered Employer lays off workers by crew, all qualified American Indian workers shall be transferred to crews to be retained so long as non-American Indians in the same job classification are employed elsewhere on the job site. Exceptions may be non-American Indians hired as "Core Crew", according to negotiated Compliance Agreements.

#### SECTION J. TERO COMPLIANCE FEES

The TERO Officer shall assess and collect a Compliance Fee based upon the following schedule.

1. Except as provided below, every contractor with a Covered Contract shall pay a Compliance Fee approved by the Yavapai- Apache Tribal Council, which Compliance Fee shall be paid by the Covered Employer prior to commencing work on the Yavapai- Apache Nation Lands. As of date of this Ordinance, the Compliance Fee is equal to three percent (3%) of the total amount of the contract and Covered Contracts are those that are in the sum of ten thousand dollars (\$10,000) or more.
2. The Compliance Fee shall not be assessed or collected from educational organizations, recognized religious organizations, health organizations, governments, governmental departments or entities, utilities franchised by the Yavapai-Apache Nation, non-profit organizations as owners of projects on Yavapai-Apache Lands, or from Covered Employers with Covered Contracts that are primarily compensated (more than fifty percent (50%)) with tribal, federal or state governmental funds or nonprofit funds. In no event shall Compliance Fees be assessed against the Yavapai-Apache Nation, Yavapai-Apache Nation departments or entities, or Yavapai-Apache Nation enrolled Tribal Members as owners of projects on Yavapai-Apache Lands.
3. Except as otherwise directed in the budgets approved by the Yavapai-Apache Tribal Council, Compliance Fees shall be used for the TERO operating budget, and the percentage may be adjusted by the Tribal Council as often as annually to remain relatively consistent with the national average.

4. The TERO Officer shall receive a copy of each Compliance Fee payment. The TERO Officer shall be responsible for collecting the fees and may establish such regulations as are necessary to ensure a fair and timely fee collection process.

#### SECTION K. ON SITE INSPECTIONS

The TERO Officer shall have the authority to make on-site inspections during regular working hours in order to monitor a Covered Employer's adherence to the terms of this Code and the Covered Employer's Compliance Agreement. The TERO Officer shall have the right to inspect and copy all relevant records of a Covered Employer, of any signatory union, or subcontractor of a Covered Employer, and shall have the right to speak to workers and to conduct an investigation on the job site. All information collected by the TERO Officer shall be kept confidential unless disclosure is necessary or ordered as part of any federal or tribal judicial or administrative proceeding.

#### SECTION L. TRIBAL PREFERENCE

Tribal preference is a form of Indian Preference which gives special preference in employment to members of the Nation. Tribal preference is permitted by the sovereign power of the Yavapai-Apache Nation, except where specifically prohibited by federal law. The order of Tribal preference is:

1. Enrolled members of the Yavapai-Apache Nation
2. Enrolled members of other federally recognized Native American Tribes
3. All others

Anyone claiming Tribal preference must show a valid Tribal Identification Card.

### CHAPTER IV. ENFORCEMENT PROCEDURES

#### SECTION A. INVESTIGATION BY THE TERO OFFICER

Any person who believes that a Covered Employer has failed to comply with the Code, or who believes that a person has been discriminated against by a Covered Employer because he/she is an American Indian, may file a complaint with the TERO Office. The complainant shall be responsible for providing the TERO Office with evidence of the discrimination practices. Upon receipt of a complainant, the TERO Officer shall conduct a prompt and thorough investigation of the charge. The TERO Officer may also initiate an investigation when the Officer has cause to believe a violation has occurred.

#### SECTION B. INFORMAL SETTLEMENT/VOLUNTARY COMPLIANCE

Upon establishing that there are reasonable grounds to support the claim, the TERO Officer shall attempt to achieve an informal settlement of the matter.

The TERO Officer shall document the settlement in the Covered Employer's file and provide a copy to all parties.

## SECTION C. ISSUANCE OF WRITTEN WARNINGS/CITATIONS

1. If an informal settlement cannot be achieved, the TERO Officer shall issue a written warning to the Covered Employer. This warning shall specify the nature of the violation and direct that the violation be corrected within three (3) business days or sooner where warranted.
2. If the violation is not corrected within the time specified, the TERO Officer shall issue a citation to the Covered Employer which shall:
  - (a) Be in writing and in the name of the Yavapai-Apache Nation;
  - (b) State the name of the violator;
  - (c) Bear the signature of the TERO Officer or his authorized representative;
  - (d) Identify the specific provisions of this TERO Code or Compliance Agreement which has been violated;
  - (e) State a brief summary of facts constituting the violation; and
  - (f) State a time and place the Covered Employer must appear to answer to the violation at the TERO Officer Hearing.

## SECTION D. TERO OFFICER HEARING

The Covered Employer shall be entitled to a hearing before the TERO Officer no later than ten (10) working days after receipt of a citation. Hearing procedures shall comply with the requirements of due process, but will not be bound by the formal rules of evidence. The Covered Employer shall be entitled to present evidence and to call witnesses to demonstrate that the Covered Employer has complied with the requirements of this Code or that the Covered Employer made a best effort to do so and therefore should not be subject to penalties. On the basis of evidence presented at the hearing and the information collected by the Office, the TERO Officer shall determine whether or not the Covered Employer complied with this Code. If the TERO Officer determined that the Covered Employer is out of compliance and has not made a best effort to comply, the TERO Officer shall impose one or more of the penalties provided for in the Code, as appropriate and shall order the Covered Employer to take such corrective action as necessary to remedy any harm done to the Tribe or individual American Indians by the Covered Employer's non-compliance. The TERO Officer shall send written notice to all parties within ten (10) days after his/her decision in the matter.

## SECTION E. EMERGENCY RELIEF

When the TERO Officer determines that a violation has occurred that is of a critical nature requiring immediate remedial action, the TERO Officer may issue a citation without delay, stating penalties to be placed on a Covered Employer.

## SECTION F. APPEALS

Any person or entity adversely affected by a decision of the TERO Officer shall have the right to appeal the decision to the Yavapai-Apache Tribal Court in accordance with Chapter VI. of this Code.

## CHAPTER V. PENALTIES

### SECTION A. PENALTIES FOR VIOLATION

Any Covered Employer who violates this Code or a Compliance Agreement negotiated hereunder shall be subject to penalties including, but not limited to:

1. Denial of the right to commence or continue business on the Yavapai-Apache Lands;
2. Suspension of operations on the Yavapai-Apache Lands;
3. Payment of back pay and/or damages to compensate any injured party;
4. An order to summarily remove employees hired in violation of this Code or Compliance Agreement negotiated hereunder;
5. Imposition of monetary civil penalties; and
6. An order specifying requirements for employment, promotion and training Indians injured by the violation.

### SECTION B. MONETARY FINES

The maximum monetary penalty that may be imposed for each violation shall be established and may be changed, by the Yavapai-Apache Tribal Council. As of the date of this Ordinance, the maximum monetary penalty per violation is established at five hundred dollars (\$500). For purposes of the imposition of penalties determined by the TERO Officer, each day during which a violation exists shall constitute a separate violation.

### SECTION C. ENFORCEMENT

1. The TERO Officer shall be entitled to pursue the enforcement of any Order through the Yavapai-Apache Tribal Court or any other court of competent jurisdiction when necessary to collect penalties or to ensure compliance with the terms and conditions of any order issued by the TERO Officer, the Yavapai-Apache Nation Tribal Court, or any other court of competent jurisdiction.
2. Any cost associated with the enforcement of such Order issued pursuant to this Code shall be assessed on the Covered Employer that is out of compliance. These may include, but are not limited to: document reproduction costs, filing fees, attorney fees and costs incurred by TERO staff related to securing enforcement of the Order.
3. Covered Employers that do not comply with the provisions of this Code and leave the Lands before enforcement penalties or an order by the TERO Officer or the Yavapai-

Apache Nation Tribal Court, shall, in addition to all other remedies at law or in equity, be denied the right of contracting or doing further business on the Yavapai-Apache Lands.

4. The Compliance Agreement shall confirm the Covered Employer's consent to jurisdiction within the Nation as provided herein. The TERO Officer, without waiving remedies or jurisdictional rights hereunder, may also elect to enforce an Order, award, or any provision of this Ordinance, in any court of competent jurisdiction where a defendant may be found.

#### **CHAPTER VI. JUDICIAL REVIEW**

Any party dissatisfied with the decision of the TERO Officer may seek judicial review in the Yavapai-Apache Tribal Court. The Court shall uphold the decision of the TERO Officer unless such decision is arbitrary, capricious or in clear violation of existing law.

The Yavapai-Apache Tribal Court is hereby granted exclusive jurisdiction to hear, review and decide any issues regarding implementation, interpretation or enforcement appeals under this Code. The decision of the Tribal Court shall be final and binding.