

**GOVERNMENT TO GOVERNMENT AGREEMENT
BETWEEN THE STATE OF MINNESOTA
AND THE
RED LAKE BAND OF CHIPPEWA INDIANS
FOR A SPECIFIC HIGHWAY CONSTRUCTION PROJECT**

This is a Government to Government Agreement ("Agreement") between the State of Minnesota, Department of Transportation ("MnDOT"), and the Red Lake Band of Chippewa Indians ("Band"), a sovereign nation and federally-recognized Indian tribe. Collectively, MnDOT and the band are referred to as the "parties" in this Agreement.

Recitals

MnDOT is authorized to enter into this Agreement by Minnesota Statutes §161.368, which provides that "the Commissioner [of Transportation] may enter into agreements with Indian tribal authorities for the purpose of providing maintenance, design, and construction to highways on tribal lands."

The Band is authorized to enter into this Agreement by the Constitution and Laws of the Red Lake Nation.

The Band is a federally-recognized Indian tribe with sovereignty over its territory, and having an interest in preserving and protecting its political, economic, and cultural rights and heritage. The Band desires to have full involvement in all infrastructure projects, including transportation projects, within the exterior boundaries of the Red Lake Nation.

The parties have determined the need for a highway construction project within the exterior boundaries of the Red Lake Nation. The project, TH 1 SP 0404-38, is located on Trunk Highway 1 from the junction of Trunk Highway 1 and Trunk Highway 89 to the junction of Trunk Highway 1 and Great Nations Drive and consists generally of grading, surfacing, drainage, ADA work, lighting, and construction of a trail (the "Project"). The Project is programmed for construction in 2020 and will be funded with MnDOT State funds and Band funds.

The Band and MnDOT have entered into a separate general agreement for planning highway construction projects (MnDOT Agreement # 1002920), the terms of which are generally applicable to the Project.

The parties have agreed that the Band should award and administer contracts for the Project, recognizing the Band's governmental, employment, and economic development interests.

The parties have entered into this project-specific Agreement in order to set forth MnDOT's financial obligations for constructing the Project, and to provide other

terms governing the construction and administration of the Project.

Agreement

A. Project Description and Plans

1. *Project Description.* The Project is located on, along, and adjacent to Trunk Highway 1, within the exterior boundaries of the Red Lake Nation from the junction of Trunk Highway 1 and Trunk Highway 89 to the junction of Trunk Highway 1 and Great Nations Drive and consists generally of grading, surfacing, drainage, ADA work, and lighting.
2. *Project Plans.* MnDOT and the Band have developed plans, specifications, and special provisions for the Project construction under MnDOT Agreement #1027843. The MnDOT-approved plans, specifications, and special provisions are on file with the State's District Engineer at Bemidji, and they are incorporated into this Agreement by reference.

B. Limitations on this Agreement

1. *Limitations.* This Agreement itself shall not constitute a contract, compact, annual funding agreement, or other agreement under the Indian Self-Determination and Education Assistance Act and no provisions of the ISDEAA are specifically adopted, incorporated by reference, or otherwise included in this Agreement.

C. Band Responsibilities

1. *Contract Award.* The Band shall award a contract for construction of the Project, using the Band's laws, processes, and procedures. The Band will make the contract award using the MnDOT-approved plans, specifications, and special provisions. Except for minor changes, the Band will obtain the MnDOT's written concurrence prior to making changes to the plans, specifications, and special provisions.
2. *Construction Monitoring.* The Band will perform all contract administration, inspection, and environmental monitoring necessary for the Project construction, as more fully set forth in Article F of this Agreement and Exhibit A.
3. *Financial Accounting.* The Band will keep detailed records of Project expenditures, including all internal, consultant, contractor and supplier costs, all in accordance with Generally Accepted Accounting Principles.
4. *Other Record-Keeping.* The Band will keep other detailed records concerning the Project, as necessary to provide MnDOT with normal and customary

records concerning the construction of the Project including, but not limited to shop drawings, as-built plans, contract changes, surveys, and test results.

D. Project Funding

1. *State Funding.* As described in Article E, MnDOT will provide state Trunk Highway Funds to cover the portion of the Project not paid by the Band. MnDOT will pay MnDOT's share directly to the Band as provided in Article E of this Agreement.

E. Project Cost Estimates; Contract Cost; Payment Procedures; Overruns/Extra Work; Claims; Consultant Costs; Return of Unused Funds

1. *Contract Cost.* MnDOT has obtained an independent cost estimate. The parties have agreed upon an estimated construction cost of \$5,560,986.88 as described in Exhibit B (the "Construction Cost") to construct the Project in accordance with the plans, specifications, and special provisions. MnDOT's estimated share of the Construction Cost is \$4,709,082.74. The Band's estimated share of the Construction Cost is \$851,904.14. The Construction Cost includes an allowance for the Band's 3% TERO Fee. MnDOT will ensure that state funds sufficient to cover the Construction Cost (minus the funds provided by the Band) are made available to the Band. In addition to the Construction Cost, MnDOT will pay the Band for Contract Administration as described in Article F; the parties have agreed upon estimated Contract Administration Costs of \$186,180.00 as described in Exhibit C. The Construction Cost and Contract Administration Costs are collectively referred to as the "Contract Cost"; the Contract Cost is an amount sufficient to cover all costs for the Project including Contract Administration; Construction Monitoring and Quality Assurance; and Compliance with Environmental Quality Standards, which are all detailed in Article F of this Agreement.
2. *Band's Payment Process.* The Band will make payments to its contractor, in accordance with the specifications and special provisions, for work completed by the contractor.
3. *State Payment Process.* MnDOT will pay its share of the Contract Cost (which is the Contract Cost as defined in Section E.1 less the Band share of the Contract Cost) to the Band as follows: every 14 days the Band will create a pay voucher in AASHTOWARE describing payments due to the prime contractor and will notify the MnDOT Resident Engineer through AASHTOWARE that the pay voucher has been created. The MnDOT Resident Engineer will review the pay voucher. If the MnDOT Resident Engineer has concerns about the pay voucher, the MnDOT Resident Engineer will contact the Band's Engineer to discuss those concerns; if the concerns cannot be resolved, then the dispute resolution provisions of Paragraph G.2 and Exhibit D will be followed. Once the MnDOT Resident

Engineer approves the pay voucher, the Band will pay the prime contractor and will promptly invoice MnDOT for the amount of the approved pay voucher plus any contract administration fees incurred by the Band during the applicable 14 day time period. If the MnDOT Resident Engineer has concerns about the invoice, the MnDOT Resident Engineer will contact the Band's Engineer to discuss those concerns; if the concerns cannot be resolved, then the dispute resolution provisions of Paragraph G.2 and Exhibit D will be followed. MnDOT will promptly pay the Band the invoiced amount.

4. *Overruns & Extra Work.* As construction progresses, the Contract Cost may prove to be insufficient, due to items overrunning, or due to necessary and desirable changes to the Project which will constitute Extra Work. It is the intent of the parties that MnDOT will provide state funds to cover legitimate overruns and Extra Work. MnDOT's responsibility for overruns and Extra Work is limited to amounts approved using the following process:
 - a. If the Band identifies items that are overrunning or are likely to overrun, the Band must immediately notify MnDOT in writing. If MnDOT concurs in the overruns, MnDOT will take necessary steps to make funds available to cover the overruns. MnDOT's concurrence in overruns will not be unreasonably withheld, conditioned, or delayed. If MnDOT does not concur in the overruns, the parties will promptly meet to discuss how to resolve or mitigate the overruns. Prompt notice of overruns is critical to allow the parties to mitigate problems and costs. The Band will not authorize overruns until MnDOT notifies the Band that MnDOT has encumbered funds sufficient to cover the overruns.
 - b. If the Band identifies work necessary for the satisfactory completion of the Project, and that work will be Extra Work under the contract, the Band will seek MnDOT's concurrence prior to authorizing or approving that work. If MnDOT concurs in the Extra Work, MnDOT will take necessary steps to make funds available to cover the Extra Work. MnDOT's concurrence in Extra Work will not be unreasonably withheld, conditioned, or delayed. If MnDOT does not concur in the Extra Work, the parties will promptly meet to discuss how to resolve or mitigate the Extra Work. Prompt notice of Extra Work is critical to allow the parties to mitigate problems and costs. This same process will also be followed if the Band's contractor asserts that it is entitled to payment for Extra Work.
 - c. Overrun and Extra Work costs concurred in by MnDOT will be called "Approved Extra Costs".
5. *Contractor Claims.* If the Band's contractor makes a claim for additional compensation, the Band will require its contractor to provide a written claim

certified in accordance with MnDOT Standard Specification 1517. The Band will handle the claim in accordance with MnDOT 1517, and will consult with MnDOT on resolving the claim. The Band will seek MnDOT's concurrence in any claim settlement. MnDOT's concurrence in a claim settlement will not be unreasonably withheld, conditioned, or delayed. If MnDOT does not concur in the claim settlement, the parties will promptly meet to discuss how to resolve or mitigate the claim settlement. A claim settlement concurred in by MnDOT will be called "Approved Claim Costs".

F. Administration, Monitoring, Environmental Quality, and Maintenance

1. *Contract Administration.* The Band will provide a full-time Tribal Engineering staff member to be in Responsible Charge of the Project. The Band will be responsible for administering the Project construction in accordance with the Project plans, MnDOT Standard Specifications (2018 edition), and special provisions. The Band may, at its option, hire a consultant to perform this contract administration work. The Band will take all reasonable and prudent measures to ensure that the Band's contractor diligently and continuously carries out the work in accordance with the plans, specifications, special provisions, and Project schedule. The Band will require its contractor to provide a baseline schedule and regular updates to the baseline schedule, and the Band will monitor and ensure its contractor's adherence to an approved schedule.
2. *Construction Monitoring and Quality Assurance by the Band.* The Band will provide construction inspection in accordance with the MnDOT Contract Administration Manual. The Band will conduct Quality Control/Quality Assurance tests in accordance with the Schedule of Materials Control in effect at the time of Project construction. The Band may, at its option, hire a consultant to perform this service.
3. *Monitoring by MnDOT.* MnDOT may conduct its own inspection of the Project, at its own expense, upon a 24-hour notice to the Band (this notice must include at least four hours of a day on which construction activity is scheduled). If MnDOT identifies problems or concerns with the Project construction, MnDOT will promptly bring those concerns to the attention of the Band's employee in responsible charge of the Project. The parties will promptly meet, as necessary, to discuss concerns.
4. *Environmental Quality.* Recognizing the importance of maintaining environmental quality within the exterior boundaries of the Red Lake Nation, the Band will comply with all environmental laws applicable to the Project construction. The Band will work with MnDOT to develop contract specific special provisions related to soil, water, and air pollution, and landscaping and vegetation, and herbicide use.

5. *Ownership and Maintenance.* The Band will own and will be fully responsible for operating and maintaining the trail constructed as part of this Project. This includes, but is not limited to, snow and ice control/removal, sweeping and debris removal, patching, crack repair, pavement replacement, vegetation control, signing, pavement markings, and any other maintenance activities necessary to perpetuate the trail in a safe and usable condition. The Band will be responsible for any and all liability or claims arising out of the Band's operation and maintenance of the trail.

G. General Provisions

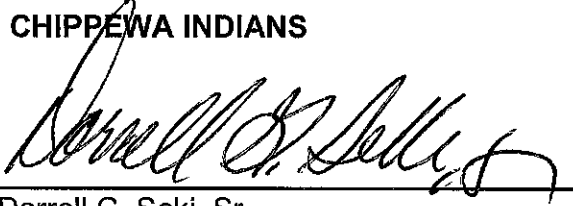
1. *Sovereignty.* Nothing in this Agreement shall be construed as a waiver of the Band's sovereign immunity. The Band does not, by entering into this Agreement, consent to the jurisdiction of a state court to hear any claims or disputes arising under this Agreement, whether arising as claims against the Band itself, its wholly owned entities, or any employee of the Band performing work hereunder, except as provided in Article G.2 of this Agreement. No Band employee shall be subject to the jurisdiction of a state court as a result of having performed work associated with the Project. Nothing in this Agreement shall be construed as a waiver of the State or MnDOT's sovereignty, sovereign immunity, or of any limitation of liability afforded to MnDOT or the State by its laws. MnDOT and the State of Minnesota do not, by entering into this Agreement, consent to the jurisdiction of a tribal court to hear any claims or disputes arising under this Agreement, whether arising as claims against the State itself or against any employee of the State performing work hereunder, except as provided in Article G.2 of this Agreement. No MnDOT or state employee shall be subject to the jurisdiction of the Band's Tribal Court as a result of having performed design, inspection, or other work associated with the Project.
2. *Dispute Resolution.* The parties agree that they have a mutual desire to resolve Project-related disputes expeditiously, informally, and at the lowest level possible. Disputes will be initially addressed by the State's Resident Engineer and the Band's Tribal Engineering employee who is in responsible charge of the Project. If the Dispute is not resolved at that level, it will be referred to the Tribal Chairman and the Commissioner of Transportation. Disputes that are not resolved through this partnering process will be resolved in accordance with the Dispute Resolution Process described in Exhibit D.
3. *MnDOT's Obligation Capped.* MnDOT's financial obligation is limited to MnDOT's share of the Contract Cost as provided in article E.1 plus Approved Extra Costs as provided in Article E.4 plus Approved Claim Costs as provided in Article E.5. MnDOT is not acting as a surety or guarantor of any tribal, governmental, or private bond or financing instrument used for the planning, design, or construction of the Project.

4. *Severability.* If any provision of this Agreement is held invalid by a court of competent jurisdiction, the remaining provisions will continue in full force and effect unless the end result would then frustrate the purpose of this Agreement. In that event, the terms shall be interpreted in a manner calculated to lead to successful completion of the Project by the Band using the obligated state funds or, if that is impossible or inequitable, in a manner intended to restore the parties to the *status quo ante*.
5. *Representative Capacity.* The signatories have not executed this Agreement as individuals, but solely in their capacities as officials of their respective governments. Each signatory represents that they are duly authorized to execute this Agreement on behalf of their respective government or agency.
6. *Merger; Amendments.* This Agreement contains all of the terms and conditions governing the Project as agreed to between the Band and MnDOT. No other understanding, whether written or oral, will be used to vary the terms of this Agreement. Any amendment to this Agreement must be made in a writing signed by parties to this Agreement.
7. *Status of Employees.* No employee of the Band, or employee of any contractor used by the Band, will be considered a State employee for any purpose. No employee of MnDOT will be considered an employee of the Band for any purpose.
8. *Audit.* The Band will comply with applicable State auditing procedures. Records relating to the Project will be retained for a minimum of six years and the band will make those records available to the State, the Legislative Auditor, or the State Auditor upon written request. This provision does not require the Band to produce any records not directly related to the Project.
9. *Nondiscrimination.* The Band agrees that it will not discriminate against employees or applicants for employment on the Project because of race, color, creed, religion, national origin, sex, marital status, disability, status with regard to public assistance, sexual orientation, or age.
10. *Data Practices Act.* All data provided to the State by the Band will be treated in accordance with the Minnesota Government Data Practices Act, Minnesota Statutes chapter 13.
11. *Effective Dates.* This Agreement will be effective on the date last signed by the parties below, including all necessary State of Minnesota Officials as required by Minnesota Statutes §16C.05, and all necessary Red Lake Nation officials as required by laws applicable to the Band. This Agreement will remain in effect until the Project has achieved "Final Contract Acceptance" in accordance with MnDOT Standard Specification 1516, and all financial obligations imposed by this Agreement have been met.

12. *Exhibits.* Exhibits A through D are attached and incorporated into this Agreement.
13. *Electronic Contracting and Signatures.* The parties agree to contract by electronic means. This includes using electronic signatures and converting original documents to electronic records.
14. *Authorized Representatives.* Each party's Authorized Representative will have responsibility to administer this Agreement; and to give and receive any notices required or permitted under this Agreement.
 - a. The Band's authorized representative is the Tribal Engineer at Red Lake, MN.
 - b. The State's authorized representative is the District Engineer at Bemidji, MN.

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**RED LAKE BAND OF
CHIPPEWA INDIANS**



Darrell G. Seki, Sr.
Chairman

Date: _____

**STATE OF MINNESOTA
ENCUMBRANCE VERIFICATION**

By: _____

Date: _____

**STATE OF MINNESOTA
DEPARTMENT OF
TRANSPORTATION**

Margaret Anderson Kelliher
Commissioner

Date: _____

**STATE OF MINNESOTA
COMMISSIONER OF ADMINISTRATION**

By: _____

Date: _____

EXHIBIT A – SCOPE OF WORK

1. Expected Outcomes.

- 1.1 The Band will provide staff and services as necessary to meet the expected outcomes of this Agreement, which are: (1) construction is inspected to ensure conformance to plans and specifications, (2) samples are taken and tests are performed in conformance to the applicable "Materials Control Schedule", and (3) construction work is adequately documented.
- 1.2 The Band is responsible for determining the means, methods, and sequence of work.
- 1.3 The Band is responsible for construction staking and all survey needs of the project.

2. Personnel Requirements.

- 2.1 The Band must provide a project engineer/supervisor, chief inspector, at least 2 additional inspectors, and a 2-person survey crew. The chief inspector will be working on SP 0404-38, and will work in coordination with State's Project Engineer/Supervisor. The combination of inspectors must, at a minimum, have the following certifications:
 - (1) Aggregate Production
 - (2) Bituminous Street levels 1 & 2
 - (3) Bituminous Plant levels 1 & 2
 - (4) Concrete Field levels 1 & 2
 - (5) Concrete Field levels 1 & 2
 - (6) Grading & Base levels 1 and 2.
 - (7) ADA Inspection Certification
 - (8) Erosion Control Site Management

3. Construction Inspection and Testing Requirements. The Band must:

- 3.1 Provide tools and equipment needed to perform the work including, but not limited to :
 - 3.1.1 Cellular telephone, computer, and WiFi access;
 - 3.1.2 Tools, supplies, and equipment including, but not limited to, testing equipment;
 - 3.1.3 Personal Protective Equipment (PPE) including, but not limited to, Safety vests meeting American National Standards Institute (ANSI) Class II, Class E long pants (for night work), hard hats, hats, fall protection, safety glasses, steel-toed boots, and hearing protection;
 - 3.1.4 Vehicle(s) for the inspector(s) use, equipped with a beacon on the approved products list, which can be found at:
www.dot.state.mn.us/products/vehiclighting/index.html; and
 - 3.1.5 Other incidentals needed to perform the work.
- 3.2 Meet with the State's Project Engineer or Supervisor before the pre-construction meeting. Understand the State's standard construction practices. Become familiar with the construction plans, contract documents, and the construction contractor's proposed schedule, prior to the date work commences.
- 3.3 Attend construction meetings necessary for close coordination during day-to-day progress of the work or as required to carry out the construction contract. Meetings may include a preconstruction meeting and a close out meeting.
- 3.4 Conduct concrete certification tests according to the Materials Control Schedule including, but not limited to, air tests, slump tests, and taking test cylinders.
- 3.5 Conduct grading certification tests according to the Materials Control Schedule including, but not limited to gradations, moisture, and density.

- 3.6 Conduct bituminous pavement sampling tests according to the Materials Control Schedule including, but not limited to, asphalt cement samples, temperatures, and quantity weigh tickets.
 - 3.7 Exercise the "Authority and Duties of the Inspector" in accordance with MnDOT Standard Specification 1510. Promptly inform the State's Project Engineer/Supervisor of issues requiring the Project Engineer's/Supervisor's attention or action including, but not limited to, problems encountered in the field. Coordinate with the State's Project Engineer/Supervisor to reject the construction contractor's work and materials not meeting contract requirements.
 - 3.8 Accurately measure and record contract pay items on a daily basis.
 - 3.9 Obtain, document, and file test report records or certificates of compliance for materials incorporated into the project.
 - 3.10 Communicate regularly with the State's Project Engineer/Supervisor including, but not limited to, the results of certification testing, field inspection, and measuring pay items.
 - 3.11 Provide the services required under this contract as necessary to accommodate the construction contractor's schedule. This may include overtime, nights, weekends, and holidays.
 - 3.12 Perform field operations in accordance with Occupational Safety and Health Administration (OSHA) regulations and accepted safety practices.
 - 3.13 Use the AASHTOWARE system to enter and maintain Daily Work Reports and Daily Diaries, making a complete and accurate record of all activities and events relating to the project and a record of all work completed by the construction contractor.
 - 3.14 Collect, properly label or identify, all original diaries, logs, notebooks, accounts, records, reports, and other documents prepared in the performance of this contract. Provide all paper and electronic documents to MnDOT upon completion or termination of the construction contract.
 - 3.15 Enter construction diaries and pay item measurements into computer applications designated MnDOT, on a daily basis.
 - 3.16 Perform daily reviews of construction signing, detour signing, and construction traffic control maintenance. Take any corrective action when necessary and notify MnDOT's Construction Project Engineer/Supervisor of such action.
 - 3.17 Perform reviews of temporary and permanent erosion control measures on the project for compliance with applicable permits and specifications. Keep a diary of these reviews including, but not limited to, written or verbal instructions for remedial action given to the construction contractor.
 - 3.18 Complete all necessary field finalizing of the project documentation in accordance with the MnDOT Specifications and MnDOT's Contract Administration Manual.
 - 3.19 Perform such other work as the Band deems necessary to achieve the expected outcomes of this contract.
 - 3.20 Use the ASHTOWARE system to create pay vouchers for payment to prime contractor.
- 4. Surveying.** The Band must:
- 4.1 Provide all necessary computations, stakes and marks to establish lines, slopes, elevations, points, continuous profile grades in accordance with MnDOT 1508 and the requirements shown in the Plan for Construction Staking; so that the contractor's forces are able to construct all required work for the Project in accordance with the requirements of this Agreement; and so that MnDOT Engineers and Inspectors are able to complete all necessary inspection and duties. The staking shall include, but not be limited to, clearing and grubbing, removals, grading, culverts, embankments, borrow, aggregate base course, pavements, bridges, utilities, signs, pavement

markings, erosion control and turf establishment items to complete the Project as represented in the Plans. The Surveying must be done in a way that is timely, and that is reflective of the continuing and ongoing nature of construction and inspection activities which will generally require frequent, separate Project visits by the Band's survey crew to the Project to accommodate the various stages of construction and inspection activities that will occur.

- 4.2 Prepare to make all necessary surveying checks for field verification of actual conditions and shall make the necessary minor surveying and staking adjustments to fit the construction to actual field conditions. In addition, some Plan details may be dependent upon actual field conditions at the time of construction. It may be necessary to perform some field survey or office computations in order to stake these components. All work referred to in this paragraph is considered part of the work of Construction Surveying and no additional payment will be made for this work.
- 4.3 Be responsible for the preservation of all reference points, monuments, government land corners, horizontal and vertical control points, stakes, and marks that are established by MnDOT or others within the Project limits. If the Band or its surveyor fails to preserve these items and if they must be reestablished by MnDOT, MnDOT will deduct a charge from monies due or becoming due the Band according to MnDOT's costs.
- 4.4 Be responsible to review, balance, adjust, correct, and investigate MnDOT provided data and to perform work on survey data and control points that may be necessary to use the survey points and data, all at no extra cost to MnDOT, unless it is determined by the MnDOT Engineer that latent errors existed in the information provided by MnDOT.
- 4.5 Start and end all level runs, traverses, or GPS control surveys, from known control. Complete all control surveys at no worse than the standards specified for supplemental control in Chapter 2, MnDOT Surveying and Mapping Manual.
- 4.6 Unless otherwise agreed to, set all stakes and marks in accordance with the Staking Information Sheets included in the Plan.
- 4.7 Furnish and install traffic control devices in accordance with the Field Manual for Temporary Traffic Control Zone Layouts, Part VI, (MN MUTCD), when contractor crew members are exposed to traffic.
- 4.8 Perform all construction surveying for all Project construction as shown in MnDOT 1508, and shall install reference points as needed for the use of any public utility crews that are staking or accomplishing utility relocation or construction associated with the Project.
 - 4.8.1 From Horizontal and Vertical Control Points established by the Engineer.
 - 4.8.2 According to the Plan, Proposal and Standard Specifications.
 - 4.8.3 According to the MnDOT Surveying and Mapping manual.
 - 4.8.4 According to actual existing field conditions.
- 4.9 Bear all costs, including but not limited to the cost of actual reconstruction of Project work that may be incurred due to errors in Contractor's Construction Surveying.
- 4.10 Provide tools, supplies, and equipment to perform the surveying including, but not limited to, testing equipment;
- 4.11 Document surveying during construction in a form acceptable to the Engineer and allow the Engineer access to surveying notes and calculations. The survey documentation includes:
 - 4.11.1 Control station monumentation with reference ties; and
 - 4.11.2 Field notes that were used to set construction stakes, control the Project, and document monument locations. The Band shall use bound, hard cover field

books for recording survey data and field notes; store field notes on an electronic medium; or use both methods. If an electronic medium is used, the raw field data files must be available. When using an electronic medium, the Band shall make all files and data available in the Standard formats used by the MnDOT. Personal Protective Equipment (PPE) including, but not limited to, Safety vests meeting American National Standards Institute (ANSI) Class II, Class E long pants (for night work), hard hats, hats, fall protection, safety glasses, steel-toed boots, and hearing protection;

4.12 Present MnDOT's Authorized Representative with the as-built Survey Data. The as-built Survey Data shall include the following:

4.12.1 Changes from the Plan

- (a) Alignment
- (b) Profile
- (c) Sewer
- (d) Typical Section

4.12.2 Locations of utilities relocated or emplaced as part of the Project

4.12.3 Identify any alignment, Right-of-Way, property, or control monumentation destroyed during the Project

4.12.4 Any alignment, Right-of-Way, property, or control monumentation that was placed during the Project and that still exists at Project completion.

4.12.5 The information shall include the x, y and, if applicable, the z coordinates in the Project datum. If the original item had no coordinate reference, then show the revised centerline station and offset.

4.12.6 The information shall be provided in both electronic (Microstation and GeoPak) and hard copy format.

4.12.7 In the case of new monumentation, there should also be a report describing how the monumentation was placed. This will include copies of any fieldwork (traverse or leveling) as well as any adjustments used. It shall also include tie sheets, to include a description of the physical object placed as the monument.

4.12.8 Furnish survey documentation and as-built Survey Data to MnDOT's Authorized Representative within the time limits indicated in the surveying work schedule.

5. **Deliverables.** The following is a brief summary of the deliverables under this contract:

- 5.1 Documents required by MnDOT's Schedule of Materials Control and Contract Administration Manual;
- 5.2 Daily Work Reports and Daily Diaries;
- 5.3 Material certification and testing results;
- 5.4 Pay voucher created at least once per month, using AASHTOWARE;
- 5.5 Project final documents including, but not limited to, closed contract pay items, materials exception report, overrun/underrun letter and all final documents properly submitted in appropriate envelopes; and
- 5.6 For bridge projects, complete and submit the following to the Bridge Office: (1) as-built sheets, (2) Pile-driving records, and (3) All other submittals required by the Bridge Special Provisions including Quality Assurance/Quality Control (QA/QC) submissions.
- 5.7 Furnish survey documentation and as-built Survey Data to the Engineer within the time limits indicated in the surveying work schedule.

6. **Reduced Staffing Needs.**

The Band will withdraw any personnel or halt any services no longer required, within a reasonable time after the lack of need becomes apparent to the Band, or at MnDOT's request.

T.H. 1 S.P. 0404-38 Bid Costs

ITEM NO.	ITEM DESCRIPTION	NOTE	UNIT	UNIT COST	TOTAL ESTIMATED QUANTITY	TOTAL ESTIMATED COST	ROADWAY RECONSTRUCTION		
							S.P. 0404-38 100% STATE FUNDS		100% Red Lake Band of Chippewa Indians
							EST. QUANT.	EST. COST	EST. COST
2011.601	AS BUILT		LUMP SUM	\$22,500.00	1	\$22,500.00	1	\$22,500.00	
2021.501	MOBILIZATION		LUMP SUM	\$275,000.00	1	\$275,000.00	0.84	\$231,000.00	\$44,000.00
2031.502	FIELD OFFICE TYPE B		EACH	\$35,470.00	1	\$35,470.00	0.84	\$29,794.80	\$5,675.20
2100.601	LIFT STATION REHABILITATION		LUMP SUM	\$14,945.34	1	\$14,945.34			\$14,945.34
2101.524	CLEARING & GRUBBING		LUMP SUM	\$16,925.00	1	\$16,925.00	1	\$16,925.00	
2104.502	REMOVE DROP INLET		EACH	\$1,725.50	2	\$3,451.00	2	\$3,451.00	
2104.502	REMOVE BOLLARDS		EACH	\$200.00	4	\$800.00			\$800.00
2104.502	SALVAGE CASTING		EACH	\$500.00	1	\$500.00			\$500.00
2104.502	REMOVE MANHOLE OR CATCH BASIN		EACH	\$1,692.50	1	\$1,692.50			\$1,692.50
2104.502	REMOVE SIGN		EACH	\$50.00	50	\$2,500.00	50	\$2,500.00	\$600.00
2104.502	SALVAGE SIGN		EACH	\$50.00	12	\$600.00			
2104.503	REMOVE PIPE CULVERTS		LIN FT	\$22.00	200	\$4,400.00	200	\$4,400.00	
2104.503	REMOVE CURB & GUTTER		LIN FT	\$7.20	2162	\$15,566.40	2162	\$15,566.40	
2104.503	SAW BITUMINOUS PAVEMENT (FULL DEPTH)		LIN FT	\$4.50	1882	\$8,469.00	1882	\$8,469.00	
2104.503	REMOVE FENCE		LIN FT	\$7.10	1583	\$11,239.30	1583	\$11,239.30	
2104.504	REMOVE BITUMINOUS SURFACING		SQ YD	\$4.00	41520	\$166,080.00	37921	\$151,684.00	\$14,396.00
2104.518	REMOVE CONCRETE SIDEWALK		SQ FT	\$8.50	752	\$6,392.00	147	\$1,249.50	\$5,142.50
2104.504	GEOTEXTILE FABRIC TYPE 5		SQ YD	\$3.40	5017	\$17,057.80	5017	\$17,057.80	
2106.507	EXCAVATION - COMMON		CU YD	\$7.83	40904	\$320,278.32	37012	\$289,803.96	\$30,474.36
2106.507	SELECT GRANULAR EMBANKMENT (CV)		CU YD	\$11.50	20588	\$236,762.00	20588	\$236,762.00	
2106.507	EXCAVATION - CHANNEL AND POND		CU YD	\$17.25	1322	\$22,804.50	1322	\$22,804.50	
2106.507	COMMON EMBANKMENT (CV)		CU YD	\$11.50	1322	\$15,203.00	1322	\$15,203.00	
2123.510	DOZER		HOURL	\$165.00	20	\$3,300.00	20	\$3,300.00	
2123.510	CRAWLER MOUNTED BACKHOE		HOURL	\$165.00	20	\$3,300.00	20	\$3,300.00	
2211.507	AGGREGATE BASE (CV) CLASS 6		CU YD	\$18.25	11662	\$212,831.50	9419	\$171,896.75	\$40,934.75
2221.509	SHOULDER BASE AGGREGATE CLASS 1		TON	\$21.25	141	\$2,996.25	141	\$2,996.25	
2232.504	MILL BITUMINOUS SURFACING (2.0")		SQ YD	\$3.80	8952	\$34,017.60	8952	\$34,017.60	
2360.509	TYPE SP 9.5 WEARING COURSE MIXTURE (3.C)		TON	\$80.25	13016	\$1,044,534.00	11046	\$896,441.50	\$188,092.50

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ITEM NO.	ITEM DESCRIPTION	NOTE	UNIT	UNIT COST	TOTAL ESTIMATED QUANTITY	TOTAL ESTIMATED COST	ROADWAY RECONSTRUCTION			
							S.P. 0404-38 100% STATE FUNDS		100% Red Lake Band of Chippewa Indians	
							EST. QUANT.	EST. COST	EST. QUANT.	EST. COST
2412.511	12 X 8 PRECAST CONCRETE BOX CULVERT END SECTION		EACH	\$18,400.00	4	\$73,600.00	4	\$73,600.00		
2412.511	12 X 8 PRECAST CONCRETE BOX CULVERT		LIN FT	\$1,100.00	300	\$330,000.00	300	\$330,000.00		
2451.507	COARSE AGGREGATE BEDDING		CU YD	\$34.00	722	\$24,548.00	722	\$24,548.00		
2452.618	STEEL SHEET PILING (TEMPORARY)		SQ FT	\$18.50	8160	\$150,960.00	8160	\$150,960.00		
2501.502	15" RC PIPE APRON		EACH	\$948.00	1	\$948.00	1	\$948.00		
2501.502	18" RC PIPE APRON		EACH	\$1,160.10	3	\$3,480.30	3	\$3,480.30		
2501.502	24" RC PIPE APRON		EACH	\$1,588.75	1	\$1,588.75	1	\$1,588.75		
2501.502	18" GS PIPE APRON		EACH	\$479.00	2	\$958.00	2	\$958.00		
2501.502	24" GS PIPE APRON		EACH	\$501.00	1	\$501.00	1	\$501.00		
2503.503	18" CP PIPE SEWER		LIN FT	\$53.00	115	\$6,095.00	115	\$6,095.00		
2503.503	24" CP PIPE SEWER		LIN FT	\$61.50	80	\$4,920.00	80	\$4,920.00		
2503.503	12" RC PIPE SEWER DES 3006		LIN FT	\$66.00	980	\$64,680.00	980	\$64,680.00		
2503.503	15" RC PIPE SEWER DES 3006		LIN FT	\$70.75	1348	\$95,371.00	1348	\$95,371.00		
2503.503	18" RC PIPE SEWER DES 3006		LIN FT	\$75.00	270	\$20,250.00	270	\$20,250.00		
2503.503	24" RC PIPE SEWER DES 3006		LIN FT	\$87.00	371	\$32,277.00	371	\$32,277.00		
2504.602	ADJUST VALVE BOX-WATER		EACH	\$564.90	4	\$2,259.60	4	\$2,259.60		
2504.602	ADJUST HYDRANT		EACH	\$1,400.50	1	\$1,400.50	1	\$1,400.50		
2506.502	CASTING ASSEMBLY		EACH	\$781.00	35	\$27,335.00	35	\$27,335.00		
2506.502	CONSTRUCT DRAINAGE STRUCTURE DES 4007		EACH	\$2,200.00	1	\$2,200.00	1	\$2,200.00		
2506.503	CONSTRUCT DRAINAGE STRUCTURE DESIGN H		LIN FT	\$493.88	119.9	\$59,192.23	119.9	\$59,192.23		
2506.503	CONSTRUCT DRAINAGE STRUCTURE DESIGN F		LIN FT	\$565.00	30	\$17,550.00	30	\$17,550.00		
2506.502	ADJUST FRAME & RING CASTING		EACH	\$700.00	12	\$8,400.00	12	\$8,400.00		
2506.602	INSTALL MANHOLE		EACH	\$10,407.50	1	\$10,407.50	1	\$10,407.50		
2506.603	CONSTRUCT DRAINAGE STRUCTURE DESIGN SPECIAL		LIN FT	\$610.00	78	\$47,580.00	78	\$47,580.00		
2511.504	GEOTEXTILE FILTER TYPE 4		SQ YD	\$4.00	249	\$996.00	249	\$996.00		
2511.507	RANDOM RIPRAP CLASS II		CU YD	\$93.25	1955	\$182,303.75	1955	\$182,303.75		
2511.507	RANDOM RIPRAP CLASS III		CU YD	\$104.50	23	\$2,403.50	23	\$2,403.50		
2511.507	RANDOM RIPRAP CLASS IV		CU YD	\$104.50	76	\$7,942.00	76	\$7,942.00		
2521.518	6" CONCRETE WALK		SQ FT	\$111.10	6751	\$74,936.10	6751	\$74,936.10	5794	\$64,313.40
2531.503	CONCRETE CURB AND GUTTER DESIGN B424		LIN FT	\$21.00	13662	\$286,902.00	13662	\$286,902.00		
2531.503	CONCRETE CURB AND GUTTER DESIGN B618		LIN FT	\$44.75	767	\$34,323.25	767	\$34,323.25		

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ITEM NO.	ITEM DESCRIPTION	NOTE	UNIT	UNIT COST	TOTAL ESTIMATED QUANTITY	TOTAL ESTIMATED COST	ROADWAY RECONSTRUCTION		
							S.P. 0404-38 100% STATE FUNDS		100% Red Lake Band of Chippewa Indians
							EST. QUANT.	EST. COST	EST. QUANT.
2531.503	CONCRETE CURB AND GUTTER DESIGN B624		LIN FT	\$39.00	1137	\$44,343.00	1137	\$44,343.00	
2531.504	8" CONCRETE DRIVEWAY PAVEMENT		SQ YD	\$80.25	1313	\$105,368.25	1313	\$105,368.25	
2531.604	8" CONCRETE VALLEY GUTTER		SQ YD	\$111.50	970	\$108,155.00	970	\$108,155.00	
2531.618	TRUNCATED DOMES		SQ FT	\$52.00	688	\$35,776.00	256	\$13,312.00	432
2545.501	LIGHTING SYSTEM "A"		LUMP SUM	\$233,200.00	1	\$233,200.00	0.5	\$116,600.00	0.5
2545.501	LIGHTING SYSTEM "B"		LUMP SUM	\$268,400.00	1	\$268,400.00	0.5	\$134,200.00	0.5
2557.502	ELECTRICAL GROUND		EACH	\$425.00	4	\$1,700.00			4
2557.502	METAL BRACE ASSEMBLY-CHAIN LINK FENCE		EACH	\$550.00	8	\$4,400.00	8	\$4,400.00	
2557.503	WIRE FENCE DESIGN 60V-9322		LIN FT	\$54.80	857	\$46,963.60			857
2557.603	INSTALL WOOD RAIL FENCE		LIN FT	\$17.40	1194	\$20,775.60	1194	\$20,775.60	
2563.601	TRAFFIC CONTROL		LUMP SUM	\$14,100.00	1	\$14,100.00	0.84	\$11,844.00	0.16
2563.601	TRAFFIC CONTROL SUPERVISOR		LUMP SUM	\$9,000.00	1	\$9,000.00	1	\$9,000.00	
2564.502	INSTALL SIGN		EACH	\$156.00	12	\$1,872.00	12	\$1,872.00	
2564.518	SIGN PANELS TYPE C		SQ FT	\$84.00	\$404.75	\$33,999.00	404.75	\$33,999.00	
2565.616	PEDESTRIAN CROSSWALK FLASHER SYSTEM		SYSTEM	\$40,700.00	1	\$40,700.00			1
2571.524	DECIDUOUS TREE 8' HT CONT		EACH	\$763.00	12	\$9,156.00	12	\$9,156.00	
2573.501	STABILIZED CONSTRUCTION EXIT		LUMP SUM	\$3,376.00	1	\$3,376.00	1	\$3,376.00	
2573.501	EROSION CONTROL SUPERVISOR		LUMP SUM	\$11,904.00	1	\$11,904.00	1	\$11,904.00	
2573.502	STORM DRAIN INLET PROTECTION		EACH	\$225.00	32	\$7,200.00	32	\$7,200.00	
2573.503	SILT FENCE, TYPE MS		LIN FT	\$3.00	5331	\$15,993.00	5331	\$15,993.00	
2573.503	FLOTATION SILT CURTAIN TYPE MOVING WATER		LIN FT	\$28.00	150	\$4,200.00	150	\$4,200.00	
2573.503	SEDIMENT CONTROL LOG TYPE WOOD FIBER		LIN FT	\$5.00	1200	\$6,000.00	1200	\$6,000.00	
2574.507	COMMON TOPSOIL BORROW		CU YD	\$16.00	7131	\$114,096.00	6510	\$104,160.00	621
2574.508	FERTILIZER TYPE 4		LB	\$1.20	2600	\$3,120.00	2000	\$2,400.00	600
2575.504	EROSION CONTROL BLANKETS CATEGORY 3N		SQ YD	\$2.50	16377	\$40,942.50	16377	\$40,942.50	
2575.505	RAPID STABILIZATION, METHOD 2		ACRE	\$1,114.00	9.6	\$10,694.40	6.6	\$7,352.40	3
2575.505	SEEDING		ACRE	\$345.40	13	\$4,490.20	10	\$3,454.00	3
2575.508	SEED MIXTURE 25-141		LB	\$5.80	767	\$4,255.20	590	\$3,304.00	177
2575.508	SEED MIXTURE 34-181		LB	\$479.00	5	\$2,395.00	5	\$2,395.00	

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							EST. QUANT.	EST. COST	EST. QUANT.	EST. COST
2575.508	HYDRAULIC BONDED FIBER MATRIX		LB	\$2.50	7200	\$18,000.00	4950	\$12,375.00	2250	\$5,625.00
2582.503	4" SOLID LINE MULTI COMP GROUND IN (WR)		LIN FT	\$0.80	30819	\$24,655.20	30819	\$24,655.20		
2582.503	4" DOUBLE SOLID LINE MULTI COMP GROUND IN (WR)		LIN FT	\$1.50	4654	\$6,981.00	4654	\$6,981.00		
2582.503	4" BROKEN LINE MULTI COMP GROUND IN (WR)		LIN FT	\$0.75	2817	\$2,112.75	2817	\$2,112.75		
2582.503	12" SOLID LINE MULTI COMP GROUND IN (WR)		LIN FT	\$15.60	42	\$655.20	42	\$655.20		
2582.518	CROSSWALK MULTI COMP GROUND IN (WR)		SQ FT	\$10.25	3594	\$36,838.50	3594	\$36,838.50		
2582.518	PAVEMENT MESSAGE PAINT GROUND IN (WR)		SQ FT	\$23.00	1185	\$27,255.00	1185	\$27,255.00		
	R.L.B.C.I. = Red Lake Band of Chippewa Indians				Bid Item Total Cost =	\$5,399,016.39	MnDOT Item Cost =	\$4,571,924.99	R.L.B.C.I. Item Cost =	\$827,091.40
	TERO FEE (3%)				Total TERO Fee =	\$161,970.49	MnDOT TERO Fee =	\$137,157.75	R.L.B.C.I. TERO Fee =	\$24,812.74
					Total Cost =	\$5,560,986.88	MnDOT Cost =	\$4,709,082.74	R.L.B.C.I. Cost =	\$851,904.14

Staking Cost	\$74,580.00
Inspection Cost	\$111,600.00
Est. Construction Phase Total	<u>\$186,180.00</u>

EXHIBIT D – DISPUTE RESOLUTION PROCESS

Mediation. In the event of any dispute, claim, question or disagreement ("Dispute") arising from or relating to this Agreement or the breach thereof, the parties hereto agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association ("AAA") under its Commercial Mediation Rules before resorting to binding arbitration.

Arbitration. If a party in good faith concludes that a Dispute is not likely to be resolved by mediation, then, upon notice by that party to the other, all Disputes shall be finally and exclusively settled by arbitration administered by the AAA in accordance with the provisions of its Commercial Arbitration Rules. Within ten days after the commencement of arbitration, each party shall select one person to act as arbitrator and the two selected shall select a third arbitrator within ten days of their appointment. If the arbitrators selected by the parties are unable or fail to agree upon the third arbitrator, the third arbitrator shall be selected by the AAA. The third arbitrator shall be a practicing attorney, actively engaged in the practice of law for at least ten years and a member in good standing of the bar of Minnesota. Alternatively, the third arbitrator may be a retired judge of the federal court or the trial court of the state of Minnesota. The third arbitrator shall have the AAA-acknowledged expertise in the appropriate subject matter. The place of arbitration shall be the county in which the project is located. The award shall be made within nine months of the filing of the notice of intent to arbitrate, and the arbitrators shall agree to comply with the schedule before accepting appointment. However, this time limit may be extended by agreement of the parties or by the majority of the arbitrators, if necessary. Any award rendered in any such arbitration proceeding shall be final and binding.

Enforcement. Judgment upon any award rendered by the arbitrators against any party shall, upon the request of the prevailing party, be entered in the Tribe's tribal court system ("Tribal Court") or in a Minnesota District Court and such proceeding shall be conducted subject to the rules and procedures thereof; the parties agree that the Tribal Court or District Court shall have the power to enforce, but not review or modify, the arbitrators' award. Each party, for itself and its authorities and instrumentalities, agrees that it shall accept and be bound by the award of the arbitrators or a judgment, ruling or order which is final (because either the time for appeal has expired or the judgment or order is issued by the court having final appellate jurisdiction over the matter and is not subject to collateral attack). The parties agree that such agreement constitutes a limited waiver of sovereign immunity solely for the purposes of enforcing the provisions of this Agreement and not a general or complete waiver of sovereign immunity.

Document Discovery. Consistent with the expedited nature of arbitration, each party will, upon the written request of the other party, promptly provide the other with copies of documents, provided such documents are relevant to the issues raised by any claim or counterclaim. Any dispute regarding discovery, or the relevance or scope thereof, shall be determined by the chair of the arbitration panel and such determination shall be conclusive. All discovery shall be completed within 45 days following the appointment of the arbitrators.

Preliminary Relief. Either party may apply to the panel of arbitrators seeking injunctive relief until the arbitration award is rendered or the Dispute is otherwise resolved. Either party also may, without waiving any remedy under this agreement, seek from the Tribal Court or District Court, any interim or provisional relief that is necessary to protect the rights or property of that party, pending the establishment of the arbitration panel (or pending the arbitration panel's determination of the merits of the Dispute).

Waiver of Trial by Jury. The parties hereby waive all rights to trial by jury in connection with any action brought or maintained hereunder.

