

PROJECT BE 09-F82

MEMORANDUM OF AGREEMENT
BETWEEN THE INDIAN HEALTH SERVICE
AND THE
LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS

CONSTRUCTION OF SANITATION FACILITIES
TO SERVE BIA HIP AND OTHER CATEGORY HOMES
ON THE LITTLE TRAVERSE BAY BANDS RESERVATION
ALCONA, ALGER, ALPENA, ANTRIM, BENZIE, CHARLEVOIX, CHEBOYGAN,
CHIPPEWA, CRAWFORD, DELTA, EMMET, GRAND TRAVERSE, IOSCO,
KALKASKA, LEELANAU, LUCE, MACKINAC, MANISTEE, MISSAUKEE,
MONTMORENCY, OGEMAW, OSCODA, OTSEGO, PRESQUE IDLE, ROSCOMMON,
SCHOOLCRAFT AND WEXFORD COUNTIES, MICHIGAN

Public Law 86-121



IN WITNESS WHEREOF, the parties have hereto subscribed their names.

FOR THE LITTLE TRAVERSE BAY BANDS OF ODAWA
INDIANS

M. Pawayleh

7-1-09

Chairperson, having Been Duly Authorized To Enter Into
This Agreement On Behalf of the Little Traverse Bay Bands
of Odawa Indians

Date

FOR THE INDIAN HEALTH SERVICE

Jerry J. [Signature]

7-13-09

Area Director, Bemidji Area Office, Indian Health Service,
Department of Health and Human Services

Date

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1.0 PREAMBLE

This agreement is made between the Indian Health Service, hereinafter called IHS, acting through the Director, Bemidji Area IHS, Department of Health and Human Services, acting on behalf of the United States of America, under and pursuant to the provisions of Public Law 86-121 (42 U.S.C. 2004a; 73 Stat. 267); and the Little Traverse Bay Band, hereinafter called the Band, acting through their Chairperson.

WHEREAS, The Band is desirous of obtaining satisfactory water supply and wastewater disposal facilities for homes on the Little Traverse Bay Bands of Odawa Indians (LTBB) Reservation, and

WHEREAS, the Band, acting through the Housing Director, submitted a Project Proposal Letter dated December 2, 2008, requesting IHS assistance under Public Law 86-121 to construct water supply and wastewater disposal facilities to serve approximately 10 Other Category homes on the LTBB Reservation; and

WHEREAS, the IHS is desirous of assisting in the construction of water supply and wastewater disposal facilities for Other Category homes to protect the health of the Tribal members and to safeguard the environment of the LTBB Reservation; and

WHEREAS, the Band has reviewed and concurs with the provisions of the attached Project Summary.

NOW THEREFORE, in order to carry out the project as set forth in the attached Project Summary entitled "CONSTRUCTION OF SANITATION FACILITIES TO SERVE OTHER CATEGORY HOMES", dated May 2009, the parties mutually agree that:

2.0 FINANCIAL OBLIGATIONS

2.1 PROJECT FUNDING SUMMARY

2.1.1 Funding Contributions

IHS	\$160,000.00
Little Traverse Bay Bands of Odawa Indians	\$ 0.00
US EPA	\$ 0.00
US Army Corps of Engineers	\$ 0.00
USDA – Rural Utility Service	\$ 0.00
Other	<u>\$ 0.00</u>
Total Project Funding	\$160,000.00

2.1.2 Funding Allocation

Construction Amount	\$ 132,500.00
IHS Construction Support	\$ 14,250.00
Contingencies	\$ 13,250.00
NEPA Evaluations	\$ 0.00
Total Project Funding	\$160,000.00

2.1.3 IHS shall provide funding for all materials, supplies, equipment, and labor for the installation of water supply and wastewater disposal facilities as provided for in the attached Project Summary, and not otherwise provided for in this agreement. The total contribution amounts identified in Section 2.1.1 shall not be exceeded without a fully executed amendment to this agreement.

2.1.4 IHS shall utilize project funds as indicated in Section 2.1.2 for IHS construction support expenses. Project construction support expenses shall include IHS expenditures for technician and clerical salaries, GSA vehicles, and miscellaneous project related expenses.

2.1.5 The Band shall provide the required sanitation facilities and services for its direct benefit using its own tribal procurement system. IHS shall provide technical assistance and contribute funds to the Band for the approved cost of the sanitation facilities and services in accordance with the provisions of this agreement.

2.1.6 IHS shall release contributions to the Band as provided for in this Agreement upon:

- Execution of this agreement by all parties; and
- Receipt of written request from the Tribe for the required funds; and
- Certification from the IHS Project Engineer that the amount of funds requested is required to make timely payments in accordance with the project budget for the supplies, materials, equipment, and services being obtained under the provisions of this agreement; and
- Approval by the Bemidji Area Office.

3.0 AGREEMENT PROVISIONS

3.1 TRIBAL LANDS

3.1.1 The Band hereby grants permission for the IHS and its representatives to enter upon or across the lands under the jurisdiction of the Band for the purpose of carrying out the project outlined in the attached Project Summary and provided for in this agreement and further agrees to waive all claims which may arise by reasons of such entry, except those which may be recognized under the Federal Tort Claims Act.

- 3.1.2 The Band will obtain without charge to the IHS all easements and/or rights-of-way on or over lands as in the judgment of the IHS may be necessary for the provision and operation of any sanitation facilities provided for herein and waives any claim for compensation and damages therefore.
- 3.1.3 The Band will obtain without charge to the IHS all land necessary for the construction of the facilities provided in the Project Summary. All interests in such lands, easements, and rights-of-way shall remain with the Band, except as otherwise provided for in this Agreement.

3.2 HISTORIC PRESERVATION AND ENVIRONMENTAL REVIEW

- 3.2.1 That the Band will provide assistance in complying with the regulations (36 CFR 800) implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) by informing IHS of any traditional cultural properties which might be affected by construction of the project. The Band shall take appropriate steps to identify traditional cultural properties which could be affected by the project, including contacting traditional cultural leaders or other tribal members who may have knowledge about such locations, sites, or objects.
- 3.2.2 That the IHS shall consult with the Band regarding excavations that may result in inadvertent discovery of human remains in accordance with the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001) and the implementing regulations at 43 CFR Part 10. This Agreement shall serve as official notice to the Band that the proposed sanitation facilities construction may result in inadvertent discoveries, and that any such discoveries shall be subject to the above regulations, including consultation between the IHS and the Tribally designated cultural resources representative and disposition of human remains or related cultural items. If the Band is administering construction of the sanitation facilities, through a Tribal contract or force account, it shall assume full responsibility for compliance with 43 CFR Part 10. [Note: The IHS remains responsible for complying with the regulations implementing Section 106 of the National Historic Preservation Act regarding post-review discoveries at 36 CFR 800.13]
- 3.2.3 IHS is required to perform an Environmental Review on all projects or ensure compliance with the National Environmental Policy Act and other environmental laws and regulations. It is unknown what level of effort will be required to complete the Environmental Review due to the very nature of the review process. Therefore, IHS will be only responsible for costs as outlined in Section 2.1.2. Additional costs will be handled through either negotiated cost sharing, reduction of project scope, changed project scope, or cancellation of the project.
- 3.2.4 The project, or any portion thereof, may be deemed unfeasible if its implementation would violate the National Environmental Policy Act or other environmental laws and regulations.

3.3 HOMES SERVED

- 3.3.1 The Band shall provide a prioritized list of eligible homes to be served under this project. Changes or deletions of homes may be made by the Band at any time prior to actual construction providing such changes are made in writing by the authorized Band representative. The actual homes served will be determined by the Band from the list of homes provided.
- 3.3.2 The Band shall provide for, at no cost to the IHS, water and sewer lines to be extended to a point five feet outside homes approved for service; power and adequate electrical facilities, including proper electrical service entrance, to be available at each home; and homes to be adequately winterized, including blocking and skirting for mobile homes, to protect facilities from freezing.
- 3.3.3 IHS shall make the final determination of eligibility taking into account the recommendations of the Band. The IHS reserves the right to delete from the project any home or participant for which eligibility requirements have not been met, and to withdraw from the project any or all funds intended to serve those homes.
- 3.3.4 The Band will insure all lot corners staked out in the field at those sites requested by the IHS before soils evaluations are performed by the IHS.
- 3.3.5 The Band, at no additional cost to IHS, will assure that all sites will be adequately cleaned of timber and other obstructions to allow for installation of sanitation facilities.
- 3.3.6 The Band will assure the provision of adequate frost protection for sanitation facilities installed at each home.
- 3.3.7 It is agreed by all parties that where a site evaluation indicates that a site will not properly support the operation of sanitation facilities, or the cost of the sanitation facilities will exceed the current IHS unit site cost cap, that particular site will not receive sanitation facilities under this project with one exception. Sites expected to exceed the cost cap may receive sanitation facilities under this project if the Band and/or homeowner agrees to pay those costs in excess of the IHS cost cap.
- 3.3.8 All parties understand that where a home is located within the geographical jurisdiction of a utility maintenance organization, the rules and regulations of that organization will apply.

3.4 TRIBAL CONTRIBUTIONS

- 3.4.1 The Band will appoint a representative who will perform the following functions:
 - a. Coordinate the conduct of the Band's participation under this agreement including, active promotion of project participants at meetings and obtaining consent of the project participants; and

- b. Obtaining Band cooperation in fulfillment of labor responsibilities assumed by the Band under this agreement; and
- c. Provide the IHS with information available to the Band that relates directly to this project, to the extent possible; and
- d. Attend the final inspection in coordination with the IHS project engineer.

3.5 INDIAN HEALTH SERVICE CONTRIBUTIONS

3.5.1 The IHS project engineer shall coordinate IHS Participation in the project.

3.5.2 IHS will provide to the Band, as needed to meet the government's requirements, approval or disapproval of materials, quality control, testing, consultations, site visits, and final acceptance necessary for construction of the sanitation facilities in accordance with the attached Project Summary.

3.5.3 IHS will provide without charge to the Band:

- a. Coordination in obtaining the necessary reviews under the National Environmental Policy Act (NEPA) and applicable laws, regulations, and executive orders. Reviews shall be completed in accordance with IHS environmental review policies and procedures; and
- b. Instructions as to the proper utilization, maintenance, operation and protection of the facilities provided for herein; and
- c. Soil evaluations and design recommendations for onsite water supply and wastewater treatment and disposal systems.

3.5.4 IHS shall provide construction support to the Band, including but not limited to the following:

- a. Engineering design and development of the plans and specifications of the recommended facilities.
- b. Assistance to the Band in the solicitation of bids and review of the bids received.
- c. Construction surveying and layout.
- d. Review and approval of shop drawings, payment requests and change orders.
- e. Intermittent site visits during installation of sanitation facilities for the purpose of verifying compliance with the contract plans, specifications, and minimum IHS standards.
- f. Coordination with the designated Band representative for the joint final inspection as provided for in this agreement.
- g. IHS shall certify and recommend for payment all applicable construction contract payment requests and provide copies to the Band.

3.6 TRANSFER OF FACILITIES

3.6.1 All parties understand that the facilities constructed (including equipment, land, and supplies purchased) under this agreement with IHS or

contributed funds are at no time the property of the IHS, but rather belong to the Band, which shall operate and maintain such facilities properly, until or unless transferred to other parties.

- 3.6.2 Because IHS does not at any time own the facilities constructed, no formal transfer agreement is necessary. In lieu of a transfer agreement, the IHS will notify the Band when IHS participation in the project is complete.
- 3.6.3 The Band shall transfer on site water and wastewater facilities to individual homeowners. Upon completion of the construction the homeowners are responsible for operation and maintenance of the facilities. Facilities constructed under this agreement at all times belong to the Band until transferred to individual homeowners or other parties.
- 3.6.4 It is the understanding of the parties to the Agreement that participants whose homes will be connected to the Band facilities will be the responsible entity for the payment of the monthly service charge, unless funds are identified for operation and maintenance from another source, and that these participants must adhere to the rules and regulations adopted by the Band or governing utility organization.

3.7 OPERATION AND MAINTENANCE FEES AND ORDINANCES

- 3.7.1 The Band will establish connection fees and user rates and collect such charges from individuals served by the system as are necessary to sustain the operation, maintenance, and repair of the Band water supply and sewerage systems. Alternatively, the Band may provide this revenue from another dedicated revenue source.
- 3.7.2 The Band agrees to enact and enforce appropriate ordinances or regulations governing: (1) Connection to the Band water supply and sewage system by the residents of the reservation; (2) The methods and materials to be used in making connections to the Band water supply and sewage system in a safe and sanitary manner; and, (3) the continued operation, maintenance, and repair of individual water supply and waste disposal facilities in a safe and sanitary condition by the persons served thereby.

3.8 PROJECT SCHEDULE

- 3.8.1 In the interest of coordination, understanding, and economy, before construction of the project begins, the IHS Project Engineer in consultation with the Band shall prepare a schedule for the conduct of the project. The schedule may be modified or amended by the Project Engineer when necessary to carry out the project.
- 3.8.2 It is important that the installation of the water supply and waste disposal facilities provided for herein be completed as soon as practicable in accordance with the schedule of the Project Engineer.

3.8.3 That in the event actual construction of this project can not be initiated, for any reason by December 31, 2009, the IHS reserves the right to cancel the project and use the funds earmarked therefore for other projects which lack impediments to prompt construction. If the condition, which impeded construction, is resolved following cancellation, the Bemidji Area Office, will give high priority to funding the project from appropriated sanitation facilities funds available at that time or from future appropriations for sanitation facilities.

3.9 PROJECT CLOSEOUT AND REIMBURSEMENT

3.9.1 The IHS will close out the project when it determines that all applicable administrative actions and all required project work have been completed. The Band shall return all unexpended funds contributed by IHS within 45 days after the project construction phase. The Band shall submit a closeout financial report within 90 days following completion of construction and return of all unused funds.

3.9.2 Except as otherwise provided, project records shall be maintained for three years from the project completion date. These records include all financial records, supporting documents, procurement documents, titles, equipment records, including but not limited to: time sheets, cancelled checks, invoices, and purchase orders and shall be available upon request by the IHS, Inspectors General, or other designated representatives. The Band shall be subject to audit in accordance with the requirements of the single audit act.

3.9.3 All records shall be retained until completion of any litigation, claim, negotiation, audit, or other action initiated prior to the end of the 3 year period until resolution of the issues which arise from it.

3.10 WARRANTIES

3.10.1 The Band will obtain one-year warranties from contractors, suppliers, and manufacturers on equipment, work, and supplies provided by them. This year will commence from the date of acceptance of the work involved. IHS will assist the Band or responsible operation and maintenance organization in obtaining benefits and protection of all warranties on equipment or work provided under this Agreement.

3.11 DISPUTE RESOLUTION

3.11.1 The parties to this Agreement agree to resolve all disputes regarding the provisions of this agreement among the parties through the Bemidji Area IHS's established administrative procedures, first. If a dispute cannot be resolved locally, the parties agree that the next administrative procedure is an appeals board established at the IHS headquarters level, which will make a recommendation to the IHS Director, who will exercise final authority for the IHS in the administrative review of all disputes.

3.12 TERMINATION OF THE AGREEMENT

- 3.12.1 Any party to the MOA may terminate its relationship with the other MOA parties prior to project completion upon 30 days advance notice in writing to all other parties.
- 3.12.2 If the MOA is terminated by all parties prior to completion of the project, all unexpended funds will be returned to the contributors in a prorated manner and in accordance with the transfer provisions contained herein. All in-place sanitation facilities will be transferred in accordance with the provisions of the MOA. IHS may elect to transfer or retain any or all materials and equipment purchased with IHS funds and may request the Band to transfer to IHS materials purchased by the Band with IHS funds. IHS will return unused IHS funds to bulk accounts at the Area office for commitment to other projects as appropriate.

3.13 ADDITIONAL SERVICES

- 3.13.1 The Band and IHS agrees that additional services may be required to complete the project scope. These services are not considered basic services to be performed by IHS and are above and beyond the services provided under the IHS contributions as outlined in Section 3.5. These services shall include but not be limited to:
- a. A soils engineer or other consultant when such services are deemed necessary, including reports, test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests and other necessary operations for determining subsoil, air and water conditions.
 - b. Assistance of professional cultural resources personnel required for discoveries or resources anticipated after the completion of the final drawings.
 - c. Assistance of professional environmental resource personnel required for delineation of wetlands, threatened and endangered species or other NEPA related issues anticipated after the completion of the final drawings.
 - d. Assistance in construction testing as necessary to insure that the materials and methods furnished by the contractor(s) are in conformance with the contract plans and specifications. Such testing includes but is not limited to in-place density tests on backfill material, gravel gradation analysis, concrete slump and compression tests, and asphalt material composition tests. The IHS shall monitor and direct any subsurface explorations that are performed by others.
 - e. Assistance in providing aerial photography, topographic mapping and vertical bridging as necessary to aid in the design of the project and preparation of construction drawings.

- f. An architect or other consultant when such services are deemed necessary, including reports, structural design, detail drawings, and other necessary operations for determining structural conditions.

3.13.2 These services will be initiated and approved by the Project Engineer and be charged directly to the IHS project account or contracted through tribal procurement. The IHS will provide contributions to the Band for additional services approved by the Project Engineer and provided using tribal procurement upon receipt of applicable invoices and supporting documentation from the Band.

4.0 ADDITIONAL PROVISIONS FOR TRIBAL PROCUREMENT

4.1 TRIBAL CONTRIBUTIONS

4.1.1 The Band shall provide for construction through its procurement system of all water and sewage facilities described in the Project Summary; and the Band shall procure the facilities in accordance with this Agreement and in compliance with applicable Federal requirements.

4.1.2 The Band shall submit to IHS for review and approval before advertising all proposed solicitations estimated to cost \$50,000.00 or more; that the Band shall make such adjustments in the solicitation as determined necessary by IHS.

4.2 IHS CONTRIBUTIONS

4.2.1 IHS shall review and approve proposed unit costs for all items of work under the project. Once approved by IHS, these unit costs shall govern all work for the duration of the Band contract under which they are proposed. Unit costs for additional or special units of work required at individual sites shall be negotiated before the IHS authorizes work for the site or group of sites affected. All unit costs are subject to approval by the Director, Division of Sanitation Facilities Construction, Bemidji Area prior to the award of any contract or the start of any construction involving those items of work.

4.2.2 Contributions shall be made in installments in accordance with the payment request forms BAO 107M, 108M and /or invoices submitted by the Band and approved by the IHS Project Engineer. Requests for contributions shall be made no more frequently than once per month in accordance with the provisions of section 2.1.6. Advance contributions may be provided at the request of the Band in accordance with IHS policy and Bemidji Area practice.

4.2.3 The IHS shall provide a contribution for program administration. This would be a cumulative amount based on the following scale:

Contract Amount and Administrative Fee

\$0 to \$25,000:	Four percent of the contract amount
\$25,000 to \$200,000:	\$ 1,000 plus three percent of the contract amount in excess of \$25,000
Above \$200,000:	\$6,250 plus two percent of the contract amount in excess of \$200,000.

- 4.2.4 At no time during the project will the Band represent the IHS nor will the IHS represent the Band in contract administration matters.
- 4.2.5 The IHS will, at the request of the Band, provide oversight and technical assistance on contractor submittals, progress payments, change order requests, and other project related information submitted by the Band's contractor and make recommendations to the Band.
- 4.2.6 The IHS and Band shall inspect all sanitation facilities constructed through Tribal procurement to insure construction meets minimum IHS standards. The procurement documents shall also note that the IHS inspector does not have authority to modify the contract or issue direction to the contractor. Following construction inspection, the IHS will advise the Band on whether the construction meets the IHS interpretation of the contract requirements.

4.3 TRIBAL FINANCIAL MANAGEMENT STANDARDS

- 4.3.1 The Band shall provide the following features in its financial management system:
- a. The Band shall maintain original accounting records which accurately identify the source and application of all project funds it receives. The source documentation shall include cancelled checks, paid bills, payrolls, time and attendance records, purchasing documents, and financial records. Accurate, current, and complete project records shall be reported in accordance with other provisions of this Agreement; and
 - b. The Band shall maintain effective controls and accountability for all cash, real and personal property, and other assets acquired; and
 - c. The Band shall compare actual Tribal expenditures with budgeted amounts for the project; and
 - d. Applicable OMB cost principles (OMB Circular A-87) and the terms of this Agreement shall govern in determining the reasonableness, allowability, and allocability of all costs under the project.
- 4.3.2 The Band shall maintain a separate financial account for the project.
- 4.3.3 Interest in excess of \$100 per year earned on cash advances (Federal funds) must be returned to the IHS project account.
- 4.3.4 Funds for construction projects under this Agreement shall not be borrowed or intentionally invested. Funds from one IHS funded

construction project shall not be used for cash flow or other unauthorized purposed or for another IHS funded construction project.

- 4.3.5 Any proposed changes by the Band in the project scope and/or budgeted costs must be reviewed and approved by IHS as provided for in this Agreement.

4.4 PROCUREMENT STANDARDS

- 4.4.1 The Band shall use a system of contract Administration that ensures performance by its contractors in accordance with the terms and conditions of the contract an in compliance with OMB Circular A-102 as adopted by HHS at 45 CFR 92. (See Appendix F of this Guideline) The Band shall be responsible in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurement. These issues include, but are not limited to source evaluation, protests, disputes, and claims.
- 4.4.2 No employee, officer or agent of the Band shall participate in the selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: (a) the employee, officer, or agent, (b) any member of his immediate family, (c) his or her partner, (d) or an organization which employs, or is about to employ any of the above, has a financial or other interest in the firm selected for the award.
- 4.4.3 The Band officers, employees, or agents will neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors.

4.5 COMPETITIVE PROCUREMENT PRACTICES

- 4.5.1 All Band procurement under this Agreement shall be competitive and based on firm fixed prices unless approved by the Director, Division of Sanitation Facilities Construction, for reasons of public exigency, critical schedule constraints that could not have been anticipated, or essential equipment compatibility for operation and maintenance. The following requirements apply:
- a. Materials, Construction, and Services (non A/E) Estimated at More than \$2,000 and Less than \$25,000: The Band shall solicit a written quote from a minimum of three (3) sources qualified to do the work and likely to submit a quote. The Band shall award a purchase order to the responsive, responsible source with the lowest quote.
 - b. Materials, Construction, and Services (non A/E) Estimated at \$25,000 or more. The Band shall advertise formally for a minimum of 15 calendar days for sealed bids to be opened publicly at a specified time, date, and place. The Band shall award a contract to the responsive, responsible source which has submitted the lowest bid price.

- c. Architect/Engineer (A/E) Services: The Band shall solicit competitive proposals from potentially interested professional firms. A three-member selection board for the Band shall establish objective selection criteria before soliciting proposals. If IHS project funds are involved, at least one Registered Professional Engineer from IHS shall serve on the Board. The Band then shall select the firm determined by those criteria to be most qualified to perform the work. The Band shall attempt to negotiate with this firm to set fair and reasonable compensation. If negotiations with one firm are not successful, the Band may proceed to negotiate with the next most qualified firms. This process may continue until agreement is reached.

4.6 INDIAN PREFERENCE

- 4.6.1 If the Band has enacted an Indian preference ordinance of general applicability and agrees to apply the terms of that ordinance, the Indian preference requirements of that ordinance shall apply in lieu of IHS requirements as long as the effect is similar to that of IHS requirements. The Band may not give preference to tribal members or tribal companies only, or limit preference geographically, including restriction to those within reservation boundaries.
- 4.6.2 In the absence of a formally adopted Indian preference policy by the Band, preference shall be given in the award of construction and service contracts to those firms (or joint ventures) whose levels of ownership and control by enrolled Indians (or Alaska Natives) each equal at least 51% of the total on a continuing basis for the duration of the contract. Firms (or joint ventures) which satisfactorily document at the time of bid or quotation such ownership and control shall have an equal to 10 percent of their total bid deducted from the bid price for comparison with other bids. Once this deduction is made for qualified Indian firms (or joint ventures), the award will be made by the Band to the responsive, responsible bidder with the lowest resulting bid.

4.7 REQUIRED NOTICE TO PROSPECTIVE BIDDERS

- 4.7.1 The Band shall notify the vendors and contract bidders of the following:
- a. Indian Preference Policy for contracting/subcontracting.
 - b. Minimum percentage of work to be performed by the Band's prime contractor (33 1/3%, unless otherwise specified).
 - c. Responsibility of the Band for compliance with and enforcement of the contract (i.e., the contract is not a Federal contract).
 - d. Restrictions on liens (state lien laws do not apply on Federal trust land).
 - e. Remedy for disputes, as provided for under General Provisions.
 - f. The role of the IHS.

4.8 WAGE RATES

- 4.8.1 Davis-Bacon wage rates shall apply for all construction contracts exceeding \$2,000 in value executed by the Band and funded by Federal agencies, except for work funded with HUD CDGB. The Tribe is responsible for reviewing payroll information submitted by the contractor for compliance with Davis-Bacon requirements. Unless it requests IHS to obtain wage rates, the Band shall request applicable wage rates directly from U.S. Department of Labor.

4.9 BOND REQUIREMENTS

- 4.9.1 For construction contracts on Federal trust land exceeding \$100,000, the Band shall require bid, payment, and performance bonds, as described below. For construction contracts on non-trust land in excess of \$50,000, payment and performance bonds shall be required. The IHS may accept the bonding policy and requirements of the Band, provided that IHS determines that its interest is adequately protected. In lieu of such determination, the minimum requirements shall be as follows:

- a. A bid guarantee from each bidder equivalent to 5% of the bid price.
- b. A payment bond on the part of the contractor for 100% of the contract price.
- c. A performance bond on the part of the contractor for 100% of the contract price.

4.10 SUBCONTRACT LIMITS:

- 4.10.1 The prime contractor shall be required to perform with its employees and equipment at least 33.3 percent of the total amount of the work included in the contract. Copies of subcontract agreements may be required to verify the amount of work performed.

4.11 ADMINISTRATIVE PROVISIONS

- 4.11.1 The Band's contract shall contain the following provisions:

- a. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate (except small purchases).
- b. Termination for cause and for convenience by the Band including the manner by which it will be effected and the basis for settlement. (Contracts exceeding \$10,000).
- c. Compliance with the "Equal Employment Opportunity" Executive Order 11246 as amended. (Contracts and subcontracts exceeding \$10,000).
- d. Compliance with the Copeland "Anti-kickback" Act.

- e. Compliance with the Davis-Bacon Act. (Contracts exceeding \$2,000).
- f. Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act. (Construction contracts in excess of \$2,000).
- g. IHS requirements for reporting, as called for in this Agreement.
- h. IHS Indian preference requirements, or approved Tribal alternative.
- i. Access by the Federal government and the Band to any books, documents, papers, and records of the contractor which are directly pertinent to the specific contract for the purpose of making an audit, examinations, excerpts, and transactions.
- j. Retention of all required records for three years after the Band makes final payment and all other pending matters are closed.
- k. Compliance with all applicable environmental laws and EPA regulations including Executive Order 11738. (Contracts exceeding \$100,000).

4.12 GENERAL PROVISIONS

4.12.1 In the absence of an equivalent set of General Provisions approved by Area SFC Division Director for construction contracts, Paragraph 1-45 of the General Provisions in Schedule B, Appendix B of the MOA Guidelines for the Public Law 86-121 Sanitation Facilities Construction Program - Working Draft dated June 2003, shall be included in their entirety in the Band's solicitation and contract. For procurement less than \$25,000, the Area SFC Division Director may approve a condensed set of these General Provisions that protects the IHS and Band's interests.

4.13 SPECIAL PROVISIONS

4.13.1 For procurement greater than \$25,000.00, the Band shall include in its solicitation and contract the Special Provisions shown as Schedule D, Appendix B of the MOA Guidelines for the Public Law 86-121 Sanitation Facilities Construction Program - Working Draft dated June 2003, unless otherwise provided for in the solicitation.

4.14 SUBMITTAL REQUIREMENTS

4.14.1 The Band shall include submittal requirements in the specification section of its solicitation.

4.15 FINAL INSPECTION

4.15.1 The Band shall conduct with the contractor, IHS representatives, and other interested parties, a final inspection of the facilities provided under the contract. Final acceptance and payment for the work by the Band

shall not occur until the contractor has corrected all deficiencies identified at the final inspection and until the work is in full compliance with the plans, specifications and other contract requirements.

4.15.2 Work will be inspected by IHS to insure that the work performed complies with all the terms and conditions of the Band contract. Final IHS contribution for the work performed will not be released to the Tribe until such time as the IHS participates in a final inspection and determines that the work complies with all contract requirements.

4.15.3 Operation and maintenance of the facility or operational unit will become the responsibility of the Band once operation commences.