

# Request for Proposals

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Pilot Project

Chemical Asphalt Rehabilitation Project



Seneca Nation of Indians  
Department of Transportation

Submittal Due: July 31, 2023, 4:30pm

Issued Date: July 17, 2023

**Notice to Contractors For  
Jimerson Road and Brant Reservation Road Project  
Allegany & Cattaraugus Territories of the Seneca Nation**

**Project Overview:**

The purpose of this Request for Proposal (RFP) is to solicit bids from qualified vendors for a chemical asphalt rehabilitation project for Jimerson Road and Brant Road. The project involves treating approximately 380,000 square feet of paved asphalt surfaces with a pavement rejuvenator. The rejuvenator should effectively lower viscosity, increase penetration, lower the softening point, and increase the ductility of the binder while maintaining the binder's ability to retain aggregate and not significantly lower skid resistance.

**Purpose:**

The Seneca Nation Department of Transportation (SNDOT) would like to conduct a pilot project using chemical asphalt rehabilitation. This will project with be the first of its kind on any Native Nations Territory.

The problem we face on territory is twofold:

1. The reliance of NYSDOT to maintain our roads, resulting in cracked, pothole ridden surfaces.
2. The declining quality of pavement being installed.
  - a. The lifespan of pavement has been negatively impacted by several factors:
    - i. the introduction of recycled asphalt pavement (RAP) into new mixes
    - ii. the reduction of liquid asphalt in new mixes
    - iii. the quality of the RAP in new mixes

SNDOT will work with the contractor to perform before and after core samples to compare the aging process of the pavement.

The project involves chemical asphalt rehabilitation for two (2) roads located on the Seneca Nation Territory. Both roads have been recently and/or scheduled to be paved with new asphalt. Jimerson/Sawmill Run Road is located on the Allegany Territory and Brant Reservation Road is located on the Cattaraugus Territory.

## Request for Proposal (RFP) - Chemical Asphalt Rehabilitation Project

### **Project Scope:**

The scope of work for the chemical asphalt rehabilitation project includes the following:

#### **Surface Preparation:**

- a. Conduct a thorough inspection and evaluation of the existing paved asphalt surfaces on Jimerson Road and Brant Road.
- b. Perform necessary cleaning, including removing debris, loose material, and vegetation, from the pavement surface.

#### **Application of Rejuvenator:**

- a. Apply the selected pavement rejuvenator to the designated areas of Jimerson Road and Brant Road.
- b. Ensure uniform coverage and proper application of the rejuvenator as per the manufacturer's guidelines.
- c. Utilize suitable equipment and techniques to achieve the desired results.

#### **Quality Control and Assurance:**

- a. Monitor control vs. treated and measure the viscosity (ASTM D-2171), penetration (ASTM D-5), softening point (ASTM D-36), and ductility (D-1-13) of the binder before and after the application of the rejuvenator.
- b. Conduct field tests to assess the skid resistance and aggregate retention properties of the treated surfaces.
- c. Document and maintain records of the test results for review.
- c. The Contractor shall supply three (3) years' independent test results of the rejuvenator showing a minimum 40% reduction in viscosity of the treated pavement when compared to the control section for 3 years. The test results will be from three different projects in three different climates. The climates shall be hot and moist, hot and dry and moderate warm-to-cold. The test shall be as designed by the US Army Corps of Engineers and shall be from 48 hours, 6 months, one-, two- and three-year time periods. These test results must be submitted with the bid.

#### **Project Management:**

- a. Provide a detailed project plan outlining the timeline, milestones, and key deliverables.
- b. Assign a dedicated project manager who will oversee the execution of the project.

- c. Ensure effective communication and coordination with the project stakeholders throughout the duration of the project.

**Environmental Considerations:**

- a. Adhere to all applicable environmental regulations and guidelines during the project execution.
- b. Properly handle and dispose of any waste materials generated during the project in accordance with local regulations.

**Warranty and Maintenance:**

- a. Provide a warranty period for the rejuvenation treatment, ensuring that the treated surfaces meet the specified performance requirements.
- b. Offer a maintenance plan or recommendations for long-term preservation of the rehabilitated surfaces.

**Proposal Submission:**

Interested vendors should submit their proposals in accordance with the following guidelines:

- **Cover Letter:**
  - Introduce your company, provide contact information, and express your interest in participating in the project.
- **Company Profile:**
  - Include a brief overview of your company, highlighting relevant experience in asphalt rehabilitation projects.
- **Methodology:**
  - Describe your proposed methodology for conducting the chemical asphalt rehabilitation, including details on the rejuvenator product, application techniques, and quality control measures.
- **Timeline:**
  - Present a detailed project timeline outlining the key activities and milestones.
- **Cost Proposal:**
  - Provide a comprehensive cost breakdown for the entire project, including materials, labor, equipment, and any other relevant expenses.
- **References:**
  - Furnish a list of references from previous clients who can attest to the quality of your work.
- **Compliance:**
  - Confirm your compliance with all applicable Seneca Nation laws, regulations, and safety standards.

- Demonstrate or agree to obtain SNI Business License and include proof of current insurance coverage.
- **Submission Deadline:**
  - All proposals must be submitted no later than July 31, 2023, at 4:30pm. Late
  - submissions may not be considered.

### **Pre-Proposal Meeting**

A non-mandatory pre-proposal meeting will be held to discuss the requested proposal with prospective clients and to answer any questions regarding the RFP.

July 25<sup>th</sup> at 1pm-2pm  
90 Ohi:yo' Way, Salamanca N.Y., 14779  
Seneca Allegany Administration Building  
2nd floor conference room.

Proposals will be received until 4:30 p.m. local time on Monday July 31, 2023. Bids will be opened and read publicly at:

Seneca Allegany Administration Building:  
90 Ohi:yo Way, Salamanca, New York 14779  
2nd Floor Conference Room

All communications regarding this request should be addressed to: Angie Kennedy (716)945-1790 x3051 , [a.kennedy@sni.org](mailto:a.kennedy@sni.org)

Contractors must pay minimum Davis-Bacon wage rates, available at: [www.sam.gov](http://www.sam.gov)

This work will be conducted under one prime contract.

No bid bond is required. No Contractor may withdraw his Proposal/Bid within 45 days after the proposal due date. The selected Contractor must furnish Performance and Payment Bonds, each in an amount at least equal to the Total Bid, issued by a surety company acceptable to the Seneca Nation. Contractors are not to include in their proposal, sales and compensating use taxes of the State of New York and of counties or cities on materials, equipment, and supplies to be incorporated into the Project. The Seneca Nation requires that Contractors certify, under penalty of perjury, that the Proposals/Bids have been prepared without collusion with other Bidders, subcontractors, suppliers, etc. A certification is included which each Contractor must sign in the space provided.

TERO fee (5%) and labor requirements and fee will apply.

The Seneca Nation reserves the right to reject any or all proposals/bids offered.

**Evaluation Criteria:**

Proposals will be evaluated based on the following criteria:

- Experience and Qualifications:
- Relevant experience in chemical asphalt rehabilitation projects.
- Expertise in utilizing pavement rejuvenators and their impact on asphalt properties.
- Methodology and Technical Approach:
  - Sound methodology for achieving the desired rejuvenation results.
  - Quality control measures to ensure the specified performance requirements are met.
- Experience working on
  - SNI transportation projects
  - other SNI projects
  - TTP projects
  - other projects with nationally recognized tribes
- Cost: Competitiveness and reasonableness of the proposed cost.
- References: Positive feedback and references from previous clients.

**Contract Award:**

The contract will be awarded to the vendor whose proposal is determined to be the most advantageous based on the evaluation criteria. The selected vendor will be notified within 7 days.

Note: This RFP is for informational purposes only and does not constitute a commitment or obligation on the part of the issuer to award a contract. The issuer reserves the right to accept or reject any or all proposals received as a result of this solicitation. All costs associated with the preparation and submission of the proposals will be borne by the respective vendors.

We look forward to receiving your proposal and considering your company for this project. Should you have any questions or require further clarification, please contact Angie Kennedy at 716-945-1790 x3051 [a.kennedy@sni.org](mailto:a.kennedy@sni.org)

Thank you for your interest in participating.

Sincerely,



Angie Kennedy  
90 Ohi:yo' way  
Salamanca, NY 14779

# TRIBAL EMPLOYMENT RIGHTS ORDINANCE



**(ENACTED: JUNE 23, 1993**

**EFFECTIVE JUNE 23, 1993)**

AMENDED: APRIL 16, 1994  
AMENDED: APRIL 13, 1996  
AMENDED: JULY 11, 1998  
AMENDED: DECEMBER 11, 2004  
AMENDED: NOVEMBER 12, 2005  
AMENDED: AUGUST 12, 2006  
AMENDED: OCTOBER 13, 2007  
AMENDED: SEPTEMBER 20, 2008

AND

EFFECTIVE: FEBRUARY 14, 2009  
AMENDED: MAY 12, 2012  
AMENDED: AUGUST 6, 2012  
AMENDED: JULY 14, 2018

SENECA NATION OF INDIANS  
TRIBAL EMPLOYMENT RIGHTS ORDINANCE

SECTION 1:            DECLARATION OF POLICY

As a guide to the interpretation and application of this Ordinance, the Seneca Nation of Indians declares that the public policy will be as follows:

Like land, water, and minerals; jobs, contracts, and subcontracts in the private sector on or near the Seneca Nation Territories are an important resource for Indian people and Indians must use their rights to obtain their rightful share of such opportunities as they become available. Indians have unique and special employment, contract, and subcontract rights and the Seneca Nation Tribal Government has the inherent sovereign power to pass laws to implement and enforce those special rights on behalf of Indians. Indians are also entitled to the protection of the laws that the Federal Government has adopted to combat employment discrimination, and tribal governments can and should play a role in the enforcement of these laws. The Seneca Nation believes that establishing a Tribal Employment Rights Office (TERO) is important in order to use the aforementioned laws and powers to increase employment of Indian workers and businesses to eradicate discrimination against Indians.

SECTION 2:           DEFINITIONS

- A.     "Employee" means any person employed for remuneration.
- B.     "Employer" means any person, partnership, corporation, or any other business entity that employs for wages two or more employees.
- C.     "Covered Employer" means any employer employing two or more employees who during any 30-Day period, spend, cumulatively, 40 or more hours performing work within the exterior boundaries of any Nation Lands as defined in Section 2.H.
- D.     "Entity" means any partnership, sole proprietorship, corporations, joint venture, government, governmental enterprise, or any other natural or artificial person or organization. The term "entity" is intended to be as broad and encompassing as possible to ensure the Ordinance's coverage overall employment and contract activities within the Tribe's jurisdiction, and the term shall be so interpreted by the Commission and the courts.
- E.     "Commission" means the Seneca Nation Tribal Employment Rights Commission established by this Ordinance.
- F.     "Indian" shall mean all persons who are members of any recognized Indian Nation or Tribe.
- G.     "Member" shall mean an individual who is an enrolled member of the Seneca Nation of Indians.

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- H. "Nation Lands" shall mean the Allegany, Cattaraugus, Oil Spring, Buffalo Creek and Niagara Falls Territories, and any other lands now or hereafter owned in fee by the Nation or any Nation-created entity and within 25 miles of restricted fee lands of the Nation. Nation Lands shall also include the public rights-of-way of an Indian Reservation Roads, as that term is defined in Title 23 of the United States Code.
- I. "Qualified" shall mean any Indian or Indian-Owned Firm meeting the minimum requirements for a position, contract or subcontract as determined by the Director to be necessary for the proper performance of the work. When establishing minimum job requirements for categories of employees of an employer or entity, the Director may request a covered employer or entity to submit job descriptions and/or minimum requirements for review and approval by the Director. The Director may modify the job description and minimum job requirements to ensure that only those requirements necessary for the proper performance of the contract work are listed for the position and that a covered employer or entity has not used qualification criteria for such job requirements to serve as barriers to Indian employment.
- J. "Indian-Owned Firm" shall mean an entity which is:
1. Fifty-one percent (51%) or more Indian-owned, such that Indians provide real value for their ownership interest, obtain majority voting rights regarding decisions of the entity, are entitled to and receive at least fifty-one percent (51%) of all profits, and are entitled to at least fifty-one (51%) of the assets on dissolution of the entity.
  2. Under significant Indian management, such that at least one Indian is substantially involved in the day-to-day management of the firm as his or her primary employment.
  3. Not created solely or primarily to take advantage of Indian preference.
  4. Employs Indians in all or most positions for which qualified Indians are available.
  5. Have proper insurance coverage, including liability, workmen's' compensation and other essential coverages.
- K. "Law Enforcement" shall mean any Seneca Nation of Indians Police, Marshals, Conservation Officer, or any other department that is given enforcement power over Seneca Nation Laws.
- L. "Competitive business" shall mean businesses which provide or receive goods and services which are subject to frequent fluctuations and market price and services.

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M. "Seneca-owned business" shall mean a business owned by one or more Members. N.

"Day" or "Days" shall mean calendar days.

SECTION 3: INDIAN PREFERENCE IN EMPLOYMENT

All covered employers for all employment occurring within the exterior boundaries of any Nation Lands shall give preference to qualified Indians in all hiring, promotion, training, and all other aspects of employment, in accord with the following priorities:

first preference to qualified enrolled Seneca Nation members;

second preference to qualified non-enrolled Seneca Nation members supporting a Seneca family;

third preference to qualified non-Indian or nonmember Indians residing with and supporting a Seneca family;

fourth preference to other qualified Native Americans enrolled with any other Tribe;

fifth preference to qualified non-Indians.

The foregoing preferences shall also be applied in reverse order to any layoffs or reductions-in-force so that enrolled Seneca Nation members and other Indians are retained in positions of employment to the extent practicable. Covered employers shall further seek to have at least 51% of its employees who are working within the exterior boundaries of the Nation's Lands be qualified Indians. This 51% Indian workforce participation goal shall otherwise mean the aggregate number of person-hours worked (including training) on-site by Indian persons (including supervisory personnel and stewards) performing work pursuant to the contract divided by the total number of person-hours worked on-site in the performance of said contract.

All covered employers shall comply with the rules, regulations, guidelines, and orders of the Seneca Nation Tribal Employment Rights Commission which set forth the specific obligations of employers in regard to Indian preference in employment, provided, however that these requirements shall not apply to:

1. Any direct employment by any federal, state, or local and tribal governments or their subdivisions;
2. Any direct employment by not-for-profit organizations.

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3. Direct employment by public utility companies for routine installation, maintenance and emergency repairs.

This Ordinance shall apply to all contractors, or grantees of such governments, not-for-profit and to all commercial enterprises operated by such governments. It shall apply to all contractors and subcontractors of any public utility company.

SECTION 4: INDIAN PREFERENCE IN CONTRACTING

- A. The prime contractor shall be required to comply with all other requirements of this Ordinance, including Indian preference in subcontracting, employment and payment of the Employment Rights fee. This Ordinance shall apply to any construction contract awarded by any department within the Seneca Nation, even if said contracts must be submitted to Tribal Council for approval. This Ordinance shall apply to all subcontracts awarded by a tribal, federal, or state direct contractor or grantee, whether or not the prime contract was subject to these requirements. All covered entities shall comply with the rules, regulations, guidelines, and orders of the Commission, which set forth the specific obligations of such entities in regard to Indian preference in contracting and subcontracting and employment.
- B. This Ordinance shall not apply to private individuals or Seneca-owned businesses except where such private individual or Seneca-owned business is bidding on a contract or subcontract that is funded by the Seneca Nation or any other government entity.
- C. A Compliance Plan must be completed by all contractors and subcontractors, and approved by the TERO Director before work can commence.
- D. All bid specifics must include the TERO bid language. To the extent practicable, the obligation to comply with this TERO Ordinance shall also be expressly stated in contracts and subcontracts, provided, however, that the failure to include this in a contract or subcontract shall not relieve a covered entity's obligation to comply with this Ordinance.

SECTION 4A: INDIAN PREFERENCE IN CONTRACTING FOR SALAMANCA  
CITY CENTRAL SCHOOL DISTRICT RECONSTRUCTION PROJECT

When the Salamanca City Central School District (the "School District") is undertaking within the Allegany Territory a reconstruction project funded by New York State Construction Aid funding, the following provisions shall apply in lieu of Section 4 of this Ordinance:

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- A. The School District, or its construction manager, shall award contracts or subcontracts for supplies, services, labor and materials in an amount of \$250 or more where the majority of the work on the contract or subcontract will occur within the exterior boundaries of any Nation Land shall give preference to qualified entities, which are certified by the Commission as 51% or more Indian-owned and controlled, in accord with the following preferences:

first preference to qualified Indian-Owned Firms that are certified by the Commission as "100% Seneca";

second preference to qualified Indian-Owned Firms that are certified by the Commission as "100% Indian-Majority Seneca" with greater preference within this subcategory given to those entities that have the higher percentage of ownership by Members;

third preference to qualified Indian-Owned Firms that are certified by the Commission as "Majority Seneca";

fourth preference to qualified Commission-certified Indian-Owned Firms, with greater preference within this subcategory give to those Indian-owned firms that have the higher percentage of ownership by Members;

fifth preference, in the event that no qualified Indian-Owned Firm bids on the project, to other qualified firms.

It shall be a violation of this Ordinance for any covered entity awarding contracts or subcontracts for supplies, services, labor and materials to bid contracts or subcontracts below the dollar threshold set forth in Sec. 4A.A. or time its contracts or subcontracts which have the effect of circumventing the goals and purposes of this Ordinance.

- B. When a contract is awarded, based upon price and specifications that are not subject to negotiation, the contract shall be awarded to the qualified Indian-Owned Firm with the lowest responsive bid if it is reasonable and is equal to the bid of the lowest bidder from any other qualified source, in accord with the priorities set out in Section 4A.A.
- C. The prime contractor shall be required to comply with all other requirements of this Ordinance, including Indian preference in subcontracting consistent with this Section 4A, employment and payment of the Employment Rights fee. This Ordinance shall apply to all subcontracts awarded by a tribal, federal, or state direct contractor or grantee, whether or not the prime contract was subject to these requirements. All covered entities shall comply with the rules, regulations, guidelines, and orders of the Commission, which set forth the specific obligations of such entities in regard to

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Indian preference in contracting and subcontracting and employment.

- D. This Ordinance shall not apply to private individuals or Seneca-owned businesses except where such private individual or Seneca-owned business is bidding on a contract or subcontract that is funded by the Seneca Nation or any other government entity.
- E. A Compliance Plan must be completed by all contractors and subcontractors, and approved by the TERO Director before work can commence.
- F. All bid specifics must include the TERO bid language. To the extent practicable, the obligation to comply with this TERO Ordinance shall also be expressly stated in contracts and subcontracts, provided, however, that the failure to include this in a contract or subcontract shall not relieve a covered entity's obligation to comply with this Ordinance.

SECTION 4B: CERTIFICATION OF ENTITIES AS AN "INDIAN-OWNED FIRM"

- A. Any entity which seeks certification as an Indian-Owned Firm" eligible for the preferences provided under this Ordinance shall submit to the TERO Director an application for certification as an Indian-Owned Firm on a form established by the Commission accompanied by documents and records sufficient to allow the Commission to determine whether the entity meets the criteria for certification set out in Sections 2.1 and 4B of this Ordinance. In addition, an entity which seeks certification as an Indian-owned firm eligible for the preferences provided under this Ordinance, shall submit a new application or renewal application annually. In the event that any of the information submitted by an entity pursuant to this Section 4B changes, the entity is required to provide written notice to the Commission of any such change along with documentation relevant to such change.

Any entity seeking certification, or certification renewal, as "100% Seneca" shall include with the application a non-refundable application fee of \$250.00 payable by check to the Seneca Nation of Indians. All other certification and certification renewal applications shall include with the application a non-refundable application fee of \$500.00 payable by check to the Seneca Nation of Indians. Upon receipt, the application fees shall be deposited in the Nation's general fund, and the TERO shall receive an allocation of such fees by Council action as may be necessary for the TERO to satisfy its obligations.

- B. The application (and all renewal applications) shall be submitted to the TERO Director no later than the time that the entity submits a bid on a project that is subject to bidding, and a copy of the application with supporting documentation, including

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the application fee, shall also accompany the bid. If the contract is not subject to bid procedures, an application for certification as an Indian-Owned Firm shall be submitted to the TERO Director before any contract will be made with the entity, and entities are encouraged to submit their applications at as early a date as practicable.

- C. Documentation will be required to establish eligibility for certification as an Indian owned firm. The failure to provide valid documentation will result in a Commission decision denying certification of the entity. Documentation required shall include, but are not necessarily limited to:

1. The identity of the Indian owners and the names and addresses of the tribes in which each such person is enrolled;

2. Documents showing how the entity was established and the ownership and control of such entity. For corporations and limited liability corporations this would include a copy of the articles of incorporation, charter and/or bylaws, and a certified listing of share ownership in the corporation including any and all rights and interest in such shares. For partnerships, limited liability partnerships and any other form of joint venture, this should include a copy of the written agreement by which that partnership, limited liability partnership or joint venture has been established and which shows ownership interests and control as between the parties to the agreement.

3. Copies of all insurance policies and verification that the premiums have been paid. The TERO Director has the authority to investigate the insurance and bonding requirements in ensure they are proper and current.

- D. It is the responsibility of the entity, and the individual owners of such entity seeking certification as an "Indian-Owned Firm" under this Ordinance to provide accurate, complete and timely information to the Commission. Failure to provide accurate, complete and timely application shall be grounds for a Commission decision not to certify the entity as an Indian-Owned Firm. In the event that false information is found to have been provided to the Commission, the Commission shall have authority to investigate the matter pursuant to Sections 12, 13 and 14, and to take enforcement action and impose penalties under the procedures established by section 15. Certified Indian-Owned Firms shall have an affirmative duty to notify the Commission, within a reasonable period of time subsequent to its certification as an Indian-Owned Firm, of any changes in its organization which may affect its status as an Indian-Owned Firm or any changes in its insurance coverage or bonds.

- E. A Commission decision not to certify an entity as an Indian-Owned Firm may be reviewed pursuant to Section 16 if a suit seeking such review is filed within 15 Days from a decision of the Commission. Such review shall be limited to review of the records as provided to the Commission and the Commission's decision shall be set

aside only if it is found to be arbitrary, in excess of the authority of the Commission or not supported by the records provided to the Commission. Any decision following such review shall be limited to prospective relief, shall not include injunctive relief that would affect contracts already awarded, and shall not include any claims for damages. The Commission's decision shall stay in effect unless and until reversed by the Nation's Courts in a final, non-appealable decision.

SECTION 4C: ADDITIONAL CERTIFICATION

- A. In addition to certification as an "Indian-owned firm," an entity may seek additional certification to qualify for certain preferences in contracting and subcontracting. The purpose of the additional certification process is not to penalize Indian-Owned Firms that have partnered with or otherwise secured the expertise of non-Indians or non-Members to form a team with a given level of capacity and capability. Rather, the purpose is to ensure that a certified Indian-Owned Firm receives the appropriate preference consideration relative to other Indian Owned Firms under the Ordinance when competing for contracts and subcontracts.
- B. An applicant seeking to qualify for preference in contracting and/or subcontracting as an Indian-Owned Firm that is "100% Seneca," "100% Indian-Majority Seneca," or "Majority Seneca" shall submit proof of the applicant's Indian ownership and control to the TERO Director. The TERO Director shall review the material submitted and make a recommendation to the Commission as to whether the applicant firm meets the minimum ownership and control requirements for additional certification.
- C. The ownership and control requirements applicable to each preference category are as follows:
  - 1. 100% Seneca. In order for an Indian-owned firm to be additionally certified as "100% Seneca," the documentation must establish the following:
    - a. Members own 100% of the firm, are entitled to 100% of all profits, and are entitled to 100% of the assets of the firm upon dissolution; and
    - b. Members exercise 100% of the management and supervisory control of the day-to-day operations of the business, including that all key employees are Members. The employment of non-Members who are not key employees will not disqualify the firm from certification in this category, provided that the non-Members they do not exercise or have the authority to exercise, any management or supervisory functions for the firm.
  - 2. 100% Indian-Majority Seneca. In order for an Indian-owned firm to be additionally certified as "100% Indian-Majority Seneca," the documentation must establish the following:

- a. Indians own 100% of the firm are entitled to 100% of all profits, and are entitled to 100% of the assets of the firm upon dissolution;
- b. Members own at least 51% of the firm are entitled to at least 51% of all profits, and are entitled to at least 51% of the assets of the firm upon dissolution;
- c. Indians exercise 100% of the management and supervisory control of the day-to-day operations of the business, including that all key employees are Indians; and d. Members exercise majority control of the business and are substantially involved in the day-to-day management and operations of the business.

3. Majority Seneca. In order for an Indian-owned firm to be additionally certified as "Majority Seneca," the documentation must establish the following:

- a. Members own at least 51% of the firm are entitled to at least 51% of all profits, and are entitled to at least 51% of the assets of the firm upon dissolution; and
- b. Members exercise majority control of the business and are substantially involved in the day-to-day management and operations of the business.

D. The following factors will be applied in determining whether the firm meets the minimum ownership requirements for the applicable certification category:

1. Value. The Indian owner(s) must establish that they provided real value for their stated ownership interest by providing capital, equipment, real property, or similar assets commensurate with the value of their ownership share. It will not be considered "real value" if the Indian(s) purchased their ownership share, directly or indirectly, through a promissory note, the ultimate creditor of which is the non-Indian owner(s) of the firm or an immediate relation thereof, or any similar arrangement, unless a convincing showing can be made that the Indian owner(s) brought such special skills, marketing connections, or similar benefits to the firm that there is a good reason to believe that arrangement would have been entered into even if there were not an Indian preference program in existence under the Ordinance.

Where an Indian owner can demonstrate that he or she could not pay good value for the ownership interest because the normal capital sources were closed to him or her because he or she Indian, that person may satisfy this requirement by demonstrating further that he or she extended his or her capital raising capability as far as possible, such that the Indian owner clearly is at risk in the business in relationship to his or her means.

2. Profits. The Indian owner(s) will receive the percentage of all profits equal to their ownership interest. If there is any provision that gives the non-Indian owner a greater share of the profits, in whatever form and under whatever name, such as through management fees, equipment rental fees, or bonuses tied to profits, additional

certification shall be denied. Salary scales will be reviewed to ensure the relative salaries being paid Indian and non-Indian owners are consistent with the skills of the parties and are not being used to circumvent the requirement that the Indian owners are receiving profits equal to their ownership interest.

- E. In determining whether the firm meets the minimum ownership requirements for the applicable certification category, the following will be considered in determining whether the firm is under significant Indian management and operational control:

1. To show Indian manage and supervisory control, one or more of the Indian owners must be substantially involved, as a senior level official, in the day-to-day management and operation of the firm. He or she must, through prior experience or training, have substantial occupational ties to the area of business in which the firm is engaged such that he or she is qualified to serve in the senior level position and is sufficiently knowledgeable about the firm's activities to be accountable for the firm's activities. The Indian owners must have the demonstrable ability to independently make basic decisions pertaining to the day-to-day operations of the firm. Office management, clerical, or other experience unrelated to the firm's field operations is insufficient to establish the requisite control necessary for certification.

2. There must be good reason to believe that the firm was not established solely or primarily to take advantage of the Indian preference program. In evaluating an applicant under this criterion the Commission will consider the factors set out below. The Commission shall exercise broad discretion in applying these criteria in order to preserve the integrity of the Indian preference program and, in close or questionable cases, may deny certification:

a. History of the Firm. Whether the history of the firm provides reason to believe it was established primarily to take advantage of the Indian preference program, and in particular whether the firm, a portion of the firm, or key actors in the firm originally were associated with a non- Indian-owned business that gained little of business value in terms of capital, expertise, equipment, etc., by adding ownership or by merging with an Indian firm.

b. Employees. Whether key non-Indian employees of the applicant are former employees of a non-Indian firm with which the Indian firm is or has been affiliated, through a joint venture or other arrangement, such that there is reason to believe the non-Indian firm is controlling the applicant. Whether Indians are employed in all or most of the positions for which qualified Indians are available. A high percentage of non- Indian employees in such positions will provide reason to believe the firm was established primarily to benefit non-Indians.

- c. Relative Experience and Resources. Whether the experience, expertise, resources, etc., of the non-Indian partner(s) is so much greater than that of the Indian(s) that there is little sound business reason for the non-Indian to accept a junior role in the firm or venture other than to be able to take advantage of the Indian preference program.
- F. In considering the various factors relevant to the control of an Indian-Owned Firm, the Commission may, in the exercise of its discretion, decide in close cases to provide an additional certification to the entity at the next lowest level, if such factors for that level are otherwise satisfied, in order to allow the firm to more clearly develop over time the requisite demonstrable level of control for the category originally sought.
- G. A Commission decision not to certify an entity Indian-Owned Firm as "100% Seneca", "100% Indian-Majority Seneca", or "Majority Seneca" may be reviewed in accordance with Section 16 if a suit seeking review of that Commission decision is filed within 15 Days from a decision of the Commission. Such review shall be limited to review of the records as provided to the Commission and the Commission's decision shall be set aside only if it is found to be arbitrary, in excess of the authority of the Commission or not supported by the records provided to the Commission. Any decision following such review shall be limited to prospective relief, shall not include injunctive relief that would affect contracts already awarded, and shall not include any claims for damages. The Commission's decision shall stay in effect unless and until reversed by the Nation's Courts in a final, non-appealable decision.

SECTION 5: UNIONS

Any covered employer who has a collective bargaining agreement with one or more unions shall obtain written agreement from such union(s) stating that the union shall comply with the Indian preference laws and with the rules, regulations, and guidelines of the Seneca Nation. Such agreement shall be subject to the approval of the TERO Director.

SECTION 6: COMMISSION; MEMBERS; QUORUM

- A. There is created a Seneca Nation Employment Rights Commission.
- B. The Commission shall be composed of five Commissioners, to serve a two-year term, nominated by the Seneca Nation President and appointed by the Seneca Nation Tribal Council, with at least two members from each Reservation. The Commission shall designate one of its members as Commission chairperson.
- C. At least three of the Commissioners shall constitute a quorum to transact business. When a vacancy occurs in the Commission, the remaining members may exercise all powers of the Commission until the vacancy is filled. Vacancies must be filled

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within 60 Days. Three consecutive unexcused absences from Commission meetings by a member of the Commission shall result in the member's automatic removal from the Commission.

SECTION 7: POWERS OF THE COMMISSION

The Commission has the full power, jurisdiction, and authority to:

- A. Formulate, adopt, amend, and rescind rules, regulations, and guidelines necessary for the Commission to function.
- B. Require each covered employer or entity to submit to the Director, an acceptable Compliance Plan indicating how it will comply with this Ordinance, before a covered employer or entity commences work within the exterior boundaries of any Nation Lands.
- C. Require the Director to impose numerical goals and timetables that specify the minimum number of Indians a covered employer must hire.
- D. Require covered employers to establish or participate in training programs the Commission determines necessary in order to increase the pool of qualified Indians on any Nation Lands.
- E. Prohibit covered employers from using qualification criteria in their personnel requirements that serve as barriers to Indian employment.
- F. To enter into agreements with unions to insure union compliance with this Ordinance. Such agreements shall in no way constitute recognition or endorsement of any union.
- G. Impose contra(£ and subcontract preference requirements with first preference as stated in this Ordinance and establish and operate a system for certifying firms as eligible for Seneca and other Indian preference.

SECTION 8: DIRECTOR; QUALIFICATIONS; STAFF; DUTIES

- A. The TERO Director shall have authority to hire staff, to expend funds appropriated by the Seneca Nation Tribal Council, and to obtain and expend funding from federal, state, or other sources to carry out the purposes of this Ordinance, subject to approval by the TERO Commission and the Seneca Nation Tribal Council.
- B. The TERO Director shall administer the policies, authorities and duties prescribed for him/her in this Ordinance and delegated to him/her by the Commission pursuant to Section 9.

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- C. Establish in conjunction with tribal employment and training programs, a tribal hiring hall or skills bank and impose a requirement that no covered employer may hire a non-Indian until the TERO office has certified that no qualified Indian is available to fill the vacancy, with preferences in referral as defined in Section 3.
- D. The Director shall have the authority to review and sign Compliance Plans. It will be the Director's responsibility to ensure that Indian preference is given in contracting, subcontracting and employment.
- E. The Commission shall have the authority to recommend corrective action or removal of the TERO Director.

SECTION 9: DELEGATION OF AUTHORITY

The Commission shall delegate to the Tribal Employment Rights Office Director the authority to carry out the day-to-day operations of the Tribal Employment Rights Office and such other authority as is convenient or necessary to the efficient administration of this Ordinance, except that the Commission may not delegate its power or duty to:

- A. Adopt, amend and/or rescind rules, regulations or guidelines.
- B. To conduct hearings or to impose sanctions pursuant to Section 15.

SECTION 10: INTERGOVERNMENTAL RELATIONSHIPS

The Commission, acting through the TERO Director, is authorized to enter into cooperative relationships with federal employment rights agencies such as the EEOC and the Office of Federal Contract Compliance Programs (OFCCP), in order to eliminate discrimination against Indians within and outside Nation Lands.

SECTION 11: EMPLOYMENT RIGHTS FEE

An Employment Rights fee to raise revenue for the operation of the Tribal Employment Rights Office is imposed as follows:

- A. Every covered employer with a prime construction contract in the sum of \$50,000 or more shall pay a one-time fee of 5% of the total amount of the contract. Such fee shall be paid by the employer prior to commencing work on any Nation Lands. However, where good cause is shown, the Commission may authorize a construction contractor to pay said fee in installments over the course of the contract.

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- B. The fee shall be non-refundable once a project has commenced.
- C. The TERO Director shall be responsible for collecting said fees pursuant to any rules and regulations adopted by the Commission. Said fees shall be paid to the Seneca Nation Treasurer and, upon receipt, shall be deposited in the Nation's general fund, and the TERO shall receive an allocation of such fees by Council action as may be necessary for the TERO to satisfy its obligations.
- D. The TERO Director shall waive the Employment Rights fee where the covered employer is the Seneca Nation of Indians or any department, corporation, or agency of the Seneca Nation.

### SECTION 12: COMPLAINTS

Any individual, group of individuals, or organization that believes any covered employer or entity, or the Commission has violated any requirements imposed by this Ordinance or regulations issued pursuant to it, may file a complaint with the TERO Director. The complaint shall be in writing and shall provide such information as is necessary to enable the TERO Director to carry out an investigation. The TERO Director shall investigate every complaint filed with him/her. If upon investigation he or she has reason to believe a violation has occurred, he/she shall proceed pursuant to the provisions of Section 15. Within 20 Days after receipt of the complaint and on a regular basis thereafter, the TERO Director shall provide the complaining party with a written report on the status of the complaint.

### SECTION 13: INVESTIGATIONS

On his/her own initiative or pursuant to a complaint, the TERO Director or any field compliance officer designated by the TERO Director shall make such public or private investigations within any Nation Lands, as he/she or the Commission deems necessary to determine whether any covered employer or other covered entity has violated any provision of this Ordinance or any rule or order hereunder, or to aid in prescribing rules, regulations, and guidelines hereunder. The TERO Director or his delegate may enter during business hours the place of business or employment of any covered employer for the purpose of such investigations and may require the covered employer or entity to submit such reports as he deems necessary to monitor compliance with the requirements of the Ordinance or any rule or order hereunder.

### SECTION 14: POWER TO REQUIRE TESTIMONY & PRODUCTION OF RECORDS

For the purpose of investigations or hearings, which in the opinion of the TERO Director or the Commission, are necessary and proper for the enforcement of this Ordinance, a Commissioner, the TERO Director, or any field compliance officer designated by the TERO Director, may take evidence, and require by citation, the production of books, papers, contracts, agreements or other documents, records or information which the TERO Director or Commission deems relevant or

materials to the inquiry. The Commission shall have the authority to administer oaths or affirmations and subpoena witnesses.

Any entity's state or federal tax records, payroll information, or financial reports subpoenaed pursuant to this section or used in a compliance hearing or subsequent appeal to the Tribal Court of Appeals, shall be confidential records and shall not be open to public inspection. They shall be used only by the TERO Director, the Commission, parties to a Compliance hearing or the Tribal Court of Appeals.

SECTION 15: ENFORCEMENT

- A. When after conducting an investigation initiated by a complaint pursuant to Section 12, or a self-initiated investigation pursuant to Section 13, there is reason to believe a violation of the Ordinance or regulations issued pursuant to it has occurred, the TERO Director or Compliance Officer shall notify the covered employer or entity in writing, specifying the alleged violations. However, he/she may withhold the name(s) of the complaining party if there is reason to believe such party shall be subject to retaliation. The TERO Director or Compliance Officer shall seek to achieve an informal settlement of the alleged violation. If unable to do so, the TERO Director or Compliance Officer shall issue a formal written notice of noncompliance which shall also advise the covered employer or entity of his right to request a hearing.
- B.
  - I. The formal written notice shall set out the nature of the alleged violation and the steps that must be taken to come into compliance. It shall provide the employer or entity with five Days to come into compliance. If the TERO Director or Compliance Officer believes irreparable harm will occur during that period, he/she may require that compliance occur within fewer than five Days.
  - 2. If the party fails or refuses to comply, the TERO Director or Compliance Officer may request a hearing before the Commission. The hearing shall be held as soon as practicable but no later than ten Days after the date of compliance established in the TERO Director's or Compliance Officer's formal notice of a violation, unless the Commission deems an expedited hearing necessary to avoid irreparable harm.
  - 3. If a party fails or refuses to comply and does not request a hearing, the Commission may proceed pursuant to Subsection F.
- C. If the party requests a hearing pursuant to Subsection B.2, and the TERO Director or Compliance Officer has good cause to believe that there is a danger that the party requesting the hearing will remove itself or its property from the jurisdiction of the Nation prior to the hearing, he/she, in his/her discretion, require the party to post a

## TRIBAL EMPLOYMENT RIGHTS ORDINANCE

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bond with the Commission in an amount sufficient to cover possible monetary damages that may be assessed against the party at the hearing. If the party fails or refuses to post said bond, the Commission may proceed pursuant to Subsection F. The TERO Director or Compliance Officer may also petition the Seneca Nation Peacemakers Court for such interim and injunctive relief as is appropriate to protect the rights of the Commission and other parties during the pendency of the complaint and hearing proceedings.

- D. Any hearing held pursuant to Subsection B.2 shall be conducted by the Commission. Conduct of the hearing shall be governed by the rules of practice and procedure which may be adopted by the Commission. The Commission shall not be bound by technical rules of evidence in the conduct of hearings under this Ordinance, and no informality in any proceeding, as in the manner of taking testimony, shall invalidate any order decision, rule or regulation made, approved, or confirmed by the Commission. The proceedings and testimony shall be recorded at the request of the party charged or at the Commission's initiative.
- E. Any covered employer or other person subject to Nation jurisdiction which retaliates against any employee, employer, union or other entity because of its exercise or rights under this law, or compliance with provisions of this law, shall be subject to the sanctions set forth in Subsection F.
- F. If no hearing is requested under Subsection B.2, or after a hearing the Commission finds the party in violation and no adequate defense in law or fact exist, or the party failed or refused to post a bond under Subsection C, the Commission may:
  - 1. Deny such party the right to commence business within Nation Lands.
  - 2. Suspend such party's operation within Nation Lands.
  - 3. Terminate such party's operation within Nation Lands.
  - 4. Deny the right of such party to conduct any further business within Nation Lands.
  - 5. Impose a civil fine on such party in an amount not to exceed \$5000 for each violation.
  - 6. Order such party to make payment of back pay to any aggrieved Indian covered under this Ordinance.
  - 7. Order such party to dismiss any employees hired in violation of this Ordinance or Commission guidelines.

## TRIBAL EMPLOYMENT RIGHTS ORDINANCE

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8. Order the party to take such action as is necessary to ensure compliance with this Ordinance or to remedy any harm caused by a violation of this Ordinance consistent with the requirements of 25 U.S.C. 1301 et seq. (Indian Civil Rights Act).

The Commission's decision shall be in writing, and served on the parties by registered mail or in person, no later than thirty Days after the close of the hearing provided in Subsection D. Where the party's failure to comply immediately with the Commission's orders may cause irreparable harm, the Commission may request injunctive relief before the Peacemakers Court pending the party's appeal or expiration of the time for appeal.

### SECTION 16: APPEALS

- A. An appeal to the Nation's Court may be taken from any final order of the Commission by any party adversely affected thereby. Except as otherwise provided in this Ordinance, the time lines and filing requirements under the civil procedure shall be used in filing an appeal. The Courts shall uphold the decision of the Commission unless it is demonstrated that the decision of the Commission is arbitrary, capricious or in excess of the authority of the Commission. Except as provided in Subsection B of this Section, the order of the Commission shall abate pending a final, non-appealable determination by the Nation's Courts. Upon petition, the Peacemaker's Court may order a party to post a bond sufficient to cover the Commission's assessment against the party or to assure the party's compliance with other sanctions or remedial actions imposed by the Commission's order, if that order is upheld by the Courts.
- B. If at any stage in the enforcement process the Commission has reason to believe there is a danger that a party will remove itself or its property from the jurisdiction of the Nation's Courts, such that the Commission or Courts will not be able to collect monetary damages or TERO fees that are (a) owed by that party pursuant to any outstanding order of the Commission or Nation Court, or (b) which will be owed if the charges set out in any outstanding notice of violations are upheld, the Commission may petition the Peacemaker's Court pursuant to the rules and procedures of that court to attach and hold sufficient property of the party to secure compliance or for such other relief as is necessary and appropriate to protect the right of the Commission and other affected parties.

### SECTION 17: CONFISCATION AND SALE

If 31 Days after sanctions have been imposed by the Commission pursuant to Subsection E of Section 15 no appeal has been filed, or 31 Days after a decision by the Court of Appeals pursuant to Subsection A of Section 16, a party has failed to pay monetary damages imposed on it or otherwise failed to comply with an order of the Commission or the Court, the TERO Director or

TRIBAL EMPLOYMENT RIGHTS ORDINANCE  
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Court or Court of Appeals may order the Seneca Nation Law Enforcement to confiscate and hold for sale the parties' property to ensure payment or to achieve compliance. Any confiscation order shall be accompanied by a list of the parties' property believed to be within the jurisdiction of the Seneca Nation, the value approximating the amount of monetary damages owed. The Seneca Nation Law Enforcement shall deliver in person a notice to the party informing it of the confiscation and of its right to redeem said property by coming into compliance with the order outstanding against it. If 30 Days after confiscation the party has not come into compliance, the Seneca Nation shall sell said property and use the proceeds to pay any outstanding monetary damages imposed by the Commission and all cost incurred by the court, the law enforcement in the confiscation and sale. All proceeds remaining shall be returned to the party.

SECTION 18: ORDERS TO LAW ENFORCEMENT

The Seneca Nation of Indians Law Enforcement Departments are hereby expressly authorized and directed to enforce such cease and desist or related orders as may from time to time be properly issued by the TERO Commission, Director or Tribal Courts. Such orders do not require a judicial decree or order to render them enforceable. The Law Enforcement Officer shall not be civilly liable for enforcing such orders so long as the order is signed by the Director and the Commission.

SECTION 19: FAIR LABOR STANDARDS

The provisions of the Federal Fair Labor Standards Act, as amended now or in the future, regarding minimum wages, overtime, fringe benefits, and time for payment of wages, are adopted by reference in and by this Ordinance. The Commission shall have the authority to monitor and enforce those requirements, pursuant to the monitoring and enforcement authorities provided generally to the Commission by this Ordinance. Provided that, this section shall apply only to those employers who are otherwise covered by the Federal law. No employer who is not presently subject to the Federal Laws (or subsequently made subject by amendments or court decisions) shall be covered by this section. The purpose of this section is to give the Commission the parallel authority to monitor and enforce the fair labor requirements against those already covered by the Federal law, not to expand such requirements to employers not already covered. In imposing back pay awards, penalties and interest sanctions under this provision, the Commission shall credit an employer with any back pay, interest or penalties paid pursuant to an order of settlement entered into with the Federal government for the same violation.

SECTION 20: SEVERABILITY

If for any circumstance, provision(s) or sections of this Ordinance are held invalid by the appropriate court of jurisdiction, the remainder of this Ordinance and other provisions or sections will not be affected in the application of the Ordinance of any person, employers and others covered by the Ordinance.

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SECTION 21: EFFECTIVE DATE

This Ordinance shall be effective from the date of its approval by the Seneca Nation Tribal Council.

Enacted:	June 23, 1993
Effective:	June 23, 1993
Amended:	April 16, 1994
Amended:	April13, 1996
Amended:	July 11, 1998
Amended:	December 11, 2004
Amended:	November 12, 2005
Amended:	August 12, 2006
Amended:	October 13, 2007
Amended:	September 20, 2008 (effective February 14, 2009)
Amended:	May 12, 2012
Amended:	August 6, 2012
Amended:	July 14, 2018

**SENECA NATION OF INDIANS  
APPLICATION FOR LICENSE TO DO BUSINESS  
BUSINESS CODE of 1988  
WITHIN THE SENECA NATION TERRITORY**

Please submit this form to: Clerk, Seneca Nation of Indians

Application To Do Business As: \_\_\_\_\_

Date of Application: \_\_\_\_\_ Identification No.: \_\_\_\_\_

1. Name, Address & Telephone of Applicant:

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2. Business Name, Address & Telephone:

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3. Nation Member:                      Yes: \_\_\_\_\_ No: \_\_\_\_\_

4. Enrollment number of Individual listed in Line 1:

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5. Date business began or will begin operating on Seneca Territory: \_\_\_\_\_

6. Address where books and \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. Location(s) of Business: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. Description of business, if not exclusively cigarette or automotive fuel sale business, please specify:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. Title of Organization:  
\_\_\_\_\_ Husband/Wife Co-Ownership  
\_\_\_\_\_ Sole Proprietorship  
\_\_\_\_\_ Partnership  
\_\_\_\_\_ Corporation  
\_\_\_\_\_ Joint Venture  
\_\_\_\_\_ Other \_\_\_\_\_

10. If a corporation, list tribe or state of incorporation: \_\_\_\_\_

11. Certification No: \_\_\_\_\_

12. If a corporation or partnership, list names and addresses of all corporate officers or partners:

	Name	Address	Title	Percent Ownership
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

(Attach additional sheets if necessary)

13. Type of corporation: \_\_\_\_\_  
(If foreign corporation, name, and address of statutory agent who shall be Reservation resident)

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

14. Corporation Charter (Attached) Yes \_\_\_\_\_ No \_\_\_\_\_

15. Corporation By-Laws (Attached) Yes \_\_\_\_\_ No \_\_\_\_\_

16. Board membership List (Attached) Yes \_\_\_\_\_ No \_\_\_\_\_

17. Previous Application \_\_\_\_\_ Previous License \_\_\_\_\_ Date: \_\_\_\_\_

18. Dates of Previous Licensed Periods: \_\_\_\_\_

19. Number of Employees: Indian \_\_\_\_\_ Non-Indian \_\_\_\_\_ Year: \_\_\_\_\_

20. Has applicant submitted proof of indemnification for personal injury or property damage through business operation? \_\_\_\_\_

21. Is applicant a participant in Flood Insurance Program? \_\_\_\_\_

22. Has applicant been convicted of a felony in any court in the U.S. or any state or territory? \_\_\_\_\_

If yes explain: \_\_\_\_\_

**NOTICE: LEGAL SIGNATURE REQUIRED**

Sole Proprietorship – owner must sign

Husband and Wife Co-ownership – both husband and wife must sign

Partnership – All partners must sign

Corporation – list all officers and signature of all persons and one corporate officers including the officer(s) on application.

Joint Venture – authorized signature of all persons and one corporate office organizing joint venture.

I hereby certify that the information provided in this application is true and complete to the best of my knowledge and belief. I (we) understand that any material misrepresentation will result in the denial or subsequent revocation of any business license. I (we) agree, based on the consensual and contractual relationship with the Seneca Nation, to abide by all applicable laws, regulations, and. rules of the Seneca Nation of Indians. I (we) also consent to the jurisdiction of the Courts of the Seneca Nation of Indians for the purpose of enforcing any laws, regulations, or rules governing this business license or the conduct of any business within the Seneca Nation of Indians' territories

(1)

Printed Name	Signature	Title
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Home Address

(2)

Printed Name	Signature	Title
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Home Address

**OFFICE USE ONLY**

Submit to **BOTH** the President's Office and the Treasurer's Office for signatures once all other signatures have been obtained).

President or Chief of Staff Signature	Date
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Treasurer or Deputy Chief of Staff Signature	Date
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Clerk Signature	Date
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**\*President's or Treasure's office: Please return this application to BPO once signatures above have been obtained**

## Authorization to Release Information

I/we have applied for a business license from the Seneca Nation Business Permits Office. As part of the application process The Seneca Nation Business Permits Office may verify information contained in my/our application and in other documents required in connection with the application.

I/we authorize you to provide Seneca Nation Business Permits Office all information and documentation that they request. Such information includes, but not limited to compliance with your departments rules and regulations and/or Seneca Nation rules, regulations and ordinances.

A copy of this authorization may be accepted as an original.

Your prompt reply to Seneca Nation Business Permits Office is appreciated.

This release of information is good for one year from the date signed.

Applicant's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Applicant's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Applicant's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Applicant's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_





# SENECA NATION OF INDIANS

## - STANDARD CONSTRUCTION CONTRACT -

DEPARTMENT: \_\_\_\_\_

PROJECT TITLE: \_\_\_\_\_

This contract, in quadruplicate, between the SENECA NATION OF INDIANS ("Nation" or "Nation's Agent"), a Sovereign Nation, by and through its President, Rickey L. Armstrong, Sr., with business addresses of 12837 Route 438, Irving, NY 14081 and 90 Ohi:yo Way, Salamanca, NY 14779, and \_\_\_\_\_ ("Contractor"), located at \_\_\_\_\_, with a business telephone number of \_\_\_\_\_, is entered into on this \_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, on the lands of the Seneca Nation. Nation and Contractor are sometimes referred to herein individually as a "Party" and collectively as "the Parties." The said parties, for the consideration hereinafter mentioned, agree to the following:

- 1. SCOPE OF WORK.** The Contractor agrees to provide all of the material and labor required to perform any and all necessary Nation-directed work for the \_\_\_\_\_ as provided in the Contractor's Proposal, which is hereinafter attached and made a part of this agreement as Exhibit A. In the performance of service, the Contractor agrees to comply with all applicable laws and regulations, standards, specifications, and requirements, including the Nation's Procurement Policy and bidding requirements, which are also incorporated into and made a part of this Contract. The Contractor agrees to coordinate all work with the Nation and perform all services within the timeframe heretofore established. \_\_\_\_\_ ("Nation's Agent"), may, at the direction of the Nation be authorized to act on the Nation's behalf for all purposes under this Contract.
- 2. PAYMENT.** The Nation hereby agrees to pay the Contractor, for the aforesaid materials and labor, a sum not to exceed (NTE) \_\_\_\_\_ US dollars (\$\_\_\_\_\_), as per the Contractor's proposal (Exhibit A) ("Contract Sum"). Payment shall be made upon satisfactory progress of the project monthly, to be determined by the Nation; and be on such form that describes work completed and documented. Final payment shall be due at the time of final completion, upon acceptance of the work by the Nation. *If the NTE amount set forth herein is in excess of, in the aggregate for the Consultant and the Department during the previous twelve months, \$49,999.99, this Agreement shall not become effective until and unless approved by the Nation's Council.*
- 3. TIME FOR PERFORMANCE.** Time is of the essence with respect to performance of this contract. The Contractor agrees that the entire above-described work shall be completed no later than the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ ("Contract Time").

4. **MATERIALS.** The Contractor agrees to provide and pay for all materials, tools and equipment required for the prosecution and timely completion of the work. All materials, equipment and articles incorporated into the work and covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided for in this Contract. References in the specifications to materials, equipment, articles or patented processes by trade name, make or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition.
5. **WORKERS.** In the prosecution of the work, the Contractor shall employ a sufficient number of workers skilled in their trades to suitably perform the work.
6. **EMPLOYMENT RIGHTS.** Contractor shall be obligated to comply with the provisions of the Seneca Nation Tribal Employment Rights Ordinance (TERO), a copy of which has been furnished to the Contractor. Contractor shall have a TERO Compliance Plan completed and approved by the TERO Director before commencing any work under the contract, and shall be required to pay any applicable TERO fees. Any portion of work that involves specialty work shall be limited to the extent required for Project completion and, upon written approval by the Nation, shall be exempt from any relevant TERO provisions.
7. **PERMITS.** The Contractor shall obtain and maintain all licenses or permits, including any applicable Nation Business Licenses, and meet all requirements of local, state or federal law necessary for the successful completion of this Project.
8. **SUBCONTRACTING.** Contractor shall not enter into any subcontracts for any of the work performed under this contract, or assign any right, interest or obligation under this contract without obtaining prior written approval of the Nation. If such approval for subcontracting is granted, the Contractor shall be solely liable to all subcontractors for the prompt payment of all just debts, demands and obligations incurred in the performance of this contract and shall be responsible for providing the Nation with a waiver of lien from any subcontractor before receiving payment from the Nation for work performed. Under no circumstances may the contractor or a subcontractor establish a lien against the Nation, Nation lands or improvements on Nation lands.
9. **COMPLIANCE WITH STANDARDS AND LAWS.** Contractor agrees to perform and complete the work with the degree of skill and care observed by those performing the same or similar work and by following and applying at all times all professional, technical and industry guidelines and standards applicable to the performance of such work. All work will be performed by Contractor in compliance with all applicable specifications established by the Nation and Contractor ("Specifications") and with all applicable statutes, acts, ordinances, laws, rules, regulations, codes, standards, license and permit requirements, and with all requirements for the Project and all requirements under any programs or grants under which any portion of the Project is being funded. Contractor shall not deliver any work or other materials to the Nation, except in strict conformance with a plan approved in advance by the Nation, including a plan to secure and protect such work and other materials. Contractor shall bear the risk-of-loss for all work and other materials until all work and other materials are accepted by the Nation.

10. **TERMINATION.** The Nation may, by written notice of default, terminate the whole or any part of this agreement if the Contractor fails to perform in the manner called for by this Contract; or fails to provide the services within the time specified herein, or any extension hereof; or fails to perform any of the other provisions of this contract; or pursues the work as to endanger performance of this contract in accordance with its terms, and fails to correct such failures. Contractor may be compensated, partially, for the work that has been satisfactorily completed, dependent upon costs that it will take a third party to complete the project. Determinations of satisfactory work will be made by the Nation in accordance with generally accepted standards of trade.
11. **DELAYS.** In the event the Contractor is hindered, delayed or prevented from performance of the work by "*Force Majeure*", causes, events or circumstances which are beyond the reasonable control of the Contractor, including, without limitation, acts of God, war, insurrections, hostilities, riots, lockouts, strikes, labor disputes, floods, fire, hurricanes, or acts of Governmental Authorities, Contractor, upon written notice to that effect and termination of such Force Majeure, shall resume performance of any suspended obligation and the time for completion of the work shall be extended for the same period as the delay occasioned by any of the aforementioned causes.
12. **WARRANTY – ONE YEAR MINIMUM.** The Contractor warrants that work performed under this contract conforms to the contract requirements and is free from any defect in equipment, materials or design furnished or workmanship performed by the Contractor or any subcontractor or supplier at any tier. The warranty term shall be the greater of industry standard for the work performed, the warranty period identified in the Contractor's Proposal, and one year. The warranty term shall commence on the date of final acceptance of the work. The Contractor shall remedy at his expense any failure to conform to the contract requirements.
13. **MAINTENANCE OF WORK AREA.** The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before final inspection and acceptance, the Contractor shall remove from the worksite and premises any rubbish, tools, scaffolding, equipment and materials that are not the property of the Nation. The Contractor shall leave the work area in a clean, neat and orderly condition.
14. **CHANGES.** All changes and deviations in the work ordered by the Nation must be in writing and approved by the Nation's CEO or CFO before proceeding with the ordered change provided the total contract amount, including the change, 1) does not exceed \$49,999.99 or 2) is approved by the Nation's Council.
15. **ACCESS.** The Nation and the Nation's Agent shall at all times have access to the work.
16. **CONTRACTOR INSURANCE.** Contractor shall provide the Nation with Certificate(s) of Insurance consistent with the minimum requirements of the Seneca Nation. See attached "SNI Insurance Requirements".
17. **BONDING REQUIREMENTS.** If the Contract is grant-funded, Contractor must certify, where applicable, that it meets the bonding requirements of 2 CFR Part 200.235.

18. **LIQUIDATED DAMAGES.** In the event the work is delayed due to the neglect of the Contractor, the Contractor agrees to pay the Nation the sum of Two Hundred Fifty US dollars (\$250.00) per day as liquidated damages until such time as the work is completed.
19. **ENTIRE AGREEMENT.** This Agreement constitutes the entire Agreement between the parties as to the matters covered herein and supersedes any other previous agreement, oral or written, between the parties.
20. **AMENDMENTS.** This Agreement can be modified or amended only by the written agreement of the Nation and the Contractor. In the event any provision in the body of this Agreement is inconsistent with a provision in an attachment or other incorporated document, the provision(s) in the body of this Agreement shall control.
21. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same original, and the execution of separate counterparts by the parties shall bind them as if they had each executed the same counterpart.
22. **NO ASSIGNMENT.** Neither the Nation nor Contractor shall have the right to assign any rights or interests occurring under this Agreement without the written consent of the other, nor shall the Contractor assign any sums due, or to become due, under the provisions of this Agreement.
23. **INDEPENDENT CONTRACTOR.** The Contractor shall be deemed to be an independent contractor of the Nation. In no event shall the Contractor be deemed an employee or agent of the Nation and the Contractor shall have no power to bind or commit the Nation or otherwise act on the Nation's behalf. The Nation will not be responsible for withholding any income tax or social security contributions or providing any benefits to the Contractor or the Contractor's employees which may be conferred upon or incurred on behalf of Nation employees. Contractor shall provide the Nation with a complete W-9 before commencement of work. If the Internal Revenue Service or any other government agency questions or challenges the Contractor's independent contractor status, then it is agreed that both the Nation and the Contractor shall have the right to participate in any conference, discussion or negotiation with the government agency, irrespective of whom initiates discussions or negotiations.
24. **BACKGROUND CHECKS.** The Contractor shall provide the Nation with an Authorization for Release of Information for Background Check of Contractor or, where appropriate, Company.
25. **APPLICABLE LAW.** This Agreement shall be governed by and interpreted in accordance with the laws of the Seneca Nation.
26. **SOVEREIGN IMMUNITY.** Notwithstanding anything to the contrary, nothing in this Agreement waives or may be deemed to waive the Nation's sovereign immunity from suit.
27. **FINAL ACCEPTANCE.** Project completion shall occur upon the date that the last of the following occurs: satisfactory inspection of the work by or on behalf of the Nation and any other required entities, acceptance by the Nation of the scope of work, and acceptance by the Nation of all required documents and/or records relating to the work, and any applicable lien waivers.

28. **CONFIDENTIALITY.** Contractor agrees that all reports, calculations, plans, specifications, records, lists of names, journals, ledgers, reports, and other recorded information developed in connection with the Work provided by Contractor hereunder ("Nation Materials"), shall always be and remain the property of the Nation and shall constitute Confidential Information of the Nation. Contractor agrees to keep all Nation Materials confidential and not to reproduce, disclose or disseminate the Nation Materials or the information contained therein to third parties without the prior written consent of the Nation. Upon termination of this contract for any reason (or upon the request of the Nation), Contractor shall immediately return all Nation Materials, and any copies thereof, to the Nation.

**IN WITNESS WHEREOF**, the parties hereto have executed this agreement as of the day and year first above written.

**SENECA NATION OF INDIANS**

**CONTRACTOR**

By: \_\_\_\_\_  
Rickey L. Armstrong, Sr., President  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXECUTE 4 ORIGINALS**

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Distribute Originals to: 1) Contractor 2) Project Manager 3) to A/P with P.O. 4) Purchasing

**NON-COLLUSIVE BIDDING CERTIFICATION**

BY SUBMISSION OF THIS BID OR PROPOSAL, THE BIDDER CERTIFIES THAT:

1. This bid or proposal has been independently arrived at without collusion with any other bidder or with any other competitor or potential competitor.
2. This bid or proposal has not been knowingly disclosed and will not be knowingly disclosed, prior to the opening of bids or proposals for this project, to any other bidder, competitor or potential competitor.
3. No attempt has been made to induce any other person, partnership or corporation to submit or not to submit a bid or proposal.
4. The person signing this bid or proposal certifies that he/she fully informed himself/herself regarding the accuracy of the statements contained in this certification, and under the penalties of perjury, affirms the truth thereof, such penalties being applicable to the bidder as well as to the person signing on its behalf.

\_\_\_\_\_

Bidder

By: \_\_\_\_\_

Signature

\_\_\_\_\_

Print Name

Date: \_\_\_\_\_

*Project Number:* \_\_\_\_\_

*Project Address:* \_\_\_\_\_

*Prime Contractor:* \_\_\_\_\_

**LIEN WAIVER**

For valuable consideration, the undersigned and/or employees of the undersigned, hereby waive all right to claim a Mechanics Lien for labor, services, machinery, tools, equipment or materials furnished prior to \_\_\_\_\_, 20\_\_\_\_, to the Seneca Nation of Indians, Agent and \_\_\_\_\_, Contractor in the improvements located on the lands of the Seneca Nation known as # \_\_\_\_\_, Street/Avenue, \_\_\_\_\_.

This release is valid on the condition that check # \_\_\_\_\_ drawn by \_\_\_\_\_ on the \_\_\_\_\_ Bank for \$ \_\_\_\_\_ dollars dated \_\_\_\_\_, 20\_\_\_\_ is paid when presented.

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

PAYMENT CERTIFICATION  
FOR CONSTRUCTION CONTRACT  
PROGRESS PAYMENTS

SUBMIT THIS ORIGINAL FORM ALONG WITH THE CONTRACTOR INVOICE (IF ANY) TO THE  
A/P DEPARTMENT.

**[Section 1— To BE COMPLETED BY PROJECT MANAGER]**

PO # \_\_\_\_\_

Payment # \_\_\_\_\_ (1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, Final, etc.)

Contractor: \_\_\_\_\_

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**[Section 2]**

Attach Original Consultant Invoice

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**[Section 3— To BE COMPLETED BY PROJECT MANAGER]**

I certify that the above work has been completed in accordance with the contract specifications and that it is acceptable. I hereby request that a progress payment be made to the contractor in the following amount:

\$ \_\_\_\_\_.

Project Manager Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Cost Center Director Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Revenue Source Director Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## SNI INSURANCE REQUIREMENTS

- 1) All Insurance Carriers must have a financial strength rating of A (Excellent) or higher by A.M. Best.
- 2) All Certificates submitted must name the Seneca Nation of Indians as an additional insured on a primary and non-contributory basis.
- 3) All Certificates must include: the Seneca Nation of Indians and their respective subsidiaries, directors, officers, agents, representatives and employees are named as additional insured(s) on the General Liability and Auto policies. A Waiver of Subrogation applies in favor of the Seneca Nation of Indians for General Liability, Auto Liability and Workers' Compensation.
- 4) Each bidder shall provide and maintain insurance and require all its Subcontractors of all tiers to provide and maintain insurance of the type and in limits set forth in the Contractor agreement.
- 5) Upon award, the Contractor & all of the Sub-Contractors shall submit an updated Certificate of Insurance with Endorsements to the Seneca Nation of Indians for review.
- 6) All policies shall not be cancelled or reduced in coverage unless Seneca Nation of Indians has been given thirty (30) days prior written notice by registered mail.
- 7) All Certificates shall list the Seneca Nation of Indians as the Certificate Holder:

Seneca Nation of Indians  
Attn: Cheryl Watts, Comptroller  
90 Ohi:yo' Way  
Salamanca, NY 14779
- 8) Commercial General Liability minimum requirements.
  - a) \$1,000,000 Per Occurrence
  - b) \$2,000,000 General Aggregate
    - i) General Aggregate coverage applies per project
- 9) Automobile Liability minimum requirements.
  - a) \$1,000,000 Combined Single Limit
    - i) Coverage applies per accident
    - ii) Coverage applies to any and all automobiles
- 10) Workers Compensation and Employers' Liability minimum requirements.
  - a) Statutory Limits for Workers Compensation
  - b) \$1,000,000 Employers' Liability
    - i) Each Accident
    - ii) Disease – Each Employee
    - iii) Disease – Policy Limit

Seneca Nation of Indians  
Standard Construction Agreement

<b>AUTHORIZATION FOR RELEASE OF INFORMATION FOR BACKGROUND CHECK FOR CONTRACTOR</b>
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In connection with my proposal to contract with the Seneca Nation, I consent to an investigation into my background and employment history. This document authorizes release to the Seneca Nation of requested information whether or not such information would be otherwise protected from disclosure by any constitutional, statutory or common law privilege.

I authorize release of any information related to my activities including: schools, property interests (real or personal), employment, criminal justice agencies, regulatory agencies, businesses, financial institutions, lending institutions, medical institutions, hospitals and health care professionals.

I authorize review and copying of all documents.

I relinquish any right that I may otherwise have to pursue a cause of action against any person (or his/her agent) to whom this request is presented when such cause of action arises out of a response to a request for information. I further agree to indemnify and hold harmless any person to whom this request is lawfully presented.

First (please print)	Middle	Last
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Address

City, State, Zip

Date of Birth

Social Security Number

Signed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signature

Seneca Nation of Indians  
Standard Construction Agreement

**AUTHORIZATION FOR RELEASE OF INFORMATION  
FOR BACKGROUND CHECK OF COMPANY**

In connection with the proposal to contract with the Seneca Nation, *(insert name of company)* \_\_\_\_\_ hereby consents to the release of any and all information to the Seneca Nation.

Additionally, *(insert name of company)* \_\_\_\_\_ agrees:

1. to provide the Seneca Nation, upon reasonable request, any and all information related to the education, skills, experience, professional association status and licensing status of employees or agents assigned to this project listed herein by name and title; and

<u>Employee Name</u>	<u>Title</u>
_____	_____
_____	_____
_____	_____
_____	_____

2. to authorize review and copying of all documents; and
3. to relinquish any right that *(insert name of company)* \_\_\_\_\_ may otherwise have to pursue a cause of action against any person (or his/her agent) to whom this request is presented when such cause of action arises out of a response to a request for information. *(Insert name of company)* \_\_\_\_\_ further agrees to indemnify and hold harmless any person to whom this request is lawfully presented.

\_\_\_\_\_  
*Name of Company*

\_\_\_\_\_  
*Name of Authorized Official*

\_\_\_\_\_  
*Title*

Signed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature

EXHIBIT A