



SECTION IV
SAMPLE CONTRACT AGREEMENT

Contract No. SINGLE-PAYMENT CONTRACT
Project No. MULTIPLE-PAYMENT CONTRACT
Location: RETAINAGE: This Contract is subject to a 10% construction retainage against invoiced amounts.

Cherokee Nation Construction Resources, LLC with offices located at 10838 East Marshall Street, Suite 220, Tulsa, Oklahoma 74116 ("PRIME") and ("Subcontractor") agree as follows:

Subcontractor shall perform all the Work (as hereinafter defined) called for in the Scope of Work, attached hereto as Exhibit "A" and incorporated herein by reference, for the location shown above.

The Work shall commence and shall be completed within () calendar days thereafter (the "Contract Time"). Therefore, the date of Substantial Completion, as hereinafter defined, shall be ("Substantial Completion Date").

Prime shall pay for the Work as set forth in this Contract. The total sum of this Contract shall be and Cents (\$) ("Contract Sum"). Prime and Subcontractor agree that this is a "Lump Sum" Contract and the "Contract Sum" shall be inclusive of all fees, permits and licenses costs, and shall be Subcontractor's complete and total re-imbursement for the Work specified in Exhibit "A".

Subcontractor shall invoice for Work in accordance with Section 17, Invoicing Instructions, of the attached Terms and Conditions. This payment plus any contingency as provided in Section 8, Extra Work, Changes and Cancellations, of the attached Terms and Conditions shall be the full, sole and complete amount to be paid Subcontractor for its performance under, arising out of, or in connection with, this Contract.

THE TERMS AND CONDITIONS ARE A PART OF THIS CONTRACT

Dated:

Dated:

SUBCONTRACTOR: "Subcontractor"

PRIME: Cherokee Nation Construction Resources, LLC

Signature

Signature

Name

Name

Title

Title

TERMS AND CONDITIONS

1. DEFINITIONS:

(A) The term “Prime’s Representative” refers to _____, or those, if any, acting within the authority conferred upon them in writing by Prime or Prime’s Representative.

(B) The term “Work” includes all services to be performed or things to be furnished by Subcontractor, or both services and things, as the context reasonably requires, including, without limitation, all supervision, labor, materials, supplies, tools, equipment, light, water, fuel, power, heat, transportation, or other facilities necessary for:

(1) _____ (hereinafter referred to as the “Project”) in accordance with the Contract Documents (as hereinafter defined), in a safe, expeditious, and orderly manner in accordance with highest construction practices and to the satisfaction of Prime’s Representative.

2. WORK AND SUPERVISION: Any work necessary to complete the Work according to the Contract shall be performed by Subcontractor. Subcontractor shall provide and pay for all Work except to the extent expressly provided otherwise in the Contract. All Work of Subcontractor shall conform to the Contract and to the satisfaction of Prime's Representative and shall be performed in a safe, expeditious, and orderly manner in accordance with highest construction practices. Subcontractor shall, at all times during the progress of the Work, keep a competent resident superintendent on the site of the Work. The superintendent shall be Subcontractor’s representative and shall have authority to act on Subcontractor’s behalf. All communications given to Subcontractor’s superintendent shall be as binding as if given to Subcontractor.

3. PAYMENT BY SUBCONTRACTOR: Subcontractor agrees to pay all bills for third party Work and all obligations incurred in the performance of the Work within ten (10) days of receipt of payment by Prime. In the event payment is not made within such time, Subcontractor’s suppliers and Subcontractors shall have a cause of action in a court of competent jurisdiction to secure payment, when and if requested by Prime. Prime reserves the right, without obligation, to withhold, reduce or recover payment if the Subcontractor fails to pay any third party for labor, materials or other costs incurred by the Subcontractor in performance of the Work as and when due. Additionally, Primes shall also have the right, but no obligation, to make joint checks or withhold and or to require satisfactory lien releases for all suppliers and Subcontractors of Subcontractor. Subcontractor shall furnish as a prerequisite to any progress payment and final payment, a Subcontractor’s Affidavit reciting that all outstanding bills of labor, materials or services then due, up to the date of the current application for payment, have been paid. The Subcontractor’s Affidavit shall be consistent in form and wording as agreed to by Prime and Subcontractor.

4. INDEPENDENT CONTRACTOR: The relationship between Prime and Subcontractor shall be only that of an "Independent Contractor." The detailed manner and method of performing the Work are under the sole control of Subcontractor; the rights of administration reserved to Prime are and shall be confined to ensuring that the results of the work of Subcontractor are in compliance with this Contract. Nothing in this Contract shall constitute Subcontractor as an employee, licensee, partner or agent of Prime, and Subcontractor shall not hold himself/herself out as such. Subcontractor specifically agrees and understands that neither Subcontractor nor Subcontractor's employees shall be entitled to any of the benefits which are available to Prime’s employees.

5. SUBCONTRACTORS:

In the performance of this contract, Prime and Subcontractor and its subcontractor(s) shall, to the greatest extent feasible, give preference in the selection of suppliers and subcontractor(s) to Indian organizations, Indian owned enterprises and individuals as certified by the Cherokee Nation Tribal Employment Rights Office (“TERO”). Subcontractor shall, as soon as practicable after signing the Contract, notify the Prime’s Representative in writing of the names of any subcontractors proposed for parts of the Work. If, subsequent to the signing of this



Contract, Subcontractor elects to subcontract a portion of the Work, Subcontractor shall notify Prime's Representative. Prime's Representative shall then assist Subcontractor with the bidding and subcontracting process, which process shall be in compliance with the applicable portions of Prime's Procurement policies and the TERO Act. Subcontractor shall not contract with any subcontractor unless and until the Prime's Representative has consented in writing to such subcontractor. Subcontractor agrees to bind every subcontractor to the provisions of the Contract insofar as the same shall be applicable to the subcontractor's work. Nothing contained in the Contract, nor any approval of subcontractors or subcontracts, shall create any contractual liability or responsibility on the part of Prime to any subcontractor. Subcontractor agrees that he is as fully responsible to Prime for the acts or omissions of his subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts or omissions of persons directly employed by Subcontractor.

6. **PROTECTION AND USE OF WORK AND PROPERTY:** Subcontractor shall continuously maintain adequate protection for all his Work from damage and shall protect Prime's property, and the property and persons of others, from injury or loss arising in connection with this Contract. Subcontractor shall comply and shall cause all his employees to comply with all Prime's rules and regulations on fires and safety at the place of Work. Subcontractor shall keep the Work site free from accumulation of waste materials, rubbish, and other debris resulting from the Work. At the completion of the Work, Subcontractor shall remove all waste materials, rubbish and debris from the Work site, as well as all tools, construction equipment, and machinery and surplus materials, and shall leave the Work site clean and ready for its intended use. Subcontractor shall restore to its original condition those portions of the Work site not designated for alteration by this Contract.
7. **CONSTRUCTION SCHEDULES:** If requested by Prime, Subcontractor shall prepare and submit a detailed construction schedule for the Work in a format acceptable to Prime. The schedule shall not exceed the Contract Time and shall be revised at appropriate intervals as required by conditions of the Work.
8. **EXTRA WORK, CHANGES AND CANCELLATION:** Prime reserves the right, without invalidating this Contract, to order, in writing, extra Work or make changes by altering, adding to, or omitting from the Work in a separate document entitled Change Order, with the Contract amounts and Contract Time being adjusted accordingly. Each Change Order shall be a part of this Contract and incorporated herein. All Change Orders shall be sequentially numbered for ease of identification, e.g., Change Order #1, #2, #3, and so forth and shall be executed by authorized individuals of both parties prior to commencement of the extra Work or Change Order Work. Subcontractor shall not invoice, and Prime shall not pay for any extra Work or Change Order Work which is not authorized by Prime as evidenced by a Change Order executed by authorized individuals of both parties. All such extra Work shall be subject to the terms and conditions of this Contract. Prime also reserves the right to cancel this Contract at any time for any reason. If the Contract is cancelled, Prime shall pay Subcontractor pro rata for all Work performed up to the time of cancellation. There shall be no other payment for the partial or total cancellation of this Contract.
9. **EXCUSES FOR NONPERFORMANCE:** If Subcontractor is prevented from performing any of its obligations under this Contract by reason of fire, flood, windstorm, earthquake, other acts of God, civil disturbance, riots, order of any court or administrative body (not due to the fault of Subcontractor), or any other cause beyond the control of Subcontractor which is not due to the fault of Subcontractor, Subcontractor may make a claim for extension by notifying Prime's Representative in writing within twenty-four (24) hours after the beginning of such period of delay. If Prime agrees, in its reasonable discretion, that such cause for delay is beyond Subcontractor's reasonable control, the time allotted by the Contract for performance of the prevented obligations will be extended one (1) day for each day of delay.
10. **RESPONSIBILITY FOR WORK:** Subcontractor warrants to Prime that material and equipment furnished under this Contract shall be new and of good quality unless specified otherwise herein, and that the Work will be free from defects and conform to the requirements stated herein. Work not conforming to these requirements, including substitution not properly approved and authorized, may be considered defective. Neither any provision in this Contract, nor Prime's Representative's acceptance of the Work, nor the final payment shall relieve Subcontractor of responsibility for Work failing to conform to this Contract. This responsibility shall continue for a period of one (1) year from the date of the acceptance of the entire Work by Prime's Representative.



11. **SUBSTANTIAL COMPLETION:** Substantial Completion is the stage in the progress of the Work when the Work (or designated portions thereof) is sufficiently complete in accordance with the Contract, which determination shall be at Prime's sole discretion, so that Prime may utilize the Work for its intended use. Upon Prime's determination of Substantial Completion, Subcontractor shall prepare and submit to Prime's Representative a comprehensive list of items to be completed or corrected prior to final payment.
12. **PERMITS, LICENSES, AND DEPOSITS:** Unless otherwise specified, Subcontractor shall secure all permits and licenses necessary to the performance of the Work, pay all fees and make all deposits pertaining thereto, and shall submit proof thereof to Prime.
13. **INSURANCE:** Subcontractor will carry or cause to be carried and maintained in force throughout the entire term of this Contract insurance coverages as described in paragraphs (A) through (C) below with insurance companies acceptable to Prime. The limits set forth below are minimum limits and will not be construed to limit Subcontractor's liability. All costs and deductible amounts will be for the sole account of the Subcontractor.
 - (A) Worker's Compensation insurance complying with the laws of the State or States having jurisdiction over each employee, whether or not Subcontractor is required by such laws to maintain such insurance, and Employer's Liability with limits of \$500,000 each accident, \$500,000 disease each employee, and \$500,000 disease policy limit.
 - (B) Commercial or Comprehensive General Liability insurance on an occurrence form with a combined single limit of \$1,000,000 each occurrence, and annual aggregates of \$2,000,000, for bodily injury and property damage, including coverage for blanket contractual liability, broad form property damage, personal injury liability, independent Subcontractors, products/completed operations, and when applicable the explosion, collapse and underground exclusion will be deleted.
 - (C) Automobile Liability insurance with a combined single limit of \$1,000,000 each occurrence for bodily injury and property damage to include coverage for all owned, non-owned, and hired vehicles.

In each of the above described policies, Subcontractor agrees to waive and will require its insurers to waive any rights of subrogation or recovery they may have against Prime its parent, subsidiary, or affiliated companies.

Under the policies described in (B) and (C) above, Prime its parent, subsidiary and affiliated companies will be named as additional insureds as respects Subcontractor's operations and as respects any Work performed under this contract. Any costs associated with naming these additional insureds is included in the contract cost. The policies described in (B) and (C) above will include the following "other insurance" amendment: "This insurance is primary insurance with respect to Prime its parent, subsidiary and affiliated companies, and any other insurance maintained by Prime its parent, subsidiary or affiliated companies is excess and not contributory with this insurance."

Non-renewal or cancellation of policies described above will be effective only after written notice is received by Prime from the insurance company thirty (30) days in advance of any such non-renewal or cancellation. Prior to commencing the Work hereunder, Subcontractor will deliver to Prime certificates of insurance on an ACORD 25 or 25S form evidencing the existence of the insurance coverages required above. In the event of a loss or claim arising out of or in connection with the Work performed under this contract, Subcontractor agrees, upon request of Prime, to submit the original or a certified copy of its insurance policies for inspection by Prime.

Prime will not insure nor be responsible for any loss or damage, regardless of cause, to property of any kind, including loss of use thereof, owned, leased or borrowed by the Subcontractor, or their employees, servants or agents, other than property which becomes a part of the contract Works.



14. **TAXES:** Subcontractor shall pay or otherwise discharge, to the satisfaction of Prime, all taxes of every kind and nature assessed against Subcontractor or Prime arising out of, occurring in, or in connection with, services performed or things furnished by Subcontractor.
15. **LIENS:** Subcontractor agrees to discharge at once all liens which may be filed in connection with the Work and to indemnify and save harmless Prime. Subcontractor agrees that Prime, in order to protect itself against any such liens, shall have the right to make settlement direct with such lienors and to deduct the amounts of such settlements from such sum or sums as may be due Subcontractor.
16. **TITLE:** The title to all Works completed, all Works in the course of construction, and all material furnished by Prime or by Subcontractor, irrespective of the location, shall be in Prime, but the ownership thereof shall not absolve Subcontractor from liability for loss or damage to same, nor from any other duty or responsibility for same as provided in the Contract.
17. **INVOICING INSTRUCTIONS:** Invoices shall be mailed in duplicate to Cherokee Nation Construction Resources, 10838 East Marshall Street, Suite 220, Tulsa, Oklahoma 74116, Attn: Robbie Dolph. Payments to Subcontractor will be made in accordance with the terms set forth in the Contract, including Section 18, Payments Withheld, of the Terms and Conditions. For a "Single Payment Contract" (as designated in this Contract), Subcontractor shall invoice Prime upon final completion of all Work. For a "Multiple Payment Contract" (as designated in this Contract), Subcontractor shall invoice Prime monthly in arrears on a percentage of completion basis. Each invoice shall bear the signature of Subcontractor's Representative and Prime's Representative, and shall be approved by the appropriate Prime personnel. Prior to final payment of retainage, if applicable, Subcontractor shall provide an invoice and an affidavit stating that all claims and liens have been paid or discharged.
18. **PAYMENTS WITHHELD:** Prime may withhold payment when, in its opinion, it reasonably believes it necessary to protect itself.
19. **AUDIT RIGHTS:** If, under this Contract, Prime shall be obligated to compensate Subcontractor for any part of the Work performed on the basis of (i) actual cost to Subcontractor, (ii) cost plus a percentage of cost, or (iii) any other "cost plus" arrangement, then Subcontractor shall keep accurate books and records as will readily disclose the basis for all charges and credits billed or due Prime in connection with the calculations of amounts due Subcontractor on account thereof and shall make such books and records available for examination and audit by Prime and its agents for a period of three (3) years after receipt by Subcontractor of final payment under this Contract. Subcontractor agrees to include the above right-to-audit clause in all subcontracts for services or materials furnished under the terms of this Contract.
20. **DOCUMENTS AND SAMPLES:** Subcontractor shall maintain at the site one record copy of all specifications, drawings, addenda, modifications and shop drawings in good order and annotated to show all changes made during the construction process. These shall be delivered to Prime upon completion of Work.
21. **COMPLIANCE WITH LAWS AND INDEMNITY:** Subcontractor shall strictly observe, comply with, and give all notices required by, all local, municipal, state, tribal and federal laws, ordinances, rules, directives, orders, and regulations related to the Work, including, without limitation, the Cherokee Nation Employment Rights Act, including all payment requirements, subcontracting requirements and Indian preference requirements contained therein, as such Act is administered by TERO. Subcontractor agrees to assume, protect, indemnify, and save Prime, harmless from and against any and all claims or suits of any kind whatsoever (except those by Subcontractor on this Contract and those based on the sole negligence of Prime), and any and all attendant expense, including attorney's fees and court cost, arising out of or occurring in connection with Subcontractor's performance of the Work. The foregoing indemnification obligations shall include failure of Subcontractor to fully and properly comply with laws, rules, regulations, or orders, and shall include claims or suits based on the infringement or violation of the right of any person under any patent, trademark, or copyright, arising out of, occurring in, or in connection with, the Work. All obligations to assume, protect, indemnify, and save Prime harmless shall extend to Prime's officers, employees, agents, Tribal Council and Tribal Chief and shall continue



for so long as any indemnitee may be subject to claims or suits calling for such obligations, notwithstanding the completion, acceptance, or payment for the Work.

22. **LIMITATION OF LIABILITY:** Prime shall not be liable, regardless of negligence or fault, for any consequential, incidental or indirect damages or loss of profits sustained by Subcontractor.
23. **LIQUIDATED DAMAGES:** In the event that Subcontractor fails to complete the Work by the Substantial Completion Date, or before the time extended in accordance with this Contract, Prime shall deduct from the moneys due or to become due to Subcontractor under this Contract liquidated damages in the amount of one percent (1%) of the Contract Sum (\$XXX,XXX.XX) per day for each consecutive calendar day the Work is delayed beyond the Substantial Completion Date. Such liquidated damages shall not be considered as a penalty. [OPTIONAL PROVISION]
24. **ASSIGNABILITY:** Neither this Contract, nor any claim for payment of sums due or to become due, or for damage or penalty by reason of alleged breach, shall be assignable in whole or in part by Subcontractor or by operation of law, without the written consent of Prime. Any such purported assignment without such consent shall be void.
25. **CONFLICT OF INTEREST:** Subcontractor will not use any funds received under the Contract for illegal or otherwise "improper" purposes related to the Contract. Subcontractor will not pay any commissions, fees or rebates to any employee of Prime, nor favor any employee of Prime with gifts or entertainment of significant cost or value. If Prime has reasonable cause to believe that one of the above provisions has been violated Prime, or its representative, may audit the records of Subcontractor, for the sole purpose of establishing compliance with such provisions.
26. **WAIVER:** Prime's right to require strict performance of Subcontractor's obligations shall not be affected in any way by any previous waiver, forbearance, or course of dealing.
27. **ENTIRETY:** This Contract comprises the entire agreement between Prime and Subcontractor, and there are no agreements, understandings, conditions, warranties, or representations, oral or written, expressed or implied, that are not merged herein or superseded hereby.
28. **AMENDMENT:** Any amendment to this Contract shall be valid only if made in writing and executed as required in Section 29, Execution and Interpretation.
29. **EXECUTION AND INTERPRETATION:** This Contract shall be signed in the spaces provided, in duplicate, by authorized representatives of Subcontractor and Prime. This Contract shall not be binding upon Prime until executed on its behalf by an authorized representative. Preparation for or commencement of Work shall not be construed as a waiver of this requirement. The counterpart of this Contract held by Prime shall be deemed to be the original and conclusive in case of any variance between it and any other signed copy. All questions relating to this Contract, including, without limitation, contractual capacity, validity, performance, interpretation, or remedies for breach, shall be governed by Cherokee Nation law. The parties acknowledge that they have had an adequate opportunity to review this Contract and to consult legal counsel knowledgeable in Federal Indian Law and Cherokee Nation Law regarding the legal effect of this Contract.
30. **RIGHT TO OFFSET:** If Subcontractor fails to make any payment due Prime, or if Prime incurs any cost and expense to cure any default of Subcontractor or to correct defective Work, Prime shall have the absolute right to offset such amount against the Contract Sum, and may, in Prime's sole discretion, elect either to: (1) deduct an amount equal to that which Prime is entitled from any payment then or thereafter due Subcontractor from the Prime, or (2) issue a written notice to Subcontractor reducing the Contract Sum by an amount equal to that which Prime is entitled as a result of curing the default or correcting the defective Work.
31. **DEFECTIVE WORK AND INSPECTIONS:**

- (A) CORRECTION OF DEFECTIVE WORK: Subcontractor shall, without charge, replace any material or correct any workmanship which does not conform to the Work to be provided by the Subcontractor under the Contract Documents. Subcontractor shall promptly segregate and remove rejected material from the Job Site. Subcontractor shall bear all cost of damages to the property of Prime or the property of any other Subcontractor in the removal or replacement of defective or nonconforming Work; however, Subcontractor shall retain the right to seek the cost and related expenses from any subcontractor or suppliers providing defective or nonconforming work.
- (B) REMEDIES FOR FAILURE TO CURE DEFECTIVE WORK: If the material and/or workmanship are not in accordance with the Contract Documents and Subcontractor does not promptly replace rejected material or correct rejected workmanship, Prime may, after five (5) days' written notice:
- (1) by contract or otherwise, replace such material or correct such workmanship and back charge to Subcontractor the cost thereof together with any resulting damage;
 - (2) terminate the Subcontractor's right to proceed under Termination for Cause; or
 - (3) issue a written order to the Subcontractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.
- (C) INSPECTION FACILITIES AND COST: Subcontractor shall promptly furnish, as part of the Work, all facilities, labor, and material reasonably needed for performing such safe and convenient inspection as may be required by the Contract Documents. All inspections by Prime and its Representatives shall be performed to the extent feasible in such manner as to not unnecessarily delay the Work. The Subcontractor shall pay any additional cost, including, but not limited to, additional fees of inspection when material or workmanship is not ready at the time specified by the Subcontractor for inspection or when re-inspection is necessitated by prior rejection.
- (D) NON-WAIVER: The cost of testing all defects or non-complying Work shall be paid by the Subcontractor if the Work is found to be defective or nonconforming. The inspection or the occupancy or acceptance of Work, shall not waive or impair Prime's right to reject or revoke its acceptance of nonconforming Work, or to avail itself of any other remedies.

32. TERMINATION:

- (A) FOR CAUSE. If Subcontractor neglects to proceed properly with the Work or fails to perform the Work, then Prime after five (5) days' written notice to Subcontractor and his surety, in addition to any other remedy, may (i) make good the deficiencies, and/or (ii) terminate this Contract and take possession of all materials, tools, and equipment and finish the Work by such means as may be required. In the event such cost of the Work exceeds the unpaid balance, Subcontractor shall pay Prime the difference within ten (10) days following written demand for such payment. Any such unpaid amounts due under this Section shall bear interest at the rate of twelve (12) percentage points per annum until paid.
- (B) FOR CONVENIENCE. Company, upon at least thirty (30) days' prior written notice to Subcontractor, may terminate this Contract Agreement. The termination of this Contract Agreement shall not terminate the obligations of Company to Subcontractor for charges and reimbursements due Subcontractor for the performance of services completed under this Contract Agreement through the date of termination, nor of Subcontractor with respect to the protection of Company confidential information, supplied by Company to Subcontractor or prepared by Subcontractor for Company, nor any indemnity obligations for the benefit of either party, all of which obligations shall survive a termination hereof.

33. ORDER OF PRECEDENCE. In the event of a conflict between the terms and conditions of the Contract Documents, then the following order of precedence, from highest to lowest, for terms, conditions, and



interpretation shall apply: (1) Specifications, (2) Drawings, (3) Contract Agreement, and (4) Subcontractor's Proposal.

SAMPLE