



**CHEROKEE NATION ENTERTAINMENT, L.L.C.**

**REQUEST FOR PROPOSAL**

**Project Name: Hard Rock Hotel Casino 2 Restroom Renovations**

**RFP NUMBER: 12618**

**DATED: 1/30/2015**

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**SECTION I**

**SOLICITATION TO BID  
CHEROKEE NATION ENTERTAINMENT, L.L.C.  
Project Name: Hard Rock Hotel Casino 2 Restroom Renovations  
PROJECT MANAGER: Mark Keener**

Sealed bids are being solicited by Cherokee Nation Entertainment, L.L.C. (“CNE”) for furnishing all equipment, labor and materials to complete the work described in Section IV of the Contract Documents, Statement of Work and Specifications.

All proposals should be sent by express delivery, regular mail or hand delivery to CNE’s Catoosa Corporate office at the following address, to be received no later than **12:00 pm on**

**IF BY EXPRESS DELIVER OR REGULAR MAIL**

Cherokee Nation Entertainment, L.L.C.  
Attn: Sherrie Larsen  
Senior Buyer  
777 W. Cherokee Street  
Catoosa, Oklahoma 74015

**IF BY HAND DELIVERY**

Cherokee Nation Entertainment, L.L.C.  
Corp. Building #3  
Attn: Sherrie Larsen  
Senior Buyer  
1102 N. 193<sup>rd</sup> East Ave.  
Catoosa, Ok 74015

It is the intention of CNE that if an acceptable proposal is received, the selected firm will be notified in writing by **email within 30 days of bid opening and any follow on meetings that may be required.**

Any bid received more than ninety-six (96) hours, excluding Saturdays, Sundays and holidays, before the time set for the opening of bids, or any bid so received after the time set for opening of Bids, shall not be considered and shall be returned unopened to the bidder submitting same.

The bidder must supply all the information required by the Contract Documents.

## **SECTION II**

### **INSTRUCTIONS TO BIDDER**

#### **1.00 DEFINITIONS**

- 1.01 The “Contract Documents” and “Contract” shall mean and shall include the Solicitation to Bid, Instructions to Bidder, Bid Schedule, Contract Agreement, Statement of Work and Specifications, and attachments, exhibits and all other documents attached hereto and thereto and incorporated by reference herein and therein, said accumulation of documents constituting the entire agreement.
- 1.02 “Company” refers to Cherokee Nation Entertainment, L.L.C..
- 1.03 “Company Representative” refers to Cherokee Nation Entertainment’s Project Manager as identified in Section I, Solicitation to Bid, or other authorized representative of Company as may be designated in writing.
- 1.04 “Contractor” refers to the party contracting with the Company in the Contract Documents, acting directly or through agents, subcontractors, or employees.
- 1.05 “Subcontractor” refers to the party contracting with the Contractor for any part of the Work required by the Contract Documents.
- 1.06 “Work” includes all services to be performed or things to be furnished by the Contractor, or both services and things, as the context reasonably requires, including all supervision, labor, materials, supplies, tools, equipment, light, water, fuel, power, heat, transportation, or other facilities necessary for the discharge of all of Contractor’s obligations under the Contract Documents.

#### **2.00 DESCRIPTION OF WORK**

- 2.01 The Work to be performed is described in Section IV, Statement of Work and Specifications, of the enclosed Contract Documents.

#### **3.00 FAMILIARITY WITH CONTRACT DOCUMENTS AND PROPOSED WORK**

- 3.01 The bidder has the responsibility for examination of all Contract Documents, inspection of all work sites, and familiarization with all conditions concerning the Work. Failure or neglect of the bidder to discharge this responsibility will not excuse nonperformance.
- 3.02 The bidder has the responsibility to estimate the time and quantities of work required to complete the Work. Failure or neglect of the bidder to discharge its responsibility will not excuse nonperformance.

#### 4.00 BIDDING INSTRUCTIONS

- 4.01 The bidder shall make his bid by inserting the bidder's figure in the applicable blanks of the Bid Schedule, by initialing those inserted figures, by completing any forms, by executing the Contract Documents and by returning the entire Contract to the Company.
- 4.02 The bidder must furnish with its bid, a completed, signed and notarized Business Relationship Affidavit, a copy of which is included in the Contract Documents as Section V.
- 4.03 The bidder must furnish with its bid, a completed, signed and notarized Non-Collusion Affidavit, a copy of which is included in the Contract Documents as Section VI.
- 4.04 The bidder must furnish with its bid, a work schedule showing the number and type of crews, a line item breakdown of man hours and proposed start and completion dates of each crew.
- 4.05 This procurement is subject to Cherokee Nation Tribal Employment Rights Office (“TERO”) regulations that include a fee of ½ of 1% of total contract award and, if applicable, the completion of a TERO Labor Agreement and payment of associated fees. The successful bidder’s award will be published on the Cherokee Nation’s procurement website and their performance will also be measured, recorded, and reported to the Cherokee Nation. The complete Act is available by contacting the TERO OFFICE at Tahlequah 918-453-5000. TERO bidders are required to provide a copy, front and back, of their TERO certificate with return bid(s) and failure to do so will result in such bidders not receiving the TERO preferences afforded TERO bidders under the CNE procurement and contracting policies and procedures.
- 4.06 The bidder must furnish, with its bid, a subcontractor plan indicating what amount of the Contract, either in dollar estimate or percentage of work estimate, will be subcontracted, and the Indian-owned status, if any, of those subcontractors, including tribal identification.
- 4.07 The Bid Schedule must be completed in ink or by typewriter. The Bid Price on the Bid Schedule must be stated in words and figures, in case of a conflict words will take precedence. No alterations, additions or erasures shall be made on the Bid Schedule. Erroneous entries shall be lined out, initialed by the bidder and the correct entry inserted.
- 4.08 All names on the Bid Schedule must be typed or printed below the signature.
- 4.09 The Bid Schedule shall contain an acknowledgment of receipt of all Addenda (the numbers of which shall be filled in on the Bid Schedule).
- 4.10 The address to which communications regarding the Bid Schedule are to be directed must be shown.
- 4.11 Bids shall be submitted at the time and place indicated in the Solicitation to Bid and shall be enclosed in a sealed envelope, marked with the Project Title, Contract Number, Name and Address of the bidder, and accompanied by the other required documents. If the Bid is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope addressed to the Cherokee Nation Entertainment, L.L.C., Attn: **Sherrie Larsen**, with the notation **“SEALED BID - DO NOT OPEN”** on the face thereof.

## **5.00 QUALIFICATION OF BIDDERS**

- 5.01 No bid will be accepted unless the bidder can, if requested, show to the satisfaction of the Company evidence of its experience and familiarity with work of the character specified. This may include, at the Company's option, evidence of similar work by his firm (or principal employees) that has been performed satisfactorily and completed during the past five (5) years.
- 5.02 No bid will be accepted unless the bidder can show to the satisfaction of the Company evidence of his financial ability to perform the Work successfully and properly, to completion.
- 5.03 If bidder has a parent company or relies on a parent company to obtain or fulfill any of the Work to be contracted, then Company has the right to require bidder's parent company to provide guarantee of bidder's proposal and the performance of any obligations arising under the Contract Documents.
- 5.04 In the awarding of this Contract and the performance of these Contract Documents, Company and Contractor and its subcontractor(s) shall, to the greatest extent feasible, give preference to Indian organizations, Indian owned enterprises and individuals as certified by TERO. First preference shall be given to members of the Cherokee Nation and their businesses. Second preference shall be given to members of all other federally recognized tribes.

## **6.00 INTERPRETATIONS**

- 6.01 All questions about the meaning or intent of the Contract Documents shall be submitted to the Company Representative in writing. Replies will be issued by Addenda mailed to, delivered or sent by facsimile to all parties recorded by Company as having received the Contract Documents. Questions received less than two days prior to the date for opening of bids will not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

## **7.00 CONTRACT TIME**

- 7.01 The number of days within which, or the date by which, the Work is to be completed (the "Contract Time") is set forth in the Bid Schedule and will be included in the Contract Agreement.
- 7.02 The Contract Time for the work to be performed is the essence of the Contract Agreement. Delays and extensions of time may be allowed in accordance with General Terms and Conditions attached to the Contract Agreement.

## **8.00 LIQUIDATED DAMAGES**

- 8.01 Provisions for liquidated damages, if any, are set forth in the Contract Agreement.

## **9.00 SUBSTITUTE MATERIAL AND EQUIPMENT**

- 9.01 The Contract, if awarded, will be on the basis of material and equipment described in the Statement of Work and Specifications without consideration of possible substitute or "or-equal" items. Whenever it is indicated in the Statement of Work and Specifications that a substitute or

“or-equal” item of material or equipment may be furnished or used by a Contractor if acceptable to Company, application for such acceptance will not be considered by Company until after the effective date of the Contract Agreement.

#### **10.00 REJECTION OF BIDS**

- 10.01 Bids received more than ninety-six (96) hours, excluding Saturdays, Sundays and holidays, before the time set for opening of bids, as well as bids received after the time set for opening of bids, will not be considered and will be returned unopened.
- 10.02 Company reserves the right to reject any and all bids when such rejection is in the best interest of Company. All bids are received subject to this stipulation and Company reserves the right to decide which bid shall be deemed lowest and best. A violation of any of the following provisions by the bidder shall be sufficient reason for rejecting his bid, or shall make any Contract between Company and the Contractor that is based on his bid; (i) null and void; divulging the information in said sealed bid to any person, other than those having a financial interest with him in said bid, until after bids have been opened; (ii) submission of a bid which is incomplete, unbalanced, obscure, incorrect, or which has conditional clauses, additions, or irregularities of any kind not in the original Bid Schedule, or which is not in compliance with the Instructions to Bidder and Solicitation to Bid, or which is made in collusion with another bidder. The foregoing list is non-exhaustive and Company reserves the right to reject a bid or nullify any Contract between Company and the Contractor that is based on his bid for any other reason it deems is in the best interest of the Company.

#### **11.00 BIDS TO REMAIN OPEN**

All bids and pricing submitted under this RFP shall remain valid and open for **sixty (60)** days after the day of the bid opening, but Company may, in its sole discretion, release any bid prior to that date.

#### **12.00 AWARD OF CONTRACT**

- 12.01 Company reserves the right to reject any and all bids, to waive any and all bid document requirements and to negotiate Contract terms with the successful bidder, and the right to disregard all nonconforming, nonresponsive or conditional bids. Discrepancies between words and figures will be resolved in favor of words. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.
- 12.02 Company reserves the right to issue one award, multiple awards, or reject all bids. All quotes are subject to negotiation prior to award. Awards may be issued without discussion of quote received, and quotes should initially be submitted on the most favorable terms from a price and technical standpoint.
- 12.03 In evaluating bids, Company shall consider the qualifications of the bidders and whether or not the bids comply with the prescribed requirements.
- 12.04 Company may consider the qualifications and experience of subcontractors and other persons and organizations (including those who are to furnish the principal items of material or equipment)

proposed for those portions of the Work as to which the identity of subcontractors and other persons and organizations must be submitted. Operating costs, maintenance considerations, performance data and guarantees of materials and equipment may also be considered by Company.

- 12.05 Company may conduct such investigations as it deems necessary to assist in the evaluation of any bid and to establish the responsibility, qualifications and financial ability of the bidders, proposed subcontractors and other persons and organizations to do the Work in accordance with the Contract Documents to Company's satisfaction within the prescribed time.
- 12.06 Company reserves the right to reject the bid of any bidder who does not pass any such evaluation to Company's satisfaction.
- 12.07 In the awarding of this Contract and the performance of these Contract Documents, Company, Contractor and its subcontractor(s) shall, to the greatest extent feasible, give preference to Indian organizations, Indian owned enterprises and individuals. First preference shall be given to members of the Cherokee Nation. Second preference shall be given to members of all other federally recognized tribes.
- 12.08 The successful bidder shall execute and deliver the Contract Agreement, Contractor's Performance Bond and the required certificates of insurance within five (5) calendar days of receipt of the Notice of Award. If the successful bidder fails to execute and deliver the Contract Agreement, Contractor's Performance Bond and the required certificate of insurance within five (5) calendar days of the Notice of Award, Company may annul the Notice of Award.

### **13.00 BEGINNING WORK**

The Work shall be commenced immediately (not more than 5 calendar days) after execution of the Contract Agreement unless otherwise agreed by the parties.

### **14.00 CONTRACTOR'S LIABILITY INSURANCE REQUIREMENTS**

- 14.01 No Work is to be commenced and no invoices will be paid until Company is in receipt of a Certificate of Insurance covering all the requirements outlined in the General Terms and Conditions attached to the Contract Agreement.

### **15.00 RETURNING OF CONTRACT DOCUMENTS**

- 15.01 Whether a bid is submitted or not, this book of Contract Documents and any accompanying documents are to be returned intact.
- 15.02 The successful bidder will be furnished necessary copies of this book and documents, conforming to the bid accepted by the Company.

## **16.00 INVOICING REQUIREMENTS**

All invoices for the Work submitted by the successful bidder must be coded in accordance with CNE policies. The successful bidder will be responsible for meeting with a representative of CNE's Accounting Department regarding necessary coding requirements and complying therewith.



**SECTION III**

**BID SCHEDULE**

**CHEROKEE NATION ENTERTAINMENT, LLC**

Bid of \_\_\_\_\_(Hereinafter called “Bidder”), and existing under the laws of the State of \_\_\_\_\_, doing business as \* \_\_\_\_\_.

In compliance with your Solicitation to Bid, Bidder hereby proposes to perform all work for the **RFP 12618** and any alternates thereof, in strict accordance with the Contract Documents, within the time set forth therein, and at the prices stated below.

By submission of this Bid, Bidder certifies, and in the case of a joint Bid each party thereto certifies as to his own organization, that this Bid has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this Bid with any other Bidder or with any competitor.

Bidder hereby agrees to commence work under this Contract on or before a date to be specified in the Notice to Proceed and to fully complete the Work within \_\_\_\_\_ Calendar Days. Bidder further agrees to be bound by the terms of Contract Agreement terms and Conditions regarding the payment of liquidated damages, if applicable.

**BIDDER AGREES TO PERFORM THE WORK DESCRIBED IN THE CONTRACT DOCUMENTS FOR THE FOLLOWING PRICES: ONLY USE THIS BID FORM FOR YOUR BASE BID, BIDDER MUST SUBMIT A DETAILED SCHEDULE OF VALUES ON OWNER PROVIDED BID FORM.**

ITEM

1. Total supervision, labor, supplies, tools equipment, light, water, fuel, power, heat, transportation of other facilities necessary for the discharge of all of Contractor's obligation under the Contract Documents

TOTAL PRICE IN WORDS \_\_\_\_\_  
\_\_\_\_\_ Dollars \$ \_\_\_\_\_

2. Total materials necessary for the discharge of all of Contractor's obligation under the Contract Documents

TOTAL PRICE IN WORDS \_\_\_\_\_  
\_\_\_\_\_ Dollars \$ \_\_\_\_\_

**TOTAL BID** \$ \_\_\_\_\_

SUBMITTED ON \_\_\_\_\_, 20\_\_

BY: \_\_\_\_\_

COMPANY: \_\_\_\_\_

IF BIDDER IS:

AN INDIVIDUAL

By: \_\_\_\_\_  
(Individual's Name)

doing business as: \_\_\_\_\_

Business address: \_\_\_\_\_

Phone No.: \_\_\_\_\_

A PARTNERSHIP

By: \_\_\_\_\_  
(General Partner)

Business address: \_\_\_\_\_

Phone No.: \_\_\_\_\_

A CORPORATION

By: \_\_\_\_\_  
(Corporation Name)

State of Incorporation: \_\_\_\_\_

By: \_\_\_\_\_  
(Name of Person Authorized to Sign)

Title: \_\_\_\_\_

(Corporate Seal)

Attest: \_\_\_\_\_  
(Secretary)

Business address: \_\_\_\_\_

Phone No.: \_\_\_\_\_

A JOINT VENTURE

By: \_\_\_\_\_  
(Name)

Business address: \_\_\_\_\_

By: \_\_\_\_\_  
(Name)

Business address: \_\_\_\_\_

(Each joint venturer must sign. The manner of signing for each individual, partnership and corporation that is a party to the joint venture should be in the manner indicated above.)

## SECTION IV

### PROJECT DESCRIPTION CHEROKEE NATION ENTERTAINMENT, LLC

#### PROJECT MANAGER:

Proposals are being solicited by Cherokee Nation Entertainment, L.L.C. for per the following general Scope of Work. Contact the Buyer, **Sherrie Larsen** to answer any questions regarding the bid. All questions must be submitted in writing via email to [sherrie.larsen@cnent.com](mailto:sherrie.larsen@cnent.com); no verbal questions will be answered.

**A. PHASED DELIVERY:**

**B. MINIMUM GENERAL REQUIREMENTS:**

**C. OPTIONAL REQUIREMENTS:**

**D. REFERENCES:**

1. Provide a minimum of three references, including contact name and phone number for casino/hotel properties at which you are installed or have performed work.

**E. ADDITIONAL INSTRUCTIONS TO BIDDERS**

1. Include a comprehensive list of equipment (individual line items) by location (identified by property name – as per the above) including separate quotes for the casinos and hotel properties *using the bid form provided*. In addition, your bid should take into consideration the infrastructure will be put in place by a third party.
2. An installed price by location as well as an equipment/software only price.
3. Quote shall remain firm 60 days. All prices and bid materials are confidential.
4. At the time of award, the successful bidder will be required to work with CNE Accounting to discuss account coding for invoices.
5. CNE reserves the right to issue one award, multiple awards, or reject all bids. All quotes are subject to negotiation prior to award. Awards may be issued without discussion of quote received, and quotes should initially be submitted on the most favorable terms from a price and technical standpoint.
6. Any award resulting from this RFP will be subject to CNE Terms and Conditions (copy available upon request)
7. Your bid should indicate hourly rates (when applicable), individual work effort, delivery schedule, or time of completion. Any items noted which are not bid should be indicated “NO BID”.
8. Any item(s) with exceptions, substitutions, exclusions, additions, or qualifications must be noted and clearly indicated on bid form.
9. This procurement is subject to Cherokee Nation Tribal Employment Rights Office (“TERO”) regulations that include a fee of ½ of 1% of total contract award and, if applicable, the completion of a TERO Labor Agreement and payment of associated fees. The successful

bidder's award will be published on the Cherokee Nation's procurement website and their performance will also be measured, recorded, and reported to the Cherokee Nation. The complete Act is available by contacting the TERO OFFICE at Tahlequah 918-453-5000. TERO bidders are required to provide a copy, front and back, of their TERO certificate with return bid(s) and failure to do so will result in such bidders not receiving the TERO preferences afforded TERO bidders under the CNE procurement and contracting policies and procedures.

10. One (1) signed copy of the CNE Non Disclosure Agreement, a fully executed copy of which will be returned to the bidder.
11. **BONDING NOTICE:** CNE may require payment and performance bonds, however, qualified firms are encouraged to bid, regardless of bonding capability.

Proposals may be mailed or hand delivered to CNE's Catoosa Corporate office to be received no later than **2:00 PM on Monday, February 16, 2015.**

**SECTION V**

**BUSINESS RELATIONSHIP AFFIDAVIT**

STATE OF )  
 ) ss.  
COUNTY OF )

\_\_\_\_\_, of lawful age, being first duly sworn, on oath states that the nature of any partnership, joint venture, or other business relationship presently in effect or which existed within one (1) year prior to the date of this statement with CNE or other party to the services provided under the Agreement is as follows:

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

Affiant further states that any such business relationship presently in effect or which existed within one (1) year prior to the date of this statement between any officer or director of Consultant and any officer, director, manager or member of the Board of Directors of CNE or other party to the project is as follows:

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

Affiant further states that the names of all persons having any such business relationships and the positions they hold with their respective companies or firms are as follows:

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

Affiant further states that any family/relative relationships present between any officer, director or agent of Consultant and any officer, director, manager or member of the Board of Directors of CNE other party to the Agreement is as follows:

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

Affiant further states that the names of all persons having any such family/relative relationships and the positions they hold with their respective companies or firms are as follows:

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

(If none of the business relationships hereinabove mentioned exist, affiant should so state.)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**SECTION VI**

**NON-COLLUSION AFFIDAVIT**

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, of lawful age, being first duly sworn, on oath says that (s)he is the agent authorized by the bidder to submit the attached bid. Affiant further states that the bidder has not been a party to any collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding; or with any Cherokee Nation Entertainment, L.L.C. employee as to quantity, quality or price in the prospective Contract, or any other terms of said prospective Contract; or in any discussions between bidders and any Cherokee Nation Entertainment, L.L.C. official concerning exchange of money or other thing of value for special consideration in the letting of a Contract.

Signed: \_\_\_\_\_

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

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_



**SECTION VII**

**NOTICE OF AWARD**

TO:

PROJECT NAME

BID NUMBER

Cherokee Nation Entertainment, L.L.C. has considered the bid submitted by you for the above described Work in response to its Solicitation for Bid dated \_\_\_\_\_, and Instructions to Bidder.

You are hereby notified that your bid has been accepted for items in the amount of \$ \_\_\_\_\_.

You are required by the Instructions to Bidder to execute the Contract Agreement and furnish the required certificates of insurance within five (5) calendar days from the date of this Notice to you.

If you fail to execute said Contract Agreement and to furnish said Bond within the five (5) days from the date of this Notice, Company will be entitled to consider all your rights arising out of Company's acceptance of your bid as abandoned. Company will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this Notice of Award to Cherokee Nation Entertainment, L.L.C..

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

\_\_\_\_\_  
for Company  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

Receipt of the above Notice of Award is hereby acknowledged by:

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

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

Title: \_\_\_\_\_

SECTION VIII



**SAMPLE CONTRACT AGREEMENT SAMPLE**

Contract No. \_\_\_\_\_ SINGLE-PAYMENT CONTRACT  
NO subsequent invoices may be submitted on this contract, unless in response to approved Amendment.

Project No. \_\_\_\_\_ MULTIPLE-PAYMENT CONTRACT  
Invoicing must be in accordance with the Terms & Conditions contained herein.

Location: \_\_\_\_\_ RETAINAGE: This Contract is subject to a 10% construction retainage against invoiced amounts.

**Cherokee Nation Entertainment, LLC** with offices located at 777 West Cherokee Street, Catoosa, Oklahoma 74015 ("Owner") and \_\_\_\_\_ with offices located at \_\_\_\_\_ ("Contractor") agree as follows:

Contractor 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").

Owner shall pay for the Work as set forth in this Contract. **The total sum of this Contract shall be \_\_\_\_\_ and \_\_\_\_\_ Cents (\$ ) ("Contract Sum").** Owner and Contractor 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 Contractor's complete and total re-imbusement for the Work specified in Exhibit "A".

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

**CONTRACTOR: "Contractor"**

**OWNER: Cherokee Nation Entertainment, LLC**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Name**

\_\_\_\_\_  
**Name**

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

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

## **SAMPLE TERMS AND CONDITIONS SAMPLE**

1. **DEFINITIONS:**

(A) The term "Owner's Representative" refers to \_\_\_\_\_, or those, if any, acting within the authority conferred upon them in writing by Owner or Owner's Representative.

(B) The term "Work" includes all services to be performed or things to be furnished by Contractor, 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 Owner's Representative.

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

3. **PAYMENT BY CONTRACTOR:** Contractor 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 Owner. In the event payment is not made within such time, Contractor's suppliers and subcontractors shall have a cause of action in a court of competent jurisdiction to secure payment. When and if requested by Owner. Owner reserves the right, without obligation, to withhold, reduce or recover payment if the Contractor fails to pay any third party for labor, materials or other costs incurred by the Contractor in performance of the Work as and when due. Additionally, Owners 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 Contractor. Contractor shall furnish as a prerequisite to any progress payment and final payment, a Contractor'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 Contractor's Affidavit shall be consistent in form and wording as agreed to by Owner and Contractor.

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

5. **SUBCONTRACTORS:**

In the performance of this contract, Owner and Contractor 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"). Contractor shall, as soon as practicable after signing the Contract, notify the Owner's Representative in writing of the names of any subcontractors proposed for parts of the Work. If, subsequent to the signing of this Contract, Contractor elects to subcontract a portion of the Work, Contractor shall notify Owner's Representative. Owner's Representative shall then assist Contractor with the bidding and subcontracting process, which process shall be in compliance with the applicable portions of Owner's Procurement policies and the TERO Act. Contractor shall not contract with any subcontractor unless and until the Owner's Representative has consented in writing to such subcontractor. Contractor 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 Owner to any subcontractor. Contractor agrees that he is as fully responsible to Owner 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 Contractor.

6. **PROTECTION AND USE OF WORK AND PROPERTY:** Contractor shall continuously maintain adequate protection for all his Work from damage and shall protect Owner's property, and the property and persons of others, from injury or loss arising in connection with this Contract. Contractor shall comply and shall cause all his employees to comply with all Owner's rules and regulations on fires and safety at the place of Work. Contractor 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, Contractor 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. Contractor 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 Owner, Contractor shall prepare and submit a detailed construction schedule for the Work in a format acceptable to Owner. 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:** Owner 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. Contractor shall not invoice, and Owner shall not pay for any extra Work or Change Order Work which is not authorized by Owner 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. Owner also reserves the right to cancel this Contract at any time for any reason. If the Contract is cancelled, Owner shall pay Contractor 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 Contractor 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 Contractor), or any other cause beyond the control of Contractor which is not due to the fault of Contractor, Contractor may make a claim for extension by notifying Owner's Representative in writing within twenty-four (24) hours after the beginning of such period of delay. If Owner agrees, in its reasonable discretion, that such cause for delay is beyond Contractor'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:** Contractor warrants to Owner 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 Owner's Representative's acceptance of the Work, nor the final payment shall relieve Contractor 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 Owner'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 Owner's sole discretion, so that Owner may utilize the Work for its intended use. Upon Owner's determination of Substantial Completion, Contractor shall prepare and submit to Owner's Representative a comprehensive list of items to be completed or corrected prior to final payment.
12. **PERMITS, LICENSES, AND DEPOSITS:** Unless otherwise specified, Contractor 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 Owner. As a result of Contractor's provision of goods and/or services under this contract, Contractor may be required to apply for and obtain a gaming license from the Cherokee Nation Gaming Commission ("CNGC"). If so required, and Contractor is unable to obtain or maintain its gaming license throughout the term of this contract, upon

written notification of such failure from CNGC and/or Owner, Owner may cancel this contract without penalty, paying only for the goods and/or services provided to Owner prior to such notification.

13. **INSURANCE:** Contractor 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 Owner. The limits set forth below are minimum limits and will not be construed to limit Contractor's liability. All costs and deductible amounts will be for the sole account of the Contractor.

(A) Worker's Compensation insurance complying with the laws of the State or States having jurisdiction over each employee, whether or not Contractor 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 contractors, 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, Contractor agrees to waive and will require its insurers to waive any rights of subrogation or recovery they may have against Owner its parent, subsidiary, or affiliated companies.

Under the policies described in (B) and (C) above, Owner its parent, subsidiary and affiliated companies will be named as additional insureds as respects Contractor'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 Owner its parent, subsidiary and affiliated companies, and any other insurance maintained by Owner 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 Owner from the insurance company thirty (30) days in advance of any such non-renewal or cancellation. Prior to commencing the Work hereunder, Contractor will deliver to Owner 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, Contractor agrees, upon request of Owner, to submit the original or a certified copy of its insurance policies for inspection by Owner.

Owner 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 Contractor, or their employees, servants or agents, other than property which becomes a part of the contract Works.

14. **TAXES:** Contractor shall pay or otherwise discharge, to the satisfaction of Owner, all taxes of every kind and nature assessed against Contractor or Owner arising out of, occurring in, or in connection with, services performed or things furnished by Contractor.

15. **LIENS:** Contractor agrees to discharge at once all liens which may be filed in connection with the Work and to indemnify and save harmless Owner. Contractor agrees that Owner, 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 Contractor.

16. **TITLE:** The title to all Works completed, all Works in the course of construction, and all material furnished by Owner or by Contractor, irrespective of the location, shall be in Owner, but the ownership thereof shall not absolve Contractor 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 Entertainment, 777 West Cherokee Street, Catoosa, Oklahoma 74015, Attn: \_\_\_\_\_ . Payments

to Contractor 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), Contractor shall invoice Owner upon final completion of all Work. For a "Multiple Payment Contract" (as designated in this Contract), Contractor shall invoice Owner monthly in arrears on a percentage of completion basis. Each invoice shall bear the signature of Contractor's Representative and Owner's Representative, and shall be approved by the appropriate Owner personnel. Prior to final payment of retainage, if applicable, Contractor shall provide an invoice and an affidavit stating that all claims and liens have been paid or discharged.

18. PAYMENTS WITHHELD: Owner may withhold payment when, in its opinion, it reasonably believes it necessary to protect itself.
19. AUDIT RIGHTS: If, under this Contract, Owner shall be obligated to compensate Contractor for any part of the Work performed on the basis of (i) actual cost to Contractor, (ii) cost plus a percentage of cost, or (iii) any other "cost plus" arrangement, then Contractor shall keep accurate books and records as will readily disclose the basis for all charges and credits billed or due Owner in connection with the calculations of amounts due Contractor on account thereof and shall make such books and records available for examination and audit by Owner and its agents for a period of three (3) years after receipt by Contractor of final payment under this Contract. Contractor 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: Contractor 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 Owner upon completion of Work.
21. COMPLIANCE WITH LAWS AND INDEMNITY: Contractor 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. Contractor agrees to assume, protect, indemnify, and save Owner, harmless from and against any and all claims or suits of any kind whatsoever (except those by Contractor on this Contract and those based on the sole negligence of Owner), and any and all attendant expense, including attorney's fees and court cost, arising out of or occurring in connection with Contractor's performance of the Work. The foregoing indemnification obligations shall include failure of Contractor 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 Owner harmless shall extend to Owner'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: Owner shall not be liable, regardless of negligence or fault, for any consequential, incidental or indirect damages or loss of profits sustained by Contractor.
23. LIQUIDATED DAMAGES: In the event that Contractor fails to complete the Work by the Substantial Completion Date, or before the time extended in accordance with this Contract, Owner shall deduct from the moneys due or to become due to Contractor 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 Contractor or by operation of law, without the written consent of Owner. Any such purported assignment without such consent shall be void.
25. CONFLICT OF INTEREST: Contractor will not use any funds received under the Contract for illegal or otherwise "improper" purposes related to the Contract. Contractor will not pay any commissions, fees or rebates to any employee of Owner, nor favor any employee of Owner with gifts or entertainment of significant cost or value. If Owner has reasonable cause to believe that one of the above provisions has been violated Owner, or its representative, may audit the records of Contractor, for the sole purpose of establishing compliance with such provisions.

26. WAIVER: Owner's right to require strict performance of Contractor'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 Owner and Contractor, 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 Contractor and Owner. This Contract shall not be binding upon Owner 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 Owner 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 Contractor fails to make any payment due Owner, or if Owner incurs any cost and expense to cure any default of Contractor or to correct defective Work, Owner shall have the absolute right to offset such amount against the Contract Sum, and may, in Owner's sole discretion, elect either to: (1) deduct an amount equal to that which Owner is entitled from any payment then or thereafter due Contractor from the Owner, or (2) issue a written notice to Contractor reducing the Contract Sum by an amount equal to that which Owner is entitled as a result of curing the default or correcting the defective Work.
31. DEFECTIVE WORK AND INSPECTIONS:
- (A) CORRECTION OF DEFECTIVE WORK: Contractor shall, without charge, replace any material or correct any workmanship which does not conform to the Work to be provided by the Contractor under the Contract Documents. Contractor shall promptly segregate and remove rejected material from the Job Site. Contractor shall bear all cost of damages to the property of Owner or the property of any other contractor in the removal or replacement of defective or nonconforming Work; however, Contractor 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 Contractor does not promptly replace rejected material or correct rejected workmanship, Owner may, after five (5) days' written notice:
- (1) by contract or otherwise, replace such material or correct such workmanship and back charge to Contractor the cost thereof together with any resulting damage;
- (2) terminate the Contractor's right to proceed under Termination for Cause; or
- (3) issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.
- (C) INSPECTION FACILITIES AND COST: Contractor 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 Owner and its Representatives shall be performed to the extent feasible in such manner as to not unnecessarily delay the Work. The Contractor 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 Contractor for inspection or when reinspection is necessitated by prior rejection.
- (D) NON-WAIVER: The cost of testing all defects or non-complying Work shall be paid by the Contractor if the Work is found to be defective or nonconforming. The inspection or the occupancy or acceptance of Work, shall not waive or impair Owner'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 Contractor neglects to proceed properly with the Work or fails to perform the Work, then Owner after five (5) days' written notice to Contractor 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, Contractor shall pay Owner 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 Contractor, may terminate this Contract Agreement. The termination of this Contract Agreement shall not terminate the obligations of Company to Contractor for charges and reimbursements due Contractor for the performance of services completed under this Contract Agreement through the date of termination, nor of Contractor with respect to the protection of Company confidential information, supplied by Company to Contractor or prepared by Contractor 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) Contractor's Proposal.



**EXHIBIT "A"**  
**SCOPE OF WORK**

**1. Definitions**

- A. Contract Documents. The Contract Documents shall consist of the Contract, the Contract Terms and Conditions; any general, supplementary or other conditions adopted by Owner and agreed to by Contractor; the Drawings and Specifications for the Work; addenda issued prior to the execution of this Contract; and modifications issued after the execution of this Contract.
- B. The Project. The Project is the total construction, of which the Work performed under the Contract Documents may be the whole or a part, and which may include construction by Owner or by the Contractor.
- C. The Drawings. The Drawings are the graphic and pictorial portions of the Contract Documents prepared by \_\_\_\_\_, wherever located and whenever issued, showing the design, location and dimensions of the Work, general including plans, elevations, sections, details, schedules and diagrams.
- D. The Specifications. The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

**2. Contractor's Scope of Work**

## SECTION X

### INSURANCE REQUIREMENTS

**Insurance:** Contractor shall carry or cause to be carried and maintained in force throughout the entire term of this Base Agreement insurance coverage as described in subsections (a) through (d) below with insurance companies acceptable to Company. Non-renewal or cancellation of policies described below will be effective only after written notice is received by Company from the insurance company, thirty (30) days in advance of any such non-renewal or cancellation. Prior to commencing the services hereunder, Contractor shall deliver to Company certificates of insurance on an Acor 25 or 25S form evidencing the existence of the following insurance coverage. All costs and deductible amounts will be for the sole account of Contractor.

(a) Workers' Compensation insurance complying with the law of the State or States having jurisdiction over each employee, whether or not Contractor 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 each, for bodily injury and property damage, including coverage for blanket contractual liability, broad form property damage, personal injury liability, independent contractors, and products/completed operations.

(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.

(d) Professional Liability insurance with limits of not less than \$2,000,000 for each claim and an annual aggregate of not less than \$5,000,000.

With respect to any insurance policy required by this Section which provides coverage on a "claims made" basis, such policy shall, if possible, be maintained for a period of not less than two years after termination of the applicable Service Agreement with retroactive coverage to the effective date of the applicable Service Agreement. If any such policy is terminated, Contractor shall provide a substitute insurance policy with the same terms, conditions, and policy limit including retroactive coverage to the effective date of the applicable Service Agreement. Said substitute policy shall be maintained in full force and effect for at least two years or provide for a two year discovery period from the date Company finally accepts work.

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

Under the policies described in subsections (b) and (c) above, Company, its parent, and affiliated companies will be named as additional insured as respects any work performed under this Base Agreement. Any costs associated with naming these additional insured are included in the compensation as designated on the Service Agreement.

The policies described in subsections (b) and (c) above shall include the following "other insurance" amendment: "This insurance is primary insurance with respect to Company its parent, subsidiary and affiliated companies, and any other insurance maintained by Company its parent, or affiliated companies is excess and not contributory with this insurance."

In the event coverage is denied or reimbursement of a properly presented claim is disputed by the carrier for insurance provided in subsections (a) through (d) above, Contractor shall, upon written request, provide Company with a certified copy of the involved insurance policy or policies within ten (10) business days of receipt of such request.

Neither the insurance required herein or the amount and type of insurance maintained by Contractor, shall limit or affect the extent of Contractor's liability hereunder for injury, death, loss or damage.

Company 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 Contractor, or its employees, servants or agents, other than property which becomes a part of the services under this Base Agreement.

All terms and conditions of Insurance requirements may be amended by specific Service Agreements as needed.