



CHEROKEE NATION BUSINESSES, L.L.C.

REQUEST FOR PROPOSAL

PROJECT NAME: Central Plants/HVAC Water Treatment Service Agreement

RFP NUMBER 15076

DATED: Aug 10, 2016

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SECTION I

SOLICITATION TO BID

CHEROKEE NATION BUSINESSES, L.L.C.

PROJECT NAME: Central Plants/HVAC Water Treatment Service Agreement

Sealed bids are being solicited by Cherokee Nation Businesses, L.L.C. ("CNB") for water treatment and service of our central plants and HVAC as 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 CNB's Catoosa Corporate office at the following address, to be received no later than **3:00 PM on Aug 31, 2016**.

IF BY EXPRESS DELIVER OR REGULAR MAIL

Cherokee Nation Businesses, L.L.C.

Attn: Sherrie Larsen

Senior Buyer IV

777 W. Cherokee Street

Catoosa, Oklahoma 74015

IF BY HAND DELIVERY

Cherokee Nation Businesses, L.L.C.

Corporate Building #3

Attn: Sherrie Larsen

Senior Buyer IV

1102 N. 193rd E. Ave.

Catoosa, OK 74015

It is the intention of CNB that if an acceptable proposal is received, the selected firm will be notified in writing by **Sept 30, 2016**.

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 Businesses, L.L.C.
- 1.03 “Company Representative” refers to Cherokee Nation Businesses’ 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 bid sheet and any other 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.
- 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 Businesses, 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 required 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 Contact 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. Please reference documents, Insurance Requirements for contractors and Waiver of Subrogation.

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 CNB policies. The successful bidder will be responsible for meeting with a representative of CNB's Accounting Department regarding necessary coding requirements and complying therewith.

SECTION III

BID SCHEDULE

CHEROKEE NATION BUSINESSES

Central Plants/HVAC Water Treatment Service Agreement

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 _____ 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:

ITEM

1. Annual preventative maintenance

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 BUSINESSES

Proposals are being solicited by Cherokee Nation Businesses, L.L.C. for Water Treatment and Service for Central Plants and HVAC per the following general Scope of Work. Contact the Buyer, **Sherrie Larsen** to answer any questions regarding the bid.

1. Water Treatment PM and Service

1. Hard Rock Hotel and Casino Tulsa, Cherokee Casino West Siloam Springs, Cherokee Casino Fort Gibson, Cherokee Casino Ramona, and Cherokee Casino Roland, Oklahoma.
2. Refer to document, Water Treatment Scope.

2. MINIMUM GENERAL REQUIREMENTS:

1. Contractor shall have been conducting business under the same name for a minimum of 5 years.
2. Contractor shall have been conducting the business of the scope of work for a minimum of 5 years.
3. Contractor shall provide a list of similar contracts held and the duration of these contracts for the past 5 years (This list will be treated as “CONFIDENTIAL” and used for the sole purpose of determining qualifications to perform the work.).
4. Contractor shall provide an enumeration of its technical staff. (i.e. number of service technicians, journeyman, apprentices, etc.).

3. REFERENCES:

1. Contractor shall provide a minimum of 3 customer references for current contracts of similar scope. Provide company, point of contact, phone number, and e-mail.

D. ADDITIONAL INSTRUCTIONS TO BIDDERS

1. Quote shall remain firm 60 days. All prices and bid materials are confidential.
2. At the time of award, the successful bidder will be required to work with CNB Accounting to discuss account coding for invoices.
3. CNB 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.

4. Any award resulting from this RFP will be subject to CNB Terms and Conditions (copy available upon request)
5. . Any items noted which are not bid should be indicated "NO BID".
6. Any item(s) with exceptions, substitutions, exclusions, additions, or qualifications must be noted and clearly indicated on bid form.
7. 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.
8. One (1) signed copy of the CNB Non Disclosure Agreement, a fully executed copy of which will be returned to the bidder.
9. **BONDING NOTICE:** CNB 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 CNB's Catoosa Corporate office to be received no later than **3:00 pm on Aug 31, 2016**.

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 CNB 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 CNB 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 CNB 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 Businesses, 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 Businesses, 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 Central Plants/HVAC Water Treatment Service Agreement
BID NUMBER 15076

Cherokee Nation Businesses, 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 Businesses, 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

CONTRACT AGREEMENT AND TERMS AND CONDITIONS

CHEROKEE NATION BUSINESSES, LLC

RFP – Water Treatment and Service Agreement

Contract agreement and terms and conditions will be negotiated upon award

SECTION IX



AGREEMENT # _____

NON-DISCLOSURE AGREEMENT

Cherokee Nation Businesses, L.L.C., a Cherokee Nation limited liability company, with offices at 777 West Cherokee Street, Catoosa, Oklahoma 74015, ("CNB"), and _____, with its principal office at _____ ("Company"), in consideration of the mutual covenants of this Non-disclosure Agreement ("Agreement"), hereby agree as follows:

1. In connection with discussions and/or negotiations between the parties regarding **potential business transactions and relationships** ("Subject Matter"), each party to this Agreement may wish to disclose its proprietary or trade secret information ("Information") to the other party on a confidential basis. The disclosing party may consider such Information proprietary under this Agreement either because it has developed the Information internally, or because it has received the Information subject to a continuing obligation to maintain the confidentiality of the Information, or because of other reasons. The disclosing party may consider such Information as a trade secret because such Information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertained by proper means by, other persons who can obtain economic value from its disclosure or use.
2. When information deemed to be proprietary or trade secret is furnished in a tangible form, including electronic mail, the disclosing party shall clearly mark the Information in a manner to indicate that it is considered proprietary, confidential, trade secret or otherwise subject to limited distribution as provided herein. When Information deemed to be proprietary is provided orally, including information conveyed to an answering machine, voice mail box or similar medium, the disclosing party shall, at the time of disclosure, clearly identify the information as being proprietary or confidential or otherwise subject to limited distribution as provided herein. If the disclosing party fails to identify Information as confidential, such disclosing party may correct the omission by later notice consisting of a writing or statement, and the recipient shall only be liable for unauthorized disclosures of such confidential information made subsequent to said notice. In addition, the existence and terms of this Agreement, and the fact and substance of discussions and correspondence between the parties concerning goods or services, shall be deemed proprietary Information.

3. With respect to Information disclosed under this Agreement, the party receiving Information shall:
 - a. hold the Information in confidence, exercising a degree of care not less than the care used by receiving party to protect its own proprietary or confidential information that it does not wish to disclose;
 - b. restrict disclosure of the Information solely to those directors, officers, employees, affiliates, and/or agents/consultants, including either party's ability to disclose to commercial lenders, and the Chief and Tribal Council of the Cherokee Nation, with a need to know and not disclose it to any other person;
 - c. advise those persons to whom the Information was disclosed of their obligations with respect to the Information; and,
 - d. use the Information only in connection with continuing discussions by the parties concerning the Subject Matter, except as may otherwise be mutually agreed upon in writing; and
 - e. except for the purposes of evaluating the Subject Matter, not copy or distribute such Information or knowingly allow anyone else to copy or distribute such Information, and any and all copies shall bear the same notices or legends, if any, as the originals.
4. The Information shall be deemed the property of the disclosing party and, upon request, the other party will return all Information received in tangible form (and marked proprietary or confidential) to the disclosing party or will destroy or erase if such Information is recorded on an erasable storage medium, all such Information at the disclosing party's direction, and certify to the disclosing party the Information has been destroyed or erased. If either party loses or makes an unauthorized disclosure of the other party's Information, it shall notify such other party immediately and use reasonable efforts to retrieve the lost or wrongfully disclosed Information.
5. In the event a party or its affiliate(s) makes an unauthorized disclosure, such party shall indemnify the aggrieved party, including the aggrieved party's officers, directors, managers, agents and/or employees for any loss proximately arising from such disclosure.
6. The party to whom Information is disclosed shall have no obligation to preserve the proprietary nature of any Information which:
 - a. was previously known to such party free of any obligation to keep it confidential;
 - b. is or becomes publicly available by other than unauthorized disclosure;
 - c. is developed by or on behalf of such party independent of any Information furnished under this Agreement;
 - d. is received from a third party whose disclosure does not violate any confidentiality obligation; or
 - e. is disclosed pursuant to the requirement or request of a duly empowered governmental agency or court of competent jurisdiction to the extent such disclosure is required by a valid law, regulation or court order, and sufficient notice is given by the recipient to the disclosing party of any such requirement or request to permit the disclosing party to seek an appropriate protective order or exemption from such

requirement or request, unless such notice is prohibited by said order.

7. Neither this Agreement, nor the disclosure of Information under this Agreement, nor the ongoing discussions and correspondence between the parties, shall constitute or imply a commitment or binding obligation between the parties or their respective affiliated companies, if any, regarding the Subject Matter. If, in the future, the parties elect to enter into a binding commitment regarding the Subject Matter, such commitment will be explicitly stated in a separate written agreement executed by both parties, and the parties hereby affirm that they do not intend their discussions, correspondence, and other activities to be construed as forming a contract regarding the Subject Matter or any other transaction between them without execution of such separate written agreement.
8. This Agreement may not be assigned by either party without the prior written consent of the other party, except that no consent is necessary for either party to assign this Agreement to a corporation succeeding to substantially all the assets or business of such party whether by merger, consolidation, acquisition or otherwise. This Agreement shall benefit and be binding upon the parties hereto and their respective successors and permitted assigns.
9. The parties acknowledge that they have had an adequate opportunity to review this Agreement and to consult legal counsel knowledgeable in Federal Indian Law and Cherokee Nation Law regarding the legal effect of this Agreement.
10. This Agreement shall become effective as of the date set forth below (“Effective Date”). Disclosure of Information between the parties under this Agreement may take place for a period (the “Information Disclosure Period”) of one (1) year after the Effective Date. The obligations of the parties contained in Paragraphs 3 and 4 shall survive and continue beyond the expiration of the Information Disclosure Period indefinitely with regard to information designated as a trade secret by disclosing party and for a period of two (2) years with regard to all other Information.
11. The parties acknowledge that in the event of an unauthorized disclosure, the damages incurred by a non-disclosing party may be difficult if not impossible to ascertain, and that such non-disclosing party may seek injunctive relief as well as monetary damages against a party that breaches this Agreement.
12. This Agreement constitutes the entire understanding between the parties with respect to the Subject Matter provided hereunder and supersedes all proposals and prior agreements (oral or written) between the parties relating to the confidential nature of the Information provided hereunder. No amendment or modification of this Agreement shall be valid or binding on the parties unless made in writing and executed on behalf of each party by its duly authorized representative.
13. During the term of this Agreement and for a period of one (1) year following the expiration or termination of this Agreement, Company shall not directly or indirectly solicit the engagement or employment of, or engage as an employee, consultant or otherwise, any

person who was an employee of CNB during the term of the Agreement or at any time during the one year period immediately preceding such solicitation.

- 14. Neither party:
 - a. is responsible or liable for any business decisions made or inferences drawn by the other party in reliance on this Agreement or in reliance on actions taken or disclosures made pursuant to this Agreement;
 - b. shall be liable to or through the other hereunder for amounts representing loss of profits, loss of business, or special, indirect, consequential, or punitive damages.

- 15. **NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, NEITHER DISCLOSING PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY NATURE WHATSOEVER WITH RESPECT TO ANY INFORMATION DISCLOSED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR AGAINST INFRINGEMENT.**

- 16. The parties acknowledge that this Agreement does not restrict the ability of the parties to engage in their respective businesses, nor does it limit either party's use or application of any information or knowledge acquired independently of the other without a breach of this Agreement in the course of such party's business.

- 17. This Agreement may be executed in one or more counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. Facsimile signatures to this Agreement shall be deemed to be binding upon the parties.

Each party represents that it has caused this Agreement to be executed on its behalf as of the date written below by a representative empowered to bind that party with respect to the undertakings and obligations contained herein.

Executed and effective this _____ day of _____ 20__.

| | |
|--------------|---|
| _____ | CHEROKEE NATION BUSINESSES, L.L.C. |
| _____ | _____ |
| (SIGNATURE) | (SIGNATURE) |
| _____ | _____ |
| (PRINT NAME) | (PRINT NAME) |
| _____ | _____ |
| (TITLE) | (TITLE) |