



CHEROKEE NATION BUSINESSES, L.L.C.

REQUEST FOR PROPOSAL (“RFP”)

PROJECT NAME: HR Hydronic Piping Insulation

RFP NUMBER: 78234

DATED: October 22, 2019

TABLE OF CONTENTS

- I. SOLICITATION TO BID**
- II. INSTRUCTIONS TO BIDDER**
- III. STATEMENT OF WORK**
- IV. BUSINESS RELATIONSHIP AFFIDAVIT**
- V. NON-COLLUSION AFFIDAVIT**
- VI. BOND AND INSURANCE REQUIREMENTS**
- VII. NON-DISCLOSURE AGREEMENT**

SECTION I

SOLICITATION TO BID CHEROKEE NATION BUSINESSES, L.L.C. PROJECT NAME: Hydronic Piping Insulation

Sealed bids are being solicited by Cherokee Nation Businesses, L.L.C. or the Cherokee Nation Businesses, L.L.C. wholly-owned entity identified in the attached Statement of Work (“Company”) to furnish Hydronic Piping Insulation on exterior chilled and hot water piping systems at Hard Rock Hotel & Casino Tulsa.

All proposals should be sent by express delivery, regular mail or hand delivery to Company’s Catoosa Corporate office at the following address, to be received no later than **3:00 PM, November 7, 2019**

IF BY EXPRESS DELIVER OR REGULAR MAIL

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

IF BY HAND DELIVERY

Cherokee Nation Businesses, L.L.C.
Attn: Sherrie Larsen
Corp. Building #3
1102 N. 193rd East Ave.
Catoosa, OK 74015

The bidder must supply all the information required by the RFP Documents, hereinafter defined.

SECTION II

INSTRUCTIONS TO BIDDER

1.00 DEFINITIONS

- 1.01 The “RFP Documents” shall mean and shall include the Solicitation to Bid; Instructions to Bidder; Bid Schedule; Statement of Work; Drawings and Specifications, and all other attachments, exhibits and other documents attached hereto and/or incorporated by reference herein.
- 1.02 “Company” refers to Cherokee Nation Businesses, L.L.C. or the Cherokee Nation Businesses, L.L.C. wholly-owned entity soliciting bids and/or proposals for the Work described in the Statement of Work.
- 1.03 “Company Representative” refers to the Company personnel who has been designated as the 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 acting directly or through agents, subcontractors, or employees and is currently under contract with the Company or upon the award of the bid will enter into a contract directly with the Company.
- 1.05 “Subcontractor” refers to the party contracting with the Contractor for any part of the Work as defined in the Statement of Work.
- 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 as described in the Statement of Work.

2.00 DESCRIPTION OF WORK

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

3.00 FAMILIARITY WITH RFP DOCUMENTS AND PROPOSED WORK

- 3.01 The bidder has the responsibility for examination of all RFP 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.

3.03 Company may require prospective bidders to complete a Non-Disclosure Agreement prior to providing the Statement of Work to a prospective bidder.

4.00 BIDDING INSTRUCTIONS

4.01 The bidder shall make its bid by inserting the bidder's figure in the applicable blanks of the Bid Schedule provided in the Statement of Work, by initialing those inserted figures, by completing any forms, and by returning the completed Bid Schedule 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 RFP Documents as Section IV.

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 RFP Documents as Section V.

4.04 The bidder must provide, with its bid, certificates of insurance on an ACORD 25 or 25S form evidencing that the bidder at the time of the bid is carrying the minimum insurance coverages outlined in Section IX Bond and Insurance Requirements below.

4.05 If included with the Bid Documents, the bidder must furnish with its bid, a completed Contractor Provided Equipment List on the provided spreadsheet.

4.06 This procurement is subject to the rules and regulations of the Cherokee Nation Tribal Employment Rights Office (“TERO”), as adopted and authorized by the Cherokee Nation Tribal Employment Rights Act (Title 40 of the Cherokee Nation Code Annotated). These rules and regulations provide for the assessment of a fee, where applicable, of ½ of 1% of the total contract award (including any and all subsequent additions and deletions to the contract award due to changes in the scope of the work);, the submission of a properly completed TERO Labor Agreement; and the assessment and payment of applicable labor fees. The complete Act is available by contacting the TERO Office located in Tahlequah, Oklahoma at 918-453-5000. The successful bidder’s award will be published on the Cherokee Nation’s procurement website and their performance will be measured, recorded, and reported to the Cherokee Nation. The TERO rules and regulations that are applicable to the Work to be performed by the successful bidder will be determined and communicated by TERO and such rules and regulations shall be made a material term of the Contract Agreement. TERO bidders are required to provide a copy, front and back, of their TERO certificate with bid(s) and failure to do so will result in such bidders not receiving the TERO preferences afforded TERO bidders under the Company procurement and contracting policies and procedures.

4.07 This procurement may be subject to Cherokee Nation Gaming Commission (“CNGC”) policies and procedures. In the event CNGC licensing is applicable, the successful vendor(s) shall be responsible for obtaining all licenses required by CNGC. CNGC licensing requirements may include licensing fees as well as security and background

checks of vendor(s) employees. Current policies and procedures can be found on the Cherokee Nation website or by contacting the CNGC office at 918-431-4116.

- 4.08 The bidder must furnish, with its bid, a subcontractor plan that (1) identifies prospective subcontractors and their respective TERO and Indian-owned statuses and their tribal affiliation; and (2) reflects the amount of the quote, either in dollar estimate or percentage of work estimate, that will be subcontracted to each subcontractor.
- 4.09 The Bid Schedule must be completed in ink or by printer. 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.
- 4.10 All names on the Bid Schedule must be typed or printed below the signature.
- 4.11 The Bid Schedule shall contain an acknowledgment of receipt of all Addenda (the numbers of which shall be filled in on the Bid Schedule).
- 4.12 The address to which communications regarding the Bid Schedule are to be directed must be shown.
- 4.13 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, Bid 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: Purchasing Department, 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 its 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 its 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 a Contract Agreement if bidder has been awarded the bid.

- 5.04 If awarded the bid, bidder and any subcontractors of bidder in the performance of the Work 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 RFP 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 RFP 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 If applicable as required in the Statement of Work, the number of days within which the Work is to be completed, or the date by which, the Work is to be completed shall be provided as set forth in the Bid Schedule and will be included in the Contract Agreement.
- 7.02 If a Project Schedule is required or a Date of Substantial Completion is defined per the Statement of Work, then the Contract Time for the work to be performed shall be considered a material consideration in the award of the bid.

8.00 LIQUIDATED DAMAGES

- 8.01 Provisions for liquidated damages, if any, will be specified in the Statement of Work and/or as set forth in the Contract Agreement.

9.00 SUBSTITUTE MATERIAL AND EQUIPMENT

- 9.01 If material and equipment as described in the Statement of Work are a basis for award, then 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 “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 perform the Work in accordance with the terms of a Contract Agreement and 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 A Contract Agreement along with the terms and conditions of such agreement will be negotiated upon award. Company may rescind the award of a bid for failure to agree upon the terms of the Contract Agreement within a reasonable period of time or for bidder's failure to negotiate in good faith or timely respond to requests or inquiries of Company. Prior to the execution of a Contract Agreement by an authorized representative(s) of each party, the successful bidder shall not perform any services, conduct any business on Company property or acquire or procure any supplies, materials or equipment on behalf of Company to be used in performing the Work as bid, unless specifically requested by an authorized Company Representative in writing. Company will notify the successful bidder in the Statement of Work or Notice of Award that additional executive or board of directors' approval will be required prior to negotiating the terms of a Contract Agreement. In the performance of the Work awarded, 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 Contractor's Payment and Performance Bond (if required per the Statement of Work or Contract Agreement) and the required certificate(s) of insurance evidencing the limits and endorsements as required by the terms and conditions of the Contract Agreement within five (5) calendar days of receipt of the Notice of Award. If the successful bidder fails to execute and deliver Contractor's Payment and Performance Bond and the required certificates of insurance(s) 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 as agreed upon by the parties. However, Work shall not be commenced until Contractor has provided the requisite bonds and proofs of insurance required by the Contract Agreement.

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 Certificates of Insurance covering all the insurance requirements outlined in the Contract Agreement. Please refer to Section IX Bond and Insurance Requirements below for minimum standard insurance requirements, additional insurance policies, coverages and limits may be required per the Contract Agreement.

15.00 RETURNING OF RFP DOCUMENTS

- 15.01 Whether a bid is submitted or not, this collection of RFP 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 Company policies. The successful bidder will be responsible for meeting with a representative of Company's Accounting Department regarding necessary coding requirements and complying therewith.

SECTION III

STATEMENT OF WORK CHEROKEE NATION BUSINESSES, LLC Bid – Hydronic Piping Insulation

Proposals are being solicited by Cherokee Nation Businesses, L.L.C. or the Cherokee Nation Businesses, L.L.C. wholly-owned entity as identified in the Statement of Work, for the replacement of the metal jacketed insulation on the 4-pipe hydronic system as illustrated below. All removed insulation shall be legally disposed of off-site. The use of Owner's trash receptacles is not allowed. Any jacketing that can not be reused, shall be legally disposed of off-site. Use of The owner's trash receptacles is not allowed. Any groove fitting or groove fitting hardware exhibiting abnormal wear or leaking shall be reported to Owner for integrity evaluation. The contractor shall include the cost of the insulation and shall provide unit cost (per foot) for the metal jacketing replacement. For the purpose of the bid, it is presumed the existing metal jacketing will be reused. 60' boom is available but you will need to supply fuel.



All materials, tools, and labor shall be provided by the successful bidder. Any additional material costs should be included in the bid. All materials will be stored and neatly put away at the end of each day. The work area should be kept clean at all times.

Contact the Buyer, via e-mail only, to answer any questions regarding the bid.

Any changes to the scope of work shall be coordinated and approved by a Company Representative in accordance with the Contract Documents. Any requests for or responses to CNE requested additional work or change to the scope of work must include a statement of need and a detailed listing of expenses.

Proposals may be mailed or hand-delivered to Company's Catoosa Corporate office to be received no later than 3:00 PM Nov 7, 2019 at the following:

IF BY EXPRESS DELIVER OR REGULAR MAIL

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

IF BY HAND DELIVERY

Cherokee Nation Businesses, L.L.C.
Attn: Sherrie Larsen
Corp. Building #3
1102 N. 193rd East Ave.
Catoosa, OK 74015

SIGNATURE PAGE TO THE BUSINESS RELATIONSHIP AFFIDAVIT

Subscribed and sworn to before me this _____ day of _____ 20__.

Notary Public

My Commission Expires: _____

SECTION V

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 employee of Cherokee Nation Businesses, L.L.C. or any wholly-owned entity of Cherokee Nation Businesses, L.L.C. 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 official of Cherokee Nation Businesses, L.L.C. or any wholly-owned entity of Cherokee Nation Businesses, L.L.C. 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 VI

BOND AND INSURANCE REQUIREMENTS

Minimum Insurance for Bidding: Bidder shall provide with its bid, certificates of insurance on an ACORD 25 or 25S form evidencing all available coverages, however, to be considered an acceptable bid the following minimum coverages and limits and any additional insurance requirements specified in the Statement of Work must be evidence on the submitted certificates of insurance. The limits set forth below are minimum limits. Additional limits or policies may be required per the terms and conditions of the Contract Agreement.

(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 Company its parent, subsidiary, or affiliated companies.

(D) Pollution Liability insurance in the amount of \$1,000,000 each incident and annual aggregate of \$2,000,000 (only applicable for bidding if required per the Statement of Work). Upon award of the bid Company may require this coverage per the Contract Agreement if such coverage is merited per the scope of the Work to be performed and the minimum limits quoted may be adjusted accordingly.

(E) Professional Liability insurance with limits of not less than \$2,000,000 for each claim and an annual aggregate of not less than \$2,000,000 (only applicable for bidding if required per the Statement of Work). Upon award of the bid Company may require this coverage per the applicable Contract Agreement or Service Agreement if such coverage is merited per the scope of the Work to be performed. The limits for professional liability insurance may be adjusted depending on complexity and size of the project and the scope of services to be provided. Any adjustments to these limits will be identified in the applicable terms and conditions of the Contract Agreement or Service Agreement.

Additional Insurance Requirements upon Award of Bid:

- (A) At a minimum the following will be required for Commercial or Comprehensive General Liability and Automobile Liability policies (Company may identify additional policies that are subject to this requirement and such additional policies and requirements will be made a part of the terms and conditions of the Contract Agreement):
- Company its parent, subsidiary and affiliated companies will be named as additional insured.
 - The policies 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, subsidiary or affiliated companies is excess and not contributory with this insurance.”

Waiver of Subrogation: In each of the policies required per the Contract Agreement, bidder agrees to waive and will require its insurers to waive any rights of subrogation or recovery they may have against Company, its parent, subsidiary, or affiliated companies.

At least five (5) days prior to the commencement of the Work, Contractor shall deliver to Company certificates of insurance on an ACORD 25 or 25S form evidencing the existence of the insurance coverage required per the Contract Agreement. 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 (E) 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.

Bid Bond and Performance, Payment and Maintenance Bonds:

- (A) Bid Bond. If required per the Statement of Work, a Bid Bond may be required as proof of the bidder’s ability to bond the Work. If awarded the Work, Performance, Payment and Maintenance Bonds may be required as indicated below.
- (B) Performance and Payment Bond. If required per the Statement of Work or Contract Agreement, the successful bidder shall obtain and provide to Company a Payment and Performance bond covering discharge of the successful bidder’s obligations. This insurance guarantee shall represent one hundred percent (100%) of the total contract award (including any and all subsequent additions and deletions to the contract award due to changes in the scope of the work). Said bond shall be issued in a form acceptable to Company covering the obligations of the successful bidder under the Contract Agreement. Company may, at its election, terminate the Contract Agreement if the required bond is not obtained within such time as Company will deem reasonable (in no event later than commencement of the Work). This insurance guarantee shall remain in full force until final acceptance of successful bidder’s work.

Any increase in the Contract amount shall automatically result in a corresponding increase in the Bond's penal amount without notice to or consent from Surety, such notice and consent being hereby waived. Decreases in the Contract amount shall not, however, reduce the Bond's penal amount unless specifically provided in said Change Order.

The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

- (C) Maintenance Bond. If required per the Statement of Work or Contract Agreement, the successful bidder may be required to obtain and provide to Company a Maintenance Bond guaranteeing Company, that the bidder will solve all maintenance issues during the specified maintenance period, which is usually one (1) year from final acceptance of successful bidder's work. The maintenance period could be longer depending upon the terms of the Contract Agreement.

Additional bonding requirements may be identified by Company in the Statement of Work or Contract Agreement.

SECTION VII

NON-DISCLOSURE AGREEMENT

Cherokee Nation Businesses, L.L.C. or the Cherokee Nation Businesses, L.L.C. wholly-owned entity identified in the attached Statement of Work with offices located at 777 West Cherokee Street, Catoosa, OK 74015 (“Company”) and

with its principal offices located at

_____ (“Bidder”)

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**

PROJECT NAME: Hydronic Piping Insulation

RFP NUMBER: 78234

(“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 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 order 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, or is disclosed pursuant to the requirement of an applicable statute, regulation or rule, and in all such cases sufficient notice is given by the recipient to the disclosing party of any such requirement or order to permit the disclosing party to seek an appropriate protective order or exemption from such requirement or order, unless such notice is prohibited by said requirement, order, statute, regulation or rule.
 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. 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.
14. **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.**
15. 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.
16. 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.

This Agreement shall be effective as of the last date of execution as indicated below.

Company

Bidder

(SIGNATURE)

(SIGNATURE)

(PRINT NAME)

(PRINT NAME)

(TITLE)

(TITLE)