

**CHEROKEE NATION
REQUEST FOR SEALED PROPOSALS
CONSTRUCTION MANAGEMENT
AT-RISK SERVICES**



Acquisition Management

**CHEROKEE NATION
P.O. Box 948
Tahlequah, OK 74465
(918) 453-5000**

CHEROKEE NATION REQUEST FOR SEALED PROPOSAL CONSTRUCTION MANAGEMENT AT-RISK SERVICES

INTRODUCTION:

The Cherokee Nation is the federally recognized government of the Cherokee people and thereby has sovereign status granted by treaty and law. Tribal sovereignty is the right to self-governance. The seat of tribal government is the W.W. Keeler Complex near Tahlequah, Oklahoma, capital of the Cherokee Nation. The reservation of the Cherokee Nation (hereinafter "Nation") covers 14 counties in Northeast Oklahoma.

PROJECT BACKGROUND:

The Cherokee Nation is issuing a Request for Sealed Proposals (RFP) for Construction Management Services from Indian and non-Indian owned firms interested in providing Construction Management At-Risk Services for Cherokee Nation.

OBJECTIVE:

The objective of the RFP is to identify responsible firms who meet the Cherokee Nation's requirements to provide Construction Management At-Risk Services for a plethora of upcoming projects within the reservation boundaries. The projects vary in size, type and scope. The Cherokee Nation reserves the right to make multiple awards to multiple responding parties using responses based on this RFP; and, subsequent additional documents addressing project specific costs. The responses to this RFP may be used by the Cherokee Nation and any of its entities for future agreements.

MANDATORY INFORMATION TO BE PROVIDED IN RESPONSE:

- Specialization areas.
- Number and size of projects administered simultaneously
- Current number of project(s) and pertinent information
- Previous work history information details for past 10 years
- References
- Company capabilities and services
- Staffing matrix with team member resumes
- Organization size and structure
- Company safety policies
- Safety manual
- OSHA violations list for previous 10 years.
 - Recordable Incident Rate (RIR) must be included.
 - Safety Experience Modification Rate (EMR) must be included.
- Sample liability insurance certificate
- Preparation Outline (Attachment A of this RFP)
- Proposed fee schedule and hourly rate sheet with annual escalation percentages (Attachment B of this RFP with additional details as needed)

- Bonding capacity and letter from the bonding company confirming capacity (Attachment C of this RFP)
- Statement on Providing Indian Preference In Employment & Training on any Cherokee Nation Project (Attachment D of this RFP).
- Statement on Providing Indian Preference in Subcontracting (Attachment E of this RFP).
- To be given Indian Preference a copy of the TERO certification must be included with submittal (Attachment F of this RFP serves as a reminder). TERO Certification is issued by the Tribal Employment Rights Office of the Cherokee Nation.
- Confirmation and Acceptance of General Terms & Conditions (Attachment G of this RFP).

VERBAL INSTRUCTIONS:

Interested parties shall not initiate or execute any negotiation, decision, or action arising from any verbal discussion with any Cherokee Nation employee. Only written communications from the designated Contact Person at Cherokee Nation may be considered a duly authorized expression on behalf of the NATION regarding this RFP. Additionally, only written communications from interested parties are recognized as duly authorized expressions on behalf of the vendor. The same instructions shall apply to any subsequent award and agreement communications.

CONTACT PERSON:

The Cherokee Nation point-of-contact for the RFP is Shelly McClain, Acquisition Management Manager. All communication between any interested Firm and Cherokee Nation shall be in written format to shelly-mcclain@cherokee.org. The subject line of the email communication should state RFP – Construction Management At-Risk Services.

REVIEW AND QUESTIONS:

Firms should carefully review this RFP. Firms shall put these comments and/or questions in writing and submit them to the Cherokee Acquisition Management (Attn: Shelly McClain) no later than **November 10, 2021 by 5:00 p.m. CST** at email shelly-mcclain@cherokee.org. In the subject line of email, reference “RFP – Construction Management At-Risk Services”.

ADDENDUM:

Any and all such interpretations and any supplemental instructions will be in the form of written addenda, will be provided no later than **November 15, 2021 by 5:00 p.m. CST**. Addendum will be posted on the Nation’s public bid website with RFP announcement. No interpretation of the RFP requirements will be made to any interest party orally. Failure to receive any issued addendum or interpretation shall not relieve responding party from any obligation contained in RFP document.

TERO CERTIFICATION/INDIAN PREFERENCE INFORMATION:

The Cherokee Nation shall to the greatest extent feasible give preference to Indian organizations and Indian-owned economic enterprises. Indian preference will be given only to responding parties who provide proof of current certification from the Cherokee Nation Tribal Employments Office (TERO) located in Tahlequah, Oklahoma, telephone number (918) 453-5000. Proof of TERO certification must accompany and be included in submittal.

Any subsequent agreement is subject to Section 7 (b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 405e) which requires in part that to the greatest extent feasible, preference in the award of contracts and subcontracts shall be given to Indian Organizations and Indian Owned Economic Enterprises. Reference Attachments D & E.

TERO requirements apply to award of any future contract. Successful offeror must complete required TERO paperwork and pay all applicable fees in accordance with current Legislative Act for this project.

NO OBLIGATION:

This RFP does not obligate the Cherokee Nation to contract for any services.

CANCELLATION:

The Cherokee Nation retains the right to cancel, modify or amend the RFP process at any time, at the NATION's sole discretion. The NATION shall not be responsible for costs incurred by firms for proposal preparation or any subsequent requests for additional information.

REJECTION OF SUBMITTALS:

The Cherokee Nation reserves the right to reject any and all submittals received without penalty.

RFP RESPONSE WITHDRAWAL AND CORRECTION:

A response may be corrected or withdrawn by a written request received prior to the due date.

SUBCONTRACTORS OR JOINT VENTURES:

For any future agreement, the Nation will contract only with the Contractor and expects the Contractor to perform the work. Any firm that proposes to employ a subcontractor or subcontractors or enter into a joint venture must disclose this information to the Nation prior to agreement execution. The Nation must approve in writing any subcontractor(s) or joint venture. The Nation in giving acceptance assumes no responsibility in connection with the terms of the subcontract or joint venture and their performance will be the responsibility of the Contractor.

CONFLICTS OF INTEREST:

Firms submitting a response to this RFP must disclose any actual, apparent, direct or indirect, or potential conflicts of interest that may exist with respect to the firm, management, or employees of the firm relative to any potential future services with the Nation. The disclosure must be included with the RFP submittal.

CONFIDENTIALITY:

Any information provided by the Nation in respect to this RFP contains proprietary information and is shared on a confidential basis. Any information acquired at the Nation or relating to processes belonging to the Nation included in this RFP shall be kept confidential. The Construction Management Firm agreement to not use in any unauthorized manner or communicate to others any confidential information without the written consent of the Cherokee Nation and will take such measures as are necessary to require it's employees and all approved Subcontractors to maintain complete confidentiality.

MEDIA ANNOUNCEMENTS:

Any and all media announcements pertaining to this RFP or any subsequent award(s) require the Nation's prior written approval.

OWNERSHIP:

All documents submitted in response to this RFP shall become the property of the Cherokee Nation and will not be returned to the vendors. Responses received will be retained by the Acquisition Management Department.

INCURRING COSTS:

Any costs incurred by the firm in preparation, transmittal, or presentation of any proposal, or material submitted in response to this RFP shall be borne solely by the vendor. The vendor is responsible for all costs associated with travel for on-site demonstrations.

SUBMITTAL DEADLINE:

Sealed proposals may be mailed to Cherokee Nation Acquisition Management, Attn: Shelly McClain, P.O. Box 948, Tahlequah, Oklahoma 74465; or, sealed proposal may be hand-delivered to Cherokee Nation Acquisition Management, Attn: Shelly McClain, 17665 S. Muskogee Avenue, Tahlequah, Oklahoma 74464. Sealed proposals must be received on or before **November 30, 2021 by 5:00 p.m. CST** by the Nation's Acquisition Management Department to be considered eligible for award. Late submittals will not be accepted. Submittal must be sealed and clearly marked "SEALED PROPOSAL, CONSTRUCTION MANAGEMENT AT-RISK SERVICES DO NOT OPEN." Sealed responses are to include 1 original and 10 copies.

SUBMITTALS:

The Response/Proposals should be concise and cover all areas described in the MANDATORY INFORMATION TO BE PROVIDED IN RESPONSE, MANDATORY RESPONSE DOCUMENTS outlined in ATTACHMENT A, and fully address all rating criteria outlined in the EVALUATION AND SCORING section of this RFP. Response/Proposals should have a Table of Contents and clearly defined sections.

GOVERNING LAW:

The Cherokee Nation will make this RFP and the successful Contractor's response a part of any future contract. This RFP and any subsequent contract and related documents shall be construed under the laws of the United States and where applicable, the Cherokee Nation. Nothing in this RFP, any subsequent documents or contract or related documents shall be construed as a waiver of limitation upon the Nation's sovereign immunity. To the extent this statement is found to be inconsistent with any other language in this RFP or any subsequent document or contract or related document, this statement shall control. This statement shall survive the completion or termination of any subsequent contract. In the event of any dispute which may affect this Agreement, the Contractor agrees the Agreement shall be governed by the laws of the United States, and where applicable, the laws of the Cherokee Nation. The Cherokee Nation will utilize the agreement template included in this RFP for any future award(s). There will be no Arbitration, Mediations or Indemnification clauses, and the Nation will not waive sovereign immunity. By submitting a proposal in response to this RFP, the Contractor agrees to these terms and conditions.

TERM:

This RFP and responses may be used as basis for any future agreements for a period of five (5) years.

QUALIFICATION OF RESPONDING PARTY:

The Nation may make such investigations as deemed necessary to determine the ability of the responding party to perform any future work. The responding party shall furnish to the Nation all such information and data for this purpose upon request. The Nation reserves the right to reject any response if the evidence submitted by, or investigation of, such responding party fails to satisfy the Nation such responding party is properly qualified to carry out the obligations of any future project and agreement.

DEBARMENT, SUSPENSION, PROPOSED DEBARMENT & OTHER RESPONSIBILITY MATTERS:

The responding party certifies to the best of its knowledge and belief that the person, the firm, or any of its principals are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency or Indian tribe. The offeror will also certify they have not, within a three-year period preceding this Request for Proposal, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, Local or Tribal) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commissions of embezzlement, theft, forgery, bribery, falsifications or destruction of records, making false statements, and are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in this provision. The responding party certifies they have not, within a three-year period preceding this Request for Proposal, had one or more contracts terminated for default by a Federal, State, Local or Tribal agency

LAWS AND REGULATIONS:

The offeror's attention is directed to the fact all applicable State Laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over construction of this project shall apply to the contract throughout, and they will be deemed to be included in any future contract the same as though written out in full.

Wage Rates: The Cherokee Nation requests the wages for any future contract/project follow the Davis Bacon Wage Scale. Awarded parties will be required to maintain wages rates paid to employees for any future awarded project and have reports available upon request.

Cherokee Nation TERO law and fees are applicable to any future agreement(s).

ENVIRONMENTAL PROTECTION FOR ANY FUTURE PROJECT

- If extraordinary or exceptional circumstances involving the National Environmental Policy Act (NEPA) and related environmental considerations are encountered in the project, or if there is any change in the project, which could change the project

environmental determination, the Contractor agrees to stop construction in affected areas and to notify the NATION'S Project Inspector.

- The work covered by this section consists of furnishing all labor, materials, and equipment, and performing all work required for the prevention of environmental pollution during, and as a result of, construction operations under this contract except for those measures set forth in other technical provisions of these specifications. For the purpose of these specifications, environmental pollution is defined as the presence of chemical, physical, or biological elements or agents which adversely affect human health or welfare; unfavorably alter ecological balances of importance of human life; affect other species of importance to man; or degrade the utility of the environmental pollution requiring consideration of air, water, and land, and involves noise and solid waste-management, as well as other pollutants.
- In order to prevent, and to provide for abatement and control of, any environmental pollution arising from construction activities of the Contractor and subcontractors in the performance of this contract, they shall comply with all applicable Federal, State, Local, Tribal laws, and regulations concerning environmental pollution control and abatement.
- The NATION will notify the Contractor of any observed non-compliance with the foregoing provisions. The Contractor shall, after receipt of such notice, immediately take corrective action. Such notice when delivered to the Contractor or his authorized representative at the site of the work shall be deemed sufficient for the purpose.
- If the Contractor fails or refuses to promptly take corrective action, the NATION may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop orders shall be made the subject of a claim for extension of time, for excess costs or damages by the Contractor unless it was later determined the Contractor was in compliance.
- Compliance with the provisions of this section by subcontractors will be the responsibility of the Contractor.
- Prior to commencement of the work, the Contractor will discuss environmental protection with the NATION'S Project Inspector to develop a mutual understanding relative to compliance with these provisions and administration of the environmental pollution control program.
- Protection of Land Resources:
 - The resources within the scope of work under this contract shall be preserved in their present condition or be restored to a condition after completion of construction that will appear to be natural and not detract from the appearance of the project. Insofar as possible, the Contractor shall confine his construction activities to areas defined by the plans or specifications. At the onset of ditch grading, topsoil shall be saved for use in restoring the ditch areas. Waste and borrow areas shall be leveled or trimmed to regular lines and shaped to provide a neat appearance. In all instances the restored area shall be well drained, so as to prevent the accumulation of stagnant water.
 - Except in areas shown on the plans or specified to be cleared, the Contractor shall not deface, injure, or destroy trees or shrubs, nor remove or cut them without special authority from the NATION.

- Any trees or other landscape features scarred or damaged by the Contractor's equipment or operations shall be restored as nearly as possible to original condition at the Contractor's expense.
- The Contractor shall obliterate all signs of temporary construction facilities such as haul roads, work areas, structures, foundations of temporary structures, stockpiles of excess or waste materials, or any other vestiges of construction, as directed by the Project Engineer or his representative. The disturbed areas shall be graded and filled as required sufficient topsoil shall be spread to provide minimum depth of four (4) inches of suitable soil for the growth of grass, and the entire area seeded.
- Protection of Water Resources:
 - The Contractor shall not pollute streams, lakes or reservoirs with fuel, oils, bitumens, calcium chloride, acids, construction wastes or other environmentally harmful materials. It is the responsibility of the Contractor to investigate and comply with all applicable Federal, State, County, Local and Tribe water laws concerning pollution of rivers and streams.
 - Special measures shall be taken to prevent chemicals, fuels, oils, bituminous materials, waste washings, and cement from entering drainage ditches.
 - The Contractor shall at all times perform all work and take such steps required to prevent any interference or disturbance to fish and wildlife. Fouling or polluting of water will not be permitted. Wash waters and wastes shall be processed, filtered, ponded, or otherwise treated pursuant to all applicable rules prior to their release into a river or other body of water.
 - No material shall be burned at the project site unless otherwise specified in the contract or authorized by the NATION and any other appropriate regulatory body.
 - The Contractor will be required to maintain all work areas within the project boundaries free from dust or debris that would cause a hazard or nuisance to others. Dust control shall be performed as the work proceeds and whenever a dust nuisance or hazard occurs.

SAFETY STANDARDS AND ACCIDENT PREVENTION FOR ANY FUTURE PROJECT

With respect to all work performed under the contract, the Contractor shall:

- Comply with the safety standards provision of applicable laws, building and construction codes and the "Manual of Accident Prevention in Construction" published by the Associated General Contractors of America, the requirements of the Occupational Safety and Health Act of 1970 (Public Law 91-596) and the requirements of Title 29 of the Code of Federal Regulations, Section 1518 as published in the "Federal Register", Volume 36, No. 75, Saturday, April 17, 1971.
- Exercise every precaution at all times for the prevention of accidents and the protection of persons (including employees) and property.
- Maintain at his office or other well known place at the job site, all articles necessary for giving first aid to the injured, and shall make standing arrangements for the immediate removal to a hospital or a doctor's care for persons (including employees) who may be injured on the job site. Employees shall not be permitted to work at a job site before the employer has made a standing arrangement for removal of injured persons to a hospital or doctor.

DRUG FREE AND TOBACCO FREE WORKPLACE FOR ANY FUTURE AGREEMENTS:

- Any Contractor performing work for the Cherokee Nation agrees to publish a statement notifying all employees, subcontractors, and other workers that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against violators of such prohibition.
- The Nation will consider lack of enforcement or lax enforcement of the statement by Contractor a default of the contract.
- The Contractor further agrees to provide all persons engaged in performance of the contract with a copy of the statement.
- A copy of responding party's Drug Free Workplace statement shall be included with the proposal or else the successful responding party will be deemed to accept and agree to use the statement provided by Nation.
- The Contractor understands and recognizes that all Cherokee Nation buildings, whether leased or owned, and the grounds surrounding those facilities are considered by the Nation to be a tobacco free workplace. The Contractor will ensure all employees, subcontractors, and other workers will abide by this policy.

INSURANCE REQUIREMENTS FOR ANY FUTURE AGREEMENT:

Indemnity and Insurance: The Cherokee Nation assumes no responsibility for negligent acts of either the offeror or their employees; therefore, the offeror is responsible for obtaining the amount of professional liability insurance coverage the NATION considers appropriate. The offeror will keep harmless and indemnify the Cherokee Nation against any or all loss, cost, damage, claims, expense or liability for all acts related to quality care management and enforcement of this contract.

Before performing contractual services on the behalf of or for the Cherokee Nation, exact requirements will be provided and coverage must be verified prior to execution of any future agreement.

Insurance coverage will be required in the following areas: Worker's Compensation and Employer's Liability; General Liability; Automobile Insurance, Builder's Risk Insurance.

The following information must then be provided on a Certificate of insurance naming the Cherokee Nation as a certificate holder and additional insured with respect to general liability, automobile liability, and builders risk policies, as their interest may appear with respect to the operations defined in this bid packet. The certificate shall reflect that coverage has been placed with an AM Best Rated Carrier of at least A IX and will contain the following information for each required coverage:

- 1) Type of insurance
- 2) Policy number
- 3) Effective date
- 4) Expiration date
- 5) Limits of Liability (this amount is usually stated in thousands)
- 6) Thirty day notice of cancellation, except ten-day cancellation clause will apply for nonpayment of premium.

SECURITY FOR FAITHFUL PERFORMANCE FOR ANY FUTURE AGREEMENT:

Simultaneously with his delivery of the signed contract, the Contractor shall furnish a surety bond or bonds as specified. Corporate sureties offered for bonds furnished with contracts performed for the Cherokee Nation must appear on the list contained in the Department of the Treasury Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies." Before any work is commenced, the Contractor shall obtain a performance bond and payment bond to guarantee the faithful performance of this contract and payment for all labor and materials used in the work each in the full amount of the Contract price in a form and with sureties satisfactory to the NATION. The NATION will accept an irrevocable letter of credit from an established institution in lieu of the above bonds. This shall remain in effect until final acceptance by the NATION.

BONDING REQUIREMENTS FOR ANY FUTURE AGREEMENTS:

Minimum requirement for bonding and insurance shall be as follows:

- a) A performance bond on the part of the contractor for 100 percent (100%) of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- b) A payment bond on the part of the contractor for 100 percent (100%) of the contract price. A "payment" bond is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.
- c) A maintenance bond may be required by Cherokee Nation based on the project. Cherokee Nation may request the Contractor provide the percentage/fees for a maintenance bond for a specific project. A "maintenance" bond is one executed to make sure a contractor remedies any defects or the owner is compensated for any defects that may have occurred throughout the construction project.

NOTE: The payment and performance bonds will only be required of the successful Contractor, but must be in full effect before any work is done. The date of the bonds must not be prior to the date of the Contract. If the Contractor is a partnership, all partners must execute the bonds.

Corporate sureties offered for bonds furnished with contracts performed for the Cherokee Nation must appear on the list contained in the Department of the Treasury Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies."

AVAILABILITY OF FUNDS:

Any future contract awarded as a result of this RFP is contingent on the appropriation of funds. A contract award may be terminated or reduced in scope if sufficient appropriations or authorizations do not exist. This vendor will be notified in writing of such terminations. The vendor will accept, as final, the Nation's decision as to whether sufficient appropriations and authorizations are available.

LEGAL REVIEW:

The Nation requires that all vendors agree to be bound by the general requirements contained in this RFP. Any vendor concerns must be properly brought to the attention of Shelly McClain, Cherokee Nation Purchasing Manager.

CONTRACT TERMS AND CONDITIONS:

The contract between the Cherokee Nation and the vendor will follow the standard format of the Cherokee Nation. The proposed sample agreement is included with this RFP. Responding parties must review the agreement and confirm acceptance and willingness to sign this agreement for any future project.

RIGHT TO WAIVE MINOR IRREGULARITIES:

The RFP Evaluation Committee reserves the right to waive minor irregularities. This right is at the sole discretion of the proposal evaluation committee.

The Nation reserves the right to determine a proposal acceptable in terms of meeting RFP requirements. The Nation reserves the right to accept or reject any and all proposals received and to negotiate with offerors regarding the terms of their proposals or parts thereof. The Cherokee Nation reserves the right to award any future contracts in the best interests of the Cherokee Nation.

WARRANTY PERIOD FOR ANY FUTURE AGREEMENT:

The Contractor warrants that work performed under awarded contract conforms to all requirements and is free of any defect in equipment, material, design, or workmanship performed by the Contractor or any Subcontractor. This warranty shall continue for a period of one year from the date of final acceptance of the work. The Contractor shall remedy at the Contractor's expense any failure or defect within the one year warranty period.

OWNERSHIP OF RFP RESPONSES:

All documents submitted in response to this RFP shall become the property of the Cherokee Nation and will not be returned to the vendors. Responses received will be retained by the Acquisition Management Department.

PROMPT PAYMENT FOR ANY FUTURE AGREEMENT:

The successful firm agrees to pay all sums due to subcontractors, laborers and material suppliers within ten (10) days of receipt of payment by the Cherokee Nation.

EVALUATION AND SCORING

For the response to be fully considered and evaluated, the minimum qualifications must be met for complete review by an Evaluation Committee to award any future agreement. All rating criteria and required/mandatory documents must be included with submittal

The Evaluation Committee will review the RFP submittals:

Criteria	Points
Current Workload	15
Staffing	15
Capabilities & Service	15

Previous Experience	15
References	10
Safety Documents/Records	10
Mandatory Documents	10
Indian Preference (Copy of TERO Certification required)	10

The Evaluation Committee may ask for additional details and/or request a presentation.

All documents submitted in response to this RFP shall become the property of the Cherokee Nation and will not be returned to the vendors. Responses received will be retained by the Acquisition Management Department.

ATTACHMENT A

Preparation Outline

Mandatory

**PREPARATION OUTLINE
MANDATORY DOCUMENT**

The following information must be submitted and signed as indicated with response to this RFP. All information must be submitted for response to be considered responsive and reasonable to enable all rating criteria outlined to reviewed and rated.

1. Preparation Outline - Attachment A, this form must be signed & dated.
2. Proposed Fee Schedule - Attachment B of RFP packet
3. Bonding Capacity Statement – Attachment C of RFP packet
4. Statement Providing Indian Preference In Employment & Training on any Cherokee Nation Project – Attachment D of RFP packet
5. Statement Providing Indian Preference In Subcontracting on any Cherokee Nation Project – Attachment E of RFP packet
6. TERO Certification: Copy front & back (If applicable, to be provided by responding party) – Attachment F serves as a reminder
7. Confirmation and Acceptance of General Terms & Conditions – Attachment G of RFP packet.

SPECIAL INSTRUCTIONS

****Be advised that all responsive proposals will be evaluated as outlined in this solicitation packet.**

Authorized Signature

Title

Company Name

Date

ATTACHMENT B

Proposed Fee Schedule

Mandatory

PROPOSED FEE SCHEDULE

All contractors shall furnish the following fees and markups as part of the RFP:

A. Construction Management Fee: This fee % range of total construction cost shall consist of and include overhead, profit, and home office personnel who will be managing the project during pre-construction, bidding, construction, and closeout, including the warranty period. This fee does not include general conditions and shall be a percentage of total construction cost. Total construction cost is the total of the CM's General Conditions, Bonds, and the cost of the actual work performed by the CM's subcontractors. The fee shall not be applied to Architectural or Engineering costs.

\$1,000,000 - \$10,000,000

Construction Management Fee: _____% to _____%

\$10,000,001 – 20,000,000

Construction Management Fee: _____% to _____%

\$20,000,001 – 50,000,000

Construction Management Fee: _____% to _____%

\$50,000,001 – 100,000,000

Construction Management Fee: _____% to _____%

\$100,000,001 - \$500,000,000

Construction Management Fee: _____% to _____%

B. Monthly General Conditions: This is a cost to the project from notice to proceed to final completion and associated with the jobsite management of the project, including but not limited to items such as project management staff, insurance, jobsite trailers, telephones, administrative, temporary roads, temporary utilities, permits, fees, general hoisting, safety and cleaning, not specifically associated with individual elements being erected CM/GC's monthly general conditions costs. This should include on-site management/supervision team (e.g., project manager, superintendent, project engineer, safety officer, etc.). All services and personnel not specifically identified as a Construction Supervision Cost will be considered to be part of the CM fee.

C. Self-Performed Work Markup: This is a fixed percentage markup that will be applied to the cost for the CM/GC's actual labor plus burden cost, material costs, and equipment costs for self-performed work. The Contractor will be allowed to self-perform work. This work must be billed for at actual cost incurred, plus the Self Performed Work Markup. Actual costs for self-performed work will be subject to audit. No billing rates will be allowed. The Contractor must bid its self-performed work against a minimum of two (2) additional bidders. The contractor shall identify in their proposal which work they anticipate to be self-performed. The Contractor's bid will then be evaluated by the Owner and Architect and must be determined to be the best value bid for the work to be awarded to the Contractor. The cost of any work that is self-performed will be part of the total construction cost and is subject to audit by owner. This is a fixed percentage markup that

will be applied to the cost for the CM/GC's actual labor plus burden cost, material costs, and equipment costs for self performed work:

D. Bonding Rate: This is the cost bonding rate based on the estimated construction cost of:

\$1,000,000 - \$10,000,000

Bonding Rate: _____%

\$10,000,001 – 20,000,000

Bonding Rate: _____%

\$20,000,001 – 50,000,000

Bonding Rate: _____%

\$50,000,001 – 100,000,000

Bonding Rate: _____%

\$100,000,001 +

Bonding Rate: _____%

ATTACHMENT C

Bonding Capacity Form

Mandatory

**BONDING CAPACITY CERTIFICATION LETTER (to be issued on Surety
Company Letterhead)**

Owner: Cherokee Nation P.O. Box 948 Tahlequah, OK 74465

Contractor: _____

Address: _____

City, State, Zip _____

Phone: _____

**This letter serves as a certified statement of bonding capacity for the
referenced Contractor. The present limits on bonding for the referenced
Contractor are as follows:**

\$ _____ each occurrence

\$ _____ aggregate

**Issuance and approval of any bond shall be predicated on the most current
financial and job information available to the underwriter on the date that the
bond is issued. The Surety Company hereby certifies that they appear on the
list contained in the Department of the Treasury Circular 570 "Companies
Holding Certificates of Authority as Acceptable Sureties on Federal Bonds
and Acceptable Reinsuring Companies" and that they are rated as follows:**

A.M. Best Rating: _____

Financial Size Category: _____

Note: This is the only acceptable format for the Surety's Bonding Capacity Certification Letter. This statement must be notarized (on an original document with an embossed stamp). Power of Attorney form must be attached.

Surety Company: _____

Address: _____

City, State, Zip: _____

Telephone: _____

Authorized Signature: _____

Date: _____

Subscribed and sworn to before me

this _____ date of _____, 20____

Notary Public in and for said City and State:

My Commission expires: _____

ATTACHMENT D

Statement Providing Indian Preference In Employment & Training on any Cherokee Nation Project

Mandatory

Statement on Providing Indian Preference In Employment and Training Opportunities

The Cherokee Nation has determined that all bidders this solicitation shall to the greatest extent feasible comply with Indian Preferences in providing training and employment opportunities.

Detail your employment and training opportunities and plans to provide preference to Indians in implementing the contract:

Provide the number or percentage of Indians anticipated to be employed and trained.

If less than 100% Indian for new hires explain why:

Provide a list of all core crew (permanent full-time employees) members:

Describe the methods that will be used to train Indian employees

Comparable statements from all subcontracts must be submitted.

Company Name

Signature

Date

ATTACHMENT E

Statement Providing Indian Preference in Subcontracting

Mandatory

Statement on Providing Indian Preference In the Award of Subcontracts

The Cherokee Nation has determined that all bidders under this solicitation shall to the greatest extent feasible comply with Indian Preference in the awarding of all subcontracts under the contract.

All bidders must follow this procedure in determining Indian Preference for subcontracts. Awards of subcontract shall be made to the qualified Indian enterprise or organization with the lowest responsive bid if that bid is no more than "X" higher than the total bid price of the lowest responsive bid from any qualified bidder. "X" is determined as follows:

X = lesser of

When the lowest responsive Proposal is less than \$150,000.00	5% of that price
When the lowest responsive Proposal is: At least \$150,000.00 but Less than \$200,000.00	4.5% of that price
When the lowest responsive Proposal is: At least \$200,000.00 but Less than \$300,000.00	4% of that price
When the lowest responsive Proposal is: At least \$300,000.00 but Less than \$400,000.00	3.5% of that price
When the lowest responsive Proposal is: At least \$400,000.00 but Less than \$500,000.00	3% of that price
When the lowest responsive Proposal is: At least \$500,000.00 but Less than \$1,000,000.00	2.5% of that price
When the lowest responsive Proposal is: At least \$1,000,000.00 but Less than \$2,000,000.00	2% of that price

When the lowest responsive
Proposal is:
At least \$2,000,000.00 but
Less than \$4,000,000.00

1.5% of that price

When the lowest responsive
Proposal is:
At least \$4,000,000.00 but
Less than \$7,000,000.00

1% of that price

\$7,000,000.00 or more

.75% of that price

If no responsive proposal by a qualified Indian-Owned economic enterprise or organization is within the stated range of the total price of the lowest responsive proposal from any qualified enterprise, award shall be made to the bidder with the lowest price.

All bidders must submit with their proposal, documentation of the bids or quotations received in subcontracts awarded to a non-Indian enterprise or a non-Indian organization. Failure by the bidder to provide such information shall render the proposal non responsive and the bidder ineligible for award.

Detail your plans to provide Indian Preference in the award of subcontracts:

Company Name: _____

Signature

Date

ATTACHMENT F

TERO CERTIFICATION
(If applicable)

ATTACHMENT G

**Agreement to sign Cherokee Nation Agreement
for any future projects**

Mandatory

(Sample Agreement - Attachment H)



GWSJDF
CHEROKEE NATION®

CONFIRMATION AND ACCEPTANCE OF GENERAL TERMS & CONDITIONS

This signed document is confirmation the sample Cherokee Nation agreement with terms and conditions (template 001) has been fully reviewed.

It is understood, any future construction management opportunity will be awarded with a formal notification from Cherokee Nation including an agreement with terms and conditions as listed in the sample, but with project specific information.

It is understood, to receive a project from Cherokee Nation, the provided agreement along with any other required documentation such as current insurance certificates and bonds, must be signed and returned to Cherokee Nation within 10 days of notification.

It is understood, failure to comply with the requirements in the formal notification will result in the award nullification.

I certify as a duly authorized person of the company listed below that I have reviewed and accept the sample terms and conditions for any agreements associated with this RFP.

Company Name

Authorized Signature

Date

Printed Name

Title

ATTACHMENT H

Cherokee Nation Sample Agreement

CONSTRUCTION MANAGEMENT AGREEMENT

CHEROKEE NATION

Contract #

Cherokee Nation
17675 South Muskogee Avenue
Tahlequah, Oklahoma 74464
Telephone: (918) 453-5000

**CHEROKEE NATION
CONSTRUCTION MANAGEMENT AGREEMENT**

This Master Agreement for Construction Services ("Construction Management Agreement" or "Agreement") made and entered into this _____ day of _____, 20____, between the Cherokee Nation, whose address is 17675 South Muskogee Avenue, Tahlequah, Oklahoma 74464 ("Cherokee Nation") and _____, whose address is _____ ("Construction Manager"). Cherokee Nation and Construction Manager have agreed that Construction Manager will provide certain services described herein on the following terms and conditions.

I. General Provisions

1. **Standard of Performance.** Construction Manager shall provide sufficient organization, personnel and management to expeditiously and economically carry out the requirements of this Construction Management Agreement pursuant to the Standard Construction Terms and Conditions, which are attached hereto as Exhibit A and incorporated herein by reference, and the Contract Documents consistent with Cherokee Nation's interests.
 2. **Contract Documents.** The Contract Documents shall consist of this Construction Management Agreement, including the attached and incorporated Cherokee Nation Standard Construction Terms and Conditions; any general, supplementary or other conditions adopted by Cherokee Nation and agreed to by Construction Manager; the construction documents and specifications for the Work including all revisions, addenda and changes issued thereto prepared by _____ (the "Architect"); addenda issued prior to the execution of this Construction Management Agreement; and modifications issued after the execution of this Construction Management Agreement.
 3. **The Work.** Cherokee Nation and Construction Manager have agreed that Construction Manager will provide certain construction management services, more particularly set forth in this Construction Management Agreement and the Contract Documents (the "Work") for _____ (The location of the Project is also referred to as the "Job Site.")
Such Work shall include all necessary preconstruction services and design review services (including consultation with the design team and preparation of all necessary documents), construction management services of any kind or nature in connection with the construction for Cherokee Nation as more fully described in the Contract Documents prepared by the Architect, including all revisions, addenda and changes issued thereto (hereinafter, the "Project"). The substantial completion date for the Project shall be _____ ("Substantial Completion Date"). Construction Manager shall prepare a schedule that reflects the expected completion dates and provide such schedule to Cherokee Nation. The schedule shall be incorporated herein by reference as Exhibit ____.
- A. **TERO Contractor Fee.** Construction Manager shall pay _____. The TERO Contractor Fee shall be adjusted in the same manner and at the same time as the Construction Management Fee, as provided for in Section 3.B. below.

- B. **Early Completion Bonus.** In the event that Construction Manager achieves Substantial Completion prior to the Project Substantial Completion Date, a bonus payment ("Early Completion Bonus") shall be paid equal to _____ for each day that Substantial Completion is achieved prior to the Project Substantial Completion Date. The Early Completion Bonus shall not exceed _____.
- C. **Delay Liquidated Damages.** If Substantial Completion does not occur on or before the Project Substantial Completion Date, Construction Manager shall pay Cherokee Nation as liquidated damages, and not as a penalty, for each day of delay from Project Substantial Completion Date, a sum ("Delay Liquidated Damages") equal to _____ for each day that achievement of Substantial Completion is delayed following the Project Substantial Completion Date. The Delay Liquidated Damages shall not exceed _____.
4. **Fixed General Conditions Fee, Construction Management Fee and Additional Construction Management Services Fee.** For its construction management services hereunder the Construction Manager shall be paid a total fee as follows:
- A. **Fixed General Conditions Fee.** A lump sum of _____ for Fixed General Conditions as defined in Exhibit ____;
- plus
- B. **Construction Management Fee.** The Construction Management Fee shall be calculated as _____ of the Cost of the Work of the Project, as more specifically described in Paragraph 5 of this Construction Management Agreement, payable monthly throughout the Project;
- plus
- C. **Additional Construction Management Services Fee.** Construction Manager shall be compensated _____ for each documented and agreed upon day the Project is delayed by Owner beyond the Substantial Completion Date.
5. **Cost of the Work.** The term "Cost of the Work" shall be the total cost to Cherokee Nation of all elements of the Project as designed and specified by the Architect, plus any change orders, general conditions, contingencies, subcontractor or supplier performed work, associated taxes, insurance, bonds, and any other costs required to be performed to complete the Work under this Construction Management Agreement. The costs of (a) general conditions as defined in Exhibit ____ and covered by the Fixed General Conditions Fee; (b) any and all required insurances of the Construction Manager by the Owner and (c) any and all bonds as may be required shall not be included in the calculation of the Construction Management Fee. The Cost of the Work will be those costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of Cherokee Nation. The Cost of the Work shall include the following items:
- A. **Labor Costs,**

- (1) Wages of construction workers directly employed by the Construction Manager to perform work at the Job Site relating to the general conditions, including, but not limited to, general labor not otherwise included in a subcontract at the site. Cherokee Nation requests the wages for this project follow the Davis Bacon wage scale. Awarded contractors and subcontractors will be required to maintain records of wage rates paid to employees for the Project and make such records available to Cherokee Nation upon request.
- (2) Project Staff Costs as more particularly described on Exhibit attached hereto. In the event Exhibit has not been prepared by Construction Manager prior to execution of this Agreement, Cherokee Nation and Construction Manager agree that this Construction Management Agreement shall be amended subsequent to its execution to add a mutually agreed Exhibit .

B. Subcontractor Costs. Payments made by the Construction Manager to subcontractors in accordance with the requirements of the subcontracts as approved by Cherokee Nation. Payment made by Cherokee Nation to Special Subcontractors or other subcontractors engaged directly by Cherokee Nation, except for the following: the Architect, subcontracts for furniture, fixtures, equipment and themeing, and independent testing and inspection contractors engaged directly by Cherokee Nation.

C. Costs of Materials and Equipment Incorporated in The Project.

- (1) Costs, including transportation, of materials and equipment incorporated or to be incorporated in the Project.
- (2) Costs of materials described in Subparagraph 5(D)(1) in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to Cherokee Nation at the completion of the Work or, at Cherokee Nation's option, shall be sold by Construction Manager, and amounts realized, if any, from such sales shall be credited to Cherokee Nation as a deduction from the Cost of the Work.
- (3) Costs of materials purchased directly by Cherokee Nation, except for costs of materials associated with furniture, fixtures, equipment, and themeing.

D. Costs of Other Materials and Equipment, Temporary Facilities and Related Items.

- (1) Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, that are provided by the Construction Manager at the Job Site and fully consumed in the performance of the Work, and cost less salvage value on such items if not

fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value.

- (2) Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers that are provided by the Construction Manager at the Job Site (inclusive of those shown in the attached Exhibit), whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to Cherokee Nation's prior approval, and in no case shall the rates be higher than the rate paid by the Construction Manager, including all discounts.
- (3) Costs of removal of debris from the site.
- (4) Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone service at the site, and reasonable petty cash expenses of the site office.
- (5) That portion of the reasonable out of town travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work.

E. Miscellaneous Costs.

- (1) Sales, use, or similar taxes imposed by a governmental authority which are related to the Work and for which the Construction Manager is liable.
- (2) Fees and assessments for the building permit and for other permits, licenses, and inspections that the Construction Manager is required by the Contract Documents to pay.
- (3) Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work other than that for which payment is permitted by Subparagraph 5(G)(2).
- (4) Royalties and license fees paid for the use of a particular design, process, or product required by the Contract Documents.
- (5) Construction Manager shall not bear the financial responsibility or costs associated with the claims made by subcontractors or the replacement of subcontractors in connection with claims or costs arising out of the provisions of Paragraph 11 of the Cherokee Nation Standard Construction Terms and Conditions. In the event that Construction Manager is required to make additional payments to any subcontractor or replace any subcontractor for claims arising out of subsurface conditions or other claims arising out of the provisions of said Paragraph 11, those expenses shall be included in the Cost

of the Work and will be the subject of Change Order if the amount exceeds the cost of any awarded subcontract for work on subsurface conditions. Construction Manager agrees to diligently pursue any claim against subcontractor for violation of the provisions of said Paragraph 11, including filing a claim against the subcontractor's performance bond. The cost of pursuing any such claim shall be included in the Cost of the Work; provided, however, that the costs of pursuing such claims shall not be included in the calculation of the Construction Management Fee.

- (6) That portion directly attributable to this Construction Agreement of premiums and deductibles for insurance and bonds, whether for Construction Manager or Construction Manager's subcontractors; provided, however, that the costs of such directly attributable premiums, deductibles and bonds shall not be included in the calculation of the Construction Management Fee.

F. Other Costs. Other costs incurred in the performance of the Work if and to the extent approved in advance and in writing by Cherokee Nation.

G. Emergencies and Repairs to Damaged or Nonconforming Work. The Cost of the Work shall also include costs incurred by the Construction Manager:

- (1) In taking action to prevent threatened damage, injury, or loss in case of an emergency affecting the safety of persons and property; or
- (2) In repairing or correcting damaged Work executed by the Construction Manager or the Construction Manager's subcontractors or suppliers, provided that such damaged Work was not caused by the negligence of the Construction Manager or the Construction Manager's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Construction Manager, or the failure of the Construction Manager's personnel to supervise adequately the Work of the subcontractors or suppliers, and only to the extent that the cost of repair is not recoverable by the Construction Manager from insurance, subcontractors, or suppliers.

H. Exclusions from Cost of the Work.

- (1) Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as shown on Exhibit ____.
- (2) Expenses of the Construction Manager's principal office and offices other than the site office, except as shown on Exhibit ____.
- (3) Overhead and general expenses, except as shown on Exhibit ____.
- (4) The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.

- (5) Rental costs of machinery and equipment, except as shown in Subparagraph 5(D).
- (6) Costs due to the negligence of the Construction Manager or to the failure of the Construction Manager to fulfill a specific responsibility to Cherokee Nation set forth in this Construction Management Agreement.
- (7) Costs incurred in the performance of Pre-Construction Phase Services.
- (8) Except as provided in Subparagraph 5(F), any cost not specifically and expressly described in Paragraph 5.
- (9) Compensation paid to the Architect or its consultants.
- (10) Costs of any Work performed by Cherokee Nation, its consultants, contractors, or subcontractors relating to furniture, fixtures, equipment, and themeing.
- (11) Costs of acquiring land, rights of way, financing, or other costs that are the responsibility of Cherokee Nation.
- (12) The Construction Management Fee.
- (13) Costs of any work performed by independent testing contractors retained by Cherokee Nation.

I. Discounts, Rebates, and Refunds.

- (1) Cash discounts shall accrue to Cherokee Nation for materials purchased directly by Cherokee Nation. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to Cherokee Nation, and the Construction Manager shall make provisions so that they can be secured.
- (2) Amounts which accrue to Cherokee Nation in accordance with the provisions of Subparagraph 5(I)(1) shall be credited to Cherokee Nation as a deduction from the Cost of the Work.

J. Accounting and Inventory Records with Regard to Costs of the Work. The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper inventory and financial management under this Construction Management Agreement, and the accounting, inventory and control systems shall be satisfactory to Cherokee Nation and consistent with the obligations set forth under the Cherokee Nation Standard Construction Terms and Conditions. Cherokee Nation and its auditors shall be afforded access to the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, inventory records, memoranda, and other data relating to this Project, and the Construction Manager shall preserve these for a

period of three (3) years after Final Payment, or for such longer period as may be required by law.

6. **Construction Management Services.** The Construction Manager shall commence, perform, and complete all construction management services to ensure completion of the Work in accordance with the Contract Documents for the construction of the Project. Among other services to be provided by Construction Manager hereunder shall be the following construction management services ("**Construction Management Services**"):

A. **Construction Phase.** The Construction Phase of the Project shall commence upon the award of the Construction Manager's Construction Management Agreement and will terminate thirty (30) days after Final Payment. During the Construction Phase, Construction Manager shall provide administration of the contracts in cooperation with Cherokee Nation and the Architect as set forth in the Contract Documents and onsite supervision of the progress of construction. Further to this Section, Construction Manager shall include, but is not limited to, the following services:

- (1) Issue and competitively bid all bid packages in strict accordance with Owner's purchasing policies and contract with sub-contractors acceptable to Cherokee Nation and provide administrative, management, and related services to coordinate scheduled activities and responsibilities of the subcontractors with each other and with those of Construction Manager, Cherokee Nation, and the Architect, as needed to diligently and effectively manage the Project in accordance with the latest approved estimate of construction cost, the Project schedule, and the Contract Documents;
- (2) Attend meetings as scheduled and conducted by Cherokee Nation, the Architect, and Cherokee Nation's contractors to discuss such matters as procedures, progress, and scheduling, and prepare and promptly distribute minutes thereof to all participants;
- (3) Update and reissue the Project Schedule bi-weekly incorporating the activities of the various contractors and suppliers on the Project, including information concerning: (i) activity sequences; (ii) drawings, product data, and samples; (iii) procurement and delivery of products requiring long lead-times; and (iv) recommended corrective actions to Cherokee Nation whenever an update indicates that the previously approved Project construction schedule may not be met;
- (4) Coordinate the sequence of construction and assignment of space in areas where the subcontractors are performing Work, consistent with the Contract Documents and using information provided by the sub-contractors;
- (5) Monitor the approved estimate of construction cost using actual costs for activities in progress and estimates for uncompleted tasks by way of comparison with approved estimates and Schedules;

- (6) Develop cash flow reports and forecasts for the Project and advise Cherokee Nation as to variances between actual and budgeted or estimated costs;
- (7) Maintain accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring accounting records;
- (8) Review and monitor the safety programs developed by each of the subcontractors for purposes of coordinating their respective safety programs;
- (9) Determine in general that the Work of each subcontractor is being performed in accordance with the requirements of the Contract Documents, endeavoring to guard Cherokee Nation against defects and deficiencies in the Work; provide timely written notification to Cherokee Nation of any uncorrected defect or deficiencies in the Work, together with a recommended course of corrective action; require, when necessary, additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed; and in consultation with Cherokee Nation, reject nonconforming Work;
- (10) Schedule and coordinate the sequence of construction in accordance with the Contract Documents and the latest approved Project Schedule;
- (11) Transmit to the Architect, with copies to Cherokee Nation, any requests for interpretations of the meaning and intent of the drawings and specifications, and assist, if requested, in the resolution of questions that may arise;
- (12) Review requests for changes, assist in negotiating subcontractors' proposals; submit recommendations to the Architect and Cherokee Nation; and, if they are accepted, prepare, as requested by the Architect, Change Orders and Construction Change Directives incorporating the Architect's modifications to the Contract Documents;
- (13) Assist the Architect in the review, evaluation and documentation of Claims;
- (14) Obtain certificates of insurance from the contractors and forward same to Cherokee Nation;
- (15) Establish and implement, in collaboration with the Architect, procedures for expediting the processing and approval of shop drawings, product data, samples, and other submittals with such reasonable promptness as will cause no delay in the Work or in the activities of Cherokee Nation or the subcontractors, to include all materials submitted by the subcontractor and coordination of submittals with information contained in related documents and the approval and transmission thereof to Cherokee Nation and the Architect;

- (16) Record the progress of the Project, submitting written daily progress reports to Cherokee Nation and the Architect, including information on each subcontractor and its Work and the entire Project, and showing percentages of completion; and keep a daily log containing a record of weather, each subcontractor's Work on the site, number of workers, identification of equipment, Work accomplished, problems encountered, and other similar relevant data as Cherokee Nation may require;
- (17) Maintain and make available to the Architect during the Project and for delivery to Cherokee Nation on completion: (i) one record copy of all contracts and subcontracts, Drawings, Specifications, addenda, Change Orders, and other modifications, in good order and marked current to record changes and selections made during construction, and approved shop drawings, product data, samples, and similar required submittals and (ii) duplicate records of principal building layout lines, elevations of the bottom of footings, floor levels, and key site elevations certified by a qualified surveyor or professional engineer;
- (18) Arrange for the delivery, storage, protection, and security of Cherokee Nation-purchased materials, systems, and equipment that are a part of the Project until such items are incorporated therein;
- (19) Observe, with the Architect's and Cherokee Nation's maintenance personnel, the contractors' final testing and start-up of utilities, operational systems, and equipment;
- (20) Upon determining that a subcontractor's Work or a designated portion thereof is substantially complete, prepare for Cherokee Nation and the Architect a list of incomplete or unsatisfactory items and a schedule for their completion, and assist Cherokee Nation and the Architect in inspections to determine whether the Work or designated portion of it is substantially complete;
- (21) Evaluate the completion of the Work and make recommendations to Cherokee Nation and the Architect when the Work is ready for final inspection, and assist Cherokee Nation and the Architect in conducting same;
- (22) Secure and transmit to the Architect warranties and similar submittals required by the Contract Documents for delivery to Cherokee Nation; deliver all keys, manuals, record drawings, and maintenance stocks to Cherokee Nation, and forward to the Architect a final Project Application for Payment upon compliance with the requirements of the Contract Documents.
- (23) At all times throughout the Project, Construction Manager shall make reasonable efforts to identify time and cost savings opportunities, providing written recommendations to Cherokee Nation of any such opportunities.

7. **Construction Services or Additional Construction Management Services.** The services described in this paragraph are not included in the Construction Management Agreement. Any additional construction management services shall be by written amendment to this Construction Management Agreement or by written Change Order. Any construction services to be performed by Construction Manager for any or all of the construction of the Work on the Project shall be by separate contractor or subcontractor agreement mutually agreed to by Cherokee Nation and Construction Manager.

A. **Additional Construction Management Services.** The following construction management services will be supplied only as the need arises.

- (1) Services required because of significant changes in the Project, including but not limited to changes in size, quality, complexity, or Cherokee Nation's schedule;
- (2) Consultation concerning replacement of Work damaged by fire or other cause during construction and services required in connection with the replacement of such Work;
- (3) Services necessitated by the termination or default of the Architect or a Cherokee Nation contractor, by major defects or deficiencies in the Work of a Cherokee Nation contractor, or by failure of performance of Cherokee Nation;
- (4) If Construction Manager determines that additional construction management services are required, Construction Manager shall promptly notify Cherokee Nation of that fact and receive written approval from Cherokee Nation prior to commencing such service. If Cherokee Nation deems that such service is not required, or if such services are deemed by Cherokee Nation to be part of the Construction Management Services covered by this Construction Management Agreement, Cherokee Nation shall promptly instruct Construction Manager in writing not to commence such service, or to complete such services as Construction Management Services covered by this Construction Management Agreement. In the event Cherokee Nation and Construction Manager disagree as to whether such Work is Additional Work, the parties will resolve the dispute in accordance with the dispute resolution process set forth in the Cherokee Nation Standard Construction Terms and Conditions.

B. **Construction Services.** Construction Manager reserves the right to bid for and to perform any part of the construction of the Work on the Project ("Construction Services"). Cherokee Nation consents to permit Construction Manager to bid for and to perform all or any portion of the Construction Services pursuant to a separate contractor or subcontractor agreement. By doing so, however, Cherokee Nation is not committing to an award of any of the Construction Services to Construction Manager.

8. **Schedule and Project Team.**

- A. **Schedule.** Cherokee Nation and Construction Manager agree that a firm construction schedule is critical to project completion. Promptly after execution of the Construction Management Agreement, Construction Manager shall deliver to Cherokee Nation's Director and the Architect its Critical Path Method (CPM) construction schedule ("**Schedule**" or "**Project Schedule**") for the Work in a form approved by Cherokee Nation. For purposes hereof, a CPM Schedule is defined as a planning, scheduling and control technique where a construction project is completely planned and scheduled and an arrow diagram drawn to show the interconnected individual tasks involved in constructing the Project, which permits determination of the relative significance of each event, and establishes the optimum sequence and duration of operations. This Schedule shall identify all milestones (including Construction Manager-imposed milestones) and the activities related thereto. This Schedule shall not exceed the time limits set forth under the Contract Documents. The Schedule shall be revised bi-weekly, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. Cherokee Nation and the Architect shall review and approve the Schedule and thereafter may request Construction Manager to make further changes and modifications. Construction Manager shall perform the Work or cause the Work to be performed in accordance with the most recent Schedule submitted to and approved in writing by Cherokee Nation. The Schedule shall be incorporated into the Construction Management Agreement as if fully set out herein. Construction Manager shall become obligated to complete or cause to be completed the various portions of the Work in accordance with starting and completion dates stated therein. During the performance of the Work, Construction Manager shall maintain at the Job Site a progress schedule showing the degree of completion of each segment of the Work. Construction Manager shall provide Cherokee Nation with weekly progress reports. Construction Manager shall promptly respond to schedule change requests within the time specified. The Schedule shall include the timing of any materials or work to be supplied by Cherokee Nation or Architect or Work to be performed by contractors engaged directly by Cherokee Nation, and any delay in meeting the critical path items for that portion of the Work to be supplied by Cherokee Nation or Cherokee Nation's subcontractors shall result in an extension of the time for Substantial Completion by the amount of the delay, as amended by Change Order.
- B. **Project Team.** Prior to the commencement of the Work, Construction Manager shall designate a competent Project Team consisting of—at a minimum—a Senior Project Manager, Superintendent, and Assistant Superintendent (collectively, the "**Project Team**") and will inform Cherokee Nation in writing of the name, qualifications, experience, address, and contact information of each member of the Project Team. Construction Manager shall also provide Cherokee Nation with the names, qualifications, experience, addresses, and contact information of all persons who will assist the Project Team. A member of the Project Team will be present at the Job Site at all times in which Work is actually in progress and will have complete authority

to represent and act for Construction Manager. The Project Team shall supervise and direct the Work and shall not physically participate in the actual performance, assemblage or installation of the Work. All written directions given to the Project Team by Cherokee Nation shall be as binding on the Construction Manager as if they were given directly to Construction Manager. If Construction Manager's Project Team or any of their assistants are or become unacceptable to Cherokee Nation, then any member of the Project Team or the unacceptable assistants shall be promptly replaced upon request by Cherokee Nation. The Project Team, as approved by Cherokee Nation, shall be appointed until completion of the Work and shall not be removed from the Project without the written consent of Cherokee Nation.

9. **Invoicing and Payment.**

- A. **Payment.** The Construction Manager's fee and the Cost of the Work to date shall be paid monthly as the Work progresses less retainage of ten percent (10%), which shall be withheld and paid, without interest, upon Final Completion. All such payments shall be made on the 20th day of the month in which the Payment Application is received.
- B. **Payment Applications.** Construction Manager shall submit five (5) copies of the monthly invoice to the Architect for its fee and any Costs of the Work actually expended by Construction Manager and for materials stored on the site through at least the 25th day of the immediately preceding month. Each application for payment shall be due on or before the 1st day of each month. Each application shall be based on the Construction Management Fee for the Cost of the Work and any Costs of the Work actually expended by Construction Manager, labor and materials incorporated into the Work, and of materials suitably stored at the site thereof up to at least the 25th day of the immediately preceding month, less the aggregates of previous payments, and shall be accompanied by a form of a Progress Payment partial release form agreed to by Construction Manager and Cherokee Nation, unless payment is withheld pursuant to the terms of the Cherokee Nation Standard Construction Terms and Conditions. Architect shall then have ten (10) days to review and provide written approval of any Payment Application.
- C. **Schedule of Values.** Before the first application for payment, Construction Manager shall submit for Cherokee Nation's approval a Schedule of Values allocating the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as Cherokee Nation may require. This Schedule of Values supplied shall be used as a basis for Construction Manager's application for payment as a method of showing progress on the Project.
- D. **Final Payment.** Final Payment to Construction Manager shall be in accordance with Cherokee Nation Standard Construction Terms and Conditions with the exception of Paragraph 18(K)(5) thereof, which shall not apply to the Construction Manager.

10. **Construction Manager's Insurance and Bonds.**

- A. **Insurance.** Construction Manager will carry or cause to be carried and maintained in force throughout the entire term of this Construction Management Agreement insurance coverages of the types and in the coverage amounts described in Paragraph 22 of the Standard Construction Terms and Conditions. The limits set forth therein are minimum limits and will not be construed to limit Construction Manager's liability. All costs and deductible amounts will be for the sole account of the Construction Manager.
- B. **Bonds.** Construction Manager shall furnish Performance, Payment, and Maintenance Bonds as required by Paragraph 23 of the Standard Construction Terms and Conditions.

11. **Termination Prior to Project Completion.** This Construction Management Agreement may be terminated only as provided herein or in the Cherokee Nation Standard Construction Terms and Conditions. If Cherokee Nation terminates this Construction Management Agreement pursuant to this paragraph after commencement of the Construction Phase, the Construction Manager shall be paid an amount to be calculated as follows:

- (1) The actual Costs of the Work incurred and paid by the Construction Manager from the first day the Work began up to and including the day on which this Agreement is terminated (the "Date of Termination"); PLUS
- (2) The Construction Manager's Fee computed upon the Cost of the Work from the first day the Work began up to and including the Date of Termination at the rate of _____; LESS
- (3) The aggregate of previous payments made by Cherokee Nation to the Date of Termination.

12. **Disputes and Claims.** Any Claim arising under this Construction Management Agreement that remains unresolved after referral to the Architect, as provided in Cherokee Nation's Standard Construction Terms and Conditions, shall be submitted to nonbinding mediation. Nonbinding mediation shall consist of the submission of the dispute to the **Director** for Cherokee Nation and the Project Manager for Construction Manager. Within five (5) days following the receipt of the Architect's written notification to the parties or within five (5) days following the deadline for such notification in the event the Architect fails to comply with the provisions of Paragraph 42 of Cherokee Nation's Standard Construction Terms and Conditions, the **Director** and the Project Manager shall meet to attempt to resolve the Claim. In the event the parties cannot resolve the Claim within five (5) days thereafter, the Claim will then be submitted to the **Chief of Staff** of Cherokee Nation and the President or Chief Executive Officer of Construction Manager who shall meet to attempt to resolve the dispute. No further action on any such Claim shall be taken by either party until the **Chief of Staff** of Cherokee Nation and the President or Chief Executive Officer of Construction Manager have had twenty (20) days to attempt to resolve the Claim. Thereafter, in the event the Claim remains unresolved, either party may seek relief from the Courts of the Cherokee

Nation. Notwithstanding any provision of the Federal Arbitration Act, 9 U.S.C. 1, *et seq.*, the AAA Rules, or this Construction Management Agreement, the parties agree that neither party may file for binding arbitration of their dispute, and that any perceived or implied right to do so is hereby expressly waived. The parties further agree that exclusive jurisdiction shall be in the Courts of the Cherokee Nation sitting in Tahlequah, Oklahoma, and that venue shall lie only in such court, and any and all objections to such jurisdiction and venue are hereby waived by Cherokee Nation, Construction Manager, and any contractors, subcontractors, or consultants thereof. All parties agree to be bound by the rulings of the Courts of the Cherokee Nation.

13. **Governing Clause.** This Construction Management Agreement, including all exhibits attached hereto shall be subject to the Contract Documents. In the event, however, that there is a conflict between the Contract Documents and the Construction Management Agreement, the terms of the Construction Management Agreement shall be controlling.
14. **Governing Laws and Conflict of Law.** This Agreement shall be governed by, construed, and enforced in accordance with the laws of the United States and, where applicable, the laws of the Cherokee Nation. If it should appear that any of the Agreement terms are in conflict with any rule of law or statutory provision of the United States or, where applicable, with any rule of law or statutory provision of the Cherokee Nation, such conflicting term(s) shall be deemed inoperative and null and void insofar as it may be in conflict with such rule of law or statutory provision, and shall be deemed modified to conform to such rule of law or statutory provision. However, such conflict shall not operate to nullify or void the entire Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Construction Management Agreement by their duly authorized agents effect as of the date first set forth above.

CHEROKEE NATION

Signature: _____

Name: _____

Title: _____

Date: _____

CONSTRUCTION MANAGER

Signature: _____

Name: _____

Title: _____

Date: _____

Exhibit A to Construction Management Agreement

<u>STANDARD CONSTRUCTION TERMS AND CONDITIONS</u>

Contract #

Cherokee Nation
17675 South Muskogee Avenue
Tahlequah, Oklahoma 74464
Telephone: (918) 453-5000

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CHEROKEE NATION STANDARD CONSTRUCTION TERMS AND CONDITIONS

The following are Cherokee Nation's Standard Construction Terms and Conditions, which shall be incorporated by reference in any agreement, contract, letter of intent, or understanding of any kind or nature whatsoever (hereinafter referred to as "**Contract**") between Cherokee Nation, Architect, Construction Manager, and any contractor, subcontractor, supplier, design professional, consultant or any other person or persons who perform services or provide materials in connection with any Work performed in furtherance of the completion of the Project (hereinafter referred to as "**Contractor**").

1. **Contract Documents.** The Contract Documents shall consist of the Contract, including these Cherokee Nation's Standard Construction Terms and Conditions which are incorporated therein; any general, supplementary or other conditions adopted by Cherokee Nation and agreed to by Contractor; the Drawings and Specifications for the Work; addenda issued prior to execution of the Contract; and agreed modifications issued after execution of the Contract.
2. **The Work.** The "**Work**" shall include all necessary construction services of any kind or nature in connection with the construction for Cherokee Nation of [INSERT PROJECT TITLE] (the "**Project**"), in accordance with the Contract Documents. (The location of the Project is also referred to as the "**Job Site.**")
3. **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 Cherokee Nation or by Contractor.
4. **The Drawings.** The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, general including plans, elevations, sections, details, schedules and diagrams.
5. **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.
6. **The Project Manual.** The Project Manual is the volume usually assembled for the Work which may include the bidding requirements, sample forms, Cherokee Nation Standard Construction Terms and Conditions, the Contract, and Specifications.
7. **Execution, Correlation and Intent.**
 - A. **Representation by Contractor.** Execution of the Contract by Contractor is a representation that Contractor has visited the Job Site, become familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.
 - B. **Intent of the Contract Documents.** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by

Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; provided, however, performance by Contractor shall only be required to the extent consistent with the Contract Documents.

- C. **Organization of Specifications.** Organization of the Specifications into divisions, sections, and articles and arrangement of Drawings shall not control Contractor in dividing the Work among its contractors or subcontractors or in establishing the extent of Work to be performed by any trade.
 - D. **Terminology.** Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.
8. **Cherokee Nation's Representatives.** Cherokee Nation's Representative for purposes of the Project shall be [INSERT NAME OF DESIGNEE] ("**Owner's Representative**"). The designation of [INSERT NAME OF DESIGNEE] as Owner's Representative, shall not serve to assign any of Cherokee Nation's right title or interest in the Projects as Owner to [INSERT NAME OF DESIGNEE], and Contractor shall be required to receive all necessary approvals, and supply all information required by the Contract Documents to both the Owner's Representative and Cherokee Nation. If the signature of Owner is required for any reason under these Terms and Conditions, such as directives, approvals, or consents, only the following individual(s) shall have the authority to sign on behalf of Cherokee Nation as Owner: [INSERT NAME].
9. **Shop Drawings, Product Data, and Samples.**
- A. **Shop Drawings.** Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by Contractor or its subcontractor, sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.
 - B. **Product Data.** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by Contractor to illustrate materials or equipment for some portion of the Work.
 - C. **Samples.** Samples are physical examples which illustrate materials, equipment, or workmanship and establish standards by which the Work will be judged.
 - D. **Review by Contractor.** Contractor shall review, approve and submit to the Architect and Construction Manager Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of Cherokee Nation or of separate contractors.
 - E. **Approval by the Architect.** Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or

similar submittals until the respective submittal has been approved by the Architect and Owner's Representative. Such Work shall be in accordance with approved submittals.

- F. **Representation by Contractor.** By approving and submitting Shop Drawings, Product Data, Samples, and similar submittals, Contractor represents that it has determined and verified materials, field measurements, and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
 - G. **Deviations.** Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's and Owner's Representative's approval of Shop Drawings, Product Data, Samples, or similar submittals unless Contractor has specifically informed the Architect and Owner's Representative in writing of such deviation at the time of submittal and the Architect and Owner's Representative have given written approval to the specific deviation. Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the Architect's and Owner's Representative's approval thereof.
 - H. **Specific Attention.** Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect or Owner's Representative on previous submittals.
10. **Use of Job Site.** Contractor shall confine operations at the Job Site to areas permitted by law, ordinances, permits, and the Contract Documents and shall not unreasonably encumber the Job Site with materials or equipment.
11. **Review of Contract Documents and Field Conditions by Contractor:**
- A. **Examination of the Job Site.** Contractor is expected to carefully examine the Job Site of the proposed Work, the Plans, Specifications, and Contract forms. Contractor shall satisfy itself as to the character, quality, and quantities of Work to be performed, materials to be furnished, and as to the requirements of the proposed Contract. The submission of a bid and the execution of a Contract between Cherokee Nation and any contractor, subcontractor, supplier, design professional, consultant, or any other person or persons who perform services or provide materials in connection with any Work performed in furtherance of the completion of the Project shall be prima facie evidence that such Contractor has made such examination and is satisfied as to the conditions to be encountered in performing the Work and as to the requirements of the proposed Contract, Plans, and Specifications. Boring logs and other records of subsurface investigations and tests are available for inspection by Contractor. It is understood and agreed that such subsurface information, whether included in the Plans, Specifications, or otherwise made available to Contractor, was obtained and is intended for Cherokee Nation's

design and estimating purposes only. Such information has been made available for the convenience of all contractors. It is further understood and agreed that each contractor is solely responsible for all assumptions, deductions, or conclusions which it may make or obtain from its examination of the boring logs and other records of subsurface investigations and tests that are furnished by Cherokee Nation.

- B. **Verification of Field Conditions.** Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to Contractor with the Contract Documents before commencing activities. Errors, inconsistencies, or omissions discovered shall be reported at once to Owner's Representative.

12. **Supervision and Construction Procedures.**

- A. **Supervision of the Work.** Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. Contractor shall be responsible for control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters.
- B. **Responsibility of the Contractor.** Contractor shall be responsible to Cherokee Nation for acts and omissions of Contractor's employees, contractors, subcontractors, and their agents and employees, and other persons performing portions of the Work under a contract or subcontract with Contractor.
- C. **Performance of the Work.** Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect or by tests, inspections, or approvals required or performed by persons other than Contractor.
- D. **Inspections of the Work.** Contractor shall be responsible for inspection of portions of Work already performed on the Project to determine that such portions are in proper condition to receive subsequent Work.

13. **Labor and Materials.**

- A. **Payment.** Unless otherwise provided in the Contract or the Contract Documents, Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.
- B. **Enforcement of Discipline.** Contractor shall enforce strict discipline and good order among Contractor's employees and other persons carrying out the Contract.

Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

- C. **Sufficient Labor, Materials, and Other Supplies.** Contractor shall diligently prosecute the Work, providing sufficient labor, materials, and other supplies at all times to assure performance of the Work in an orderly and expedient fashion and to ensure the Work is essentially complete by the date and time for Substantial Completion as defined in the Contract.

14. **Permits, Fees and Notices.**

- A. **Permits and Licenses.** Contractor shall secure or cause to be secured through its subcontractors all permits and licenses and shall pay all fees necessary for the lawful and proper performance of the Work. Contractor shall determine the amount of building permit fees, development impact fees, gas, sewer and/or water tap fees, and all other fees for water, sewer, and electric, including connection fees and deposits required for the Work. Contractor shall complete all required applications and obtain related permits on Cherokee Nation's behalf. The cost thereof shall be the sole responsibility of Contractor. Cherokee Nation will reimburse Contractor for this cost with no mark-up or pay directly at Cherokee Nation's option if time allows.
- B. **Compliance With Laws.** Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, codes, and lawful orders of public authorities bearing on performance of the Work, including, without limitation, the Tribal Employment Rights Office of the Cherokee Nation ("TERO").
- C. **Responsibility of Contractor.** If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes (including, without limitation, the applicable National Fire Protection Association Codes and the applicable local fire codes and ordinances), and rules and regulations, Contractor shall assume full responsibility for such Work and shall bear the attributable costs required to remedy such non-compliance.

15. **Schedule, Pre-Construction Meeting, and Superintendent.**

- A. **Schedule.** Cherokee Nation and Contractor agree that a firm construction schedule is critical to project completion. Promptly after contract award, Contractor shall deliver to Owner's Representative and the Architect its Critical Path Method (CPM) construction schedule ("**Schedule**") for the Work in a form approved by Cherokee Nation. For purposes hereof, a CPM Schedule is defined as a planning, scheduling, and control technique where a construction project is completely planned and scheduled and an arrow diagram drawn to show the interconnected individual tasks involved in constructing the Project, which permits determination of the relative significance of each event, and establishes the optimum sequence and duration of operations. The Schedule shall identify all milestones (including Contractor-imposed milestones) and the activities related thereto. The Schedule shall not

exceed the time limits set forth under the Contract Documents. The Schedule shall be revised at appropriate intervals as required by the conditions of the Work, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. Owner's Representative and the Architect shall review and approve the Schedule and thereafter may request that Contractor make further changes and modifications. Contractor shall perform the Work or cause the Work to be performed in accordance with the most recent Schedule submitted to and approved in writing by Cherokee Nation and Contractor. The Schedule shall be incorporated into the Contract as if fully set out therein. Contractor shall become obligated to complete or cause to be completed the various portions of the Work in accordance with starting and completion dates stated therein. During the performance of the Work, Contractor shall maintain at the Job Site a progress schedule showing the degree of completion of each segment of the Work. Contractor shall provide Owner's Representative with weekly progress reports as required by Cherokee Nation sufficient to allow Cherokee Nation to request revisions to the Schedule to ensure that the Project Work is completed by the time for Substantial Completion. Contractor shall promptly respond to schedule change requests within the time specified. The Schedule shall include the timing of any materials or work to be supplied by Cherokee Nation or Architect.

- B. Preliminary Meeting.** Contractor, upon award of the Contract and before construction commences, shall schedule a meeting with Owner's Representative and the Architect. Contractor shall instruct all special contractors and subcontractors whose work is considered significant to the completion of the Project by Contractor or Cherokee Nation to attend this meeting. Contractor shall bring to this meeting the Schedule prepared pursuant to Paragraph 15(A) hereof, a complete list of subcontractors for all phases of the Work, including those not previously submitted on the Bid Form, and a completed Schedule of Values. The location of this meeting shall be Owner's Representative's office for the Project.
- C. Superintendent.** Prior to commencement of the Work, Contractor shall designate a competent superintendent ("**Superintendent**") and will inform Cherokee Nation in writing of the Superintendent's name, qualifications, experience and address. Contractor shall also provide Cherokee Nation with the names, qualifications, experience and addresses of all persons who will assist the Superintendent. The Superintendent or his designated assistant will be present at the Job Site at all times during which Work is actually in progress and will have complete authority to represent and act for Contractor. The Superintendent shall supervise and direct the Work and shall not physically participate in the actual performance, assemblage or installation of the Work. All directions given to the Superintendent by Owner's Representative shall be as binding on Contractor as if they were given directly to Contractor. If Contractor's Superintendent or any of his assistants are or become unacceptable to Cherokee Nation then the Superintendent or the unacceptable assistants shall be promptly replaced upon request by Cherokee Nation. The Superintendent, as approved by Cherokee Nation, shall be appointed until

completion of the Work and shall not be removed from the Project without the written consent of Cherokee Nation.

16. **Time of the Essence.** Time is of the essence. Contractor and the Architect shall coordinate their Work as may be directed by Cherokee Nation according to the accepted Schedule.

17. **Furnishing and Ownership of Documents.**

- A. **Copies of Drawings and Specifications.** Contractor will be furnished a sufficient number of reproducible construction Drawings and Specifications, either separately or in the form of a Project Manual. Contractor shall be responsible for distribution of documents to its subcontractors and suppliers involved with the Work in a timely manner to maintain the progress of the Work in accordance with the accepted Schedule.
- B. **Property of Cherokee Nation.** Drawings and specifications furnished by Cherokee Nation are the property of Cherokee Nation and shall not be used by Contractor on other work.
- C. **Forms.** Cherokee Nation will furnish, in electronic media, one set of forms as identified in the Contract Documents for parties with whom it has directly contracted. Contractor will not modify Cherokee Nation forms, but rather will input the relevant information onto the forms and thereafter use them for their intended purpose on the Project. Said forms are Cherokee Nation's property and shall not be used by Contractor on other work.
- D. **Requirements Provided by Cherokee Nation.** Cherokee Nation will furnish Contractor with complete information with respect to the requirements of the Project, including all necessary Contract Documents. To the extent available to Cherokee Nation or as required by law, Cherokee Nation will furnish to Contractor or cause to be furnished to Contractor the following items, at Cherokee Nation's expense:
- (1) laboratory and environmental tests, inspections, and reports required by law;
 - (2) a sufficient quantity of Contract Documents;
 - (3) surveys describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a written legal description of the Job Site; and
 - (4) (notwithstanding property held in Trust by the Federal Government) geotechnical reports and tests including, but not limited to, test borings, test pits, determination of soil bearing values, percolation tests with reports and reports on other subsurface conditions, and appropriate professional recommendations. It is understood and agreed that such reports, whether

included in the Plans, Specifications, or otherwise made available to the Contractor, were obtained and are intended for Cherokee Nation's design and estimating purposes only. Such information has been made available for the convenience of all contractors. It is further understood and agreed that each contractor is solely responsible for all assumptions, deductions, or conclusions which it may make or obtain from its examination of the reports and other records of subsurface investigations and tests that are furnished by Cherokee Nation.

18. Invoicing and Payment.

- A. Payment.** Contractor's cost-to-date of labor and materials incorporated into the Work shall be paid monthly as the Work progresses less retainage of ten percent (10%), which shall be withheld and paid, without interest, upon Final Completion. All such payments shall be made on the 25th day of the month in which the Payment Application is received.
- B. Schedule of Values.** Before the first application for payment, Contractor shall submit for Cherokee Nation's approval a Schedule of Values allocating the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as Cherokee Nation may require. This Schedule of Values shall be used as a basis for Contractor's application for payment as a method of showing progress on the Project; however, Cherokee Nation acknowledges that the amounts reflected on the Schedule of Values for specific items is not a representation or agreement by the Contractor as to the maximum cost of any one item.
- C. Payment Applications.** Contractor shall invoice Cherokee Nation monthly in duplicate for Work completed and for materials stored on the site through at least the 25th day of the immediately preceding month on Cherokee Nation's Contractor Progress Payment Request form. Each application for payment shall be due on or before the 1st day of each month. Each application shall be based on ninety percent (90%) of the labor and materials incorporated into the Work and of materials suitably stored at the site thereof up to at least the 25th day of the immediately preceding month, less the aggregates of previous payments, and shall be accompanied by a form of an executed Progress Payment Release-Unconditional. Such Payment Application shall be submitted to the Architect for review within five (5) days following receipt of the Payment Application. Architect shall then have ten (10) days to review and provide written recommendation for approval of payment to Cherokee Nation.
- D. Unconditional Progress Payment Releases.** Contractor's initial application for payment shall consist solely of the Progress Payment Request. Subsequent applications shall be accompanied by properly executed Unconditional Progress Payment Release forms executed by all its subcontractors, material suppliers, and potential lienors. All Unconditional Progress Payment Releases for this Project

shall be consistent in form and wording and shall be in the form agreed to by Cherokee Nation and Contractor.

- E. **Payment Including Change Order.** If a progress payment is to include payment for a Change Order, as that term is defined herein, a copy of the cover sheet of the fully executed Change Order shall accompany the Progress Payment Request.
- F. **Contractor's Affidavit.** When and if requested by Cherokee Nation, 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 Cherokee Nation and Contractor.
- G. **Payment to Third Parties.** Cherokee Nation reserves the right, without obligation, to withhold, reduce or recover payment if Contractor fails to pay any third party for labor, materials, or other costs incurred by Contractor in performance of the Work as and when due. Additionally, Cherokee Nation shall 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.
- H. **Payment for Materials Stored On Site.** Payment, subject to retention for materials and equipment suitably stored at the site and intended for incorporation in the Work, will be made by Cherokee Nation, subject to the following conditions:
 - (1) Contractor shall furnish to Owner's Representative satisfactory evidence that such materials have been properly received, inventoried, and stored at the Job Site in accordance with applicable manufacturer's recommendations and special requirements of Cherokee Nation;
 - (2) Payment shall be conditioned upon submission by Contractor of bills of sale or such other documentation as will evidence the transfer to title to such materials or equipment to Cherokee Nation upon payment;
 - (3) Risk of loss of any materials stored on or adjacent to the Job Site shall remain the obligation of Contractor until such time as title has passed to Cherokee Nation. Notwithstanding anything contained in this provision, the primary source of recovery for any loss shall be the Builders Risk insurance; and
 - (4) Payment will not be made for materials stored offsite unless authorized in writing by Cherokee Nation.
- I. **Certificate for Payment.** Cherokee Nation will, within thirty (30) days after the receipt of Contractor's Progress Payment Request, make payment or notify Contractor of Cherokee Nation reason for withholding the Request, or portions of the Request. Receipt by Cherokee Nation is defined to be delivery in person to

Cherokee Nation Executive Director's office located at 17675 S. Muskogee Avenue, Tahlequah, OK 74464. Payment is defined to be by Cherokee Nation's mailing by first-class U.S. Mail a check for the amount of the Request for payment, subject to retention and adjustment as provided in the Contract Documents. If the pay date occurs on a Saturday, Sunday or holiday, Cherokee Nation will make payment on the next business day. Contractor's Progress Payment Requests are to be dated the 25th of the month as defined in other provisions of the Contract Documents.

J. Decisions to Withhold Payment. Cherokee Nation may decline to make payment because of subsequently discovered evidence or subsequent observations, may nullify the whole or any part of any Progress Payment Request previously received and/or withhold payment to such extent as may be necessary to protect Cherokee Nation for loss because of:

- (1) defective Work not remedied;
- (2) third party claims filed or reasonable evidence indicating the probable filing of such claims;
- (3) failure of Contractor to make payments properly to suppliers or subcontractors or for labor, materials or equipment;
- (4) reasonable evidence that the Work cannot be completed for the unpaid balance of the subcontract amount;
- (5) damage to Cherokee Nation or another contractor or property of another;
- (6) reasonable evidence that the Work will not be completed within the time permitted for completion of the Project;
- (7) failure to carry out the Work in accordance with the Contract Documents;
or
- (8) materially inaccurate or incomplete information provided with the Request or Certificate of Payment.

K. Final Payment.

- (1) Contractor shall submit application for Final Payment. Final Payment and retention shall not become due until Contractor submits to Cherokee Nation (i) a Contractor's Affidavit acceptable to Cherokee Nation that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Cherokee Nation or its property or its sureties might in any way be responsible, have been paid or otherwise satisfied, (ii) consent of surety, if any, to Final Payment, (iii) when applicable, accurate record drawings for Contractor's Work, and (iv) if required by Cherokee Nation,

other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of lien arising out the Contract, to the extent and in such form as may be designated by Cherokee Nation.

- (2) If any of Contractor's subcontractors or suppliers refuses to furnish a release or waiver required by Cherokee Nation, Contractor may furnish a bond satisfactory to Cherokee Nation to indemnify it against any such lien. If any lien remains unsatisfied after all payments are made, Contractor shall refund to Cherokee Nation all monies that the latter may be compelled to pay in discharging such lien.
- (3) Final Payment shall constitute a waiver of Claims by Cherokee Nation except those arising from: (i) liens, claims, or security interest encumbrances arising out of the Contract; (ii) failure of the Work to comply with the requirements of the Contract Documents; or (iii) terms of warranties required by the Contract Documents.
- (4) Acceptance of Final Payment by Contractor shall constitute waiver of any known claims, except those previously made in writing and identified as unsettled at the time of final Application for Payment. Final Payment (including retention) will be due no later than sixty (60) days after completion of the Work in accordance with the Contract Documents. Final Payment shall include payment of any conditional items to which Contractor may be entitled hereunder, including amounts earned by completion of the Project.
- (5) Any billings received later than sixty (60) days after Final Completion will not be processed. Failure to cause billings to be received by Cherokee Nation within sixty (60) days of Final Completion is agreed to be conclusive proof of a failure to mitigate damages and shall be a complete defense to the recovery of any damages associated with said billings and said defense shall apply to any theory of recovery, whether legal or equitable, in contract or tort, and including fraud, breach of contract, promissory estoppel or quantum meruit. Payment to a Contractor shall not operate as approval or acceptance of Work done or materials furnished under the Contract Documents. In the event that any of those items identified on the Punch List remain undone or uncorrected within forty-five (45) days of Substantial Completion, Cherokee Nation may, after written notice, cause any of the items to be completed or corrected and back charge the Contractor for the actual cost incurred by Cherokee Nation.

19. Completion.

- A. Substantial Completion.** Substantial Completion is defined as the stage in the progress of the Work when the Project or a designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the constructed

facilities are suitable and capable of being operated for their intended use, and Contractor, if applicable, has received a final Certificate of Occupancy. If, however, the constructed facilities are not occupied or used for their intended use for reasons not due to the construction set forth in this Contract, Substantial Completion is still met. Cherokee Nation may occupy or use any completed or partially completed portion of the Work at any state acceptable to Cherokee Nation and allowed by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion has reached the Substantial Completion stage. Before Substantial Completion, among other things, construction signage, temporary fencing, office trailers, storage trailers and temporary utilities shall be removed. Contractor's traffic control measures shall be eliminated and removed, if safe to do so. Contractor's insurance obligations shall remain in force and effect until Final Completion; however, upon occupancy of the constructed facilities, the existence of the Builder's Risk Insurance shall be governed by the terms of the Builder's Risk policy.

- B. **Right to Occupy before Substantial Completion.** Cherokee Nation retains the right to occupy or to use any completed or partially completed portion of the Work at any stage acceptable to Cherokee Nation and Contractor and allowed by public authority having jurisdiction over the Work. Such partial occupancy or use may commence whether or not that portion is complete for Substantial Completion. Partial use or occupancy shall not constitute acceptance of the Work.
- C. **Inspections by Contractor and Punch List.** Upon the date for Substantial Completion as set forth in the Contract, Contractor shall prepare and submit to the Architect and Owner's Representative a punch list of items to be completed or corrected. Contractor shall then have thirty (30) days following the date for Substantial Completion to complete or correct the items on the punch list, unless such additional time is provided in writing by Owner's Representative to complete such items. Failure to include an item on the punch list does not relieve the Contractor of the obligation to perform the Work in accordance with the Contract Documents.
- D. **Inspections by Cherokee Nation and Punch List.** Within twenty (20) days following receipt of Contractor's punch list, the Architect, Owner's Representative and designees will make an inspection of the Project to determine whether the Contractor's Work is substantially complete. If Cherokee Nation's inspection discloses any item, whether or not included on the Contractor's punch list, which is not in accordance with the requirements of the Contract Documents, Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item within thirty (30) days following notification by Owner's Representative. Within two (2) days thereafter, Contractor shall then submit a request for another inspection by the Architect, Owner's Representative and designees to determine Substantial Completion. Such subsequent inspection will be completed within five (5) days following such notification by Contractor.

Contractor is not relieved from completing or correcting Work by Cherokee Nation's failure to inspect the Work within the time frame provided for herein.

- E. **Certificate of Substantial Completion.** When the Work or a designated portion thereof is substantially completed, the Architect will, within five (5) days thereafter, prepare a Certificate of Substantial Completion, which shall establish the date of Substantial Completion, the responsibilities of Cherokee Nation and Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which Contractor shall finish all items on the punch list accompanying the Certificate, which time shall not exceed ten (10) days without the written consent of Owner's Representative. Completion of the above punch list items shall not affect the date of Substantial Completion.
- F. **Cherokee Nation's Receipt of Fixtures and Equipment.** Contractor understands, and shall take into consideration, that sixty (60) days prior to the date for Substantial Completion, Cherokee Nation may begin receiving fixtures and equipment to be stored in the facilities, and that Cherokee Nation and Cherokee Nation's separate contractor(s) may be installing fixtures and Cherokee Nation's furnished equipment or other equipment immediately thereafter.
- G. **Exterior Closed and Locked.** At least sixty (60) days prior to Contractor's scheduled date for Substantial Completion, all exterior openings shall be closed in, if required, exterior doors provided with locks, and the entire building sufficiently secure to protect Cherokee Nation fixtures.
- H. **Final Completion.** Upon receipt of written notice from Contractor that the Work is ready for final inspection and acceptance and upon receipt of a final application for payment, the Architect, Owner's Representative and designees will promptly make such inspections and, when they find the Work acceptable under the Contract Documents and the Contract fully performed, they will issue a Certificate of Final Acceptance and thereafter will approve Final Payment.

20. **Construction by Cherokee Nation or by Special Subcontractors.**

- A. **Cherokee Nation's Right to Perform Construction and to Award Separate Contracts.** Cherokee Nation reserves the right to perform construction related to the Project and to award separate contracts in connection with other portions of the Project (hereinafter referred to as "**Special Subcontractors**"). Cherokee Nation shall provide for coordination of the activities of Cherokee Nation's own employees and of each of the Special Subcontractors with the Work of the Contractor. Contractor shall participate with each Special Subcontractor and Cherokee Nation in reviewing their respective construction schedules when directed to do so by Cherokee Nation. Contractor shall make any revisions to the Schedule and the Project budget after a joint review and mutual agreement between Cherokee Nation and Contractor.

- B. Mutual Responsibility.** Contractor shall afford Cherokee Nation or the Special Contractors the opportunity for introduction and storage of their materials and equipment and performance of their activities and shall coordinate Contractor's construction and operations with Cherokee Nation or the Special Subcontractors. If part of Contractor's Work depends upon construction by Cherokee Nation or the Special Subcontractors, Contractor shall, prior to proceeding with that portion of the Work, promptly report to Owner's Representative that such construction by Cherokee Nation or the Special Subcontractors is required in order to give Cherokee Nation adequate time to coordinate such construction. Costs caused by delays or by improperly timed activities shall be borne by the party responsible therefore.

21. Subcontractors and Suppliers.

- A. Subcontractual Relations.** By appropriate agreement, written where legally required for validity, Contractor shall require each of its contractors or subcontractors, to the extent of the Work to be performed by its contractors or subcontractors, to be bound to Contractor by terms of the Contract Documents and the Cherokee Nation Standard Construction Terms and Conditions, and to assume toward Contractor all the obligations and responsibilities which Contractor, by these Conditions, assumes toward Cherokee Nation. Each subcontract agreement shall preserve and protect the rights of Cherokee Nation under the Contract Documents with respect to the Work to be performed by the contractor or subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, Contractor shall require each contractor or subcontractor to enter into similar agreements with sub-subcontractors. Contractor shall make available to each proposed contractor or subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the contractor or subcontractor will be bound, and, upon written request of the contractor or subcontractor identify to the contractor or subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Contractors or subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed sub-subcontractors.

B. Award of Subcontracts and Other Contracts for Portions of the Work.

- (1) Unless otherwise stated in the Contract Documents or the bidding requirements, Contractor, as soon as practicable after award of the Contract, shall furnish in writing to Cherokee Nation the names of persons or entities proposed for each principal portion of the Work. Owner's Representative will promptly reply to Contractor in writing stating whether or not Cherokee Nation, after due investigation, has reasonable objection to any such proposed person or entity.
- (2) Contractor shall not contract with a proposed person or entity to which Cherokee Nation has made reasonable and timely objection.

- (3) If Cherokee Nation has reasonable objection to a person or entity proposed by Contractor, Contractor shall propose another to whom Cherokee Nation has no reasonable objection.

C. **Contractor's Subcontracts.** Contractor shall not subcontract any part of the Work except as specifically provided in the Contract Documents or as Cherokee Nation, in its sole discretion, agrees to in writing. If applicable, Contractor will evaluate bids from subcontractors and suppliers and present tabulation of bids and qualifications. As a condition to commencing Work, Contractor shall submit, in writing, a list of all subcontractors and suppliers to be used in connection with the Work and shall within a reasonable time thereafter supply subcontractor's signed contracts and vendor purchase orders to Cherokee Nation and Owner's Representative per the Project Schedule. Contractor shall immediately notify Cherokee Nation and Owner's Representative, in writing, of any change in their subcontractors and suppliers. Contractor shall have each subcontractor and supplier complete the Progress Payment forms and attach them to its monthly Progress Payment Requests. Failure to comply with this provision will delay processing of monthly progress payments. For purposes of this Section, identified subcontractors and suppliers shall mean all subcontractors and those suppliers whose total price(s) exceeds five percent (5%) of the estimated Cost of the Work.

D. **Certificates of Insurance.** Contractor shall provide Cherokee Nation with acceptable certificates of policies of insurance for all contractors and subcontractors.

E. **Contingent Assignment of Subcontracts.** Each subcontract agreement for a portion of the Work is assigned by Contractor to Cherokee Nation provided that:

- (1) Assignment is effective only after termination of the Contract by Cherokee Nation for cause or for convenience and only for those subcontract agreements which Cherokee Nation accepts by notifying the contractor or subcontractor in writing; and
- (2) Assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

22. **Insurance.**

A. **Contractor's Liability Insurance.** Contractor shall carry or cause to be carried and maintained in force throughout the entire term of this Contractor's Agreement insurance coverage as described below with insurance companies acceptable to Cherokee Nation. 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 the sole responsibility of Contractor.

- (1) **Worker's Compensation.** To the extent such coverage is required by law, 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 insurance with limits of \$500,000 each accident, \$500,000 disease each employee, and \$500,000 disease policy limit.

- (2) General Liability. Commercial or Comprehensive General Liability insurance on an occurrence form with a combined single limit of \$2,000,000 each occurrence, \$2,000,000 Personal and Advertising Liability, \$4,000,000 General Aggregate, \$4,000,000 Products and Completed Operations Aggregate, and Ten (10) years Completed Operations Coverage from Substantial Completion.
 - (3) Excess Liability. Excess Liability Insurance coverage shall be maintained with the following limits: \$50,000,000 Each Occurrence; \$50,000,000 General Aggregate; \$50,000,000 Products and Completed Operations Aggregate, and Ten (10) years Completed Operations Coverage from Substantial Completion.
 - (4) Automobile Insurance. 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.
 - (5) Errors and Omissions. Contractor's Pollution Liability / Professional Liability / Errors and Omissions Liability insurance shall be maintained on a claims-made basis with limits of not less than \$5,000,000 for each claim and an annual aggregate of not less than \$5,000,000.
- B. Waiver of Subrogation.** In the above-described policies, Contractor agrees to waive and shall require its insurers to waive any rights of subrogation or recovery they may have against Cherokee Nation.
- C. Additional Insured.** Under the Automobile and General Liability insurance policies, Cherokee Nation shall be named as additional insured as respects Contractor's operations and as respects any Services performed under this Agreement. Any costs associated with naming Cherokee Nation as additional insured is included in the contract cost.
- D. Primary and Non-Contributory:** The Automobile and General Liability insurance policies will include the following "other insurance" amendment: "This insurance is primary insurance with respect to Cherokee Nation, and any other insurance maintained by Cherokee Nation is excess and not contributory with this insurance."
- E. Non-renewal or Cancellation.** Non-renewal, modification, or cancellation of policies described above will be effective only after written notice is received by Cherokee Nation from the insurance company thirty (30) days in advance of any such non-renewal, modification, or cancellation.

- F. Evidence of Insurance. Prior to commencing the Services to be provided hereunder, Contractor will deliver to Cherokee Nation certificates of insurance on an ACORD 25 or 25S form evidencing the existence of the insurance coverage required above. In the event of a loss or claim arising out of or in connection with the Services to be provided under this Agreement, Contractor agrees, upon request of Cherokee Nation, to submit the original or a certified copy of its insurance policies for inspection by Cherokee Nation.
- G. Non-Liability for Contractor's Loss. Cherokee Nation 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 its employees, servants or agents.
- H. Builder's Risk. If requested by Cherokee Nation, Contractor shall provide or cause to be provided Builders Risk Insurance on an "all risk" or equivalent policy form and shall include without limitation, terrorism coverage, insurance against perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, glass breakage, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss as well as all increased Cost of the Work, (including General Conditions) resulting from any related delay or disruption of the Work. This Builder's Risk insurance shall cover portions of the work stored off the site and also portions of work in transit.
- I. Other Risks. If Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, Cherokee Nation shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor.
- J. Insurance Company Ratings. All insurance to be provided by Contractor shall be written by insurance companies acceptable to the Cherokee Nation and carrying an AM Best rating of A- X or better.
23. Contractor's Bond. Contractor shall furnish Performance, Payment, and Maintenance Bonds as follows: Payment and Performance Bonds shall be in a sum equal to the contract price. If the Performance Bond provides a one (1) year warranty, a separate Maintenance Bond is not required. If the warranty period specified in the contract is for longer than one (1) year, a Maintenance Bond equal to ten percent (10%) of the contract price is required. Bonds shall be duly executed by a responsible corporate surety authorized to issue such bonds in the state where the project is located and the surety must be approved by Cherokee Nation. If Contractor is providing default insurance, then Contractor will provide a bond for a sum equal to the work not covered under the default insurance. Cherokee Nation has the right to fully review the default insurance and to decide if the default insurance provided is acceptable. At Cherokee Nation's request, Contractor shall disclose its cost (stated both as a

percentage of total Project cost, and an estimated total cost) for said bonds. The bonds shall name Cherokee Nation as obligee and shall be in the form or forms as agreed upon by Cherokee Nation and Contractor. The cost of the bonds shall be included in the contract amount.

24. Safety Regulations and Safety of Persons and Property.

- A. **Safety Plan.** Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract Documents.
- B. **Safety Representations.** Contractor, its agents, employees, suppliers, and subcontractors shall perform all Work in a safe and responsible manner and shall comply with all applicable safety laws and regulations promulgated by any Federal, State or Local government authority and regulations and all other safety rules and regulations related to such Work promulgated by any governmental agency in the jurisdiction the Work is located.
- C. **Protective Equipment.** During all Work performed hereunder, Contractor shall provide and enforce the use of suitable safety barriers and provide employees, agents, subcontractors, etc., with appropriate personal protective equipment where required (e.g., hard hat, hand, eye, foot and respiratory protection). Such personal protective equipment shall be worn by all persons during their presence in posted areas.
- D. **Right to Know.** Contractor's employees present at Cherokee Nation Job Site shall be provided copies of Material Safety Data Sheets used on site for all toxic substances to which Contractor's employees may be routinely exposed. Contractor shall provide Owner's Representative with Material Safety Data Sheets for any chemical substance used by Contractor on the Job Site.
- E. **Drug Testing.** Contractor, subcontractors, and supplier's employees may be subject to pre-employment and/or random drug testing.

25. Cooperation with Other Contractors. Contractor shall cooperate and coordinate its Work with other contractors employed by Cherokee Nation in order to insure that the Work of each shall be commenced and completed without delay.

26. Representations and Warranties.

- A. **General Representations and Warranties.** Contractor represents and warrants to Cherokee Nation that:
 - (1) all materials delivered hereunder are new and free from defects in material and workmanship;

- (2) Contractor has good title to the material and has or shall convey such good title to Cherokee Nation;
- (3) the material purchased or provided hereunder shall conform to the Contract Documents, including all applicable specifications, drawings, samples, or other descriptions provided by Cherokee Nation;
- (4) the material purchased or provided hereunder will be suitable for the purposes intended under the Contract Documents;
- (5) Contractor and its subcontractors have the requisite skill, experience, expertise, financial resources, and capability to perform properly and timely the Work as required by the Contract Documents;
- (6) Contractor will provide and perform the Work in strict compliance with the Contract Documents, manufacturers' printed directions, and all applicable law; and
- (7) Contractor and its subcontractors will perform the Work utilizing the skill and attention of experienced and competent contractors involved in the business of completing the Work and shall conduct the Work in a prudent, safe, and careful manner consistent with Cherokee Nation interests.

B. Warranty Exclusions. Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage.

C. Warranty Period. Such Representations and Warranties shall commence on the date of Substantial Completion and shall extend for a period one (1) year thereafter or such longer period as may be prescribed in the Contract Documents, or by law. Work not conforming to these standards will be considered defective. Any Work replaced or repaired pursuant to such warranty shall be further warranted for one (1) year after the completion of such repair or replacement. If any of the Work is defective in materials or workmanship, or is otherwise not in conformity with the requirements of the Contract Documents, Contractor shall promptly correct or replace such defect or nonconformity at Contractor's sole cost and expense and at a time or times convenient to Cherokee Nation and shall be liable for any damage to other work or property caused by such defects. After ten (10) days' written notice to Contractor of its intent to do so, Cherokee Nation may correct such defects and back charge Contractor for the actual cost of correcting the defect or nonconformity. Contractor's warranty shall include all labor, materials, shipping costs, and other associated costs regardless of the manufacturer's limited warranty, and shall be nonexclusive of other warranties or remedies available to Cherokee Nation.

- D. **Named Products.** Where products named in the specifications are accompanied by the term "or equal," or other language of similar effect, the products shall comply with those Contract Document provisions concerning substitutions for obtaining Cherokee Nation approval (or Change Order) to provide an unnamed product.
- E. **Other Specified Products.** Whenever any product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer trade names or similar reference, Contractor obligates himself to the use of the product and no substitutes or equals shall be allowed. Where two or more products are shown or specified, Contractor has the option of which to use.
- F. **Warranty on Substantial Completion.** The warranties stated in this Contract commence on the date of Substantial Completion and shall survive any inspection, delivery, acceptance, payment, expiration, or earlier termination of this Contract and such warranties shall run to Cherokee Nation and its successors and assigns. Neither written acceptance by Cherokee Nation nor payment to Contractor shall release Contractor from its responsibility or liability for defective Work or for failure to comply with the warranties set forth herein.
- G. **Third Party Suppliers Warranty.** Contractor shall obtain from third party suppliers and manufacturers the required extensive warranties and guarantees for equipment and materials and shall assign, and hereby assign the same to Cherokee Nation. Contractor shall cooperate with Cherokee Nation in the enforcement of such warranties and, if so requested by Cherokee Nation or Owner's Representative, assist in obtaining proper servicing, repair, or replacement from each manufacturer under the provisions of the warranties. Contractor shall furnish Cherokee Nation and Owner's Representative with a complete list of such third party suppliers and manufacturers, together with a copy of complete warranties from such suppliers and manufacturers on or before Final Completion of the Work hereunder.
- H. **Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.** Contractor certifies to the best of its knowledge and belief that neither Contractor nor any of its principals are presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal, state, local, or tribal agency. Contractor also certifies to the best of its knowledge and belief that it has not, within a three-year-period preceding this Agreement, been convicted of, or had a civil judgment rendered against it for: commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, local, or tribal) contract or subcontract; violation of federal or state antitrust statutes relating to submission of offers or commissions or embezzlement, theft, forgery, bribery, falsifications or destruction of records, and/or making false statements; and is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in this provision. Contractor certifies it has not within a

three-year period preceding this Agreement, had one or more contracts terminated for default by a federal, state, local, or tribal agency.

27. **Liens.** Contractor shall have the affirmative duty to keep Cherokee Nation property free from mechanic and materialmen's liens of any person or entity supplying any portion or the Work and shall not permit any such lien to be filed or maintained in connection with the Work. Cherokee Nation may recoup, offset or retain out of payments due or to become due to Contractor an amount sufficient to fully protect Cherokee Nation from any such lien, claim of lien, or claim against bond. This clause shall be inserted in all of Contractor's purchase orders and subcontract agreements. Contractor further agrees to defend (including attorney fees), indemnify and hold harmless Cherokee Nation from any and all loss of use as a result of any lien filed upon the property of Cherokee Nation unless the lien is due to the failure of Cherokee Nation to pay a valid request for payment.
28. **Inspection and Correction of Work.** All Work shall be subject to inspection by Cherokee Nation, its Owner's Representative, and/or the Architect at all reasonable times and at all places. Any such inspections are for the sole benefit of Cherokee Nation and shall not relieve Contractor of the responsibility for providing quality control measures to assure that the Work strictly complies with the Contract Documents. No inspection by Cherokee Nation or its Representatives shall be construed as constituting or implying either a waiver or acceptance. Inspections shall not relieve Contractor of responsibility for damage to or loss of material prior to acceptance, nor in any way affect the continuing rights of Cherokee Nation after acceptance of the completed Work.
29. **Interference, Clean-up, Defective Work, Inspection of Facilities, and Cutting and Patching.**
 - A. **Interference.** Cherokee Nation or Owner's Representative shall, at all times, have access to the Work. Contractor shall perform all Work without interference or interruption to Cherokee Nation and other persons completing other work at the Job Site, and Cherokee Nation and its representatives shall perform inspections and site visits without interference or interruption of others performing Work at the Job Site. Contractor shall fully cooperate and coordinate its Work with such other persons or entities. Contractor, before proceeding with the Work, will accurately check and verify all previous and surrounding work done by others, if any, and shall determine the correctness of the same.
 - B. **Cleaning Up.** Contractor shall at all times avoid creating dust, fumes, vibration, contamination and excess noise. If dust, fumes, vibration, contamination, or excess noise are unavoidable, Contractor shall give prior written notice of such fact to Cherokee Nation and Owner's Representative, and Contractor shall proceed with such Work only upon Cherokee Nation written authorization. Contractor shall maintain the Job Site in a safe, clean condition free from accumulations of waste material or rubbish on a daily basis.

- C. **Cherokee Nation's Right to Clean Up.** If a dispute arises among Contractor, separate contractors and Cherokee Nation as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, Cherokee Nation may, after five (5) days' written notice, clean up and allocate the cost among those responsible.
- D. **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 Cherokee Nation 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.
- E. **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, Cherokee Nation 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 Contractor's right to proceed under Termination for Cause; or
 - (3) issue a written order to Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.
- F. **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 Cherokee Nation and its Representatives shall be performed to the extent feasible in such manner as to not unnecessarily delay the Work. 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 Contractor for inspection or when re-inspection is necessitated by prior rejection.
- G. **Cutting and Patching.** Contractor shall be responsible for cutting, fitting or patching required to complete the Work or make its parts fit together properly. Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Project by Cherokee Nation or Special Subcontractors by cutting, patching or otherwise altering such construction or by excavation.

- H. **Non-waiver.** The cost of testing all defects or non-complying Work shall be paid by 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 Cherokee Nation right to reject or revoke its acceptance of nonconforming Work, or to avail itself of any other remedies.

30. **Environmental Protection and Hazardous Materials.**

- A. **If extraordinary or exceptional circumstances involving the National Environmental Policy Act (NEPA) and related environmental considerations are encountered in the project, or if there is any change in the project which could change the project environmental determination, the Contractor agrees to stop construction in affected areas and to notify the Cherokee Nation.**
- B. **The work covered by this section consists of furnishing all labor, materials, and equipment, and performing all work required for the prevention of environmental pollution during, and as a result of, construction operations under this contract except for those measures set forth in other technical provisions of these specifications. For the purpose of these specifications, environmental pollution is defined as the presence of chemical, physical, or biological elements or agents which adversely affect human health or welfare; unfavorably alter ecological balances of importance of human life; affect other species of importance to man; or degrade the utility of the environmental pollution requiring consideration of air, water, and land, and involves noise and solid waste-management, as well as other pollutants. This Section applies to work at all sites.**
- C. **In order to prevent, and to provide for abatement and control of, any environmental pollution arising from construction activities of Contractor and sub-contractors in the performance of the Contract, they shall comply with all applicable Federal, State, Local, Tribal laws, and regulations concerning environmental pollution control and abatement. Cherokee Nation will notify Contractor of any observed or perceived non-compliance with the foregoing provisions. Contractor shall, after receipt of such notice, immediately take corrective action. Such notice when delivered to Contractor or its authorized representative at the Job Site shall be deemed sufficient for the purpose. If the Contractor fails or refuses to promptly take corrective action, Cherokee Nation may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. No part of the time lost due to any such stop orders shall be made the subject of a claim for extension of time, for excess costs or damages by Contractor unless it is later determined that Contractor was in compliance. Compliance with the provisions of this Section by subcontractors will be the responsibility of Contractor.**
- D. **Protection of Land Resources.** The resources within the scope of work under this Contract shall be preserved in their present condition or be restored to a

condition after completion of construction that will appear to be natural and not detract from the appearance of the Project. Insofar as possible, Contractor shall confine construction activities to areas defined by the plans or specifications. At the onset of ditch grading, topsoil shall be saved for use in restoring the ditch areas. Waste and borrow areas shall be leveled or trimmed to regular lines and shaped to provide a neat appearance. In all instances the restored area shall be well drained, so as to prevent the accumulation of stagnant water. Except in areas shown on the plans or specified to be cleared, Contractor shall not deface, injure, or destroy trees or shrubs, nor remove or cut them without written authority from the Cherokee Nation. Any trees or other landscape features scarred or damaged by Contractor's equipment or operations, including those of its sub-contractors, shall be restored as nearly as possible to original condition at Contractor's expense. Contractor shall obliterate all signs of temporary construction facilities such as haul roads, work areas, structures, foundations of temporary structures, stockpiles of excess or waste materials, or any other vestiges of construction, as directed by the Cherokee Nation, and disturbed areas shall be graded and filled as required with sufficient topsoil spread to provide minimum depth of four (4) inches of suitable soil for the growth of grass, and the entire area seeded.

- E. Protection of Water Resources. Contractor shall not pollute streams, lakes or reservoirs with fuel, oils, bitumens, calcium chloride, acids, construction wastes, or other environmentally harmful materials. It is the responsibility of Contractor to investigate and comply with all applicable Federal, State, County, Local and Tribe water laws concerning pollution of rivers and streams. Special measures shall be taken to prevent chemicals, fuels, oils, bituminous materials, waste washings, and cement from entering drainage ditches. Contractor shall at all times perform all work and take such steps required to prevent any interference or disturbance to fish and wildlife. Fouling or polluting of water will not be permitted. Wash waters and wastes shall be processed, filtered, ponded, or otherwise treated pursuant to all applicable rules and regulations prior to their release into a river or other body of water.
- F. No material shall be burned at the project site unless otherwise specified in the contract or authorized by the NATION and any other appropriate regulatory body.
- G. Contractor will be required to maintain all work areas within the project boundaries free from dust or debris that would cause a hazard or nuisance to others. Dust control shall be performed as the work proceeds and whenever a dust nuisance or hazard occurs.
- H. Hazardous Materials Brought Onto or Produced On the Job Site. Except to the extent required by the Contract Documents, Contractor shall not introduce, use or otherwise cause the presence of Hazardous Materials of any kind at the location of

the Project. Notwithstanding the foregoing, Contractor shall be responsible for any and all Hazardous Materials brought on to the Job Site or produced by Contractor at the Job Site. Here, "**Hazardous Materials**" means any substance which, by reason of being explosive, flammable, poisonous, corrosive, oxidizing, irritating, or otherwise harmful, may cause injury or death. Contractor shall comply with all laws, regulations and procedures regarding Hazardous Materials. Contractor shall immediately notify Cherokee Nation and Owner's Representative of any Hazardous Materials present at the Job Site. Contractor's employees present at the Job Site shall be provided with copies of Material Safety Data Sheets used on the Job Site for all Hazardous Materials that Contractor's employees may be exposed to. Contractor shall provide Cherokee Nation and Owner's Representative with Material Safety Data Sheets for any Hazardous Materials it uses on the Job Site. Contractor is responsible for the disposal of all Hazardous Materials it or its subcontractor(s) bring onto or produce at the Job Site. Contractor agrees that all such dispositions shall be made under the rules and regulations of the U.S. Environmental Protection Agency and any state or local agencies or entities performing similar functions. Contractor shall not dispose of any Hazardous Materials on the Job Site or on any of Cherokee Nation property.

- I. **Hazardous Materials Found on the Site.** In the event Contractor encounters material reasonable believed to be asbestos, polychlorinated biphenyl ("**PCB**") or any other Hazardous Material that has not been rendered harmless, Contractor shall immediately stop Work in the area affected and promptly report the condition to Cherokee Nation and Owner's Representative by telephone and in writing. Contractor shall use its best effort to continue Work in other areas of the Project so as to not delay completion of the Project. Cherokee Nation and its Representatives shall take such steps as may be reasonable to verify the present or absence of Hazardous Material or substance and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Cherokee Nation shall employ such consultants and experts as may be deemed appropriate to perform tests and render lawfully contain, remediate or deal with such materials.

31. **Taxes.** All contract amounts include, and the Contractor shall be solely responsible for paying, all taxes, excises, duties and assessments arising out of the Contractor's performance of the Work in any manner levied, assessed or imposed by a government or agency having jurisdiction. Cherokee Nation represents that it enjoys tax-exempt status. As such, Contractor and any subcontractor agree, where appropriate and at the sole option of Cherokee Nation to permit Cherokee Nation to purchase goods and materials utilized in the performance of this Contract on a tax-exempt basis and pass those savings on to Cherokee Nation for the benefit of the Cherokee Nation.
32. **Compliance with Laws.** 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 Right Acts as administered by the Tribal Employment Rights Office ("TERO") of the Cherokee Nation. All work that is in addition to the Work

specifically required by this Contract, but necessary to fully comply with such Laws, shall be deemed part of the Work. Contractor will keep and have available all necessary records and make all payments, reports, collections, and deductions, and otherwise do any and all things so as to comply fully with all such laws, including, but not limited to:

- (a) the production, purchase and sale, furnishing and delivering, pricing and use or consumption of materials, supplies, and equipment;
- (b) the hire, tenure, or conditions of employment of employees and their hours of work and rates and payment of their wages; and
- (c) the keeping of records, making of reports, and the payment collection, and deduction of federal, state, and municipal taxes and contributions, all so as to fully relieve Cherokee Nation from and protect it against any and all responsibility or liability therefor or in regard thereto.

33. Changes in the Work; Change Orders.

- A. **Changes in the Work.** All changes in the Work must be in writing. Cherokee Nation may, at any time, by written Change Order or written Construction Change Directive, make changes in, additions to, and omissions from the Work. Contractor shall promptly proceed with the Work as so changed by the Change Order.
- B. **Change Order.** A Change Order is a written instrument prepared by Cherokee Nation or the Architect at Cherokee Nation's direction and signed by Cherokee Nation, the Architect and Contractor stating their agreement upon all of the following:
 - (1) change in the Work;
 - (2) the amount of the adjustment, if any, in the subcontract price; and
 - (3) the extent of the adjustment, if any, in the time for Substantial Completion.
- C. **Construction Change Directives.** A Construction Change Directive is a written order prepared by the Architect or Cherokee Nation, directing a change in the Work prior to agreement and adjustment, if any, in the subcontract amount or time for Substantial Completion or both. Cherokee Nation may issue a signed Construction Change Directive without invalidating the Contract, order changes in the Work within the general scope of this Contract; the subcontract price and time for Substantial Completion being adjusted accordingly. A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.
- D. **Adjustment to Contract Price.** If the Construction Change Directive provides for an adjustment to the subcontract price, the adjustment shall be based on one of the following methods:

- (1) mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- (2) unit prices stated in the Contract Documents or subsequently agreed upon; or
- (3) cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee.

E. Information Required. Upon Receipt of a Construction Change Directive, the following information shall be provided by Contractor for review by Cherokee Nation and the Architect upon receipt of a Construction Change Directive.

- (1) The separate costs between building, site and equipment as noted on the Schedule of Values.
- (2) Complete backup on all costs including but not limited to:
 - (a) Subcontractors or employee time records;
 - (b) Material invoices or purchase orders;
 - (c) Rental receipts for specialized equipment or tools;
 - (d) Time relationships to progress of work for delay of Project; and/or
 - (e) Validity of quantity of work and requested price (i.e. cost per square foot, gallons of material, etc.).
- (3) Backup for reason or basis of Construction Change Directive.
 - (a) Not shown on documents;
 - (b) Requested by Cherokee Nation, Owner's Representative and/or the Architect;
 - (c) Local jurisdictional requirements; and/or
 - (d) Material or item is no longer made.
- (4) Initiation date and any limitations on time that will affect the amount of the Construction Change Directive. Complete package shall be submitted to Cherokee Nation with a copy to the Architect.

F. Contractor to Proceed with the Work. Upon receipt of a Construction Change Directive, Contractor shall promptly proceed with the change in the Work involved and inform Cherokee Nation and the Architect in writing of Contractor's agreement or disagreement with the method, if any, provided in the Construction Change

Directive for determining the proposed adjustment in the subcontract price or time for Substantial Completion.

G. Failure to Agree. If Contractor does not respond promptly or disagrees with the method for adjustment in the subcontract price, the method and the adjustment shall be initially determined by Cherokee Nation, Owner's Representative, and/or the Architect on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the subcontract price, an allowance for overhead and profit in accordance with the schedule set forth below:

- (1) costs of labor;
- (2) costs of materials, supplies and equipment, including cost of transportation;
- (3) rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- (4) costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work;
- (5) overhead and profit as used herein to include supervision, superintendence, wages of timekeepers, wages of watchmen and clerks, hand tools, incidentals, general office expense, and all other expenses not included in "cost" above; and
- (6) any other cost which would have been included as part of the Cost of the Work as set forth in the Construction Management Agreement between Cherokee Nation and Contractor as it pertains to this Project.

H. Contract Price Decrease. The amount of credit to be allowed by Contractor to Cherokee Nation for a deletion or changed which results in a net decreased in the subcontract price shall be actual net cost as confirmed by Cherokee Nation. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

I. Pending Final Determination of Total Cost. Pending final determination of the total cost of a Construction Change Directive to Cherokee Nation, amounts not in dispute for such changes in the Work shall be included in applications for payment accompanied by a Changer Order indicating the parties' agreement with part or all of such costs.

J. Agreement between Contractor and Cherokee Nation. When Cherokee Nation and Contractor agree as to the adjustments in the subcontract price and time for Substantial Completion, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

K. Claim for Additional Costs or Time. In any instance in which Cherokee Nation has issued a Construction Change Directive, or in which Contractor for any reason believes he is entitled to additional cost or compensation, Contractor shall, within twenty-one (21) days after issuance of a Construction Change Directive, submit such claim for additional compensation in the form of a Proposal Request. If all information is not available within twenty-one (21) days after Contractor has incurred a substantial portion of the costs involved in the change, Contractor shall submit a Proposal Request outlining costs then available to the Contractor within such twenty-one (21) days. If information available to Contractor is not submitted within twenty-one (21), the claim shall be deemed to be waived by Contractor.

34. Term. This Contract shall commence on the date it is executed by both parties and shall continue in effect until the Work contemplated thereto has been performed and all payments received, unless sooner terminated, with or without cause, at Cherokee Nation's sole discretion. If Contractor has commenced performance of any Work before the execution of this Contract, this Contract shall be effective retroactively to the date the Work was first performed.

35. Stop Work. If Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required herein or fails to carry out Work in accordance with the Contract Documents, Cherokee Nation may issue a written order to Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of Cherokee Nation to stop the Work shall not give rise to a duty on the part of Cherokee Nation to exercise this right for the benefit of Contractor or any other person or entity, except to the extent required in this Contract.

36. Cherokee Nation's Right to Carry Out the Work. If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails to commence and continue correction of such default or neglect with diligence and promptness, Cherokee Nation may, after five (5) days' written notice, without prejudice to any other remedies it may have, either correct such deficiencies or terminate this Contract in whole or in part. In such case, Cherokee Nation may provide written notice to Contractor that it will deduct from payments then or thereafter due the Contractor the reasonable costs of correcting such deficiencies, including Cherokee Nation expenses and compensation for design professionals, as well as all additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to Cherokee Nation within ten (10) days following written demand for such payment. Any such unpaid amounts due under this Section shall bear interest at the prime rate of interest as set by the Bank of Oklahoma plus two (2) percentage points until paid in full.

37. Termination for Cause. If Contractor files for or is adjudged bankrupt, or makes a general assignment for the benefit of its creditors, or should a receiver be appointed because of its insolvency, or should it fail to make reasonable prompt payment to its subcontractors or for materials or labor, or should it disregard laws, ordinances or other governmental regulations, or substantially violate any other provisions of this Agreement, or if Contractor

neglects to proceed properly with the Work or fails to perform the Work, then Cherokee Nation after five (5) days' written notice to Contractor and Contractor's surety, in addition to any other remedy, may (i) make good the deficiencies and deduct the cost thereof from the payment then or thereafter due Contractor, 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. If the unpaid balance of the amounts due to Contractor hereunder exceed the expense of finishing the Work (after completion and cost calculation), Cherokee Nation shall pay the Contractor the difference, but if such cost of the Work exceeds the unpaid balance, Contractor shall immediately pay Cherokee Nation 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 prime rate of interest set by the Bank of Oklahoma plus two (2) percentage points per annum until paid. In the event of termination pursuant to this Section or Section 38, below, Contractor, at its cost, shall remove from the Job Site any material designated by Cherokee Nation to be removed therefrom. Any termination for cause by Cherokee Nation that is determined in accordance with the procedures set forth in Subparagraph 43(E) to be wrongful for any reason shall be deemed for all purposes to be a termination for convenience as provided herein.

38. **Suspension and Termination for Convenience.** Cherokee Nation may suspend or terminate the Work in whole or in part at any time for its convenience. Such suspension or termination shall be effective by written notice to Contractor stating the extent and effective time of such suspension or termination. Contractor shall continue to perform any part of the Work not so suspended or terminated if the Work is terminated under this Section. Contractor shall be paid for the Work completed up to the effective date of termination and no more. Cherokee Nation and Contractor shall execute a Change Order regarding adjustments to the price of the subcontracts, scope of Work, and any other matters affected by such suspension or termination. Upon material breach of Cherokee Nation obligations hereunder, Contractor may suspend performance if Contractor provides fourteen (14) day's written notice to Cherokee Nation.
39. **Title.** Title to all Work completed or in the course of being provided, and title to all material and supplies provided under the Contract Documents, except tools, equipment, and vehicles owned by or rented to Contractor or its Subcontractors, shall pass to Cherokee Nation immediately after delivery to the Job Site or payment therefore by Cherokee Nation, whichever occurs first.
40. **Uncovering and Correction of Work.**
- A. **Uncovering of Work Contrary to Request.** If a portion of the Work is covered contrary to Cherokee Nation's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by Cherokee Nation, be uncovered for Cherokee Nation's observation and be replaced at Contractor's expense.
- B. **Uncovering of Work Not Specifically Requested.** If a portion of the Work has been covered which Cherokee Nation has not specifically requested to observe prior

to its being covered, Cherokee Nation may request to see such Work and it shall be uncovered by Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to Cherokee Nation. If such Work is not in accordance with the Contract Documents, Contractor shall pay such costs.

- C. **Prompt Correction of Covered Work.** Contractor shall promptly correct Work rejected by Cherokee Nation or the Architect or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for Cherokee Nation and the Architect's services and expenses made necessary thereby.
- D. **Long Term Correction of Covered Work.** If, within one (1) year after the date of Substantial Completion of the Work or designed portion thereof, or after the date for commencement of warranties or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, Contractor shall correct it promptly after receipt of written notice from Cherokee Nation to do so unless Cherokee Nation has previously given Contractor a written acceptance of such condition. This period of one (1) years shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. This obligation shall survive acceptance of the Work under the Contract and termination of the Contract. Cherokee Nation shall give such notice promptly after discovery of the condition.
- E. **Removal of Work From the Job Site by Contractor.** Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by Contractor nor accepted by Cherokee Nation.
- F. **Correction of the Work by Cherokee Nation.** If Contractor fails to correct nonconforming Work within a reasonable time, Cherokee Nation may correct such work at Contractor's expense. If Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from Cherokee Nation, Cherokee Nation may remove it and store the salvable materials or equipment at Contractor's expense. If Contractor does not pay costs of such removal and storage within ten (10) days after written notice, Cherokee Nation may, upon ten (10) additional days after written notice, sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which Contractor should have borne, the Contract Fee shall be reduced by the deficiency. If payments then or

thereafter due Contractor are not sufficient to cover such amount, Contractor shall pay the difference to Cherokee Nation.

- G. **Cost of Correcting the Work.** Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of Cherokee Nation or separate contractors caused by Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.
- H. **No Established Limitation.** Nothing contained in this Paragraph shall be construed to establish a period of limitation with respect to other obligations which Contractor might have under the Contract Documents. Establishment of the time period of one (1) year relates only to the specific obligation of Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be enforced, nor to the time within which proceedings may be commenced to establish Contractor's liability with respect to Contractor's obligations other than specifically to correct the Work.
- I. **Acceptance of Nonconforming Work.** If Cherokee Nation prefers to accept the Work that is not in accordance with the Contract Documents, Cherokee Nation may do so instead of requiring that the Work be corrected. In this instance, the subcontract price will be equitably reduced by the value of the nonconforming Work as compared to the value of the Work had it been performed in accordance with the Contract Documents. Such adjustment shall be effected whether or not Final Payment has been made.

41. **Tests and Inspections.**

- A. **Compliance With Laws.** Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction shall be made at an appropriate time. Contractor shall make arrangements for all such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to Cherokee Nation, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. Contractor shall give Cherokee Nation advance and timely notice of the dates, times, and locations of tests and inspections so that Cherokee Nation may observe such procedures. Contractor and its sub-contractors shall, in addition to the above, comply with Cherokee Nation's job site procedures and regulations.
- B. **Additional Testing.** If the Architect, Owner's Representative, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included hereunder, Cherokee Nation will instruct Contractor to make arrangements for such additional testing, inspection, or approval by an entity acceptable to Cherokee Nation, and Contractor shall give advance and timely notice to Cherokee Nation, Owner's Representative, and the

Architect of the dates, times, and locations of tests and inspections so that Cherokee Nation, Owner's Representative and the Architect may observe such procedures.

- C. **Testing Which Reveals Nonconforming Work.** If such procedures for testing, inspection or approval hereunder reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, Contractor shall bear all costs made necessary by such failure in accordance with the Cherokee Nation Standard Construction Terms and Conditions.
- D. **Required Certificates.** Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by Contractor and promptly delivered to Cherokee Nation.
- E. **Prompt Testing.** Tests or inspections conducted pursuant to the Contract Document shall be made promptly to avoid unreasonable delay in the Work.

42. **Claims and Disputes.**

- A. **Claims.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between Cherokee Nation and Contractor arising out of or relating to the Contract. Claims must be made by written notice.
- B. **Referral to the Architect.** All Claims, excluding Claims for breach of warranty, but including those alleging an error or omission by the Architect, shall be referred initially to the Architect for action as provided below. A decision by the Architect, which decision shall be made in an expeditious and timely manner, shall be required as a condition precedent to initiating the dispute resolution procedure set forth in Paragraph 43 of a Claim between Contractor and Cherokee Nation as to all such matters arising prior to the date Final Payment is due, regardless of (a) whether such matters relate to execution and progress of the Work or (b) the extent to which the Work has been completed. The decision by the Architect in response to a Claim shall not be a condition precedent to initiating such dispute resolution in the event (a) the position of Architect is vacant, (b) the Architect has not received evidence or has failed to render a decision within agreed time limits, (c) the Architect has failed to take the required action within thirty (30) days after the Claim is made, (d) forty-five (45) days have passed after the Claim has been referred to the Architect, or (e) the Claim relates to a mechanic's and materialman's lien.
- C. **Timing of Making a Claim.** Claims by Contractor must be made within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after Contractor first recognizes the condition giving rise to the Claim, whichever is later. There shall be no limitation on when a Claim may be made by Cherokee Nation. Claims must be made by written notice. An additional

Claim made after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

- D. **Diligent Performance of the Work Pending a Claim.** Pending final resolution of a Claim in accordance with Paragraph 43, unless otherwise agreed in writing, Contractor shall proceed diligently with performance of the Contract.
- E. **Claims for Additional Cost.** If Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given. Contractor's Claim shall include an estimate of the proposed increased cost.
- F. **Claims for Additional Time.** If Contractor wishes to make a Claim for increases in the time to complete the Work, written notice as provided herein shall be given. Contractor's Claim shall include an estimate of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.
- G. **Notice of a Claim.** If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party. The notice shall provide sufficient detail to enable the other party to investigate the matter.

43. **Resolution of Claims and Disputes.**

- A. **Review of Claims by the Architect.** The Architect will review Claims and take one or more of the following preliminary actions within ten (10) days of receipt of a Claim: (i) request additional supporting data from the claimant, (ii) submit a schedule to the parties indicating when the Architect expects to take action, (iii) reject the Claim in whole or in part, stating reasons for rejection, (iv) recommend approval of the Claim by the other party, or (v) suggest a compromise.
- B. **Documentation of the Resolution of a Claim.** If a Claim has been resolved, the Architect will prepare or obtain appropriate documentation.
- C. **Additional Information for Unresolved Claims.** If a Claim has not been resolved, the party making the Claim shall, within ten (10) days after the Architect's preliminary response, take one or more of the following actions: (i) submit additional supporting data requested by the Architect, (ii) modify the initial Claim, or (iii) notify the Architect that the initial Claim stands.
- D. **Architect's Decision Relating to Unresolved Claims.** If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Architect, the Architect will notify the parties in

writing that the Architect's decision will be made within seven (7) days, which decision shall be nonbinding on the parties. Upon expiration of such time period, the Architect will render to the parties the Architect's written decision relative to the Claim. If there is a surety and there appears to be a possibility of Contractor's default, the Architect may, but is not obligated to notify the surety and request the surety's assistance in resolving the controversy.

- E. **Governing Law, Jurisdiction and Waiver of Venue.** The rights and obligations of the parties to this Contract shall be governed by and construed in accordance with the laws of the United States and, where applicable, the laws of the Cherokee Nation. Any Claim arising under this Contract that remains unresolved after referral to the Architect, as provided herein, shall be adjudicated in the Courts of the Cherokee Nation.

44. **Indemnification.**

- A. **Indemnification-General.** Contractor shall defend (at Cherokee Nation's option), indemnify and hold harmless Cherokee Nation, its officers, employees, representatives and agents and the Chief and Tribal Council of the Cherokee Nation (collectively referred to as the "Cherokee Nation Group") from and against any claim, demand, cause of action, judgment, settlement, penalty, lien, fine, liability, damages, loss or expense, including all expenses of litigation, court costs and attorneys' fees and expenses incurred by the Cherokee Nation Group in any Claim, action or proceeding between the Cherokee Nation Group and Contractor or between the Cherokee Nation Group and any third party arising directly or indirectly from or related in any way to the Work provided under this Contract, including injury to or death of persons (including but not limited to employees, representatives and agents of the Cherokee Nation Group, Contractor, any personnel directly or indirectly employed by Contractor and third parties) or damage to or loss of property (including but not limited to property of the Cherokee Nation Group, Contractor, any personnel directly or indirectly employed by Contractor and third parties), to the extent that claim is caused by the negligence or failure of Contractor to perform its duties under the Contract Documents. This indemnity, defense and hold harmless provision does not apply to any claim or liability to the extent the Cherokee Nation Group is found to have been solely negligent by the Courts of the Cherokee Nation.

- B. **Indemnification-Taxes.** Contractor accepts full and exclusive liability for the payment of any and all taxes and assessments which may now or hereafter be imposed by tribal, local, state, or federal governments, including without limitations, all applicable TERO fees, sales tax, use power, gross receipts, or other taxes levied with respect to materials furnished or work performed by Contractor, or payments made to the Contractor through issuance of a purchase order including but not limited to, building permits, Contractor's licenses, specialty permits required by law to be issued to Contractor, and/or transportation permits. Contractor, and its subcontractors shall, in addition to the above, comply with the Cherokee Nation's job site procedures and regulations. Further, Contractor agrees

to defend, indemnify, and hold harmless Cherokee Nation Group for all taxes, contributions, penalties, fees and expenses (including but not limited to attorneys' fees and expenses) incurred by Cherokee Nation Group because of Contractor's failure to withhold federal and state income taxes, FICA taxes, or FETA taxes or any other such taxes or governmental charges, state or federal, including those taxes enumerated at Section 49(B) hereof, which Cherokee Nation Group may be required to pay on account of Contractor.

C. **Participation by Cherokee Nation Group.** Any of Cherokee Nation Group hereto may, at their option and expense, participate in their/its own defense through separate counsel without relieving Contractor of any obligation hereunder.

D. **Patent Infringement.** Contractor shall, and does hereby agree to, indemnify Cherokee Nation Group and to pay on demand, assume liability for, defend, protect, and hold the Cherokee Nation Group harmless from, against, and in respect of any and all Claims that the Work (or any process or apparatus supplied by Contractor as a part of the Work) or the use or operation of the Work infringes upon any patent, trade secret, copyright, or application therefor, or any other property right of a third party. If such a claim has been made or is likely to be made, Contractor, at its option and sole expense, may promptly procure the right for Cherokee Nation to continue using the Work in question or to modify or replace promptly the Work to Cherokee Nation satisfaction so that it becomes non-infringing. Contractor shall indemnify Cherokee Nation Group for all costs, damages, attorney fees and expenses that arise or result from any such claim(s). The provisions of this paragraph shall survive the termination of this Contract and the completion of the Work.

45. **Consequential Loss or Damage.** Contractor waives claims against Cherokee Nation for consequential loss or damage arising out of or relating to the Contract Documents, except for anticipated profit arising directly from the Work. Cherokee Nation will be liable for any direct damages incurred by Contractor caused by any breach of the Contract by Cherokee Nation to the extent that Cherokee Nation is found liable for any such breach by the Courts of the Cherokee Nation.

46. **Patents.** Contractor shall obtain, at its own expense, any license or other authorization for use of any copyright trademark, or patent that would be infringed by carrying out the Work or performing under the Contract Documents.

47. **Work Product.**

A. **New Work Created.** All new or original Work created hereunder, and all Work obtained or acquired, shall be considered work for hire, and Cherokee Nation shall own all rights thereto, including, but not limited to, patents and applications therefore, copyrights, trademarks, trade names, mask works, and publication rights. Contractor shall assign all such intellectual property rights and other work product to Cherokee Nation or its designee. Documents and other written materials provided by Contractor pursuant to this Contract will forever remain Cherokee Nation or its designee's property.

- B. Drawings and Specifications.** The drawings, specifications and other documents, including those in electronic form, prepared by Cherokee Nation and Cherokee Nation's Architect are and shall remain Cherokee Nation property through which the Work is to be executed by Contractor. Contractor may retain one record set. Neither Contractor nor any subcontractor, sub-subcontractor or material or equipment supplier shall own or claim a copyright in the drawings. Specifications and other documents prepared by Cherokee Nation or Cherokee Nation's Architect shall be deemed, unless otherwise indicated, to have been authored by Cherokee Nation, and Cherokee Nation will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of the drawings and specifications, except the Contractor's record set, shall be returned or suitably accounted for to Cherokee Nation, on request, upon completion of the Work. The drawings, specifications, and other documents prepared by Cherokee Nation and Cherokee Nation's Architects or consultants, and copies thereof furnished to Contractor, are for use solely with respect to the Project. They are not to be used by Contractor or any subcontractor, sub-subcontractor or material or equipment supplier on other projects or for additions to this project outside the scope of the Work without the specific written consent of Cherokee Nation.
- C. As-Built Drawings.** Contractor is to create an "as-built" record set of drawings in accordance with the Contract Documents, noting especially those items of Work that are hidden from view. Cherokee Nation reserves the right to withhold final payment to Contractor if, in Cherokee Nation sole opinion, accurate "as-built" drawings have not been delivered to Cherokee Nation by Contractor upon completion of Contractor's Work.

48. Delay.

- A. Force Majeure.** If Contractor is prevented from performing any of its obligations under these Contract Documents 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 and without fault on the part of Contractor, the time allotted by the Contract Documents for performance of the obligations that are so prevented shall be extended one (1) day for each day of such delay. Contractor shall make no claim for extension of the time for Substantial Completion pursuant to this Section unless it shall notify Owner's Representative, in writing, of the existence of any delay excused herein within twenty-four (24) hours after the beginning of such period of delay and of the termination of such period of delay within twenty-four (24) hours after its termination.
- B. Normal Weather Conditions.** Contractor has incorporated typical weather days as per the Tulsa International Airport FAA average rainfall schedule into the Project Schedule. If there are additional weather days greater than those provided for in the Schedule, Contractor may get the additional days above the average as an extension to the Substantial Completion date. No time for weather delays will be charged for days on which Contractor is capable of performing Work pursuant to the current

Schedule for at least six (6) hours with a normal work force, and in the event that the normal work force is on a double shift, twelve (12) hours shall be used. There shall be no extension of time granted to Contractor for delay due to weather conditions unless agreed to by Cherokee Nation by written Change Order, which agreement shall not be unreasonably withheld.

- C. **Delay Caused by Cherokee Nation or Others.** Should Contractor's progress be interfered with or the completion of this Contract be prevented through failure of Cherokee Nation to provide required services, or for any reason attributable to Cherokee Nation, its Special Subcontractors, agents, or others acting for, on behalf, or at the direction of Cherokee Nation, then Contractor will be entitled to an extension of time, day-for-day, within which to complete the Work, as reflected by Change Order.
- D. **Time for Claim Submission.** All claims for extension of time shall be made in writing to Owner's Representative no more than twenty (20) days after the occurrence of the delay; otherwise they shall be waived. In the case of a continuing cause for delay, only one claim is necessary.
- E. **Claims for Additional Costs. Except for Contractor's costs detailed in Exhibit to that certain Construction Management Agreement between Owner and Construction Manager for the Project and any General Conditions fees agreed in writing between Construction Manager and Contractors or subcontractors, neither Construction Manager nor any Contractor shall be entitled to any additional costs as a result of delays described in Section 42 and this Section.**

49. **Independent Contractor.**

- A. **Independent Contractor.** Contractor hereby declares, acknowledges, and agrees that it is engaged in an independent business, and agrees to perform the Work as an independent contractor with full responsibility for the control and direction of its employees. Contractor, in its performance of this Contract, has and hereby retains the right to exercise full control and supervision over the accomplishment of the Work. Contractor shall not be, or be deemed for any purpose, an agent, employee, or servant for Cherokee Nation, and may not bind Cherokee Nation. This Contract is not intended to and shall not create a partnership of any kind or type. It is understood that Contractor is free to contract for similar services to be performed for others during the term of this Contract, subject to the conditions set forth herein.
- B. **Payment of Taxes.** Contractor shall be solely responsible for the payment of each of its employee's compensation and benefits, including, but not limited to, employment taxes, any similar taxes associated with employment, withholding of federal, state, or local taxes imposed on wages, deductions for social security, contributions for unemployment compensation funds, and all other regulations governing such matters. Contractor further warrants that it will comply with all other applicable, federal, state or local laws or regulations applicable to Contractor

as an employer regarding compensation, hours of work, or other conditions of employment, including those applicable to minimum wage and overtime wages.

- C. **Reporting Requirements.** All amounts paid by Cherokee Nation to Contractor pursuant to this Contract will be reported as non-employee compensation by Cherokee Nation to the I.R.S. at the end of each calendar year. Contractor agrees to complete and execute the Form W-9, "Request for Taxpayer Identification Number and Certification," upon the execution of this Contract. Contractor represents that it is withholding federal and state income taxes, FICA, and FUTA taxes from the paychecks of all its employees who do work in furtherance of the Contract. Contractor further agrees to furnish Cherokee Nation upon request a certificate, or other evidence of proof of payment, or compliance with local, state, or federal laws covering contributions, taxes, and assessments imposed on wages and the employer.
- D. **Waiver of Benefits.** Contractor's personnel shall not be entitled to participate in or receive benefits under any Cherokee Nation programs maintained for its employees, including, without limitation, life, medical and disability benefits, pension, profit sharing or other retirement plans or other fringe benefits. Nor shall Contractor personnel be entitled to any direct or indirect compensation or remuneration of any kind from Cherokee Nation as a result of the performance of this Contract, except for Cherokee Nation's obligation to pay the charges to Contractor provided for herein, and Contractor shall be responsible for all compensation of such Contractor personnel and shall indemnify Cherokee Nation for any claim by any Contractor personnel for such rights or benefits.
50. **Contractor's Personnel.** Contractor shall, upon Cherokee Nation or its Owner's Representative's request, furnish Cherokee Nation with the names and addresses of its employees assigned to the Work. Cherokee Nation, in its sole discretion, may require Contractor to remove such employees from the Job Site whereupon Contractor shall replace the person so removed with those of equal or higher standing regarding work experience and position.
51. **Improper Payments.** Contractor will not use any funds received under this Contract for illegal or otherwise improper purposes related to the Contract. Contractor will not pay any commissions, fees, or rebates to any employee of Cherokee Nation nor favor any employee of Cherokee Nation with gifts or entertainment of significant cost or value. If Cherokee Nation has reasonable cause to believe that the provisions of the preceding sentences have been violated, Cherokee Nation, its representatives, or auditors may audit the records of Contractor for the purpose of establishing compliance with such requirements. All costs of any such audit shall be the responsibility of Contractor.
52. **Alcohol, Drug, and Tobacco Policy.** Contractor's employees, while on Cherokee Nation's premises or engaged in Cherokee Nation's Work, shall refrain from unauthorized consumption or possession of alcoholic beverages, tobacco use, and the possession, sale, use, or distribution of unauthorized drugs. Any Contractor performing work for the Cherokee Nation agrees to publish a statement notifying all employees, subcontractors, and

other workers that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against violators of such prohibition. Contractor shall provide all persons engaged in performance of the Contract with a copy of said statement, and shall include a copy of said statement with any bid submitted hereunder, or shall be deemed to accept and agree to use the statement provided by Cherokee Nation. Notwithstanding any other provision of this Contract, violation of this provision by Contractor personnel will: (i) result in immediate removal of Contractor employees from the Cherokee Nation's premises, and (ii) constitute a material breach of this Contract. Contractor shall have the obligation to replace its employees with a suitable substitute or substitutes, within a reasonable time.

53. **Audit.** Contractor shall keep all books and records on a consistent basis and in accordance with generally accepted accounting principles (GAAP). These books and records shall readily disclose the basis for any charges or credits, ordinary or extraordinary, billed or due to Cherokee Nation under this Contract and shall be made available for examination, audit and reproduction by Cherokee Nation and its agents during the term of this Contract and for a period of two (2) years after the receipt by Contractor of Final Payment. When requested by Cherokee Nation, Contractor shall permit Cherokee Nation's personnel or its duly authorized agent or representative access during normal working hours to Contractor's personnel, property, and records necessary to conduct the Cherokee Nation's audit. In the event that the audit rights set forth in this Section conflict with any other terms of this Contract, this Section shall control. Contractor further agrees to include this right to audit clause in all subcontracts for services and materials furnished under the terms of this Contract, if any, entitling Cherokee Nation to a right to inspect books and records to validate subcontractor charges. All costs of such audit(s) shall be the responsibility of the Contractor.

54. **Publicity.** Contractor acknowledges and agrees that it is prohibited from referencing, directly or indirectly, Cherokee Nation as a customer or client in any manner, including, but not limited to, in any online materials, speeches, solicitations, marketing materials, advertisements, articles, interviews, news releases or other releases to any publication, or by self-publication on social media or otherwise without the express written permission of Cherokee Nation for each separate instance of such publication, secured at least three (3) business days in advance of any such publication. Contractor's confidentiality obligations set forth in this section survive and continue after the termination or expiration of this Contract.

55. **Confidential and Proprietary Information.**

A. **Confidentiality.** In the course of Contractor's rendering services hereunder, Contractor will or may acquire valuable trade secrets, proprietary data, and sensitive confidential information, including but not limited to written information identified as "confidential" by a legend to that effect and verbal information identified by Cherokee Nation as "confidential" at the time of disclosure, with respect to Cherokee Nation (collectively, "**Confidential Information**"). The parties hereto agree that such trade secrets, proprietary data, and other Confidential

Information include but are not limited to copyrights, inventions, models, processes, patents, and improvements thereon, Cherokee Nation's financial methods and practices, file or database materials, software listings or printouts, computer programs, credit and financial data of Cherokee Nation or subsidiary entities.

- B. Return of Confidential Information.** Upon termination or expiration of this Contract for any reason, or upon request of Cherokee Nation, Contractor shall return, or certify as destroyed, written material and other media containing any Confidential Information, together with any copies thereof. Failure by Contractor to comply with this requirement shall be grounds for withholding any payment that may be due Contractor, except as needed for Contractor's business records for the Project.
- C. Fiduciary Trust.** In addition, Contractor, on behalf of Cherokee Nation, may develop a personal acquaintance employees, advisors, consultants, vendors, and agents of Cherokee Nation, its subsidiary entities, and affiliates. As a consequence thereof, the parties hereto acknowledge that Contractor will occupy a position of trust and confidence with respect to Cherokee Nation's affairs, processes, plans, strategies, finances, and services.
- D. Protection of Proprietary and Confidential Information.** Neither Contractor, nor its employees or consultants, during the term of this Contract or at any time thereafter, shall, without the express written consent of Cherokee Nation, directly or indirectly communicate or divulge, or use for its or their own benefit, other than as a contractor of Cherokee Nation and to further the Cherokee Nation's interests, or for the benefit of any other person, firm, association or corporation, any of Cherokee Nation's proprietary data or other Confidential Information, except that Contractor may disclose such matters to the extent that disclosure is required (i) in the course of said relationship, or (ii) to enable Contractor's personnel to render services hereunder.
- 56. Assignment of Contract.** Contractor shall not assign, delegate, or sublet this Contract or any part thereof, or any money due or any money to become due hereunder, without the prior written consent of Cherokee Nation in each instance. Subject to the foregoing, this Contract shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. Unless specifically provided in this Contract, none of the provisions of this Contract shall be enforceable by or for the benefit of any person or entity except the parties hereto and their successors and permitted assigns. Cherokee Nation may assign this Contract. No assignment shall relieve Cherokee Nation from any of its obligations hereunder unless specifically agreed to in writing by Contractor.
- 57. Notices.** All notices required or permitted to be given under this Contract shall be in writing and shall be given by personal delivery, verified facsimile transmission, receipted delivery services, or by registered or certified mail, first class postage prepaid, return receipt requested, and for Contractor and Cherokee Nation, shall be delivered or addressed as appears on the Contract Documents. Notice for all purposes under these Contract

Documents, regardless of the form in which given, shall be deemed given when received by the addressee of such notice.

58. **Litigation Costs; Attorneys' Fees.** The prevailing party in an action brought by either party to enforce the terms and conditions of the Contract shall be entitled to its reasonable costs of suit and expenses including reasonable attorneys' fees, including costs and attorney fees upon appeal.
59. **Headings; Severability.** Headings in this Contract are for convenience only and shall not be used to interpret or construe the provisions of this Contract. If any provision of this Contract shall be held by a Court of the Cherokee Nation to be contrary to law, the remaining provisions of this Contract shall remain in full force and effect, and the parties agree to negotiate, in good faith, substitute enforceable provisions that most nearly effect the parties' intent in entering into the Contract.
60. **Incorporation by Reference; Survival.** The Contract Documents referred to herein are hereby incorporated by reference into this Contract. All terms and conditions of this Contract which, by their nature, extend beyond the terms hereof shall survive acceptance, Final Payment, expiration, or earlier termination of this Contract.
61. **Waiver.** If, in one or more instances, either party fails to insist that the other party perform any of the terms of this Contract, such failure shall not be construed as a waiver by such party of any past, present, or future right granted under this Contract, and the obligations of both parties shall continue in full force and effect.
62. **Notice of Claims.** Contractor shall promptly notify Cherokee Nation in writing of any claims, demands, causes of action, or suits threatened, initiated, or anticipated against Contractor or Cherokee Nation, and shall do all things required by Cherokee Nation to protect Cherokee Nation's interests.
63. **Reference to Liens Shall Not be Construed to Create Right to a Lien.** No reference to liens or lien claims contained herein shall be construed to create or acknowledge any lien or any rights on the part of Contractor or any subcontractor to file any sort of lien whatsoever against property of Cherokee Nation.
64. **No Waiver of Sovereign Immunity . NO PROVISION OF THIS CONTRACT, THE CHEROKEE NATION'S STANDARD CONSTRUCTION TERMS AND CONDITIONS (INCLUDING, WITHOUT LIMITATION, THE PROVISIONS OF SUBPARAGRAPH 43(E)) OR THE CONTRACT DOCUMENTS SHALL CONSTITUTE, OR BE CONSTRUED TO BE, A WAIVER OF SOVEREIGN IMMUNITY BY CHEROKEE NATION.**
65. **Availability of Funds.** The NATION'S obligation for payment under this Agreement is contingent upon the availability of appropriated funds from which payment for services can be made. Funds are available for performance under this Agreement when appropriated or authorized by the Tribal Council of the Cherokee Nation. No legal liability on the part of the NATION for any payment may arise hereunder until funds are made

available by the designated officer of the NATION for performance and until the CONTRACTOR receives notice of availability from the NATION'S designated officer, through issuance of a purchase order.

66. Cherokee Nation Indian Preference Policy. Cherokee Nation shall, to the greatest extent feasible, give preference in the award of contracts to Indian organizations and Indian-owned economic enterprises. All contracting is required to comply with procedures for selection of Contractors and subcontractors as set forth in legislation pertaining to preference to Indians, Indian organizations, and Indian-owned economic enterprises in the awarding of contracts as detailed within 25 U.S.C. § 5307(b), as well as the Cherokee Nation Acquisition Management Policies and Procedures. Contractor shall include this clause in every subcontract in connection with the Project, and shall, at the direction of Cherokee Nation, take appropriate action pursuant to a finding by Cherokee Nation of a violation hereof by a contractor or subcontractor.
67. Binding Agreement. The terms and conditions herein stated may not be changed on behalf of a party except by a written agreement signed by both parties. This Contract shall be binding on the legal representatives, successors, heirs and assigns of the parties.

**END OF CHEROKEE NATION'S
STANDARD CONSTRUCTION TERMS AND CONDITIONS**