

Cherokee Nation Entertainment
DRAFT AGREEMENT FOR ARCHITECTURAL SERVICES

This Agreement for Architectural Services (“Architect’s Agreement”) is made as of _____, _____ by and between **CHEROKEE NATION ENTERTAINMENT, LLC**, a **limited liability company**, doing business as a wholly-owned tribal corporation of the Cherokee Nation, a federally recognized Indian tribe which has jurisdiction over “Indian lands” as defined in Title 25, Section 2703(4) of the United States Code, having offices at 777 West Cherokee, Catoosa, Oklahoma 74015 (“**Cherokee Nation Entertainment**”), and _____, with a mailing address of _____, _____, _____ (“**Architect**”).

1. **Contract Documents.** This Architect’s Agreement shall be a part of and subject to the Contract Documents. The Contract Documents shall consist of this Architect’s Agreement, and to the extent applicable to the Architect, Cherokee Nation Entertainment’s Standard Construction Terms and Conditions; any general, supplementary or other conditions adopted by Cherokee Nation Entertainment with the approval of the Architect; the Drawings and Specifications for the Project; any addenda issued prior to the execution of this Architect’s Agreement; modifications issued after the execution of this Architect’s Agreement. Cherokee Nation Entertainment’s Standard Construction Terms and Conditions (Exhibit “A”) as incorporated into the Construction Management Agreement between Cherokee Nation Entertainment and the General Contractor/Construction Manager shall be incorporated into this Architect’s Agreement as an Addendum upon the final execution of the Construction Management Agreement.

2. **The Work.** Cherokee Nation Entertainment is contemplating the construction of the following:

_____ (“**Project**”).

Cherokee Nation Entertainment and Architect have agreed that Architect will provide all architectural and engineering services (except those services to be performed by contractors directly under contract with Cherokee Nation Entertainment) for Cherokee Nation Entertainment more particularly set forth in this Architect’s Agreement. Such services will include, but not be limited to, architectural services, design services, mechanical, engineering and plumbing (MEP), electrical engineering, structural engineering, low voltage, life safety and fire protection, bidding and negotiation, construction administration, as-built drawings and closeout procedures (collectively the “Services”) in connection with the construction of the Project. The location of the Project is also referred to as the “**Job Site**”. Cherokee Nation Entertainment shall determine the schedule and timing of all Services described in this Agreement to be performed by Architect and Architect shall not perform any Services unless and until it receives a written notice to proceed for such service from Cherokee Nation Entertainment. Architect shall conduct weekly site visits and shall prepare and provide Cherokee Nation Entertainment with Architectural Field Reports. The Services shall be performed in accordance with any and all applicable laws, ordinances, codes, regulations, rules, or orders of any governmental body with respect to the Project, including but not limited to International Building Codes (IBC), FM Global Data Sheets for Building Envelope, Roofing and Life Safety, Americans with Disabilities Act (ADA), local/municipal and state building codes and ordinances, etc. Architect shall provide all labor, materials, and equipment necessary to perform the Architectural, Engineering (MEP,

Structural, & Low Voltage), and construction to convert the existing buffet into the approved food hall design. This includes meeting all required Life Safety and Code requirements.

3. **Parameters.** Cherokee Nation Entertainment anticipates entering into a construction agreement and/or a construction management agreement with a qualified contractor in connection with the Project. The anticipated date of completion for the entire construction project is _____, _____ (“**Substantial Completion**”).

Upon the Effective Date of this Architect’s Agreement, Architect shall commence providing Services and preparing the Deliverables (as identified and defined below). The Services and Deliverables shall be performed and provided in the following phases (“Phases”):

- (1) Conceptual Design
- (2) Schematic Design
- (3) Design Development
- (4) Construction Documents
- (5) Construction Administration

4. **Architect’s Base Fee.** Architect shall be paid an “Architect’s Base Fee” for providing all such professional Services in connection with completion of the Project. In consideration for providing such professional Services in connection with completion of the Project, Architect shall be entitled to compensation as follows:

For all architectural and engineering Services provided by the Architect in completing the Project, Architect is to be paid a lump sum of _____ (\$_____).

The Architect’s Base Fee shall be inclusive of all fees, expense and costs incurred by Architect in performing the Services and Architect shall not be entitled to any reimbursable expenses in addition to the Architect’s Base Fee.

5. **Additional Services.** Fees for Additional Services shall be based upon either a pre-approved agreed upon lump sum cost or on a time and materials basis. Additional Services shall not be billed unless the scope of work has changed after Cherokee Nation Entertainment has formally approved the Deliverable of a previously completed Phase and the change in scope is at the request of Cherokee Nation Entertainment and results in a significant change in direction such that a significant and substantive modification of the Deliverable of a previously completed Phase is required.

Such Additional Services shall be as requested and approved in writing or per e-mail approval in advance by an authorized representative of Cherokee Nation Entertainment. Such requests shall include a cost estimate which shall not be exceeded without further written approval from an authorized representative of Cherokee Nation Entertainment. Architect’s services beyond the date of Substantial Completion shall be provided as Additional Services.

6. **Invoicing and Nonpayment.** The Architect shall be paid monthly as the Project progresses. Architect shall invoice Cherokee Nation Entertainment monthly through the 25th day of the

immediately preceding month, including any claims for Reimbursable Expenses. All invoices for payment of the Architect's Base Fee during the Project shall be based on a monthly percentage of completed work. All invoices for payment of the Payment shall be due within thirty (30) days from the receipt of the invoice.

7. **Decisions to Withhold Payment.** Cherokee Nation Entertainment may decline to make payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or any part of any payment request previously received and/or withhold payment to such extent as may be necessary to protect Cherokee Nation Entertainment for any loss resulting from the Architect's failure to carry out the Architect's duties in accordance with this Architect's Agreement. Cherokee Nation Entertainment's decision to withhold payment from Architect does not entitle Architect to suspend or terminate performance of this Architect's Agreement.
8. **Final Payment.** Final payment will be due no later than ninety (90) days after Final Completion of the Project or Architect's Certification of Final Completion. Any billings received later than one hundred twenty (120) days after Final Completion will not be processed for payment. Failure to cause billings to be received by Cherokee Nation Entertainment within one hundred twenty (120) 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.
9. **Changes in the Project.** Architect's compensation being based on the completion of Phases, if the Project is suspended or terminated resulting in the suspension or termination of any Phase in which Services are to be provided by the Architect then compensation for those suspended or terminated phases shall not be payable to Architect to the extent that professional services were not performed by Architect. In the event that Architect has actually performed Services for any such portion or portions of a suspended or terminated Phase, the Architect shall submit to Cherokee Nation Entertainment an invoice satisfactory to Cherokee Nation Entertainment for such Services, and based thereon the parties will agree in writing to a lump sum payment to Architect for such Services.
10. **Cooperation.** Cherokee Nation Entertainment and Architect shall cooperate to fulfill their respective obligations hereunder and shall endeavor to maintain good working relationships among all members of the Project team, including the contractor, construction manager, consultants, and Cherokee Nation Entertainment's representative ("**Representative**").
11. **Architect's Responsibilities.** The design professional services to be performed by the Architect and its consultants are set forth as follows:
 - A. **Diligence and Deadlines.** Architect shall perform its Services as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. In the event this Architect's Agreement sets forth certain time requirements, Architect shall meet all such time requirements. Attached hereto as Exhibit "B" is a schedule (to be provided by the Architect) relating to the Architect's Services that are to be provided throughout the duration of the Project ("**Schedule**"). The Schedule, with Cherokee Nation Entertainment's consent, may be adjusted as the Project proceeds.

Deadlines established by the Schedule, once approved by Cherokee Nation Entertainment, shall not be exceeded by Architect without the written consent of Cherokee Nation Entertainment. Cherokee Nation Entertainment shall be responsible for timely approval of the Architect's Work as reflected in the Schedule. In the event Cherokee Nation Entertainment does not meet such approved deadlines, Architect shall be entitled to an extension of time to complete its Services, of an equal amount of time in which Cherokee Nation Entertainment has taken to provide its approval past the dates set forth in the Schedule.

- B. Architect's Services. As used herein, Architect's Services include the following: (i) Conceptual Design, (ii) Schematic Design, (iii) Design Development, (iv) Construction Documents, and (v) Construction Administration.
- C. Site Analysis. The Architect shall provide all necessary geotechnical reports and topographic surveys relating to the Architect's work on the Project located on land held in Trust by the Federal Government. The Architect shall be aware of local or federally listed endangered species that may occur and any endangered species coordination specific to the Project. This would include avoidance and minimization measures as well as environmental permits and commitments. The Architect shall have the necessary information to recognize any wetlands present in the Project area.
- D. Administrative Services. The Architect shall provide all necessary Administrative Services relating to the Architect's work on the Project. Such Administrative Services shall include, but not be limited to, the following:
- (1) Attend meetings with Cherokee Nation Entertainment and Cherokee Nation Entertainment's contractors and consultants, and to communicate with all of the foregoing. Architect shall also review and respond, as directed or requested by Cherokee Nation Entertainment to requests for information.
 - (2) Assist Cherokee Nation Entertainment with the review of all bids on the Project.
 - (3) Issue progress reports on a bi-weekly basis (2 reports per month) throughout the construction period.
 - (4) Coordinate the Services provided by the Architect and its consultants with that of Cherokee Nation Entertainment and Cherokee Nation Entertainment's contractors and consultants.
 - (5) Update the Schedule.
 - (6) Assist Cherokee Nation Entertainment and Cherokee Nation Entertainment's contractors and consultants with the filing of documents with governmental agencies as required for the Project.
 - (7) Make presentations to Cherokee Nation Entertainment and/or its representatives regarding the Architect's proposed design and program for the Project.

- (8) Prepare a single, professionally prepared and colored rendering. Any additional renderings shall be treated as Additional Services.
 - (9) Assist Cherokee Nation Entertainment in establishing and evaluating a program for the Project setting forth Cherokee Nation Entertainment's objectives, schedule, criteria, and site requirements.
 - (10) Per the Cherokee Nation Entertainment-directed and or Cherokee Nation Entertainment-provided theming, incorporate the themeing concepts of Cherokee Nation Entertainment and its consultants into the Project.
 - (11) Advise Cherokee Nation Entertainment of any impact on the Project program in terms of cost and time of completion of the Project as regarding the method of contracting for construction services on the Project.
 - (12) Assist and advise Cherokee Nation Entertainment and Cherokee Nation Entertainment's contractors and consultants with an evaluation of the Construction Budget and to periodically assist and advise Cherokee Nation Entertainment and Cherokee Nation Entertainment's contractors and consultants with revising the Construction Budget.
- E. Schematic Design. The Architect shall provide all necessary Schematic Design documents based upon the Project program, schedule, and Construction Budget. The Schematic Design documents shall include a conceptual site plan, preliminary building plans, sections, and elevations. At Cherokee Nation Entertainment's option, the Schematic Design documents may include the additional services of models, electronic and otherwise, as well as perspective sketches. Preliminary selections of major building systems and construction materials shall be noted on the drawings and/or described in writing.
- F. Design Development. The Architect shall provide all necessary Design Development documents based on the approved Schematic Design documents and the Construction Budget.
- G. Construction Documents. The Architect shall provide all necessary Construction Documents based upon the approved Design Development documents and the Construction Budget. The Construction Documents shall contain all information necessary for construction of the Project.
- H. Construction Observation. Construction Observation shall begin upon the commencement of construction and will terminate ninety (90) days after the date of Final Completion of the Work, including any extensions or Additional Services thereto as determined solely in the discretion of Cherokee Nation Entertainment. During the Construction Administration phase of the Project, Architect's services shall include, but not be limited to, the following:
- (1) Timely provide all administrative services required by Architect pursuant to this Architect's Agreement and Cherokee Nation Entertainment's Standard Construction Terms and Conditions, including, but not limited to, all

necessary site visits, submittal reviews, change order reviews, reviews of requests for information, review and certification of payment requests and such other duties and responsibilities as directed by Cherokee Nation Entertainment. Architect shall at all times have access to the Job Site wherever it is in preparation or progress.

- (2) Advise and consult with, and represent, Cherokee Nation Entertainment during construction, with the assistance of its contractors and consultants.
- (3) Periodically and regularly visit the Job Site at intervals appropriate to the stage of construction (or otherwise as directed by Cherokee Nation Entertainment) in order to become familiar with the progress and quality of the construction work completed and to generally determine if it is being performed in a manner indicating that, when completed, it will be in accordance with the Contract Documents.
- (4) Attend meetings with Cherokee Nation Entertainment and its contractors and consultants, as directed or required by Cherokee Nation Entertainment, to review the progress of the Project and to help identify and resolve outstanding issues, and on the basis of on-site observations as an Architect, keep Cherokee Nation Entertainment informed of the progress and quality of the construction of the Project, and recommend actions to help protect Cherokee Nation Entertainment from defects and deficiencies in the construction of the Project.
- (5) Promptly review, evaluate, and certify all progress payment requests and amounts due thereunder in relation to the progress of the construction of the Project. In doing so, Architect's certification for payment shall constitute its representation to Cherokee Nation Entertainment that the construction of the Project has progressed to the point indicated, and the quality of the construction of the Project is in general accordance with the Contract Documents. Further, execution of any progress payment request shall constitute Architect's representation that Cherokee Nation Entertainment's contractors and consultants are entitled to payment in the amount requested. Architect shall have the obligation to reject any work that does not conform to the Contract Documents or recommend solutions, which would not be detrimental to maintaining the construction schedule. Whenever Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, Architect shall have authority to require additional inspections or testing of the work, whether fabricated, installed or completed.
- (6) Promptly review and approve, or take other appropriate action, upon all submittals such as Shop Drawings and Product Data and Samples, for the purpose of checking for conformity with information given and the design concept expressed in the Contract Documents. Architect's action shall be taken with such care as is required in Architect's professional judgment to permit adequate review and with such promptness as is required to prevent delay in the construction of the Project.

- (7) At the direction of Cherokee Nation Entertainment, prepare change orders and construction change directives with supporting documentation and data for Cherokee Nation Entertainment's approval.
- (8) Conduct adequate inspections to determine the date or dates of Substantial Completion and the date of Final Completion; review preliminary punch lists submitted by Contractor, Cherokee Nation Entertainment, and/or Cherokee Nation Entertainment's consultants or contractors and prepare all final necessary punch lists for Substantial Completion and Final Completion; receive and forward to Cherokee Nation Entertainment for Cherokee Nation Entertainment's review and records written warranties and related documents required by the Contract Documents and assembled by Cherokee Nation Entertainment's contractors and consultants; and issue a final certificate of payment upon compliance with the requirements of the Contract Documents.
- (9) Promptly interpret and decide matters concerning performance of Cherokee Nation Entertainment's contractors and consultants, under the requirements of the Contract Documents.

I. As-Built Drawings. Architect shall collect and compile as-built notes, comments and marked-up Construction Drawings from the Contractor and create a final "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 Entertainment reserves the right to withhold final payment to Architect if, in Cherokee Nation Entertainment sole opinion, accurate "as-built" drawings have not been delivered to Cherokee Nation Entertainment by Architect upon completion of the contractor's work.

12. **Consultants**. Architect shall be responsible for hiring any consulting design professionals necessary to complete the Services required under this Architect's Agreement, including, but not limited to, mechanical engineers, electrical engineers, landscaping, irrigation, and structural steel engineers. Architect shall be solely responsible for payment of any Services provided by such consultants. Any agreement between Architect and any such consultants shall incorporate by reference this Architect's Agreement and such consultants shall be bound by the terms hereof. Prior to engaging the Services of any consultant, Architect must obtain prior written approval of such consultant by Cherokee Nation Entertainment or its' Representative. Such approval is granted by Cherokee Nation Entertainment with its signature to this agreement which includes Exhibit "D". Failure to obtain such prior approval may result, at Cherokee Nation Entertainment's sole discretion, in the rejection of any work performed by any unapproved consultant and the requirement that such work be done by an approved consultant at Architect's sole expense.

13. **Cherokee Nation Entertainment's Responsibilities**. Cherokee Nation Entertainment shall be responsible for the following:

A. Definition of Objectives. Given the information then presently available, Cherokee Nation Entertainment will specify to Architect the objectives and requirements of the Project, addressing such things as schedule, deadlines, constraints and criteria, space

requirements, configuration and relationships, flexibility, expandability, special equipment, systems and site.

- B. Budget. Cherokee Nation Entertainment and its contractors and consultants will establish and update an overall budget for the Project, including construction cost as estimated by the Construction Manager with input from the Architect, and, if applicable, Cherokee Nation Entertainment's other costs and reasonable contingencies related thereto.
- C. Representation. Cherokee Nation Entertainment will designate in writing, as shown in Exhibit "D", its Representative to act on Cherokee Nation Entertainment's behalf with respect to the Project. Cherokee Nation Entertainment or its Representative will render timely decisions pertaining to documents submitted by Architect as necessary to avoid unreasonable delay in the orderly and sequential progress of the Project.
- D. Information. Cherokee Nation Entertainment will furnish Architect copies of the following materials as available:
- (1) surveys describing the physical characteristics, legal limitations and utility locations for the Project site, including grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours; locations, dimensions and necessary data pertaining to existing structures, improvements and trees; and available utility services and lines, both public and private, above and below grade including inverts and depths, with all such survey information referenced to a project benchmark;
 - (2) any necessary Services of geotechnical engineers with copies of resulting reports and professional recommendations relating to test borings and pits, soil bearing values and percolation, environmental hazards, ground corrosion and resistivity, and anticipated subsoil conditions; and
 - (3) any structural, mechanical, chemical, air and water pollution and environmental quality tests, inspections and reports required by law or the Contract Documents.
- E. Notice. Cherokee Nation Entertainment will give written notice to Architect of any fault or defect in the Project or any nonconformance with the Contract Documents of which Cherokee Nation Entertainment becomes aware. Such notice shall request desired action of the Architect and shall include a reasonable time for action and response. Failure to promptly provide any such notice shall not relieve Architect of any liability resulting therefrom.
14. Term. This Agreement shall commence on _____, ____ and shall continue in effect until _____, _____, see Schedule in Exhibit "B", unless sooner terminated, with or without cause, at Cherokee Nation Entertainment's sole discretion.

15. **Cherokee Nation Entertainment's Right to Carry Out the Agreement.** If the Architect defaults or neglects to carry out the obligations of this Architect's Agreement and fails within a ten (10) day period after receipt of written notice from Cherokee Nation Entertainment or its Representative to commence and continue correction of such default or neglect with diligence and promptness, Cherokee Nation Entertainment may, without prejudice to any other remedies it may have, either correct such deficiencies or terminate this Architect's Agreement in whole or in part. In such case, Cherokee Nation Entertainment may provide written notice to Architect that it will deduct from payments then or thereafter due the Architect the reasonable costs of correcting such deficiencies, including Cherokee Nation Entertainment 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 Architect are not sufficient to cover such amounts, Architect shall pay the difference to Cherokee Nation Entertainment within ten (10) days following written demand for such payment. Any such unpaid amounts due under this paragraph shall bear interest at the rate of eighteen percent (18%) per annum until paid.
16. **Termination for Cause.** If the Architect neglects to proceed properly under the terms of this Architect's Agreement, then Cherokee Nation Entertainment after three (3) days' written notice to Architect, in addition to any other remedy, may (i) make good the deficiencies and deduct the cost thereof from the payment then or thereafter due Architect, or (ii) terminate this Architect's Agreement. If the unpaid balance of the amounts due to Architect hereunder exceed the expense of completing the design professional services (after completion and cost calculation), Cherokee Nation Entertainment shall pay the Architect the difference, but if such cost exceeds the unpaid balance, Architect shall immediately pay Cherokee Nation Entertainment the difference within ten (10) days following written demand for such payment. Any such unpaid amounts due under this paragraph shall bear interest at the rate of eighteen percent (18%) per annum until paid. Any termination for cause by Cherokee Nation Entertainment that is determined by the Courts of the Cherokee Nation to be wrongful for any reason shall be deemed for all purposes to be a termination for convenience as provided herein. Upon material breach of Cherokee Nation Entertainment's obligations hereunder, Architect may suspend performance if Architect provides written notice to both Cherokee Nation Entertainment and its Representative. Cherokee Nation Entertainment shall then have ten (10) days following receipt of the notice of such default to cure any such default.
17. **Suspension and Termination for Convenience.** Upon seven (7) days written notice delivered to the Architect the Cherokee Nation Entertainment may suspend or terminate this Architect's Agreement in whole or in part at any time for its convenience. Such suspension or termination shall be effective by written notice to Architect stating the extent and effective time of such suspension or termination. Architect shall continue to perform any part of this Architect's Agreement not so suspended or terminated. Architect shall be paid for the Services completed up to the effective date of termination and no more but will continue to be paid for any part not so suspended or terminated.
18. **Consequential Loss or Damage.** Architect waives claims against Cherokee Nation Entertainment for consequential loss or damage arising out of or relating to this Architect's Agreement. This includes damages incurred by Architect for principal office expenses including compensation of personnel stationed there; for loss of financing, business, and

reputation; for loss of profit; and for loss of indirect office overhead or Eichleay formula damages caused by delays in the Project.

19. Insurance.

- A. Architect's Liability Insurance. Architect shall carry or cause to be carried and maintained in force throughout the entire term of this Architect's Agreement insurance coverage as described below with insurance companies acceptable to Cherokee Nations Entertainment. The limits set forth below are minimum limits and will not be construed to limit Architect's liability. All costs and deductible amounts will be the sole responsibility of Architect.
- (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, and Employer's Liability insurance with limits of \$1,000,000 each accident, \$1,000,000 disease each employee, and \$1,000,000 disease policy limit.
 - (2) General Liabilities. Commercial or Comprehensive General Liability insurance on an occurrence form with a combined single limit of \$1,000,000 each occurrence, and annual aggregates of \$2,000,000, for bodily injury and property damage, personal injury liability, independent contractors, products/completed operations and, when applicable, the explosion, collapse and underground exclusion will be deleted.
 - (3) Automobile Insurance. Automobile liability insurance with a combined single limit of \$500,000 each occurrence for bodily injury and property damage to include coverage for all owned, non-owned, and hired vehicles. In each of the above described policies, Contractor agrees to waive and will require its insurers to waive any rights of subrogation or recovery they may have against Cherokee Nation Entertainment, its parent, subsidiary and affiliated companies.
 - (4) Professional Liability Insurance. Professional liability insurance with limits of not less than \$2,000,000 for each claim and an annual aggregate of not less than \$2,000,000. Additional coverage amounts shall be furnished as an Additional Service of the Architect.
- B. Thirty (30) Day Notice Clause. As a condition precedent to the modification of the limits of liability or cancellation of the policy or policies issued by the insuring company during the periods of coverage as stated herein, thirty (30) days' prior written notice of such modification or cancellation shall be mailed to Cherokee Nation Entertainment.
- C. Subrogation. In each of the above-described policies, Architect agrees to waive and shall require its insurers to waive any rights of subrogation or recovery they may have against Cherokee Nation Entertainment, its parent, subsidiary, or affiliated companies.

- D. Additional Insured. Under the Automobile and General Liability insurance policies, Cherokee Nation Entertainment, its parent, subsidiary and affiliated companies shall be named as additional insureds as respects Architect's operations and as respects any Services performed under this Architect's Agreement. Any costs associated with naming these additional insureds will be handled as a reimbursable expense. The General Liability policy will include the following "other insurance" amendment: "This insurance is primary insurance with respect to Cherokee Nation Entertainment, its parent, subsidiary and affiliated companies, and any other insurance maintained by Cherokee Nation Entertainment, its parent, subsidiary or affiliated companies is excess and not contributory with this insurance."
- E. Non-renewal or Cancellation. Non-renewal or cancellation of the policies described above will be effective only after written notice is received by Cherokee Nation Entertainment from the insurance company thirty (30) days in advance of any such non-renewal or cancellation. Prior to commencing the Services to be provided hereunder, Architect will deliver to Cherokee Nation Entertainment 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 Architect's Agreement, Architect agrees, upon request of Cherokee Nation Entertainment, to submit the original or a certified copy of its insurance policies for inspection by Cherokee Nation Entertainment.
- F. Non-Liability for Architect's Loss. Cherokee Nation Entertainment 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 Architect, or his employees, servants or agents.
- G. Other Risks. If Architect 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 Entertainment shall, if possible, include such insurance, and the cost thereof shall be charged to the Architect.
- H. Insurance Companies to be Licensed. All insurance to be provided by Architect shall be written by insurance companies with an AM Best rating of A- or better.

20. Indemnification.

- A. Indemnification - General. Architect shall defend (at Cherokee Nation Entertainment's option), indemnify and hold harmless Cherokee Nation Entertainment, its parent, subsidiaries and affiliates and its and their respective directors, 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 (collectively referred to as "Claims") incurred by the Cherokee Nation Group in any Claim, action or proceeding between the Cherokee Nation Group and Architect or between the Cherokee Nation Group and any third party arising directly or indirectly from or related in any way to the Services provided under this Architect's Agreement, including injury to or death of persons (including

but not limited to employees, representatives and agents of the Cherokee Nation Group, Architect, any personnel directly or indirectly employed by Architect and third parties) or damage to or loss of property (including but not limited to property of the Cherokee Nation Group, Architect, any personnel directly or indirectly employed by Architect and third parties), which is caused in whole or in part by Architect or any personnel directly or indirectly employed by Architect, to the extent allowed by Cherokee law. This indemnity, defense and hold harmless provision does not apply where the Cherokee Nation Group is found to have been solely negligent.

- B. Indemnification – Codes and Regulations. Architect shall defend, protect, indemnify and hold harmless Cherokee Nation Group from and against all Claims, demands, causes of action, liabilities, loss, or expense (including, without limitation, reasonable attorneys' fees, costs and expenses) of every kind and character arising from or related to actual or asserted failure of Architect and its employees or subcontractors to comply with any law, ordinance, code, regulation, rule, or order of any governmental body;
 - C. Indemnification - Taxes. Architect 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 Architect'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 which Cherokee Nation Group may be required to pay on account of Architect.
 - D. Participation by Cherokee Nation Group. Any of the Cherokee Nation Group hereto may, at their option and expense, participate in their/its own defense through separate counsel without relieving Architect of any obligation hereunder. The Cherokee Nation Group shall, in that event, be responsible for the cost of such separate counsel.
 - E. Patent Infringement. Architect 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 product or documents prepared and provided by Architect or Architect's consultants or contractors under this Architect's Agreement 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, Architect, at its option and sole expense, may promptly procure the right for Cherokee Nation Entertainment to continue using the documents in question or to modify or replace promptly the documents to Cherokee Nation Entertainment's satisfaction so that it becomes non-infringing. Architect shall indemnify the 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 Architect's Agreement.
21. Patents. Architect 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 this Architect's Agreement unless such patent, copyright or trademark use is provided by Cherokee Nation Entertainment.

22. Property Rights.

- A. Tangible Property. All tangible materials (whether original or duplicates) including, without limitation, equipment purchase agreements, file or data base materials in whatever form, books, manuals, sales literature, equipment price lists, training materials, client record cards, client files, correspondence, documents, contracts, orders, messages, memoranda, notes, agreements, invoices, receipts, lists, software listings or printouts, all programmer generated materials including any materials cataloged on Cherokee Nation Entertainment storage medium, documentation of tests conducted by Architect, all programs prepared, compiled or acquired by Architect in accordance with this Architect's Agreement, specifications, models, computer programs, and records of any kind in the possession or control of Architect which in any way relate or pertain to Cherokee Nation Entertainment's business, including the business of the parent or subsidiaries or affiliates of Cherokee Nation Entertainment, whether furnished to Architect by Cherokee Nation Entertainment or prepared, compiled or acquired by Architect during its relationship with Cherokee Nation Entertainment, shall be the sole property of Cherokee Nation Entertainment. At any time upon request of Cherokee Nation Entertainment, and in any event promptly upon termination of this Architect's Agreement, Architect shall deliver all such materials to Cherokee Nation Entertainment. Cherokee Nation Entertainment shall be under no obligation to pay Architect any sum of money then due Architect or becoming due thereafter until Architect has complied with the provisions of this paragraph.
- B. Infringement Indemnity. Notwithstanding anything to the contrary in this Architect's Agreement, Architect shall protect, defend, indemnify and hold harmless Cherokee Nation Entertainment from and against all Claims for alleged infringement of any patents, copyrights, or trade secrets ("**Infringement Claims**") arising from the Services provided by Architect under this Architect's Agreement or from Cherokee Nation Entertainment's use thereof as contemplated by this Architect's Agreement. Cherokee Nation Entertainment agrees to provide Architect with written notice of any such Infringement Claims and of any suits brought or threatened against Cherokee Nation Entertainment based thereon and to give Architect assistance and authority to assume the defense of any such suits through its own counsel and, with the approval of Cherokee Nation Entertainment, to compromise or settle any such suits (but without affecting Architect's indemnification obligations under this Section). If any development resulting from the Services, including, but not limited to, hardware, software, processes, or written documents ("**Development**") is held to constitute an infringement and the use thereof is enjoined in any such suit so defended, or if in light of any allegation of infringement Cherokee Nation Entertainment and Architect mutually agree that it is advisable to do so, Architect agrees, at its own expense and subject to the agreement of Cherokee Nation Entertainment, (i) to procure for Cherokee Nation Entertainment the right to continue the use of the Development, or (ii) to replace the same with a Development which does not give rise to allegations of infringement, or (iii) to modify such Development to remove the basis for allegations of infringement. The provisions of this Section shall survive the cancellation, termination, or expiration of this Architect's Agreement. As a breach of the foregoing provisions may give rise to damages suffered by Cherokee Nation Entertainment,

which may be difficult if not impossible to ascertain, Cherokee Nation Entertainment may, at its option, obtain specific enforcement of Architect's obligations hereunder.

C. **Ownership of Copyright.** Architect, Architect's employees and consultants agree that the work to be produced by Architect and its consultants shall be considered a work made for hire as defined in the Copyright Act of 1976, 17 U.S.C. §101 as amended et seq.; and is therefore owned exclusively by Cherokee Nation Entertainment under §201(b), which vests copyright ownership of works for hire in Cherokee Nation Entertainment for whom the work is prepared. To the extent that title to any such work product may not, by operation of law, vest in Cherokee Nation Entertainment or such work product otherwise may not be considered a work made for hire, by executing this Agreement, Architect and Architect's employees and consultants hereby irrevocably assign all rights, title and interest to all work product to Cherokee Nation Entertainment and agree to enter any further documentation necessary to effectuate the same. Ownership of copyright of the Architect's work made for hire is for the Project at Tahlequah, Oklahoma, and is for Cherokee Nation Entertainment's use at this project site only. Cherokee Nation Entertainment agrees not to sell the copyrighted material without the Architect's written approval and further agrees to disclaim any future liability if ownership of copyrighted material is transferred to some party not a party to this Agreement. In the event the Cherokee Nation Entertainment uses the work product produced and prepared by Architect under this Agreement for this Project on a different project, without retaining the Architect, the Cherokee Nation Entertainment releases and agrees to hold harmless the Architect and Architect's consultants from all Claims and causes of action asserted by any third person or entity arising from such uses.

23. **Confidentiality.** In the course of Architect's rendering Services hereunder, Architect will or may acquire valuable trade secrets, proprietary data, and sensitive confidential including but not limited to written information identified as "confidential" by a legend to that effect and verbal information identified by Cherokee Nation Entertainment as "confidential" at the time of disclosure, with respect to Cherokee Nation Entertainment's business (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 Entertainment's business and financial methods and practices, pricing and selling techniques, file or data base materials, price lists, software listings or printouts, computer programs, lists of Cherokee Nation Entertainment's clients, client record cards, client files, credit and financial data of Cherokee Nation Entertainment's suppliers and present and prospective clients, and particular business requirements of Cherokee Nation Entertainment's present and prospective clients, as well as similar information relating to the parent, subsidiaries and affiliates of Cherokee Nation Entertainment.

24. **Return of Confidential Information.** Upon termination or expiration of this Architect's Agreement for any reason, or upon request of Cherokee Nation Entertainment, Architect shall return, or certify as destroyed, written material and other media containing any Confidential Information, together with any copies thereof. Failure by the Architect to comply with this requirement shall be grounds for withholding any payment that may be due Architect.

25. **Fiduciary Trust.** In addition, Architect, on behalf of Cherokee Nation Entertainment, may develop a personal acquaintance with clients and prospective clients of Cherokee Nation Entertainment, its parent, subsidiaries and affiliates. As a consequence thereof, the parties hereto acknowledge that Architect will occupy a position of trust and confidence with respect to Cherokee Nation Entertainment's affairs, products and Services.
26. **Protection of Proprietary and Confidential Information.** Neither Architect, its employees or consultants, during the term of this Architect's Agreement or at any time thereafter, shall, without the express written consent of Cherokee Nation Entertainment, directly or indirectly communicate or divulge to, or use for its or their own benefit, other than as a consultant of Cherokee Nation Entertainment and to further the Cherokee Nation Entertainment's interests, or for the benefit of any other person, firm, association or corporation, any of Cherokee Nation Entertainment's, its parent's, subsidiaries' or affiliates', trade secrets, proprietary data or other Confidential Information, except that Architect may disclose such matters to the extent that disclosure is required (1) in the course of said relationship, (2) to enable Architect's personnel to render Services hereunder, or (3) by a court or other governmental agency of competent jurisdiction. Architect shall cause Architect's employees, agents, or contractors providing the Work hereunder to sign a Nondisclosure Agreement, in the form similar to or use the form attached hereto as Exhibit "C". Architect shall provide to Cherokee Nation Entertainment an original of the Nondisclosure Agreement executed by its employees, agents, or contractors.
27. **Remedies; Injunctive Relief.** Architect acknowledges that in the event of a breach or threatened breach of the provisions of Paragraphs 22 through 26, remedies at law will be inadequate and that Cherokee Nation Entertainment shall be entitled to specific performance, injunctive or other equitable relief to enforce those provisions, provided that nothing herein shall be construed as precluding Cherokee Nation Entertainment from pursuing further remedies. Architect acknowledges that it is reasonable and necessary for the protection of the goodwill and business of Cherokee Nation Entertainment for Architect to make the covenants contained in Paragraphs 22 through 26, and that Cherokee Nation Entertainment will suffer irreparable injury if Architect engages in conduct prohibited thereby.
28. **Independent Contractor.**
- A. **Independent Contractor.** Architect hereby declares it is engaged in an independent business and agrees to perform the Services under this Architect's Agreement as an independent contractor with full responsibility for the control and direction of its employees. Architect, in its performance of this Architect's Agreement, has and hereby retains the right to exercise full control and supervision over the accomplishment of the Services under this Architect's Agreement. Architect shall not be an agent, employee or servant for and may not bind Cherokee Nation Entertainment. This Agreement is not intended to and shall not create a partnership of any kind or type.
- B. **Payment of Taxes.** Architect shall be solely responsible for the payment of each of its employee's compensation and benefits including 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. Architect further warrants that it will comply with all other applicable, federal, state or local laws or regulations applicable to Architect 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 Entertainment to Architect pursuant to this Architect's Agreement will be reported as non-employee compensation by Cherokee Nation Entertainment to the I.R.S. at the end of each calendar year. Architect agrees to complete and execute the Form W-9, "Request for Taxpayer Identification Number and Certification," upon the execution of this Architect's Agreement. The Architect represents that it is withholding federal and state income taxes, FICA, and FUTA taxes from the paychecks of all its employees who do work for Cherokee Nation Entertainment, its parent or any of its affiliates in all positions pursuant to this Architect's Agreement. Architect further agrees to furnish Cherokee Nation Entertainment 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.
29. **Improper Payments.** Architect will not use any funds received under this Architect's Agreement for illegal or otherwise improper purposes related to the Agreement. Architect will not pay any commissions, fees, or rebates to any employee of Cherokee Nation Entertainment nor favor any employee of Cherokee Nation Entertainment with gifts or entertainment of significant cost or value. If Cherokee Nation Entertainment has reasonable cause to believe that the provisions of the preceding sentences have been violated, Cherokee Nation Entertainment, its Representatives, or auditors may audit the records of Architect, for the sole purpose of establishing compliance with such requirements.
30. **Compliance with Law:** Architect 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 Services, including, without limitation, the Cherokee Nation Employment Rights Act, including all payment requirements, subcontracting requirements and Indian preference requirements contained therein, as such Act is administered by the Tribal Employment Rights Office ("TERO") of the Cherokee Nation.
31. **Cherokee Nation Gaming Commission Licensing:** As a result of Architect's provision of goods and/or services under this contract, Architect may be required to apply for and obtain a gaming license from the Cherokee Nation Gaming Commission ("CNGC"). If so required, and Architect is unable to obtain or maintain its gaming license throughout the term of this Contract, upon written notification of such failure from CNGC and/or Cherokee Nation Entertainment, Cherokee Nation Entertainment may cancel this Contract without penalty, paying only for the goods and/or services provided to Cherokee Nation Entertainment prior to such notification.
32. **Alcohol and Drug Policy.** Architect's employees, while on Cherokee Nation Entertainment's premises or engaged in Services under this Architect's Agreement for Cherokee Nation Entertainment, shall refrain from unauthorized consumption or possession of alcoholic beverages and the possession, sale, use or distribution of unauthorized drugs. Architect's failure to comply with this paragraph will constitute a material breach of this

Architect's Agreement. Notwithstanding any other provision of this Architect's Agreement, violation of this provision by Architect personnel will: (i) result in immediate removal of Architect employees from the Cherokee Nation Entertainment's premises, and (ii) constitute a material breach of this Architect's Agreement. Architect shall have the obligation to replace its employees with a suitable substitute or substitutes, within a reasonable time.

33. **Audit.** Architect shall keep such books and records on a consistent basis and in accordance with generally accepted accounting principles (GAAP) for a cash basis taxpayer. These books and records shall readily disclose the basis for any charges or credits, ordinary or extraordinary, billed or due to Cherokee Nation Entertainment under this Architect's Agreement and shall be made available for examination, audit and reproduction by Cherokee Nation Entertainment and its agents during the term of this Architect's Agreement and for a period of two (2) years after the receipt by Architect of Final Payment. When requested by Cherokee Nation Entertainment, the Architect shall permit Cherokee Nation Entertainment's personnel or its duly authorized agent or representative access during normal working hours to the Architect's personnel, property and records necessary to conduct the Cherokee Nation Entertainment's audit. In the event that the audit rights set forth in this paragraph conflict with any other terms of this Architect's Agreement, this paragraph shall control.
34. **Publicity.** Architect shall not identify Cherokee Nation Entertainment nor publicize the fact that Cherokee Nation Entertainment is a customer of Architect in any manner including, but not limited to, press releases, articles, interviews, marketing materials, online materials, and speeches without first obtaining, for each separate instance of such publication, at least three (3) business days' prior written approval from Cherokee Nation Entertainment. The obligations of this paragraph shall survive the termination of this Architect's Agreement.
35. **Assignment of This Agreement.** Architect shall not assign, delegate or sublet this Architect's Agreement or any part thereof, or any money due or any money to become due hereunder, without the prior written consent of Cherokee Nation Entertainment in each instance. Subject to the foregoing, this Architect's Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. Unless specifically provided in this Architect's Agreement, none of the provisions of this Architect's Agreement 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 Entertainment shall not assign, delegate or sublet this Agreement without the written consent of the Architect, except that Cherokee Nation Entertainment may assign this Agreement to an institutional lender providing financing for the Project. In such event, the lender shall assume Cherokee Nation Entertainment's rights and obligations under the Agreement. The Architect shall execute all consents reasonably required to facilitate such assignment. In the event such assignment is requested by Cherokee Nation Entertainment, the Architect shall not be required to execute any documents that increase the Architect's contractual or legal obligations or risks, or adversely affect the availability or cost of its professional or general liability insurance.

36. **Litigation Costs; Attorneys' Fees.** The prevailing party in an action brought by either party to enforce the terms and conditions of this Architect's Agreement shall be entitled to

its reasonable costs of suit and expenses including reasonable attorneys' fees including costs and attorney fees upon appeal.

37. **Severability.** Each of the covenants contained in Paragraphs 22 through 26 shall be construed as a separate agreement independent of any other provisions of this Architect's Agreement, and the existence of any Claim or cause of action of Architect against Cherokee Nation Entertainment, whether predicated on this Architect's Agreement or otherwise, shall not constitute a defense to Cherokee Nation Entertainment's enforcement of any of such covenants. In addition, if any provision of this Architect's Agreement is held to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.
38. **Defined Terms.** Capitalized terms used, and not otherwise defined herein, shall have the meanings assigned to them. In case of conflict the definitions in the Contract Documents shall govern.
39. **Accrual of Claims.** Causes of action between the parties pertaining to acts or failures to act shall be deemed to have accrued, and the applicable statute of limitations shall commence to run, (a) on the date of Substantial Completion, for acts or failures to act occurring prior to Substantial Completion, and (b) on the date the final Certificate for Payment is issued, for acts of failures to act occurring after Substantial Completion.
40. **Binding Force/Assignability.** This Agreement shall be binding upon, and inure to the benefit of, Cherokee Nation Entertainment and Architect, and their respective partners, successors, assigns and legal representatives. Neither Cherokee Nation Entertainment nor Architect shall assign their rights, or delegate their duties, under this Architect's Agreement to any other person or entity without the prior written consent of the other.
41. **Entire Agreement; Order of Priority.** This Agreement represents the entire understanding of the parties with respect to that part of the Project comprising the subject matter hereof, and it may be amended only by a written instrument signed by both parties. Upon a conflict between the instruments constituting the agreement between the Architect and Cherokee Nation Entertainment, the following order of priority shall apply from most specific having the highest priority to least specific having lowest priority: (i) this Architect's Agreement, (ii) any written amendments to this Architect's Agreement, and (iii) the Contract Documents.
42. **No Third Party Beneficiaries.** Nothing in this Architect's Agreement shall be construed to create a contractual relationship with, or a cause of action in favor of, a third party against either Cherokee Nation Entertainment or Architect.

IN WITNESS WHEREOF the parties have caused this Architect's Agreement to be executed and delivered by their duly authorized officers or representatives as of the day and year first written above.

"Architect"

By _____

Printed Name: _____

Title: _____

Date: _____

"Cherokee Nation Entertainment"

**CHEROKEE NATION ENTERTAINMENT,
LLC**

By _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT “A”

**CHEROKEE NATION ENTERTAINMENT
STANDARD TERMS AND CONDITIONS**

[to be incorporated into this Agreement as an Addendum upon the final execution of the Construction Management Agreement]



Exhibit "A"
Agreement for Architectural Services

_____, 202__

STANDARD CONSTRUCTION TERMS AND CONDITIONS

Cherokee Nation Entertainment, L.L.C.
777 West Cherokee Street
Catoosa, Oklahoma 74015-0515

TABLE OF CONTENTS

1.	Contract Documents.....	1
2.	The Work	1
3.	The Project.....	1
4.	The Drawings.....	1
5.	The Specifications.....	1
6.	The Project Manual	1
7.	Execution, Correlation and Intent	1
	A. Representation by the Contractor.....	1
	B. Intent of the Contract Documents	2
	C. Organization of Specifications.....	2
	D. Terminology	2
8.	Cherokee Nation Entertainment’s Representatives	2
9.	Shop Drawings, Product Data and Samples	2
	A. Shop Drawings.....	2
	B. Product Data	2
	C. Samples.....	2
	D. Review by the Contractor	2
	E. Approval by the Architect.....	3
	F. Representation by the Contractor.....	3
	G. Deviations	3
	H. Specific Attention	3
10.	Use of Site.....	3
11.	Review of Contract Documents and Field Conditions by Contractor	3
	A. Examination of the Job Site	3
	B. Verification of Field Conditions	4
12.	Supervision and Construction Procedures.....	4
	A. Supervision of the Work	4
	B. Responsibility of the Contractor	4
	C. Performance of the Work.....	4
	D. Inspections of the Work	4
13.	Labor and Materials	4
	A. Payment	4
	B. Enforcement of Discipline	5
	C. Sufficient Labor, Materials and Other Suppliers	5
14.	Permits, Fees and Notices	5
	A. Permits and Licenses	5
	B. Compliance With Laws	5
	C. Responsibility of Contractor	5
15.	Schedule, Pre-Construction Meeting and Superintendent	5
	A. Schedule.....	5
	B. Preliminary Meeting	6
	C. Superintendent	6
16.	Time of the Essence	7
17.	Furnishing and Ownership of Documents.....	7
	A. Copies of Drawings and Specifications	7
	B. Property of Cherokee Nation Entertainment.....	7
	C. Forms	7
	D. Requirements Provided by Cherokee Nation Entertainment	7
18.	Invoicing and Payment	8
	A. Payment	8
	B. Schedule of Values	8
	C. Payment Applications	8

	D.	Unconditional Progress Payment.....	9
	E.	Payment Including Change.....	9
	F.	Contractors' Affidavit.....	9
	G.	Payment to Third Parties.....	9
	H.	Payment for Materials Stored On Site.....	9
	I.	Certificate for Payment.....	10
	J.	Decisions to Withhold Payment.....	10
	K.	Final Payment.....	11
19.		Completion.....	12
	A.	Substantial Completion.....	12
	B.	Right to Occupy before Substantial Completion.....	12
	C.	Inspections by the Contractor and Punch List.....	13
	F.	Cherokee Nation Entertainment's Receipt of Fixtures and Equipment.....	13
	G.	Exterior Closed and Locked.....	14
	H.	Final Completion.....	14
20.		Construction by Cherokee Nation Entertainment or by Special Subcontractors.....	14
	A.	Cherokee Nation Entertainment's Right to Perform Construction and to Award Separate Contracts.....	14
	B.	Mutual Responsibility.....	14
21.		Subcontractors and Suppliers.....	14
	A.	Subcontractual Relations.....	14
	B.	Award of Subcontracts and Other Contracts for Portions of the Work.....	15
	C.	Contractor's Subcontracts.....	15
	D.	Certificates of Insurance.....	16
	E.	Contingent Assignment of Subcontracts.....	16
22.		Insurance.....	16
	A.	Contractor's Liability Insurance.....	16
	B.	Thirty (30) Day Notice Clause.....	17
	C.	Subrogation.....	17
	D.	Additional Insured.....	17
	E.	Non-Renewal or Cancellation.....	17
	F.	Non-Liability for Contractor's Loss.....	18
	G.	Other Risks.....	18
	H.	Insurance Companies to be Licensed.....	18
23.		Contractor's Bond.....	18
24.		Safety Regulations and Safety of Persons and Property.....	18
	A.	Safety Plan.....	18
	B.	Safety Represent.....	18
	C.	Protective Equipment.....	18
	D.	Right to Know.....	18
	E.	Drug Testing.....	19
25.		Cooperation With Other Contractors.....	19
26.		Representations and Warranties.....	19
	A.	General Representations and Warranties.....	19
	B.	Warranty Exclusions.....	19
	C.	Warranty Period.....	20
	D.	Named Products.....	20
	E.	Other Specified Products.....	20
	F.	Warranty on Substantial Completion.....	20
	G.	Third Party Suppliers Warranty.....	20
27.		Liens.....	21
28.		Inspection and Correction of Work.....	21
29.		Interference, Clean-up, Defective Work, Inspection of Facilities, and Cutting and Patching.....	21
	A.	Interference.....	21
	B.	Cleaning Up.....	22
	C.	Cherokee Nation Entertainment's Right to Clean Up.....	22
	D.	Correction of Defective Work.....	22

	E.	Remedies for Failure to Cure Defective Work	22
	F.	Inspection Facilities and Cost	22
	G.	Cutting and Patching.....	23
	H.	Non-waiver	23
30.		Hazardous Materials.....	23
	A.	Hazardous Materials Brought on or Produced on the Site	23
	B.	Hazardous Materials Found on the Site	23
31.		Taxes.....	24
32.		Compliance with Laws.....	24
33.		Changes in the Work; Change Orders	25
	A.	Changes in the Work.....	25
	B.	Change Order.....	25
	C.	Construction Change Directives	25
	D.	Adjustment to Contract Price.....	25
	E.	Information Required.....	26
	F.	Contractor to Proceed with the Work	26
	G.	Failure to Agree	26
	H.	Contract Price Decrease.....	27
	I.	Pending Final Determination of Total Cost	27
	J.	Agreement Between Contractor and Cherokee Nation Entertainment.....	27
	K.	Claim for Additional Costs and/or Time.....	27
34.		Term	28
35.		Stop Work.....	28
36.		Cherokee Nation.....	28
37.		Termination for Cause.....	28
38.		Suspension and Termination for Convenience	29
39.		Title.....	29
40.		Uncovering and Correction of Work.....	29
	A.	Uncovering of Work Contrary to Request	29
	B.	Uncovering of Work Not Specifically Requested.....	29
	C.	Prompt Correction of Covered Work.....	30
	D.	Long Term Correction of Covered Work	30
	E.	Removal of Work From the Job Site by Contractor	30
	F.	Correction of the Work by Cherokee Nation Entertainment.....	30
	G.	Cost of Correcting the Work.....	31
	H.	No Established Limitation	31
	I.	Acceptance of Nonconforming Work.....	31
41.		Tests and Inspections	31
	A.	Compliance With Laws	31
	B.	Additional Testing	31
	C.	Testing Which Reveals Nonconforming Work.....	32
	D.	Required Certificates	32
	E.	Prompt Testing.....	32
42.		Claims and Disputes.....	32
	A.	Claims	32
	B.	Referral to the Architect	32
	C.	Timing of Making a Claim	32
	D.	Diligent Performance of the Work Pending a Claim	33
	E.	Claims for Additional Cost.....	33
	F.	Claims for Additional Time	33
	G.	Notice of a Claim.....	33
43.		Resolution of Claims and Disputes	33
	A.	Review of Claims by the Architect.....	33
	B.	Documentation of the Resolution of a Claim.....	33
	C.	Additional Information for Unresolved Claims	33
	D.	Architect's Decision Relating to Unresolved Claims	33

	E. Governing Law, Jurisdiction and Waiver of Venue.....	34
44.	Indemnification.....	34
	A. Indemnification-General.....	34
	B. Indemnification-Taxes.....	34
	C. Participation by Cherokee Nation Group.....	34
	D. Patent Infringement.....	35
45.	Consequential Loss or Damage.....	35
46.	Patents.....	35
47.	Work Product.....	35
	A. New Work Created.....	35
	B. Drawings and Specifications.....	35
	C. As-Built Drawings.....	36
48.	Delay.....	36
	A. Force Majeure.....	36
	B. Normal Weather Conditions.....	36
	C. Delay Caused by Cherokee Nation Entertainment or Others.....	37
	D. Time for Claim Submission.....	37
49.	Independent Contractor.....	37
	A. Independent Contractor.....	37
	B. Payment of Taxes.....	37
	C. Reporting Requirements.....	38
	D. Waiver of Benefits.....	38
50.	Contractor’s Personnel.....	38
51.	Improper Payments.....	38
52.	Alcohol and Drug Policy.....	38
53.	Audit.....	39
54.	Publicity.....	39
55.	Confidential and Proprietary Information.....	39
	A. Confidentiality.....	39
	B. Return of Confidential Information.....	40
	C. Fiduciary Trust.....	40
	D. Protection of Proprietary and Confidential Information.....	40
56.	Assignment of Contract.....	40
57.	Notices.....	40
58.	Litigation Costs; Attorneys’ Fees.....	41
59.	Headings; Severability.....	41
60.	Incorporation by Reference; Survival.....	41
61.	Waiver.....	41
62.	Notice of Claims.....	41
63.	Reference to Liens Shall Not be Construed to Create Right to a Lien.....	41
64.	No Waiver of Sovereign Immunity.....	41
65.	Binding Agreement.....	42

**CHEROKEE NATION ENTERTAINMENT
STANDARD CONSTRUCTION TERMS AND CONDITIONS**

The following are Cherokee Nation Entertainment’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 the “**Contract**”) between Cherokee Nation Entertainment and any Construction Manager (hereinafter referred to as “**Contractor**”), Architect, contractor, subcontractor, supplier, consultant or any other person or persons who perform services or provide materials in connection with any Work performed in the completion of the Project.

Contract Documents. The Contract Documents shall consist of the Contract, Cherokee Nation Entertainment’s Standard Construction Terms and Conditions; any general, supplementary or other conditions adopted by Cherokee Nation Entertainment and agreed to by the Contractor; the Drawings and Specifications for the Work; addenda issued prior to the execution of this Contract; and modifications issued after the execution of this Contract.

1. **The Work.** The “**Work**” shall include all necessary construction services of any kind or nature in connection with the construction for Cherokee Nation Entertainment of

(hereinafter referred to as the “**Project**”), in accordance with the Contract Documents. (The location of the Project is also referred to as the “**Job Site.**”)
2. **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 Entertainment or by the Contractor.
3. **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.
4. **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.
5. **The Project Manual.** The Project Manual is the volume usually assembled for the Work which may include the bidding requirements, sample forms, Cherokee Nation Entertainment Standard Construction Terms and Conditions, the Contract, and Specifications.
6. **Execution, Correlation and Intent.**
 - A. **Representation by the Contractor.** Execution of the Contract by the Contractor is a representation that the 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 the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the 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 the 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.
- 7. Cherokee Nation Entertainment's Representatives.** Cherokee Nation Entertainment's Representative shall be _____ ("Owner's Representative"). The designation of _____ as Owner's Representative, shall not serve to assign any of Cherokee Nation Entertainment's right to title or interest in the Projects as Owner to _____, and Construction Manager 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 Entertainment, LLC. If the signature of Owner is required for any reason under these Terms and Conditions, such as directives, approvals and/or consents, only the following individuals shall have the authority to sign on behalf of Cherokee Nation Entertainment as Owner: TBD.
- 8. Shop Drawings, Product Data and Samples.**
- A. Shop Drawings.** Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the 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 the 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 the Contractor.** The 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 Entertainment or of separate contractors.

- E. Approval by the Architect.** The 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 the Contractor.** By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor 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.** The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect and Owner's Representative's approval of Shop Drawings, Product Data, Samples or similar submittals unless the 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. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect and Owner's Representative's approval thereof.
- H. Specific Attention.** The 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.
- 9. Use of Site.** The 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 site with materials or equipment.
- 10. Review of Contract Documents and Field Conditions by Contractor:**
- A. Examination of the Job Site.** The Contractor is expected to carefully examine the Job Site of the proposed Work, the Plans, Specifications, and Contract forms. He shall satisfy himself 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/or the execution of a Contract between Cherokee Nation Entertainment 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 the completion of the Project shall be prima facie evidence that the 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 the Contractor. It is understood and

agreed that such subsurface information, whether included in the Plans, Specifications, or otherwise made available to the Contractor, was obtained and is intended for Cherokee Nation Entertainment'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 he may make or obtain from his examination of the boring logs and other records of subsurface investigations and tests that are furnished by Cherokee Nation Entertainment.

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

11. **Supervision and Construction Procedures.**

- A. **Supervision of the Work.** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The 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.** The Contractor shall be responsible to Cherokee Nation Entertainment for acts and omissions of the Contractor's employees, contractors, subcontractors and their agents and employees, and other persons performing portions of the Work under a contract or subcontract with the Contractor.
- C. **Performance of the Work.** The 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 the Contractor.
- D. **Inspections of the Work.** The Contractor shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work.

12. **Labor and Materials.**

- A. **Payment.** Unless otherwise provided in the Contract or the Contract Documents, the 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.** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.
- C. **Sufficient Labor, Materials and Other Suppliers.** 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 fashion and to ensure the Work is essentially complete by the date and time for Substantial Completion as defined in the Contract.

13. **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 Entertainment's behalf. The cost shall be the sole responsibility of the Contractor. Cherokee Nation Entertainment will reimburse Contractor for this cost with no mark-up or pay directly at Cherokee Nation Entertainment's option if time allows.
- B. **Compliance With Laws.** The 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 ("TERO") of the Cherokee Nation.
- 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, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs.

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

- A. **Schedule.** Cherokee Nation Entertainment 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 Entertainment. 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 Contractor-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 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 Contractor to 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 Entertainment and Contractor. The Schedule shall be incorporated into the Contract as if fully set out herein. 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 Entertainment sufficient to allow Cherokee Nation Entertainment 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 Entertainment 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 Entertainment 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 the commencement of the Work, Contractor shall designate a competent superintendent ("**Superintendent**") and will inform Cherokee Nation Entertainment in writing of the Superintendent's name, qualifications, experience and address. Contractor shall also provide Cherokee Nation Entertainment 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 in which Work is actually in progress and will have complete authority to represent and act for Contractor. 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 Superintendent by Owner's Representative shall be as binding on the 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 Entertainment then the Superintendent or the unacceptable assistants shall be promptly replaced upon request by Cherokee Nation Entertainment. The Superintendent, as approved by Cherokee Nation Entertainment, shall be appointed until completion of the Work and shall not be removed from the Project without the written consent of Cherokee Nation Entertainment.

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

16. **Furnishing and Ownership of Documents.**

A. **Copies of Drawings and Specifications.** Contractor will be furnished reproducible construction Drawings and Specifications, either separately or in the form of a Project Manual. The 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 Entertainment.** Drawings and specifications furnished by Cherokee Nation Entertainment are the property of Cherokee Nation Entertainment and shall not be used by Contractor on other work.

C. **Forms.** Cherokee Nation Entertainment 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 Entertainment 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 Entertainment's property and shall not be used by Contractor on other work.

D. **Requirements Provided by Cherokee Nation Entertainment.** Cherokee Nation Entertainment 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 Entertainment or as required by law, Cherokee Nation Entertainment will furnish to Contractor or cause to be furnished to Contractor the following items, at Cherokee Nation Entertainment'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 Entertainment'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 he may make or obtain from his examination of the reports and other records of subsurface investigations and tests that are furnished by Cherokee Nation Entertainment.

17. Invoicing and Payment.

- A. Payment.** The 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 Entertainment'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 Entertainment may require. This Schedule of Values supplied shall be used as a basis for Contractor's application for payment as a method of showing progress on the Project; however, Cherokee Nation Entertainment 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 Entertainment 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 Entertainment'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 Entertainment.

- D. Unconditional Progress Payment Releases.** All Contractors' initial application for payment shall consist solely of the Progress Payment Request. Subsequent applications shall be accompanied by a properly executed Unconditional Progress Payment Release forms executed by all its subcontractors, material suppliers, consultants or 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 Entertainment 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. Contractors' Affidavit.** When and if requested by Cherokee Nation Entertainment, Contractors shall furnish as a prerequisite to any progress payment and Final Payment, a Contractors' 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 Contractors' Affidavit shall be consistent in form and wording as agreed to by Cherokee Nation Entertainment and Contractor.
- G. Payment to Third Parties.** Cherokee Nation Entertainment reserves the right, without obligation, to withhold, reduce or recover payment if the Contractor fails to pay any third party for labor, materials or other costs incurred by the Contractor in performance of the Work as and when due. Additionally, Cherokee Nation Entertainment shall also have the right, but no obligation, to make joint checks or withhold and or to require satisfactory lien releases for all suppliers and subcontractors of Contractor.
- H. Payment for Materials Stored on Site.** Payment, subject to retention for materials and/or equipment suitably stored at the site and intended for incorporation in the Work will be made by Cherokee Nation Entertainment, 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 site in accordance with applicable manufacturer's recommendations and special requirements of Cherokee Nation Entertainment;
 - (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 Entertainment upon payment;

- (3) Risk of loss of any materials stored on or adjacent to the Job Site shall remain the obligation of the Contractor until such time as title has passed to Cherokee Nation Entertainment. 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 Entertainment.

I. Certificate for Payment. Cherokee Nation Entertainment will, within thirty (30) days after the receipt of Contractor's Progress Payment Request, make payment or notify Contractor of Cherokee Nation Entertainment reason for withholding the Request, or portions of the Request. Receipt by Cherokee Nation Entertainment is defined to be delivery in person to Cherokee Nation Entertainment's Director at the Director's office located at 777 West Cherokee Street, Catoosa, Oklahoma 74015-0515. Payment is defined to be by Cherokee Nation Entertainment'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 Entertainment 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 Entertainment 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 Entertainment 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 Entertainment 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 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 Entertainment (a) a Contractor's Affidavit acceptable to Cherokee Nation Entertainment that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Cherokee Nation Entertainment or its property or its sureties might in any way be responsible, have been paid or otherwise satisfied, (b) consent of surety, if any, to Final Payment, (c) when applicable, accurate record drawings for Contractor's Work, and (d) if required by Cherokee Nation Entertainment, 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 Entertainment.
- (2) If any of Contractor's subcontractors or suppliers refuses to furnish a release or waiver required by Cherokee Nation Entertainment, Contractor may furnish a bond satisfactory to Cherokee Nation Entertainment to indemnify it against any such lien. If any lien remains unsatisfied after all payments are made, Contractor shall refund to Cherokee Nation Entertainment 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 Entertainment except those arising from: (a) liens, claims, or security interest encumbrances arising out of the Contract; (b) failure of the Work to comply with the requirements of the Contract Documents; or (c) terms of warranties required by the Contract Documents.
- (4) Acceptance of Final Payment by the 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 ninety (90) 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 ninety (90) days after Final Completion will not be processed. Failure to cause billings to be received by Cherokee Nation Entertainment within ninety (90) 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 then Cherokee Nation Entertainment 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 Entertainment.

18. 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 Entertainment may occupy or use any completed or partially completed portion of the Work at any state acceptable to Cherokee Nation Entertainment 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 Entertainment retains the right to occupy or to use any completed or partially completed portion of the Work at any stage acceptable to Cherokee Nation Entertainment 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 the Contractor and Punch List.** Upon the date for Substantial Completion as set forth in the Contract, the Contractor shall prepare and submit to the Architect and Owner's Representative a punch list of items to be completed or corrected. The 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 Entertainment and Punch List.** Within twenty (20) days following receipt of the Contractor's punch list, the Architect, Owner's Representative and his designees will make an inspection of the Project to determine whether the Contractor's Work is substantially complete. If Cherokee Nation Entertainment'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, the 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, the Contractor shall then submit a request for another inspection by the Architect, Owner's Representative and his designees to determine Substantial Completion. Such subsequent inspection will be completed within five (5) days following such notification by the Contractor. The Contractor is not relieved from completing or correcting Work by Cherokee Nation Entertainment'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 Entertainment and the Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the 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 Entertainment'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 Entertainment may begin receiving fixtures and equipment to be stored in the facilities, and that Cherokee Nation Entertainment and Cherokee Nation Entertainment's separate contractor(s) may be installing fixtures and Cherokee Nation Entertainment'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 Entertainment fixtures.
- H. **Final Completion.** Upon receipt of written notice from the 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 his 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.

19. **Construction by Cherokee Nation Entertainment or by Special Subcontractors.**

- A. **Cherokee Nation Entertainment's Right to Perform Construction and to Award Separate Contracts.** Cherokee Nation Entertainment 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 Entertainment shall provide for coordination of the activities of Cherokee Nation Entertainment's own employees and of each of the Special Subcontractors with the Work of the Contractor. The Contractor shall participate with each Special Subcontractor and Cherokee Nation Entertainment in reviewing their respective construction schedules when directed to do so by Cherokee Nation Entertainment. The Contractor shall make any revisions to the Schedule and the Project budget after a joint review and mutual agreement between Cherokee Nation Entertainment and Contractor.
- B. **Mutual Responsibility.** The Contractor shall afford Cherokee Nation Entertainment 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 Entertainment or the Special Subcontractors. If part of the Contractor's Work depends upon construction by Cherokee Nation Entertainment or the Special Subcontractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to Owner's Representative that such construction by Cherokee Nation Entertainment or the Special Subcontractors is required in order to give Cherokee Nation Entertainment adequate time to coordinate such construction. Costs caused by delays or by improperly timed activities shall be borne by the party responsible therefore.

20. **Subcontractors and Suppliers.**

- A. **Subcontractual Relations.** By appropriate agreement, written where legally required for validity, the 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 the Contractor by terms of the Contract Documents and the Cherokee Nation Entertainment Standard Construction Terms and

Conditions, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Conditions, assumes toward Cherokee Nation Entertainment. Each subcontract agreement shall preserve and protect the rights of Cherokee Nation Entertainment 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, the Contractor shall require each contractor or subcontractor to enter into similar agreements with sub-subcontractors. The 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, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to Cherokee Nation Entertainment the names of persons or entities proposed for each principal portion of the Work. Owner's Representative will promptly reply to the Contractor in writing stating whether or not Cherokee Nation Entertainment, after due investigation, has reasonable objection to any such proposed person or entity.
- (2) The Contractor shall not contract with a proposed person or entity to which Cherokee Nation Entertainment has made reasonable and timely objection.
- (3) If Cherokee Nation Entertainment has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom Cherokee Nation Entertainment 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 Entertainment, 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 Entertainment and Owner's Representative per the Project Schedule. Contractor shall immediately notify Cherokee Nation Entertainment 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 Entertainment 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 the Contractor to Cherokee Nation Entertainment provided that:

- (1) Assignment is effective only after termination of the Contract by Cherokee Nation Entertainment for cause or for convenience and only for those subcontract agreements which Cherokee Nation Entertainment 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.

21. Insurance.

A. Contractor's Liability Insurance. Contractor will carry or cause to be carried and maintained in force throughout the entire term of this Contract insurance coverage as described below with insurance companies acceptable to Cherokee Nations Entertainment. The limits set forth below are minimum limits and will not be construed to limit Contractor's liability. Except as provided for in the Contract, all costs and deductible amounts will be the sole responsibility of Contractor.

- (1) Worker's Compensation. 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 \$1,000,000 each accident, \$1,000,000 disease each employee and \$1,000,000 disease policy limit.
- (2) General Liabilities. Commercial or Comprehensive General Liability insurance on an occurrence form with a combined single limit of \$1,000,000 each occurrence, and annual aggregates of \$2,000,000 for bodily injury and property damage, including coverage for blanket contractual liability, broad form property damage, personal injury liability, independent contractors, products/completed operations, and when

applicable the explosion, collapse and underground exclusion will be deleted.

- (3) Automobile Insurance. Automobile liability insurance with a combined single limit of \$500,000 each occurrence for bodily injury and property damage to include coverage for all owned, non-owned, and hired vehicles.
- (4) Professional Liability Insurance. Professional liability insurance on a claims-made basis with an annual claim limit of \$2,000,000 and annual aggregate of \$2,000,000. Additional coverage amounts shall be furnished as an Additional Service of the Architect.

- B. Thirty (30) Day Notice Clause.** As a condition precedent to the modification or cancellation of the policy or policies issued by the insuring company during the periods of coverage as stated herein, thirty (30) days' prior written notice of such cancellation shall be mailed to Cherokee Nation Entertainment.
- C. Subrogation.** In each of the above-described policies, Contractor agrees to waive and will require its insurers to waive any rights of subrogation or recovery they may have against Cherokee Nation Entertainment, its parent, subsidiary, or affiliated companies.
- D. Additional Insured.** Under the General Liability, Excess Liability and Automobile insurance policies, Cherokee Nation Entertainment, its parent, subsidiary and affiliated companies and the Architect and Architect's consultants will be named as additional insureds as respects Contractor's operations and as respects any services performed under this Contract. Any costs associated with naming these additional insureds will be handled as a reimbursable expense. The General Liability and Automobile insurance policies will include the following "other insurance" amendment: "This insurance is primary insurance with respect to Cherokee Nation Entertainment, its parent, subsidiary and affiliated companies, and any other insurance maintained by Cherokee Nation Entertainment, its parent, subsidiary or affiliated companies is excess and not contributory with this insurance."
- E. Non-Renewal or Cancellation.** Non-renewal or cancellation of the policies described above will be effective only after written notice is received by Cherokee Nation Entertainment from the insurance company thirty (30) days in advance of any such non-renewal or cancellation. Prior to commencing the Work hereunder, Contractor will deliver to Cherokee Nation Entertainment 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 Work performed under this Contract, Contractor agrees, upon request of Cherokee Nation Entertainment, to submit the original or a certified copy of its insurance policies for inspection by Cherokee Nation Entertainment.

- F. Non-Liability for Contractor's Loss.** Except for builders risk insurance required under the Contract Documents, Cherokee Nation Entertainment 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 his employees, servants or agents.
- G. 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 Entertainment shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.
- H. Insurance Companies to be Licensed.** All insurance to be provided by Contractor shall be written by insurance companies licensed to do business in the State of Oklahoma.
- 22. Contractor's Bond.** If required by Cherokee Nation Entertainment, Contractor shall furnish performance and a labor and material payment bond in the amount of the cost of Contractor's Work. At Cherokee Nation Entertainment's request, Contractor shall disclose its cost (stated both as a percentage of the cost of Contractor's Work, and an estimated total cost) for said bonds. The bonds shall name Cherokee Nation Entertainment as obligee and shall be in the form or forms as agreed upon by Cherokee Nation Entertainment and Contractor. The cost of the subcontractor's bonds shall be included in the subcontract amount.
- 23. 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, supplier 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 Entertainment 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, subcontractor and supplier's employees may be subject to pre-employment and/or random drug testing.

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

25. **Representations and Warranties.**

A. **General Representations and Warranties.** Contractor represents and warrants to Cherokee Nation Entertainment 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 Entertainment;
- (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 Entertainment;
- (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 Entertainment interests.

B. **Warranty Exclusions.** The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Constructor,

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 Entertainment 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 Entertainment 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 Entertainment.
- 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 Entertainment 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, the 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, the 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 Entertainment and its successors and assigns. Neither written acceptance by Cherokee Nation Entertainment 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 Entertainment. Contractor shall cooperate with Cherokee Nation Entertainment in the enforcement of such warranties and, if so requested by Cherokee Nation Entertainment 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 Entertainment 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.

26. **Liens.** Contractor shall have the affirmative duty to keep Cherokee Nation Entertainment 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 Entertainment may recoup, offset or retain out of payments due or to become due to Contractor an amount sufficient to fully protect Cherokee Nation Entertainment 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 Entertainment from any and all loss of use as a result of any lien filed upon the property of Cherokee Nation Entertainment unless the lien is due to the failure of Cherokee Nation Entertainment to pay a valid request for payment.
27. **Inspection and Correction of Work.** All Work shall be subject to inspection by Cherokee Nation Entertainment, 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 Entertainment and shall not relieve the 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 Entertainment 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 Entertainment after acceptance of the completed Work.
28. **Interference, Clean-up, Defective Work, Inspection of Facilities, and Cutting and Patching.**
- A. **Interference.** Cherokee Nation Entertainment 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 Entertainment and other persons completing other work at the Job Site, and Cherokee Nation Entertainment 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 Entertainment and Owner's Representative, and Contractor shall proceed with such Work only upon Cherokee Nation Entertainment 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 Entertainment's Right to Clean Up.** If a dispute arises among the Contractor, separate contractors and Cherokee Nation Entertainment as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, Cherokee Nation Entertainment 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 Entertainment 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 Entertainment may, after five (5) days' written notice:
- (1) by contract or otherwise, replace such material or correct such workmanship and back charge to Contractor the cost thereof together with any resulting damage;
 - (2) terminate the Contractor's right to proceed under Termination for Cause;
or
 - (3) issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.
- 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 Entertainment and its Representatives shall be performed to the extent feasible in such manner as to not unnecessarily delay

the Work. The Contractor shall pay any additional cost, including, but not limited to, additional fees of inspection when material or workmanship is not ready at the time specified by the Contractor for inspection or when re-inspection is necessitated by prior rejection.

- G. **Cutting and Patching.** The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or make its parts fit together properly. The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Project by Cherokee Nation Entertainment 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 the Contractor if the Work is found to be defective or nonconforming. The inspection or the occupancy or acceptance of Work, shall not waive or impair Cherokee Nation Entertainment right to reject or revoke its acceptance of nonconforming Work, or to avail itself of any other remedies.

29. **Hazardous Materials.**

- A. **Hazardous Materials Brought on or Produced on the 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. For purposes here, “**Hazardous Materials**” means any substance which, by reason of being explosive, flammable, poisonous, corrosive, oxidizing, irritating, or otherwise harmful and will cause injury or death. Contractor shall comply with all laws, regulations and procedures regarding Hazardous Materials. Contractor shall immediately notify Cherokee Nation Entertainment 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 Entertainment 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 Entertainment property.
- B. **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 Entertainment 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 Entertainment 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 Entertainment shall employ such consultants and experts as may be deemed appropriate to perform tests and render lawfully contain, remediate or deal with such materials.

- 30. 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 Entertainment represents that it is a wholly-owned, tribally chartered corporation that does business for the benefit of the Cherokee Nation, and enjoys the tax-exempt status of the Cherokee Nation. As such, Contractor and any subcontractor agree, where appropriate and at the sole option of Cherokee Nation Entertainment to permit Cherokee Nation Entertainment 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 Entertainment for the benefit of the Cherokee Nation.
- 31. 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 Entertainment from and protect it against any and all responsibility or liability therefor or in regard thereto.

32. **Changes in the Work; Change Orders.**

- A. **Changes in the Work.** All changes in the Work must be in writing. Cherokee Nation Entertainment 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 Entertainment or the Architect at Cherokee Nation Entertainment's direction and signed by Cherokee Nation Entertainment, 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 Entertainment, 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 Entertainment may be 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 the Contractor for review by Cherokee Nation Entertainment 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 Entertainment, 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 Entertainment with a copy to the Architect.

F. Contractor to Proceed with the Work. Upon receipt of a Construction Change Directive the Contractor shall promptly proceed with the change in the Work involved and inform Cherokee Nation Entertainment and the Architect in writing of the 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 Entertainment, 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 Entertainment and Contractor as it pertains to this Project.

H. Contract Price Decrease. The amount of credit to be allowed by the Contractor to Cherokee Nation Entertainment 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 Entertainment. 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 Entertainment, 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 Entertainment. When Cherokee Nation Entertainment 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 and/or Time. In any instance in which Cherokee Nation Entertainment 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 a 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.

33. **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 Entertainment'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.
34. **Stop Work.** If the 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 Entertainment may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of Cherokee Nation Entertainment to stop the Work shall not give rise to a duty on the part of Cherokee Nation Entertainment to exercise this right for the benefit of Contractor or any other person or entity, except to the extent required in this Contract.
35. **Cherokee Nation Entertainment'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 Entertainment 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 Entertainment 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 Entertainment 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 Entertainment 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.
36. **Termination for Cause.** If Contractor neglects to proceed properly with the Work or fails to perform the Work, then Cherokee Nation Entertainment after five (5) days' written notice to Contractor and his 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 Entertainment shall pay the Contractor the difference, but if such cost of the Work exceeds the unpaid balance, Contractor shall immediately pay Cherokee Nation Entertainment 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. Any termination for cause by Cherokee Nation Entertainment 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.

37. **Suspension and Termination for Convenience.** Cherokee Nation Entertainment 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 Entertainment 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 Entertainment obligations hereunder, Contractor may suspend performance if Contractor provides fourteen (14) day's written notice to both Owner's Representative and Cherokee Nation Entertainment.
38. **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 Entertainment immediately after delivery to the Job Site or payment therefore by Cherokee Nation Entertainment, whichever occurs first.
39. **Uncovering and Correction of Work.**
- A. **Uncovering of Work Contrary to Request.** If a portion of the Work is covered contrary to Cherokee Nation Entertainment's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by Cherokee Nation Entertainment, be uncovered for Cherokee Nation Entertainment's observation and be replaced at the Contractor's expense.
- B. **Uncovering of Work Not Specifically Requested.** If a portion of the Work has been covered which Cherokee Nation Entertainment has not specifically requested to observe prior to its being covered, Cherokee Nation Entertainment may request to see such Work and it shall be uncovered by the 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 Entertainment. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs.

- C. **Prompt Correction of Covered Work.** The Contractor shall promptly correct Work rejected by Cherokee Nation Entertainment 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. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for Cherokee Nation Entertainment 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, the Contractor shall correct it promptly after receipt of written notice from Cherokee Nation Entertainment to do so unless Cherokee Nation Entertainment has previously given the 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 Entertainment shall give such notice promptly after discovery of the condition.
- E. **Removal of Work from the Job Site by Contractor.** The 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 the Contractor nor accepted by Cherokee Nation Entertainment.
- F. **Correction of the Work by Cherokee Nation Entertainment.** If the Contractor fails to correct nonconforming Work within a reasonable time, Cherokee Nation Entertainment may correct such work at the Contractor's expense. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from Cherokee Nation Entertainment, Cherokee Nation Entertainment may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, Cherokee Nation Entertainment 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 the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Fee shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to Cherokee Nation Entertainment.

- G. **Cost of Correcting the Work.** The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of Cherokee Nation Entertainment or separate contractors caused by the 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 the Contractor might have under the Contract Documents. Establishment of the time period of one (1) year relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.
- I. **Acceptance of Nonconforming Work.** If Cherokee Nation Entertainment prefers to accept the Work that is not in accordance with the Contract Documents, Cherokee Nation Entertainment 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.

40. **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. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to Cherokee Nation Entertainment, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give Cherokee Nation Entertainment timely notice of when and where tests and inspections are to be made so Cherokee Nation Entertainment may observe such procedures.
- 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 Entertainment will instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to Cherokee Nation Entertainment, and the Contractor shall give timely notice to Cherokee Nation Entertainment, Owner's Representative and the Architect of when and where tests and inspections are to be made so that Cherokee Nation Entertainment, 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, the Contractor shall bear all costs made necessary by such failure in accordance with the Cherokee Nation Entertainment 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 the Contractor and promptly delivered to Cherokee Nation Entertainment.
- E. **Prompt Testing.** Tests or inspections conducted pursuant to the Contract Document shall be made promptly to avoid unreasonable delay in the Work.

41. 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 Entertainment 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 the Contractor and Cherokee Nation Entertainment 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 litigation (or arbitration, depending on the process) 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 the 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 the 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 Entertainment. 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, the Contractor shall proceed diligently with performance of the Contract.
- E. **Claims for Additional Cost.** If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of the proposed increased cost.
- F. **Claims for Additional Time.** If the Contractor wishes to make a Claim for increases in the time to complete the Work, written notice as provided herein shall be given. The 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.

42. **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: (a) request additional supporting data from the claimant, (b) submit a schedule to the parties indicating when the Architect expects to take action, (c) reject the Claim in whole or in part, stating reasons for rejection, (d) recommend approval of the Claim by the other party, or (e) 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: (a) submit additional supporting data requested by the Architect, (b) modify the initial Claim, or (c) 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 the 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 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.

43. Indemnification.

- A. Indemnification-General.** Contractor shall defend (at Cherokee Nation Entertainment's option), indemnify and hold harmless Cherokee Nation Entertainment, its parent, subsidiaries and affiliates and its and their respective directors, 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 the 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, pursuant to the procedures set forth in Paragraph 43(E).
- B. Indemnification-Taxes.** Contractor agrees to defend, indemnify, and hold harmless Cherokee Nation Group for the following 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 which Cherokee Nation Group may be required to pay on account of Contractor.
- C. Participation by Cherokee Nation Group.** Any of the 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 Entertainment to continue using the Work in question or to modify or replace promptly the Work to Cherokee Nation Entertainment satisfaction so that it becomes non-infringing. Contractor shall indemnify the 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.
- 44. Consequential Loss or Damage.** Contractor waives claims against Cherokee Nation Entertainment 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 Entertainment will be liable for any direct damages incurred by the Contractor caused by any breach of the Contract by Cherokee Nation Entertainment to the extent that Cherokee Nation Entertainment is found liable for any such breach, pursuant to the procedures set forth in Paragraph 43(E).
- 45. 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.
- 46. Work Product.**
- A. New Work Created.** All new or original Work created hereunder, or all Work obtained or acquired, shall be considered work for hire, and Cherokee Nation Entertainment 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 Entertainment or its designee. Documents and other written materials provided by Contractor pursuant to this Contract will forever remain Cherokee Nation Entertainment or its designee's property.
- B. Drawings and Specifications.** The drawings, specifications and other documents, including those in electronic form, prepared by Cherokee Nation Entertainment and Cherokee Nation Entertainment's Architect are and shall remain Cherokee Nation Entertainment property through which the Work is to be executed by the Contractor. Contractor may retain one record set. Neither the 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 Entertainment or Cherokee Nation Entertainment's Architect and, unless otherwise indicated, Cherokee Nation Entertainment shall be deemed the author of them and 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 Entertainment, on request, upon completion of the Work. The drawings, specifications and other documents prepared by Cherokee Nation Entertainment and Cherokee Nation Entertainment consultants, and copies thereof furnished to the Contractor, are for use solely with respect to the Project. They are not to be used by the Contractor or any subcontractor, sub-subcontractor or material or equipment supplier on other projects or for additions this project outside the scope of the Work without the specific written consent of Cherokee Nation Entertainment.

- 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 Entertainment reserves the right to withhold final payment to Contractor if, in Cherokee Nation Entertainment sole opinion, accurate "as-built" drawings have not been delivered to Cherokee Nation Entertainment by Contractor upon completion of Contractor's Work.

47. **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 the 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, the 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 the 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 Entertainment by written Change Order, which agreement shall not be unreasonably withheld.

- C. **Delay Caused by Cherokee Nation Entertainment or Others.** Should Contractor's progress be interfered with or the completion of this Contract be prevented through failure of Cherokee Nation Entertainment to provide required services, or for any reason attributable to Cherokee Nation Entertainment, Special Subcontractors, its agents, or others, then in that event, 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 Construction Manger's costs detailed in Exhibit A 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 not be entitled to any additional costs as a result of delays described in Section 42 and this Section 48.

48. **Independent Contractor.**

- A. **Independent Contractor.** Contractor hereby declares 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 an agent, employee or servant for and may not bind Cherokee Nation Entertainment. 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 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 Entertainment to Contractor pursuant to this Contract will be reported as non-employee compensation by Cherokee Nation Entertainment 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. The 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 for Cherokee Nation Entertainment, its parent or any of its affiliates in all positions pursuant to this Contract. Contractor further agrees to furnish Cherokee Nation Entertainment 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 Entertainment's 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 Entertainment as a result of the performance of this Contract, except for Cherokee Nation Entertainment'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 Entertainment for any claim by any Contractor personnel for such rights or benefits.
49. **Contractor's Personnel.** Contractor shall, upon Cherokee Nation Entertainment or its Owner's Representative's request, furnish Cherokee Nation Entertainment with the names and addresses of its employees assigned to the Work. Cherokee Nation Entertainment, 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.
50. **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 Entertainment nor favor any employee of Cherokee Nation Entertainment with gifts or entertainment of significant cost or value. If Cherokee Nation Entertainment has reasonable cause to believe that the provisions of the preceding sentences have been violated, Cherokee Nation Entertainment, its representatives, or auditors may audit the records of Contractor, for the sole purpose of establishing compliance with such requirements. All costs of any such audit shall be the responsibility of Contractor.
51. **Alcohol and Drug Policy.** Contractor's employees, while on Cherokee Nation Entertainment's premises or engaged in Cherokee Nation Entertainment's Work, shall refrain from unauthorized consumption or possession of alcoholic beverages and the possession, sale, use or distribution of unauthorized drugs. Contractor's failure to

comply with this Section will constitute a material breach of this Contract. 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 Entertainment'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.

52. **Audit.** Contractor shall keep such 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 Entertainment under this Contract and shall be made available for examination, audit and reproduction by Cherokee Nation Entertainment 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 Entertainment, the Contractor shall permit Cherokee Nation Entertainment's personnel or its duly authorized agent or representative access during normal working hours to the Contractor's personnel, property and records necessary to conduct the Cherokee Nation Entertainment'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 Entertainment 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.
53. **Publicity.** Contractor shall not identify Cherokee Nation Entertainment nor publicize the fact that Cherokee Nation Entertainment is a customer of Contractor in any manner including, but not limited to, press releases, articles, interviews, marketing materials, online materials, and speeches without first obtaining, for each separate instance of such publication, at least three (3) business days' prior written approval from Cherokee Nation Entertainment. The obligations of this Section shall survive the termination of this Contract.
54. **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 including but not limited to written information identified as "confidential" by a legend to that effect and verbal information identified by Cherokee Nation Entertainment as "confidential" at the time of disclosure, with respect to Cherokee Nation Entertainment's business (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 Entertainment's business and financial methods and practices, pricing and selling techniques, file or data base materials, price lists, software listings or printouts, computer programs, lists of Cherokee Nation Entertainment's clients,

client record cards, client files, credit and financial data of Cherokee Nation Entertainment's suppliers and present and prospective clients, and particular business requirements of Cherokee Nation Entertainment's present and prospective clients, as well as similar information relating to the parent, subsidiaries and affiliates of Cherokee Nation Entertainment.

- B. Return of Confidential Information.** Upon termination or expiration of this Contract for any reason, or upon request of Cherokee Nation Entertainment, Contractor shall return, or certify as destroyed, written material and other media containing any Confidential Information, together with any copies thereof. Failure by the Contractor to comply with this requirement shall be grounds for withholding any payment that may be due Contractor, except as need for Contractor's business records for the Project.
- C. Fiduciary Trust.** In addition, Contractor, on behalf of Cherokee Nation Entertainment, may develop a personal acquaintance with clients and prospective clients of Cherokee Nation Entertainment, its parent, subsidiaries 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 Entertainment's affairs, products 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 Entertainment, directly or indirectly communicate or divulge to, or use for its or their own benefit, other than as a contractor of Cherokee Nation Entertainment and to further the Cherokee Nation Entertainment's interests, or for the benefit of any other person, firm, association or corporation, any of Cherokee Nation Entertainment's, its parent's, subsidiaries' or affiliates', trade secrets, proprietary data or other Confidential Information, except that Contractor may disclose such matters to the extent that disclosure is required (1) in the course of said relationship, or (2) to enable Contractor's personnel to render services hereunder.
- 55. 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 Entertainment 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 Entertainment may assign this Contract. No assignment shall relieve Cherokee Nation Entertainment from any of its obligations hereunder unless specifically agreed to in writing by Contractor.
- 56. 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 shall be delivered or addressed as appears on the Contract, and to Cherokee Nation Entertainment to the attention of Contract Administration at the address at it appears in 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.

57. **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.
58. **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 competent jurisdiction 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.
59. **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.
60. **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.
61. **Notice of Claims.** Contractor shall promptly notify Cherokee Nation Entertainment in writing of any claims, demands, causes of action, or suits and shall do all things required by Cherokee Nation Entertainment to protect Cherokee Nation Entertainment interests.
62. **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 the Contractor or any subcontractor to file any sort of lien whatsoever against property of Cherokee Nation Entertainment and/or the Cherokee Nation.
63. **No Waiver of Sovereign Immunity.** **NO PROVISION OF THIS CONTRACT, THE CHEROKEE NATION ENTERTAINMENT'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 ENTERTAINMENT AND/OR THE CHEROKEE NATION.**

64. **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 ENTERTAINMENT'S
STANDARD CONSTRUCTION TERMS AND CONDITIONS**

EXHIBIT “B”

SCHEDULE

[to be provided at a later date]

EXHIBIT “C”

NONDISCLOSURE AGREEMENT

I, _____, Architect’s employee, agent, or contractor, am aware that an agreement (“Agreement”) has been entered into between Cherokee Nation Entertainment, LLC (“CNE”), and _____ (“Architect”), dated as of _____, and I fully understand that the Agreement imposes confidentiality obligations upon Architect, its employees, agents, and contractors, as set forth in Annex 1 attached hereto. I agree to regard and preserve as confidential all such information received by Architect or its designee in providing the Services described in the subject Agreement and to comply with its contractual obligations regarding confidentiality. Any disclosure of such confidential information by me or a representative of Architect will be only on a “need to know” basis, and Architect will advise such officers, employees, agents, and representatives of the confidential nature thereof and its obligations with respect thereto.

I agree that all work created, produced, prepared, or otherwise performed by me on behalf of CNE shall be original and shall be deemed “work for hire.” If for any reason the work to be done by me is not deemed “work for hire,” then I hereby assign all rights, title, and interest to CNE.

Architect, agent, or contractor:

Signature

Print Name

Date

EXHIBIT “D”

IDENTIFICATION OF PROJECT PARTIES

1. Owner: Cherokee Nation Entertainment, LLC
777 W. Cherokee Street
Catoosa, OK 74015-0515

Owner’s Representative: (xxx) xxx-xxxx
2. Construction Manager: Firm Name (xxx) xxx-xxxx
Address
City, State Zip
Contact
3. Architect: Firm Name
Address
City, State Zip
Contact

Architect’s Representatives: (xxx) xxx-xxxx
4. Structural Engineer: Firm Name (xxx) xxx-xxxx
Address
City, State Zip
Contact
5. Mechanical Engineer: Firm Name (xxx) xxx-xxxx
Address
City, State Zip
Contact
6. Plumbing Engineer: Firm Name (xxx) xxx-xxxx
Address
City, State Zip
Contact
7. Electrical Engineer: Firm Name (xxx) xxx-xxxx
Address
City, State Zip
Contact
8. Food Consultant: Firm Name (xxx) xxx-xxxx
Address
City, State Zip
Contact
9. Civil/Surveying Engineers: Firm Name (xxx) xxx-xxxx
Address
City, State Zip
Contact