

**SECTION IV**

**BUSINESS RELATIONSHIP AFFIDAVIT**

STATE OF )  
 ) ss.  
COUNTY OF )

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

---

---

---

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

---

---

---

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

---

---

---

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

---

---

---

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

---

---

---

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

**SIGNATURE PAGE TO THE BUSINESS RELATIONSHIP AFFIDAVIT**

---

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

---

Notary Public

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

**SECTION V**

**NON-COLLUSION AFFIDAVIT**

STATE OF )  
 ) ss.  
COUNTY OF )

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

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

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

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

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

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

## SECTION VI

### NON-DISCLOSURE AGREEMENT

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

---

with its principal offices located at

---

(“Bidder”)

in consideration of the mutual covenants of this Non-disclosure Agreement (“Agreement”), hereby agree as follows:

**1. In connection with discussions and/or negotiations between the parties regarding**

**PROJECT NAME:**

**RFP NUMBER:**

(“Subject Matter”), each party to this Agreement may wish to disclose its proprietary or trade secret information (“Information”) to the other party on a confidential basis. The disclosing party may consider such Information proprietary under this Agreement either because it has developed the Information internally, or because it has received the Information subject to a continuing obligation to maintain the confidentiality of the Information, or because of other reasons. The disclosing party may consider such Information as a trade secret because such Information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertained by proper means by, other persons who can obtain economic value from its disclosure or use.

2. When Information deemed to be proprietary or trade secret is furnished in a tangible form, including electronic mail, the disclosing party shall clearly mark the Information in a manner to indicate that it is considered proprietary, confidential, trade secret or otherwise subject to limited distribution as provided herein. When Information deemed to be proprietary is provided orally, including information conveyed to an answering machine, voice mail box or similar medium, the disclosing party shall, at the time of disclosure, clearly identify the Information as being proprietary or confidential or otherwise subject to limited distribution as provided herein. If the disclosing party fails to identify Information as confidential, such disclosing party may correct the omission by later notice consisting of a writing or statement, and the recipient shall only be liable for unauthorized disclosures of such Information made subsequent to said notice. In addition, the existence and terms of this Agreement, and the fact and substance of discussions and correspondence between the parties concerning goods or services, shall be deemed proprietary Information.
3. With respect to Information disclosed under this Agreement, the party receiving Information shall:
  - a. hold the Information in confidence, exercising a degree of care not less than the care used by receiving party to protect its own proprietary or confidential information that it does not wish to disclose;
  - b. restrict disclosure of the Information solely to those directors, officers, employees, affiliates, and/or agents/consultants, including either party’s ability to disclose to commercial lenders, and the Chief and Tribal Council of the Cherokee Nation, with a need to know and not disclose it to any other person;
  - c. advise those persons to whom the Information was disclosed of their obligations with respect

- to the Information; and,
- d. use the Information only in connection with continuing discussions by the parties concerning the Subject Matter, except as may otherwise be mutually agreed upon in writing; and
  - e. except for the purposes of evaluating the Subject Matter, not copy or distribute such Information or knowingly allow anyone else to copy or distribute such Information, and any and all copies shall bear the same notices or legends, if any, as the originals.
4. The Information shall be deemed the property of the disclosing party and, upon request, the other party will return all Information received in tangible form (and marked proprietary or confidential) to the disclosing party or will destroy or erase if such Information is recorded on an erasable storage medium, all such Information at the disclosing party's direction, and certify to the disclosing party the Information has been destroyed or erased. If either party loses or makes an unauthorized disclosure of the other party's Information, it shall notify such other party immediately and use reasonable efforts to retrieve the lost or wrongfully disclosed Information.
  5. In the event a party or its affiliate(s) makes an unauthorized disclosure, such party shall indemnify the aggrieved party, including the aggrieved party's officers, directors, managers, agents and/or employees for any loss proximately arising from such disclosure.
  6. The party to whom Information is disclosed shall have no obligation to preserve the proprietary nature of any Information which:
    - a. was previously known to such party free of any obligation to keep it confidential;
    - b. is or becomes publicly available by other than unauthorized disclosure;
    - c. is developed by or on behalf of such party independent of any Information furnished under this Agreement;
    - d. is received from a third party whose disclosure does not violate any confidentiality obligation; or
    - e. is disclosed pursuant to the requirement or order of a duly empowered governmental agency or court of competent jurisdiction to the extent such disclosure is required by a valid law, regulation or court order, or is disclosed pursuant to the requirement of an applicable statute, regulation or rule, and in all such cases sufficient notice is given by the recipient to the disclosing party of any such requirement or order to permit the disclosing party to seek an appropriate protective order or exemption from such requirement or order, unless such notice is prohibited by said requirement, order, statute, regulation or rule.
  7. Neither this Agreement, nor the disclosure of Information under this Agreement, nor the ongoing discussions and correspondence between the parties, shall constitute or imply a commitment or binding obligation between the parties or their respective affiliated companies, if any, regarding the Subject Matter. If, in the future, the parties elect to enter into a binding commitment regarding the Subject Matter, such commitment will be explicitly stated in a separate written agreement executed by both parties, and the parties hereby affirm that they do not intend their discussions, correspondence, and other activities to be construed as forming a contract regarding the Subject Matter or any other transaction between them without execution of such separate written agreement.
  8. This Agreement may not be assigned by either party without the prior written consent of the other party, except that no consent is necessary for either party to assign this Agreement to a corporation succeeding to substantially all the assets or business of such party whether by merger, consolidation, acquisition or otherwise. This Agreement shall benefit and be binding upon the parties hereto and their respective successors and permitted assigns.
  9. The parties acknowledge that they have had an adequate opportunity to review this Agreement and to consult legal counsel knowledgeable in Federal Indian Law and Cherokee Nation Law regarding the

legal effect of this Agreement.

10. This Agreement shall become effective as of the date set forth below (“Effective Date”). Disclosure of Information between the parties under this Agreement may take place for a period (the “Information Disclosure Period”) of one (1) year after the Effective Date. The obligations of the parties contained in Paragraphs 3 and 4 shall survive and continue beyond the expiration of the Information Disclosure Period indefinitely with regard to Information designated as a trade secret by disclosing party and for a period of two (2) years with regard to all other Information.
11. The parties acknowledge that in the event of an unauthorized disclosure, the damages incurred by a non-disclosing party may be difficult if not impossible to ascertain, and that such non-disclosing party may seek injunctive relief as well as monetary damages against a party that breaches this Agreement.
12. This Agreement constitutes the entire understanding between the parties with respect to the Subject Matter provided hereunder and supersedes all proposals and prior agreements (oral or written) between the parties relating to the confidential nature of the Information provided hereunder. No amendment or modification of this Agreement shall be valid or binding on the parties unless made in writing and executed on behalf of each party by its duly authorized representative.
13. Neither party:
  - a. is responsible or liable for any business decisions made or inferences drawn by the other party in reliance on this Agreement or in reliance on actions taken or disclosures made pursuant to this Agreement;
  - b. shall be liable to or through the other hereunder for amounts representing loss of profits, loss of business, or special, indirect, consequential, or punitive damages.
14. **NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, NEITHER DISCLOSING PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY NATURE WHATSOEVER WITH RESPECT TO ANY INFORMATION DISCLOSED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR AGAINST INFRINGEMENT.**
15. The parties acknowledge that this Agreement does not restrict the ability of the parties to engage in their respective businesses, nor does it limit either party's use or application of any information or knowledge acquired independently of the other without a breach of this Agreement in the course of such party's business.
16. This Agreement may be executed in one or more counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. Facsimile signatures to this Agreement shall be deemed to be binding upon the parties.

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

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

**Company**

**Bidder**

\_\_\_\_\_  
(SIGNATURE)

\_\_\_\_\_  
(SIGNATURE)

\_\_\_\_\_  
(PRINT NAME)

\_\_\_\_\_  
(PRINT NAME)

\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(TITLE)

## SECTION VII

### BOND AND INSURANCE REQUIREMENTS

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

- (A) Worker's Compensation insurance complying with the laws of the State or States having jurisdiction over each employee, whether or not Contractor is required by such laws to maintain such insurance, and Employer's Liability with limits of \$500,000 each accident, \$500,000 disease each employee, and \$500,000 disease policy limit.

(B) Commercial or Comprehensive General Liability insurance on an occurrence form with a combined single limit of \$1,000,000 each occurrence, and annual aggregates of \$2,000,000, for bodily injury and property damage, including coverage for blanket contractual liability, broad form property damage, personal injury liability, independent contractors, products/completed operations, and when applicable the explosion, collapse and underground exclusion will be deleted.

(C) Automobile Liability insurance with a combined single limit of \$1,000,000 each occurrence for bodily injury and property damage to include coverage for all owned, non-owned, and hired vehicles. In each of the above described policies, Contractor agrees to waive and will require its insurers to waive any rights of subrogation or recovery they may have against Company its parent, subsidiary, or affiliated companies.

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

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

#### **Additional Insurance Requirements upon Award of Bid:**

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

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

At least five (5) days prior to the commencement of the Work, Contractor shall deliver to Company certificates of insurance on an ACORD 25 or 25S form evidencing the existence of the insurance coverage required per the Contract Agreement. In the event coverage is denied or reimbursement of a properly presented claim is disputed by the carrier for insurance provided in subsections (A) through (E) above,



Contractor shall, upon written request, provide Company with a certified copy of the involved insurance policy or policies within ten (10) business days of receipt of such request.

**Bid Bond and Performance, Payment and Maintenance Bonds:**

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

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

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

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

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