

# **REQUEST FOR PROPOSAL**

## **CHEROKEE COUNTY RECREATION AND PARKS SOLICITATION FOR BID FOR NEW FENCING & DUGOUT ROOFING AT MULTIPLE COUNTY PARKS**

**RFP# 2009-32**

### **RELEASE DATE**

**November 6, 2009**

### **SUBMITTAL DEADLINE**

**November 30, 2009  
3:00 PM**

### **CONTACT POINT**

**Chuck Abbott, Capital Program Manager  
770-721-7818 Office  
cabbott@cherokeega.com**

<b>SUBMIT TO:</b> Cherokee County Purchasing Department Attn: Dorothy Griffith 1130 Bluffs Parkway Canton, GA 30114	<h1>REQUEST FOR PROPOSAL</h1>			
<b>CONTACT PERSON:</b> Chuck Abbott, Capital Program Manager 770-721-7818 Fax 678-493-6088 E-mail: <a href="mailto:cabbott@cherokeega.com">cabbott@cherokeega.com</a>	<b>BID TITLE:</b>  <p style="text-align: center;"><b><u>COUNTY NEW FENCING AND DUGOUT ROOFING FOR MULTIPLE COUNTY PARKS</u></b></p>			
<b>REQUESTING DEPARTMENT:</b>  CHEROKEE COUNTY BOARD OF COMMISSIONERS / CAPITAL PROGRAMS	<b>BID #:</b>  RFP#2009-32	<b>SUBMITTAL DEADLINE:</b>  3:00 P.M., November 30, 2009		
<b>PRE BID PROPOSAL DATE, TIME, AND LOCATION:</b> NONE		<b>Submittals received after above date and time will not be considered.</b>		
<b>RESPONDANT NAME:</b>	<b>IF RETURNING AS A "NO RESPONSE," STATE REASON:</b>			
<b>MAILING ADDRESS:</b>				
<b>CITY-STATE-ZIP:</b>				
<b>TELEPHONE NO.</b>	<input checked="" type="checkbox"/> _____ Authorized Signature			
<b>FAX NO.</b>			_____ Printed Name	
<b>FEDERAL ID NO.</b>				
			_____ Date	
<p>By my signature I certify that this offer is made without prior understanding, agreement, or connection with any corporation, firm, business entity, or person submitting an offer for the same materials, supplies, equipment, or service(s), and without collusion or fraud. I further agree that if the offer is accepted, the offertory will convey, sell, assign, or transfer to the County of Cherokee all right title, and interest in and to all causes of action it may now or hereafter acquire under the Anti-trust Laws of the United States of Georgia for price fixing relating to the particular commodity(s) or service(s) purchased or acquired by the County of Cherokee. At the County's discretion, such assignment shall be made and become effective at the time the County tender's final payment to vendor.</p>				
<p>The bidder in their bid proposal must acknowledge receipts of amendments. Each Bidder should ensure that they have received all addenda and amendments to this bid before submitting their bid proposal. It is the bidder's responsibility to check the County's Website at <a href="http://www.cherokeega.com">www.cherokeega.com</a> periodically for any addendum(s).</p> <p><b>CONFIRM RECEIPT OF ANY ADDENDA ISSUED FOR THIS BID:</b></p> <p>ADDENDUM(S) _____</p> <p>DATE _____</p>				

## REQUEST FOR PROPOSAL INSTRUCTIONS TO BID

- 1.1 Purpose & Scope of Fencing Project:** The purpose of this document is to provide general and specific information for use by vendors in submitting a bid to supply the County of Cherokee with New Fencing & Dugout Roofing for Multiple County Parks to include supplies, and or services as listed in this Request for Proposal and specifically in **Attachment I** required specifications. All bids are governed by the Codes of the County of Cherokee.
- 1.2 How to Prepare Bid Proposals:** All bid proposals shall be:
- (A) Prepared on the forms enclosed herewith, unless otherwise prescribed.
  - (B) Typewritten or completed with pen and ink, signed by the vendor or his authorized representative, with all erasures or corrections initialed and dated by the official signing the proposal. Bidders are encouraged to review carefully all provisions and attachments of this document prior to completion. Each bid constitutes an offer and may not be withdrawn except as provided herein. Also, prices are to remain firm for the period stated herein.
- 1.3 How to Submit Bid Proposals:** An original and three (3) copies of the proposal and supporting documents must be submitted in response to the RFP; all bid proposals shall be:
- (A) **Submitted in sealed opaque envelope, plainly marked with the bid number, bid title and the submittal deadline as listed on the Request for Proposal.**
  - (B) Mailed or delivered as follows in sufficient time to ensure receipt by the Purchasing Manager on or before 3:00 P.M. on the 30<sup>th</sup> of November, 2009
    - (a) **Mailing Address: Cherokee County Purchasing Department, Attn: Dorothy Griffith, 1130 Bluffs Parkway, Canton, GA 30114**
    - (b) Hand Delivery Address: UL Floor, 1130 Bluffs Parkway, Cherokee County Administrations Bldg., Canton, GA. 30114
    - (c) Bids not received by the time and date specified above will not be opened.
    - (d) The County will not except fax proposals or proposals sent via e-mail. All faxed or e- mailed proposals will be returned.
- 1.4 Failure to Bid:** If a bid is not submitted, bidder should return bid sheets, stating reason therefore, and indicate whether the business should be retained or removed from the County's Vendor list. The outside of the envelope should clearly be marked "No Bid".
- 1.5 Errors in Bids:** Bidders or authorized representatives are expected to fully inform themselves as to the conditions, requirements and specifications before submitting bids. Failure to do so will be at the bidder's own risk. In case of error in extension of prices in the bid, the unit prices shall govern.
- 1.6 Standards for Acceptance of Bid for Award Contract:** The County reserves the right to reject any or all bids and to waive any irregularities or technicalities in bids received whenever such rejections or waiver is in the interest of the County. The County reserves

the right to reject the bid of a bidder who has previously failed to perform properly or complete on time contracts of a similar nature, or a bid from a bidder whom investigation shows is not in a position to perform the contract.

- 1.7 Bidder:** Whenever the term “bidder” is used it shall encompass the “contractor” “purchaser” or other party having a contract with the County in such capacity after a contract has been entered into or between such party and County.
- 1.8 Compliance with Laws:** The bidder shall obtain and maintain all licenses, permits, liability insurance, workman’s compensation insurance and comply with any and all other standards or regulations required by Federal, State or County statute, ordinances and rules during the performance of any contract between the bidder and the County. Any such requirement specifically set forth in any contract document between the bidder and the County shall be supplementary to this section and not in substitution thereof.
- 1.9 Contact(s):** Questions regarding this Request for Proposal should be directed to :

**Chuck Abbott, Capital Program Manager**  
**770-721-7818**  
**cabbott@cherokeega.com**

## GENERAL CONDITIONS

- 2.1 Specifications:** Any obvious error or omission in specifications shall not inure to the benefit of the bidder but shall put the bidder on notice to inquire of or identify the same from the County. Whenever mention is made of any article, material, or workmanship to be in accordance with laws, ordinances, building codes, underwriter’s codes, A.S.T.M. regulations or similar expressions, the requirements of these laws, ordinances, etc., shall be construed to be the minimum requirements of these specifications.
- 2.2 Specific Specifications:** Please see ATTACHMENT I for locations and specific project specification requirements.
- 2.3 Delivery Point:** Unless otherwise stated, all items shall be quoted and delivered F.O.B. Destination (i.e., at a specific County address), and delivery cost and changes (if any) will be included in bid price.
- 2.4 Cash Discounts:** (Terms): Unless otherwise specified, prompt payment cash discounts will be considered in determining cost. A minimum of ten (10) working days must be allowed for an offered prompt payment discount in order to be considered in making an award.
- 2.4 Payment Terms:** The County will remit full payment on all undisputed invoices within thirty (30) days from receipt by the appropriate person(s) or receipt of all products or services ordered.
- 2.5 Delivery Time:** When delivery time is requested in invitation documents, time will be of the essence; therefore, bid shall include the delivery date. In some instances, the County

may specify an outside delivery date.

**2.6 Preparation for Delivery:**

- A. Packing – Packing shall be accomplished in accordance with acceptable commercial practices for domestic shipments, unless otherwise stated in the contract or purchase order. The vendor shall make shipments using the minimum number of containers consistent with the requirements of safe available mode of transportation routing. It shall be the vendor's responsibility to determine that packing is done as adequate to assure that all the materials shall arrive at destination in an undamaged condition ready for its intended use.
- B. Marking – All packages shall be identified with the Cherokee County purchase order number and the using Department. Sealed packing lists must be affixed to all cartons showing its content.
- C. Shipping – The vendor shall follow shipping instructions as stated on the purchase order or contract.

**2.7 Multiple Bids:** no vendor will be allowed to submit more than one bid. Any alternate proposals must be brought to the Purchasing Manager's attention during the Pre-Bid Conference OR submitted in writing at least five (5) days preceding bid opening date.

**2.8 Bids for All or Part:** Unless otherwise specified by the County or by the bidder, The Cherokee County Board of Commissioners reserves the right to make award on all items, or on any of the items according to the best interest of the County.

**2.9 Warranties for Usage:** Whenever a bid is sought seeking a source of supply for a specified period of time for materials or services, The QUANTITIES OF USAGE SHOWN ARE ESTIMATED ONLY. No guarantee or warranty of any amount is given or implied by the County as to the total amount that may be purchased from any resulting contracts.

**2.10 Acceptance Period:** Bidder warrants that bid prices, terms and conditions quoted in his bid will be firm for acceptance for a period of ninety (90) days from opening date.

**2.11 Description of Materials:** proposals for materials, supplies, vehicles, and/or equipment should be accompanied by copies of detailed factory specifications, ratings, technical data, including accurate descriptions of the exact materials, supplies, vehicles, and/or equipment on which bids are made.

**2.12 Completeness:** all information required by Bid Proposal must be completed and submitted to constitute a proper bid.

**2.13 Quality:** all materials used for the manufacture or construction of any supplies, materials or equipment covered by this bid shall be new (unless otherwise specified), the latest model, of the best quality, and highest grade workmanship. Vehicles and/or equipment shall be equipped with such necessary equipment complying with the Georgia State Law, but not including licensing. Also, materials must comply with all applicable Federal and State OSHA requirements in affect at the time of bid.

- 2.14 Acceptance of Material:** The material delivered under this proposal shall remain the property of the seller until a physical inspection and actual usage of this material and/or services is made therefore accepted to the satisfaction of the County. IN THE EVENT THAT THE MATERIAL AND/OR SERVICES SUPPLIED TO THE COUNTY IS FOUND TO BE DEFECTIVE OR DOES NOT CONFORM TO SPECIFICATIONS, THE COUNTY RESERVES THE RIGHT TO CANCEL THE ORDER UPON WRITTEN NOTICE TO THE SELLER AND RETURN THE PRODUCT TO THE SELLER AT THE SELLER'S EXPENSE AND TO INVOKE THE PROVISIONS OF SECTION 2.16.
- 2.15 Plant and Facility Inspections:** The Purchasing Department may require the vendor to make his plant and facilities available for inspection; or may require additional information concerning the vendor's ability to perform compliant with the requirements of this specification. Failure to comply with this requirement may cause rejection of the bid package.
- 2.16 Guarantee:** Unless otherwise specified by the County, the bidder shall unconditionally guarantee the materials and workmanship on all material, and/or services. If within the guarantee period any defects are due to faulty and or services, the bidder at his expense, shall repair or adjust the condition, or replace the material and/or services to the complete satisfaction of the County. These repairs, replacement or adjustments shall be made only at such time as will be least detrimental to the operation of County business.
- 2.17 Manufacture or Dealer Advertisement:** No manufacturer or dealer advertising attachment shall appear on products delivered to the County without prior approval by the Cherokee County Board of Commissioners.
- 2.18 Brand Name:** If and wherever brand names, makes, names of manufacturers, trade names, vendor catalogs or model numbers are stated, they are for the purpose of establishing a grade or quality of material.
- 2.19 Equal" Interpretation:** It is the vendor's responsibility to prove to the County that each bid item is equal to the grade or quality of material specified. On all such bids, the bidder shall indicate clearly the product (brand and catalog or model numbers) on which he is bidding, and shall supply a sample and sufficient data in detail to enable an intelligent comparison to be made with the particular brand or manufacturers specified. Failure to submit the required information will be sufficient grounds for rejection of bid. The County shall be the sole judge concerning the merits of bid submitted. If the vendor has any questions relative to whether his product is equal to the grade or quality of the product specified, he should resolve this issue at the least seven (7) days before submission of bid.

NOTHING HEREIN PRECLUDES TESTING AS SPECIFIED BY THE COUNTY.  
VENDOR SHALL BEAR EXPENSES OF TESTS.

**2.20 Certified Test Report:** Each bidder shall provide a copy of a certified test report prior to or with their sealed bids when specified. The certified test report shall be from a recognized independent testing laboratory or manufacturer's quality control laboratory showing all test results and full compliance with the appropriate specification indicated herein. However, the County will bear the cost of any independent tests or consultant services it so chooses to perform.

**2.21 Samples and Demonstrations:** Evidence in the form of samples may be requested. When required, such samples are to be furnished after the date of bid opening only upon request of the County unless otherwise stated in the bid proposal. If samples are requested, unless otherwise authorized, such samples must be received by the County no later than seven (7) days after formal request is made. The County may request full demonstration of any item(s) bid prior to the award of any contract.

Bid samples shall be an exact and true representative sample of the actual material offered. Each bid sample shall be properly tagged or labeled with the name of the bidder and manufacturer, the bid opening date, and the bid number. Bid samples shall be provided at no additional costs to the County. Samples not used for tests will be returned to the bidder at the bidder's expense if so requested.

Furthermore, the County reserves the right to secure additional check samples from the actual material supplied. In the event the check samples fail to conform with the contract requirement, the contractor shall immediately replace the portion of the delivered commodity with acceptable material conforming to the contract requirements at no additional cost to the County.

**2.22 Liability:** Where bidders are required to enter or go onto County property to deliver materials or perform work or services as a result of bid award, the bidder shall be liable for any injury, damage or loss to the County occasioned by negligence of the bidder or his agent or any person the bidder has designated in the completion of his contract as a result of his bid and shall indemnify and hold harmless the County from any liability arising there from. When specified a certificate showing appropriate liability insurance coverage must be submitted to the Purchasing Manager prior to award of the purchase. In connection with its indemnification and Hold Harmless, bidder shall be required to notify its liability insurance carrier and the County of any and all claims for injury, damage or loss occasioned by the negligence or alleged negligence of the bidder (or agent) or any person the bidder has designated in the completion of his contract.

**2.23 Default Provision:** The contract may be canceled or annulled by the County in whole or in part by written notice of default to the contractor upon non-performance or violation of contract terms. An award may be made to the next low bidder, for articles and/or services specified or they may be purchased on the open market and, the defaulting Contractor (or his surety) shall be liable to the County for costs to the County in excess of the defaulted contract prices. The Contractor shall continue the performance of this contract to the extent any part is not terminated under the provisions of this clause.

**2.24 Patent Indemnity:** Except as otherwise provided, the successful bidder agrees to indemnify the County and its officers, agents and employees against liability, including costs and expenses for infringement upon any letters or patent of the United States arising out of the performance of this Contract or out of the use or disposal by or for the account of the County of supplies furnished or construction work performed hereunder.

**2.25 Certification of Independent Price Determination:** By submission of this bid, the bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, that in connection with this procurement:

- (1) The prices in this bid have been arrived at independently, without consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- (2) unless otherwise required by law, the prices which have been quoted in this bid have not been disclosed by the bidder and will not knowingly be disclosed by the bidder to opening, directly or indirectly to any other or to any competitor;
- (3) No attempt has been made or will be made by the bidder to include any other person or firm to submit or not to submit a bid for the purpose of restricting competition; and
- (4) No agent or employee of the County has been bribed in connection with this bid solicitation.

**2.26 Award of Proposal:** Award will be made to the Proposer offering the most advantageous proposal after consideration of all Evaluation Criteria set forth below. The criteria are not listed in any order of preferences. An Evaluation Committee will be established by the County. The Committee will evaluate all proposals received in accordance with the Evaluation Criteria. The County reserves the right to establish weight factors that will be applied to the criteria depending upon order of importance. Weight factors and evaluation scores will not be released until after award of proposal. The County shall not be obligated to accept the lowest proposal, but will make an award in the best interest of the County after all factors have been evaluated.

**The contents of this bid** and all provisions of the successful bid proposal deemed pertinent by the County may be incorporated into a contract and become legally binding.

The County reserves the right to cancel the contract without cause with a minimum thirty (30) day written notice.

**2.27 Award Evaluation Criteria:** Evaluation Criteria that will be used to evaluate all proposals that are received are listed below:

	Percentage
(1) Reasonableness of Cost in Bid Proposal	60
(2) Maximum guaranteed response time for warranty service calls	15
(3) Evaluation of five provided references	15
(4) Conformance with the terms of the RFP	10

- 2.28 Award Term:** This is to be a firm contract for a 12 month period with an extension option. This contract may be extended for one or more years not to exceed five (5) years if requested by the awarded vendor at least 60 days in advance of current term expiration and sent to Cherokee County Purchasing Department Manager.
- 2.29 Minority /Women Business Enterprise (MWBE) Policy:** It is the policy of the County to provide minority and women owned business enterprises with equal opportunity for participating in selling goods and services to the County. Bidders are required to make a Good Faith Efforts to subcontract, where applicable, with or purchase supplies from MWBEs. The bidder shall keep records of such efforts that are adequate to permit a determination of compliance with this requirement.
- 2.30 Qualified Vendor/Contractor:** A “Qualified Vendor and/or Contractor” is defined for this purpose as one who meets or by the date of bid acceptance can meet, all requirements for licensing, insurance and service contained within these specifications.
- 2.31 Compliance With Specifications – Terms and Conditions:** The Bid, Legal Advertisement, General Conditions and Instructions to Bidders, Specifications, Special Conditions, Vendor’s Bid, Addendum, and/or any other pertinent documents from a part of this proposal and reference are made a part hereof.
- 2.32 Signed Bid Considered Offer:** The signed bid shall be considered an offer on the part of the bidder, which shall be deemed accepted upon approval by the Cherokee County Board of Commissioners and/or the County Manager or his designee. In case of a default on the part of the bidder after such acceptance, the County may take such actions as it deems appropriate including legal action for damages or specific performance.
- 2.33 Notice to Proceed:** The successful bidder shall not commence work under this bid proposal until notified by receipt of signed contract, and/or Letter of Notice to Proceed. If the successful bidder does commence any work prior to receiving official notification, he does so at his own risk.
- 2.34 Tax Exempt:** The County is exempt from payment of excise, transportation and sales tax imposed by the Federal Government and/or the state of Georgia. Such taxes must not be included in the bid prices. Exemption certificates will be provided upon request.

## **SPECIAL CONDITIONS**

### **3.1 Bonds:** (Check where applicable)

- (A) Each bidder shall post a bid bond, certified check or money order made payable to Cherokee County in the amount of 5% of the bid price. A company check is not acceptable. No bids shall be considered without a proper form of security.
- (B) No bond, certified check, U.S. Money Order is required.

(C) Bidder shall post a payment / performance bond, certified check or money order payable to the County in the amount of 100% of the bid price if awarded the purchase. Such bond(s) are due prior to contract execution as a guarantee that goods meet requirements of the contract including timely delivery, performance specifications and warranty requirements. Such payment of invoices to any subcontractors.

(D) Bidder shall post a performance bond, certified check or money order in the amount of     % of the bid price if awarded the purchase, such bond(s) are due prior to contract execution as a guarantee of timely delivery and that equipment, materials and /or goods are delivered according to specifications.

Whenever a bond is provided, it shall be executed by a surety authorized to do business in the State of Georgia, approved by the County. At the discretion of the County, other forms of security may be considered in lieu of a performance bond.

**3.2 Warranty Requirements:** (Check where applicable)

(A) Provisions of item 2.12 in regards to quality shall apply.

(B) Warranty required.

(a) Standard Warranty shall be offered with bid.

(b) Extended warranty shall be offered with bid.

**3.3 Terms of Contract:** (Check where applicable)

(A) Annual Contract

(B) One time Purchase

(C) Other

**3.4 Insurance:** The contractor shall secure and maintain, at its sole cost and expense during the contract term, and will be required to provide evidence of the following types of insurance in the amount specified before a contract will be issued.

A. Commercial general liability Insurance with a combined limit of not less than \$1,000,000 per occurrence.

B. Automobile Liability insurance with a combined limit of not less than \$1,000,000 per occurrence.

C. Workers Compensation insurance with a combined limit of not less than \$1,000,000

D. Professional Liability Insurance - \$1,000,000 limit of Liability per accident

**3.5 Certificate of Insurance.** A certificate of insurance indicating that the Contractor has coverage in accordance with the requirements herein set forth shall be furnished by the Contractor to the County representative within seven (7) days from the execution of the contract and annually upon renewal thereafter. Contractor agrees that no payments will be

made by County pursuant to the terms of the contract until all required proof or evidence of insurance have been provided to the County Representative. Contractor agrees that the insurer shall waive its rights of subrogation, if any, against the County. These shall be completed by the authorized Resident Agent and returned to the Purchasing Department. This certificate shall be dated and show:

- A. The name of the insured Contractor. The specified job by name, name of the insurer, the number of the policy, its effective date and its termination date.
- B. Statement that the insurer will mail notice to the County at least thirty (30) days prior to any material changes in provisions or cancellation of the policy.

## **DOCUMENTATION**

- 4.0** A complete inspection report must be provided to the agency or department head responsible for each County park receiving fencing. This report must include any problems or issues noted during the inspection.
- 4.1** If additional work is required that falls outside the scope of the inspection being conducted, a written proposal must be submitted to the agency or department head responsible for any fencing issues that may hinder the project. If the additional work is to the magnitude that the fencing project installation may stop or incur lost time the agency or department must be contacted immediately.

## **BIDDERS RESPONSIBILITY**

- 5.0** A Bidder, by submitting a bid represents that:
  - A. The Bidder has read and understands the Request for Proposal and the bid is made in accordance therewith, and
  - B. The Bidder is familiar with the local conditions under which the awarded Bidder and proposed products must perform. The Bidder possesses the capabilities, resources, and personnel necessary to provide efficient and successful service to the County and;
  - D.** Before submitting a bid proposal, each Bidder shall make all investigations and examinations necessary to ascertain site conditions and requirements affecting the full performance of the contract and to verify any representations made by the County of Cherokee, Georgia, upon which the Bidders will rely. If the Bidder receives an award because of its bid proposal submission, failure to have made such investigations and examinations will no way relieve the Bidder from its obligations to comply in every detail with all provisions and requirements of the contract, nor will a plea of ignorance of such conditions and requirements be

accepted as a basis for any claim by the Bidder for additional compensation or relief.

**Bidder shall provide to the County a current Insurance-of-Certificate, naming the Cherokee County BOC as an ADDITIONAL INSURED & CERTIFICATE HOLDER during the contract period.**

**SUBMITTAL REQUIREMENTS**

(Submit in the following order)

- 6.0 Completed Request for Proposal
- 6.1 Company's Completed Bid Proposal
- 6.2 List Business References where the proposed products and services have been used within the past three (3) years. (Business Reference Form included in bid)
- 6.3 Attach evidence of required current insurance coverage
- 6.4 Proposer's Acknowledgement Form

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**Company Representative**

**Company Information:**

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**7.0 Five Business References Required**

1. Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Contact: \_\_\_\_\_
  
2. Name : \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Contact: \_\_\_\_\_
  
3. Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Contact: \_\_\_\_\_
  
4. Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Contact: \_\_\_\_\_
  
5. Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Contact: \_\_\_\_\_

8.0

**I hereby acknowledge** that I have read and understand the requirements of this Request for Proposal No: 2009-32 that I as the bidder, will comply with all requirements, and that I am duly authorized to execute this proposal/offer document and any contract(s) and/or other transactions required by award of this Bid.

Name of Company: \_\_\_\_\_

Representative \_\_\_\_\_  
(Type or Print)

Signature \_\_\_\_\_ Title: \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

**ATTACHMENT I**  
**LOCATIONS & BID SPECIFICATIONS**

Cherokee Recreation & Parks Agency  
Request-for-Proposal for County New Fencing and Dugout Roofing for Multiple County Parks

Bid Opening Date November 30, 2009 at 3:00 PM

Vendors will submit one (1) original and two (2) copies of bid Proposal

Contact Person: \_\_\_\_\_

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Representative: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

**E-mail:** \_\_\_\_\_

## CONSTRUCTION AGREEMENT

This Construction Agreement (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2009, by and between CHEROKEE COUNTY, a political subdivision of the State of Georgia, acting by and through its governing authority, the Cherokee County Board of Commissioners (hereinafter referred to as the "County"), and \_\_\_\_\_, a \_\_\_\_\_ corporation with its principal place of business located at \_\_\_\_\_ (hereinafter referred to as the "Contractor").

### W I T N E S S E T H:

WHEREAS, the County issued a Notice to Contractors, dated \_\_\_\_\_, to solicit bids for \_\_\_\_\_; and

WHEREAS, based upon Contractor's bid to construct and install \_\_\_\_\_, the County has selected Contractor as the successful bidder, and

WHEREAS, Contractor has agreed to perform such work as set forth in this Agreement, according to the terms and conditions provided in this Agreement; and

WHEREAS, Contractor has familiarized himself with the nature and extent of the Contract Documents, the Project, and the Work, with all local conditions and federal, state and local laws, ordinances, rules and regulations in any manner that may affect cost, progress or performance of work, and Contractor is aware that he must be licensed to do business in the State of Georgia.

NOW THEREFORE, the County and Contractor, in consideration of the mutual promises contained herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, agree as follows:

#### **Section 1. Contract Documents**

The following documents are incorporated herein by reference and constitute the Contract Documents:

- A. This Agreement;
- B. Notice to Contractors, attached hereto as Exhibit "A";
- C. Bid Documents from Contractor dated \_\_\_\_\_, attached hereto as Exhibit "B";
- D. Performance Bond and Payment Bond, attached hereto collectively as Exhibit "C";
- E. Noncollusion Affidavit of Prime Bidder, attached hereto as Exhibit "D";
- F. Final Affidavit, attached hereto as Exhibit "E";
- G. Alien Employment affidavits attached hereto as Exhibits "F" and "G";
- H. Plans and specifications, attached hereto collectively as Exhibit "H";
- I. Key Personnel, attached hereto as Exhibit "I";
- J. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents if properly adopted in writing and executed by the Parties; and
- K. Georgia Department of Transportation Standard Specifications, 2001 Edition, and Supplemental Specifications and attached Special Provisions.

**Section 2. Project Description**

The Project is defined generally as follows: \_\_\_\_\_.

**Section 3. The Work**

The Work is specified and indicated in the Contract Documents (the "Work"). The Work previously described includes all material, labor, insurance, tools, equipment, and any other miscellaneous items necessary to complete the Work as described. Contractor shall complete the Work in strict accordance with the Contract Documents.

**Section 4. Contract Time**

Contractor agrees to complete the Project within \_\_\_\_ calendar days from the date of Notice To Proceed. Every effort will be made by Contractor to shorten this period.

**Section 5. Contractor's Compensation; Time and Method of Payment**

- A. The total amount paid under this Agreement as compensation for services performed and reimbursement for costs incurred shall be \$\_\_\_\_\_, except as outlined in Section 6(C) below.
  
- B. County agrees to pay the Contractor for work performed and costs incurred by Contractor upon certification by the County that the work was actually performed and costs actually incurred in accordance with the Agreement. Compensation for work performed and reimbursement for costs incurred shall be paid to the Contractor upon receipt and approval by the County of invoices setting forth in detail the work performed and costs incurred. Invoices shall be submitted on a monthly basis, and such invoices shall reflect charges incurred versus charges budgeted. Any material deviations in tests or inspections performed, times or locations required to complete such tests or inspections and like deviations from the Work described in this Agreement shall be clearly communicated to the County *before charges are incurred* and shall be handle through change orders as described in Section 6 below. The County shall pay the Contractor within thirty (30) days after approval of the invoice by County staff. No payments will be made for unauthorized work. Upon the County's certification of Final Completion of the Project, an invoice should be submitted to Geoffrey E. Morton, P.E., County Engineer, Office of Capital Program Management, 1130 Bluffs Parkway, Canton, Georgia 30114, for approval. Payment will be sent to the designated address by U. S. Mail only; payment will not be hand-delivered.

**Section 6. Work Changes**

- A. The County reserves the right to order changes in the Work to be performed under this Agreement by altering, adding to, or deducting from the Work. All such changes shall be incorporated in written change orders executed by the Contractor and the County. Such change orders shall specify the changes ordered and any necessary adjustment of compensation and completion time. If the Parties cannot reach an agreement on the terms for performing the changed work within a reasonable time to avoid delay or other unfavorable impacts as determined by the County in its sole discretion, the County shall have the right to determine

reasonable terms and the Contractor shall proceed with the changed work.

- B. Any work added to the scope of this Agreement by a change order shall be executed under all the applicable conditions of this Agreement. No claim for additional compensation or extension of time shall be recognized, unless contained in a written change order duly executed on behalf of the County and the Contractor.
- C. The County Manager has authority to execute without further action of the Cherokee County Board of Commissioners, any number of change orders so long as their total effect does not materially alter the terms of this Agreement or materially increase the total amount to be paid under this Agreement. Any such change orders materially altering the terms of this Agreement or increasing the total amount to be paid under this Agreement in excess of \$10,000.00, must be approved by resolution of the Cherokee County Board of Commissioners.

**Section 7. Covenants of Contractor.**

A. Ethics Code

Contractor agrees that it shall not engage in any activity or conduct that would be in violation of the Cherokee County Code of Ethics.

B. Time is of the Essence

Contractor specifically acknowledges that TIME IS OF THE ESSENCE for completion of the Project.

C. Expertise of Contractor

Contractor accepts the relationship of trust and confidence established between it and the County, recognizing that the County's intention and purpose in entering into this Agreement is to engage an entity with the requisite capacity, experience, and professional skill and judgment to provide the services in pursuit of the timely and competent completion of the Work undertaken by Contractor under this Agreement. Contractor must be on the Georgia Department of Transportation Prequalified Bidder List.

D. Budgetary Limitations

Contractor agrees and acknowledges that budgetary limitations are not a justification for breach of sound principals of Contractor's profession and industry. Contractor shall take no calculated risk in the performance of the Work. Specifically, Contractor agrees that, in the event it cannot perform the Work within the budgetary limitations established without disregarding sound principals of Contractor's profession and industry, Contractor will give written notice immediately to the County.

E. County's Reliance on the Work

The Contractor acknowledges and agrees that the County does not undertake to approve or pass upon matters of expertise of the Contractor and that therefore, the County bears no responsibility for Contractor's services performed under this Agreement. The Contractor acknowledges and agrees that the acceptance of Work by the County is limited to the function of determining whether there has been compliance with what is required to be produced under this Agreement. The County will not, and need not, inquire into adequacy, fitness, suitability or correctness of Contractor's performance. Contractor further agrees that no approval of designs, plans, specifications, or work by any person, body or agency shall relieve Contractor of the responsibility for adequacy, fitness, suitability, and correctness of Contractor's professional and industry standards or for performing services under this Agreement in accordance with sound and accepted professional and industry principals.

F. Contractor's Reliance of Submissions by the County

Contractor must have timely information and input from the County in order to perform the services required under this Agreement. Contractor is entitled to rely upon information provided by the County, but Contractor shall be required to provide immediate written notice to the County if Contractor knows or reasonably should know that any information provided by the County is erroneous, inconsistent, or otherwise problematic.

G. Contractor's Representative

\_\_\_\_\_ shall be authorized to act on Contractor's behalf with respect to the Work as Contractor's designated representative.

H. Assignment of Agreement

The Contractor covenants and agrees not to assign or transfer any interest in, nor delegate any duties of this Agreement, without the prior express written consent of the County.

I. Responsibility of Contractor and Indemnification of County

The Contractor covenants and agrees to take and assume all responsibility for the services rendered in connection with this Agreement. The Contractor shall bear all losses and damages directly or indirectly resulting to it on account of the performance or character of the services rendered pursuant to this Agreement. Contractor shall defend, indemnify and hold harmless the County, its officers, boards, commissions, elected and appointed officials, employees and agents from and against any and all claims, suits, actions, liability, judgments, damages, losses, and expenses, including but not limited to, attorney's fees, which may be the result of willful, negligent or tortious conduct arising out of the Work, performance of contracted services, or operations by the Contractor, any subcontractor, anyone directly or indirectly employed by the Contractor or

subcontractor or anyone for whose acts the Contractor or subcontractor may be liable, regardless of whether or not the negligent act is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this provision. In any and all claims against the County or any of its agents or employees, by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by the Contractor or subcontractor or anyone for whose acts the Contractor or subcontractor may be liable, the indemnification obligation set forth in this provision shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. This obligation to indemnify and defend the County, its members, officers, agents, employees and volunteers shall survive termination of this Agreement.

J. Independent Contractor

Contractor hereby covenants and declares that it is engaged in an independent business and agrees to perform the services as an independent contractor and not as the agent or employee of the County. The Contractor agrees to be solely responsible for its own matters relating to the time and place the services are performed; the instrumentalities, tools, supplies and/or materials necessary to complete the services; hiring of Contractors, agents or employees to complete the services; and the payment of employees, including compliance with Social Security, withholding and all other regulations governing such matters. The Contractor agrees to be solely responsible for its own acts and those of its subordinates, employees, and subcontractors during the life of this Agreement. Any provisions of this Agreement that may appear to give the County the right to direct Contractor as to the details of the services to be performed by Contractor or to exercise a measure of control over such services will be deemed to mean that Contractor shall follow the directions of the County with regard to the results of such services only.

The Contractor shall obtain and maintain, at the Contractor's expense, all permits, licenses, or approvals that may be necessary for the performance of the services. The Contractor shall furnish copies of all such permits, licenses, or approvals to Cherokee County's Representative within ten (10) days after issuance.

Inasmuch as Cherokee County and the Contractor are contractors independent of one another, neither has the authority to bind the other to any third person or otherwise to act in any way as the representative of the other, unless otherwise expressly agreed to in writing signed by both parties hereto. The Contractor agrees not to represent itself as the County's agent for any purpose to any party or to allow any employee of the Contractor to do so, unless specifically authorized, in advance and in writing, to do so, and then only for the limited purpose stated in such authorization. The Contractor shall assume full liability for any contracts or

agreements the Contract enters into on behalf of Cherokee County without the express knowledge and prior written consent of the County.

K. Insurance

- (1) Requirements: The Contractor shall have and maintain in full force and effect for the duration of this Agreement, insurance insuring against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work by the Contractor, its agents, representatives, employees or subcontractors. All policies shall be subject to approval by the County Attorney as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the County Manager.
- (2) Minimum Limits of Insurance: Contractor shall maintain limits no less than:
  - (a) Comprehensive General Liability of \$1,000,000 combined single limit per occurrence for bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom.
  - (b) Comprehensive Automobile Liability (owned, non-owned, hired) of \$1,000,000 combined single limit per occurrence for bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom.
  - (c) Professional Liability of \$1,000,000 limit for claims arising out of professional services caused by the Contractor's errors, omissions, or negligent acts.
  - (d) Workers' Compensation limits as required by the State of Georgia and employers Liability limits of \$1,000,000 per accident.
- (3) Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by the County.
- (4) Other Insurance Provisions: The policy is to contain, or be endorsed to contain, the following provisions:
  - (a) General Liability and Automobile Liability Coverage.
    - (i) The County, its officials, employees, agents and volunteers are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, leased, or used by the Contractor;

automobiles owned, leased, hired, or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the County, its officials, employees, agents or volunteers.

- (ii) The Contractor's insurance coverage shall be primary noncontributing insurance as respects to any other insurance or self-insurance available to the County, its officials, employees, agents or volunteers. Any insurance or self-insurance maintained by the County, its officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
  - (iii) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County, its officials, employees, agents or volunteers.
  - (iv) Coverage shall state that the Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
  - (v) Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion.
  - (vi) The insurer agrees to waive all rights of subrogation against the County, its officials, employees, agents and volunteers for losses arising from work performed by the Contractor for the County.
  - (vii) All endorsements to policies shall be executed by an authorized representative of the insurer.
- (b) Workers' Compensation Coverage: The insurer will agree to waive all rights of subrogation against the County, its officials, employees, agents and volunteers for losses arising from work performed by the Contractor for the County.
- (c) All Coverages:
- (i) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the County.

- (ii) Policies shall have concurrent starting and ending dates.
- (5) Acceptability of Insurers: Insurance is to be placed with insurers with an A.M. Best's rating of no less than A:VII.
- (6) Verification of Coverage: Contractor shall furnish the County with certificates of insurance and endorsements to the policies evidencing coverage required by this clause prior to the start of work. The certificates of insurance and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificate of insurance and endorsements shall be on a form utilized by Contractor's insurer in its normal course of business and shall be received and approved by the County prior to execution of this Agreement by the County. The County reserves the right to require complete, certified copies of all required insurance policies, at any time. The Contractor shall provide proof that any expiring coverage has been renewed or replaced at least two (2) weeks prior to the expiration of the coverage.
- (7) Subcontractors: Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated in this Agreement, including but not limited to naming the parties as additional insured.
- (8) Claims-Made Policies: Contractor shall extend any claims-made insurance policy for at least six (6) years after termination or final payment under the Agreement, whichever is later.
- (9) County as Additional Insured and Loss Payee: The County shall be named as an additional insured and loss payee on all policies required by this Agreement.

L. Employment of Unauthorized Aliens Prohibited

It is the policy of County that unauthorized aliens shall not be employed to perform work on County contracts involving the physical performance of services. Therefore, the County shall not enter into a contract for the physical performance of services within the State of Georgia, unless the Contractor shall provide evidence on County-provided forms, attached hereto as Exhibits "F" and "G" (affidavits regarding compliance with the E-Verify program to be sworn under oath under criminal penalty of false swearing pursuant to O.C.G.A. § 16-10-71) that it and Contractor's subcontractors have within the previous twelve (12) month period conducted a verification of the social security numbers of all employees who will perform work on the County contract to ensure that no unauthorized aliens will be employed. The County Manager or his/her designee shall be authorized to conduct an inspection of the Contractor's and Contractor's subcontractors' verification process to determine that the verification was correct

and complete. The Contractor and Contractor's subcontractors shall retain all documents and records of its verification process for a period of three (3) years following completion of the contract. This requirement shall apply to all contracts for the physical performance of services where more than three (3) persons are employed on the County contract.

The County Manager or his/her designee shall further be authorized to conduct periodic inspections to ensure that no County Contractor or Contractor's subcontractors employ unauthorized aliens on County contracts. By entering into a contract with the County, the Contractor and Contractor's subcontractors agree to cooperate with any such investigation by making its records and personnel available upon reasonable notice for inspection and questioning. Where a Contractor or Contractor's subcontractors are found to have employed an unauthorized alien, the County Manager or his/her designee may order the Contractor to terminate or require its subcontractor to terminate that person's employment immediately and to report same to the Department of Homeland Security. The Contractor's failure to terminate the employee, or otherwise cooperate with the investigation may be sanctioned by termination of the contract, and the Contractor shall be liable for all damages and delays occasioned by the County thereby.

Compliance with the requirements of O.C.G.A. § 13-10-91 and Rule 300-10-1-.02 is mandatory.

Contractor agrees that the employee-number category designated below is applicable to the contractor.

\_\_\_\_\_ 500 or more employees.

\_\_\_\_\_ 100 or more employees.

\_\_\_\_\_ Fewer than 100 employees.

Contractor agrees that, in the event the Contractor employs or contracts with any subcontractor(s) in connection with this Agreement, the Contractor will secure from the subcontractor(s) such subcontractor(s)' indication of the above employee-number category that is applicable to the subcontractor.

Contractor's compliance with the requirements of O.C.G.A. § 13-10-91 and Rule 300-10-1-.02 shall be attested by the execution of the contractor's affidavit attached as Exhibit "F."

The above requirements shall be in addition to the requirements of State and federal law, and shall be construed to be in conformity with those laws.

M. Records, Reports and Audits

(1) Records:

- (a) Records shall be established and maintained by the Contractor in accordance with requirements prescribed by the County with respect to all matters covered by this Agreement. Except as otherwise authorized, such records shall be maintained for a period of three years from the date that final payment is made under this Agreement. Furthermore, records that are the subject of audit findings shall be retained for three years or until such audit findings have been resolved, whichever is later.
- (b) All costs shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

(2) Reports and Information: Upon request, the Contractor shall furnish to the County any and all statements, records, reports, data and information related to matters covered by this Agreement in the form requested by the County.

(3) Audits and Inspections: At any time during normal business hours and as often as the County may deem necessary, there shall be made available to the County for examination all records with respect to all matters covered by this Agreement. The Contractor will permit the County to audit, examine, and make excerpts or transcripts from such records, and to audit all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and or data relating to all matters covered by this Agreement.

N. Conflicts of Interest

Contractor agrees that it shall not engage in any activity or conduct that would result in a violation of the Cherokee County Code of Ethics.

O. Confidentiality

Contractor acknowledges that it may receive confidential information of the County and that it will protect the confidentiality of any such confidential information and will require any of its subcontractors, consultants, and/or staff to likewise protect such confidential information. The Contractor agrees that confidential information it receives or such reports, information, opinions or conclusions that Contractor creates under this Agreement shall not be made available to, or discussed with, any individual or organization, including the news

media, without prior written approval of the County. The Contractor shall exercise reasonable precautions to prevent the unauthorized disclosure and use of County information whether specifically deemed confidential or not.

P. Compliance with Laws Regulating Illegal Aliens

The United States Congress enacted the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603, which required the former Immigration and Naturalization Service (now the Department of Homeland Security) to establish a system (the “E-Verify System”) for verifying the immigration status of non-citizen applicants for, and recipients of, certain types of federally funded benefits, and to make the system available to Federal, State, and local benefit-issuing agencies and institutions that administer such benefits.

The Contractor covenants and declares that it is enrolled in the E-Verify System (Contractor’s enrollment number \_\_\_\_\_), and that it has verified the employment eligibility of all its employees utilizing such program. Contractor shall likewise require all subcontractors or sub-consultants to verify the employment eligibility of all their respective employees utilizing the E-Verify System. Contractor shall provide documentation prior to commencing work under this Agreement, in a form acceptable to the Cherokee County, affirming the Contractor’s compliance with this Section.

Q. Licenses, Certifications and Permits

The Contractor covenants and declares that it has obtained all diplomas, certificates, licenses, permits or the like required of the Contractor by any and all national, state, regional, county, local boards, agencies, commissions, committees or other regulatory bodies in order to perform the services contracted for under this Agreement. All work performed by Contractor under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily expected of competent professionals.

R. Key Personnel

All of the individuals identified in Exhibit "I" are necessary for the successful prosecution of the Work due to their unique expertise and depth and breadth of experience. There shall be no change in Contractor's Project Manager or members of the project team, as listed in Exhibit "I", without written approval of the County. Contractor recognizes that the composition of this team was instrumental in the County's decision to award the work to Contractor and that compelling reasons for substituting these individuals must be demonstrated for the County's consent to be granted. Any substitutes shall be persons of comparable or superior expertise and experience. Failure to comply with the provisions of this section shall constitute a material breach of Contractor's obligations under this Agreement and shall be grounds for termination. Contractor shall not subcontract with any third party for the performance of any portion of the Work without the prior written consent of the County. Contractor shall be solely responsible for any such subcontractors in terms of performance and compensation.

S. Authority to Contract

The Contractor covenants and declares that it has obtained all necessary approvals of its board of directors, stockholders, general partners, limited partners or similar authorities to simultaneously execute and bind Contractor to the terms of this Agreement, if applicable.

T. Ownership of Work

All reports, designs, drawings, plans, specifications, schedules, work product and other materials prepared or in the process of being prepared for the services to be performed by the Contractor ("materials") shall be the property of the County and the County shall be entitled to full access and copies of all such materials. Any such materials remaining in the hands of the Contractor or subcontractor upon completion or termination of the work shall be delivered immediately to the County. The Contractor assumes all risk of loss, damage or destruction of or to such materials. If any materials are lost, damaged or destroyed before final delivery to the County, the Contractor shall replace them at its own expense. Any and all copyrightable subject matter in all materials is hereby assigned to the County and the Contractor agrees to execute any additional documents that may be necessary to evidence such assignment.

U. Meetings

The Contractor is required to meet with the County's personnel, or designated representatives, to resolve technical or contractual problems that may occur during the term of the contract, at no additional cost to the County. Meetings will occur as problems arise and will be coordinated by the County. The Contractor will be given a minimum of three full working days notice of meeting date, time, and location. Face-to-face meetings are desired. However, at the Contractor's

option and expense, a conference call meeting may be substituted. Consistent failure to participate in problem resolution meetings, two consecutive missed or rescheduled meetings, or to make a good faith effort to resolve problems, may result in termination of the contract.

**Section 8. Covenants of the County**

A. Right of Entry

The County shall provide for right of entry for Contractor and all necessary equipment in order for Contractor to complete the Work.

B. County's Representative

\_\_\_\_\_ shall be authorized to act on the County's behalf with respect to the Work as the County's designated representative

**Section 9. Warranty**

Except as may be otherwise specified or agreed, the Contractor shall repair all defects in materials, equipment, or workmanship appearing within one year from the date of Final Completion of the Project at no additional cost to the County. An inspection shall be conducted by the County or its representative(s) near the completion of the one-year general warranty period to identify any issues that must be resolved by the Contractor.

**Section 10. Termination**

A. The County may terminate this Agreement for convenience at any time upon written notice to Contractor. In the event of a termination for convenience, Contractor shall take immediate steps to terminate work as quickly and effectively as possible and shall terminate all commitments to third-parties unless otherwise instructed by the County. Provided that no damages are due to the County for Contractor's failure to perform in accordance with this Agreement, the County shall pay Contractor for work performed to date in accordance with Section 5 herein. The County shall have no further liability to Contractor for such termination.

B. The County may terminate this Agreement for cause if Contractor breaches any material provision of this Agreement. The County shall give Contractor seven (7) days written notice of its intent to terminate the Agreement and the reasons therefore, and, if Contractor, or its Surety, fails to cure the default within that period, the termination shall take place without further notice. The County shall then make alternative arrangements for completion of the Project and deduct the cost of completion from the unpaid Contract Price. The County will make no payment to the Contractor or its Surety until all costs of completing the Project are paid. If the unpaid balance of the amount due the Contractor, according to this agreement, exceeds the cost of finishing the Project, the Contractor or its

Surety will receive the applicable funds due. If the costs of completing the Project exceed the unpaid balance, the Contractor or its Surety will pay the difference to the County.

- C. If the County terminates this Agreement for cause, and it is later determined that the County did not have grounds to do so, the termination will be treated as a termination for convenience under the terms of this Section (A) above.
- D. Upon termination, the Contractor shall: (1) promptly discontinue all services affected, unless the notice directs otherwise; and (2) promptly deliver to the County all data, drawings, reports, summaries, and such other information and materials as may have been generated or used by the Contractor in performing this Agreement, whether completed or in process, in the form specified by the County.
- E. The rights and remedies of the County and the Contractor provided in this Section are in addition to any other rights and remedies provided under this Agreement or at law or in equity.

**Section 11. Miscellaneous**

- A. Complete Agreement. This Agreement contains all of the understandings and agreements of whatsoever kind and nature existing between the parties hereto with respect to the subject matter contained herein.
- B. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Georgia.
- C. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.
- D. Invalidity of Provisions. Should any part of this Agreement for any reason be declared by any court of competent jurisdiction to be invalid, such decision shall not affect the validity of any remaining portion, which remaining portion shall continue in full force and effect as if this Agreement had been executed with the invalid portion hereof eliminated, it being the intention of the parties that they would have executed the remaining portion of this Agreement without including any such part, parts or portions which may for any reason be hereafter declared invalid.
- E. Notice. All notices requests, demands and other communications hereunder shall be in writing and shall be deemed received, and shall be effective when personally delivered or on the third day after the postmark date when mailed by certified mail, postage prepaid, return receipt requested or upon actual delivery when sent *via* national overnight commercial carrier to the parties at the addresses given below, unless a substitute address shall first be furnished to the other parties by

written notice in accordance herewith:

**NOTICE TO COUNTY** shall be sent to:

Cherokee County  
1130 Bluffs Parkway  
Canton, Georgia 30114  
Attention: Chuck Abbott, Capital Program Manager

**NOTICE TO CONTRACTOR** shall be sent to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- F. Sovereign Immunity. Nothing contained in this Agreement shall be construed to be a waiver of the County's sovereign immunity or any individual's qualified good faith or official immunities.
  
- G. Force Majeure. Neither the County nor Contractor shall be liable for their respective non-negligent or non-willful failure to perform or shall be deemed in default with respect to the failure to perform (or cure a failure to perform) any of their respective duties or obligations under this Agreement or for any delay in such performance due to: (i) any cause beyond their respective reasonable control; (ii) any act of God; (iii) any change in applicable governmental rules or regulations rendering the performance of any portion of this Agreement legally impossible; (iv) earthquake, fire, explosion or flood; (v) strike or labor dispute, excluding strikes or labor disputes by employees and/or agents of Contractor; (vi) delay or failure to act by any governmental or military authority; or (vii) any war, hostility, embargo, sabotage, civil disturbance, riot, insurrection or invasion. In such event, the time for performance shall be extended by an amount of time equal to the period of delay caused by such acts and all other obligations shall remain intact.
  
- H. Headings. All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed under seal as of the date first above written.

**[CONTRACTOR'S NAME]**

By: \_\_\_\_\_

Its: \_\_\_\_\_  
[CORPORATE SEAL]

SIGNED, SEALED, AND DELIVERED  
in the presence of:

\_\_\_\_\_

**Witness**

\_\_\_\_\_

Notary Public

[NOTARY SEAL]

**My Commission Expires:**

\_\_\_\_\_

**CHEROKEE COUNTY BOARD OF COMMISSIONERS**

\_\_\_\_\_

L. B. Ahrens, Chairman

\_\_\_\_\_

**[COUNTY SEAL]**

**SIGNED, SEALED, AND DELIVERED**

in the presence of:

\_\_\_\_\_

Witness

\_\_\_\_\_

## **Notary Public**

[NOTARY SEAL]

**My Commission Expires:**

---

EXHIBIT "C"

**PERFORMANCE BOND**

**CHEROKEE COUNTY, GEORGIA**

~~\_\_\_\_\_ KNOW ALL MEN BY THESE PRESENTS THAT \_\_\_\_\_ (as CONTRACTOR, hereinafter referred to as the "Principal"), and \_\_\_\_\_ (as SURETY COMPANY, hereinafter referred to as the "CONTRACTOR'S SURETY"), are held and firmly bound unto Cherokee County, Georgia (as OWNER, hereinafter referred to as the "County"), for the use and benefit of any "Claimant," as hereinafter defined, in the sum of Dollars (\$ \_\_\_\_\_), lawful money of the United States of America, for the payment of which the Principal and the Contractor's Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.~~

~~\_\_\_\_\_ WHEREAS, the Principal has entered, or is about to enter, into a certain written agreement with the County, dated the \_\_\_\_ of \_\_\_\_\_, 20\_\_ which is incorporated herein by reference in its entirety (hereinafter referred to as the "CONTRACT"), for the construction of a project known as \_\_\_\_\_, (hereinafter referred to as "the PROJECT").~~

~~\_\_\_\_\_ NOW THEREFORE, the conditions of this obligation are as follows:~~

- ~~1. \_\_\_\_\_ That if the Principal shall fully and completely perform each and all of the terms, provisions and requirements of the Contract, including and during the period of any warranties or guarantees required thereunder, and all modifications, amendments, changes, deletions, additions, and alterations thereto that may hereafter be made, and if the Principal and the Contractor's Surety shall~~

~~indemnify and hold harmless the County from any and all losses, liability and damages, claims, judgments, liens, costs and fees of every description, including but not limited to, any damages for delay, which the County may incur, sustain or suffer by reason of the failure or default on the part of the Principal in the performance of any and all of the terms, provisions and requirements of the Contract, including all modifications, amendments, changes, deletions, additions, and alterations thereto and any warranties or guarantees required thereunder, then this obligation shall be void; otherwise to remain in full force and effect;~~

~~2. In the event of a failure of performance of the Contract by the Principal, which shall include, but not be limited to, any breach of default of the Contract:~~

~~a. The Contractor's Surety shall commence performance of its obligations and undertakings under this Bond no later than thirty (30) days after written notice from the County to the Contractor's Surety; and~~

~~b. The means, method or procedure by which the Contractor's Surety undertakes to perform its obligations under this Bond shall be subject to the advance written approval of the County.~~

~~The Contractor's Surety hereby waives notice of any and all modifications, omissions, additions, changes and advance payments or deferred payments in or about the Contract, and agrees that the obligations undertaken by this Bond shall not be impaired in any manner by reason of any such modifications, omissions, additions, changes, and advance payments or deferred payments. The Parties further expressly agree that any action on this Bond may be brought within the time allowed by Georgia law for suit on contracts under seal.~~

~~\_\_\_\_\_ IN WITNESS WHEREOF, the principal and Contractor's Surety have hereunto affixed their corporate seals and caused this obligation to be signed by their duly authorized officers or attorneys in fact, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.~~

~~\_\_\_\_\_ (Name of Principal)~~

~~\_\_\_\_\_~~

~~By: \_\_\_\_\_~~

~~\_\_\_\_\_ Title: \_\_\_\_\_ (SEAL)~~

~~Attest:~~

~~\_\_\_\_\_~~

~~Title: \_\_\_\_\_~~

~~Date: \_\_\_\_\_~~

~~(Name of Contractor's Surety)~~

~~\_\_\_\_\_~~

~~By: \_\_\_\_\_~~

~~\_\_\_\_\_ Title: \_\_\_\_\_ (SEAL)~~

~~Attest:~~

~~\_\_\_\_\_~~

~~Date: \_\_\_\_\_~~

~~(ATTACH SURETY'S POWER OF ATTORNEY)~~

***EXHIBIT "C"***

**PAYMENT BOND**

**CHEROKEE COUNTY, GEORGIA**

**KNOW ALL MEN BY THESE PRESENTS THAT** \_\_\_\_\_ (as  
CONTRACTOR, hereinafter referred to as the "Principal"), and \_\_\_\_\_ (as  
SURETY COMPANY, hereinafter referred to as the "CONTRACTOR'S SURETY"), are held  
and firmly bound unto Cherokee County, Georgia (as OWNER, hereinafter referred to as the  
"County"), for the use and benefit of any "Claimant," as hereinafter defined, in the sum of  
Dollars (\$ \_\_\_\_\_), lawful money of the United States of America, for the payment of  
which the Principal and the Contractor's Surety bind themselves, their heirs, executors,  
administrators, successors and assigns, jointly and severally, firmly by these presents.

\_\_\_\_\_ **WHEREAS**, the Principal has entered, or is about to enter, into a certain written  
agreement with the County, dated \_\_\_\_\_, which is incorporated herein by reference  
in its entirety (hereinafter referred to as the "CONTRACT"), for the construction of a project  
known as \_\_\_\_\_, (hereinafter referred to as "the  
PROJECT").

~~\_\_\_\_\_ NOW THEREFORE, the condition of this obligation is such that if the Principal shall promptly make payment to any Claimant, as hereinafter defined, for all labor, services and materials used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise to remain in full force and effect.~~

~~\_\_\_\_\_ A "Claimant" shall be defined herein as any Subcontractor, person, Party, partnership, corporation or other entity furnishing labor, services or materials used or reasonably required for use in the performance of the Contract, without regard to whether such labor, services or materials were sold, leased or rented, and without regard to whether such Claimant is or is not in privity of the Contract with the Principal or any Subcontractor performing Work on the Project.~~

~~\_\_\_\_\_ In the event of any claim made by the Claimant against the County, or the filing of a Lien against the property of the County affected by the Contract, the Contractor's Surety shall either settle or resolve the Claim and shall remove any such Lien by bond or otherwise as provided in the Contract.~~

~~\_\_\_\_\_ The Parties further expressly agree that any action on this Bond may be brought within the time allowed by Georgia law for suit on contracts under seal.~~

~~\_\_\_\_\_ IN WITNESS WHEREOF, the Principal and Contractor's Surety have hereunto affixed their corporate seals and caused this obligation to be signed by their duly authorized officers on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.~~

\_\_\_\_\_  
~~(Name of Principal)~~

\_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_

\_\_\_\_\_  
Title: \_\_\_\_\_ (SEAL)

(Signatures Continued from Previous Page)

Attest:

\_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_ (Name of Contractor's Surety)

\_\_\_\_\_

\_\_\_\_\_ By: \_\_\_\_\_

\_\_\_\_\_ Title: \_\_\_\_\_ (SEAL)

Attest:

\_\_\_\_\_

Date: \_\_\_\_\_

(ATTACH SURETY'S POWER OF ATTORNEY)

**EXHIBIT "D"**

*NONCOLLUSION AFFIDAVIT OF PRIME BIDDER*

**STATE OF GEORGIA**

**COUNTY OF CHEROKEE**

\_\_\_\_\_, being first duly sworn, deposes and says that:

(1) He is \_\_\_\_\_ (Owner, Partner, Officer, Representative, or Agent) of the Bidder that has submitted the attached Bid;

(2) He is fully informed respecting their preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;

(3) Such Bid is genuine and is not a collusive of sham Bid;

(4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest, including this affidavit, has in any way colluded, conspired, connived, or agreed, directly or indirectly, with any other Bidder, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted to or refrain from bidding in connection with such Contract, or has in any collusion or communication or conference with any other Bidder, firm or person to fix the price or prices in the attached Bid or of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against Cherokee County or any person interested in the proposed Contract; and,

(5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affidavit.

(6) Bidder has not directly or indirectly violated O.C.G.A. § 36-91-21(d).

(Signed)

\_\_\_\_\_  
Subscribed and Sworn to before me  
(Name)

\_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_\_.

Title \_\_\_\_\_

\_\_\_\_\_  
My Commission Expires \_\_\_\_\_  
Date

(SEAL)

**EXHIBIT "E"**

**FINAL AFFIDAVIT**

TO CHEROKEE COUNTY, GEORGIA

I, \_\_\_\_\_, hereby certify that all suppliers of materials, equipment and service, subcontractors, mechanics, and laborers employed by \_\_\_\_\_ or any of his subcontractors in connection with the construction of \_\_\_\_\_ at Cherokee County have been paid and satisfied in full as of \_\_\_\_\_, 200\_\_\_\_, and that there are no outstanding obligations or claims of any kind for the payment of which Cherokee County on the above named project might be liable, or subject to, in any lawful proceeding at law or in equity.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

Personally appeared before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, \_\_\_\_\_, who under oath deposes and says that he is \_\_\_\_\_ of the firm of \_\_\_\_\_ that he has read the above statement and that to the best of his knowledge and belief same is an exact true statement.

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

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

***EXHIBIT "F"***

**STATE OF GEORGIA**

**COUNTY OF CHEROKEE**

**CONTRACTOR AFFIDAVIT AND AGREEMENT**

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm, or corporation which is contracting with Cherokee County has registered with and is participating in a federal work authorization program, in accordance with the applicability provisions and deadlines established in O.C.G.A. § 13-10-91.

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to this contract with Cherokee County, contractor will secure from such subcontractor(s) similar verification of compliance with O.C.G.A. § 13-10-91 on the Subcontractor Affidavit provided in Rule 300-10-01-.08 in the form attached hereto as Exhibit "1." Contractor further agrees to maintain records of such compliance and provide a copy of each such verification to Cherokee County at the time the subcontractor(s) is retained to perform such service.

\_\_\_\_\_  
EEV / Basic Pilot Program User Identification Number

\_\_\_\_\_  
BY: Authorized Officer or Agent Date  
(Contractor Name)

\_\_\_\_\_  
Title of Authorized Officer or Agent of Contractor

\_\_\_\_\_  
Printed Name of Authorized Officer or Agent

**SIGNED, SEALED, AND DELIVERED**

in the presence of:

\_\_\_\_\_  
Witness

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

[NOTARY SEAL]

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

**EXHIBIT "G"**

STATE OF GEORGIA

COUNTY OF CHEROKEE

**SUBCONTRACTOR AFFIDAVIT**

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with (name of contractor) on behalf of Cherokee County has registered with and is participating in a federal work authorization program, in accordance with the applicability provisions and deadlines established in O.C.G.A. § 13-10-91.

\_\_\_\_\_  
EEV / Basic Pilot Program User Identification Number

\_\_\_\_\_  
BY: Authorized Officer or Agent Date  
(Subcontractor Name)

\_\_\_\_\_  
Title of Authorized Officer or Agent of Subcontractor

\_\_\_\_\_  
Printed Name of Authorized Officer or Agent

**SIGNED, SEALED, AND DELIVERED**

in the presence of:

\_\_\_\_\_  
Witness

**Notary Public**

[NOTARY SEAL]

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