

JACKSON COUNTY QUALLA WHITTIER PARK CONTRACT AGREEMENT

THIS AGREEMENT entered into this, December 17, 2024 by and between “Cherokee Enterprises, Inc.” of the State of North Carolina, with its principal office located at 1371 Acquoni Rd, Cherokee, NC 28179, the "Contractor", hereinafter called ("CONTRACTOR"), and Jackson County the "Owner", hereinafter called ("County").

WITNESSETH:

The Contractor "CONTRACTOR" has entered into a contract dated December 17, 2024 based on the bid submitted on November 21, 2024 hereinafter called (the "Project").

THEREFORE, in consideration of the mutual promises, covenants, and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Owner "COUNTY" and the Contractor "CONTRACTOR" agree as follows:

ARTICLE 1 - SCOPE OF WORK

(1) “CONTRACTOR” shall perform all construction services, and provide all material, equipment, tools and labor, necessary to complete the Project as described in the attached proposal dated November 21, 2024 and reasonably inferable from the Contract Documents, including any additions, deletions or modifications mutually agreed upon and formally incorporated into the Project.

ARTICLE 2 - THE CONTRACT AND CONTRACT DOCUMENTS

(1) The Contract: The Contract between “CONTRACTOR” and COUNTY consists of this document and the other Contract Documents described in Article 2 Section 2, "The Contract Documents". The Contract shall be effective as of December 17, 2024, the date of its approval, and that date shall also be considered the execution date of the Contract.

(2) The Contract Documents: The Contract Documents consist of this Agreement (including all Exhibits, Schedules, and Attachments), the Proposal dated December 17, 2024, and all Construction Documents hereafter prepared by “CONTRACTOR” and approved by COUNTY including all written modifications, amendments, minor changes, Change Orders and Field Orders issued hereafter in accordance with this Agreement and the Contract Documents.

ARTICLE 3 - GENERAL PROVISIONS

(1) COUNTY and “CONTRACTOR” agree to proceed on the basis of trust, good faith and fair dealing.

(2) “CONTRACTOR” is fully qualified to act as the general contractor for the Project and is, and will remain, licensed to practice general contracting by all public entities that have jurisdiction over “CONTRACTOR” or the Project.

(3) "CONTRACTOR" will maintain all necessary licenses, insurance, permits or other authorizations necessary to act as the Contractor for the Project until "CONTRACTOR"'s duties under this Contract have been satisfied.

(4) The standard of care and standard of services applicable to "CONTRACTOR"'s construction services is the degree of skill and diligence normally employed by providers of technical services, construction professionals, and skilled construction tradesmen and/or staff performing the same and/or similar services.

(5) All notices to "CONTRACTOR" shall be in writing and shall be signed by an authorized representative of COUNTY. Such notices can be delivered in person to the official representative of "CONTRACTOR" or mailed to "CONTRACTOR"'s official address listed above. Such delivery in person or by mail shall constitute service of notice.

ARTICLE 4 - INTERPRETATION AND INTENT

(1) It is the intent of COUNTY and "CONTRACTOR" to include all items necessary for the proper execution and completion of the Project. Prior to execution of the Agreement, "CONTRACTOR" shall review all the Contract Documents, for any conflicts or ambiguities. "CONTRACTOR" will discuss with the COUNTY and resolve any identified conflicts or ambiguities prior to execution of the Agreement.

(2) The Contract Documents are intended to permit the parties to complete the Project and all obligations required by the Contract Documents within the construction schedule and Contract Price.

(3) The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction industry standards.

(4) In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, COUNTY and "CONTRACTOR" shall attempt to resolve any ambiguity, conflict or inconsistency by reasonable means, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Article 2 Section 2 of The Contract Documents hereof.

(5) If COUNTY Project Criteria contain specifications:

(a) "CONTRACTOR" shall be entitled to reasonably rely on the accuracy of the information represented in such design specifications and their compatibility with other information set forth in COUNTY's Project Criteria which are incorporated in the construction documents

(b) "CONTRACTOR" shall be entitled to an adjustment in the Contract Price and/or Contract Time to the extent "CONTRACTOR"'s cost and/or time of performance have been adversely impacted by such inaccurate design specification as defined on the construction documents.

(6) The Contract Documents for the entire agreement between COUNTY and "CONTRACTOR" and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or

other agreements have been made by the parties except as specifically stated in the Contract Documents.

ARTICLE 5 - CONTRACT TIME

Contract Commencement: The "Commencement Date" is within (60) days of "CONTRACTOR"'s receipt of COUNTY's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

(2) Contract Time: The work will be substantially complete and ready for final payment by December 31, 2025. Any delay in the Contract Commencement Date that adversely affects the Project schedule shall not bind "CONTRACTOR" to the original Contract Time and Contract Schedule.

(3) Substantial Completion: Substantial Completion is the date on which the Project, or an agreed upon portion of the Project, is sufficiently complete in accordance with the Contract Documents so that COUNTY can occupy or use the Project or portion thereof for its intended purposes.

(4) Final Completion: Final Completion of the Project or identified portions of the Project shall be achieved as expeditiously as reasonably practicable and without adverse effect to quality workmanship.

(5) Time is of the Essence: COUNTY and "CONTRACTOR" mutually agree that time is of the essence with respect to maintaining in good faith the schedules, milestones, dates and times set forth in the Contract Documents. Failure to substantially complete the project by December 31, 2025 shall result in a liquidated damage fee of \$500 per day payable by CONTRACTOR to COUNTY until such time as the project is substantially completed.

ARTICLE 6 - CONTRACT PRICE

(i) Contract Price: COUNTY shall pay "CONTRACTOR" in accordance with the Contract Documents the sum of 1,962,393 Dollars and 72 Cents (\$) the ("Contract Price"), subject to adjustments made in accordance with The Contract Documents of Article 2 Section 2 hereof.

ARTICLE 7 - PROCEDURE FOR PAYMENT

(1) Application for Payment: "CONTRACTOR" shall submit to COUNTY on the thirtieth (30th) day of each month, beginning with the first month after the date of Contract Commencement, "CONTRACTOR"'s Application for Payment on the basis for Work completed during the previous month.

(2) Progress Payments: COUNTY shall make payment within thirty (30) days after COUNTY's receipt of each properly submitted and accurate Application for Payment, but in each case less the total of payments previously made for Work completed.

(3) Interest: All Payments due and unpaid by COUNTY to "CONTRACTOR" shall bear interest commencing fifteen (15) days after payment is due at the rate of one and one-half percent (1.5%) per month until paid.

(4) Landscape Architect of Record: Equinox Environmental Consultation and Design, Inc., of 14 O'Henry Avenue Suite 206, Asheville, NC 28801, hereinafter called ("EQUINOX") shall serve as the Engineer of Record for the Project. EQUINOX shall inspect and approve, on behalf of COUNTY, the accuracy and workmanship of the work completed in accordance with the contract documents each application for payment prior to progress payment.

(5) Retainage: COUNTY **will** retain a portion of the amount due "CONTRACTOR" each progress payment until substantial completion. The amount retained by COUNTY shall be limited to the following:

(a) Not more than five percent (5%) of work claimed shall be withheld until the contract reaches fifty percent (50%) completion.

(b) No further retainage shall be withheld from progress payments once the contract has reached fifty percent (50%) completion.

(c) COUNTY may reinstate a five percent (5%) retainage after the contract reaches fifty percent (50%) completion in the event Project workmanship or progress become unsatisfactory.

(d) COUNTY may withhold additional retainage from progress payments as necessary to maintain a total retainage of not less than two- and one-half percent (2.5%) of contract cost through substantial completion.

(6) Sales Tax Statement: "CONTRACTOR" shall submit to COUNTY a North Carolina State sales and use tax statement on materials and equipment incorporated into the project each application for payment.

ARTICLE 8 - SUSPENSION AND TERMINATION

(1) Termination: Upon (30) day's written notice to "CONTRACTOR", COUNTY may, for its convenience and without cause, elect to terminate this Agreement. In such event, COUNTY shall pay "CONTRACTOR" for the following:

(a) All Work executed and for proven loss, cost or expense in connection with the Project;

(b) The reasonable costs and expenses attributable to such termination, including amounts due in settlement of terminated contracts with Subcontractors, Engineers and Design Consultants: and

(c) The fair and reasonable sums for overhead and profit on the sum of items (a) and (b) of Article 8 Section 1 above.

(2) Suspension: In the event COUNTY directs a suspension of performance, through no fault of "CONTRACTOR", and provided "CONTRACTOR" submits a proper claim as provided in this Contract, COUNTY shall pay "CONTRACTOR" as full compensation for such suspension "CONTRACTOR"'s reasonable costs, actually incurred and paid, of:

(a) demobilization and remobilization, including such costs paid to Subcontractors, Engineers and Design Consultants;

(b) preserving and protecting Construction Work in place;

(c) storage of materials or equipment purchased for the Project, including insurance and bonds thereon; and

(d) performing in a later, or during a longer, time frame than that contemplated by the Project Proposal dated November 21, 2024 and/or the "Contract Documents".

ARTICLE 9 – PERFORMANCE BOND AND INSURANCE

(1) Before commencing Work for the Project, "CONTRACTOR" shall:

- a. provide the Performance Bond equal to 100% of the contract price in accordance with the bid requirements for the project;
- b. provide COUNTY verifying certificates of Insurance from reputable insurers authorized to do business in the state of North Carolina.

(2) Per industry standards, "CONTRACTOR" shall warrant that policies shall not be canceled or changed until at least thirty (30) days prior written notice has been given COUNTY.

(3) Unless otherwise required in this Agreement, "CONTRACTOR" shall during the performance of the Contract, maintain in full force and effect Insurance complying with all North Carolina statutory requirements and maintain a minimum insurance coverage during the Project of the types and amounts specified:

- Commercial General Liability – Combined single limit of no less than \$1,000,000 for each occurrence and \$2,000,000 aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability, Cross Liability, or Personal and Advertising Injury Liability.
- Automobile Liability – Limits of no less than \$1,000,000 Combined Single Limit. Coverage shall include liability for Owned, Non-Owned and Hired automobiles. In the event Contractor does not own automobiles, Contractor agrees to maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Auto Liability policy. Automobile coverage is only necessary if vehicles are used in the provision of services under this Contract and/or are brought on a County site.
- Umbrella or Excess Liability – Contractor may satisfy the minimum liability limits required above under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability, however, the Annual Aggregate limits shall not be less than the highest 'Each Occurrence' limit for required policies. Contractor agrees to endorse the Jackson County as an 'Additional Insured' on the Umbrella or Excess Liability unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a 'Follow-Form' basis.
- Worker's Compensation & Employers Liability – Contractor agrees to maintain Worker's Compensation Insurance in accordance with North Carolina General Statute Chapter 97 and with

Employer Liability limits of no less than \$1,000,000 for each accident, each employee, and policy limit. This policy must include a Waiver of Subrogation.

- Additional Insured – The Contractor agrees to endorse the County as an Additional Insured on the Commercial General Liability. The Additional Insured shall read Jackson County as its interest may appear.
- Certificate of Insurance – Contractor agrees to provide Jackson County a Certificate of Insurance evidencing that all coverage, limits, and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available, by Contractor’s insurer. If Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein or receives notice that coverage no longer complies with the insurance requirements herein, Contractor agrees to notify the County within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. The Certificate Holder address should read:

Jackson County
88 Cullowhee Mountain Road
Cullowhee, NC 28723

All primary insurance carriers must be authorized to do business in North Carolina.

ARTICLE 10 - REPRESENTATIVES OF THE PARTIES

(1) COUNTY has designated the person below as its designated representative for general management of this Agreement. Any reference to COUNTY herein is a reference to the person named below, but only in such person's capacity as a representative for COUNTY.

Name: Michael Hopkins
Title: Parks and Recreation Director
Address: 88 Cullowhee Mountain Road, Cullowhee, NC 28723

Phone: 828-293-3053-2020
Email: michaelhopkins@jacksonnc.org

For the purpose of correspondence and notices, copies shall be sent to:

ATTN: Michael Hopkins
Jackson County
88 Cullowhee Mountain Road
Cullowhee, NC 28723

(2) “CONTRACTOR” has designated the person below as its designated representative for general management of this Agreement.

Name: Michael Hopkins
Title: Recreation Director
Address: 88 Cullowhee Mountain Road, Cullowhee, NC 28723
Email: michaelhopkins@jacksonnc.org

For the purpose of correspondence and notices to "CONTRACTOR", copies shall be sent to:

ATTN: Michael Hopkins

ARTICLE 11 – INDEMNIFICATION

(1) "CONTRACTOR" and COUNTY shall, to the extent that the same may be caused by its own negligence or willful misconduct, defend and indemnify the other, its officers, employees and agents, against and hold them harmless from all liability, damage, cost or expense. Prompt notice shall be given of any such Claim. The parties acknowledge and understand that an unlimited indemnification constitutes a violation of the North Carolina Constitution and is void and unenforceable by operation of law. Any indemnifications given to any party under the Contract shall be deemed to be given only to the fullest extent allowed by law.

ARTICLE 12 – WARRANTY

(1) "CONTRACTOR" warrants to COUNTY that all Work will be of good quality and will conform with the Contract Documents. Work not conforming to the requirements of the Contract Documents will be corrected by "CONTRACTOR".

(2) All materials furnished and incorporated into the Project will be of good quality, and free of defects.

ARTICLE 13 - MISCELLANEOUS PROVISIONS

(1) Governing Laws: The validity or construction of this Agreement, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of North Carolina without regard to its choice of law provisions.

(2) Partial Invalidity: If any term, covenant, condition or provision of this Agreement is found by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect, and shall in no way be affected, impaired or invalidated thereby.

(3) Default: Should either party breach any provisions of this Agreement the non-breaching party shall have the rights and remedies provided by law or under these terms and conditions.

(4) Non-Disclosure: Except as expressly permitted by the Agreement, "CONTRACTOR" and COUNTY shall maintain to each and the other all Proprietary Information in confidence and not disclose it to any third party. COUNTY shall handle the Proprietary Information with the same degree of care it applies to its own confidential information, and at a minimum all due care to protect the confidentiality of the Proprietary Information.

LIST OF EXHIBITS AND CONTRACT SUPPLEMENTS

- EXHIBIT A Proposal/Bid Dated November 21, 2024

- EXHIBIT B Insurance

- EXHIBIT C Plan set Dated November 21, 2024

- EXHIBIT D Minority Business Contract Provisions

- EXHIBIT E Application for Payment

- EXHIBIT F Change Order Form

- EXHIBIT G State of North Carolina Sales and Use Tax Report Summary

IN EXECUTION of this Agreement as of the date first written above, COUNTY and “CONTRACTOR” each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each is duly authorized with the necessary corporate approvals to execute this Agreement, and perform the services described herein.

County’s Signature _____ Date: December 17, 2024

Print Name Mark Letson

Contractor’s Signature _____ Date: _____

Company: _____

Print Name: _____

EXHIBIT A

Proposal/Bid Dated November 21, 2024

EXHIBIT B

Insurance

EXHIBIT C

Plan set Dated November 21, 2024

EXHIBIT D

Minority Business Contract Provisions

EXHIBIT E

Application for Payment

EXHIBIT F

Change Order Form

EXHIBIT G

State of North Carolina Sales and Use Tax Report Summary