

This is the Standard Professional Services Agreement of Cherokee County. Any consultant doing business with the County must enter into this Agreement.

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is effective as of this _____ day of _____, 20____, 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 (“County”), and **Tunnel, Spangler & Associates, Inc., d/b/a TSW** (“Consultant”), collectively referred to as the “Parties.”

WITNESSETH THAT:

WHEREAS, the County desires to retain Consultant to provide certain services generally described as creating a park and trails **area plan for the Northeast portion of Cherokee County**; and

WHEREAS, the County finds that specialized knowledge, skills, and training are necessary to perform the Work contemplated under this Agreement; and

WHEREAS, the Consultant has represented that it is qualified by training and experience to perform the Work; and

WHEREAS, the Consultant desires to perform the Work under the terms and conditions set forth in this Agreement; and

WHEREAS, the public interest will be served by this Agreement;

NOW, THEREFORE, for and in consideration of the mutual promises, the public purposes, and the acknowledgements and agreements contained herein, together with other good and adequate consideration, the sufficiency of which is hereby acknowledged, the Parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES AND TERMINATION DATE

A. The Work

The Work to be completed under this Agreement (the “Work”) consists of creating a park and trails area plan for the Northeast portion of Cherokee, more specifically described in Exhibit “D”. This Agreement incorporates the terms and conditions and all scope of work described in Cherokee County RFP 2021-032 and any issued documentation or addenda as part of solicitation 2021-032.

1.0 Scope of Work

The scope of this project is to produce master plans for three parcels in the NE portion of the county that encompasses the parcels identified below.

1.1 Parcel #1

1.1.1 TIN: 03N13 019; **PIN:** 03-0199-0001

1.1.2 ± 23 Acres

1.1.3 Description - The subject property is located on the east side of GA Hwy 372, north of the Etowah River, and west of Long Swamp Creek. It has roughly 1300 linear feet of road frontage on Hwy 372 on the west side; roughly 1500 feet of water frontage along the Etowah River on the south side; and roughly 950 feet of water frontage along Long Swamp Creek on the east side. The property is roughly boot shaped with the southwest corner protruding farther west than the northwest corner. It is bound by the Etowah River on the south side and Long Swamp Creek on the east side. It is bound by private property on the north side. The property is mostly all an open pasture area with hardwood trees along the frontage of the two water features. It possesses a residential home, a large open port, and a small, enclosed, wooden storage structure. Additionally, the property is well known for its richness in Native American history and culture, specifically to the Cherokee Nation. Elevations on the property vary from 920 - 930 feet above sea level. The majority of the property is within the current FEMA floodplain and a portion of the property is within the FEMA floodway.

1.2 Parcel #2

1.2.1 TIN: 03N20 007; **PIN:** 03-0319-0001

1.2.2 ± 538 Acres

1.2.3 Description - The subject property is located on the west side of Yellow Creek Road and northwest of the Etowah River. It has roughly 1300 linear feet of road frontage along Yellow Creek Road and roughly 9,000 linear feet of water frontage along the Etowah River. It is bound by multiple private properties on the north and northwestern sides and bound by the Etowah River on the southern and western sides. It is completely forested with a combination of mostly hardwoods and deciduous trees. Elevations on the property vary from 940 – 1160 feet above sea level. A small portion of the property falls within the current FEMA floodplain and floodway area on the southern and western borders. In addition, there is a small FEMA flood plain area that runs through the middle of the property due to Bryant Creek. The property is protected by a conservation easement that limits the type of recreation activities and development on the property.

1.3 Parcel #3

1.3.1 TIN: 03N23 198; **PIN:** 03-0908-0001/ **TIN:** 03N23 202; **PIN:** 03-0893-0001

1.3.2 ± 102 Acres

1.3.3 Description - The subject property is located on the west side of Hwy 372 and approximately one quarter of a mile north of Free Home Elementary School and Hwy 20. It has roughly 400 linear feet of road frontage along Hwy 372 and roughly 1,300 feet of road frontage along Hube Turner Rd. It is bound by multiple private properties on the west side, the majority of the north side is bound by Hube Turner Rd., and the southern and eastern sides are bound

predominantly by Cherokee County School District property. The majority of the property is open pasture land with hardwood bottoms and other specimen trees scattered throughout the property. The property possesses a residential home, various barns and other wooden structures, a roughly 2-acre pond, and a small creek that feeds into the pond. Elevations on the property range from 1140 – 1220 feet above sea level. None of the property resides within the current FEMA floodplain area. Cherokee County recently sold 40.7 AC to the Cherokee County School District at the south end of the property for the future replacement Free Home Elementary School (leaving 102 AC for the county). The county and school district intend to cooperate on a shared entrance to the school and park. Preliminary plans for the school property will be shared with the successful bidder.

1.4 Work Statement

Cherokee County will act as the lead agency through all aspects of the project. The role of the selected consultant team will be to complete tasks necessary to draft a master plan for each park that addresses components of previous county plans as well as the results of the public participation processes specific to the proposed park(s).

The master plans must be in a form suitable for submittal to the Cherokee County Board of Commissioners for review, and must be submitted in both printed and electronic format. A full description of deliverables is included below. All aspects of the scope of services outlined below and included herein are expected to be completed within the agreed upon project deadlines.

1.5 Plan Elements

The following elements should be included in the plan, but may not be limited to such.

1.5.1 Project Coordination

1.5.1.1 Project Management

Cherokee County staff will serve as project management and primary point of contact for direction, deliverable review and approval, management of contract, and external communications for the master planning process.

The consultant will perform work necessary to effectively coordinate the project development including the project schedule. The consultant will assist in managing the Project Management Team consisting of key Cherokee County staff, guiding the team through project goal setting, engagement and data collection, concept development, and plan drafting. Cherokee County staff will work closely with the consultant to develop content, provide feedback/comments, and offer project direction.

1.5.2 Project Coordination

1.5.2.1.1 Kickoff Meeting

The consultant will meet with County staff to review the project schedule, discuss the goals of the project and determine key touch points throughout the process.

1.5.2.1.2 Progress Meetings

The consultant will meet with County staff at key intervals throughout the process (minimum of six (6) meetings).

1.5.2.1.3 Draft Plan Review

The consultant will meet with County staff to review and discuss the draft plan before finalizing the plan for presentation to the Recreation and Parks Advisory Board and/or the Board of Commissioners.

Deliverables for each of the meetings will include but may not be limited to meeting agendas, appropriate materials and minutes.

1.5.3 Site(s) Inventory and Analysis

The site(s) inventory and analysis establish parameters for the proposed facilities and activities at the site(s). Describe the physical, natural, and historic/cultural resources and legal restrictions related to the project site(s) and any potential impacts on potential development and use. Provide analysis of the opportunities and constraints. Examples include:

- Location
- Historic/Cultural Features
- Acreage
- Zoning; Surrounding Land Use
- Environmental Issues
- Topography
- Deed Restrictions
- Hydrology (water, wetlands, storm water)
- Easements & Rights-of-Way
- Vegetation
- Utilities
- Soil Types
- Circulation & Access

1.5.4 Public Participation

The consultant will be responsible for developing a public participation plan by working with the county to plan and perform public and agency involvement to facilitate input and support of the project. A public and agency engagement strategy is needed to assess stakeholder input, perform the alternatives development and evaluation process, and facilitate acceptance and approvals for the project.

The process must include opportunity for the public to provide input and comments on the contents of the master plans. The master plans submitted to the county shall include a summary of comments received that identifies issues raised and content resulting from engagement efforts.

1.5.4.1 Stakeholder Interviews

The consultant should plan on 15-20 stakeholder interviews. Stakeholder interviews are one-on-one or small group discussions about the proposed park

with individual(s) recognized or designated as community leaders. The consultant will be provided a list of key individuals to be interviewed by Cherokee County. The county will assist in ensuring the availability of these interviewees in a timely manner. Virtual meetings may be considered.

1.5.4.2 Public Meetings

At least three (3) public meetings must be held. Cherokee County will provide meeting space and assist in the advertisement of the public meetings. Virtual meetings may be considered.

1.5.4.3 Citizen Survey

In cooperation with County staff the consultant will develop a citizen survey for each park to be disturbed via online media. County staff will utilize local print media and social media accounts to advertise the survey. The consultant will analyze the results of the survey and provide the results to County staff with recommendations for inclusion in the plan.

1.5.4.4 Project Web Site

In cooperation with County staff the consultant will develop and manage a project web site to allow for public engagement throughout the project.

1.5.5 Background Information

The background information provides an overview of the community, park system, and project site(s) and establishes a foundation for project implementation. The following information should be included in the plan but is not intended to represent a complete list.

- Physical characteristics including location, size, and regional context.
- Demographics including population, age, gender, race & ethnicity, households, income, education, and visitors.
- Economic, housing, transportation, and historic/cultural assets.
- Natural resources such as forests, wetlands, waters, farmland, critical habitats, etc.
- Park, open space, and recreation facility(ies) including number, size, and type.
- Project site(s) relationship to the community and/or county park system.
- Provisions of existing planning documents (i.e. Comprehensive Recreation, Parks and Open Space Plan, Comprehensive Land Use Plan, Comprehensive Transportation Plan Trails Element, Southwest Cherokee Area Plan, etc.) that are applicable to the project site(s).

1.5.6 Activity(s) and Facility(s) Analysis

The activity(ies) and facility(ies) analysis developed by the Consultant will be used to determine the proposed facilities and activities at the site(s) including type, size, and standards. Describe the community needs, uses, and priorities for the site as identified by the public participation process, previous planning work, and needs assessment. Describe the recreation facilities

proposed to be developed on the site(s). The proposed facilities and uses should also be clearly represented on the concept drawing(s).

For proposed recreation facilities and uses, provide the following information:

- For active recreation facilities, describe the sizes, types and standards.
- For passive recreation facilities, describe the proposed use of the project site(s) such as wildlife viewing, nature trails, multi-purpose trails, community gardens, habitat protection, environmental education, etc.
- Describe the proposed preservation of open space, natural areas, and riparian buffers.
- Support facilities may be required for the proposed recreation facilities and uses. Depending on the site and proposed uses, support facilities may include roads, storm water management, maintenance facilities, utilities, parking, comfort facilities, etc. Provide a brief description of each support facility and the requirements for connectivity and accessibility.

1.5.7 Design Considerations

All park, open space, and recreational facilities have the potential to protect and/or enhance natural resources and habitats. Green and sustainable elements promote environmental, health, and economic benefits and enhance the visitor experience. From a management perspective, maintenance requirements and associated costs may be lower for a naturalized site. Because the agency mission is to both preserve parks and facilities and promote active communities through recreation, it is important to combine sound detailed analysis, planning and sustainability. This includes incorporation of native plantings, storm water best management practices, and habitat protection/enhancement.

Consider the following items when developing the plan:

- Parcel 1 and Parcel 2 should be designed exclusively for passive, self-directed, outdoor recreation activities such as, but not limited to, hiking, biking, horseback riding, camping, kayaking, etc.
- Site opportunities, constraints, and generally accepted design standards related to the proposed recreation facilities and uses including any applicable local recreation and park agency standards.
- Topography of the site.
- Compliance with applicable laws, regulations, and guidelines including land subdivision, zoning, ADA Standards for Accessible Design, Uniform Construction Code, American Society for Testing Materials (ASTM) standards, and the Consumer Product Safety Commission (CPSC) guidelines pertaining to playground areas and equipment.
- Protection/enhancement of significant historic structures and areas.
- Protection/enhancement of environmentally sensitive areas including forests, streams, wetlands, and natural areas that provide wildlife habitat and protect water quality.
- Sustainable site design and green infrastructure/materials that may reduce environmental impact and lower maintenance and operation costs.

- Establishment and maintenance of sustainable riparian native grass and/or forest buffers.
- Storm water management.

1.5.8 Design Process and Recommendations

- Develop preliminary concept drawings and present to County staff for review and discussion. Relationships between facilities and circulation patterns should be shown; however, the exact shape and placement of facilities is not critical.
- Evaluate the preliminary alternative concept drawings highlighting both the positive and negative points. Through the public participation process, determine which alternative (or combination) best meets community needs, design standards, and regulations.
- Prepare a draft of the final Narrative Report and Concept Drawings(s).
- Present the draft final Narrative Report and Concept Drawings(s) at a public meeting for final comment. All existing and proposed facilities and areas must be shown on this final Concept Drawing in proper shape, size, and orientation.
- Upon approval of the final Narrative Report and Concept Drawings(s) by the county, the consultant prepares the final deliverables.

1.5.9 Deliverables

The final plans must clearly define findings and recommendations; with graphic illustrations - including but not limited to aerial photographs, ground photographs, drawings, maps, etc. The plans will include cost estimates for the recommended capital and green infrastructure improvements and natural resource management activities.

All reports/documentation must be developed and presented in Microsoft Office, Adobe Acrobat or other acceptable program(s) as determined by Cherokee County. Digital versions of the master plan and other relevant documents suitable for online viewing must also be submitted. The plan document(s) also must be suitable for copying on a commercial black and white and color copying machines.

Ten (10) copies of the entire plan document(s) must be printed on 8-1/2" x 11", 70# off-white, printed two sides, color ink, spiral bound and sufficient illustrations and photos that display major elements of the text. The county may consider alternative size, bindings and type of paper for the final documents as proposed by the consultant.

The plan document(s) must include the following elements:

- **Executive Summary** – Summary of the Narrative Report as described below.
- **Narrative Report**
 - Purpose, Goals, and Objectives
 - Public Participation Methods and Results
 - Background Information
 - Site(s) Inventory and Analysis
 - Activity(s) and Facility(s) Analysis
 - Design Considerations
 - Design Process and Recommendations

- Recommended trail design standards for each type of trail with elements such as but not necessarily limited to standard trail widths, buffer areas, surface(s), grades, markings, intersection design, rest areas and signage.
- **Final Concept Drawing(s)**
 - Three (3) hardcopy print Site Plans for each park(s) – 24” x 36”
 - A PDF file of the Site Plans for the park(s)
 - Upon acceptance of the plan, final PDF and CAD files shall be provided to the County for use without restrictions
- **Cost Estimates** – As described below.
 - Development (Construction) Costs – Provide a current detailed cost estimate for the development of the proposed park(s), recreation areas, facilities and trails. The cost estimate should include: engineering and other professional services cost; construction and materials cost; project administration cost; and a contingency of at least 10% of the construction cost estimate.
 - Phased Capital Development Program – If the proposed development cannot realistically be carried out in one to two years as one project, develop a phased and prioritized multi-year capital development program. This should explain the strategy for the phasing and identify which areas and facilities are to be developed in which phase.

B. Schedule, Completion Date, and Term of Agreement

Consultant warrants and represents that it will perform its services in a prompt and timely manner, which shall not impose delays on the progress of the Work. This Agreement shall commence as of the date first written above, and the Work shall be complete within **six (6) months of the issuance of the Notice to Proceed.** If the Term of this Agreement is longer than one year, the Parties agree that this Agreement, as required by O.C.G.A. § 36-60-13, shall terminate absolutely and without further obligation on the part of the County on December 31 each calendar year of the Term [**unless this box is checked, in which case the Agreement shall terminate absolutely and without further obligation on the part of the County at the end of the County’s fiscal year each year of the Term**], and further, that this Agreement shall automatically renew on January 1 of each subsequent calendar year [**unless this box is checked, in which case the Agreement shall automatically renew on the first day of each subsequent County fiscal year of the Term**] absent the County’s provision of written notice of non-renewal to Consultant at least five (5) days prior to the end of the then current calendar or fiscal year, as applicable. Title to any supplies, materials, equipment, or other personal property shall remain in Consultant until fully paid for by the County.

II. 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 Consultant 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 Consultant 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 Consultant.

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, as set forth in Section III(B) below. 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 \$25,000 must be approved by resolution of the Cherokee County Board of Commissioners.

III. COMPENSATION AND METHOD OF PAYMENT

A. County agrees to pay the Consultant for the Work performed and costs incurred by Consultant 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 Consultant upon receipt and approval by the County of invoices setting forth in detail the services 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, or 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 handled through change orders as described in Section II above. The County shall pay the Consultant within thirty (30) days after approval of the invoice by County staff.

B. The total amount paid under this Agreement as compensation for Work performed and reimbursement for costs incurred shall not, in any case, exceed fifty-nine thousand five hundred dollars and zero cents (\$59,500.00) before options, except as outlined in Section II(C) above. The compensation for Work performed shall be based upon the fee schedule below:

Task 1: Project Coordination	\$8,360.00
Task 2: Site Inventory & Analysis	\$11,235.00
Task 3: Public Participation	\$8,190.00
Task 4: Concept Plan Development	\$19,075.00
Task 5: Final Deliverables	\$11,140.00
<u>Reimbursable Expenses</u>	<u>\$1,500.00</u>
Total	\$59,500.00

Optional: Parcel #3 Survey \$13,100.00

IV. COVENANTS OF CONSULTANT

A. Expertise of Consultant

Consultant 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 Work in pursuit of the timely and competent completion of the Work undertaken by Consultant under this Agreement.

B. Budgetary Limitations

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

C. County's Reliance on the Work

The Consultant acknowledges and agrees that the County does not undertake to approve or pass upon matters of expertise of the Consultant and that, therefore, the County bears no responsibility for Consultant's Work performed under this Agreement. The Consultant acknowledges and agrees that the acceptance of designs, plans, and specifications 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 Consultant's performance. Consultant further agrees that no approval of designs, plans, or specifications by any person, body or agency shall relieve Consultant of the responsibility for adequacy, fitness, suitability, and correctness of Consultant's Work under professional and industry standards, or for performing services under this Agreement in accordance with sound and accepted professional and industry principals.

D. Consultant's Reliance on Submissions by the County

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

E. Consultant's Representative

Adam Williamson, Senior Principal, shall be authorized to act on Consultant's behalf

with respect to the Work as Consultant's designated representative.

F. Assignment of Agreement

The Consultant 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. As to any approved subcontractors, the Consultant shall be solely responsible for reimbursing them, and the County shall have no obligation to them.

G. Responsibility of Consultant and Indemnification of County

The Consultant covenants and agrees to take and assume all responsibility for the Work rendered in connection with this Agreement. The Consultant shall bear all losses and damages directly or indirectly resulting to it and/or the County on account of the performance or character of the Work rendered pursuant to this Agreement. Consultant shall defend, indemnify and hold harmless the County, its officers, boards, commissions, elected and appointed officials, employees, servants, volunteers and agents (hereinafter referred to as "County Parties") from and against any and all claims, injuries, suits, actions, judgments, damages, losses, costs, expenses and liability of any kind whatsoever, including but not limited to, attorney's fees and costs of defense, (hereinafter "Liabilities") which may be the result of willful, negligent or tortious conduct arising out of the Work, performance of contracted services, or operations by the Consultant, any subcontractor, anyone directly or indirectly employed by the Consultant or subcontractor or anyone for whose acts the Consultant or subcontractor may be liable, regardless of whether or not the negligent act is caused in part by a party indemnified hereunder. This indemnity obligation does not include Liabilities caused by or resulting from the sole negligence of the County or County Parties. 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 County Parties, by any employee of the Consultant, any subcontractor, anyone directly or indirectly employed by the Consultant or subcontractor or anyone for whose acts the Consultant 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 Consultant or any subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. This obligation to indemnify, defend, and hold harmless the County and County Parties shall survive expiration or termination of this Agreement, provided that the claims are based upon or arise out of actions that occurred during the performance of this Agreement.

H. Independent Contractor

Consultant hereby covenants and declares that it is engaged in an independent business and agrees to perform the Work as an independent contractor and not as the agent or employee of the County. The Consultant 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 Work; hiring of Consultants, agents or employees to complete the Work; and the payment of employees, including compliance with Social Security, withholding

and all other regulations governing such matters. The Consultant 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 Consultant as to the details of the services to be performed by Consultant or to exercise a measure of control over such services will be deemed to mean that Consultant shall follow the directions of the County with regard to the results of such services only.

I. Insurance

(1) Requirements:

The Consultant 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 Consultant, its agents, representatives, employees or subcontractors. All policies shall be subject to approval by the County Attorney 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:

Consultant shall maintain the following insurance policies with limits no less than:

- (a) Comprehensive General Liability of \$1,000,000 (one million dollars) 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 (one million dollars) 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 (one million dollars) limit for claims arising out of professional services and caused by the Consultant'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 (one million dollars) per accident.

(3) Deductibles and Self-Insured Retentions:

Any deductibles or self-insured retentions must be declared to and approved by the County in writing.

(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 and County Parties are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, leased, or used by the Consultant; automobiles owned, leased, hired, or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the County or County Parties.
- (ii) The Consultant's insurance coverage shall be primary noncontributing insurance as respects to any other insurance or self-insurance available to the County or County Parties. Any insurance or self-insurance maintained by the County or County Parties shall be in excess of the Consultant'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 and County Parties.
- (iv) Coverage shall state that the Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought.
- (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 shall agree to waive all rights of subrogation against the County and County Parties for losses arising from work performed by the Consultant for the County.

(b) Workers' Compensation Coverage.

The insurer providing Workers' Compensation Coverage will agree to waive all rights of subrogation against the County and County Parties for losses arising from work performed by the Consultant 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:

Consultant shall furnish the County with certificates of insurance and endorsements to the policies evidencing coverage required by this Article prior to the start of work. The certificate of insurance and endorsements shall be on a form utilized by Consultant'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 Consultant 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:

Consultant shall include all subcontractors as insureds 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 insureds.

(8) Claims-Made Policies:

Consultant 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, except the County need not be named as an additional insured and loss payee on any Professional Liability policy or Workers' Compensation policy.

J. Employment of Unauthorized Aliens Prohibited – E-Verify Affidavit

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:

- (1) the Consultant shall provide evidence on County-provided forms, attached hereto as Exhibits "A" and "B" (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 Consultant's subcontractors have conducted a verification, under the federal Employment Eligibility Verification ("EEV" or "E-Verify") program, of the social security numbers, or other identifying information now or hereafter accepted by the E-Verify program, of all employees who will perform work on the County contract to ensure that no unauthorized aliens will be employed, **or**
- (2) the Consultant provides evidence that it is not required to provide an affidavit because it is licensed pursuant to Title 26 or Title 43 or by the State Bar of Georgia and is in good standing as of the date when the contract for services is to be rendered.

The Consultant hereby verifies that it has, prior to executing this Agreement, executed a notarized affidavit, the form of which is provided in Exhibit "A", and submitted such affidavit to County or provided the County with evidence that it is not required to provide such an affidavit because it is licensed and in good standing as noted in subsection (2) above. Further, Consultant hereby agrees to comply with the requirements of the federal Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603, O.C.G.A. § 13-10-91 and Rule 300-10-1-.02.

In the event the Consultant employs or contracts with any subcontractor(s) in connection with the covered contract, the Consultant agrees to secure from such subcontractor(s) attestation of the subcontractor's compliance with O.C.G.A. § 13-10-91 and Rule 300-10-1-.02 by the subcontractor's execution of the subcontractor affidavit, the form of which is attached hereto as Exhibit "B", which subcontractor affidavit shall become part of the contractor/subcontractor agreement, or evidence that the subcontractor is not required to provide such an affidavit because it is licensed and in good standing as noted in subsection (2) above. If a subcontractor affidavit is obtained, Consultant agrees to provide a completed copy to the County within five (5) business days of receipt from any subcontractor.

Where Consultant is required to provide an affidavit pursuant to O.C.G.A. § 13-10-91, the County Manager or his/her designee shall be authorized to conduct an inspection of the Consultant's and Consultant's subcontractors' verification process at any time to determine that the verification was correct and complete. The Consultant and Consultant's subcontractors shall retain all documents and records of their respective verification process for a period of three (3) years following completion of the contract. Further, where Consultant is required to provide an affidavit pursuant to O.C.G.A. § 13-10-91, the County Manager or his/her designee shall further be authorized to conduct periodic inspections to ensure that no County Consultant or Consultant's subcontractors employ unauthorized aliens on County contracts. By entering into a

contract with the County, the Consultant and Consultant's subcontractors agree to cooperate with any such investigation by making their records and personnel available upon reasonable notice for inspection and questioning. Where a Consultant or Consultant's subcontractors are found to have employed an unauthorized alien, the County Manager or his/her designee may report same to the Department of Homeland Security. The Consultant's failure to cooperate with the investigation may be sanctioned by termination of the contract, and the Consultant shall be liable for all damages and delays occasioned by the County thereby.

Consultant agrees that the employee-number category designated below is applicable to the Consultant. [Information only required if a contractor affidavit is required pursuant to O.C.G.A. § 13-10-91.]

_____ 500 or more employees.

_____ 100 or more employees.

_____ Fewer than 100 employees.

Consultant hereby agrees that, in the event Consultant employs or contracts with any subcontractor(s) in connection with this Agreement and where the subcontractor is required to provide an affidavit pursuant to O.C.G.A. § 13-10-91, the Consultant will secure from the subcontractor(s) such subcontractor(s)' indication of the above employee-number category that is applicable to the subcontractor.

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.

K. Records, Reports and Audits

(1) Records:

- (a) Records shall be established and maintained by the Consultant 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 Consultant 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 Consultant 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.

L. Conflicts of Interest

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

M. Confidentiality

Consultant 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 Consultant agrees that confidential information it receives or such reports, information, opinions or conclusions that Consultant 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 Consultant shall exercise reasonable precautions to prevent the unauthorized disclosure and use of County information whether specifically deemed confidential or not.

Consultant acknowledges that the County's disclosure of documentation is governed by Georgia's Open Record's Act, and Consultant further acknowledges that if Consultant submits records containing trade secret information, and if Consultant wishes to keep such records confidential, Consultant must submit and attach to such records an affidavit affirmatively declaring that specific information in the records constitutes trade secrets pursuant to Article 27 of Chapter 1 of Title 10, and the Parties shall follow the requirements of O.C.G.A. § 50-18-72(a)(34) related thereto.

N. Licenses, Certifications and Permits

The Consultant covenants and declares that it has obtained all diplomas, certificates, licenses, permits or the like required of the Consultant by any and all national, state, regional, county, local boards, agencies, commissions, committees or other regulatory bodies in order to

perform the Work contracted for under this Agreement. All work performed by Consultant under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily expected of competent professionals.

O. Key Personnel

All of the individuals identified in Exhibit “C” are necessary for the successful completion of the Work due to their unique expertise and depth and breadth of experience. There shall be no change in Consultant’s Project Manager or members of the project team, as listed in Exhibit “C”, without written approval of the County. Consultant recognizes that the composition of this team was instrumental in the County’s decision to award the work to Consultant 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 Consultant’s obligations under this Agreement and shall be grounds for termination. Consultant shall not subcontract with any third party for the performance of any portion of the Work without the prior written consent of the County. Consultant shall be solely responsible for any such subcontractors in terms of performance and compensation.

P. Authority to Contract

The Consultant 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 Consultant to the terms of this Agreement, if applicable.

Q. 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 Work to be performed by the Consultant (“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 Consultant or subcontractor upon completion or termination of the Work shall be delivered immediately to the County. The Consultant 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 Consultant shall replace them at its own expense. Any and all copyrightable subject matter in all Materials is hereby assigned to the County, and the Consultant agrees to execute any additional documents that may be necessary to evidence such assignment.

R. Nondiscrimination

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and all other provisions of Federal law, the Consultant agrees that, during performance of this Agreement, Consultant, for itself, its assignees and successors in interest, will not discriminate against any employee or

applicant for employment, any subcontractor, or any supplier because of race, color, creed, national origin, gender, age or disability. In addition, Consultant agrees to comply with all applicable implementing regulations and shall include the provisions of this Section IV(R) in every subcontract for services contemplated under this Agreement.

V. COVENANTS OF THE COUNTY

A. Right of Entry

The County shall provide for right of entry for Consultant and all necessary equipment to Adam Williamson, Senior Principal, in order for Consultant to complete the Work.

B. County's Representative

Bryan Reynolds, Community Services Agency Director, or his designee, shall be authorized to act on the County's behalf with respect to the Work as the County's designated representative; provided that any changes to the Work or the terms of this Agreement must be approved as provided in Section II above.

VI. TERMINATION

A. The County shall have the right to terminate this Agreement for convenience by providing written notice thereof at least five (5) calendar days in advance of the termination date. The Consultant shall have no right to terminate this Agreement prior to completion of the Work, except in the event of the County's failure to pay the Consultant within thirty (30) days of Consultant providing the County with notice of a delinquent payment and an opportunity to cure.

B. Upon termination, County shall provide for payment to the Consultant for services rendered and expenses incurred prior to the termination date.

C. Upon termination, the Consultant 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 Consultant in performing this Agreement, whether completed or in process, in the form specified by the County.

D. The rights and remedies of the County and the Consultant provided in this Article are in addition to any other rights and remedies provided under this Agreement or at law or in equity.

VII. NO PERSONAL LIABILITY

Nothing herein shall be construed as creating any individual or personal liability on the part of any County Party. No County Party shall be personally liable to the Consultant or any successor in interest in the event of any default or breach by the County or for any amount which may become due to the Consultant or successor or on any obligation under the terms of this Agreement. Likewise, Consultant's performance of services under this Agreement shall not

subject Consultant's individual employees, officers or directors to any personal liability. The Parties agree that their sole and exclusive remedy, claim, demand or suit shall be directed and/or asserted only against Consultant or the County, respectively, and not against any employee, officer, director, or elected or appointed official.

VIII. ENTIRE AGREEMENT

This Agreement constitutes the complete agreement between the Parties and supersedes any and all other agreements, either oral or in writing, between the Parties with respect to the subject matter of this Agreement. No other agreement, statement or promise relating to the subject matter of this Agreement not contained in this Agreement shall be valid or binding. This Agreement may be modified or amended only by a written document signed by representatives of both Parties with appropriate authorization.

IX. SUCCESSORS AND ASSIGNS

Subject to the provision of this Agreement regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the respective Parties, provided that no party may assign this Agreement without prior written approval of the other party.

X. APPLICABLE LAW

If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the rules, regulations, statutes and laws of the State of Georgia will control. Any action or suit related to this Agreement shall be brought in the Superior Court of Cherokee County, Georgia.

XI. CAPTIONS AND SEVERABILITY

The caption or headnote on articles or sections of this Agreement are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent thereof, or of this Agreement nor in any way affect this Agreement. Should any article(s) or section(s), or any part thereof, later be deemed unenforceable by a court of competent jurisdiction, the offending portion of the Agreement should be severed, and the remainder of this Agreement shall remain in full force and effect to the extent possible.

XII. BUSINESS LICENSE

~~Prior to commencement of the services to be provided hereunder, Consultant shall apply to the County for a business license, pay the applicable business license fee, and maintain said business license during the term of this Agreement.~~

XIII. NOTICES

A. Communications Relating to Day-to-Day Activities

All communications relating to the day-to-day activities of the Work shall be exchanged between Bryan Reynolds, Community Services Agency Director, or his designee, for the County and Adam Williamson, Senior Principal, for the Consultant.

B. Official Notices

All other notices, requests, demands, writings, or correspondence, as required by this Agreement, shall be in writing and shall be deemed received, and shall be effective, when: (1) personally delivered, or (2) on the third day after the postmark date when mailed by certified mail, postage prepaid, return receipt requested, or (3) upon actual delivery when sent via national overnight commercial carrier to the Parties at the addresses given below, or at a substitute address previously furnished to the other Parties by written notice in accordance herewith:

NOTICE TO THE COUNTY shall be sent to:

County Manager
Cherokee County Board of Commissioners
1130 Bluffs Parkway
Canton, Georgia 30114

NOTICE TO THE CONSULTANT shall be sent to:

Tunnell, Spangler & Associates, Inc. d/b/a TSW
1447 Peachtree Street NE
Suite 850
Atlanta, Georgia 30309

Future changes in address shall be effective only upon written notice being given by the County to Consultant or by Consultant to County Manager via one of the delivery methods described in this Section.

XIV. WAIVER OF AGREEMENT

No failure by the County to enforce any right or power granted under this Agreement, or to insist upon strict compliance by Consultant with this Agreement, and no custom or practice of the County at variance with the terms and conditions of this Agreement shall constitute a general waiver of any future breach or default or affect the County's right to demand exact and strict compliance by Consultant with the terms and conditions of this Agreement.

XV. NO THIRD PARTY RIGHTS

This Agreement shall be exclusively for the benefit of the Parties and shall not provide any third parties with any remedy, claim, liability, reimbursement, cause of action or other right.

XVI. 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.

XVII. FORCE MAJEURE

Neither the County nor Consultant 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: (a) any cause beyond their respective reasonable control; (b) any act of God; (c) any change in applicable governmental rules or regulations rendering the performance of any portion of this Agreement legally impossible; (d) earthquake, fire, explosion or flood; (e) strike or labor dispute, excluding strikes or labor disputes by employees and/or agents of CONSULTANT; (f) delay or failure to act by any governmental or military authority; or (g) 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.

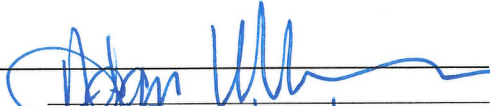
IN WITNESS WHEREOF the County and the Consultant have executed this Agreement effective as of the date the last Party executes this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

Approved as to form:

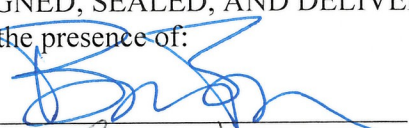
County Attorney

**CONSULTANT: TUNNEL , SPANGLER &
ASSOCIATES, INC. dba TSW**


By: 
Its: President

[CORPORATE SEAL]

SIGNED, SEALED, AND DELIVERED
in the presence of:



Witness



Notary Public

[NOTARY SEAL]

My Commission Expires:

Elizabeth W. Walsh
NOTARY PUBLIC
FULTON COUNTY
State of Georgia
My Commission Expires January 3, 2022

CHEROKEE COUNTY

By: _____
Its: _____

[COUNTY SEAL]

SIGNED, SEALED, AND DELIVERED
in the presence of:

Witness

Notary Public

[NOTARY SEAL]

My Commission Expires:

EXHIBIT "A"

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 engaged in the physical performance of services on behalf of Cherokee County has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned contractor will continue to use the federal work authorization program throughout the contract period and the undersigned contractor will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the information required by O.C.G.A. § 13-10-91(b).

Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

208896
Federal Work Authorization User Identification Number

July 13th, 2021
Date of Authorization

TSW
Name of Contractor
PARKS & TRAILS AREA PLAN FOR NE CHEROKEE COUNTY
Name of Project

Cherokee County
Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.
Executed on July 13, 2021 in ATL (city), GA (state).

[Signature]
Signature of Authorized Officer or Agent

Adam Williamson, President
Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME ON THIS THE 13th DAY OF July, 2021.

[Signature]
NOTARY PUBLIC

[NOTARY SEAL]

Elizabeth W. Walsh
My Commission Expires
NOTARY PUBLIC
FULTON COUNTY
State of Georgia
My Commission Expires January 3, 2022

EXHIBIT "B"

**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, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned subcontractor will continue to use the federal work authorization program throughout the contract period, and the undersigned subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the subcontractor with the information required by O.C.G.A. § 13-10-91(b). Additionally, the undersigned subcontractor will forward notice of the receipt of an affidavit from a sub-subcontractor to the contractor within five (5) business days of receipt. If the undersigned subcontractor receives notice that a sub-subcontractor has received an affidavit from any other contracted sub-subcontractor, the undersigned subcontractor must forward, within five (5) business days of receipt, a copy of the notice to the contractor.

Subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification
Number

Date of Authorization

Name of Subcontractor

Name of Project

Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, ____, 201__ in _____(city),
_____ (state).

Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME
ON THIS THE _____ DAY OF
_____, 201__.

NOTARY PUBLIC

[NOTARY SEAL]

My Commission Expires:

EXHIBIT "C"

[Insert any list of key personnel pursuant to Section IV(O).]

EXHIBIT “D”

[Consultant’s Proposal]