

INTERGOVERNMENTAL AGREEMENT

This INTERGOVERNMENTAL AGREEMENT ("Agreement") is entered into this ____ day of _____, 2004 in Kenosha, Wisconsin, by and between the MENOMINEE INDIAN TRIBE OF WISCONSIN, (the "Tribe"), a Federally Recognized Tribe of Indians, whose reservation is located within the State of Wisconsin, the MENOMINEE KENOSHA GAMING AUTHORITY (the "Authority"), a tribal gaming business chartered on September 16, 1999 by the Tribe, the CITY OF KENOSHA (the "City"), a municipal government in the State of Wisconsin, within which limits the Tribe proposes to acquire lands to be held in trust by the United States Government ("Federal Trust Land") for the purpose of conducting gaming thereon pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. Sections 2701 et seq. (the "IGRA") and the COUNTY OF KENOSHA (the "County"), a quasi-municipal corporation in the State of Wisconsin.

WHEREAS, the Tribe and the State of Wisconsin (the "State") have entered into that certain Menominee Indian Tribe of Wisconsin and State of Wisconsin Gaming Compact of 1992 (the "Compact"); and

WHEREAS, the Tribe and the State have entered into amendments to the Compact, executed on March 2, 1999 and April 25, 2003 ("Compact Amendments") that have, among other things, extended the original term of the Compact; and

WHEREAS, the Compact Amendments provide for the payment of monies by the Tribe to the State; and

WHEREAS, the Compact Amendments include a Memorandum of Understanding Regarding Government to Government Matters, in which the Governor of Wisconsin (the “Governor”) agreed to undertake his best efforts within the scope of his authority to assure that the payments made to the State under the Compact Amendments will be expended upon, among other things, economic development initiatives in regions around tribal casinos and promotion of tourism within the State; and

WHEREAS, the Tribe has identified certain lands which are fully described in the legal description attached as Exhibit A hereto and incorporated herein and are further delineated in the map attached as Exhibit B and incorporated herein within the city of Kenosha that it proposes to purchase, and on which it intends to conduct Class III gaming, as well as Class II gaming at a future date, as defined in the IGRA, at a facility for such purposes (the "Kenosha Facility"); and

WHEREAS, the Tribe intends to apply to the United States Department of Interior (the "Department") to place the lands described in Exhibits A and B into Federal Trust pursuant to 25 U.S.C. Section 2719(b) (the “Federal Trust Application”); and

WHEREAS, the approval of the Secretary of the Department (the "Secretary") of the Federal Trust Application requires the consent of the Governor, pursuant to 25 U.S.C.

Section 2719(b)(1), and includes consultation with local governments concerning the effects of removing the subject property from the tax rolls and the impact the Kenosha Facility will have on the City and the County; and

WHEREAS, the support of local government is important to the development of a cooperative intergovernmental relationship vital to the ongoing development the Tribe proposes; and

WHEREAS, a 1998 citywide referendum in Kenosha, Wisconsin, approved Class III Indian gaming in the city of Kenosha by a margin of 57% to 43%; and

WHEREAS, IGRA permits the use of tribal gaming revenues to support the operations of local government under 25 U.S.C. § 2710(b)(2); and

WHEREAS, the Tribe and the Authority recognize that upon placement of the land into Federal Trust, the City and the County will suffer the permanent loss of revenue from property, sales and admissions taxes from one of its largest taxpayers, which will negatively impact all taxpayers in the City and the County; and

WHEREAS, the Tribe and the Authority recognize that the approval of the Federal Trust Application and the conduct of gaming under IGRA will have the following impacts: the City and the County will be deprived of revenue from property and admissions taxes, the County will be

deprived of revenue from sales taxes, there will be an increase in demand for City and County services; there will be additional burdens on the City and County infrastructure; there will be economic, social and other impacts stemming from the effect of gaming activities and the City and the County will be deprived of revenues from future development on the Federal Trust Land; and

WHEREAS, the City and the County require additional financial resources to provide for the increased demand for a complete range of municipal services which has been requested by the Tribe and the Authority in order to facilitate the conduct of Class II and Class III gaming at the Kenosha Facility as provided in Section 1(A), to provide new improvements to infrastructure necessitated by the expanded activity in the vicinity of the Kenosha Facility, to provide for the accelerated maintenance and depreciation of community-wide infrastructure resulting from such expanded activity, to mitigate the cost of economic, social and other impacts arising out of gaming activities and to mitigate the revenues lost from the loss of taxable development on the Federal Trust Land; and

WHEREAS, in accordance with IGRA and Section 66.0301 of the Wisconsin Statutes, the Tribe, acting through the Authority, has agreed to make certain payments to the City and the County in recognition of the demand for the complete range of municipal services, the new improvements to the infrastructure necessitated by the expanded activity in the vicinity of the Kenosha Facility, the accelerated maintenance and depreciation of community-wide infrastructure from such expanded activity, the mitigation of the cost of economic, social and other impacts arising out of gaming activities and the revenues lost from the loss of taxable development on the Federal Trust Land; and

WHEREAS, the City and the County have entered into this Agreement in reliance on the Authority’s charter, enacted September 16, 1999 (the “Charter”) (including, but not limited to, Section 10 of the Charter); and

WHEREAS, in order to respect and accommodate orderly and appropriate development on the Federal Trust Land at the Kenosha Facility, the Tribe acknowledges its obligations to abide by State building and other codes as provided in Section XIV of the Compact and has adopted certain ordinances enumerated in Exhibit C;

NOW, THEREFORE, in consideration of the foregoing, the covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Tribe, the Authority, the City and the County agree as follows:

Section 1. Commitments of the City and the County.

A. Provide Services. The City and the County shall provide to the Kenosha Facility such services as are usually and customarily provided by the City and the County to other commercial enterprises, including, but not limited to, law enforcement, fire protection, traffic controls, emergency medical service, bus service, sewer and water service, storm water control, street and highway maintenance and plowing, social services, alcohol beverage licenses, public safety dispatch services, an airport providing an additional

transportation mode to the Kenosha Facility, a train station providing service to the greater Chicago area, and supporting services.

B. Support Federal Trust Application. In consideration for the benefits accruing to the City and County under this Agreement, the City and the County, upon request of the Tribe, agree to support the Federal Trust Application, by resolution of each respective governing body and by letter from each respective chief executive officer, consistent with this Agreement.

C. Support Compact Amendments. In consideration for the benefits accruing to the City and County under this Agreement, the City and County, upon request of the Tribe, agree to support, by resolution of each respective governing body and by letter from each respective chief executive officer, the Tribe's efforts to secure those amendments to the Compact which are necessary to effectuate the operation of the Kenosha Facility, consistent with this Agreement.

D. Exclusive Class III Gaming. Neither the City nor the County shall endorse, by resolution of each respective governing body or by letter from each respective chief executive officer, the establishment of any other Class III or casino-style gaming facility, for so long as the Tribe conducts Class III gaming at the Kenosha Facility. Additionally, in the event casino-style gaming is legalized in Wisconsin, neither the City nor the County, to the extent authorized by law, shall license or permit any establishment to conduct Class III or

casino-style gaming unless by agreement of the parties to this Agreement. Nothing in this Section 1(D) shall prohibit the City and the County from continuing to license establishments whose primary business is to sell alcohol beverages that may also conduct casino-style gaming.

E. No City/County Enactments to Impair Agreement. Neither the City nor the County shall enact any ordinance that impairs the obligations of this Agreement without the written consent of the Tribe or the Authority.

Section 2. Commitments of the Tribe and the Authority.

A. Payments to Support Local Government Operations. In exchange for the commitments of the City and the County under Section 1 of this Agreement, the Authority shall make the following payments as hereinafter provided to the City.

(1) Net Win Payment. For purposes of Section 2(A), “Net Win” means the total amount wagered on gaming on the Federal Trust Land, less the amounts paid out as prizes (including the cost of non-cash prizes), which shall mean any personal property distributed to a Kenosha Facility patron as a result of a specific legitimate wager at the Kenosha Facility.

Commencing with the establishment of the Federal Trust Land, the Authority shall pay to the City three (3%) percent of Net Win for each period of time beginning on January 1 through and including December 31 (a “Calendar Year”). Such payment shall be made for the period of time beginning with the establishment of the Federal Trust Land through and including December 31 of that year (“Calendar Year One”) and through and including Calendar Year Eight or until the Tribe or the Authority concludes its payments for management fees to the Kenosha Facility management entity and development fees to the project developer, whichever scenario occurs first (the “Phase 1 Payments”). Upon the conclusion of the Phase 1 Payments, the Authority shall pay to the City four (4 %) percent of Net Win for each Calendar Year thereafter (the “Phase 2 Payments”) for so long as gaming occurs at the Kenosha Facility.

Payments to be made by the Authority to the City under this Section 2(A)(1) shall be made in quarterly installments, with such quarters designated as January through March, April through June, July through September and October through December, respectively, of each Calendar Year. Such quarterly payments shall be made within thirty (30) days following the last day of the quarter for which payment is due.

(2) Minimum Payment. In order to ensure that the Authority makes a payment to the City adequate to support the operations of local government, a

minimum annual payment shall be paid to the City in any Calendar Year when the payments under Section 2(A)(1) of this Agreement are less than the payments described in Section 2(A)(2) of this Agreement.

A minimum annual payment of one million (\$1,000,000) dollars shall be due and payable to the City in Calendar Year One. If the establishment of the Federal Trust Land occurs after January 1 of Calendar Year One, such minimum annual payment shall be prorated, with such minimum annual payment equaling a minimum annual payment of one million (\$1,000,000) dollars multiplied by a fraction, the numerator of which shall be the total number of days beginning with the date of the establishment of the Federal Trust Land plus the number of days remaining in Calendar Year One, and the denominator of which is Three Hundred Sixty-Five.

Beginning with Calendar Year Two, and continuing through and including Calendar Year Six, a minimum payment of one million (\$1,000,000) dollars shall be due after adjusting such payment by multiplying such payment by a fraction, the numerator of which shall be the Consumer Price Index for All Urban Consumers, All Items, U.S. City Average, as published by the Bureau of Labor Statistics of the United States Department of Labor (“DOL”), 1982-1984 Base equals One Hundred (“CPI-U”), published for January of the Calendar Year in which such adjustment is

made, and the denominator of which is the CPI-U published for the month of January for Calendar Year One.

Commencing with Calendar Year Seven, a minimum annual payment of two million (\$2,000,000) dollars shall be made to the City.

Beginning with Calendar Year Eight and continuing thereafter, a minimum annual payment of two million (\$2,000,000) dollars shall be due after adjusting such payment by multiplying such payment by a fraction, the numerator of which shall be the CPI-U, published for January of the Calendar Year in which such adjustment is made, and the denominator of which is the CPI-U published for the month of January for Calendar Year Seven.

Should DOL discontinue the publication of the CPI-U, or publish the same less frequently, or alter the same in some other manner as to make it unworkable under this Section 2(A)(2), the parties to this Agreement shall agree on and shall adopt a substitute index or procedure which reasonably reflects and monitors consumer prices.

(3) When Minimum Payment Due and Payable. After the close of each Calendar Year, the Authority shall determine the sum of quarterly payments of Net Win made or to be made to the City under Section 2(A)(1) for that Calendar Year

and compare such sum to the minimum annual payment under Section 2(A)(2) for that Calendar Year.

If the sum of the quarterly payments of Net Win under Section 2(A)(1) exceeds the minimum annual payment under Section 2(A)(2), no minimum annual payment shall be made under this Section 2(A)(3).

If the sum of the quarterly payments of Net Win under Section (2)(A)(1) are less than the minimum annual payment under Section 2(A)(2) for that Calendar Year, the difference between such minimum annual payment under Section 2(A)(2) and Net Win payments under Section 2(A)(1) shall be paid to the City within forty-five (45) days of the end of that Calendar Year.

An illustrative example of when such minimum annual payment is due appears in Exhibit D.

(4) Audit/Certification. For purposes of this Agreement, “Net Revenues” shall mean the gross revenues of the Kenosha Facility less amounts paid out as, or paid for, prizes and total operating expenses, excluding management fees.

For the convenience of the parties to this Agreement and to facilitate the implementation of Section 2 of this Agreement, the Tribe and the Authority agree

that the fiscal year of the Authority for the Kenosha Facility shall be a Calendar Year.

Prior to the close of each Calendar Year, the Tribe or the Authority shall engage a firm of independent Certified Public Accountants (“CPA Firm”) that maintains a gaming-related contractor certificate or temporary gaming-related contractor certificate issued by the Wisconsin Department of Administration, to audit the books and records of the Authority’s operations at the Kenosha Facility.

The Tribe or the Authority shall provide an audit that relates to the gaming operations of the Kenosha Facility to the City and the County. The completed audit shall include separate calculations of Net Win for each type of game conducted at the Kenosha Facility. The audit shall show the reserve account balance provided in Section 2(A)(10) of this Agreement. This audit shall also show Net Revenues for the Kenosha Facility. The audit shall include information on expenses of the gaming operations of the Kenosha Facility in sufficient detail to determine when payments by the Tribe or the Authority for management fees to manage the Kenosha Facility or development fees associated with the Kenosha Facility cease. The audit shall be conducted in accordance with the most recent version of The American Institute of Certified Public Accountants Casino Auditing Guide.

The audit contemplated under this Section 2(A)(4) shall be completed within one hundred twenty (120) days of the close of a Calendar Year. Within thirty (30) days of the completion of the audit, the Tribe or the Authority shall forward copies of the audit and any opinions and/or verifications/certifications of the CPA Firm described herein to the City and the County. In the event that such audit and such opinions and/or verifications/certifications described herein are not submitted to the City and the County within one hundred eighty (180) days of the close of a Calendar Year, the City and/or the County may, at the expense of the Tribe or the Authority, perform the audit. In the event that such audit is initiated, the Tribe and the Authority shall fully cooperate, including providing access to all books and records of the Tribe's gaming operations to the CPA Firm retained by the City and/or the County.

If the audit shows that the prior quarterly payments to the City under Section 2(A)(1) of this Agreement were less than the quarterly payments that should have been paid to the City under the audit as a result of a revised Net Win figure, the Tribe or the Authority shall, within 60 days after receipt of the audit, make a separate payment to the City of the difference between such amounts. If the audit shows that the Tribe or the Authority paid more in prior quarterly payments under Section 2(A)(1) of this Agreement than the revised Net Win figure reflected in the audit, the Tribe or the Authority shall provide an invoice showing the difference between such amounts to the City for payment by the City.

(5) Payment of Property Taxes. Property taxes due on any real estate or personal property are assessed against the owner of such property based on ownership existing on January 1 of any Calendar Year (the “Determination Date”). In the event that a sale of the Kenosha Facility to the Tribe or the Authority does not occur on the Determination Date, the Tribe or the Authority agrees to collect from the seller of the Kenosha Facility property taxes (real and personal) due for the period beginning on the Determination Date to and including the date of closing of such sale, and forward to the City such monies collected within fifteen (15) days after the closing of such sale.

(6) Payments to School Districts. In any Calendar Year where payments received by the City under Section 2(A)(1) exceed two million (\$2,000,000) dollars and within ninety (90) days after the close of such Calendar Year, the City shall provide five hundred thousand (\$500,000) dollars to the Kenosha Unified School District and the County shall provide five hundred thousand (\$500,000) dollars to be distributed to the high school districts located west of Interstate 94 in the county of Kenosha, as determined by the County.

(7) Where Payments to be Made. The Authority shall make all payments due under Section 2(A) of this Agreement to the City of Kenosha, Attention: City Clerk/Treasurer, 625 52nd Street, Kenosha, WI 53140.

(8) City to Make Distributions to County. The City shall make distributions under this Agreement, following receipt of payments from the Authority under Section 2(A) of this Agreement, to the County to the extent of the County's entitlement to such monies.

(9) Interest on Late Payments. Interest on any late payment due under Section 2(A) of this Agreement shall accrue at the rate of one and one-half (1.5 %) percent per month on the unpaid balance due until paid in full. Any partial payments of the unpaid balance due shall first be applied to accrued interest with the remainder, if any, next applied to the unpaid balance.

(10) Authority To Maintain Reserve. The Authority shall maintain as a reserve account a sum of money equal to the minimum annual payment under Section 2(A)(2) for the current Calendar Year.

B. Charitable Contributions. The Authority and/or the Tribe shall establish a charitable contributions policy to govern donations by the Authority and/or the Tribe to charities in Kenosha County. Within ninety (90) days after the Federal Trust Land is established, the Authority and/or the Tribe will create a committee to draft and implement such a policy, with consultation from citizens who reside in Kenosha County sought by the

Authority and/or the Tribe from time to time. In addition, the Tribe and/or the Authority shall make the following charitable donations:

(1) Payments for Public Purposes. At the time of closing of any financing that the Tribe or the Authority undertakes for purposes of purchasing or developing the Kenosha Facility, the Tribe or the Authority shall pay five million (\$5,000,000) dollars to the City for the following purposes: (a) to establish a trust fund to support the public museums of the City, the principal of which shall be preserved and interest thereon used to defray expenses associated with the museums so as to facilitate the removal of the costs of such museums from the property tax levy, (b) to establish a trust fund to meet the needs of homeless persons in the city of Kenosha, the principal of which shall be preserved and interest thereon used to fund such needs, and (c) to address cultural and charitable needs in the county of Kenosha of organizations with a principal place of business in the county of Kenosha.

(2) Payments to Schools. In any Calendar Year where payments received by the City under Section 2(A)(1) exceed two million (\$2,000,000) dollars and within ninety (90) days after the close of such Calendar Year, the Tribe or the Authority shall annually provide one and one-half million (\$1,500,000) dollars to the City for distribution to the Kenosha Unified School District and one and one-half million (\$1,500,000) dollars to schools on the Menominee Indian Reservation.

