

INTERGOVERNMENTAL AGREEMENT

This INTERGOVERNMENTAL AGREEMENT ("Agreement") is entered into this ____ day of _____, 2005 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 465 and use these lands for gaming purposes pursuant to 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 and the Authority propose; 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, a November, 2004 county-wide referendum in Kenosha County, Wisconsin, approved Class III Indian gaming in the city of Kenosha by a margin of 56% to 44%; 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 the Tribe and the Authority have 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 and the Authority 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.

F. Tribal Designee on Tourism Corporation Board. The mayor of the city of Kenosha shall appoint a designee of the Tribe as one of the City's representatives on the board of directors of the Kenosha Area Tourism Corporation ("Corporation"), subject to confirmation by the common council of the City. In addition, the City shall use its best efforts to secure the creation of an additional member of the board of directors of the Corporation to permit an additional designee of the Tribe to serve on the Corporation's board of directors.

G. Fire Station Staffing Levels. The City shall provide reasonable staffing in the City Fire Department ("Department") in order to provide the fire protection services described in Section 1(A) of this Agreement. Nothing in this Section shall in any manner affect the City's management, control or authority over the operations of the Department so long as the City provides the fire protection services to the Kenosha Facility described in Section 1(A).

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.

During Calendar Year Twenty and at each succeeding ten (10) year interval thereafter, the parties to this Agreement shall meet and discuss whether the Phase 2 Payments should be increased. Such a meeting of the parties to this Agreement shall occur on or before March 1 of Calendar Year Twenty and at each succeeding ten (10) year interval thereafter.

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 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 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 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 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 Authority, perform the audit. In the event that such audit is initiated, 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 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 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 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 and the Authority agree 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 in accordance with an intergovernmental cooperation and revenue sharing agreement between the City and the County.

(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 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 will create a committee to draft and implement such a policy, with consultation from citizens who reside in Kenosha County sought by the Authority from time to time. In addition, 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 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 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.

C. Responsible Gaming Program. The Tribe and the Authority recognize that problem gambling has a disruptive effect on affected individuals, families and the community. In order to combat such problem gambling in Kenosha County, the Authority will create and implement a detailed, responsible gaming policy within ninety (90) days after the Federal Trust Land is established. In creating such a policy, the Authority will review the policies of other casino operators throughout the United States and seek the advice of the Wisconsin Council on Problem Gambling and the Kenosha County Department of Health & Human Services. The Authority's responsible gaming policy will include (a) provision of financial support for the Wisconsin Council on Problem Gambling and other problem gambling organizations that provide problem gambling services in Kenosha County, (b) development of brochures, pamphlets, videos and other materials for the purpose of promoting responsible gambling, including establishment of a help line at the Kenosha Facility, (c) cooperation with local area media to promote awareness of problem gambling, (d) institution of self-limitation policies, (e) institution of self-exclusion policies, (f) institution of exclusion policies, (g) training for all employees on the issue of problem gambling, including education of employees of the nature of problem gambling, how to recognize such behavior and resources available to help problem gamblers, (h) sponsorship and support for problem gambling conferences and workshops, (i) prohibition of underage gambling, including identification of gambling customers, display and advertisement of legal age to gamble, heightening awareness of customer responsibility when bringing

children to the Kenosha Facility and working with educational institutions and other local organizations to raise awareness of problem gambling, (j) prohibition on gambling by employees of the Kenosha Facility, and (k) in any Calendar Year that the Tribe and the Authority conduct gaming in Kenosha and for which the County has appropriated funds specifically for the assessment and treatment of problem gamblers, the Authority shall pay to the County, as a match, an amount equal to the County's appropriation. The Authority's commitment under this Section 2(C) is limited to a total annual payment to the County of one hundred fifty thousand (\$150,000) dollars. Payment shall be made within ninety (90) days of the date of appropriation, or ninety (90) days after commencement of gaming, whichever is later. If any funds appropriated by County, or provided by the Authority under this Section 2(C) are intentionally used for any purpose other than the assessment and treatment of problem gamblers without the express prior written consent of the Authority, the County shall pay to the Authority an amount equal to three (3) times the amount of the infraction, pursuant to this Section 2(C). The Authority shall have no duty to match any appropriation of the County in any year where three hundred thousand (\$300,000) dollars or more of payments from the Authority are carried over from the previous fiscal year(s).

In addition, the City shall provide the sum of one hundred fifty thousand (\$150,000) dollars to the County for problem gambling in the first Calendar Year that the County appropriates funds specifically for the assessment and treatment of problem gamblers as provided in this Section 2(C).

D. Minority Recruitment and Retention. The Authority shall promulgate an affirmative action policy and designate a compliance officer within ninety (90) days of the final approval necessary to establish the Federal Trust Land to ensure that minority recruitment and retention at the Kenosha Facility (including tribal preference) complies with a goal of twenty-five percent (25%) minority employment. The Authority and the Kenosha Facility's human resources department will follow the Tribe's guidelines on Indian preference.

E. Preference for Local and Minority Contractors. The Authority shall give a preference of three percent (3%) over and above the lowest quoted price of a bidder whose principal place of business is not located in Kenosha County to qualified Kenosha County vendors who seek to supply services, goods or materials to the Kenosha Facility. The Authority shall also use its best efforts to award fifteen percent (15%) of all contracts to vendors or enterprises certified as minority business enterprises and shall use its best efforts to award ten percent (10%) of all contracts to enterprises which are certified as fifty-one percent (51%) owned, controlled or managed by women or Native Americans. In order to facilitate the award of such contracts, the Authority will appoint and maintain a minority supplier development manager within ninety (90) days of the final approval necessary to establish the Federal Trust Land.

F. Law Enforcement. The Tribe and the Authority acknowledge that Public Law 280, 67 Stat. 588 ("PL 280") applies to the Kenosha Facility. PL 280 grants jurisdiction over criminal and certain civil matters to the State of Wisconsin. The State of

Wisconsin has delegated some of this jurisdiction to the City and the County. The Tribe and the Authority recognize and acknowledge the jurisdiction of the City and County over criminal offences that occur on the Federal Trust Land. The Tribe and the Authority acknowledge that each has adopted those ordinances referenced in Section 2(I) of this Agreement and agree to enforce all such ordinances adopted pursuant to this Agreement.

G. Public Health and Safety Standards for Buildings, Electrical Wiring, Fire Prevention, Plumbing and Sanitation. According to Section XIV(D) of the Compact, the public health and safety standards for public buildings, electrical wiring, fire prevention, plumbing and sanitation set forth in the Wisconsin Statutes Chapter 101 and Wisconsin Administrative Code Chapters, including but not limited to, Comm 14 (Fire Prevention), 16 (Electrical), 28 (Smoke Detectors), 75 (Public Buildings), 77 (Theaters and Assembly Halls), and 81-86 (Plumbing; Private On-Site Wastewater Treatment Systems; Soil and Site Evaluations; On-Shore Sewage Facilities), including any amendments thereto, shall be directly applicable to the Kenosha Facility, except that the terms of the Compact and this Agreement shall provide exclusive remedies for non-compliance with such standards.

H. Inspections. According to Section XIV(B) of the Compact, the Tribe and the Authority shall engage a state certified inspector to conduct inspections of the Kenosha Facility on a periodic, but not less than annual, basis. The Tribe and the Authority shall promptly repair or correct any and all instances of non-compliance with the requirements of Sections 2(G) and 2(I) of this Agreement. The Tribe and the Authority shall submit the inspector's report to the Wisconsin Department of Administration, with a copy to the City

and the County, within thirty (30) days of receipt and include any corrective action to be implemented.

I. Tribe and Authority to Adopt Certain Ordinances. The Tribe and the Authority have adopted certain ordinances, which are substantially similar to those of the City and the County, as are enumerated in Exhibit C.

J. Sewer, Water and Stormwater Charges. The Authority shall pay all usual and customary charges associated with the delivery and receipt of sewer and water services received from the City's water utility as such charges are from time to time imposed upon similar classifications of users. The Authority shall also pay to the Kenosha Water Utility the usual and customary costs associated with increasing the size of sanitary sewer and water mains required to serve the Kenosha Facility. The Authority shall also pay usual and customary stormwater charges associated with stormwater control and management in the drainage basin in which the Kenosha Facility is located as from time to time may be imposed by the City or any stormwater utility having jurisdiction. Interest on any late payment due under this Section 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.

K. No Tribal or Authority Enactments to Impair Agreement. As provided in Section XXXIX(B)(2) of the Compact, the Tribe and the Authority shall enact no law nor

shall any Tribal or Authority official or employee act in any manner to impair the obligations of this Agreement without the written consents of the City and the County.

L. Maintenance of Charter of Authority. The Tribe and the Authority agree not to amend or change any provision of the Charter of the Authority without the consent of the City and the County. This Agreement is made in reliance on Section XXXIX(B)(3) of the Compact and Section 10 of the Charter of the Authority.

M. Air/Water Quality. The Tribe and the Authority may have authority and rights under federal, state, or tribal law to enact or promulgate regulations or standards concerning air quality, water quality, or any other environmental regulations or standards which may exist by virtue of the Tribe's authority over the Federal Trust Land. The Tribe and the Authority may enact or promulgate any air quality, water quality or any other environmental regulations or standards on the Federal Trust Land that are not more stringent than the least stringent air quality, water quality or any other environmental regulation or standards applicable to the county of Kenosha. The Tribe and the Authority agree not to enact or promulgate any air quality, water quality or any other environmental regulations or standards on the Federal Trust Land that has any effect outside the boundaries of the Federal Trust Land.

N. Alcohol Beverages. Pursuant to 18 U.S.C., Section 1161, the Kenosha Facility shall comply with all State laws relating to the sale or consumption of alcohol beverages. Alcohol beverages may be served only during the hours prescribed in Section

125.32(3) of the Wisconsin Statutes, or any successor statute. Alcohol beverages may not be sold for the purpose of off-premises consumption.

O. Gaming Only as Authorized. The Kenosha Facility shall be used and operated only for such gaming purposes as are permitted under IGRA, the Compact, and for State-licensed pari-mutuel racing under Chapter 562 of the Wisconsin Statutes.

P. Cessation of Gaming. In the event that gaming operations at the Kenosha Facility cease for any reason for 365 consecutive days, the Tribe and the Authority shall use best efforts, including, but not limited to, petitioning the United States Congress, to ensure that the Federal Trust Land is removed from federal trust and reverts to taxable status under ch. 70 of the Wisconsin Statutes. In the event that gaming ceases for the period described herein, the minimum payment provisions of Section 2(A)(2) of this Agreement shall continue to apply.

Q. Height Limitations and Airport Overlay District. The parties acknowledge certain height and other restrictions associated with the proximity of the Kenosha Facility and the Federal Trust Land to the Kenosha airport. Any development on the Federal Trust Land shall be subject to federal law and rules of the Federal Aviation Administration (“FAA”). The Tribe and the Authority waive any right to bring any action against the City or County and agree to indemnify the City and the County for any action brought against the City and/or the County by any person located on the Federal Trust Land arising out of the proximity of the Federal Trust Land to the Kenosha airport.

R. Additional Trust Land. Any expansion of the Trust Lands in the county of Kenosha beyond the boundaries identified in Exhibit A shall require the written consent of all parties to this Agreement.

S. Tribe's and Authority's Representations as to Kenosha Facility. The Tribe and the Authority represent that the Tribe and the Authority intend, subject to availability of financing and capital at reasonable terms, conditions and costs, to develop the Kenosha Facility and undertake related development in accordance with the planned construction and physical development described in the June 15, 2004 letter from the Chairperson of the Tribe to the Mayor of the city of Kenosha and the County Executive of the county of Kenosha and the June 14, 2004 Overview of a Proposed Kenosha, Wisconsin Casino Gaming and Regional Destination Entertainment Center, each of which is attached as Exhibit E to this Agreement.

Section 3. Effective Date and Term. The terms of this Agreement shall become effective upon approval of the governing bodies of the City, the County, the Tribe and the Authority, execution by the appropriate officers of the parties, and shall remain in effect for so long as the Federal Trust Land exists, unless otherwise terminated by the mutual written consent of the Tribe, the Authority, the City and the County. This Agreement shall terminate if the Tribe and the Authority are unsuccessful in securing the approvals necessary to implement the Tribe's and the Authority's proposal to develop and operate the Kenosha Facility by December 31, 2009.

Section 4. Waiver of Tribal Immunity. The Authority agrees to waive any sovereign immunity enjoyed by the Authority in connection with disputes or claims arising under this Agreement. The Tribe also agrees to waive its sovereign immunity to enforce the provisions of Section 22 of this Agreement. Both the Tribe and the Authority consent to be sued in the United States District Court for the Eastern District of Wisconsin and all related federal appellate courts or, if such United States District Court cannot hear or refuses to hear such dispute, State Circuit Court in and for Kenosha County and all related State appellate courts in connection with such waivers of sovereign immunity. No party to this Agreement shall contest jurisdiction or venue of the above-referenced courts for any dispute or claim arising under this Agreement. Neither the Tribe nor the Authority shall invoke the doctrine of exhaustion of tribal or other administrative remedies to defeat or delay such jurisdiction. Further, neither the Tribe nor the Authority shall invoke the doctrine of tribal sovereign immunity to evade its duties or obligations under this Agreement. Pursuant to Article XIII, Section 4(c) of the Tribe's constitution, in any suit against the Tribe or the Authority for monetary damages, the parties agree that such damages shall be limited to the undistributed or future Net Revenues or other assets of the Authority and/or other tribal gaming business established for the purposes of owning and operating the Kenosha Facility.

Section 5. Dispute Resolution; Remedies. Claims, disputes or other matters arising out of or related to this Agreement, or the breach thereof, shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by any party to this Agreement. Prior to filing a written demand for mediation, the party making such demand shall submit to the other affected parties a statement of the claim, dispute or other matter in question. The parties shall meet promptly after such statement is filed and shall endeavor in good faith to resolve any such claim,

dispute or other matter in question amicably. If such meeting does not resolve the claim, dispute or other matter in question, a demand for mediation shall be filed in writing with the other affected parties and shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when the institution of legal or equitable proceedings based upon such claim, dispute or other matter in question would be barred by the applicable statute of limitations. Any mediation conducted pursuant to this Section 5 shall be held in accordance with the rules of the American Arbitration Association then in effect, unless the parties mutually agree otherwise. If the mediation fails to resolve the claim, dispute or other matter in question, arbitration shall not be available, and shall not be considered a condition precedent to the commencement of legal or equitable proceedings based upon such claim, dispute or other matter in question. If a demand for mediation has been made under this Section 5 of this Agreement but such mediation has either not occurred or has not resolved the claim(s) subject to such mediation before the applicable statute of limitations for such claim(s) has run, a party to this Agreement may avail itself of any legal or equitable remedy available to the party without concluding the mediation. In the event that mediation does not resolve a claim, dispute or other matter in question, this Agreement is intended to provide each party with a right and standing to challenge any act or omission which violates this Agreement in the United States District Court for the Eastern District of Wisconsin and all related federal appellate courts or, if such United States District Court cannot hear or refuses to hear such dispute, State Circuit Court in and for Kenosha County and all related State appellate courts. This Agreement is further intended to provide each party with a right and standing to seek any available legal or equitable remedy to enforce this Agreement and to seek damages for the breach of this Agreement in such enumerated courts. Pursuant to Article XIII, Section 4(c) of the Tribe's

constitution, in any suit against the Tribe or the Authority for monetary damages, the parties agree that such damages shall be limited to the undistributed or future Net Revenues or other assets of the Authority and/or other tribal gaming business established for the purposes of owning and operating the Kenosha Facility.

Section 6. Liquidated Damages.

A. Tribal or Authority Breach. Because of the uncertainty in measuring the calculation of actual damages resulting from a breach of Sections 2(C), 2(D), 2(E) and 2(N) of this Agreement, the Authority shall pay to the City liquidated damages in the amounts of one thousand (\$1,000) dollars for each uncured breach of such Sections of this agreement. Because of the uncertainty in measuring the calculation of actual damages resulting from a breach of Sections 2(H), 2(I), 2(K), 2(L), 2(M), 2(O), 2(Q) and 2(R) of this Agreement, the Authority shall pay to the City liquidated damages in the amounts of ten thousand (\$10,000) dollars for each uncured breach of such Sections of this Agreement. Each day of uncured breach may be considered a separate breach for purposes of this Section, but notice of such breach to be given under Section 5 of this Agreement may be made and shall be considered continuing until such breach is cured or as otherwise provided in such notice. Such liquidated damages as provided in this Section shall be the exclusive remedy for breach of such Sections of this Agreement as are enumerated herein. Pursuant to Article XIII, Section 4(c) of the Tribe's constitution, any liquidated damages shall be paid from undistributed or future Net Revenues or other

assets of the Authority and/or other tribal gaming business established for the purposes of owning and operating the Kenosha Facility.

B. City or County Breach. Because of the uncertainty in measuring the calculation of actual damages resulting from a breach of Sections 1(B) and 1(C) of this Agreement, the City and/or the County shall pay to the Authority liquidated damages in the amounts of ten thousand (\$10,000) dollars for each uncured breach of such Sections of this Agreement, provided that such damages shall only be paid by the party causing such breach. Because of the uncertainty in measuring the calculation of actual damages resulting from a breach of Section 1(D) of this Agreement, the Authority shall be entitled to a credit against, but such credit shall not exceed, its payments made pursuant to Section 2(A) of this Agreement in an amount equal to any payments (including any payments derived from taxes imposed on gaming revenues) made to the City and/or the County by an owner or operator of any establishment or facility endorsed, authorized, permitted or licensed in contravention of Section 1(D) of this Agreement. Neither the City nor the County shall be responsible for a breach of Section 1(D) caused by the other. Each day of uncured breach may be considered a separate breach for purposes of this Section, but notice of such breach to be given under Section 5 of this Agreement may be made and shall be considered continuing until such breach is cured or as otherwise provided in such notice. Such liquidated damages or, in the instance of a breach of Section 1(D) of this Agreement, such credit, as provided in this Section shall be the exclusive remedy for breach of such Sections of this Agreement as are enumerated herein.

Section 7. Prevailing Party to Receive Costs and Fees. In the event of litigation arising under this Agreement, the prevailing party in any such litigation shall be entitled to an award and judgment for its reasonable attorney's fees and any statutory costs.

Section 8. Termination. No breach or violation of any of the terms of this Agreement by either party shall operate to void or terminate or provide grounds for termination of this Agreement, it being the intent of the parties that the provisions of this Agreement shall be subject to specific performance, and injunctive relief shall be provided to cure any breaches prospectively, and that damages shall be awarded to redress any harm occasioned by a breach.

Section 9. Governing Law. This Agreement shall be governed by the laws of the United States of America and of the State of Wisconsin.

Section 10. Authorization. The Tribe, the Authority, the City and the County each represent and warrant that each has performed all acts precedent to adoption of this Agreement, including, but not limited to, matters of procedure and notice, and each has the full power and authority to execute this Agreement and to perform its obligations in accordance with the terms and conditions thereof, and that the representative executing this Agreement on behalf of such party is duly and fully authorized to so execute and deliver this Agreement.

A. The Tribe has authorized its officers to execute this Agreement by the adoption of Resolution No. ____ adopted _____, a copy of which is attached hereto as Exhibit F.

- B. The Authority has authorized its officers to execute this Agreement by the adoption of Resolution No. _____ dated _____, a copy of which is attached hereto as Exhibit G.

- C. The Common Council of the City has approved this Agreement at a duly noticed meeting of the Common Council held on _____, and a certified copy of the proceeding of the Common Council is attached as Exhibit H.

- D. The Board of Supervisors of the County has approved this Agreement at a duly noticed meeting of the Board of Supervisors held on _____, and a certified copy of the proceedings of the Board of Supervisors is attached as Exhibit I.

Section 11. Notices. All notices required to be given hereunder shall be given in writing, sent by either personal delivery, certified mail, return receipt requested, or overnight mail. If sent via personal delivery, the notice shall be effective on the date of delivery. If sent by certified mail, the notice shall be deemed effective five (5) days after such mailing, not counting the day such notice was sent. If sent by overnight mail, the notice shall be effective on the date of delivery. All notices shall be addressed as follows:

To the City:

City Clerk/Treasurer
City of Kenosha
Municipal Building
625 - 52nd Street
Kenosha, WI 53140

To the County: County Clerk
County of Kenosha
912 56th Street
Kenosha, WI 53140

To the Tribe: Tribal Chairman
Menominee Tribe of Indians
Loop Road
Keshena, WI 54135

To the Authority: Menominee Kenosha Gaming Authority
Menominee Tribe of Indians
Loop Road
Keshena, WI 54135

Section 12. Interpretation. This Agreement has been the subject of mutual negotiations between the parties and their respective counsel. This Agreement has been and shall be construed to have been jointly drafted by the parties in order to preclude the application of any rule of construction against a party's interest as the sole drafter of this Agreement.

Section 13. No Challenges to this Agreement. The City, the Tribe, the Authority and the County hereby waive any right each may have to commence or maintain any civil action or other proceeding to contest, invalidate or challenge this Agreement, any procedure or proceeding undertaken to adopt this Agreement or any of the actions required or contemplated by this Agreement, or to take any actions, either directly or indirectly, to oppose or in any other way, to initiate, promote or support the opposition of approvals required under this Agreement or to hinder, obstruct or unduly delay any of the actions required or contemplated by this Agreement. This paragraph shall not be construed to prevent a party to this Agreement from commencing a declaratory judgment action regarding the interpretation of this Agreement. In the event of a challenge to the validity of this Agreement by any third party, the City, the Tribe, the Authority and

the County shall each defend the validity and enforceability of this Agreement in any administrative or judicial proceeding.

Section 14. Severability. If any court of competent jurisdiction determines that any provision of this Agreement is invalid or unenforceable, then such invalidity or unenforceability shall have no effect on the other provisions hereof, which shall remain valid, binding and enforceable and in full force and effect. In the event of such a determination by such court, the parties shall promptly meet to discuss how they might satisfy the terms of this Agreement by alternative means. The parties shall use their best efforts to find, design and implement a means of successfully effectuating the terms of this Agreement. If necessary, parties shall negotiate appropriate amendments of this Agreement to maintain, as closely as possible, the original terms, intent and balance of benefits, and burdens of this Agreement. In the event the parties are not able to reach agreement in such situation, the dispute resolution procedure of Section 5 of this Agreement shall apply.

Section 15. Good Faith and Fair Dealing. The parties to this Agreement agree that this Agreement imposes on them a duty of good faith and fair dealing.

Section 16. No Liability for Acts Prior to Agreement. Except as subject to a specific, written agreement, no party shall incur any liability for any acts undertaken during the discussion, negotiation, execution or the processes undertaken to secure any approval required to effectuate this Agreement, whether or not all necessary approvals to make this Agreement effective are obtained.

Section 17. Captions. The captions contained in this Agreement are inserted only as matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provisions hereof.

Section 18. Agreement in Counterparts. This Agreement may be executed in several counterparts, each of which fully executed counterparts shall be deemed an original.

Section 19. Amendment. This Agreement may only be amended by written instrument executed by all of the parties.

Section 20. Complete Agreement. This Agreement represents the entire integrated agreement between the parties and supersedes all past agreements and all negotiations, representations, promises or agreements, either written or oral, made during the course of negotiations leading to this Agreement.

Section 21. Submission of Agreement to the Secretary of the Interior and the National Indian Gaming Commission. The Authority shall submit this Agreement to the Secretary of the Interior under 25 U.S.C. Section 81 and the National Indian Gaming Commission under IGRA for a determination by the Secretary that this Agreement is not subject to 25 U.S.C. Section 81 and for a determination by NIGC that this Agreement is not subject to review or approval by NIGC. Any determination by the Secretary or the NIGC under this Section shall be transmitted to the City and the County. In the event that either the Secretary or the NIGC fails to make the determination

contemplated under this Section, the parties shall meet to determine how to achieve such a determination.

Section 22. Tribe to Guarantee Authority's Performance. The Tribe agrees that it will guarantee the performance of any duty or obligation of the Authority under this Agreement, and either perform such duty or obligation or cause its performance by the Authority, within ten (10) days of its receipt of notice from the City or the County of the Authority's failure to perform any such duties or obligations.

Section 23. Force Majeure. In the event that any party hereto shall be delayed or hindered in or prevented from the performance of any act required under this Agreement by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, governmental moratorium or other governmental action or inaction by any governmental entity other than the parties to this Agreement (including failure, refusal or delay in issuing permits, approvals and/or authorizations) injunction or court order, riots, insurrection, war, fire, earthquake, flood or other natural disaster or other reason of a like nature not the fault of the party delaying in performing work or doing acts required under this Agreement (but excluding delays due to financial inability), then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this Section 23 shall not be construed to excuse or delay any payment due under Section 2(A) of this Agreement.

Section 24. No Third-Party Beneficiary. This Agreement is personal to the parties to this Agreement and is not intended for the benefit of any other party.

Section 25. Benefit and Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assignees. Except with respect to successors, neither this Agreement, nor any of the rights or interests of the parties hereto, may be assigned, transferred or conveyed in any manner without the prior written consent of each of the parties to this Agreement.

IN WITNESS WHEREOF, the Tribe, the Authority, the City, and the County have respectively signed this Agreement and caused their seals to be affixed and attested as of the date shown.

CITY OF KENOSHA, WISCONSIN,
A Municipal Corporation

By: _____
JOHN M. ANTARAMIAN, Mayor
Date: _____

By: _____
JEAN A. MORGAN, City Clerk/Treasurer
Date: _____

COUNTY OF KENOSHA, WISCONSIN

By: _____
ALLAN K. KEHL, County Executive
Date: _____

By: _____
EDNA R. HIGHLAND, County Clerk
Date _____

MENOMINEE INDIAN TRIBE OF WISCONSIN

By: _____
JOAN R. DELABREAU, Chairperson
Date: _____

MENOMINEE KENOSHA GAMING AUTHORITY

By: _____
JOAN R. DELABREAU, Chairman
Date: _____

By: _____
LAURIE BOIVIN, Member
Date: _____

By: _____
GARY BESAW, Member
Date: _____