

# CONSTRUCTION CONTRACT

**THIS CONTRACT** is by and between the **Stockbridge-Munsee Community d.b.a. Mohican North Star Gaming and Resort** ("CASINO") whose address is W12180 County Highway A, Bowler, WI 54416, and \_\_\_\_\_ ("CONTRACTOR"), whose address is \_\_\_\_\_.

WITNESSETH, that the Casino and the Contractor for consideration provided for herein agree as follows:

## I. SCOPE OF WORK

**Section 1. Purpose.** The general purpose of this Contract is to:

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(the "Project") on the Stockbridge-Munsee Reservation. The Contractor shall be responsible for services necessary to complete this Project.

Check if additional pages are attached to describe scope of work for Project.

For this Project, \_\_\_\_\_ shall be the Casino's primary point of contact with the Contractor. \_\_\_\_\_ shall be the Contractor's primary point of contact with the Casino. Contractor shall notify Casino with a specific schedule of when it will be providing services on-site at Casino and notify Casino of any changes in a timely manner. Any interruptions of electrical or other utilities shall be coordinate by the contact persons prior to the interruption.

**Section 2. Contract Documents.** The contract documents for the Project are incorporated into this Contract by reference and include: the request for bids; the Contractor's proposal (dated \_\_\_\_\_); other construction plans developed for the Project; and change orders that are made in writing and signed by both parties. If the Contractor discovers a discrepancy, error, or omission in the contract documents, the Contractor shall promptly report it to the Casino for clarification or correction.

**Section 3. Services.** Contractor agrees to use a high standard of care and complete all work in accordance with Wisconsin building codes or other standards identified in the contract documents. Except as otherwise specifically stated in the Contract, the Contractor shall provide and pay for all materials, tools, equipment, liability insurance, transportation and all other services and facilities of every nature whatsoever to execute the Project and deliver it complete. The Contractor shall be responsible for such cutting, fitting or patching as necessary for the Project without damaging or endangering the work or the facility. If any design work is done under this Contract, the work shall be considered a work-for-hire.

**Section 4. Supervision and Construction Procedures.** Contractor shall supervise and direct the work. Contractor shall be solely responsible for and have control over construction means and methods. Contractor shall be responsible to Casino for acts and omissions of Contractor's employees or its subcontractors.

**Section 5. Safety and Emergencies.** Contractor shall be responsible for job site safety in accordance with OSHA standards. Casino will abide by the Contractor's reasonable Project site safety rules. If, as part of completing the work under this Contract, the Contractor encounters hazardous or toxic materials on the site, the Contractor shall immediately stop work in the affected area, take immediate measures to protect against injury to persons or property and report the

condition to the Casino in writing. The Contractor has no responsibility for such hazardous or toxic materials on the site unless the Contractor, or someone for whom the Contractor is liable, introduces such materials to the site.

Contractor shall take appropriate measures to prevent damage, injury or loss to persons or property in the event of an emergency. Adjustments to compensation or time may be claimed by the Contractor based on an emergency, except that no adjustment will be made if the emergency was the result of the Contractor's misconduct or negligence.

**Section 6. Access.** Casino will provide Contractor with reasonable access in order to complete the work. Contractor shall provide the Casino with access to visit the Project. Contractor understands that the Casino will continue its operations while this work is being completed and shall use its best efforts to not impede access and to limit disruptions. Any work that may impede the general use of the space, and cannot be removed, shall be flagged and cordoned off by the Contractor when appropriate.

**Section 6. Right to Carry Out Work.** If Contractor defaults or persistently fails or neglects to carry out work in accordance with the contract documents, the Casino, after 10 days' written notice to Contractor and without prejudice to other remedies, may make good such deficiencies and may deduct the reasonable cost thereof from payment then or thereafter due to Contractor.

**Section 7. Subcontractors.** The Contractor shall require each subcontractor comply with the terms of the Contract Documents for this Project and assume all appropriate obligations and responsibilities for the work thereunder. This provision does not limit or otherwise affect the Contractor's responsibility for the quality of labor, services, and materials furnished by subcontractors and for the acts and omissions of subcontractors.

## II. SPECIAL CONDITIONS

**Section 1. Contract Times.** The Contractor shall begin work on the Project upon a mutually agreed upon schedule once contract is fully signed. It is anticipated that work will commence as of \_\_\_\_\_ . The contract work, without change orders, shall be completed by \_\_\_\_\_ .

**Section 2. Contractor's Insurance.** The Contractor shall purchase and maintain insurance for protection from claims under worker's compensation laws, disability benefits laws or other similar employee benefit laws; for damages due to injury, occupational disease, or death of employees; from personal injury claims; and from property damage claims, including loss of use resulting therefrom -- any and all of which may arise out of or result from the Contractor's operations under the Contract. The Contractor's insurance shall be written for not less than any limits of liability specified in the Contract or required under Wisconsin law, whichever is greater, and shall include contractual liability insurance. Liability coverage shall be written on an occurrence basis. The Contractor waives all rights of subrogation in relation to such insurance.

Before starting the work, the Contractor shall file with Casino certificates of such insurance, acceptable to the Casino, these certificates shall contain a provision that the coverage afforded under the policies will not be canceled or materially changed during the course of this Contract. The certificate shall be incorporated herein by reference and become a part of this Contract.

**Section 3. Site Examination.** It is understood that the Contractor has examined the site and is familiar with all conditions that might affect the execution of this Contract and has made provisions therefore in its bid. When the site contains concealed or unknown conditions that differ materially

from those indicated in the contract documents, the parties agree that the contract sum or time shall be equitably adjusted.

**Section 4. Permits and Inspections.** Unless otherwise provided in the Contract or construction documents, the Contractor shall be responsible to secure and pay for any required permits, fees and inspections required to properly execute and complete the Project.

**Section 5. Cleanup.** The Contractor shall keep the premises free from the accumulation of construction rubbish and debris and shall be responsible for the proper disposal of waste materials. At the completion of the work, the Contractor shall remove all construction materials and leave the premises "broom clean."

**Section 6. Indian Preference in Hiring.** The Contractor agrees that, to the greatest extent feasible, Indian persons will be given preference if opportunities for training and employment in connection with this work arise. The Contractor agrees to give preference to qualified Stockbridge-Munsee Tribal Members in hiring employees for any new positions that may be required in order to complete the Contract.

**Section 7. Performance and Payment Bonds.**

Not Required.

Required. The Contractor shall furnish performance and payment bonds to the Casino as security for the faithful performance and payment of all obligations under this Contract prior to starting work. These bonds shall be in amounts at least equal to the contract price and in such form and with such sureties as are acceptable to the Casino. The bonds shall be incorporated herein and made a part of the Contract by reference. Failure to provide bonds as required under the Contract shall result in immediate termination of this Contract, unless otherwise agreed upon by the parties.

**Section 8. Liquidated Damages.**

Not Required.

Required. The Contractor and his sureties shall be liable for and shall pay to the Casino the sum of \$ \_\_\_\_\_ for each calendar day of delay until the work is substantially completed and accepted by the Casino, except for delays caused by force majeure.

**Section 9. Sales and Use Tax Exemption.** As a federally-recognized Indian tribe, the Stockbridge-Munsee Community is exempt from Wisconsin sales and use tax. This Project is on land held in trust by the United States of America on the Stockbridge-Munsee Community's behalf, so all material used for the construction of the Project shall be shipped free on board (FOB) to the trust land and be exempt from sales and use tax.

### III. CONTRACT SUM

**Section 1. Contract Sum.** The Casino shall pay the Contractor, subject to adjustments, the sum of \_\_\_\_\_ (\$ \_\_\_\_\_). The contract sum shall not exceed this cost without express written permission from the Casino.

### IV. PAYMENTS

**Section 1. Application for Payment.** Payments shall be payable upon application for payment from Contractor. Applications for progress payments shall be based on work completed. Each application for payment shall be accompanied by support for the requested payment. No

payments shall constitute a waiver of the Casino's right to withhold payment for any grounds stated in this Contract, nor shall any payment estop the Casino from recovering from the Contractor any money paid for work that subsequently proves to be defective or otherwise not in conformity with the Contract.

**Section 2. Payments Withheld.** The Casino, in its discretion, may withhold payment in whole or in part, as it deems necessary to protect against: a) defective work not remedied; b) claims filed or reasonable evidence indicating probable filing of claims; c) failure of the Contractor to make payments promptly to subcontractors or for labor, materials or equipment; d) reasonable probability that the work will not be completed for the unpaid balance of the contract sum; e) damage to other contractors; f) reasonable probability that the work will not be completed within the contract time; or g) unsatisfactory performance or execution of the work by the Contractor. Regardless of the above, all progress payments shall be subject to a retainage of ten percent (10%). This retention is held to ensure successful completion of the work.

**Section 3. Liens and Encumbrances.** Submission of any application for payment by the Contractor shall constitute a warranty and guarantee by the Contractor that title to all work, materials and equipment covered by the application for payment, is free and clear of all liens, claims, security interests or encumbrances. Such lien releases may be conditional on payment. Nothing contained herein shall be construed to modify or amend the risks assumed by the Contractor anywhere in the contract documents.

**Section 4. Change Order.** Changes in the work after execution of the Contract will typically be handled through written change orders. A change order is a written document that is signed by both Casino and Contractor stating their agreement upon the following: the change to the identified contract work and the amount of adjustment, if any, to the contract sum and contract time. No changes to the contract sum or contract time will be honored without an approved change order or an amendment to the Contract.

**Section 5. Completion and Final Payment.** The final payment shall be made following final acceptance of the work. Upon completion, the Contractor shall provide notice that it has fully performed the work under the Contract, not including any responsibilities that extend past the date of final completion. Also, the Contractor shall submit the final application for payment to the Casino.

The parties shall schedule and complete a joint inspection of the job site. As part of this inspection, a punch list will be prepared as to all incomplete and unsatisfactory items. It is hereby understood that the decision as to whether the Project or any particular item is complete and satisfactory is reserved solely to the Casino. When the Contractor feels that the items on the punch list are satisfactorily corrected or completed, notice will again be given the Casino and another joint inspection shall be made. This method shall be used for further inspections until all items are satisfactorily completed.

## **V. WARRANTY AND CORRECTIONS**

**Section 1. Warranty.** Contractor warrants that materials and equipment furnished under the Contract will be of good quality and new, unless otherwise required or permitted by the contract documents; that the Project will be free from defects; and that the Project will conform to the requirements of the contract documents. Work not conforming to the contract documents, including substitutions not properly authorized, may be considered defective. Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear. The

Contractor shall provide the Casino with all warranties and documentation applicable to the equipment, materials and systems installed.

**Section 2. Correction of Work.** Contractor shall promptly correct work rejected by Casino or failing to conform to the requirements of the contract documents whenever discovered during the Project. Costs of correcting such work and/or replacing damaged materials and equipment, including additional testing, inspections, and expenses made necessary thereby, shall be at Contractor's expense.

In addition, Contractor covenants and agrees to remedy without cost to the Casino any defects, excepting normal wear and tear and those by reasons of force majeure, that may arise within two (2) years from the date of final completion.

## VI. OTHER CONDITIONS AND PROVISIONS

**Section 1. Employment Status of Contractor.** It is understood and agreed by both parties the Contractor is and will be considered to be an independent contractor. The Contractor acknowledges that it is operating as an independent contractor and will be completely responsible for required insurance, worker compensation and withholding for payroll taxes for itself and its employees.

**Section 2. Governing Law.** This Contract shall be construed in accordance with the laws of the Stockbridge-Munsee Community and, in absence of tribal law on point, Wisconsin law.

**Section 3. Notice.** All notices required or authorized to be served shall be in person or by first class mail to the address above or the last business address known by the party giving notice.

**Section 4. Indemnification.** Contractor agrees to indemnify and hold the Casino and its employees and agents harmless from claims, damages, losses and expenses arising out of or resulting from the performance of the Project, but only to the extent caused by the negligent or willful acts or omissions of the Contractor, subcontractor or anyone for whose acts they may be liable. This indemnity obligation shall not be limited as to the amount or type of damages, compensation or benefits payable by or for the Contractor or subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

**Section 5. Assignment.** Neither this Contract nor any part thereof shall be assigned to a third party without prior authorization, in writing, from the Casino.

**Section 6. Integration.** This Contract and any exhibits, attachments and documents incorporated by reference constitute the entire agreement and understanding between the parties hereto and supersedes any and all prior agreements and understandings, oral or written, relating to the subject matter hereof. This Contract shall control when there is any conflict between the provisions of it and any exhibit, attachment or incorporated document.

**Section 7. Severability.** Any part of this Contract that is held void or unenforceable shall be stricken and all remaining provisions shall continue to valid and binding.

**Section 8. Termination.** The Contractor may terminate the Contract if work is stopped for a period of 30 consecutive days through no act or fault of the Contractor. The Contractor shall be equitably compensated for work completed prior to this termination.

The Owner may terminate the Contract for cause (e.g., if the Contractor fails to supply properly skilled workers or proper materials or otherwise substantially breaches the contract documents) or for convenience. If the Owner terminates the Contract for convenience, the

Contractor is entitled to payment for work executed and costs incurred due to such termination. However, if Owner terminates the Contract for cause, the Contractor is not entitled to receive further payment until the work is completed. Owner shall notify Contractor in writing of its plan to terminate the contract for cause, and allow Contractor a period of seven (7) days to cure the matter to Owner's reasonable satisfaction. If the unpaid balance of the contract sum exceeds the actual cost of finishing the work, including damages incurred by the Owner, the excess shall be paid by Contractor to Owner. This obligation survives the termination of this Contract.

**Section 9. Electronic Signatures.** The parties agree the contract documents may be executed and delivered by electronic means and such electronic signatures shall have the same effect as an original executed document.

**CASINO:**

**CONTRACTOR:**

BY: \_\_\_\_\_

BY: \_\_\_\_\_

\_\_\_\_\_  
*Print name and title*

\_\_\_\_\_  
*Print name and title*

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_