

CONSTRUCTION CONTRACT

THIS CONTRACT is by and between the **Stockbridge-Munsee Community** ("TRIBE") whose address is N8476 Moh He Con Nuck Road, PO Box 70, Bowler, WI 54416, and _____ ("CONTRACTOR"), whose address is _____.

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

I. SCOPE OF WORK

Section 1. Purpose. The general purpose of this Contract: _____ (the "Project") on the Stockbridge-Munsee Reservation. The Contractor shall be responsible for services necessary to complete this Project. For this Project, _____ shall be the Tribe's primary point of contact with the Contractor.

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; 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 Tribe for clarification or correction.

Section 3. Federal Funds. The work on this Project is funded, in whole or in part, with federal funds that the Tribe obtained through a grant agreement from the United States government. The contract provisions outlined in **ATTACHMENT A** shall apply, as applicable, to the Contract in accordance with 2 CFR 200.327, which incorporates Appendix II, Contract Provisions for Non-Federal Entity Contracts under Federal Awards. Such provisions supersede any competing language in the underlying contract documents.

Section 4. 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 5. Supervision and Construction Procedures. Contractor shall supervise and direct the work and shall be responsible for job site safety in accordance with OSHA standards. Contractor shall be solely responsible for and have control over construction means and methods. Contractor shall be responsible to Tribe for acts and omissions of Contractor's employees or its subcontractors. The 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. Safety and Access. Contractor shall be responsible for job site safety in accordance with OSHA standards. The Tribe shall provide the Contractor with reasonable access

in order to complete the work. Contractor shall provide the Tribe with access to visit the Project. The Tribe shall abide by the Contractor's reasonable Project site safety rules.

Contractor understands that the Tribe will continue its operations while this work is being completed and shall use its best efforts to not impede access for operations and to limit disruptions. Any interruption to electrical or other utilities shall be coordinated with the Tribe's contact person prior to the interruption. 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 7. Right to Carry Out Work. If Contractor defaults or persistently fails or neglects to carry out work in accordance with the contract documents, the Tribe, 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 8. 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 on _____ . 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 Tribe certificates of such insurance, acceptable to the Tribe, 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.

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 Tribe 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.

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. Prevailing Wage Rates. The Contractor is required to pay its employees wages consistent with federal prevailing wage rates (Davis-Bacon wage rates). In the event the Tribe has set tribal wage rates and, if permissible by federal law, such tribal prevailing wages will supersede federal prevailing wage rates.

Section 8. Performance and Payment Bonds.

Not Required.

Required. The Contractor shall furnish performance and payment bonds to the Tribe 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 Tribe. 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 9. Liquidated Damages.

Not Required.

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

Section 10. Sales and Use Tax Exemption. As a federally-recognized Indian tribe, the Tribe is exempt from Wisconsin sales and use tax. This Project is on land held in trust by the United States of America on the Tribe'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 with all savings accruing to Owner.

III. CONTRACT SUM

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

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 Tribe's right to withhold payment for any grounds stated in this Contract, nor shall any payment estop the Tribe 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 Tribe, 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 Tribe 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 Tribe.

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 Tribe. When the Contractor feels that the items on the punch list are satisfactorily corrected or completed, notice will again be given the Tribe 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 Tribe 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 Tribe 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 Tribe 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. Tribal Bid Policy. The parties understand and agree that this Contract may not be held valid when the Tribe's Competitive Construction Bid Policy is applicable to the contract work, but was violated by either party.

Section 4. 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 5. Indemnification. Contractor agrees to indemnify and hold the Tribe 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 6. Assignment. Neither this Contract nor any part thereof shall be assigned to a third party without prior authorization, in writing, from the Tribe.

Section 7. 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 8. 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 9. 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 10. 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.

TRIBE:

BY: _____

Print name and title

DATE: _____

CONTRACTOR:

BY: _____

Print name and title

DATE: _____

**ATTACHMENT A
FEDERAL FUNDS CONTRACT PROVISIONS**

1. Equal Employment Opportunity (if Contract is for construction).

It is not a violation of the equal opportunity clause to provide preference to Indians living on or near an Indian reservation for work on or near an Indian reservation per the exceptions in 41 CFR 60-1.5 (a)(7).

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such

information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding

paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such

sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

2. Davis-Bacon Act (if Contract for construction is more than \$2,000).

- a. Davis-Bacon prevailing wage rates may be superseded by tribal prevailing wage rates, see Section II.7 of the Contract.
- b. All transactions regarding this Contract including the actions of the contractor and lower tier subcontractors shall be in compliance with the Davis-Bacon Act (40 U.S.C. §§3141- 3144, and §§3146-3148) and the requirements of 29 CFR part 5 as may be applicable.
- c. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. Additionally, contractors are required to pay wages not less than once a week.

3. Copeland Anti-Kickback Act (if Contract for construction is more than \$2,000).

- a. *Contractor.* The contractor shall comply with 18 U.S.C. §874, 40 U.S.C. §3145, and the requirements of 29 CFR. part 3 as may be applicable, which are incorporated by reference into this contract.
- b. *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clause above and

such other clauses as the awarding federal agency may require as well as a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

- c. *Breach.* A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 CFR. 5.12.

4. Rights to Inventions (if Contract is with non-profit or small business). If the Contractor is a small business firm or nonprofit organization and enters into a Contract with the Tribe that is a “funding agreement” and includes provisions regarding the substitution of parties, assignment or performance of experimental, developmental, or research work, then the Tribe will comply with the requirements of 37 C.F.R. part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued.

5. Debarment and Suspension.

- a. This contract is a covered transaction for purposes of 2 CFR part 180 and 2 CFR parts 300-5999, as applicable. As such, the contractor certifies that none of the contractor’s principals or its affiliates are excluded or disqualified (see definitions under 2 CFR part 180) and that the Contractor, as well as its subcontractors, shall comply with these regulations on the federal government-wide debarment and suspension system.
- b. This certification is a material representation of fact relied upon by the Tribe. If it is later determined that the contractor did not comply with 2 CFR part 180, subpart C, and agency-specific requirements, in addition to remedies available to the Tribe, the

federal government may pursue available remedies, including but not limited to suspension and/or debarment.

6. Access to Records.

- a. The contractor agrees to provide the Tribe, the awarding federal agency, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- b. The contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- c. The contractor agrees to provide the awarding agency access to construction or other work sites pertaining to the work being completed under the contract.
- d. In compliance with the Disaster Recovery Act of 2018, the Tribe and the contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

7. Contract Changes or Modifications.

Changes in the work after execution of the Contract will typically be handled through amendments to the Contract or written change orders. Such documents shall be signed by both Tribe and contractor and contain: 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.

8. Federal Agency Seal, Logo, and Flags.

The contractor shall not use the awarding federal agency’s seal(s), logos, crests, or reproductions of flags or likenesses of

agency officials without specific pre-approval.

9. **Compliance with Federal Law, Regulations, and Executive Orders.** This is an acknowledgement that federal financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable federal law, regulations, executive orders, agency policies, procedures, and directives.
10. **No Obligation by Federal Government.** The federal government is not a party to this Contract and is not subject to any obligations or liabilities to the Tribe,

contractor, or any other party pertaining to any matter resulting from the Contract.

11. **Program Fraud and False or Fraudulent Statements.** The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract.
12. **Seat Belts, Texting and Driving.** Contractor and its employees, subcontractors and agents shall use seat belts and shall not engage in text messaging while driving when performing services under this Contract.