



KENOSHA COUNTY

BOARD OF SUPERVISORS

Resolution No. _____

Subject: A Resolution in Support of an Intergovernmental Agreement Pertaining to the Application by the Menominee Indian Tribe of Wisconsin to the Bureau of Indian Affairs to Place Approximately 59.19 Acres Located in the City and County of Kenosha in Trust for the Menominee Indian Tribe of Wisconsin for the Purpose of Conducting Class III and Class II Gaming			
Original [<input checked="" type="checkbox"/>]	Revised [<input type="checkbox"/>]	2nd Correction [<input type="checkbox"/>]	Resubmitted [<input type="checkbox"/>]
Date Submitted: 11/09/23		Date Resubmitted:	
Submitted by: Finance and Legislative Committees			
Fiscal Note Attached [<input type="checkbox"/>]		Legal Note Attached [<input type="checkbox"/>] Agreement	
Prepared by: Joseph Cardamone, Corporation Counsel		Signature:	

WHEREAS, the Menominee Indian Tribe of Wisconsin intends to apply to the Federal Bureau of Indian Affairs to have approximately 59.19 Acres of Land located in the City and County of Kenosha placed into Trust for the Menominee Indian Tribe of Wisconsin for the Purpose of Conducting Class III and Class II Gaming, and whereas, the Tribe and the Authority have sought the County's support for placing this land into trust; and

WHEREAS, the Tribe is authorized to conduct Gaming in the State of Wisconsin under the terms of the Wisconsin Gaming Compact of 1992, as amended; and

WHEREAS, the Tribe, through its Authority, may only conduct Gaming at the Kenosha Facility if it is placed into Federal Trust through application and approval by the Federal Bureau of Indian Affairs (the B.I.A.); and

WHEREAS, as part of the application process, the impact [including loss of tax revenues as well as financial contributions in support of local government] of the establishment of such a gaming operation on the surrounding community must be addressed along with efforts to address such impacts; and

WHEREAS, the Menominee Indian Tribe of Wisconsin, the Menominee Indian Gaming Authority, which was created by the Tribe for the purpose of operating such gaming operation, and the County of Kenosha have negotiated and proposed the attached Intergovernmental Agreement that supports placing the above

described lands into trust for the Menominee Indian Tribe for the purposes stated and in accordance with the development proposed by the Tribe which further addresses the impact of such a gaming operation and development on the surrounding community including any loss in tax revenues due to such lands being placed into trust as well as financial support for local government operations as authorized by Federal law and which agreement would further state the rights and obligations of the parties to the agreement; and

WHEREAS, the Support Payments are offered by the Tribe and Authority in recognition of the demand for the complete range of municipal services offered by the County, 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 Kenosha Facility; and

WHEREAS, the attached Intergovernmental Agreement includes a proposed agreement by and between the County of Kenosha and the Tribe and Authority relative to the imposition of a Tribal Sales Tax on certain sales on Indian trust lands that would otherwise be exempt from the State and County sales tax; and

WHEREAS, revenues received by the County pursuant to this agreement would be utilized by the County to fund general infrastructure projects that would benefit both the Tribe and County;

NOW THEREFORE BE IT RESOLVED that the Kenosha County Board of Supervisors approves of the execution of the Intergovernmental Agreement between the Menominee Indian Tribe of Wisconsin, the Menominee Indian Gaming Authority and the County of Kenosha, including the agreement by and between the County of Kenosha and the Tribe and Authority relative to the imposition of a Tribal Sales Tax and further that it supports the application of the Menominee Indian Tribe of Wisconsin to place approximately 59.19 Acres of Land Located in the City and County of Kenosha, Wisconsin into Trust for the Menominee Indian Tribe of Wisconsin for the Purpose of Conducting Class III and Class II Gaming;; and

BE IT FURTHER RESOLVED that the County Clerk is directed to send a certified copy of this Resolution to the Bureau of Indian Affairs, Tribe and Authority and the Governor of the State of Wisconsin.

Respectfully Submitted by:

Legislative Committee

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Excused</u>
<hr/> Brian Thomas, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/> John Poole, Vice-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/> Amanda Nedweski	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/> Jeff Wamboldt	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/> Andy Berg	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/> Daniel Gaschke	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/> Monica Yuhas	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Finance/Administration Committee

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Excused</u>
<hr/> Terry Rose, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/> Dave Geertsen, Vice-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/> John Poole	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/> Erin Decker	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/> Tim Stocker	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/> John Franco	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/> William Grady	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

INTERGOVERNMENTAL AGREEMENT

This INTERGOVERNMENTAL AGREEMENT (“Agreement”) is entered into this [DATE] day of [MONTH], 2023 in Kenosha, Wisconsin, by and between the MENOMINEE INDIAN TRIBE OF WISCONSIN (the “Tribe”), a federally recognized Indian tribe, 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 COUNTY OF KENOSHA (the “County”), a quasi - municipal corporation in the State of Wisconsin, where the Tribe proposes to acquire lands located within the County to be held in trust by the United States Government (“Proposed 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”).

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 (“Compact Amendments”) that have, among other things, extended the original term of the Compact;

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 (“Proposed Trust Land” or “Trust Land”) and incorporated herein and are further delineated in the map attached as Exhibit B and incorporated herein within the County 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 Proposed Trust Land described in Exhibits A and B into Federal Trust pursuant to 25 U.S.C. § 5108 and use these lands for gaming purposes pursuant to 25 U.S.C. § 2719(b) (the “Federal Trust Application”); and

WHEREAS, the approval of the Secretary of the Interior (the “Secretary”) of the Federal Trust Application requires the consent of the Governor, pursuant to 25 U.S.C. § 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 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, the County has the obligation to protect the health, welfare, and economic vitality of the community it represents, including by ensuring that social, economic, and environmental impacts of development projects are properly mitigated and the increased demands on County resources are sufficiently funded; and

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

WHEREAS, the Tribe and the Authority recognize that upon acquisition of the

Proposed Trust Land into Federal Trust, the County will suffer the permanent loss of revenue from taxes that would otherwise apply to the property and any activities taking place thereon, which will negatively impact all taxpayers in the County; and

WHEREAS, the Tribe and the Authority recognize that the acquisition in Federal Trust of the Proposed Trust Land and the conduct of gaming under IGRA will have the following impacts: the County will be deprived of tax revenues, there will be an increase in demand for County services; there will be additional burdens on the County infrastructure; there will be economic, social and other impacts stemming from the effect of gaming activities; and the County will be deprived of revenues from future development on the Proposed Trust Land; and

WHEREAS, the County requires 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 I (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 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 Proposed Trust Land; and

WHEREAS, the County has 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 Proposed Trust Land at the Kenosha Facility, the Tribe acknowledges its obligations to abide by State building and other codes as provided in Section XIV.C. 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, and the County agree as follows:

SECTION 1. Commitments of the County

A. **Provide Services.** The County shall provide to the Kenosha Facility such services as are usually and customarily provided by the County to other commercial enterprises, including, but not limited to law enforcement, street and highway maintenance and plowing, social services, public safety dispatch services. Nothing in this Agreement commits the County to providing services to the Property currently provided by the City of Kenosha.

B. **Support Federal Trust Application.** In consideration for the benefits accruing to the County under this Agreement, and only as specifically set forth herein, the County, upon request of the Tribe, agrees to support the Federal Trust Application, by resolution of its governing body and by letter from its Chief Executive Officers, consistent with this Agreement.

C. **Support Compact Amendments.** In consideration for the benefits accruing to the County under this Agreement, and only as specifically set forth herein, the County, upon request of the Tribe, agrees to support, by resolution of its governing body and by letter from its Chief Executive Officers, 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.** The County shall not endorse, by resolution of its governing body or by letter from its Chief Executive Officers, 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, the County, to the extent authorized by law, shall not 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 County from continuing to license establishments whose primary business is to sell alcohol beverages that may also conduct casino-style gaming.

E. **No County Enactments to Impair Agreement.** The County shall not enact any ordinance that impairs the obligations of this Agreement without the written consent of the Tribe or the Authority.

F. **County Support Contingent on Validity of Agreement.** The County's support for the Federal Trust Application is contingent on the determinations set forth in Section 21. Submission of Agreement to the Secretary of the Interior and the National Indian Gaming Commission. In the event that the Secretary of the Interior or the National Indian Gaming Commission (NIGC) withhold an approval required under federal law or determines that the any provision of this Agreement violates IGRA or is otherwise impermissible under any federal, state, or tribal law, or refuses to confirm its validity under such authorities, the Parties agree that the County shall not support the Federal Trust Application and in the absence of the mitigation provided herein, the County has concluded that the Trust Acquisition and the Kenosha Facility will be detrimental to the surrounding community.

SECTION 2. Commitments of the Tribe and the Authority

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

1) **Net Win Payment.** For purposes of Section 2.A., “Net Win” means the total amount wagered on gaming 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 County one (1) percent of Net Win for each period of time beginning on January 1 through and including December 31 (a “Calendar Year”). Commencing Calendar Year Nine, the Authority shall increase the payment stated above by 0.33 percent of Net Win so that the payment would be 1.33% of Net Win.

The Triggering Event for the purposes of this subsection shall be:

During Calendar Year Twenty and at each succeeding ten (10) year interval thereafter, the parties to this Agreement shall meet and discuss whether 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 County 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 County adequate to support the operations of local government, a minimum annual payment shall be paid to the County 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 \$50,000 dollars shall be due and payable to the County in Calendar Years One and Two. If the acquisition of the Proposed Trust Land in

Federal Trust 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 \$50,000 dollars multiplied by a fraction, the numerator of which shall be the total number of days beginning with the date of the acquisition of the Proposed Trust Land in Federal Trust plus the number of days remaining in Calendar Year One, and the denominator of which is Three Hundred Sixty-Five.

Beginning with Calendar Year Three, and continuing through and including Calendar Year Eight, a minimum payment of \$500,000 dollars shall be due.

Beginning with Calendar Year Nine and continuing thereafter, a minimum annual payment shall be due of \$1,000,000 dollars, adjusted 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 U.S. 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 Nine.

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 County 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 County 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 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 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. 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 County. In the event that such audit and such opinions and/or verifications/certifications described herein are not submitted to the County within one hundred eighty (180) days of the close

of a Calendar Year, 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 County.

If the audit shows that the prior quarterly payments to the County under Section 2.A.1. of this Agreement were less than the quarterly payments that should have been paid to the County 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 County 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 County for payment by the County.

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 County such monies collected within fifteen (15) days after the closing of such sale.

6) Payment for Specific Purposes. In Calendar Years 9 through 12, the Authority shall annually pay to the County \$650,000 annually. The County shall use these funds for debt service related to the construction of a new human services building

7) Responsible Gaming. 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 subsection (7) is limited to a total payment to the County of Seventy-Five Thousand Dollars (\$75,000). 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 subsection (7) 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. The Authority shall have no duty to match any appropriation of the County in any year where one hundred fifty thousand (\$150,000) dollars or more of payments from the Authority are carried over from the previous fiscal year(s).

8) Where Payments to be Made. The Authority shall make all payments due under Section 2(A) of this Agreement to the County of Kenosha, *Attention:*

County Treasurer, Administration Building
1010 56th Street
Kenosha, WI 53140-3738

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 the 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 the County sought by the Authority from time to time. Pursuant to this charitable contributions policy the Authority, within the first 12 Calendar Years, shall pay a minimum of \$850,000 to charitable organizations addressing the cultural and charitable needs in the County of Kenosha. The Parties agree that any payment to such charitable organizations made by an entity contracted to manage the Kenosha Facility shall be deemed a payment by the Authority for the purposes of this provision.

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 Proposed Trust Land is acquired in trust. 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; and (j) prohibition on gambling by employees of the Kenosha Facility.

D. 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 County. The Tribe and the Authority recognize and acknowledge the jurisdiction of the County over criminal offenses 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.

E. Public Health and Safety Standards for Building, Electrical Wiring, Fire Prevention, Plumbing, and Sanitation. According to Section XIV(C) 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, chs. SPS 314 (Fire Prevention); 316 (Electrical); 328 (Smoke Detectors and Carbon Monoxide Detectors); 366 (Existing Buildings); 377 (Theaters and Assembly Halls); and 381-387 (Plumbing), 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. 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 to the County all building permit fees as would be applicable to such a development on fee simple lands.

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

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

H. No Tribal or Authority Enactments to Impair Agreement. As provided in Section XXXVI.A.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 County.

I. 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 County. This Agreement is made in reliance on Section XXXVI.A.3 of the Compact and Section 10 of the Charter of the Authority.

J. 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.

K. Alcohol Beverages. Pursuant to 18 U.S.C. § 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.

L. Gaming Only as Authorized. The Kenosha Facility shall be used and operated only for such gaming purposes as are permitted under IGRA, the Compact.

M. 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.

N. 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 County and agree to indemnify the County for any action brought against 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.

O. 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.

P. 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 Exhibit E to this Agreement.

Q. Sales Tax. Sales on the Federal Trust Land that are not subject to the State of Wisconsin's sales or use tax shall be taxed by the Tribe or Authority pursuant to the AGREEMENT REGARDING SALES TAX BETWEEN THE MENOMINEE INDIAN TRIBE

OF WISCONSIN, THE MENOMINEE KENOSHA GAMING AUTHORITY AND THE COUNTY OF KENOSHA, attached hereto as Exhibit F.

R. Conversion from Trust Land Status to Reservation Status. The Tribe will not seek a reservation proclamation pursuant to 25 U.S.C. § 5110 for the Proposed Trust Land fully described in the legal description attached as Exhibit A without the written consent of the County of Kenosha.

SECTION 3. Effective Date and Term. The terms of this Agreement shall become effective upon approval of the governing bodies of 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, and the County. Either party may terminate this Agreement upon thirty (30) day written notice 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 on or before December 31, 2025.

SECTION 4. Waiver of Tribal Sovereign 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., and 2.K. of this Agreement, the Authority shall pay to the County 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.F, 2.G, 2.H, 2.I, 2.J, 2.L, 2.N of this Agreement, the Authority shall pay to the County liquidated damages in the amounts often 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. 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 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. 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 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. 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, 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. [Number], adopted [DATE], a copy of which is attached hereto as Exhibit G.
- B. The Authority has authorized its officers to execute this Agreement by the adoption of a Consent to Board Action dated [DATE], a copy of which is attached hereto as Exhibit H.
- C. The Board of Supervisors of the County has approved this Agreement at a duly noticed meeting of the County Board held on [DATE], and a certified copy of the proceeding of the Board of Supervisors is attached as Exhibit I.

SECTION 11. Notice. 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 County: County Clerk
County of Kenosha
912 56th Street
Kenosha, WI 53140

To the Tribe: Tribal Chairperson
Menominee Indian Tribe of Wisconsin
W2908 Tribal Office Loop Road
Keshena, WI 54135

To the Authority: Chairperson
Menominee Kenosha Gaming Authority
W2908 Tribal Office 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 County, the Tribe, and the Authority 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 County, the Tribe, and the Authority 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 for review under 25 U.S.C. § 81 for a determination that this Agreement is not subject to review under 25 U.S.C. § 81. In addition, the Authority shall submit this Agreement to the National Indian Gaming Commission (NIGC) and the Secretary of the Interior for determinations that this Agreement is not subject to review by NIGC under IGRA and is not subject to review by or a determination from the Secretary that this Agreement does not violate IGRA. All determinations by the Secretary and the NIGC under this Section shall be transmitted to 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 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.

SECTION 26. Management Limitations. Notwithstanding any provision in this Agreement or any other agreements between the parties, or any other right to enforce the provisions of this Agreement or other agreements, the County shall not engage in any of the following: planning, organizing, directing, coordinating, or controlling all or any portion of the Tribe's and/or Authority's gaming operations (collectively, "Management Activities"), including:

- (a) the training, supervision, direction, hiring, firing, retention, compensation (including benefits) or any employee (whether or not a management employee) or contractor;

- (b) any working or employment policies or practices;
- (c) the hours or days of operation;
- (d) any accounting systems or procedures;
- (e) any advertising, promotions, or other marketing activities;
- (f) the purchase, lease, or substitution of any gaming device or related equipment or software, including player tracking equipment;
- (g) the vendor, type, theme, percentage of pay-out, display, place, or placement of any gaming device or equipment; or
- (h) budgeting, allocating, or conditions payments of the Tribe's and/or Authority's expenses.

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

COUNTY OF KENOSHA, WISCONSIN

By: _____
_____, County Executive
Date: _____

By: _____
_____, County Clerk
Date: _____

MENOMINEE INDIAN TRIBE OF WISCONSIN

By: _____
_____, Chairman
Date: _____

MENOMINEE KENOSHA GAMING AUTHORITY

By: _____

, Chairman

Date: _____

**INTERGOVERNMENTAL AGREEMENT
EXHIBIT "A"**

LEGAL DESCRIPTION

EXHIBIT A

PROPERTY LEGAL DESCRIPTION 5.80-Acre

Parcel (Parcel A):

1-B PT NE 1/4 SEC 1 T 1 N R 21 E OF THE 4TH PRINCIPAL MERIDIAN COMM AT NE COR NE 1/4 TH W'LY 620.93 FT TH S 100 FT TO POB TH CONT S ALG E ROW 122ND AVE APPROX 708.46 FT AS DESC IN DOC#1634242 TPP PLAT 09-1024-4.02 TO N LN LOT A CSM 211 V 929 P 571 TH E ALG N LN CSM TO W ROW I-94 TH N ALG W ROW I-94 AND S LN 60TH ST 99.87 FT TH W ALG S LN 60TH ST 288.79 FT TO POB LYING AND BEING IN THE CITY OF KENOSHA COUNTY OF KENOSHA STATE OF WISCONSIN (2001 ANNEXATION 35-4-121-011-0100) (2009 LOT LINE ADJUSTMENT) (2011 PT 03-121-01-101-100) DOC #975090 5.80 AC DOC#1027160 DOC#1564651

PARCEL #: 03-121-01-101-101

10.55-Acre Parcel (Parcel B):

THAT PT OF THE FOLLOWING LYING E OF 122ND AVE ROW AS DESCRIBED IN DOC#1634242 TPP 09-1024-4.02 PT NE 1/4 SEC 1 T 1 N R 21 E OF THE 4TH PRINCIPAL MERIDIAN COM AT E 1/4 COR SEC 1 TH W 275.03 FT TO W ROW I-94 TO POB TH TH N 221.63 FT TH W 1042.46 FT TH SW'LY 117.81 FT ALG CURVE TH S 43 DEG 57' 55" W 105.41 FT TH N 1197.61 FT TH E 38.71 FT TH N 254.15 FT TH E 1186 FT TH S 366.44 FT TH W 235.2 FT TH S 120 FT TH E 235.20 FT TH S 847.05 FT TO POB 10.576 AC LYING AND BEING IN THE CITY OF KENOSHA COUNTY OF KENOSHA STATE OF WISCONSIN (2007 PT 03-121-01-101-420) (2011 PT 03-121-01-101421) DOC#1500247 DEED IN ERROR DOC#1502945 CORRECTION (2016 LOT LINE ADJ DOC #1757896 & DOC#1757697)

PARCEL #: 03-121-01-101-422

18.65-Acre Parcel (Parcel C):

THAT PT OF THE FOLLOWING LYING W OF 122ND AVE ROW AS DESCRIBED IN DOC# 1634242 AND TPP 09-1024-4.02 PT OF NE 1/4 SEC 1 T 1 N R 21 E OF THE 4TH PRINCIPAL MERIDIAN BEG 434.07 FT W OF NE COR 1/4 W 832.43 FT S 624 FT W 189.75 FT S 654.75 FT E 824.94 FT N 450 FT E 362.8 FT TO W LN HY N 635.88 FT NW'LY 242.65 FT TO POB LYING AND BEING IN THE CITY OF KENOSHA COUNTY OF KENOSHA STATE OF WISCONSIN ANNEX ORD 64-00 DOC#1202936 EXC ROAD ROW DOC#1564651 (2001 ANNEXATION 35-4-121-011-0100) (2009 LOT LINE ADJUSTMENT) (2011 PT 03-121-01-101-100) DOC #975090 18.65 AC DOC#1027160 DOC#1564651 DOC #975090 DOC#1027160 DOC#1564651

PARCEL #: 03-121-01-101-102

24.19-Acre Parcel (Parcel D):

THAT PT OF FOLLOWING LYING W OF 122ND AVE ROW AS DESCRIBED IN
DOC#1634242 TPP 09-1024-4.02 PT NE 1/4 SEC 1 T 1 N R 21 E OF THE 4TH PRINCIPAL
MERIDIAN COM AT E 1/4 COR SEC 1 TH W 275.03 FT TO W ROW 1-94 TO POB THEN
N 221.63 FT TH W 1042.46 FT TH SW'LY 117.81 FT ALG CURVE TH S 43 DEG 57' 55" W
105.41 FT TH N 1197.61 FT THE 38.71 FT TH N 254.15 FT THE 1186 FT TH S 336.21 FT
TH W 235.2 FT TH S 120 FT THE 235.20 FT TH S 876.78 FT TO POB 24.19 AC LYING
AND BEING IN THE CITY OF KENOSHA COUNTY OF KENOSHA STATE OF
WISCONSIN (2007 PT 03-121-01-101-420) (2011 PT 03-121-01-101421) DOC#1500247
DEED IN ERROR DOC#1502945 CORRECTION

PARCEL #: 03-121-01-101-423

**INTERGOVERNMENTAL
AGREEMENT EXHIBIT B**

MAP



026808-0006/33119180

INTERGOVERNMENTAL AGREEMENT EXHIBIT C

KENOSHA TRUST LAND ORDINANCES

Exhibit C

Chapter 594 of the Menominee Tribal Code is attached and incorporated into this Agreement. The Tribe shall amend Chapter 594 to clarify its applicability to any lands located in the City or County of Kenosha as shown in attachment 1 to this Exhibit C.

Intergovernmental Agreement

Exhibit C

Attachment 1

MENOMINEE NATION

THE MENOMINEE TRIBAL LEGISLATURE

TRIBAL ORDINANCE NO. 23-__

AMENDMENT TO THE CODE OF THE MENOMINEE INDIAN- TRIBE OF WISCONSIN

CHAPTER 594

KENOSHA TRUST LANDS

FIRST CONSIDERATION:

BE IT ORDAINED BY THE LEGISLATURE OF THE MENOMINEE INDIAN TRIBE OF WISCONSIN:

Tribal Ordinance 23-__ is hereby enacted. Tribal Ordinance 23- amends Chapter 594, “Kenosha Trust Lands” of the Code of the Menominee Indian Tribe of Wisconsin as attached hereto and incorporated herein as if fully reproduced here.

CERTIFICATION

We, the undersigned Officers of the Menominee Tribal Legislature, do hereby certify that the foregoing Ordinance 23-__ Amendment to Chapter 594 – “Kenosha Trust Lands” was _____, for first reading and sent to public hearing, at a regular meeting of the Tribal Legislature held _____, 2023, at which a quorum was present, by a vote of ____ for, ____ opposed, ____ abstentions and ____ absent.

The undersigned also certify that the foregoing amendment to Code of the Menominee Indian Tribe of Wisconsin has been posted in accordance with the Menominee Constitution and Bylaws.

GENA KAKKAK, CHAIRWOMAN
MENOMINEE INDIAN TRIBE OF WISCONSIN

DATE: _____

SPENCER GAUTHIER, SECRETARY
MENOMINEE INDIAN TRIBE OF WISCONSIN

TRIBAL ORDINANCE 23-__

AMENDMENT TO CHAPTER 594 – KENOSHA TRUST LANDS

1. Purpose. The purpose of this Amendment is to make Chapter 594 applicable to any lands owned by the United States in trust for the Menominee Indian Tribe of Wisconsin located in the City or County of Kenosha, Wisconsin.
2. Amendment to § 594-2 Applicability. Section 594-2 is deleted in its entirety and replaced by the following:

Applicability. This Chapter 594 shall apply to any lands owned by the United States in trust for the Menominee Indian Tribe of Wisconsin located in the City or County of Kenosha, hereinafter "Menominee Kenosha trust lands" or "trust lands."

3. Amendment to § 594-6 Specific Development Regulations. Section 594-6.A is deleted in its entirety and replaced with the following:
 - A. Purposely Deleted
4. Amendment to § 594-8 Exhibits and References. Section 594-8.A(1) is deleted in its entirety and replaced with the following:
 - (1) Purposely Deleted
5. Effect on Remaining Provisions of Chapter. The remaining provisions of Chapter 594 are unchanged.
6. Effective Date. This amendment shall be effective upon Final Approval by the Tribal Legislature.

INTERGOVERNMENTAL AGREEMENT EXHIBIT D

MINIMUM PAYMENT ILLUSTRATION

INTERGOVERNMENTAL AGREEMENT EXHIBIT E

[TO BE ADDED]

INTERGOVERNMENTAL AGREEMENT

EXHIBIT "E"

PLANNED CONSTRUCTION AND PHYSICAL DEVELOPMENT

The Tribe and the Authority (hereinafter "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 below:

1. The Authority intends to transfer approximately 60 acres (described in Exhibit A of the Intergovernmental Agreement) to the United States of America, in trust for the Menominee Indian Tribe of Wisconsin.
2. The Authority intends to develop a Casino, Hotel, a variety of amenities and Hard Rock Live on the property. The intent is to build all three areas simultaneously; however, it is possible that the Hard Rock Live and / or Hotel construction may be delayed until after the Casino is in operation and generating revenue due to the availability of financing on reasonable terms.
3. The current approved concept program (subject to change based on availability of financing on reasonable terms) is shown in Table 1 below:

Table 1

CASINO

Gaming Positions / Sq. Footage

Slots	1,500
Tables	55
Sports Book	TBD
Square Footage of Gaming Areas and Support Areas	approx. 70,000 sq. ft

Administration / Back of House

Square Footage	approx. 25,000 sq. ft
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Food & Beverage Type / Sq. Footage

Hard Rock Café	(150 seats)	5,200 sq. ft
Marketplace / Buffet	(250 seats)	10,200 sq. ft
Steakhouse	(87 seats)	3,200 sq. ft
Asian Restaurant	(95 seats)	3,200 sq. ft
Other F&B	(170 seats)	7,000 sq. ft

Parking

Valet and Surface	2,375 spaces
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HOTEL

Guest Rooms

Standard Rooms	119
Guest Suites	31

Conference / Meeting Space

Ballroom and Support Space	(567 seats)	18,375 sq. ft
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Recreational Facilities

Health Club	1,280 sq. ft
Spa	TBD

EXHIBIT F

AGREEMENT REGARDING SALES TAX BETWEEN THE MENOMINEE INDIAN TRIBE OF WISCONSIN, THE MENOMINEE KENOSHA GAMING AUTHORITY AND THE COUNTY OF KENOSHA

This Agreement is entered into by and between the MENOMINEE INDIAN TRIBE OF WISCONSIN, a federally recognized Indian tribe (the "Tribe"), the MENOMINEE KENOSHA GAMING AUTHORITY, (hereinafter the "Authority") a gaming entity formed by the Tribe and the COUNTY OF KENOSHA (hereinafter the "County") (collectively, the "Parties" or a "Party").

WITNESSETH:

WHEREAS, the Tribe and the Authority seek to develop a destination gaming facility and related development on lands to be held in trust by the United States (the "Facility") in Kenosha, Wisconsin; and

WHEREAS, the Tribe or Authority will enact a sales tax ordinance applicable to certain sales transactions executed on the Tribe's trust lands in Kenosha, Wisconsin; and

WHEREAS, the intent of a Tribal sales tax is to generate revenue for Tribal government; and

WHEREAS, the Tribe or Authority will collect its sales tax from patrons traveling to the Tribe's trust lands; and

WHEREAS, Kenosha County is responsible for the building and maintenance of a large portion of the road system within Kenosha County; and

WHEREAS, it is in the interest of the Tribe and Authority that the roads of Kenosha County are maintained at a high standard; and

WHEREAS, the Tribe, the Authority and the County desire to enter into an Agreement under which the Authority will provide funds to the County to be used for road and road infrastructure building and maintenance;

NOW, THEREFORE, in exchange for the mutual covenants and promises set forth below, the Parties hereby agree as follows:

A. ENACTMENT OF SALES TAX

The Tribe or Authority shall enact and maintain a Tribal sales tax at a rate equal to the State of Wisconsin sales tax and any applicable County sales tax. This tax shall apply to sales made by the Authority on the trust land that are not subject to the State of Wisconsin's sales or use tax. The Tribal sales tax shall tax sales in a substantially similar manner as the State of Wisconsin Sales tax. The tax shall be effective on the date the trust lands are

accepted into trust by the United States.

B. PAYMENT TO THE COUNTY AND AUDIT

The Tribe or Authority shall pay to the County 75% of the tax collected by the Tribe or Authority pursuant to the sales tax ordinance referenced in Section I, above beginning on the date the first payment is made through Calendar Year 8. Beginning in Calendar Year Nine the Authority shall no longer pay to the County 75% of such tax collected, but instead shall pay to the County 25% of such tax collected. Such payments shall be made in accordance with the payment schedule in Appendix A to this Agreement. Any good or service provided to customers of the Authority without charge shall not be subject to the Tribal sales tax ordinance. Any good or service provided to customers of the Authority who are members of the Menominee Indian Tribe of Wisconsin shall not be subject to the Tribal sales tax ordinance.

The Authority will provide an audit and sales tax report to the County annually as part of the audit provided to the County under the terms and conditions provided for in the Intergovernmental Agreement between County of Kenosha and the Menominee Indian Tribe of Wisconsin and the Menominee Kenosha Gaming Authority. In the event that sufficient information is not provided in such audit so as to accurately reflect sales tax revenues, the Authority shall allow the County to have an audit performed at the Tribe's expense.

If the audit shows that the payments to the County under this Agreement were less than the payments that should have been paid to the County pursuant to the terms of this Agreement, the Tribe or the Authority shall, within 60 days after receipt of the audit, make a separate payment to the County of the difference between such amounts. If the audit shows that the payments to the County were more than the payments that should have been paid to the County pursuant to the terms of this Agreement, the County shall, within 60 days after receipt of the audit, make a payment to the Tribe or Authority of the difference between such amounts.

C. COUNTY USE OF FUNDS

All funds paid to the County by the Authority pursuant to Section II, above, shall be used by the County for general infrastructure projects, including but not limited to, road or road infrastructure construction or maintenance on roads falling within the jurisdiction of the County, equipment, labor, materials, capital improvement funds, highway related debt service or sinking funds for highway purposes, broadband and other county identified projects.

The County shall, within ninety (90) days of the Federal Trust Lands going into Trust, and annually thereafter, prepare and maintain a list of infrastructure and county projects that will benefit both the Menominee Tribal Trust lands and the citizens of Kenosha County. The County shall consult with the Tribe in creating said list. The County shall select one or more projects or purposes from the list presented, and if more than one project or purpose is chosen, shall prioritize the projects or purposes chosen. Funds collected by the County

pursuant to this Agreement shall be used only for the projects or purposes listed in this section.

County shall maintain funds received under this Agreement in a separate ledger and shall provide a report to the Tribe annually based on the County's audit showing how such funds were or will be used.

D. TERM

The term of this Agreement shall continue for so long as the Tribe or the Authority makes sales on the Trust land subject to the Tribal sales tax ordinance.

E. DEFAULT

1. In the event that any of the Parties to this Agreement believe that any other Party is not fulfilling any of that Party's obligations under this Agreement, the Party alleging a default shall serve notice upon the defaulting Party. The Party against whom a default is asserted shall have 30 days from receipt of such notice to cure any alleged default of its obligation. If the Party against whom a default is asserted fails to cure its default during this period, the Parties shall meet to informally mediate the dispute within 30 days after the Party requesting such a meeting serves notice on the other Party.
2. If after such meeting the dispute is not resolved, the dispute may be litigated in the United States District Court for the Eastern District of Wisconsin, the Seventh Circuit Court of Appeals, and the United States Supreme Court, or if such federal courts will not hear disputes related to this Agreement, in the State Circuit Court for Kenosha County, the State Court of Appeals and the State Supreme Court.

F. LIMITED WAIVER OF TRIBAL IMMUNITY

The Tribe and Authority agree to waive any sovereign immunity enjoyed by the Tribe or Authority to enforce any dispute or claim arising under this Agreement. The Tribe, Authority and County consent to be sued in the United States District Court for the Eastern District of Wisconsin, the Seventh Circuit Court of Appeals, and the United States Supreme Court in connection with such disputes or claims. If such federal courts will not hear a dispute or claim arising under this Agreement, the Authority and County consent to be sued in the State Circuit Court for Kenosha County, the State Court of Appeals and the State Supreme Court in connection with such disputes or claims. No Party to this Agreement shall contest jurisdiction or venue of the above-referenced courts. The Authority shall not invoke the doctrine of exhaustion of tribal or other administrative remedies to defeat or delay such jurisdiction or proceeding.

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 to this Agreement 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 businesses established for the purposes of owning and operating the Facility.

G. TERMINATION

This Agreement may be terminated upon the mutual agreement of the Parties, or pursuant to Section I of this Agreement.

H. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the legal representatives, successors and duly authorized assigns of each Party pursuant to the terms of this Agreement.

I. NON-ASSIGNABILITY

None of the Parties may assign this Agreement without the express written consent of each of the other Parties.

J. ENTIRE AGREEMENT

This Agreement represents the entire agreement between the Parties and supersedes all prior agreements or understandings between the Parties, whether written or oral.

K. 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.

L. AMENDMENT

This Agreement may only be amended upon the written agreement of the Parties.

M. GOOD FAITH

The parties to this Agreement agree that this Agreement imposes upon them a duty of good faith and fair dealing and further agree not to act or fail to act in such a manner as to directly or indirectly impair the obligations set forth herein.

N. INTEREST ON LATE PAYMENTS

Interest on any late payment due under 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.

O. DISPUTE RESOLUTION

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 XV 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 XV 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.

P. 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.

Q. GOVERNING LAW

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

R. AUTHORIZATION

The Tribe, the Authority, 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.

S. 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 County: County Clerk
County of Kenosha
1010 56th Street
Kenosha, WI 53140

To the Tribe: Tribal Chairman
Menominee Indian Tribe of Wisconsin
W2908 Tribal Office Loop Road
Keshena, WI 54135

To the Authority: Menominee Kenosha Gaming Authority
Menominee Tribe of Indians
W2908 Tribal Office Loop Road
Keshena, WI 54135

T. NO CHALLENGES TO THE AGREEMENT

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

U. SEVERABILITY

Except for this Section, Section IV, Section VI, Section XIII, Section XV, Section XX, and

Section XXV, no provision of this Agreement is severable from this Agreement. In the event that any provision of this Agreement is adjudged by any court of competent jurisdiction or federal agency having jurisdiction over this Agreement or Indian gaming to be invalid, ineffective or unenforceable, in whole or in part, 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 XV of this Agreement shall apply.

V. NO LIABILITY FOR ACTS PRIOR TO THE 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.

W. 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.

X. AGREEMENT IN COUNTERPARTS

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

Y. 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 County of the Authority's failure to perform any such duties or obligations.

Z. EFFECTIVE DATE

This Agreement shall be effective upon its execution by all of the Parties of this Agreement and upon execution of all the Parties of the intergovernmental agreement between these parties.

COUNTY OF KENOSHA, WISCONSIN

By: _____

Samantha Kerkman, County Executive

Date: _____

By: _____

Regi Waligora, County Clerk

Date: _____

**MENOMINEE INDIAN TRIBE OF
WISCONSIN**

By: _____

Gena Kakkak, Chairperson

Date: _____

**MENOMINEE KENOSHA GAMING
AUTHORITY**

By: _____

Joey Awonohopay, Chairperson

Date: _____

APPENDIX A

Collection Month of Sales Tax	Payment Date
January	Last calendar day of February
February	Last calendar day of March
March	Last calendar day of April
April	Last calendar day of May
May	Last calendar day of June
June	Last calendar day of July
July	Last calendar day of August
August	Last calendar day of September
September	Last calendar day of October
October	Last calendar day of November
November	Last calendar day of December
December	Last calendar day of January

**INTERGOVERNMENT AGREEMENT
EXHIBIT G**

**MENOMINEE KENOSHA GAMING AUTHORITY
BOARD OF DIRECTORS RESOLUTION**

INTERGOVERNMENTAL AGREEMENT EXHIBIT H

**COUNTY OF KENOSHA BOARD OF SUPERVISORS
RESOLUTION**