

AGREEMENT BETWEEN THE CITY OF MILWAUKEE AND THE FOREST COUNTY
POTAWATOMI COMMUNITY D/B/A POTAWATOMI BINGO CASINO
FOR WEST POTAWATOMI CIRCLE IMPROVEMENTS

THIS AGREEMENT (“Agreement”) is made and entered into by and between the City of Milwaukee, hereinafter called “City”, a municipal corporation, and the Forest County Potawatomi Community, a federally recognized Indian tribe d/b/a Potawatomi Bingo Casino, hereinafter called “Potawatomi Community”, relating to the installation of improvements on West Potawatomi Circle to improve pedestrian and vehicular safety and operation as defined below.

WHEREAS, the Common Council of the City adopted Resolution File Number 160689 to authorize the Commissioner of Public Works to enter into this Agreement;

WHEREAS, The City and Potawatomi Community agree that additional improvements on West Potawatomi Circle will further enhance pedestrian and vehicular safety and operations near the Potawatomi Hotel and Casino complex, parking structures, and surface parking lots (“Hotel and Casino Complex”);

WHEREAS, Continued development in and around the Potawatomi Hotel and Casino Complex has resulted in increased pedestrian and vehicle activity on West Potawatomi Circle;

WHEREAS, the City and Potawatomi Community desire that additional countermeasures be undertaken to improve pedestrian and vehicular safety and operations on West Potawatomi Circle; and

WHEREAS, Design and construction of the proposed improvements should proceed upon execution of this agreement and be completed within the 2016 construction season ending on December 1, 2016.

NOW, THEREFORE, in consideration of the mutual promises of each entity made to the other and the fulfillment of the terms and conditions, agreements, and understanding hereinafter set forth, it is mutually agreed by and between the parties that:

- I. The City of Milwaukee will:
 - a) Design and construct, as directed by the Commissioner of Public Works, the project improvements outlined in this Agreement and as shown in Attachment A of this Agreement (the “Project”).
 - b) Provide a construction schedule to Potawatomi Community for Potawatomi Community’s approval prior to the commencement of any work, which approval shall not be unreasonably withheld or delayed.
 - c) Maintain a minimum of one full traffic lane in each direction through the construction zone to provide continued access to the Hotel and Casino Complex.

- d) Develop any plans and oversee any let work or work by City workers associated with the construction of the Project.
- e) Pay for any Project costs exceeding the \$124,300 cost projection, which is set forth in Attachment B.
- f) Invoice Potawatomi Community upon the completion of the Project for all actual costs incurred during the design and construction of the Project by providing a detailed summary of all labor, materials, and costs associated with the Project not to exceed \$124,300.00.
- g) Maintain and repair all materials installed under this agreement at City's own cost and expense, at City's discretion and in the normal course of City's routine maintenance schedules.

II. Potawatomi Community will:

- a) Fund actual project costs up to \$124,300 as outlined in Attachment B within 30 days after receipt of an invoice from the City.
- b) Provide plans and locations of all underground facilities that may be impacted by the design and construction of the Project.
- c) Should Potawatomi become aware of any malfunctions or other maintenance required of the materials installed under this Agreement, it will notify the City of the same. This paragraph shall not place an obligation on the Potawatomi Community to independently inspect the improvements installed as part of the Project.

III. Ownership

After the design and construction work for the Project outlined in this Agreement is completed, all of the materials installed shall be the property of the City.

IV. Payments

All payments due under this agreement shall be paid within thirty (30) days after receipt of an undisputed invoice with appropriate back-up evidence of the same. In the event of any dispute, Potawatomi Community shall pay all undisputed amounts within the time period provided.

V. Liability

This Agreement shall not be interpreted to waive any right of recovery in law or in equity by either party against the other.

VI. Duration

This Agreement shall continue and be in force indefinitely unless terminated on six (6) months written notice by either party to the other.

VII. Notices

Any and all notices or correspondence required under this Agreement shall be in writing and deemed served upon depositing same with the United States Postal Service as "Certified Mail, Return Receipt Requested" or deemed served upon receipt if sent via United States Postal Service as "Regular Mail," and addressed as follows:

To Potawatomi Community: Legal Department
Attention: Attorney General
5416 Everybody's Road
PO BOX 340
Crandon, WI 54520

To the City: City of Milwaukee, Commissioner of Public Works
Attention: Joseph Blakeman, PE
841 North Broadway, Room 920
Milwaukee, WI 53202

VIII. No Additional Waiver Implied

The failure of either party to insist, in any one or more instance, upon performance of any of the terms, covenants, or conditions of this Agreement shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant, or condition by any other party hereto, but the obligation of such other party with respect to such future performance shall continue in full force and effect.

IX. Public Records Law

Both parties understand that the City is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Agreement are subject to and conditioned on the provisions of Wis. Stat. Section 19.21, *et seq.* Potawatomi Community acknowledges that it is obligated to assist the City in retaining and producing records that are subject to the Wisconsin Public Records Law, that the failure to do so shall constitute a material breach of this Agreement. Except as otherwise authorized, those records shall be maintained for a period of seven years after termination of this Agreement.

X. Conflict of Interest

No officer, employee, agent, member of the governing body, or other public official of the City who exercises any functions or responsibilities in connection with the carrying out of any services or requirements to which this Agreement pertains shall have any personal interest, direct or indirect, in this Agreement. Potawatomi Community covenants that no such person who presently exercises any functions or responsibilities in connection with this Agreement has any personal financial interest, direct or indirect, in this Agreement.

XI. Amendment

This Agreement shall be amended only by formal written supplementary amendment. No oral amendment of this Agreement shall be given any effect. All amendments to this Agreement shall be in writing and executed by both parties.

XII. Applicable Law

This Agreement and all questions arising in connection herewith shall be construed in accordance with the internal laws of the State of Wisconsin.

XII. No Employment or Joint Venture

In performing its obligations under this Agreement, each party shall act solely for its own account and not as an agent, representative, or employee of the other party. Nothing contained in this Agreement shall be deemed or construed by the parties or any third party to create the relationship of a partnership, joint venture, or employment.

XIV. Successors and Assigns

This Agreement shall be binding on the heirs, successors, and assigns of each party hereto. Neither party shall assign, sublet, or transfer its interest or obligations under the provisions of this Agreement without the prior written consent of the other; provided however that claims for money due or to become due from the City under this Agreement may be assigned to a bank, trust company, or other financial institution without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the City.

XV. Nondiscrimination. No person in the United States shall, on the grounds of race, color, religion, sex, or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Contract. The City and each employer will comply with all requirements imposed by or pursuant to the regulations of the appropriate federal agency effectuating Title VI of the Civil Rights Act of 1964.

XVI. Severability

The provisions of this Agreement are severable. If any provision or part of this Agreement or the application thereof to any person or circumstance shall be held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part thereof to other persons or circumstances shall not be affected thereby.

XVII. Counterparts

This Agreement may be executed in one or more counterparts, all of which shall be considered but one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

XVIII. Entire Agreement

This Agreement contains the complete agreement and entire understanding between and among the parties relating to the subject matter hereof, and all prior agreement, correspondence, discussions, and understandings of the parties (whether oral or written) are merged herein and made a part hereof, it being the intention of the parties that this Agreement shall serve as the complete and exclusive statement of their agreement together.

IN WITNESS WHEREOF, the undersigned on behalf of the City of Milwaukee affix their hands and seals this ____ day of _____, 2016.

CITY OF MILWAUKEE

COMMISSIONER OF PUBLIC WORKS

COMPTROLLER

ASSISTANT CITY ATTORNEY
As to Form and Execution

IN WITNESS WHEREOF, the undersigned on behalf of the Forest County Potawatomi Community affix their hands and seals this ____ day of _____, 2016.

THE FOREST COUNTY POTAWATOMI COMMUNITY
D/B/A POTAWATOMI BINGO CASINO

By: _____

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