

**LAW ENFORCEMENT AND SECURITY SERVICES
GRANT AGREEMENT BETWEEN THE FOREST COUNTY POTAWATOMI
COMMUNITY D/B/A POTAWATOMI BINGO CASINO AND
THE CITY OF MILWAUKEE**

This agreement is entered into this ____ day of _____, 2013 by and between the City of Milwaukee (the City”), acting through its Chief of Police (“Chief”) and the Forest County Potawatomi Community a federally recognized Indian tribe (Tribe) d/b/a Potawatomi Bingo Casino (the “PBC”).

WITNESSETH

Whereas, the Tribe owns and operates a class II and III gaming and other entertainment venue located at 1721 W. Canal St., Milwaukee WI 53233 (Entertainment Venue); and

Whereas the operation of the Tribe’s Entertainment Venue is the number one entertainment venue in the City with over six million visitors annually; and

Whereas the Forest County Potawatomi Community makes an annual payment to the City pursuant to the Intergovernmental Agreement between the Tribe; and

Whereas the Entertainment Venue presents unique security needs that require additional police services; and

Whereas the City designates the use of such payments and desires to designate some of the funds to support the security needs of the Entertainment Venue; and

Whereas, the PBC has offered the Milwaukee Police Department (“MPD”) an additional grant for assignment of on-premise MPD officers at the Entertainment Venue on a regular basis, the days and time of which shall be agreed to by the Chief and PBC; and

Whereas, the Chief has indicated a willingness to provide special assignment of MPD police officers in accordance with the terms and conditions of this Agreement; and

Whereas, the Common Council has approved this Agreement via Common Council Resolution File No. _____ adopted _____ and authorized the Chief to execute the Agreement on the City’s behalf; and

Whereas, the Tribe has approved this Agreement and authorized its General Manager to execute it on PBC’s behalf; and

Now, therefore, in consideration of the promises and other good and valuable consideration hereinafter set forth, the parties agree as follows:

1. **Services and Staffing.**
 - a. MPD police officers shall be provided for security and law enforcement duty at PBC’s Entertainment Venue on such dates and times as agreed to by the parties. For purposes of this Agreement, representatives of PBC shall promptly designate MPD officer, staffing levels in consultations with MPD, but in all instances such staffing levels shall be subject to PBC’s final approval. Such staffing levels shall be submitted by PBC no later than **August** of each year during the Term of this Agreement. These staffing levels shall be

based upon a variety of factors, including but not limited to (a) the prior experience of PBC in staffing a security force at the Entertainment Venue, (b) the projected attendance for each day and/or special event, (c) PBC's need to patrol and to maintain lawful peace and order in and around the exterior areas of the Entertainment Venue's parking lots, and (c) PBC's need to patrol and to maintain lawful peace and order in the interior areas of the Entertainment Venue.

- b. Staffing levels for special promotional events shall be determined by PBC, in consultation with the Chief or a designated representative of the Chief, and shall be subject to PBC's final approval. The attendance benchmarks shall be determined by the PBC and communicated to the Chief's designee no later than twenty (20) days prior to the special event. The Chief may provide additional personnel, if requested by PBC, upon less than twenty (20) days notice. In the case of special events, PBC expressly reserves the right to engage the security services of alternative enforcement entities or agencies at its own discretion or to the extent required by the promoter of such special event, by reason of the terms of such special event agreement or as may be otherwise required by contract or law. The staffing levels may be adjusted at any time during the Term of this Agreement, by the mutual agreement of PBC and the Chief, to ensure the effective management of the Entertainment Venue and the surrounding parking lots, as well as the effective use of the MPD police officers. If the Chief determines that a public safety emergency at any location in the City, including the Entertainment Venue, requires the deployment of additional MPD personnel, the Chief shall so inform PBC as soon as possible and the Chief may make appropriate adjustments to the suggested staffing levels to reflect the Chief's need to respond to the emergency. PBC shall remain responsible for the costs of the off-duty personnel assigned pursuant to this agreement and shall not be billed for any additional or routine police personnel required to respond to the emergency.
- c. MPD shall assign not more than three (3) police officers under this agreement without assigning a police sergeant. If four or more police officers are to be scheduled at any given time, MPD requires that a police sergeant be scheduled as well. The supervision ratio shall be as follows: one to three (1-3) officers, zero (0) sergeants; four to seven (4-7) officers, one (1) sergeant; eight to eleven (8-11) officers, two (2) sergeants, etc.
- d. To further ensure the effective performance of services hereunder, the Chief agrees to designate one (1) contact person who will serve as PBC's contact for all purposes related to this Agreement during the Term (as defined below).
- e. MPD represents and warrants that it has a sufficient number of officers available to meet the staffing levels provided hereto, both for routine staffing needs and special events designated by PBC. The parties agree that these representations are based on conversations between the parties related to anticipated staffing needs as of the date of this agreement and that dramatic changes to the anticipated staffing needs will require additional funding from PBC.
- f. The Parties agree that PBC will pay MPD for up to one (1) hour per week of administrative work (e.g., scheduling of security officers) at the actual overtime rate of the one (1) individual performing such administrative services hereunder. Such services/charges shall be clearly identified on all invoices as administrative charges.

2. Command Post.

- a. PBC shall provide MPD with a room of sufficient size and configuration (the police command post currently located North/East corner of the Casino at the Entertainment Venue which meets MPD requirements) for operation of law enforcement services within Entertainment Venue. This room shall serve as the command post for MPD operations at Entertainment Venue.
 - b. If arrestees are to be held at Entertainment Venue, they will be detained in the North/East corner of the Casino. PBC will provide all necessary utilities, including telephone, electricity, heat, air conditioning, radio antenna networks, and water for MPD personnel at Entertainment Venue.
3. **MPD Equipment.** MPD at its own cost and expense shall provide all law enforcement equipment and supplies, including but not limited to all mobile, portable and control-base-radio equipment necessary for operations at Entertainment Venue, as well as all necessary office supplies, including but not limited to a desktop facsimile machine, a desktop copier, and a desktop computer.
4. **Term.** The term of this Agreement (the "Term") shall consist of the Initial Term and any extension thereof. The initial term of this Agreement shall commence on September 30, 2013, and shall terminate on September 30, 2014 (the "Initial Term"). Upon the end of the initial term this Agreement shall automatically renew for one year terms until terminated by one of the parties upon written notice of termination sixty (60) days prior to the end of the current term.
5. **Fees.**
 - a. Commencing with the August, 2013 payment, made in accordance the Intergovernmental Agreement by the Tribe to the City and each year thereafter that this Agreement is in effect the City upon receipt of the Tribe's annual payment to the City pursuant to the Intergovernmental Agreement, will designate \$50,000 to provide for additional MPD police officers. Upon approval of this Agreement by the parties the Tribe agrees to pay up to \$50,000 for MPD police officers assigned in accordance with this Agreement and each year thereafter that this Agreement is in effect the Tribe agrees to pay up to \$50,000 for MPD police officers assigned in accordance with this Agreement. The monies used for the payment for such services shall be paid first from the monies assigned by the City from the payment made in accordance with the Intergovernmental Agreement, then from any additional grant monies, and finally from the moneys committed by PBC. Costs for such services shall be at the actual overtime rate for each individual police member who provides services at the Entertainment Venue. The Parties understand that such pay rates may be the subject of union negotiations during the Term. As such, the Parties have mutually agreed upon rate caps for each category of employee for each contract year during the Term. As set forth herein, PBC shall remain, at all times during the Term, obligated to pay only the actual overtime rates paid to each individual who performs services at the Entertainment Venue during the Term (regardless of any rate differentials within a classification of employee).
 - b. The caps set forth herein shall represent the maximum rate that PBC shall be obligated to pay each classification of employee during each year during the Term of this Agreement.

	Rate at Time of Execution	2014 Rate Cap
Police Officers	\$51.70	\$53.24
Police Sergeants	\$57.51	\$59.24

- c. In the event that the hourly overtime rates in place at the time of the execution of this Agreement are adjusted in any way, based on a formal agreement between MPD or the City and the relevant unions, PBC must receive notice of such changes in writing, within (5) business days of the change, and all invoices and supporting documentation submitted to PBC must similarly reflect such change. PBC shall be entitled to review the relevant portion of the final agreement entered into between MPD and the relevant union(s) for purposes of verifying wage increases. In no event shall the PBC be responsible for retroactive pay increases.
- d. In the event rate increases for police officers exceed the caps set forth herein, PBC shall have the option to terminate this Agreement within thirty (30) days of receiving written notice of such rate increase, or MPD may elect to continue the Agreement, with PBC paying each category of employee at the cap rate for the relevant classification of employee, for the duration of the Initial Term or the Option Term, as the case may be. In the event PBC elects to terminate this Agreement as provided for in this Paragraph 5(d), any hours worked during the thirty (30) day period after receiving notice shall be compensated at the rate in place immediately before PBC' receipt of such notice.
- e. PBC makes no representation or guarantee as to the total amount to be paid to the City or MPD pursuant to this Agreement.
- 6. Grants.** The parties agree to cooperate in acquiring federal or other grant funds for which PBC is eligible to be used to cover the offset of the \$50,000 payment by PBC.
- 7. Invoices.**
- a. MPD shall be responsible for maintaining complete and accurate books and records of all hours worked by police officers assigned to provide services at the Entertainment Venue, pursuant to this Agreement. PBC shall have the right to request an audit of such books and records at any time during the Term and up to 7 years after the termination of this Agreement.
- b. The City shall submit invoices to PBC on a monthly basis, and such invoices must be received by PBC within seven (7) days of the last day of each month during the Term (e.g., the invoice for services provided in October must be received by the PBC on or before Thursday, November 7, 2013.) All invoices should be sent directly to the attention of
- Potawatomi Bingo Casino
Security Director
1721 W. Canal St.
Milwaukee, Wisconsin 53233
- c. The monthly invoices shall reflect comprehensive information for all police officers assigned to the Entertainment Venue under this Agreement in the previous month. The

invoices shall clearly reflect the following information for each event/date during the immediately prior month:

- i. The relevant special event date;
- ii. The location each such individual was assigned to and worked for such event date (parking lot vs. casino floor);
- iii. The name of each police officer working on the date;
- iv. The actual regular pay rate and overtime pay rate for each individual;
- v. The number of hours worked for each such individual;
- vi. The total amount paid to each such individual for his/her work on the date.

In addition, each monthly invoice should include the total amount charged to PBC for the immediately prior month.

- d. Except as expressly provided for in Paragraph 2 hereof, any and all additional costs associated in any way with the performance of services hereunder, including but not limited to the cost of gasoline for law enforcement vehicles, transportation to and from the Entertainment Venue and standard law enforcement services shall be the sole responsibility of the City or MPD.
- e. Payments shall be made within thirty (30) days of PBC's receipt of an invoice, with payment made payable to:

City of Milwaukee/MPD

and shall be sent to:

**Police Administration Building, Budget & Finance Division
749 West State Street, Room 706
Milwaukee, Wisconsin 53233.**

8. **Confidentiality.** In the course of providing services MPD officers will be exposed to confidential proprietary information belonging to PBC which pertains to the operation of PBC's business, MPD and its assigned officers agree to the extent permitted by law and their employment requirements not to disclose to any third party any confidential information learned by MPD or its officers at any time from PBC. For purposes of this Agreement, "Confidential Information" shall mean any and all information concerning PBC and its operations which is disclosed, made known to, or discovered by MPD and its officers in connection with the services to be performed by MPD hereunder that is not generally available to MPD/officers, including, but not limited to, any information (whether written or oral) made known to MPD/officers (i) from any inspection, examination or review of the books, records, documents, or files made available to MPD by PBC; (ii) from communications with any of PBC's governmental officials, employees, agents, or representatives of PBC; (iii) MPD/officers may also be exposed to marketing and promotional campaigns which PBC desires to keep confidential until announced to the general public. MPD/officers agree to keep all marketing and promotional events confidential until such marketing or promotion is announced to the general public and then

MPD/officers shall only disclose those matters which were made public and maintain the confidentiality of all other information with respect to such marketing or promotion.

Notwithstanding the foregoing, Confidential Information shall not include information that was or becomes publicly known without direct or indirect disclosure by MPD/officers, or which was known by MPD prior to its provision of services to PBC.

9. **Termination.**

- a. MPD may terminate this Agreement with or without cause upon delivery of written notice to PBC specifying that the Agreement shall be terminated as of an effective date no sooner than sixty (60) days following the date such written notice of termination is received by PBC. Upon such termination, the City shall be compensated for all special assignments provided prior to the effective date of termination. PBC may terminate this Agreement with or without cause upon delivery of written notice to MPD specifying that the Agreement shall be terminated as of an effective date no sooner than thirty (30) days following the date such written notice of termination is received by MPD. Upon such termination, the City shall be compensated for all special assignments provided prior to the effective date of termination.
- b. The city may, at its option, terminate this Agreement upon failure of PBC to pay any amounts that may become due hereunder for a period of sixty (60) days following the submission of an appropriate invoice and supporting information, in the manner provided for herein. Upon such termination, the City shall be compensated for all special assignments provided prior to the effective date of termination.
- c. If the City fails to fulfill any of its obligations under this Agreement in a timely and proper manner (including the improper issuance of invoices or supporting documentation), or violates any provision of this Agreement, PBC shall thereafter have the right to terminate this Agreement by written notification delivered to the Chief specifying the alleged violation and the effective date of termination. The Chief shall thereafter have five (5) days to remedy the alleged violation. If the alleged violation is not remedied to the satisfaction of PBC after said five (5) day period, PBC may terminate this Agreement for cause, effective as of such fifth day. As a complete alternative to termination, PBC retain the rights to cancel the termination notice or delay the effective date of the notice of termination beyond the initial five (5) day cure period, or otherwise establish appropriate procedures to avoid future violations. Only in the event that PBC elects to continue under this Agreement shall it be liable to pay for services it believes were improperly performed during such preceding five (5) day period.

10. **Liability.** The City and the PBC, respectively, shall be solely liable for all acts undertaken by their employees, agents and officers. The parties acknowledge that financial and civil liability for the actions and omission of each employee remain vested with its respective employing agency. MPD represents to the PBC that it will, at all times, perform the services described herein in accordance with the code of conduct and all standards, laws and other guidelines applicable to law enforcement officers. In the event an officer is the subject of a complaint or other dispute which may call into question the judgment or quality of services provided by such individual, the Chief will determine what, if any, disciplinary action is appropriate.

11. **Age & Access to Facility.** PBC agrees to provide MPD officers with access to all equipment locations, subject to PBC's reasonable business and security policies, and any

applicable regulatory restrictions governing such access. MPD agrees that all persons providing services on the premises of Entertainment Venue shall be twenty-one (21) years of age or older. All MPD officers furnishing services must check in at the PBC's Security Desk located at the employees entrance on the south west side of the building prior to proceeding to the work site. Officers are prohibited from participating in any gaming while in on duty or in uniform.

12. **Independent Contractor.** The parties are acting herein as independent contractors and independent employers. Nothing herein contained shall create or be construed as creating a partnership, joint venture or agency relationship between the parties and neither party shall have the authority to bind the other in any respect.
13. **Entire Agreement.** This Agreement is the final, complete and exclusive statement and expression of the agreement among the parties hereto with relation to the subject matter of this Agreement, it being understood that there are no oral representations, understandings or agreements covering the same subject matter as this Agreement. This Agreement supersedes, and cannot be varied, contradicted or supplemented by evidence of any prior or contemporaneous discussions, correspondence, or oral or written agreement of any kind.
14. **Modification.** The parties hereto shall not amend, modify or supplement this Agreement, except by written instrument signed by the parties.
15. **Assignment.** This Agreement or any part hereof shall not be assigned or otherwise transferred by either party without the prior written consent of the other party, and any attempted assignment without such written consent shall be null and void, except that PBC may assign this Agreement to any party without the City or MPD's prior written consent provided that contemporaneously with such assignment PBC are merged or consolidated with such assignee or such assignee acquires all or substantially all of the assets of PBC.
16. **Waiver.** A failure of either party to insist upon or enforce any term or provision or to exercise any right, option, or remedy of this Agreement, or to require at any time, performance of any provision hereof shall not be construed as a waiver of any such term or provision. No waiver by either party of any term or provision hereof shall be binding unless made in writing and signed by such party. Nor shall any single or partial exercise of any right or power under this Agreement preclude further exercise thereof of any other right or power.
17. **Severability.** In case any provision of this Agreement shall be invalid, illegal or unenforceable, such provision shall be severed from this Agreement. The validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.
18. **Headings.** The captions used in this Agreement are for convenience only and shall not affect in any way the meaning or interpretation of the provisions set forth herein.
19. **Jurisdiction.** Nothing in this Agreement is intended to create, enhance, expand, reduce or eliminate the law enforcement jurisdiction which the City, Chief and MPD would have in the absence of the Agreement. Nor is anything in this Agreement intended to reduce

or eliminate any rights, jurisdiction, or authority the Tribe or PBC would have in the absence of this Agreement.

20. Applicable Law. This Agreement shall be construed in accordance with the laws of the State of Wisconsin for interpreting ambiguous agreements.

In witness hereof, the parties have executed this Agreement on the day and year first above written.

IN THE PRESENCE OF:

CITY OF MILWAUKEE

Police Chief Edward Flynn

COUNTERSIGNED:

Mike Goodrich, General Manager

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