

**INTERGOVERNMENTAL SERVICE AND DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF MADISON AND THE HO-CHUNK NATION**

This Agreement is entered into, in Madison, Wisconsin, on this 25th day of August, 1998, at 12:00 p.m., by and between the Ho-Chunk Nation ("Nation"), a federally recognized Indian Tribe, with its main administration offices located at West 9814 Airport Road, Black River Falls, Wisconsin 54615, and the City of Madison ("City"), a municipal corporation, organized under the laws of the State of Wisconsin, with its main administrative offices located at 210 Martin Luther King, Jr. Blvd., Madison, Wisconsin 53709. The City and the Tribe shall be collectively referred to in this Agreement as the "Parties."

RECITALS

The following Recitals form the factual basis for the Parties entering into this Agreement:

WHEREAS, the Nation is a federally recognized Indian Tribe organized under Section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. §476, and governed by a Tribal Legislature; and

WHEREAS, pursuant to the provisions of the Indian Reorganization Act, the Nation has adopted a Constitution, which was approved by the Secretary of the Interior on November 1, 1994; and

WHEREAS, pursuant to Article V, Section 2(i), of the Nation's Constitution, the Legislature of the Nation is delegated the authority to "negotiate and enter into treaties, compacts, contracts, and agreements with other governments, organizations, or individuals"; and

WHEREAS, the Nation owns various parcels of property located along Mill Pond, Evans Acres, and Savannah roads on the southeast corner of the intersection of Interstate 90 and U.S. Highway 12-18, in the East ½ of Section 26, Township 7 North, Range 10 East, Dane County, Wisconsin ("Development Area"). The Development Area and the parcels of property owned by the

Nation within the Development Area are depicted on the map of specific location which is hereby incorporated by reference and attached hereto as Exhibit A; and

WHEREAS, the Nation is the beneficial owner of one (1) of the parcels of property within the Development Area title to which is owned by the United States of America in trust for the Nation ("Trust Parcel"); and

WHEREAS, a portion of the Development Area lies within the City and another portion within the Town of Blooming Grove; and

WHEREAS, the Nation, pursuant to its inherent sovereign authority, and the City, pursuant to applicable state law and Public Law 83-280 ("P.L. 280"), both exercise limited criminal and civil jurisdiction on the Trust Parcel; and

WHEREAS, the Nation has constructed a gaming facility ("Facility") on its Trust Parcel and desires that the City provide water, sewer, and storm water management services to the Facility and make certain street and sidewalk improvements to Evans Acres and Savannah roads so that the Nation can open the Facility to the general public; and

WHEREAS, to ensure the Nation's access to municipal services necessary for its Trust Parcel and to assure the City of reasonable compensation for the services provided to the Nation's Trust Parcel, it is to the Parties' mutual benefit and interest to enter into an agreement regarding the provision of and payment for municipal services; and

WHEREAS, the City desires to construct the necessary public improvements and provide the municipal services that would allow the properties within the Development Area to be developed, including allowing the Nation to open its Facility to the general public; and

WHEREAS, in order to ensure that the properties in the Development Area are developed

in a planned, coordinated, effective and cost efficient manner, it is in the best interests of the Parties that the portion of the Development Area lying in the Town of Blooming Grove be annexed to the City and that the Parties, by zoning the Nation's and the City's lands within the Development Area, Planned Unit Development ("PUD Zone"), establish a comprehensive and consistent plan for the development of the Development Area; and

WHEREAS, Section 66.30 of the Wisconsin Statutes authorizes cities to enter into contracts with federally recognized Indian tribes for the purpose of providing governmental services to the tribes and for the purpose of allowing cities and tribes to jointly exercise any power possessed by both entities, required or authorized by law; and

WHEREAS, the Parties, out of mutual respect and recognition of their separate governmental status and authority, desire to enter into this intergovernmental agreement concerning land use, taxation, provision of services and the development of property within the Development Area; and

WHEREAS, it is in the best interests of the Parties to enter into this Agreement for the mutual benefit of the Nation, its Tribal citizens, its property, both fee and trust, and the future patrons of its businesses, and for the benefit of the City, its residents, the property subject to its jurisdiction, and visitors to the City; and

WHEREAS, the Nation and the City have engaged in extensive negotiations and discussions to achieve an agreement that is mutually acceptable and beneficial to both parties.

NOW, THEREFORE, in consideration of the above-recited facts and the mutual promises contained herein, the Parties hereby agree as follows:

AGREEMENT

1. Definitions:

The following words shall have the following meanings when used in this Agreement:

- 1.1 **Agreement.** The word "Agreement" means this Intergovernmental Service and Development Agreement, together with all exhibits appended hereto.
- 1.2 **Construction Contract.** The words "Construction Contract" mean and include the contracts between the City of Madison and any licensed general contractor, any subcontractors, material men, laborers, or any other person or entity for the performance of work on the Public Improvements or the delivery of materials to construct the Public Improvements.
- 1.3 **Effective Date.** The words "Effective Date" mean the date on which the Parties and the Secretary of the Interior, or his designated representative have executed and approved this Agreement.
- 1.4 **Fee Lands.** The words "Fee Lands" mean any land owned by the Nation within the Development Area that is not owned by the United States of America in trust for the Nation.
- 1.5 **Gaming Facility.** The words "Gaming Facility" mean all buildings, improvements and facilities located on the Trust Parcel wherein gaming is intended to be conducted by the Nation.
- 1.6 **Public Improvements.** The words "Public Improvements" or "Improvements" mean and include, without limitation, repair and construction work to all existing and future water pipelines, sewer pipelines and laterals, curb, gutter, sidewalk, street paving, street improvements, lighting, drainage structures, storm sewers, landscaping

and similar construction required by the Plans and Specifications.

1.7 Plans and Specifications. The words "Plans and Specifications" mean the plans and specifications for the development and construction of the Public Improvements which have been prepared by the City and which are hereby incorporated by this reference and attached hereto as Exhibit B, together with such changes and additions as may be approved by the City in writing.

1.8 Trust Lands. The words "Trust Lands" mean all lands owned by the United States in trust for the Nation within the Development Area.

2. Annexation.

Within ninety (90) days from the Effective Date of this Agreement, the Nation agrees that it will file an appropriate petition or petitions with the City Clerk requesting that the City annex all parcels of property presently owned by the Nation within the Town of Blooming Grove and lying within the Development Area to the City. If the Nation acquires any ownership interest in any property within the Development Area lying outside the City limits, the Nation further agrees that it will, within ninety (90) days of acquiring said interest, file an appropriate petition or petitions with the City requesting the City to annex the property into the City. The City, through its legal counsel and City staff, agrees to provide the Nation technical assistance in the preparation of said petition(s) to ensure that said petition(s) meet the requirements imposed by all applicable annexation laws.

3. Prezoning and Zoning by the Nation.

Within sixty (60) days of the Effective Date of this Agreement, the Nation shall pre-zone all of its Trust Lands within the Development Area to the classification of Planned Unit Development ("PUD") under its Zoning Ordinance which is hereby incorporated by this reference and attached

hereto as Exhibit C:

4. Zoning by the City.

Upon annexation of the Nation's Fee Lands into the City, the City shall rezone all of the parcels owned by the City and by the Nation in fee within the Development Area to PUD under the City's current zoning ordinance.

5. Adoption of Development Plan.

In order to ensure and promote cooperative planning of the use and development of all real property within the Development Area, there is hereby created a Joint Planning Committee ("Committee") composed of six (6) members; three appointed by the Nation, two (2) appointed by the Mayor of the City subject to the approval of the City Common Council, and the Director of the City Department of Planning and Development, or his or her designee. Four (4) members, two (2) each representing the Nation and the City, shall be required to constitute a quorum. The Committee so constituted shall meet as necessary, upon the request of either the Nation or the City, and at least biannually and shall be charged with the responsibility of creating and periodically updating a development plan ("Plan") for the Nation's Fee and Trust Land real properties located within the Development Area and the City boundaries. The Committee will provide a forum in which the Nation and the City can meaningfully consult with each other regarding matters set forth within this Agreement, matters which arise as a result of efforts of both Parties to fulfill cooperative joint-planning ideas and wherein meaningful discussion of all issues relevant hereto and of concern between the respective governments may be initiated. The Plan shall consider zoning designations as set out in the Nation's and the City's Zoning Ordinances, and shall take into account the application of the same to the Nation's Trust and Fee Lands considering the unique status and needs.

of the Nation as a sovereign, and the needs of the City as they specifically relate to planning and development and the provision of urban services to all property within the Development Area. In addition, the Plan shall provide that any use of the Nation's Trust Lands as a handgun shop, as defined in ch. 28, Madison General Ordinances, shall be prohibited. The Committee shall forward the Plan(s) and all subsequent amendments thereto to the Nation's Legislature and the City Plan Commission and Common Council for review and adoption. Action on the Plan by the City shall be as required for zoning code amendments pursuant to Section 62.23(7), Wis. Stats. and by the Nation as required by its Zoning Ordinance. Upon approval by both Parties, the Plan shall constitute the zoning classification for all of the Nation's properties located within the Development Area. Each party shall comply with all zoning requirements so established unless an amendment to the Plan is recommended by the Committee and each Party's legislative bodies so approves the recommendation. The Parties agree that such approval shall not be unreasonably withheld or delayed. Amendments to the Plan will only be approved by the Nation under its Zoning Ordinance and its rules and by the City following the procedures for a City zoning code amendment as prescribed by Section 62.23(7), Wis. Stats. and Madison General Ordinances. Until such time as the Plan is approved pertaining to any particular parcel of the Nation's fee land, the current City zoning code provisions shall apply to the Nation's fee lands in the Development Area located within the City.

6. Development and Health Standards.

All development that takes place on any trust land owned by or hereafter acquired by the Nation within the Development Area shall be constructed and maintained in accordance with Chapter 31 of the Madison General Ordinances (entitled "Street Graphics Control Ordinance"), the

development standards set forth in the approved Plan described in section 5 above and in accordance with the Uniform Building, Electrical, Fire, Mechanical and Plumbing Codes, as promulgated and updated from time to time by the International Conference of Building Officials, the Western Fire Chief's Association, and the International Association of Plumbing and Mechanical Officials as adopted and amended from time to time by the Nation pursuant to a duly adopted Ordinance of the Nation, provided, however, that the Nation shall not be obligated to adopt any provision of any of the aforesaid codes that does not have city-wide application. The Nation shall adopt an ordinance establishing minimum standards for the storage, preparation, and serving of food for the purposes of human consumption. Said standards shall meet or exceed the minimum standards established by the State of Wisconsin. All food stored, prepared, or served to the public on any of the Nation's Trust Lands shall be done so in strict conformance with said Ordinance. For purposes of this section, it is agreed that the Nation has constructed its gaming facility on the Trust Parcel in compliance with the intent and City interpretation of ILHR 50-64, because the building incorporates a fire sprinkler system which meets the requirements of NFPA 13 and 25 and provides adequate fire protection for the building and life safety for the occupants. The sprinkler system was designed and installed to protect the superstructure of the roof system, as well as a suppressor in the event of fire and constitutes an alternative to applying a one hour fire protection material on the roof's structural members. The alternative chosen by the Nation, in the opinion of the City Fire Marshall and Inspection Unit Director, meets and exceeds the intent and requirements of the administrative codes enforced by their respective departments. The Nation further agrees that the sprinkler system is the primary fire safety and protection component of its gaming facility and that, prior to occupancy of the facility, the Nation shall properly connect the fire sprinkler system to the improved City public

water supply to be constructed as provided hereinafter in section 10, and the Nation shall thereafter operate and maintain the fire sprinkler system in compliance with NFPA 13 and 25, and that the said sprinkler system shall be in service at all times the gaming facility is occupied.

The Nation agrees that reasonable City access to its Trust Lands and buildings is essential to assure conformance with the applicable codes in this regard and to provide municipal services thereto under this Agreement and hereby grants to necessary City utility personnel, ordinance and administrative code enforcement employees, inspectors and supervisory personnel, a nonrevocable right of access to the Nation's Trust Lands within the Development Area and to all buildings and structures located thereon for the limited purposes of providing municipal services thereto under this Agreement and inspection regarding conformance with the above-referenced codes and ordinances, provided that each said City employee, inspector or supervisor is charged by statute or ordinance with powers or duties involving inspection and enforcement under said laws. The City agrees that it will provide the Nation with notice as required by every applicable City ordinance, departmental policy or procedure prior to any inspection to be carried out on the Nation's Trust Lands or related to any buildings or structures located thereon, except in the event of an emergency which requires immediate action by agents of the City.

The Nation agrees to cooperate with and assist City Public Health officials in any local investigation and control of food-borne infections. Nothing herein shall be deemed or construed as any restriction on or limitation of the authority or rights of commissioned officers of the Madison Police or Fire Departments under P.L. 280 to enter onto the Nation's Trust Lands for the purpose of investigating and enforcing the criminal prohibitory laws of the State of Wisconsin which are applicable on the Nation's Trust Lands.

7. Enforcement of Minor Ordinance Offenses and Cross-deputization.

Until such time as the Nation may adopt comparable substantive ordinances pertaining to the following listed matters, which ordinances may be similar to but no less stringent than those enumerated below, the Nation shall adopt as the Nation's Ordinances the following enumerated Madison General Ordinance Sections, regarding individual conduct and the enforcement thereof, upon the Nation's Trust Lands covered by this Agreement: 1.08, issuance of citations for violations of certain ordinances and providing a schedule of cash deposits; 23.06, damage to property; 23.07, unlawful trespass; 23.11, minors under seventeen not allowed on streets or other public places after certain hours; 23.20, regulations concerning marijuana and cannabis; 23.201, possession of drug paraphernalia; 23.38, purchase or possession of tobacco products by children, except possession of certain religious tobacco by the Nation's members and other Native American children only for the customary practice of their religion; 23.385, restrictions on the sale or gift of cigarettes or tobacco products, except that application of 23.385 shall not be construed to affect any tax rebate entitlement, agreement or any tax immunity of the Nation permitted under federal or state law or agreement with the State of Wisconsin; 23.54, retail theft; 23.56, private parking enforcement; 24.02, disorderly conduct; 24.04, noises disturbing the peace; 24.07, obstruction of buildings; 24.12, menacing or aggressive panhandling; 26.01, exposure of person; 26.04, obscene literature, pictures, etc.; 26.05, exposing minors to harmful materials; 26.06, commercial sexual gratification; 26.08, loitering for purposes of prostitution; 26.085, loitering for purposes of soliciting prostitutes; 26.11, child enticement; 25.01(5), as it relates to possession of a pellet gun; 25.01(12), handgun transfer waiting period; 25.06, discharge of firearm; and any ordinance regulating the sale, purchase, purchase delay, transfer, ownership, use, keeping, possession, bearing, transportation, or taxation of any firearm or

part of a firearm, including ammunition and reloader components, which ordinance is the same as or similar to and no more stringent than a state statute or which is otherwise permitted or not prohibited under state law; 32.05, the public sewerage system; 38.04, as it pertains to the sale, dispensing or giving of any alcohol beverages to any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age or to any intoxicated person, and to the possession or consumption of alcohol beverages by any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age; and Chapter 12 of the Wisconsin Vehicle Code. As used herein, the word "Firearm" shall have the same meaning given in Sec. 167.31(1)(c), Wis. Stats. The Nation's Ordinances shall deputize or designate the Madison Police and Fire Departments as the Nation's Police and Fire Departments; the Madison City Attorney as the Nation's Prosecutor and the Madison Municipal Court as the Nation's tribal court for the sole purpose of enforcing the aforesaid ordinances only on the Nation's Trust Lands within the Development Area until such time as the Nation establishes its own Police Department and Prosecutor's Office ("Law Enforcement Services") that have been authorized by the Nation to exercise jurisdiction and enforce the aforesaid ordinances on the Nation's Trust Lands within the Development Area. After the Nation has established its Law Enforcement Services, the Nation and the City, upon written request from the Nation, shall enter into good faith negotiations for a reasonable period of time in an attempt to conclude a mutual aid and cross-deputization agreement respecting the exercise of jurisdiction within the Development Area by the City and the Nation pertaining to the enforcement of the aforesaid ordinances.

8. Street and Drainage Improvements.

The City shall install public street improvements abutting the Nation's Fee Lands and Trust

Parcel on Savannah Road, Evan Acres Road and Millpond Road in accordance with the Plans and Specifications.

The Nation has requested that the City relocate the intersection of Evan Acres Road and Savannah Road with a 250-foot radius, and additionally has requested that the City relocate the intersection of Savannah Road and Millpond Road in order to provide a free flow of traffic to Savannah Road. The City has agreed to do so, provided the Nation shall dedicate the necessary seventy (70) foot wide right-of-way for the relocation of both intersections as set forth in the Plans and Specifications. Upon the conclusion of construction, the City shall initiate the vacation of surplus lands created by these intersection relocations to the abutting land owners. The City shall also initiate the vacation of the public right-of-way which is dedicated for Evan Acres Road east of Savannah Road, withholding necessary public easements for sanitary sewers, storm sewers and water mains, if applicable. Within sixty (60) days from the Effective Date of this Agreement, the City shall prepare, review, and approve the construction bid documents for the construction of the Improvements called for in the Plans and Specifications ("Construction Contract"). Within twenty (20) days from the date of approval of the construction bid documents, the City shall advertise the Construction Contract in accordance with all applicable federal, state, and City laws and regulations, receive bids, and subsequently award the Construction Contract. Upon award of the Construction Contract, the City shall administer the construction contract, which includes, but is not limited to, the following: (1) reviewing and processing all contractor submittals; (2) preparing and processing all change orders and payment requests; (3) providing all engineering/inspection services during construction; (4) ensuring that the Public Improvements are constructed in accordance with the Plans and Specifications; and (5) upon completion of construction, certifying that all of the Public

Improvements have been constructed in accordance with the Plans and Specifications. The Nation agrees to pay its proportionate share of said street improvement and intersection relocation costs to the City as special assessments levied pursuant to Chapter 4, Madison General Ordinances and Wisconsin Statutes, which assessments shall be a lien on the Nation's benefitting Fee Lands in favor of the City. The Construction Contract shall provide for completion of construction of the Improvements as set forth in the Plans and Specifications within one hundred and eighty (180) days of the effective date of this Agreement and the City's issuance of a notice to proceed and shall impose liquidated damages in an amount to be approved in writing by the City on the construction general contractor for any delay beyond the stipulated completion date. The Construction Contract shall contain a force majeure provision providing for extension caused by weather delays, including, but not limited to, the period from November 1 through March 31. The notice to proceed shall be issued by the City within thirty (30) days from the date of approval of award of the Construction Contract by the City.

The Wisconsin Department of Transportation (WDOT) is in the process of relocating the USH 12 & 18 frontage road (Millpond Road extended) approximately one-quarter mile to the east. The Nation agrees to pay to the City the Nation's proportionate share, as determined by the City, of local costs of the improvements necessary to widen the proposed frontage road beyond the two lanes currently planned.

9. Storm Water Retention.

The Nation shall construct a storm water retention pond ("Pond") on City-owned lands located southeast of and adjacent to the Nation's Trust Parcel, in accordance with plans and specifications jointly prepared by the Nation and the City Engineer and approved by the Common

Council and the Legislature for the Nation. It is understood and agreed that this construction includes construction of main line public storm sewer connecting the City-contracted improvements at the intersection of Savannah and Evan Acres Road to the Pond. This includes approximately 620 linear feet of 48-inch reinforced concrete pipe, 55 linear feet of 38-inch by 60-inch horizontal elliptical reinforced concrete pipe, 100 linear feet of 24-inch reinforced concrete pipe, 3 storm sewer access structures, and one 48-inch concrete apron end. The Pond and accompanying storm sewer structures shall be further detailed on plans approved by the City Engineer and shall allow for private connections thereto from the Nation. Portions of the public storm sewer shall be within a public storm sewer easement across fee lands other than Trust lands. The Pond shall be constructed in accordance with all applicable federal and state laws. The Nation shall pay a one-time only fee in the sum of \$156,000.00 to the City within ninety (90) days of the Effective Date of this Agreement as compensation for the use of City lands for storm water retention purposes, as a result of and benefitting the Nation's development on its Trust Parcel and the proposed five-acre parking lot adjacent thereto.

The City shall manage and maintain the Pond and the storm water run-off which drains to the Pond. The Nation shall pay additional sums, as recommended by the City Engineer and determined by the Board of Public Works, to the City for any future storm water run-off, caused by any future development constructed by the Nation in the Development Area, and which drains into the Pond, and is in excess of any run-off from any development on the Nation's Trust Parcel and the proposed five-acre parking lot adjacent thereto. As an alternative to paying said additional sums, the Nation may provide additional storm water retention capacity on the Nation's lands in conformance with the applicable sections of ch. 37, of the Madison General Ordinances. All

discharges into the Pond shall be in accordance with the City's National Pollutant Discharge Elimination System Permit, as issued by the Wisconsin Department of Natural Resources and the U.S. Environmental Protection Agency, and which may be modified from time to time. The Nation shall also pay additional sums to the City as reimbursement for any costs incurred as a result of any action or omission by the Nation or its agents resulting in the occurrence of any substance in the Pond, whether by spill or otherwise, other than naturally occurring storm water run-off.

10. Water Services.

The City, through its water utility, agrees to extend municipal water service adequate to serve: (1) the Nation's proposed Gaming Facility development on its Trust Parcel and (2) the Development Area located within the City and the former Blooming Grove Sanitary District No. 8 (the "District") in general, including fire protection needs, and to upgrade the existing service provided by the water utility through the facilities of the former District, in accordance with the Plans and Specifications including, but not limited to: a) construction of approximately 4,130 feet of 12-inch water main from the existing main located at Femrite Drive, 400 feet west of Ohmeda Drive, to be extended east to the undeveloped Town of Blooming Grove right-of-way, then south to the existing water system; b) construction of approximately 1,600 feet of 12-inch water main from the aforementioned new main (segment a) under USH 12 & 18, then along and under Long Drive, Millpond Road and Savannah Road past the existing supply well and elevated tank; and c) construction of approximately 1,200 feet of 12 inch water main along and under Savannah Road from the existing supply site to the intersection with the supply main on Evan Acres Road. The City agrees to schedule the water main extension construction so the anticipated completion date will be on or before the date that the street improvements required to be constructed in accordance with

paragraph 8 above are completed, subject however to conditions beyond the control of the City, such as, but not limited to: state and regulatory commission approvals, and adverse weather conditions.

11. Payment of Share of Costs by the Nation to Extend Water Services.

The Nation shall pay the City its assessable share of the cost to construct the Improvements necessary to extend water service to the Nation's Trust Parcel, as specified in the Plans and Specifications, estimated in the amount of One Hundred Sixty-Two Thousand Eight Hundred Dollars (\$162,800.00) and in accordance with the City's standard water main assessment policy and ordinances. The Nation reserves the right to pay said assessments in not more than fifteen (15) equal annual installments, with the first annual installment due on the first day of the first month following the issuance by the City of a notice of completion certifying that the construction of the water service Improvements has been completed in accordance with the Plans and Specifications. The obligation of the Nation to pay its proportionate share of the costs of said water main extension Improvements shall not expire upon the termination of this Agreement.

12. Construction of Improvements on the Nation's Trust Parcel.

The Nation shall construct all private improvements set forth in the Plans and Specifications to be constructed on the Nation's Trust parcel for connection to the City's water, sewer, and storm drain facilities. The City shall have a right of access to the public storm and sanitary sewer easement and to the Nation's Trust Parcel for purposes of inspecting the improvements constructed by the Nation on its Trust Parcel to ensure that the improvements have been constructed in accordance with the Plans and Specifications. During the term of this Agreement, the City shall retain the right, upon at least twenty-four (24) hours notice to the Nation's engineer, to enter onto the Nation's Trust Parcel to inspect the improvements to ensure that the improvements have been maintained by the Nation

and comply with the Plans and Specifications.

13. Application for Water and Sewer.

Within ten (10) days of the Effective Date of this Agreement, the Nation may make application to the City for the water and sewer services contemplated by the Parties under this Agreement on the standard forms provided by the City to the Nation for that purpose and which the City utilizes for approval of all requests for water and sewer services made by the general public. Upon submission of the applications for water and sewer services, the City shall accept and review the application(s) and shall approve the application(s), subject to completion of the water main extension construction described in section 10 above and the Nation's meeting of the conditions and requirements imposed on all other applicants for such service and consistent with all applicable regulations, ordinances, policies and procedures. Upon such conditional approval, water and sewer service shall be provided to the Nation at rates equal to those rates established for the general public utility customers by the Public Service Commission of Wisconsin and the Common Council of the City, subject to all the provisions provided for in the laws, ordinances, rules, regulations, policies and procedures governing service to all other utility customers. If the Nation fails to pay the applicable rates for water and sewer services, or late-payment charges, such late-payment charges not to exceed the maximum allowable by the Public Service Commission of Wisconsin and the Common Council of the City, on any unpaid utility bill balance at the rate normally charged to customers of the City, the City shall have the right to terminate water and sewer service in accordance with the provisions of all applicable City Ordinances. The City shall also have the right to disconnect or refuse water or sewer service for any reason it may lawfully disconnect or refuse service to any other utility customer.

14. Payment of Water and Sewer Fees and Special Assessments.

The Nation shall pay all applicable City water and public sewer fees and special assessments that would be applicable, if the Nation's Trust Parcel was not owned by the United States of America in trust for the Nation. The amount of the water and sewer fees and special assessments ("Fees") and the payment terms for the Fees shall be at the prevailing rates charged and the payment terms offered to all other utility customers who receive water and sewer services. The obligations hereunder to pay such fees and special assessments shall not expire upon termination of this Agreement.

15. Letter of Credit Guarantee.

The Nation shall file with the City Treasurer upon the Effective Date of this Agreement, subject to the approval of the City Attorney, an irrevocable letter of credit from a local issuing or correspondent bank or savings bank in favor of the City for a sum not to exceed a total amount of \$ 113,169.82 to secure payment of special assessments for Public Improvements benefitting the Nation's Trust Lands, plus the amount of one annual base municipal service fee. Drafts shall be honored by the bank within five (5) working days when the City provides evidence to the bank that an official demand by the City has been made to have the Nation pay certain special assessments or assessment installment(s) levied against the Nation's Trust Lands, or any municipal service fee in accordance with the requirements of this Agreement and evidence of the refusal or inability of the Nation to pay said special assessments or assessment installment(s), or municipal service fee. The amount of the letter of credit may be reduced as the Trust Land special assessments or assessment installments are paid, with the approval of the City Attorney; however, the amount shall be increased by the Nation to include annual municipal service base fee increases as provided in this Agreement, and to include the amounts of any future special assessments which the Nation elects to pay in

installments and which benefit the Nation's Trust Lands located in the Development Area.

16. Special Assessments and Storm Water Utility Fees for Future Improvements.

The Nation further consents to the levy of and agrees to pay all future special assessments and storm water utility fees levied by the City Common Council against any of the Nation's Trust Lands within the Development Area, but only after notice and hearing thereon, all in accordance with applicable Wisconsin Statutes and Chapter 4, Madison General Ordinances, which assessments may include, but are not limited to, special assessments for the proportional share of: (1) any other street or intersection improvements; (2) traffic signals; (3) public water mains; (4) public sewer mains; (5) public storm sewer and drainage improvements; (6) street trees; (7) public sidewalks; and (8) street lights. It is further agreed that the Nation's agreement to pay such future special assessments and storm water utility fees for public works improvements levied by the City against the Nation's Trust Lands shall not operate to waive the notice and hearings for such public works projects as required by Wisconsin Statutes. The obligation of the Nation to pay any and all special assessments and storm water utility fees for public improvements under this Agreement shall not expire upon the termination of this Agreement.

17. Municipal Services and Municipal Service Fee on Current Trust Parcel.

The City agrees to provide primary police, hazardous material, fire protection, emergency medical services, street maintenance and repair, street snow-plowing and other standard municipal services, provided to all other parcels of commercial property within the Development Area and also within the City boundaries, including the Nation's Trust Lands, upon the Effective Date of this Agreement. The Nation agrees to pay the City a fee for such services provided in lieu of the City's real estate and personal property taxes that otherwise would have been levied on the property, but

for the fact that the Nation's Trust Lands are exempt from such taxation. The initial 1998 payment shall be one-twelfth (1/12) of the initial annual base fee of \$86,500.00 for each remaining whole and any partial month of calendar year 1998, as of the date the Nation opens its gaming facility on the Trust Parcel to the general public, payable to the City on or before said opening date. Subsequent semi-annual fees, payable in two equal semi-annual installments on or before January 31 and July 31 of each year, respectively, and commencing in calendar year 1999, shall be each one-half of the said initial annual base fee of \$86,500.00, increased or decreased each year by the product of (i) the percentage increase or decrease in the Building Cost Index annual average, published by the Engineering News-Record, or, if there shall be no such Building Cost Index, then by the successor or the most nearly comparable successor index thereto, for the immediately prior year and the year next preceding and (ii) the semi-annual fees applicable for the prior calendar year.

18. Municipal Service Fee for Additional Trust Lands or Further Development of Trust Lands.

In the event that any additional lands within the Development Area are acquired by the United States of America in trust for the benefit of the Nation for gaming or ancillary income generation purposes, the amount of the semi-annual installments for municipal services to the Nation's Trust Lands payable hereunder in the calendar year following such trust acquisition shall be further increased by adding to each installment one-half (1/2) of the product of (i) the pre-trust status assessed market value of such additional lands and any improvements located thereon, if developed, or the assessed market value of such lands, if unimproved, and (ii) the mill rate levied by the City for municipal property tax purposes during the calendar year of the trust acquisition. The Building Cost Index formula set forth above shall then be applied to the increased services fee for

the year following trust acquisition to determine the semi-annual installment amounts for the next and each subsequent year. In the further event that any such unimproved Trust Lands become developed or redeveloped for a more intensive Nation income or revenue generating use, the installments for municipal service in the calendar year following development or redevelopment shall be further increased by adding to each prior year's installment one-half ($\frac{1}{2}$) of the product of: (a) the cost of any new improvements located thereon, less (b) the appraised market value of preexisting improvements removed, if any, and (c) the mill rate levied by the City for municipal property tax purposes in the calendar year during which occupancy of the completed development or redevelopment occurs. The Building Cost Index formula set forth above shall then be applied to the increased services fee for the year following development or redevelopment to determine the semi-annual installment amounts for the next and each subsequent year.

19. Renegotiation and Elimination or Suspension of Indian Gaming.

The parties agree to renegotiate in good faith the foregoing formula for computation of the annual payment for municipal services provided to Trust Lands to equitably reflect: (a) any state legislation or other action that results in significant changes in the use of property taxes to fund local municipal services; (b) any federal or state legislation, constitutional amendment or other regulatory action which is not stayed by legal action or court order and which results in the elimination of both Class II and Class III Indian gaming, as now defined in the Indian Gaming Regulatory Act, 25 U.S.C. §2701 et seq., on Trust Lands within the Development Area; or (c) in the event that any Trust Lands and the improvements and personal property thereon within the Development Area are: (i) not used for any commercial income generation purposes by the Nation, including without limitation, any Class II or Class III Indian gaming or any related parking or other accessory or ancillary use to said

gaming operation, any hotel, amusement park or arcade, gasoline sales or automobile service, restaurant, tavern, bar, gift shop or any other type of sales or service permitted thereon, except the accessory tobacco, gift and food concession income as set forth in the following clause; but (ii) are used exclusively for other tribal governmental or tribal member benefit programs, including without limitation, a cultural center or museum ("non-commercial purposes"). The parties further agree that non-commercial purposes include the ability of the Nation to produce certain income from a cultural center or museum operation which is substantially related to such parcel's governmental or programmatic purpose, such as income produced by admission or performance charges for a cultural center or museum and income of accessory or ancillary tobacco, gift and/or food concession facilities operated in association therewith, limited only as to annual net income from the accessory sale of tobacco products not in excess of the portion of the municipal services fee payable in a given year with respect to the parcel used for such non-commercial purposes. In the further event that the Nation takes unilateral action to suspend all Class II and Class III Indian gaming on the Trust Parcel within the Development Area and the former Gaming Facility on the Trust Parcel is not used for any other commercial revenue generation purposes by the Nation, the semi-annual payments for municipal services hereunder shall be suspended only as to the Trust Parcel on which the Gaming Facility is located, provided that the former Gaming Facility on the Trust Parcel is not used for said Indian gaming purposes or for any other commercial Nation income or revenue generation purposes by the Nation and is used only for other tribal governmental or tribal member benefit programs, consistent with (c) above and the sentence which follows (c), during said period of payment suspension.

20. Contribution to Monona Terrace Community and Convention Center and General Provisions.

Nothing herein shall subject the Nation's Trust Lands, now owned or acquired in the future within the Development Area, to any tax or mill rate including but not limited to, local school tax, VTAE tax, County tax, and other non-City taxes not directly or indirectly related to the provision of services mentioned in this section above; provided however, the Nation does additionally agree to pay to the City Treasurer a contribution towards the equipping, operation and improvement of the Monona Terrace Community and Convention Center and for local visitor, tourism and convention promotion, as more fully set out below, at the rate of eight percent (8%), or such lower rate as may from time to time be imposed under the City's hotel and motel room tax, on the gross receipts for all hotel or motel rooms located on the Nation's Trust Lands located in the Development Area; said contribution shall be paid quarterly and distributed by the City with eleven-sixteenths (11/16) allocated to the City's cost of equipping, operating and improving the Monona Terrace Community and Convention Center and five-sixteenths (5/16) allocated for local visitor, tourism and convention promotion; provided further, however, that the Nation's obligation to make such contributions shall cease if the City's hotel and motel room tax is repealed or ceases to be used solely for equipping, operating and improving the Monona Terrace Community and Convention Center and local visitor tourism and convention promotion. The Nation shall have the right to audit the use of its contribution to assure that it is being utilized for the purposes stated herein. This section applies only to the Nation's Trust Lands within the Development Area and any improvements now or hereafter constructed thereon; provided that it shall apply to Trust Lands within the Development Area only after legal annexation is complete. All other Nation-owned Fee Lands within the

Development Area and located within the City shall be provided with the full range of municipal services and be subject to the same real estate property, personal property and room tax assessments, levies, payments, liens, procedures and laws as all other privately owned real estate.

21. Refuse Collection.

The Nation agrees that it will contract for or provide its own refuse collection and disposal service for all Trust and Fee Lands owned by the Nation within the Development Area.

22. Future Water Easement.

The Nation agrees to grant a future 20-foot wide public water main easement and an adjacent 30-foot wide temporary construction easement, at no cost to the City, at a location to be determined by the parties and, if on trust lands, subject to the approval of the United States Department of the Interior. The easement will run from approximately the intersection of Savannah and Evan Acres Roads to the I-90 right-of-way. This easement is for future looping of the water main system. The Nation further agrees to cooperate with the City on extension and location of utilities and further agrees to grant the City such other public utility easements as are reasonably necessary to serve development within the Development Area, subject to the approval of the United States Department of the Interior, if located on Trust Lands.

23. Limited Waiver of Sovereign Immunity.

23.1 Meet and Confer. Whenever, during the term of this Agreement, any disagreement or dispute arises between the parties as to the interpretation of this Agreement or any rights or obligations arising thereunder, all such matters shall be resolved, whenever possible, by meeting and conferring. Any party may request such a meeting by giving notice to the other, in which case such other party shall make itself available within seven (7) days thereafter.

If such matters cannot be so resolved within ten (10) days after the longer of giving such notice to confer or conferring which has commenced within seven (7) days of giving such notice, or for matters involving immediate threat to public health or safety without any requirement to meet and confer, either party may seek judicial enforcement of the this Agreement as provided in paragraph 23.2 below.

23.2 Parties' Limited Waiver of Sovereign Immunity. By this Agreement, the Nation does not waive, limit, or modify its sovereign immunity from unconsented suit, except as expressly provided herein. The Nation expressly waives for the City only, in a limited manner, its immunity from suit, and the City expressly waives for the Nation only, in a limited manner, any governmental immunity from suit it may possess, in accordance with the following provisions. Either Party may commence an action or counterclaim against the other in the United States District Court for the Western District of Wisconsin or the Wisconsin Circuit Court for Dane County with respect to disputes arising out of or relating to this Agreement. The Parties agree that, whenever arguments for federal jurisdiction can be made consistent with the requirements of Federal Rule of Civil Procedure 11, they shall file any such actions in the United States District Court for the Western District of Wisconsin. The Parties' waiver of sovereign or governmental immunity provided herein is specifically limited to the following actions and judicial remedies: (1) declaratory relief to determine whether either Party or both are violating any of the terms of this Agreement; (2) equitable relief to compel the Party or Parties to specifically perform their obligations under this Agreement; and (3) monetary relief, limited to the award of any sums that may be due and owing under the terms of this Agreement. A prevailing party shall further be entitled to

enforce any equitable relief granted by court order or injunction and enforce, execute upon and obtain satisfaction of any resulting monetary judgment through any remedy which that party would be able to invoke if the other party were an entity that did not enjoy sovereign or governmental immunity (including, but not limited to the remedies of attachment and foreclosure), provided that nothing in this waiver shall authorize the imposition of any encumbrances upon any of the Nation's Trust Lands.

23.3 Service of Process and Notices. If either Party initiates any legal action to enforce the provisions of this Agreement, the Parties agree, and do hereby expressly authorize the City Clerk of the City, on behalf of the City, and the Secretary to the Legislature for the Nation, on behalf of the Nation, to accept service of process. In addition, the Nation expressly gives its consent to any process server authorized by the City to come onto the Nation's Trust Lands where the Nation's Administrative governmental offices are located for the sole purpose of personally serving the Secretary to the Legislature with the process authorized herein. Until otherwise provided by the respective Parties, all notices or other communications required under this Agreement, directly or indirectly, shall be sufficiently given when hand-delivered to the appropriate person or office in the same manner as for service of process or when faxed or mailed by certified mail, postage prepaid, or by overnight commercial courier, addressed as follows:

To the Nation:

Ho-Chunk Nation
West 9814 Airport Road
Black River Falls, Wisconsin 54615
Fax Number--(715) 284-3172

To the City:

City of Madison Clerk
210 Martin Luther King, Jr. Blvd.
Madison, Wisconsin 53709
Fax Number--(608) 266-4666

23.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin, without reference to principles of conflicts of laws. The Nation specifically waives any law, ordinance or custom of the Nation that might otherwise apply to the construction of this Agreement or to the determination of the Parties' rights, obligations, or remedies arising hereunder.

23.5 Exclusive Remedy. The Parties agree that the dispute resolution procedures set forth in this paragraph 23 of this Agreement shall provide the exclusive means for resolving any disputes arising out of or relating to this Agreement. The Parties specifically waive any present or future right that they may have to submit disputes arising out of or relating to this Agreement to any tribal, state, or federal court, agency, or other forum, except as expressly provided in paragraph 23.2 above.

23.6 Exhaustion of Remedies. The Parties do hereby unconditionally waive any right to require any exhaustion of state or tribal administrative or judicial remedies in any manner other than as set forth in this paragraph 23 of this Agreement.

24. Non-Discrimination.

In the performance of the services under this Agreement, the Parties agree not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, handicap, national origin, or ancestry, income level, or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, or student

status. The Parties further agree not to discriminate against any subcontractor or person who offers to subcontract because of race, religion, color, age, disability, sex or national origin. Nothing herein shall invalidate or limit any Indian Preference program of the Nation authorized or permitted under federal law, or hiring requirements and limitations imposed on the Nation by the Indian Gaming Regulatory Act, 25 U.S.C. §2701 et. seq. ("IGRA").

25. Term.

- a. **Initial Term.** This Agreement shall remain in effect for an initial term of fifteen (15) years, subject to renewal as hereinafter provided, unless terminated by mutual written agreement of the Parties, except that any federal or state legislation, constitutional amendment or other regulatory action which is not stayed by legal action or court order and which results in the elimination of both Class II and Class III Indian gaming, as now defined in the IGRA, on any of the Nation's Trust Lands within the Development Area, shall operate hereunder, at the option of the Nation, to effectively amend the initial or any renewal term of this Agreement to end upon the effective date of the said elimination of Indian gaming on said Trust Lands.
- b. **Renewal terms.** The Parties further agree to renegotiate three (3) additional fifteen (15) year renewal terms, the first prior to the conclusion of the initial term, the second prior to the conclusion of the first renewal term and the third prior to the conclusion of the second renewal term, or, in any case, the next such renewal following the elimination of Indian gaming on the Nation's Trust Lands under the above-stated exception. The renegotiation of said renewal terms shall commence diligently and in good faith at least six (6) months prior to the conclusion of the

initial term or respective renewal term, or as soon as possible under the gaming elimination exception set forth in subsection 25.a. above. Renegotiation of an agreement for the respective renewal term shall include all of the applicable provisions of this Agreement or any renewal thereof at the conclusion of the respective prior term; and, until the Parties agree to a replacement agreement for the respective renewal term, all applicable provisions of this Agreement or any renewal thereof, including, but not limited to, zoning regulation, code and ordinance compliance, provision of municipal services and payment therefore under section 17, payment of contributions for the Monona Terrace Convention Center and visitor and tourism and convention promotion, and the dispute resolution section, shall operate and remain in effect indefinitely, until a replacement agreement can be negotiated and executed by the Parties and approved by the Secretary of the Interior, or his or her designated representative, or other successor federal approval authority as may be required by law. The Parties further agree that in the absence of such replacement agreement when the term of this Agreement is ended by elimination of Indian gaming on the Nation's Trust Lands under the above-stated exception, the payment for municipal services shall not be increased by the formula as applied in section 17 above, but shall remain that amount in effect when Class II and Class III gaming is eliminated until such replacement agreement can be negotiated by the Parties. The Parties further agree that it is their intent that should there be a need for municipal services to the Nation's trust lands following the conclusion of the third renewal term provided above, the Parties will in good faith negotiate an appropriate replacement

agreement to provide therefore.

- c. **Suspension of Indian gaming.** In the further event that the Nation takes unilateral action to suspend all Class II and Class III Indian gaming on the Nation's Trust Parcel within the Development Area, then the Nation's Payment for municipal services for said Trust Parcel shall be suspended, provided that the former Gaming Facility or the Trust Parcel is not used for Indian gaming purposes or any other commercial income or revenue generation purposes during said period.
- d. **Breach or violation of Agreement.** No breach or violation of any of the terms of this Agreement by either Party shall operate to void or terminate this Agreement, it being the intent of the Parties that any such breach or violation shall only be redressed, enjoined or otherwise remedied by exercise of the enforcement remedies set forth in section 23 of this Agreement. Notwithstanding the foregoing, in the event the Nation shall completely divest itself and any of its corporations of any interest in any real property subject to this Agreement, the provisions of this Agreement shall not transfer to the benefit nor detriment of any subsequent arm's length fee title holder. Nothing herein shall be deemed or construed as any restriction on or limitation of the authority or rights of commissioned officers of the Madison Police or Fire Departments under P.L. 280 to enter onto the Nation's Trust Lands for the purpose of investigating and enforcing the criminal prohibitory laws of the State of Wisconsin which are applicable on the Nation's Trust Lands.
- e. **Public Improvement Assessments and Public Utility Fees Not to Expire.** No termination of this Agreement shall operate to eliminate or reduce the obligation of

the Nation to pay all outstanding special assessments for public improvements and all applicable City water and public sanitary sewer and storm water utility customer fees and storm water detention fees as provided elsewhere herein.

26. No Third Party Beneficiary.

This Agreement is intended to be solely between the City and the Nation. Nothing in this Agreement accords any third party beneficiary rights whatsoever on any nonparty that may be enforced by any nonparty to this Agreement.

27. Waiver of Certain Governmental Powers.

The Nation agrees that it will not seek to impose any taxes, licensing requirements, or other regulations upon the City or the City's employees or agents with respect to any of the services or Public Improvements provided to the Nation pursuant to this Agreement.

28. Governmental Authority.

Each Party certifies that it possesses legal authority to enter into this Agreement; and that a resolution, motion or similar action has been duly adopted or passed as an official act of the Party's governing body, authorizing the execution of this Agreement and directing and authorizing its representatives and agents to act in the fulfillment of and compliance with the requirements and provisions of this Agreement. Contemporaneous with the execution of this Agreement, and as a condition of the Parties' responsibilities hereunder, each Party shall deliver to the other the opinion of that Party's legal counsel reasonably satisfactory to the other Party that this Agreement has been duly executed on behalf of the Party; that the execution, delivery and performance of this Agreement by the Party has been duly authorized by all necessary governmental action of the Party; and that this Agreement is the legal, valid and binding obligation of the Party enforceable against that Party in

accordance with its terms.

29. Entire Agreement.

This Agreement represents the entire integrated agreement between the Parties and supersedes all prior negotiations, representations or agreements, either written or oral, and is intended to fully bind both Parties upon its approval by the Nation's Legislature and the City Common Council, its execution by both Parties and its subsequent approval by or on behalf of the Secretary of the Department of the Interior of the United States of America, as required by federal law. This Agreement may be used in litigation or other proceeding and may be introduced into evidence by either Party in any action to enforce the terms of this Agreement. Except as otherwise provided in this Agreement, this Agreement may be modified, amended or altered only by mutual agreement of the Parties in writing which is approved as set forth above for this Agreement. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

30. Severability.

If any clause, provision or section of this Agreement is ruled invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any of the remaining clauses, provisions or sections of this Agreement. However, in the event a court so invalidates any clause, provision or section of this Agreement, the Parties agree to promptly negotiate in good faith for a replacement clause, provision or section that will meet the court's objections while implementing, to the extent possible, the Parties' original intentions.

31. Compliance with Section 81.

The Parties mutually agree that this Agreement meets all of the requirements of Title 25 of

the United States Code §81 and that this Agreement was executed in strict compliance with said section. The Parties, being governmental entities, have no residence or occupation. The names and addresses of the Parties is set forth above in the first paragraph of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers and their seals to be affixed as of the day and year first above written.

HO-CHUNK NATION, a federally
recognized Indian tribe:

By: Jacob H. Lonetree
Jacob Lonetree, President
Ho-Chunk Nation

Marlene Gamroth
Marlene Gamroth, Legislative Secretary (Acting)
Ho-Chunk Nation Legislature

CITY OF MADISON, a Dane County,
Wisconsin, municipal corporation:

Countersigned:

Gale Dushack
Gale Dushack, City Comptroller

Approved as to form:

Eunice Gibson
Eunice Gibson, City Attorney
8/25/98

By: Susan J. M. Bauman
Susan J. M. Bauman, Mayor

Ray Fisher
Ray Fisher, City Clerk

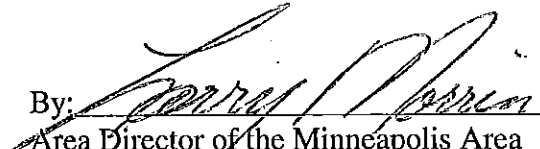
SECTION 81 APPROVAL

The undersigned finds that this Intergovernmental Service and Development Agreement between the City of Madison and the Ho-Chunk Nation complies with and satisfies the requirements of 25 U.S.C. §81. Accordingly, pursuant to the authority delegated to me by 290 DM8 and 10 BIAM 3, the undersigned hereby approves this Agreement.

APPROVED this 10 day of September, 1998.

**UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS:**

Dated: 9-10-98

By: 
Area Director of the Minneapolis Area
Office of the Bureau of Indian Affairs for
the Secretary of the Interior and the
Commissioner of Indian Affairs, acting
under delegated authority.