

Form approved by Tribal Council \_\_\_/\_\_\_/\_\_\_  
Initial if procurement requirement met \_\_\_\_\_  
Initial if Legal Dept. review requirement met \_\_\_\_\_  
Other review: \_\_\_\_\_

**AGREEMENT  
BETWEEN OWNER AND CONTRACTOR**

CONSTRUCTION CONTRACT

This Agreement made the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, by and between \_\_\_\_\_, hereinafter called the Contractor, and the Bad River Band of the Lake Superior Tribe of Chippewa Indians, hereinafter called the Owner,

WITNESSETH, that the Contractor and the Owner for the consideration hereinafter named agree as follows:

ARTICLE 1. SCOPE OF WORK: The Contractor shall furnish all of the materials and perform all of the work shown on the drawings and described in the specifications for the project entitled: \_\_\_\_\_ (Project No. \_\_\_\_\_). These drawings and specifications are prepared for the Bad River Band of the Lake Superior Tribe of Chippewa Indians by \_\_\_\_\_, acting as and in these Contract Documents entitled the Project Architect. The Contractor shall do everything required by this Agreement, the General and Supplementary Conditions of the Contract, the Special Conditions, the Addenda, the Specifications, the Drawings, the Tribal Employment Rights Policy Compliance Plan, and the Proposal attached as **Exhibit 1** (including any unit prices stated therein).

The Specifications and Drawings are enumerated as follows:

DRAWINGS: Attached as **Exhibit 2**

SPECIFICATIONS: Attached as **Exhibit 1**

ADDENDA:

ALTERNATES: The following Alternate Proposals, fully described in the Specifications, are included as a part of this Contract: \_\_\_\_\_.

ARTICLE 2. TIME OF COMPLETION: The Owner shall provide a Notice to Proceed in which a date for commencement of the work shall be stated; such commencement date shall be 10 or more days after the date of the notice. The Contractor shall achieve substantial completion of the work within \_\_\_\_\_ (\_\_\_\_) calendar days after such commencement date, as such completion date may be extended by approved Change Orders. The time set forth for completion of the work is an essential element of the Contract.

ARTICLE 3. THE CONTRACT SUM: The Owner shall pay the Contractor for performance of the Contract, subject to additions and deductions provided therein, the sum of \_\_\_\_\_ (\$ .00), and make payment in accordance with the payment schedule.

ARTICLE 4. TRIBAL EMPLOYMENT RIGHTS POLICY COMPLIANCE PLAN: The Owner has adopted the Tribal Employment Rights Policy Compliance Plan, which is incorporated herein by reference. Contractor, as a provision of the Agreement must comply with the requirements of the Policy and adhere to the Compliance Plan attached as **Exhibit 3**. No changes to the Compliance Plan can be made by the Contractor without the prior written approval of the Owner in accordance with the Policy.

~~ARTICLE 5. PAYMENT FOR LABOR AND MATERIAL:~~ The Contractor specifically agrees to pay for all claims for labor performed at rates at least equal to the prevailing federal wage rates compliant with the Davis-Bacon Act of August 21, 2002 as amended. The contractor also agrees to provide the materials furnished, used or consumed in completing the foregoing contract together with all equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the work, as the obligation of the Contractor.

~~Prime Contractor Affidavit of Compliance with Prevailing Wage Determination.~~ The Contractor agrees to submit to Owner prior to final payment, a Prime Contractor Affidavit of Compliance with Prevailing Wage Rate Determination. This Affidavit must be filed by all Contractors who are subject to the prevailing wage laws.

~~Sub-Contractors must file Agent or Subcontractor Affidavit of Compliance with Prevailing Wage Rate Determination with Owner's Contractor. The Contractor must supply Owner with a copy prior to final payment.~~

ARTICLE 6. LIQUIDATED DAMAGES: For each consecutive calendar day after the substantial completion period set forth in Article 2 above that any work, including the correction of deficiencies found during the final testing and inspection, is not completed, the amount of \_\_\_\_\_ (\$ .00) will be deducted from the money due or becomes due the Contractor, not as a penalty but as liquidated damages representing the parties' estimate at the time of contract execution of the damages which the Owner will sustain for late completion.

ARTICLE 7. ACCEPTANCE OF BID OR AWARD OF CONTRACT: By signing this Agreement, the undersigned certifies as follows:

Assignment. This Agreement is a personal service contract for the services of Construction, and Contractor's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party.

Records of expenses pertaining to Additional Services and services performed on the basis of a Worker Wage Rate or Monthly Salary Rate shall be kept on the basis of generally accepted accounting principles and in accordance with cost accounting standards promulgated by the Federal Office of Management and Budget Cost Accounting Standards Board and shall be available for audit by the Owner or the Owner's authorized representative on reasonable notice.

Entire Agreement; Modifications. This Agreement supersedes all prior agreements, written or oral, between Contractor and Owner and shall constitute the entire Agreement and understanding between the parties with respect to the Project. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Contractor and Owner.

Captions. The captions of paragraphs in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

Governing Law and Venue. This Agreement and all of the rights and obligations of the parties and all of the terms and conditions shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the Bad River Band of the Lake Superior Tribe of Chippewa Indians without reference to its conflicts of law provisions. The Bad River Reservation at Odanah, Wisconsin shall be the sole place of venue for any legal action arising from or related to this Agreement or the Project in which the Owner is a party.

Waivers. No delay or omission by either party in exercising any right or power arising from non compliance or failure of performance by the other party with any of the provisions of this Agreement shall impair or constitute a waiver of any such right or power. A waiver by either party of any covenant or condition of this Agreement shall not be construed as a waiver of any subsequent breach of that or of any other covenant or condition of the Agreement.

Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted assigns and successors.

Appointment. Owner hereby expressly reserves the right from time to time to designate by notice to Contractor a representative(s) to act partially or wholly for Owner in connection with the performance of Owner's obligations. Contractor shall act only upon instructions from the designated representative(s) unless otherwise specifically notified to the contrary.

Records. Records of Contractor's costs, reimbursable expenses pertaining to the Project and payments shall be available to Owner or its authorized representative during business hours and shall be retained for four (4) years after final Payment or abandonment of the Project, unless Owner otherwise instructs Contractor in writing.

Notices. All notices, consents, approvals, demands, requests or other communications relied on by the parties shall be in writing. Written notice shall be deemed to have been given when delivered in person to the designated representative of the Contractor or Owner for whom it is intended; or sent by U. S. Mail to the last known business address of the designated representative; or transmitted by fax machine to the last know business fax number of the designated representative.

Mail notices are deemed effective upon receipt or on the third business day after the date of mailing, whichever is sooner. Fax notices are deemed effective the next business day after faxing.

Severability. Should any term or provision of this Agreement be held invalid or unenforceable in any respect, the remaining terms and provisions shall not be affected and this Agreement shall be construed as if the invalid or unenforceable term or provision had never been included.

Ethics Matters/No Financial Interest. Contractor and its employees, agents, representatives and subcontractors have read and understand Owner's Conflicts of Interest Policy available at Chapter 920 of the Bad River Band of the Lake Superior Tribe of Chippewa Indians' Tribal Court Code. Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause Owner's employees to violate Owner's Conflicts of Interest Policy. Contractor represents and warrants that no officer, committee or its members, employees or agents of Owner has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

BY SIGNING BELOW, the Parties have executed and bound themselves to this Agreement as of the day and year first above written.

(Contractor)

By: \_\_\_\_\_  
(original signature)  
\_\_\_\_\_  
(name and title typed)  
\_\_\_\_\_  
\_\_\_\_\_  
(address)  
\_\_\_\_\_  
(telephone)

Date: \_\_\_\_\_

BAD RIVER BAND OF THE LAKE  
SUPERIOR TRIBE OF CHIPPEWA  
INDIANS  
(Owner)

By: \_\_\_\_\_  
(original signature)

Name:  
Title:

Date: \_\_\_\_\_