

**AGREEMENT REGARDING TOURISM PROMOTION AND ROOM TAX  
BETWEEN THE MENOMINEE INDIAN TRIBE OF WISCONSIN, THE MENOMINEE  
KENOSHA  
GAMING AUTHORITY AND THE  
KENOSHA AREA TOURISM CORPORATION**

This Agreement is entered into by and between the MENOMINEE INDIAN TRIBE OF WISCONSIN, a federally recognized Indian tribe (the “Tribe”), the MENOMINEE KENOSHA GAMING AUTHORITY, (hereinafter the “Authority”) a gaming entity formed by the Tribe and the KENOSHA AREA TOURISM CORPORATION, a non-stock, non-profit corporation formed under the provisions of Chapter 181 of the Wisconsin Statutes, (hereinafter the “Bureau”) (collectively, the “Parties” or a “Party”).

WITNESSETH:

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

WHEREAS, the Tribe will enact a room tax ordinance at the Facility; and

WHEREAS, tourist trade at the Facility will be a significant part of the income of the Authority and the continuing growth of such trade is necessary for the economic well-being of the entire Tribe; and

WHEREAS, the general mission of the Bureau is to stimulate the growth of the local visitor and tourism industry by providing visitor services and marketing and public relation services to its member municipalities; and

WHEREAS, the Bureau, through its marketed name of the Kenosha Area Convention & Visitors Bureau operates to raise the awareness and profile of the Bureau’s member municipalities within the Kenosha, Wisconsin region, both internally and externally, and to support the development of tourism attractions, events, and other related visitor infrastructure; and

WHEREAS, the Tribe, the Authority and the Bureau desire to enter into an Agreement under which the Bureau will perform certain services in promoting tourism for the benefit of the Tribe and the Authority at the Facility; and

WHEREAS, it is in the best interest of the Tribe, the Authority and the Bureau that a long-term relationship be established among the Parties;

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

I. SCOPE OF SERVICES

The Bureau shall provide all services and materials reasonably necessary and proper, in the Bureau's opinion, to successfully promote and attract convention and leisure tourism trade to the Tribe and the Authority for the Facility, including a professionally trained staff, public relations, marketing, visitor services, adequate accounting services, promotional and advertising material and services, and administrative oversight of tourism programs. These services will be provided in conjunction with and at a level commensurate with services provided to the Bureau's member municipalities in the Kenosha area, and at a professional level commensurate with industry standards.

## II. DUTIES OF THE BUREAU

- A. The Bureau agrees that it shall prepare and provide to the Authority an annual report on or before May 15<sup>th</sup> of each year, during the term of this Agreement.
- B. The Bureau shall cause an annual financial audit to be conducted by an independent, certified public accountant, a bound copy of which shall be provided to each member of the Bureau's Board of Directors.
- C. The Bureau shall provide to the Authority an Annual Business Plan, approved by the Bureau's Board of Directors that includes the goals, objectives, and the promotional calendar which explains all Bureau tourism programs and benefits to the Authority and all of the Bureau's member municipalities.

## III. GOVERNANCE OF THE BUREAU

The Authority shall designate an individual to serve on the Bureau's Board of Directors. The individual designated by the Authority under this Section shall begin the individual's service on the Bureau's Board of Directors when one or more entities subject to the Tribe's room tax ordinance is operating at the Facility and the individual has been appointed by a member municipality and the individual shall continue to serve as a director during the term of this Agreement and for so long as one or more entities subject to the Tribe's room tax ordinance is operating at the Facility. The Authority shall designate such individual at least sixty (60) days prior to the commencement of operations of an entity subject to the tax imposed under Section VI of this Agreement. The Authority may change its designee to the Bureau's Board of Director's by providing written notice of such change to the Bureau's Board of Directors and the member municipality making the appointment.

## IV. REPRESENTATIONS OF THE PARTIES

- A. The Bureau represents that the Bureau is a duly organized corporation under Chapter 181 of the Wisconsin Statutes and has the necessary authority to enter into this Agreement and be subject to its terms.
- B. The Authority represents that it is a duly organized entity under tribal law and has the necessary authority to enter into this Agreement and be subject to its terms.

- C. The Tribe represents that it is a federally recognized Indian tribe and has the necessary authority to enter into this Agreement and be subject to its terms.

#### V. PAYMENT BY AUTHORITY FOR SERVICES PROVIDED

- A. In exchange for the services to be provided by the Bureau under this Agreement, the Authority shall make monthly payments to the Bureau equal to ninety percent (90%) of the room tax collected by the Authority pursuant to the Tribe's room tax ordinance. Such payments shall be made in accordance with the payment schedule in Appendix A to this Agreement. The first payment from the Authority shall be made when the individual designated by the Authority to serve on the Bureau's Board of Directors under Section III of this Agreement has been appointed by the Mayor of the City of Kenosha and confirmed by the Common Council of the City of Kenosha. In the event that the Authority fails to designate an individual at least sixty (60) days prior to the commencement of operations of an entity subject to the tax imposed under Section VI of this Agreement, the first payment shall otherwise be made in accordance with the payment schedule in Appendix A to this Agreement.
- B. In order to ensure that an appropriate amount of room tax is collected by the Authority and paid to the Bureau, the Authority shall file a hotel/motel room tax return, in a form substantially similar to the form attached as Exhibit B to this Agreement, with the Bureau concurrent with the payment of room tax to the Bureau.
- C. The Authority shall cause an annual financial audit to be conducted by hotel/motel operator or franchisee at the Facility by an independent, certified public accountant within one hundred eighty (180) days after the end of such hotel/motel operator or franchisee's fiscal year. Such audit shall be delivered to the Bureau within fifteen (15) days of the completion and delivery of the audit to such hotel/motel operator or franchisee. If the audit determines that the room tax has been incorrectly calculated and paid, the Authority shall adjust the next monthly payment accordingly.
- D. All unpaid amounts of room tax provided under Section V(A) of this Agreement shall bear interest at the rate of twelve percent (12%) per annum from the due date of the return until the first day of the month following the month in which the tax is paid to the Bureau.
- E. The Bureau shall be permitted to audit room tax collections of the Authority from time to time upon reasonable notice to and at the expense of the Bureau.

#### VI. TRIBE TO MAINTAIN ROOM TAX

The Tribe shall enact and maintain, during the term of this Agreement, a room tax that equals the room tax imposed by the City of Kenosha.

#### VII. TERM

The term of this Agreement shall continue in perpetuity for so long as the Tribe or the Authority (or the Tribe's or the Authority's successors or assigns) operates, authorizes or permits a hotel or motel at the Facility.

#### VIII. DEFAULT

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

#### IX. LIMITED WAIVER OF TRIBAL IMMUNITY

The Authority agrees to waive any sovereign immunity enjoyed by the Authority to enforce any dispute or claim arising under this Agreement. The Authority consents to be sued in the United States District Court for the Eastern District of Wisconsin, the Seventh Circuit Court of Appeals, and the United States Supreme Court in connection with such disputes or claims. If such federal courts will not hear a dispute or claim arising under this Agreement, the Authority consents to be sued in the State Circuit Court for Kenosha County, the State Court of Appeals and the State Supreme Court in connection with such disputes or claims. No Party to this Agreement shall contest jurisdiction or venue of the above-referenced courts or an arbitration proceeding under this Agreement. The Authority shall not invoke the doctrine of exhaustion of tribal or other administrative remedies to defeat or delay such jurisdiction or proceeding. Pursuant to Article XIII, Section 4(c) of the Tribe's constitution, in any suit against the Tribe or the Authority for monetary damages, the parties to this Agreement agree that such damages shall be limited to the undistributed or future net revenues or other assets of the Authority and/or other tribal gaming businesses established for the purposes of owning and operating the Facility.

#### X. TRIBE TO GUARANTEE AUTHORITY'S PERFORMANCE

The Tribe agrees that the Tribe will guarantee the performance of any obligation of the Authority under this Agreement and either perform such obligation or cause its performance by the Authority within thirty (30) days of receipt of notice from the Bureau of the Authority's failure to perform any such obligation.

To allow the Bureau to enforce the Tribe's guarantee, the Tribe consents to be sued in the United States District Court for the Eastern District of Wisconsin, the Seventh Circuit Court of

Appeals, and the United States Supreme Court in connection with such disputes or claims. If such federal courts will not hear a dispute or claim arising under this Agreement, the Tribe consents to be sued in the State Circuit Court for Kenosha County, the State Court of Appeals and the State Supreme Court in connection with such disputes or claims. No Party to this Agreement shall contest jurisdiction or venue of the above-referenced courts or an arbitration proceeding under this Agreement. The Tribe shall not invoke the doctrine of exhaustion of tribal or other administrative remedies to defeat or delay such jurisdiction or proceeding. Pursuant to Article XIII, Section 4(c) of the Tribe's constitution, in any suit against the Tribe or the Authority for monetary damages, the parties to this Agreement agree that such damages shall be limited to the undistributed or future net revenues or other assets of the Authority and/or other tribal gaming businesses established for the purposes of owning and operating the Facility.

#### XI. TERMINATION

This Agreement may be terminated upon the occurrence of any of the following:

1. By mutual agreement of the Parties,
2. Upon dissolution of the Bureau,
3. If the City of Kenosha repeals its room tax,
4. If the City of Kenosha withdraws from the Bureau.

#### XII. SPECIFIC PERFORMANCE

Except as provided in this Section, no default or violation of any of the terms of this Agreement by any of the Parties shall operate to void or terminate or provide grounds for termination of this Agreement, it being the intent of the parties that the provisions of this Agreement shall be subject to specific performance or any other remedy at law or equity.

#### XIII. CONTROLLING LAW

This Agreement shall be interpreted pursuant to the laws of the State of Wisconsin. The venue for any suit brought with respect to or arising out of this Agreement shall be in the United States District Court for the Eastern District of Wisconsin, the Seventh Circuit Court of Appeals, and the United States Supreme Court, or if such federal courts shall not hear disputes related to this Agreement, in the State Circuit Court for Kenosha County, the State Court of Appeals and the State Supreme Court.

#### XIV. SUCCESSORS AND ASSIGNS

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

#### XV. NON-ASSIGNABILITY

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

#### XVI. ENTIRE AGREEMENT

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

#### XVII. STATUS OF PARTIES

This Agreement shall not constitute a partnership, joint venture or similar arrangement. The Parties hereto are separate and distinct entities independently contracting with each other.

#### XVIII. INTERPRETATION

This Agreement has been the subject of mutual negotiations between the parties and their respective counsel. This Agreement has been and shall be construed to have been jointly drafted by the parties in order to preclude the application of any rule of construction against a party's interest as the sole drafter of this Agreement.

#### XIX. GOOD FAITH AND FAIR DEALING

The parties to this Agreement agree that this Agreement imposes on them a duty of good faith and fair dealing.

#### XX. NO LIABILITY FOR ACTS PRIOR TO AGREEMENT

Except as subject to a specific, written agreement, no party shall incur any liability for any acts undertaken during the discussion, negotiation, execution or the processes undertaken to secure any approval required to effectuate this Agreement, whether or not all necessary approvals to make this Agreement effective are obtained.

#### XXI. CAPTIONS

The captions contained in this Agreement are inserted only as matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provisions hereof.

#### XXII. AGREEMENT IN COUNTERPARTS

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

XXIII. NO THIRD-PARTY BENEFICIARY

This Agreement is personal to the parties to this Agreement and is not intended for the benefit of any other party.

XXIV. AMENDMENT

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

XXV. NOTICES

All notices, requests, payments and other communications contemplated in this Agreement shall be in writing and (a) personally delivered, (b) deposited in the United States mail, first-class, registered or certified mail, return receipt requested, with postage prepaid, (c) sent by overnight courier service, for next business day delivery, shipping prepaid, or (except for payments made under this Agreement) (d) by facsimile transmission, as follows:

If to the Tribe:	If to the Authority:	If to the Bureau:
Tribal Chairman Menominee Indian Tribe Loop Road Keshena, WI 54135	Menominee Kenosha Gaming Authority Loop Road Keshena, WI 54135	KenoshaAreaConvention Visitors Bureau 812 56 <sup>th</sup> Street Kenosha, WI 53140-3735

or such persons or addresses that any Party may request by notice duly given hereunder. Except as otherwise specified herein, notices shall be deemed given and received at the time of personal delivery or, if sent by US mail, three (3) business days after mailing, or, if sent by overnight courier, one (1) business day after such sending.

XXVI. EFFECTIVE DATE

This Agreement shall be effective upon its execution by all of the Parties.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands.

MENOMINEE KENOSHA GAMING  
AUTHORITY

By: \_\_\_\_\_

Attest: \_\_\_\_\_

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

KENOSHA AREA TOURISM  
CORPORATION

By: \_\_\_\_\_

Attest: \_\_\_\_\_

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

MENOMINEE INDIAN TRIBE OF  
WISCONSIN

By: \_\_\_\_\_

Attest: \_\_\_\_\_

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

## APPENDIX A

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

Q:\client\053166\0001\B0456071.1