

CONTRACTOR AGREEMENT

This **AGREEMENT** (this “Agreement”) is entered into this ____ day of ____ 202__, by and between the **MATCH-E-BE-NASH-SHE-WISH BAND OF POTTAWATOMI INDIANS OF MICHIGAN** (a/k/a Gun Lake Tribe), a sovereign nation and federally recognized Indian Tribe (“Tribe”), located at 2872 Mission Drive, Shelbyville, Michigan 49344 and ____, located at ____ (“Contractor”).

RECITALS

WHEREAS, the Tribe seeks assistance to install a 5kW solar photovoltaic array at the Jijak Garden; and

WHEREAS, the Contractor has the requisite knowledge, expertise and certifications to fulfill the services desired by the Tribe; and

WHEREAS, the Contractor and the Tribe have agreed to contract for this function, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the parties agree as follows:

AGREEMENT

ARTICLE 1 – CONTRACTOR’S SERVICES

1.1 Effective Date and Schedule. This Agreement becomes effective upon both parties’ signature below. . All services to be performed by Contractor under this Agreement shall be completed by or about December 1, 2024, unless otherwise extended by the Tribe.

1.2 Contractor's Services. Contractor is properly licensed in the State of Michigan to provide services of the types called for by this Agreement, if applicable, and represents to the Tribe that Contractor is experienced in providing and performing such services for projects of a similar size, type, use and scope as this Project. Contractor shall provide all professional services called for by this Agreement in strict accordance with the terms and conditions of this Agreement and in a manner consistent with the normal standard of care for like projects and for professionals with experience in performing such services.

1.3 Basic Services. Contractor shall provide as “Basic Services” all of the services outlined and generally described in, or logically inferable from, this Agreement, the Request for Proposal (Exhibit 2), and the bid submitted by Contractor on XXXXXX (hereinafter Bid) (Exhibit 3). Such Basic Services include, but are not limited to:

- a. Provide turnkey XX kW solar photovoltaic array as described in the Bid. This means that the Contractor shall install turnkey XX kW solar photovoltaic array at the Tribe's Jijak property located at 2044 126th Avenue, Hopkins, Michigan in the location indicated in the Bid. The inverter, panels and mounts shall be the models specified in the Bid unless agreed upon in writing by the Tribe and Contractor.
- b. The Contractor shall provide all warranties and guarantees specified in the Bid.
- c. The Contractor shall provide all professional services called for in the Request for Proposal, which include, but are not limited to: Construction and engineering documents signed and sealed by a licensed architect or engineer; Procurement of materials and products; equipment and labor by appropriately licensed individuals; Design and construction supervision / contract management; Quality control plan (QCP) (Exhibit 4); Safety plan (Exhibit 5); Inspections and tests per QCP; Manuals (design calculations, operation/maintenance, shop drawing, etc.); Commissioning of project; Mentoring and training for staff for operation and maintenance; Operation and Maintenance during first year and optional service plan after the first year; and providing a Web-based monitoring system for 20 years as reflected in the RFP/Bid.
- d. Upon execution, the Contractor shall work with Consumers Energy to develop an Interconnection Agreement (Exhibit 6) and shall install the project in accordance with the Interconnection agreement with Consumers Energy to allow for a connection to the supply.
- e. All connecting lines shall be underground. The Tribe is responsible for locating and marking all privately owned underground obstructions. Contractor to facilitate Miss Dig locating underground public utilities and a subcontractor locating private utilities.
- f. Contractor shall verify and select array exact placement that is shade free from at minimum 9 am to 3 pm.
- g. The contractor shall make a good faith effort to use project components that are to the greatest extent practicable American-made, and components that are made of materials that are recyclable, contain recycled materials and that are EPA or Energy Star rated if they are available on the market and provide American-made documentation as applicable.
- h. The Contractor shall comply with the Tribe's Department of Energy contract DE-IE0000180 Special Terms and Conditions (attached), excluding Davis-Bavis Act Wages and those provisions pertaining to contracts above the Simplified Acquisition Threshold, but including, without limitation, the following pursuant to 2 CFR 200.327:
 1. Equal Employment Opportunity Clause as reflected in **41 CFR 60-1.4(b)** and incorporated into this Agreement by reference (Exhibit 7).
 2. Any other applicable contract provisions reflected in Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts under Federal Awards (Exhibit 8).
- i. The array must be operational and compliant with all applicable standards, building codes, Consumers Energy interconnection requirements, State of Michigan and Tribal requirements including the following list incorporated below:
 1. National Electrical Code (NEC).
 2. UL 1703 Flat – Plate PV Modules and Panels.

3. UL 1741 – Standard for Static Inverters and Charge Controllers for Use in Photovoltaic Power Systems.
4. FM Approved – Fire Protection Tests for Solar Component Products.
5. IEC 62446 Grid Connected Photovoltaic Systems- Minimum Requirements for System Documentation, Commissioning Tests, and Inspections.
6. ASME PTC 50 (solar PV performance).
7. ANSI Z21.83 (solar PV performance and safety).
8. NFPA 853 (solar PV systems near buildings).
9. IEEE 1547 (interconnections).
10. ASCE/ SEI-7 – American Society of Civil Engineers – “Minimum Design Loads for Buildings and Other Structures.”
11. Gun Lake Tribe Building, Public Health and Safety and Environmental Codes Ordinance

1.4 Additional Services. In the event the Tribe requests Contractor in writing to perform any services on the Project which are not part of Basic Services, the Tribe and the Contractor shall agree in writing before said services are performed to compensate Contractor for said additional services (hereinafter referred to as “Additional Services”). Upon Agreement for Additional Services, the Contractor shall perform the Additional Services so identified, and shall be paid, as its sole compensation, in accordance with Article 2 below.

1.5 Tribe's Representative. The Tribe's Representative, for purposes of this Agreement, shall be Liz Binoniemi-Smith, Environmental Director, or Melissa Brown, Senior Director of Operations, in the event of an absence of the Tribe’s Representative, or such substitute as may be designated by the Tribe in writing. All directions concerning details of the Project and the services to be performed under this Agreement shall come through the Tribe’s Representative. Absent prior authorization, Contractor shall communicate solely with the Tribe’s Representative on all matters related to the Project.

1.6 Principal in Charge. XXXXXXXX shall be the “Principal in Charge” and XXXXX shall be the “Project Manager” in charge of the administration, supervision, and coordination of all services to be provided by Contractor under this Agreement. These individuals and all key personnel assigned to the project, shall not be removed from the Project without the prior written approval of the Tribe, unless removal is necessitated by illness or departure from the firm; provided however, that an individual shall be removed and replaced if requested by the Tribe.

1.7 Subcontractors. Contractor shall provide all services called for by this Agreement itself. Employing Subcontractors to perform any work or portions of work in this Agreement may only occur if and to the extent that the Tribe, in writing, and in advance, consents thereto and approves the Subcontractor. The Department of Energy’s Contracting Officer must also approve any subcontractor (See Term 36 of the Department of Energy contract DE-IE0000180 Special Terms and Conditions). Furthermore, any subcontractor must comply with the Department of Energy contract DE-IE0000180 Special Terms and Conditions. The retention and approval of any subcontractor shall not diminish or reduce Contractor’s obligations and duties under this

Agreement and shall not create any obligations on the part of the Tribe to the subcontractor.

1.8 Design Services. To the extent Contractor provides any design services in connection with the Project, Contractor assumes full responsibility for all designs, which shall be performed to the Tribe's satisfaction and through licensed professionals (if and to the extent professional licenses are required).

1.9 Ownership of Work Products. The parties acknowledge that there is no intellectual property that will be developed under this Agreement. To the extent that the Contractor used or plans to use any intellectual property in the bidding and design documents that Contractor already owned (hereinafter Work Product), the Contractor shall retain the ownership, title, and property rights, including any patents, intellectual property, and common law rights in the Work Product. Nevertheless, the Contractor shall provide copies of the Work Product and the Owner may retain such copies for its records. The Tribe may use its copy of the design documents for its purposes in operating and maintaining the constructed solar array facilities. The Tribe shall indemnify and hold Contractor harmless for any use of the Work Product that is not directly related for its intended purpose in connection with this Solar Array project.

ARTICLE 2 - COMPENSATION

2.1 Fee for Basic Services. For Basic Services as defined in Paragraph 1.2 above, the Contractor shall be paid as its sole compensation a total Basic Services Fee not to exceed \$ for this project, this includes both design and construction as indicated in the Bid.

2.2 Billing. Upon execution of this Agreement, Contractor will invoice 35% Milestone 1 of the Basic Services Fee. Milestone 2 of 55% will be invoiced upon commencement of construction activities and delivery of goods to the project site. Tribe shall render payments for Milestones 1 and 2 upon receipt. The Tribe shall render the final payment, Milestone 3, within thirty (30) days after full completion and commissioning of solar array. Each Contractor invoice shall provide a clear summary of hours and services provided.

2.3 Documentation. Records supporting all hours and itemizations of services performed and the Basic Services Fee (and Additional Services fees, if applicable) charged under this Agreement shall be kept in accordance with generally accepted accounting practice. All records required by this paragraph shall be maintained for three (3) years after completion of this project and copies shall be presented to the Tribe at no charge upon request during this timeframe.

ARTICLE 3 - INSURANCE

3.1 Insurance. Contractor shall obtain insurance of the types and in the amounts described below and shall maintain all such insurance during the term of this Agreement. Each of the policies except the Workers' Compensation/Employer's Liability and Professional Liability policies shall name as additional insureds the following: The Tribe and its Environmental Department, as well as the officers, directors, members, employees, and agents of each. All insurers shall have a rating by A.M. Best of A-VIII or better. Insurers shall retain the A.M. Best rating of A-VIII or better throughout

the term of this Agreement and all policy periods required herein. All coverage shall be primary and non-contributory with any coverage the Tribe may maintain in its own name and on its own behalf.

3.2 Certificates of Insurance. Prior to commencing its services, and at any time thereafter within ten (10) days of the Tribe's written request, Contractor shall furnish the Tribe's Representative with original Certificates of Insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth in this Agreement. All Certificates shall provide for thirty (30) days written notice to the Tribe prior to the cancellation or material change of any insurance referred to therein. Contractor shall, upon request by the Tribe, make all of Contractor's actual insurance policies available for the Tribe's inspection.

3.3 Failure to Provide Insurance. Contractor's failure to provide any of the required insurance, or evidence thereof, shall give the Tribe the right, but not the obligation, to do any or all of the following at the Tribe's option: (a) prohibit Contractor from entering the Project site, and refuse to accept any work product tendered by Contractor, until the deficiency is corrected; (b) purchase the required insurance coverage itself at Contractor's expense; and (c) terminate this Agreement for default. The Tribe's failure to exercise, or delay in exercising, any such right, or to demand a Certificate or other evidence of Contractor's full compliance with these insurance requirements, or to note any deficiency in the insurance furnished, shall not be construed as a waiver of Contractor's obligation to maintain all insurance required by this Agreement.

3.4 Subcontractor Insurance. In the event Contractor retains any subcontractor to perform any of the services called for by this Agreement, Contractor shall cause each subcontractor to purchase and maintain insurance of the types specified in this Article 3, with limits appropriate for the services each subcontractor is providing.

3.5 Commercial General and Umbrella Liability Insurance. Contractor shall maintain occurrence basis commercial general liability (COL) insurance and, if necessary, commercial umbrella insurance, with a combined limit of not less than \$1,000,000 per occurrence. If such COL insurance contains a general aggregate limit, it shall apply separately to the Project. Coverage shall include broad form contractual liability and any liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, as well as all contractual and tort indemnity obligations, and shall not be subject to any endorsement or modification limiting the scope of coverage for liability arising from explosion, collapse, or underground property damaged due to carelessness or neglect.

3.6 Business Auto and Umbrella Liability Insurance. Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance, with a combined limit of not less than \$1,000,000 per accident. Such insurance shall cover any liability arising out of the ownership or use of any motor vehicle (including owned, hired, leased and non-owned automobiles) and shall include bodily injury and property damage. Coverage shall also include uninsured and underinsured motorist liability coverage.

3.7 Workers' Compensation and Employer's Liability Insurance. Contractor shall

maintain workers' compensation and employer's liability insurance. The employer's liability, and, if necessary, commercial umbrella liability insurance shall have limits of not less than \$1,000,000 per accident for bodily injury or death by accident and \$1,000,000 per employee for bodily injury or death by sickness or disease. The workers' compensation coverage limits shall be in the statutory amount and shall include coverage for any claims arising from any bodily injury, occupational sickness or disease, or death by any of Contractor's employees under any applicable workers' compensation statute or any other applicable employer's liability law.

3.8 Professional Liability Insurance. If and to the extent this Agreement calls for Contractor to perform any design services, Contractor shall maintain professional liability coverage insuring Contractor for negligent acts, errors and omissions arising out of the performance of Contractor's design services under this Agreement. The professional liability limits shall not be less than \$2,000,000 per claim and in the annual aggregate. The professional liability policy shall be maintained in full force and effect during the course of the Project and for a period of three (3) years after completion of the Project.

3.9 Waiver of Subrogation. Contractor waives all subrogation rights and all rights against the Tribe and its agents, officers, directors and employees for recovery of damages to the extent those damages are covered by any of the insurance policies required to be maintained under this Agreement.

3.10 No Representation of Coverage Adequacy. By requiring the insurance as set out in this Article 3, the Tribe does not represent that the coverage and limits specified herein will necessarily be adequate to protect Contractor, and such coverage and limits shall not be deemed as a limitation on Contractor's liability under the indemnities provided to the Tribe in this Agreement or any other provision of this Agreement.

ARTICLE 4 - MISCELLANEOUS

4.1 Confidentiality. Contractor hereby agrees that during the term of this Agreement and indefinitely thereafter, Contractor shall not directly or indirectly disclose, publish or use for the benefit of the Contractor or disclose to any third party, except in carrying out the Contractor's duties for the Tribe, any Confidential Information (as defined below), without the prior written consent of the Tribe. For the purposes of this Agreement, "Confidential Information" means all non-public information respecting the Tribe's government, its Tribal Citizens, and its business, including without limitation, its data, agreements, files, records, and accounts. Contractor acknowledges and agrees that the Confidential Information provided by the Tribe is unique to the Tribe and that monetary damage for a violation of this Agreement may not be an adequate remedy. Contractor agrees that should Contractor violate any terms or provisions of this Agreement, in addition to monetary damages, injunctive relief in any court of competent jurisdiction is an appropriate remedy to protect the Tribe's interest. This Section 4.1 shall survive the expiration or sooner termination of this Agreement.

4.2 Required Disclosures. The parties both acknowledge that the United States Department of Energy – Office of Indian Energy, is funding a portion of this project in a cost-sharing grant.

In accordance with the Special Terms and Conditions of this grant, any information that either party must share with the U.S. Federal Government as part of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards shall be treated as part of either party's contractual obligations or as "non-Confidential." Furthermore, in accordance with Term 34 of the Department of Energy contract DE-IE0000180 Special Terms and Conditions, the parties agree that:

These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee [or either party's] obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.

To the extent that any provision in this Section 4.2 conflicts with any prior, current, or future agreement, or understanding of this project, this Section shall be controlling. Section 4.2 of this Agreement survives termination.

4.3 Termination by the Tribe Due to Contractor's Default. In the event Contractor breaches any of its obligations under this Agreement, and fails to cure said breach within 10 calendar days after written notice from the Tribe to Contractor, the Tribe may declare Contractor to be in default hereunder and may, without prejudice to any other rights or remedies the Tribe may have under this Agreement or under the law, terminate this Agreement and take possession of all work product prepared by Contractor by whatever method the Tribe deems expedient. In that event, the Tribe shall have no further payment obligations and may pursue any action available to it under the law to obtain relief for any damage suffered by reason of Contractor's defaults, failures, or breaches.

4.4 Termination by the Tribe without Fault of Contractor. Upon fifteen (15) day's written notice, the Tribe shall have the right to cancel and terminate this Agreement at any time. The Tribe shall incur no liability to Contractor or any other person by reason of such termination, except that if the termination is due to no fault of Contractor, the Tribe shall pay to Contractor all compensation then due to Contractor for services rendered prior to the date of the termination, with such compensation to consist of the cost of any labor, materials, or equipment procured and delivered to the Tribe within the scope of this Agreement, plus any reasonable sums for overhead.

4.5 Transfers on Termination. In the event of any termination of this Agreement, Contractor shall deliver to the Tribe all work product referred to in Paragraph 4.1 above, as well as any other property of the Tribe which Contractor may possess, including, but not limited to, any confidential or proprietary information of the Tribe that Contractor may possess including, but not limited to, any confidential or proprietary information as referred to in Paragraph 4.1 above.

4.6 Indemnification. To the fullest extent permitted by law, Contractor, on behalf of itself and its agents (all of said parties are herein collectively referred to as the “Indemnitors”), shall fully indemnify, defend, save and hold harmless the Tribe, including the Tribe’s agents, affiliates, citizens, co-developers, lenders, directors, officers, employees, representatives and consultants (each hereinafter a “Tribe Indemnitee”) from and against all liability, damage, loss, claims, demands, actions and expenses of any nature whatsoever incurred in good faith, including, but not limited to reasonable attorney’s fees, which arise out of or are connected with: (i) any negligent act or omission or any willful misconduct or other fault by any Indemnitor(s) in the performance of any services to be performed hereunder; (ii) any failure by any Indemnitor to comply with applicable laws, codes or ordinances; (iii) any breach of any obligation of the Indemnitors. Notwithstanding anything contained herein, this indemnification article shall not be construed to indemnify any Tribe Indemnitee for any loss or damage attributable solely to the negligent acts or omissions of such Tribe Indemnitee. The indemnification obligation set forth in this Paragraph shall survive any termination of this Agreement.

4.7 Full Agreement. Each party acknowledges its full understanding of this Agreement, and that there are no verbal promises, undertakings or agreements in connection herewith. All previous negotiations and agreements between the parties hereto with respect to the transactions set forth herein are merged into this instrument, which fully and completely expresses the parties’ rights and obligations. This Agreement may be modified only by a written agreement signed by all parties hereto and no waiver of any provision of this Agreement shall be effective unless in writing.

4.8 Prohibition on Assignment. Contractor shall not assign this Agreement without the prior written consent of the Tribe. The Tribe may assign this Agreement, should it elect to do so, by giving written notice to Contractor.

4.9 Successors and Assigns. This Agreement shall be binding upon the parties hereto and each of their successors, legal representatives, and assigns.

4.10 No Agency. All services provided by the Contractor shall be performed by the Contractor directly and independently and not as an agent, employee or representative of the Tribe. This Agreement is not intended to and does not constitute, create or otherwise give rise to a joint venture, partnership or other type of business association or organization of any kind by or between the Tribe and the Contractor. Specifically, and without limitation, the Contractor has no power or authority to contract for, or bind, the Tribe in any manner.

4.11 Partial Invalidity. If any term or provision of this Agreement shall be ruled illegal or unenforceable, the remaining terms of the Agreement shall remain in full force and effect; provided, however, that this Agreement shall be interpreted and applied to reflect the intentions of the parties as indicated by the Agreement as a whole.

4.12 Notices. Any notices required by this Agreement shall be in writing and shall be personally served, forwarded by messenger or courier service, or mailed via certified mail, return receipt requested, addressed to the parties as follows:

If to the Tribe:

Elizabeth Binoniemi-Smith
Environmental Director
Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians
2872 Mission Drive
Shelbyville, MI 49344

Melissa Brown
Senior Director of Operations
Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians
2872 Mission Drive
Shelbyville, MI 49344

With a copy to:

Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians
Attn: General Counsel
2872 Mission Drive
Shelbyville, MI 49344

If to Contractor:

XXXXXX

4.13 Compliance with Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the Tribe. Each party hereto consents to the jurisdiction of the Gun Lake Tribe and its courts as the proper venue and choice of law for any disputes arising out of this Agreement. The Contractor shall fully comply with all applicable federal, state, Tribal and local laws, rules and regulations in performing the services under this Agreement. In the event either party hereto brings a legal proceeding to enforce or to obtain a declaration of its rights under this Agreement, the prevailing party or parties in such legal proceeding shall be entitled to recover its reasonable attorneys' fees and costs incurred in the proceeding from the non-prevailing party or parties.

4.14 Modification. This Agreement may be modified only by a written instrument signed by the Tribe and the Contractor.

4.14. Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

Facsimile copies hereof and facsimile signatures hereon shall have the same force and effect as originals.

4.15 Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, discussions, negotiations, and undertakings, whether written or oral, between the parties with respect thereto.

4.16 No Waiver. Notwithstanding any other provisions of this Agreement, nothing herein shall be construed as a waiver of the tribal sovereignty of the Match-E-Be-Nash-She-Wish Band of Pottawatomí Indians.

~Signatures on Next Page~

IN WITNESS WHEREOF, the parties have executed this Agreement, and by so executing, the individuals whose signatures appear below affirmatively represent that they are authorized to and do hereby bind their respective entities.

Contractor XXXX

Dated: _____

Name: _____

Signature: _____

Its: _____

MATCH-E-BE-NASH-SHE-WISH-BAND OF POTTAWATOMI INDIANS OF MICHIGAN, a
federally recognized Indian Tribe

Dated: _____

Name: Melissa Brown

Signature: _____

Its: Senior Director of Operations

Exhibits

Exhibit 1	Department of Energy contract DE-IE0000180 Special Terms and Conditions
Exhibit 2	Request for Proposal
Exhibit 3	Bid submitted by Contractor on xx, XX, 2024
Exhibit 4	Quality Control Plan
Exhibit 5	Safety Plan
Exhibit 6	Interconnection Agreement (To be completed post-execution)
Exhibit 7	Equal Employment Opportunity Clause - 41 CFR 60-1.4(b)
Exhibit 8	Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts under Federal Awards
Exhibit 9	Department of Energy Contractor Officer’s Written Approval and Modified Contract DE-IE0000180 Special Terms and Conditions
Exhibit 10	Additional Services or Change Orders (reserved for post execution of contract)