

CONTRACTOR AGREEMENT

This **AGREEMENT** (this “Agreement”) is entered into this day of October ____, 2024 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”), with an address of 2872 Mission Drive, Shelbyville, Michigan 49344 and **NAME, ADDRESS** (“Contractor”).

RECITALS

WHEREAS, the Tribe has elected the Contractor to provide Professional Services for 130th to Reno Preliminary Engineering (the “Project”), and

WHEREAS, the Tribe desires to obtain the services of a qualified professional business, experienced in providing such services for projects of a similar size, use and scope as this Project, to furnish the services for this Project as described herein; and

WHEREAS, Contractor desires to perform and provide said services on the terms stated herein, and solely in exchange for the consideration stated herein;

NOW, THEREFORE, in consideration of the premises, mutual covenants, conditions and promises contained herein, the receipt and sufficiency of which as consideration are expressly acknowledged, **TRIBE AND CONTRACTOR HEREBY AGREE AS FOLLOWS:**

AGREEMENT

ARTICLE 1 – CONTRACTOR’S SERVICES

1.1 Contractor's Services. Contractor or sub-contractor is properly licensed in the State of Michigan (Company License ID) # ___N/A___ to provide services of the types called for by this Agreement, 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.

1.2 Basic Services. Contractor shall provide as “Basic Services” all of the services outlined and generally described in, or logically inferable from, this Agreement and the Proposal for Professional Services ___NAME___ submitted by NAME OF FIRM dated MONTH DAY, 2024 (Exhibit A).

1.3 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, and 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”). Contractor shall perform the Additional Services so identified, and shall be paid, as its sole compensation, in accordance with Paragraphs 2.2 and 2.3 below.

1.4 Schedule. All services to be performed by Contractor under this Agreement shall be completed by or about ___December 19, 2025_____, to meet federal funding deadlines.

1.5 Tribe's Representative. The Tribe's Representative, for purposes of this Agreement, shall be Catherine Adsitt, 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. ___NAME___ shall be the “Principal in Charge” and ___NAME___ shall be the “Project Manager and Client Contact” 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 as outlined in the proposal, including subconsultants, 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 portions of the services as described in Exhibit A. Employing subcontractors to perform any additional portion or portions of the services under this Agreement may occur only if and to the extent the Tribe, in writing and in advance, consents thereto and approves the subcontractor. 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 – either itself or through a subcontractor, consultant, or someone else acting, either directly or indirectly, on Contractor's behalf – 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 Tribe shall own and retain the right to utilize all work product and intellectual property developed under this Agreement. This agreement in no way suggests or promises that the Contractor will work on subsequent phases or implementation.

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 \$ _____ this includes services performed by subcontractors.

2.2 Billing. The Contractor shall bill the Tribe monthly for services performed. The monthly bill shall be itemized to 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 and shall be available to the Tribe for inspection during normal business hours at Contractor's office. Copies shall be presented to the Tribe at no charge, upon request. All records required by this Paragraph shall be maintained for three (3) years after substantial completion of the Project.

ARTICLE 3 - INSURANCE

3.1 Insurance. Contractor shall obtain insurance of the types and in the amounts described below and set forth in Exhibit A, (incorporated herein by this reference) 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, 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 \$5,000,000 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 damage.

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 \$3,000,000 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 Products or Completed Operations Insurance. Contractor shall maintain products or completed operations insurance, with a limit of not less than \$1,000,000 for each occurrence or \$2,000,000 aggregate. The products or completed operations insurance shall include coverage for claims of bodily injury or property damage that may arise from Contractor's products or work completed.

3.10 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.

3.11 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. Each employee of the Contractor working on this project shall sign the Tribe's standard non-disclosure agreement and submit the signed document to the Tribe prior to working on the project. This Section 4.1 shall survive the expiration or sooner termination of this Agreement.

4.2 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 ten (10) 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 the employment of Contractor 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 to Contractor and may pursue any action available to it under the law to obtain relief for any damages suffered by reason of Contractor's defaults, failures, or breaches.

4.3 Termination by the Tribe without Fault of Contractor. Upon fifteen (15) days' 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 Contractor for services actually rendered prior to date of the termination, with such compensation to consist of the fee due based upon the percentage of Contractor's services under this Agreement which have been completed.

4.4 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 4.2 above, as well as any other

property of the Tribe which Contractor may possess, including, but not limited to, any confidential or proprietary information as referred to in Paragraph 4.1 above.

4.5 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, indemnify, defend, save and hold harmless the Tribe, including the Tribe's agents, affiliates, members, 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 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 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.

4.6 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.

4.7 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.

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

4.9 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.

4.10 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.

4.11 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:

Catherine Adsitt
Director of Land Use, Planning and Development
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
2872 Mission Drive
Shelbyville, MI 49344
Attn: Tribal Chairman

If to the Contractor:

NAME ANE TITLE
COMPANY
ADDRESS 1
ADDRESS 2

4.12 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.

4.13 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 Pottawatomini Indians.

IN WITNESS WHEREOF, the parties have executed this Agreement, effective as of the day and year first above written, 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

Dated: _____ By: _____

Name: _____

Its: _____

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

Dated: _____ By: _____

Name: _____

Its: _____