

INTERGOVERNMENTAL AGREEMENT

HO-CHUNK NATION
CITY OF BELOIT
ROCK COUNTY



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INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT (this "IGA") is entered into as of the Effective Date by and between the HO-CHUNK NATION, a federally recognized Indian Tribe organized under Section 16 of the Indian Reorganization Act, the CITY OF БЕЛОIT, a municipal corporation organized under the laws of the state of Wisconsin, and COUNTY OF ROCK, a municipal corporation organized under the laws of the state of Wisconsin, for the purpose of facilitating construction by the Nation of the Class III Gaming Facility and the construction of a full service hotel with conference and meeting facilities, restaurants and related support facilities; all as subject to the successful approval of the Federal Trust Application and final approval by the Secretary of the Interior to take the Nation Trust Property into Federal Trust and authorizing the Nation to construct the Class III Gaming Facility thereon.

RECITALS

WHEREAS, capitalized terms used in these recitals are defined in Article I of this IGA;

WHEREAS, pursuant to the provisions of the IRA, the Nation has adopted a constitution, which was approved by the Secretary of the Interior on November 1, 1994;

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

WHEREAS, pursuant to Article XII, § 1 of the Nation's constitution, the Nation's Legislature holds the authority to waive the Nation's sovereign immunity from suit;

WHEREAS, the Nation (then known as the Wisconsin Winnebago Tribe) entered into the Gaming Compact with the government of the state of Wisconsin pursuant to the Indian Gaming Regulatory Act;

WHEREAS, the Gaming Compact, approved by the Secretary of the Interior on July 30, 1992, authorizes the Nation to conduct Class III Gaming at four (4) Class III Gaming facilities in Wisconsin, three (3) of which have been constructed and are operating as of the Execution Date;

WHEREAS, the Nation has purchased, and intends to conduct Class III Gaming upon, the Nation Trust Property;

WHEREAS, the Nation intends to submit the Federal Trust Application to the Secretary of the Interior with respect to the Nation Trust Property;

WHEREAS, pursuant to 25 U.S.C. § 2719(b)(1) of the Indian Gaming Regulatory Act, the Secretary of the Interior may approve the Federal Trust Application if, after consultation with the Nation and appropriate State and local officials, it determines that the Beloit Class III Gaming Facility would be in the best interest of the Nation and its members, and would not be detrimental to the surrounding community, but only if the Governor of Wisconsin concurs in the Secretary of Interior's determination;

WHEREAS, the support of local government is important to secure the Secretary of the Interior's approval of the Federal Trust Application, and to the ultimate success of the Beloit Class III Gaming Facility;

WHEREAS, a purpose of this IGA is to more clearly describe the scope of the Parties' respective rights and obligations, to minimize conflict, and to maximize the Parties' and their residents' and members' collective prosperity, benefit and cooperation;

WHEREAS, the Parties recognize the Beloit Class III Gaming Facility will be beneficial to the City, County, area residents, and to the Nation and its tribal members by, among other things, providing increased revenue, economic development, and employment opportunities;

WHEREAS, the City and County acknowledge the significant investment the Nation intends to make with the establishment of the Beloit Class III Gaming Facility and the benefits derived therefrom to the Beloit community;

WHEREAS, the Nation recognizes that the approval of the Federal Trust Application and the operation of the Beloit Class III Gaming Facility will have the potential Impacts described hereinafter;

WHEREAS, in order to address and compensate for the Impacts, the City and County have requested, and the Nation has agreed to provide, the Impact Payments to the City and County;

WHEREAS, the City and County recognize that the Impact Payments to be made by the Nation to the City and County under this IGA shall be substantially higher than taxes and assessments paid to the City and County by a business not engaged in the conduct of Class III Gaming but of comparable location, size and valuation to the Beloit Class III Gaming Facility and that the Impact Payments therefore are good and valuable consideration to the City and County in recognition of and in compensation for the Impacts and of the City's and County's obligations hereunder;

WHEREAS, the Parties intend that nothing in this IGA will limit the customary application of the general ordinances of the City and the ordinances of the County with respect to the Nation Fee Property; and

WHEREAS, the Parties, out of mutual respect and recognition of their separate governmental status and authority, desire to enter into this IGA to set forth their respective rights and obligations in regard to the Nation Trust Property, the Beloit Class III Gaming Facility, the Impact Payments, the Nation Fee Property, and certain other appurtenant matters.

NOW, THEREFORE, in consideration of the foregoing, the covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

INTERGOVERNMENTAL AGREEMENT

ARTICLE I DEFINITIONS

Section 1.1. "City" means the City of Beloit, Wisconsin, a municipal corporation organized and existing under the laws of the state of Wisconsin.

Section 1.2. "City Approved PUD" means the Planned Unit Development ("PUD") Zoning District for the Nation Trust Property in the form approved by the City in accordance with Section 3.10.4 of this IGA.

Section 1.3. "City Improvements" means certain improvements to City infrastructure intended to support the operation of the Beloit Class III Gaming Facility.

Section 1.4. "City Zoning Ordinance" means Chapter 19 of the City ordinances, as amended.

Section 1.5. "Class III Gaming" shall have the definition given such term in the Indian Gaming Regulatory Act.

Section 1.6. "Commencement Date" means the date on which the Beloit Class III Gaming Facility is first made open to the public for the purpose of Class III Gaming.

Section 1.7. "County" means the County of Rock, Wisconsin, a municipal corporation organized and existing under the laws of the state of Wisconsin.

Section 1.8. "Development Agreement" means an agreement to be entered into between the City and Nation with respect to the City Improvements and related matters, which the City and Nation anticipate becoming effective shortly following the Trust Approval Date.

Section 1.9. "Development Area" means the real property depicted on the map attached hereto as Exhibit E.

Section 1.10. "Effective Date" means the first date upon which all of the following have occurred: (i) approval of this IGA by the governing bodies of each of the Parties; (ii) execution of this IGA by the appropriate officers of the Parties; and (iii) approval of this IGA in the form approved and executed by the Parties by the Secretary of the Interior under 25 U.S.C. § 81 (or a written determination by the Secretary of the Interior that this IGA is not subject to 25 U.S.C. § 81).

Section 1.11. "Execution Date" means the first date upon which all of the following have occurred: (i) approval of this IGA by the governing bodies of each of the Parties; and (ii) execution of this IGA by the appropriate officers of the Parties.

Section 1.12. "Exhibits" means and includes the following exhibits to this IGA:

Exhibit A	Legal Description and Map of Nation Trust Property
Exhibit B	Nation Resolutions Approving this IGA

Exhibit C	City Resolutions Approving this IGA
Exhibit D	County Resolutions Approving this IGA
Exhibit E	Depiction of Development Area

Section 1.13. **"Federal Trust"** means real property acquired by the Secretary of the Interior in trust for the benefit of a federally recognized Indian tribe.

Section 1.14. **"Federal Trust Application"** means the Nation's fee-to-trust application to the Secretary of the Interior to place the Nation Trust Property into Federal Trust pursuant to 25 U.S.C. § 2719(b) of the Indian Gaming Regulatory Act.

Section 1.15. **"Gaming Compact"** means the Gaming Compact of 1992 dated June 11, 1992 by and between the Nation and the state of Wisconsin, as amended.

Section 1.16. **"Impact Payments"** means the Infrastructure Down Payment, the Net Win Payment, and the Room PILOT, each made in recognition of the Impacts, as further described in Section 3.1 of this IGA.

Section 1.17. **"Impacts"** means the following potential impacts to the City and County resulting from the acceptance of the Nation Trust Property into Federal Trust and the conduct of Class III Gaming at the Beloit Class III Gaming Facility: (i) loss of City and County tax revenue; (ii) increased utilization of City and County services; (iii) increased use of the City and the County infrastructure; (iv) a need for additional improvements to City and County infrastructure; (v) increased maintenance, repair and replacement of County and/or City infrastructure; and (vi) costs related to mitigating impacts arising out of Class III Gaming.

Section 1.18. **"Indian Gaming Regulatory Act"** means the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 et seq., as amended.

Section 1.19. **"Indian Reorganization Act"** means the Indian Reorganization Act of 1934, 25 U.S.C. § 461, et seq., as amended.

Section 1.20. **"Infrastructure Down Payment"** means a one-time Impact Payment in the amount of two million dollars (\$2,000,000.00).

Section 1.21. **"Joint Commission"** means a four-member commission comprised of two (2) members of the Nation Legislature and two (2) members of the City Council, as further described in Section 3.10.4.4 of this IGA.

Section 1.22. **"Municipal Services"** means the provision of municipal potable water, storm water control and diversion, sanitary sewer collection and treatment, police, fire inspection and emergency response, public safety dispatch, emergency medical and ambulance service, and all other applicable municipal services customarily provided to City residents under the Permitted City Ordinances, together with applicable inspections and permitting.

Section 1.23. **"Nation"** means the Ho-Chunk Nation, a federally recognized Indian Tribe organized under Section 16 of the Indian Reorganization Act.

Section 1.24. **"Nation Approved PUD"** means the PUD Zoning District for the Nation Trust Property in the form approved by the Nation in accordance with Section 3.10.4 of this IGA.

Section 1.25. **"Nation Fee Property"** means any interests in real property owned by the Nation within the Development Area, except for the Nation Trust Property.

Section 1.26. **"Nation Gaming Ordinance"** means 5 HCC § 1, as amended.

Section 1.27. **"Nation Trust Property"** is the approximately 32 acres of real property located within the boundaries of the City as legally described on the attached Exhibit A, together with all appurtenant rights.

Section 1.28. **"Nation Zoning Ordinance"** means 8 HCC § 4, as amended.

Section 1.29. **"Net Win"** shall have the definition given such term in the Gaming Compact.

Section 1.30. **"Net Win Payment"** means the Impact Payment described in Section 3.1.2 of this IGA.

Section 1.31. **"Party"** means any of the Nation, the City or the County.

Section 1.32. **"Parties"** means the Nation, City and County, collectively.

Section 1.33. **"Permitted City Ordinances"** means the designated chapters of the General Code of Ordinances for the City of Beloit, which will be applicable on the Nation Trust Property as listed in Section 3.9.1 of this IGA, all as amended.

Section 1.34. **"Permitted County Ordinances"** means the designated chapters of the County Code of Ordinances for the County of Rock, which will be applicable on the Nation Trust Property as listed in Section 3.9.2 of this IGA, all as amended.

Section 1.35. **"PUD Application"** means an application prepared by the Nation with respect to the Nation Trust Property to rezone the Nation Trust Property to a PUD Zoning District as further described in Section 3.10.4 of this IGA.

Section 1.36. **"PUD Zoning District"** means planned unit development district zoning under the City Zoning Ordinance and planned unit development combining zone under the Nation Zoning Ordinance, as amended.

Section 1.37. **"Quarter" or "Quarterly"** means occurring at 3-month intervals.

Section 1.38. **"Quarter of Operation"** means the period commencing upon the first day of the first full month following the Commencement Date, and ending upon the last day of the third month thereafter, and including each Quarterly period thereafter during the term of this IGA.

Section 1.39. **"Room PILOT"** means the Impact Payment and payment in lieu of taxes by the Nation in an amount equal to the amount that would be due and owing under the City's ordinance enacted under § 66.0615 of the Wisconsin Statutes if such ordinance were applicable to the Nation Trust Property, as further described in Section 3.1.3 of this IGA.

Section 1.40. **"Secretary of the Interior"** means the Secretary of the United States Department of Interior.

Section 1.41. **"Trust Approval Date"** means the first date upon which all of the following have occurred: (i) approval of any Gaming Compact amendments necessary to approve or construct the Beloit Class III Gaming Facility by the Governor of Wisconsin, the Nation and the Secretary of the Interior; (ii) approval of the Federal Trust Application by the Secretary of the Interior and the concurrence of the Governor of Wisconsin; and (iii) publication in the Federal Register of an official notice from the Secretary of the Interior that the Nation Trust Property has been accepted into Federal Trust.

Section 1.42. **"Wisconsin's Minimum Mark-up Law"** means Wisconsin law applicable to the mark-up of fuel prices over wholesale cost.

ARTICLE II COMMITMENTS OF THE CITY AND THE COUNTY

Section 2.1. **Municipal Services.** The Nation hereby determines that it is more cost effective, efficient and productive for the Nation to utilize certain existing government services provided by the City and County rather than duplicate those services on the Nation Trust Property. The City and County shall provide the Municipal Services to the Nation and shall bill the Nation (in addition to the Impact Payments) for the provision of the Municipal Services in the same manner as is usual and customary for all other users of such Municipal Services; provided, however, and notwithstanding anything to the contrary in this IGA, that any costs and fees associated with providing the Municipal Services that are customarily included in City or County real property taxes or special assessments shall not be billed separately to the Nation and shall be deemed paid as part of the Impact Payments.

Section 2.2. **City Improvements.** The City Improvements, and the City's and Nation's respective rights and obligations with respect to the City Improvements and related matters shall be set forth in a Development Agreement to be separately negotiated and entered into by the City and Nation. The preliminary scope of City Improvements is as follows: (i) construction of a fourth lane on the east side of Willowbrook Road between Stateline Road on the south and Colley Road on the northerly border of the Nation Trust Property, to include driveway aprons, deceleration/turning lanes, and other necessary and appurtenant road infrastructure and including certain improvements to Willowbrook Road made prior to the Execution Date in support of the Nation Trust Property; (ii) reconstruction, including possible relocation, of Colley Road to meet applicable design standards and as deemed appropriate by the City and Nation, including the installation of curb and gutter in either a two (2) or four (4) lane configuration; and (iii)

construction of traffic signalization in the vicinity of the Nation Trust Property at the intersections of existing and/or reconstructed public streets, if warranted by applicable design standards. The cost of the City Improvements will be financed and paid for exclusively by the City and will be subject to repayment from the Nation to the City pursuant to a guaranteed minimum payment and the Infrastructure Down Payment as further described in the Development Agreement.

Section 2.3. Support of Federal Trust Application. The City and the County shall support the Federal Trust Application consistent with this IGA. In the event this IGA is revised or disapproved, in whole or in part, in any fashion by the Secretary of the Interior, the City or the County may reconsider such support at their respective discretion.

Section 2.4. Resolution of Support. The City agrees to provide the Nation with a resolution adopted by the City Council in support of the Beloit Class III Gaming Facility and Federal Trust Application. The City agrees to consult with the Nation on the language to be contained in the resolution and to present it to the Nation no later than one hundred twenty (120) days after the Execution Date.

Section 2.5. Support of Gaming Compact Amendments. Upon and after the Execution Date, the City and County shall support and not oppose approval by the Governor of Wisconsin and the state of Wisconsin of any additional amendments to the Gaming Compact necessary to effectuate the operation of the Beloit Class III Gaming Facility consistent with this IGA. The Nation shall provide sufficient information and shall confer with the City and County regarding any amendment to the Gaming Compact affecting the operation of the Beloit Class III Gaming Facility. All information provided to the City and County regarding the negotiation of such amendment, including, without limitation, drafts thereof, shall be confidential and not subject to public disclosure.

Section 2.6. Additional Class III Gaming Facility. The City and the County agree that, during the term of this IGA and for so long as the Nation conducts Class III Gaming on the Nation Trust Property, the City and County shall not support the establishment of any Class III Gaming Facility within Rock County other than the Beloit Class III Gaming Facility.

ARTICLE III COMMITMENTS OF THE NATION

Section 3.1. Impact Payments. In exchange for the Impacts, the Nation agrees to make the following Impact Payments described below.

3.1.1 Infrastructure Down Payment. Subject to the terms of the Development Agreement, the Nation shall make a Two Million and No/100 Dollar (\$2,000,000.00) Infrastructure Down Payment to the City, payable within thirty (30) days following the Trust Approval Date, which shall be applied against the cost of the City Improvements. Because this Infrastructure Down Payment will be applied by the City against the cost of the City Improvements, it will be paid exclusively to the City and will not be divided between the City and County as provided for in Section 3.3 of this IGA.

3.1.2 **Net Win Payment.** On or before the fifteenth (15th) day of each month following a Quarter of Operation, the Nation shall make a payment to the City equivalent to two percent (2%) of the Net Win at the Beloit Class III Gaming Facility with respect to such prior Quarter of Operation.

3.1.3 **Room PILOT.** The Nation agrees to make applicable Quarterly payments of the Room PILOT to the City and Beloit Convention and Visitor's Bureau. Because the Room PILOT will be paid exclusively to the City and Beloit Convention and Visitor's Bureau, it will not be divided between the City and County as provided for in Section 3.2 of this IGA.

3.1.4 **Nation Fee Property.** Except for the Nation Trust Property, if the Nation acquires real property within the Development Area, then such property will be Nation Fee Property hereunder and shall not be included in the Federal Trust Application. If the Nation later desires to submit such Nation Fee Property to Federal Trust, then the Parties agree to negotiate in good faith an amendment hereto with respect to such application. Nothing in this IGA shall prevent or restrict in any manner the Nation's acquisition and development of Nation Fee Property.

Section 3.2. Wire Transfer of Impact Payments. The Nation shall make all Impact Payments to the City and Beloit Convention and Visitors Bureau (in the case of the Room PILOT) by wire transfer to an account or accounts specified in writing by the City Treasurer no later than the date such Impact Payment is due and payable hereunder.

Section 3.3. County-City Split of Net Win Payment. The City shall make distributions to the County equal to thirty percent (30%) of the amount of each Net Win Payment actually received by the City within twenty (20) days following receipt of each such Net Win Payment from the Nation under this IGA.

Section 3.4. Business Operations on Nation Fee Property. Business operations conducted on Nation Fee Property shall be taxed as any other business and pay such amounts as are generally levied upon similar businesses operated in the City. The Nation agrees that it will not sell on Nation Fee Property any casino chips, tokens, coupons, tickets or similar credits for redemption, for Class III Gaming or any other use at the Beloit Class III Gaming Facility.

Section 3.5. Audits and Records. The City and County, or their consultants, shall have the right, following the Commencement Date, upon reasonable prior notice to the Nation, to examine those portions of the annual independent financial audits provided to the State pursuant to the Gaming Compact (specifically Article XII thereof) related to the calculation of the Net Win Payment from the Beloit Class III Gaming Facility ("Audit"). The City and County acknowledge that the Audit is confidential and proprietary and shall remain the exclusive property of the Nation even if examined by the City and/or the County. Any consultants used by the City and County shall be bound by the same confidentiality obligations set out herein for the City and County. Any such examination shall be conducted during normal daytime business hours at the offices of the Beloit Class III Gaming Facility in a manner that will, to the maximum extent permitted by law, minimize the risk of public disclosure of the Audit. The City, County and the Nation do not intend by this IGA to make the Audit subject to any applicable open records laws. Should the Gaming Compact be amended or renumbered in any fashion, the above

references shall be deemed to include the equivalent amended or renumbered provisions thereof. Each year, the City shall notify the Nation when its Comprehensive Annual Financial Report (CAFR) is completed and posted to the City's website for the Nation's information and use.

Section 3.6. Nation's Infrastructure Commitments.

3.6.1 Signalization. Should the Nation desire to install signalization at a Beloit Class III Gaming Facility entrance site which is other than a public roadway intersection, and provided further that the signalization meets appropriate traffic design warrants, the cost for said installation shall be borne by the Nation.

3.6.2 Private Infrastructure. The costs of constructing and maintaining private roadways, driveways and parking facilities upon the Nation Trust Property or Nation Fee Property shall be the responsibility of the Nation, including any off-street loading and storage sites. The Nation shall be further responsible for the construction and maintenance of private water lines, private sewer service lines and private storm water lines upon the Nation Trust Property or Nation Fee Property.

3.6.3 Road Relocation. Should the Nation and the City mutually agree to relocate one or more existing roadways adjacent to or nearby the Nation Trust Property, it shall be the responsibility of the Nation to acquire the necessary property and to dedicate right-of-way of a sufficient width to meet then applicable traffic design standards for roadway width.

3.6.4 Green Construction. The Nation acknowledges its intent to build environmentally friendly buildings and facilities. Accordingly, the Nation will construct the Beloit Class III Gaming Facility in a manner that honors its heritage, culture and Mother Earth as it relates to the treatment of natural resources and the environment.

Section 3.7. Charitable Contributions. The Nation acknowledges that in addition to Impact Payments and other requirements provided herein, the Nation anticipates making charitable contributions to Beloit-area based not-for-profits, service clubs, and related organizations to help support philanthropic activities within the Beloit area. The Nation has a long history of such contributions at its other Wisconsin Class III Gaming facilities and will continue that practice at the Beloit Class III Gaming Facility.

Section 3.8. Compulsive Gambler Program. The Nation shall maintain at the Beloit Class III Gaming Facility, its programs and policies for the assessment, identification and assistance of compulsive gamblers currently in effect at its other Class III Gaming facilities.

Section 3.9. Nation Sovereignty. In accordance with applicable law, no City or County law, ordinance, code, resolution, rule or other regulation limiting zoning or otherwise governing, regulating, or controlling the use or development of real or personal property, shall be applicable to the Nation Trust Property. The Nation shall have and enjoy, to the maximum extent permitted under applicable law, sovereign control, ownership and governance over any lands accepted into Federal Trust on behalf of the Nation, including without limitation, the Nation Trust Property

(following the Trust Approval Date), and over all activities conducted thereupon unless and to the extent expressly waived in accordance with applicable law by the Nation in this IGA.

3.9.1 Permitted City Ordinances. Notwithstanding the above, the Nation finds that to ensure that the development of the Class III Gaming Facility complies with host community standards, it is in the Nation's best interest, subject to the terms and conditions of this IGA, to permit the City to enforce upon the Nation Trust Property only the following portions of the Code of General Ordinances of the City of Beloit until such time as the Nation and City may agree to any replacements pursuant to Section 3.10.4.3 of this IGA (collectively, the "Permitted City Ordinances"):

Chapter 6 – Fire Prevention Code;
Chapter 7 – Property Maintenance Code;
Chapter 8 – Plumbing Code;
Chapter 9 – Building Code;
Chapter 10 – Electrical Code;
Chapter 11 – Streets and Sidewalks;
Chapter 13 – Traffic Code;
Chapter 15 – Public Peace and Good Order;
Chapter 16 – Public Nuisances (excluding Section 16.08);
Chapter 17 – Regulation of Solid Waste;
Chapter 19 – Zoning Code;
Chapter 24 – Stormwater Management;
Chapter 26 – Heating and Air Conditioning Code;
Chapter 27 – City Water Utility;
Chapter 29 – Wastewater Treatment System;
Chapter 30 – Outdoor Sign Regulations;
Chapter 31 – Alcohol Beverages; and
Chapter 34 – Architectural Review and Landscape Code.

Notwithstanding anything to the contrary herein, the Permitted City Ordinances shall not include the rights and obligations of the City Board of Appeals.

3.9.2 Permitted County Ordinances. Notwithstanding the above and subject to the terms and conditions of this IGA, the Nation shall permit the County to enforce upon the Nation Trust Property only the following portions of the County ordinances until such time as the Nation and County agree to any replacements pursuant to Section 3.10.4.3 of this IGA (whether one or more, the "Permitted County Ordinances"); that portion of Chapter 13 of the County Public Health Ordinance governing the operation of restaurants, hotels and swimming pools.

Section 3.10. Municipal Ordinances and Inspections.

3.10.1 Enforcement of Permitted Ordinances. The Nation shall permit the City and County to enforce the Permitted City Ordinances and Permitted County Ordinances, respectively, upon the Nation Trust Property. Notwithstanding anything in this IGA to the contrary, any provision of the Permitted City Ordinances or Permitted County Ordinances that

conflicts with provisions of the Indian Gaming Regulatory Act, the Gaming Compact, or this IGA or that in any way restricts Class III Gaming, or that is applied exclusively to the Nation or to the Nation Trust Property, shall be deemed excluded from the Permitted City Ordinances and Permitted County Ordinances and inapplicable to the Nation Trust Property. The Nation further hereby (i) authorizes the Beloit Police Department, the Beloit Fire Department, City inspectors and County officials to carry out their respective rights and obligations under the Permitted City Ordinances and Permitted County Ordinances, as applicable, upon the Nation Trust Property, (ii) authorizes the office of the Beloit City Attorney to carry out its rights and obligations in prosecuting violations of the Permitted City Ordinances occurring upon the Nation Trust Property, (iii) authorizes the office of Rock County Corporation Counsel to carry out its rights and obligations in prosecuting violations of the Permitted County Ordinances occurring upon the Nation Trust Property, and (iv) authorizes City district and circuit courts located within the City and County to adjudicate violations of the Permitted City Ordinances occurring upon the Nation Trust Property. The Nation agrees to construct and maintain or cause to be constructed and maintained all buildings and improvements at the Nation Trust Property in accordance with the relevant chapters of the Permitted City Ordinances governing building design, construction, safety, and operation, and to submit to all related City inspections, fees and approvals required with respect thereto.

3.10.2 Grant of Right of Access and Inspection. The Nation hereby grants to the Beloit Police Department, the Beloit Fire Department, and emergency responders from other public safety departments summoned by the City pursuant to mutual aid agreements with the City, and to applicable City and County inspectors a license to access the Nation Trust Property and Beloit Class III Gaming Facility as necessary to perform their respective duties under the Permitted City Ordinances and Permitted County Ordinances. Except during emergencies, the City and County shall make reasonable efforts to provide the Nation with advance notice when scheduled or regular inspections are needed, and such inspections shall be made during normal business hours. Such notice shall be made by phone or e-mail to such phone number or e-mail address designated in writing by the Nation from time to time.

3.10.3 Zoning and Land Use – Nation Fee Property. The Nation Fee Property shall be subject to all chapters of the Beloit municipal code, including chapters related to zoning, building, construction, site plan and architectural review.

3.10.4 Zoning and Land Use – Nation Trust Property.

3.10.4.1 Prior to Completion of Construction. At all times prior to the issuance of a Certificate of Occupancy for the Beloit Class III Gaming Facility, the Permitted City Ordinances shall apply to and govern the zoning and land use of improvements upon the Nation Trust Property; provided, however, that all rights and obligations of the City Board of Appeals with respect to the Nation Trust Property shall be held and exercised solely by the Joint Commission. The Nation shall prepare and submit to the City in accordance with the City Zoning Ordinance, the PUD Application for the Nation Trust Property. The PUD Application shall include a general development plan for the Nation Trust Property and will include a specific development plan for the Beloit Class III Gaming Facility. The construction of the Beloit Class III Gaming Facility shall occur consistent with the City Approved PUD and with all

other applicable Permitted City Ordinances. In addition, the Nation shall adopt and approve the City Approved PUD as a Nation Approved PUD. The City and Nation agree to act in good faith hereunder and to not unreasonably delay or refuse to issue any approvals, minutes, certificates, or inspections contemplated hereunder.

3.10.4.2 Following Completion of Construction – Land Use and Zoning. At all times following the issuance of a Certificate of Occupancy for the Beloit Class III Gaming Facility, the Nation Zoning Ordinance shall exclusively apply to the Nation Trust Property; provided, however, that if the Nation (following the issuance of a Certificate of Occupancy for the Beloit Class III Gaming Facility) wishes to construct improvements on the Nation Trust Property in a manner that varies from the City Approved PUD, then the Nation shall first submit an application to amend the City Approved PUD to the Joint Commission. As a condition of approval, the Joint Commission may require review and recommendation by City and/or Nation planning and zoning staff. The City and Nation and Joint Commission agree to act in good faith hereunder and to not unreasonably delay or refuse to issue any approvals, minutes, certificates, or inspections contemplated hereunder.

3.10.4.3 Following Completion of Construction – Building Permits, Including Site and Architectural Review. Notwithstanding anything to the contrary in this IGA, all Permitted City Ordinances, except for the City Zoning Ordinance, shall continue to apply and govern over the Nation Trust Property, following the issuance of a Certificate of Occupancy for the Beloit Class III Gaming Facility. However, after the issuance of a Certificate of Occupancy for the Beloit Class III Gaming Facility, any building permit application, including site, sign and architectural review applications, which result in an irreconcilable difference of opinion between the Nation and the City, shall be submitted to the Joint Commission for resolution. The City and the Nation and Joint Commission agree to act in good faith hereunder and to not unreasonably delay or refuse to issue any approvals, minutes, certificates, or inspections contemplated hereunder. Further, after the Commencement Date, the Nation may petition to the City, as to Permitted City Ordinances, and the County, as to Permitted County Ordinances, to replace one or more of any such ordinances with the Nation's ordinances, provided those ordinances are in writing, approved by the Nation's legislature, and are substantially similar to the City or County ordinance being replaced.

3.10.4.4 Joint Commission. Any decision of the Joint Commission shall require the affirmative vote of three (3) or more of its members, and no decision may be made and effective unless made at a properly noticed meeting of the Joint Commission where at least three (3) of its members are present, provided that such meetings shall be held at a convenient place in the City of Beloit and notice thereof shall comply with Sections 19.83, 19.84 and 19.85 of the Wisconsin Statutes. The Joint Commission shall have the authority to enact and enforce policies regarding notice, meeting times, and other procedural matters of the Joint Commission not in conflict with this IGA.

Section 3.11. **Tobacco Sales.** Notwithstanding anything herein to the contrary, neither the City nor the County shall impose or enforce any prohibition or restriction on the sale of tobacco products on the Nation Trust Property; provided, however, that the Nation shall collect and remit

all federal, Nation and state taxes applicable to such sales and shall abide by applicable State of Wisconsin laws governing the sale of tobacco to minors.

Section 3.12. Fuel Sales. Notwithstanding anything in this IGA to the contrary, the Nation shall be permitted to engage in the construction and operation of a gasoline station upon the Nation Trust Property for the purpose of engaging in the retail sale of gasoline, diesel fuel, kerosene, and/or propane, together with tobacco products and other consumables; provided, however, that the Nation's sale and storage of such fuels shall be subject to all applicable federal, Wisconsin, County and City health and safety laws and regulations (including inspections) governing the installation, operation and closure of such facilities, and that all fuel sales to non-members of the Nation shall be subject to the same federal, Nation, Wisconsin, County and City (if applicable) taxes then in effect for the retail sale of fuels in Beloit, Wisconsin, with all such taxes, or equivalent payments thereto to be collected by the Nation and remitted to the appropriate government agency. Further, the sale of gasoline by the Nation on the Nation Trust Property shall be subject to Wisconsin's Minimum Mark-up Law, if any.

Section 3.13. Day Care Center. The Nation may provide day care services to serve the patrons and employees of the Beloit Class III Gaming Facility. Any such day care facility shall be licensed and operated in compliance with State of Wisconsin, City and County laws, rules, ordinances and regulations related to the operation of day care facilities.

Section 3.14. Gaming Only As Authorized. Class III Gaming shall be conducted at the Beloit Class III Gaming Facility in accordance with Indian Gaming Regulatory Act, the Gaming Compact, the Nation Gaming Ordinance, and shall be subject to the authority of the Nation Gaming Commission.

ARTICLE IV TERM

Section 4.1. Termination. This IGA shall remain in effect until either of the following occurs: (i) termination of Class III Gaming at the Nation Trust Property; or (ii) termination of the Gaming Compact with respect to the Nation Trust Property; provided, however, that this IGA may continue in effect thereafter upon the written consent of the Parties.

Section 4.2. Reutilization of the Trust Land for Purposes other than Class III Gaming. Should the Nation, for any reason, cease Class III Gaming on the Nation Trust Property and desire to continue to use the Nation Trust Property for other purposes, it agrees to enter into good faith negotiations with the City and County to amend this IGA or to create a new intergovernmental agreement to mitigate the impact of the proposed different use. The utilization of the Nation Trust Property for purposes that do not include Class III Gaming shall not commence until either an amended IGA or new intergovernmental agreement is in place that provides for impact payments to the City and County.

Section 4.3. Automatic Expiration. This IGA shall automatically expire and become null and void on the date occurring three (3) years following the Execution Date if the Trust Approval Date has not then occurred, unless the Parties agree otherwise in writing.

ARTICLE V
WAIVER OF IMMUNITY AND DISPUTE RESOLUTION

Section 5.1. **Meet and Confer.** Whenever, during the term of this IGA, any disagreement or dispute arises between the Parties as to the interpretation of this IGA 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, any Party may seek judicial enforcement of this IGA as provided in Section 5.2 of this IGA.

Section 5.2. **Limited Waiver of Sovereign Immunity.** The Parties do not waive, limit, or modify their respective immunity from unconsented suit, except as expressly provided herein.

5.2.1 **By the Nation.** The Nation, pursuant to Article XII, § 1, of the Nation's Constitution, by resolution of the Nation's Legislature, expressly waives for the City and County only, in a limited manner, its immunity from suit with respect to matters arising under this IGA.

5.2.2 **By the City.** The City, by resolution of the City Council, expressly waives for the Nation and County only, in a limited manner, its immunity from suit with respect to matters arising under this IGA.

5.2.3 **By the County.** The County, by resolution of the County's Board of Supervisors, expressly waives for the Nation and City only, in a limited manner, its immunity from suit with respect to matters arising under this IGA.

Section 5.3. **Jurisdiction and Venue.** Any Party may commence an action or counterclaim against other Parties in the United States District Court for the Western District of Wisconsin or the Wisconsin Circuit Court for Rock County (subject to the right of any Party to petition for removal of said action to the United States District Court for the Western District of Wisconsin) with respect to disputes arising out of or relating to this IGA. 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.

Section 5.4. **Limitation of Remedy.** The Parties' waiver of sovereign or governmental immunity provided herein is specifically limited to the following actions and judicial remedies: (i) declaratory relief to determine whether either Party or both are violating any of the terms of this IGA; (ii) equitable relief to compel the Party or Parties to specifically perform their obligations under this IGA; and (iii) monetary relief, limited to the award of any sums that may be due and owing under the terms of this IGA. 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).

Section 5.5. Service of Process. If a Party initiates any legal action to enforce the provisions of this IGA, the Parties agree, and do hereby expressly authorize, the City Clerk of the City on behalf of the City, the Secretary to the Nation's Legislature on behalf of the Nation, and the County Clerk on behalf of the County, to accept service of process. In addition, the Nation expressly gives its consent to any process server authorized by the City or County 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 process authorized herein.

Section 5.6. Governing Law. This IGA shall be governed by and construed in accordance with the applicable laws of the state of Wisconsin and of the United States.

Section 5.7. Exclusive Remedy. The Parties agree that the dispute resolution procedures set forth in Article V of this IGA shall provide the exclusive means for resolving any disputes arising out of or relating to this IGA.

Section 5.8. Exhaustion of Remedies. The Parties do hereby unconditionally waive any right to require any exhaustion of City, County, Wisconsin or Nation administrative or judicial remedies in any manner other than as set forth in Article V of this IGA.

Section 5.9. Prevailing Party to Receive Costs and Fees. In the event of litigation arising under this IGA, the prevailing Party in any such litigation shall be entitled to an award and judgment for its reasonable attorney's fees and any statutory costs.

Section 5.10. No Challenges to this IGA. The Parties each hereby waive any right each may have to commence or maintain any civil action or other proceeding to contest, invalidate or challenge this IGA, any procedure or proceeding undertaken to adopt this IGA or any of the actions required or contemplated by this IGA, or to take any actions, either directly or indirectly, to oppose or in any other way, to initiate, promote or support the opposition of approvals required under this IGA or to hinder, obstruct or unduly delay any of the actions required or contemplated by this IGA. This paragraph shall not be construed to prevent a Party to this IGA from commencing a declaratory judgment action regarding the interpretation of this IGA. In the event of a challenge to the validity of this IGA by any third party, each of the Parties shall defend the validity and enforceability of this IGA in any administrative or judicial proceeding.

Section 5.11. Indemnification.

5.11.1 By the Nation. The Nation agrees to and shall indemnify, defend, protect and hold harmless the City and the County from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs and expenses (including reasonable attorneys' fees) to the extent arising from or in connection with, or caused by any act, omission, or negligence of the Nation or its contractors, licensees, invitees, agents, lessees or employees, related to or in connection with any obligations on the Nation's part to be performed under the terms of this

IGA, and in case any action or proceeding be brought against the City and/or County (or the City's or County's agents, employees, contractors, subcontractors or legal counsel) by reason of any such claim, the Nation upon notice from the City and/or County shall have the option to defend the same at the Nation's expense by counsel reasonably satisfactory to the City and/or County, as applicable. However, in the event that the Nation does not elect to defend the action or proceeding, the City and/or County, as applicable, shall defend the same, at the Nation's expense, and shall consult with the Nation during the pendency of the action or proceeding.

5.11.2 By the City. The City agrees to and shall indemnify, defend, protect and hold harmless the Nation and the County from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs and expenses (including reasonable attorneys' fees) to the extent arising from or in connection with, or caused by any act, omission, or negligence of the City or its contractors, licensees, invitees, agents, lessees or employees, related to or in connection with any obligations on the City's part to be performed under the terms of this IGA, and in case any action or proceeding be brought against the Nation and/or County (or the Nation's or County's agents, employees, contractors, subcontractors or legal counsel) by reason of any such claim, the City upon notice from the Nation and/or County shall have the option to defend the same at the City's expense by counsel reasonably satisfactory to the Nation and/or County, as applicable. However, in the event that the City does not elect to defend the action or proceeding, the Nation and/or County, as applicable, shall defend the same, at the City's expense, and shall consult with the City during the pendency of the action or proceeding.

5.11.3 By the County. The County agrees to and shall indemnify, defend, protect and hold harmless the Nation and the City from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs and expenses (including reasonable attorneys' fees) to the extent arising from or in connection with, or caused by any act, omission, or negligence of the County or its contractors, licensees, invitees, agents, lessees or employees, related to or in connection with any obligations on the County's part to be performed under the terms of this IGA, and in case any action or proceeding be brought against the Nation and/or City (or the Nation's or City's agents, employees, contractors, subcontractors or legal counsel) by reason of any such claim, the County upon notice from the Nation and/or City shall have the option to defend the same at the County's expense by counsel reasonably satisfactory to the Nation and/or City, as applicable. However, in the event that the County does not elect to defend the action or proceeding, the Nation and/or City, as applicable, shall defend the same, at the County's expense, and shall consult with the County during the pendency of the action or proceeding.

ARTICLE VI TERMINATION

No breach or violation of any of the terms of this IGA by any of the Parties shall operate to void or terminate or provide grounds for termination of this IGA, it being the intent of the Parties that the provisions of this IGA shall be subject to specific performance, and injunctive relief shall be provided to cure any breaches prospectively, and that damages shall be awarded to redress any harm occasioned by a breach; provided, however, that if a Party cannot or will not conform to the requirements of this IGA as evidenced by a pattern of violations, and if such violations pose a

serious threat to the public health, safety or welfare, this restriction on termination of this IGA shall not apply.

ARTICLE VII AUTHORIZATION

Section 7.1. **Authorization.** The Parties each represent and warrant that each has performed all acts precedent to adoption of this IGA, including, but not limited to, matters of procedure and notice, and each has the full power and authority to execute this IGA and to perform its obligations in accordance with the terms and conditions thereof, and that the representative executing this IGA on behalf of such Party is duly and fully authorized to so execute and deliver this IGA.

Section 7.2. **Nation Resolutions.** Evidence of Nation Legislature approval of this IGA is attached hereto as Exhibit B.

Section 7.3. **City Resolutions.** Evidence of City Council approval of this IGA is attached hereto as Exhibit C.

Section 7.4. **County Resolutions.** Evidence of County Board of Supervisors approval of this IGA is attached hereto as Exhibit D.

ARTICLE VIII NOTICES

All notices required to be given hereunder shall be given in writing, sent by either personal delivery, certified mail, return receipt requested, or overnight mail. If sent via personal delivery, the notice shall be effective on the date of delivery. If sent by certified mail, the notice shall be deemed effective five (5) days after such mailing. If sent by overnight mail, the notice shall be effective on the date of delivery. All notices shall be addressed as follows:

To the City:

City of Beloit
Attn: City Manager
100 State Street
Beloit, WI 53511

With Copy To:

City of Beloit
Attn: City Attorney
100 State Street
Beloit, WI 53511

To the County:

County of Rock
Attn: Rock County Clerk
51 South Main Street
Janesville, WI 53545

With Copy To:

County of Rock
Attn: Rock County Corporation Counsel
51 South Main Street
Janesville, WI 53545

To the Nation:

Ho-Chunk Nation
Office of the President
P.O. Box 667
West 9814 Airport Road
Black River Falls, WI 54615

With Copy To:

Ho-Chunk Nation
Office of the Attorney General
P.O. Box 667
West 9814 Airport Road
Black River Falls, WI 54615

ARTICLE IX INTERPRETATION

This IGA shall be interpreted as though jointly drafted by the Parties.

ARTICLE X SEVERABILITY

No provision of this IGA is severable from this IGA. In the event that any provision of this IGA is adjudged by any Court of competent jurisdiction or federal agency having jurisdiction over this IGA or Indian gaming to be invalid, ineffective or unenforceable, in whole or in part, the Parties shall promptly meet to discuss how they might satisfy the terms of this IGA by alternative means. The Parties shall use their best efforts to find, design and implement a means of successfully effectuating the terms of this IGA. If necessary, the Parties shall negotiate appropriate amendments of this IGA to maintain, as closely as possible, the original terms, intent and balance of benefits, and burdens of this IGA. In the event the Parties are not able to reach agreement in such situation, the dispute resolution procedures of Article V of this IGA shall apply.

ARTICLE XI GOOD FAITH AND FAIR DEALING

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

**ARTICLE XII
CAPTIONS**

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

**ARTICLE XIII
AGREEMENT IN COUNTERPARTS**

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

**ARTICLE XIV
AMENDMENTS**

This IGA may only be amended by written instrument executed by all of the Parties.

**ARTICLE XV
COMPLETE AGREEMENT**

This IGA, including and incorporating all Exhibits, represents the entire integrated agreement between the Parties and supersedes all past agreements and all negotiations, representations, promises or agreements, either written or oral, made during the course of negotiations leading to this IGA.

**ARTICLE XVI
APPROVAL BY THE SECRETARY OF THE INTERIOR**

The Parties agree that this IGA may be subject to the approval of the Secretary of the Interior under 25 U.S.C. § 81. The Parties agree to use their best efforts to secure the approval of the Secretary of the Interior or a written determination of the Secretary of the Interior that this IGA is not subject to 25 U.S.C. § 81.

**ARTICLE XVII
ASSIGNMENT OR TRANSFER**

Neither this IGA nor any of the rights or obligations created herein shall be assignable or transferable by operation of law or otherwise by any Party without the prior written consent of all the Parties. Any attempted assignment or transfer by one Party without first obtaining the written consent of all Parties shall become null and void.

ARTICLE XVIII
FORCE MAJEURE

No Party shall be liable or deemed to be in default for any delay or failure in performance under this IGA resulting directly or indirectly from Acts of God, civil or military authority, acts of public enemy, war, riots, civil disturbances, accidents, fire, explosions, earthquakes, floods, the elements, strikes, lockouts, labor disturbances, shortages of suitable parts, labor or transportation, delays caused by suppliers or other cause beyond the reasonable control of such Party. In the event of such a cause, the performance of the Party prevented from performing shall be excused for the period of the cause event. Should the period exceed ninety (90) days, a Party may proceed under Article V of this IGA. The obligation to make payments due or payable shall not be excused for any force majeure event.

[Signature page follows]

DRAFT

IN WITNESS WHEREOF, the Parties have entered into this IGA as of the Execution Date.

ATTEST:

CITY OF БЕЛОIT, WISCONSIN

By: _____
Rebecca S. Houseman, City Clerk

By: _____
Larry N. Arft, City Manager

Date: _____

Approved as to Form

By: _____
Thomas R. Casper, City Attorney

ATTEST:

COUNTY OF ROCK, WISCONSIN

By: _____
Lori Stottler, County Clerk

By: _____
J. Russell Podzilni, County Board Chair

Date: _____

ATTEST:

HO-CHUNK NATION

By: _____
Hope B. Smith, Tribal Secretary

By: _____
Jon Greendeer, President

Date: _____

[APPROVAL OF SECRETARY OF THE INTERIOR IS ON THE FOLLOWING PAGE.]

**APPROVAL OF THIS IGA BY THE
UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF INDIAN AFFAIRS**

Pursuant to its authority under 25 U.S.C. § 81 (1988), the undersigned designee of the Secretary of the Department of the Interior of the United States of America, by executing below, does hereby approve the terms and conditions of the forgoing Intergovernmental Agreement by and between the Ho-Chunk Nation, the City of Beloit, Wisconsin and the County of Rock, Wisconsin.

United States Department of the Interior
Bureau of Indian Affairs

By:

Print Name: _____
Print Title: _____

Date: _____