



**RESOLUTION OF THE GOVERNING BODY OF THE
THREE AFFILIATED TRIBES OF THE
FORT BERTHOLD INDIAN RESERVATION**

A Resolution entitled, Approval of Owners Representative and Project Management for New Casino Event Center and Parking Structure – Okland Construction Company, Inc. 1978 South West Temple, Salt Lake City, Utah, 84115”

WHEREAS, The Three Affiliated Tribes (the “MHA Nation”), having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act and having adopted a Constitution and By-Laws pursuant to said Act; and

WHEREAS, The Constitution of the MHA Nation generally authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the MHA Nation and of the enrolled members thereof; and

WHEREAS, Article III of the Constitution of the Three Affiliated Tribes provides that the Tribal Business Council is the governing body of the Tribes; and

WHEREAS, The 4 Bears Casino & Lodge (“Casino”) has a new event center and parking structure project in development to be funded by a loan from the Three Affiliated Tribes; and

WHEREAS, The Casino has selected Okland Construction Company of Salt Lake City, Utah, to serve as Owners Representative and provide Project Management for the New Casino Event Center and Parking Structure; and

WHEREAS, As owner of the Casino, the Tribe becomes a necessary party to the Agreement that includes a limited waiver of its Sovereign Immunity that is limited to enforcement of the contract terms including specific performance.

NOW, THEREFORE, BE IT RESOLVED that the Tribal Business Council of the Three Affiliated Tribes approves the selection of Okland Construction Company to serve as Owners Representative and provide Project Management services in the New Casino Event Center and Parking Structure project; and

BE IT FINALLY RESOLVED, the Tribal Business Council hereby approves a limited waiver of sovereign immunity in the Agreement that is limited to the contract terms and specific performance and expressly excludes consequential, indirect and/or incidental damages by the parties.




CERTIFICATION

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Indian Reservation hereby certify that the Tribal Business Council is composed of seven (7) members of whom five (5) constitute a quorum, 6 were present at a Regular Meeting thereof duly called, noticed, convened and held on the 26th day of August, 2014, that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of 6 members, 0 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.


Chairman [] Voting. [] Not Voting.

Dated this 26th day of August, 2014.

ATTEST:



Executive Secretary V. Judy Brugh
Tribal Business Council
Three Affiliated Tribes



Tribal Chairman, Tex Hall
Tribal Business Council
Three Affiliated Tribes

**SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of 07-30-14 ("Effective Date") between Three Affiliated Tribes, ("Owner") whose address is 404 Frontage Road, New Town, ND 58763 and Kadrmas, Lee & Jackson, Inc., ("Engineer") whose address is 2611 Gable Road, Billings, MT, 59102. The Engineer agrees to provide the services described below to Owner for 4 Bears Expansion - 2020 Vision ("Project"). The services Engineer shall provide, or cause to be provided, are further defined in attached Exhibit A - Engineer's Services and are generally described as follows: Owner's Representative for Construction/Project Management for the 4 Bears Event Center, Parking Structure and Casino Renovation. Owner shall provide, or cause to be provided, the payment for these services as set forth in attached Exhibit B - Payment for Services.

Owner and Engineer further agree as follows:

1.01 Basic Agreement

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement, and Owner shall pay Engineer for such Services as set forth in Paragraph 10.01.

2.01 Payment Procedures

- A. *Preparation of Invoices.* Engineer will prepare a monthly invoice in accordance with Engineer's standard invoicing practices and submit the invoice to Owner.
- B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, without liability, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

3.01 Additional Services

- A. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above.
- B. Owner shall pay Engineer for such additional services as follows: For additional services of Engineer's employees engaged directly on the Project an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any.

4.01 Termination

- A. The obligation to provide further services under this Agreement may be terminated
 - 1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party.
 - b. By Engineer:
 - 1) Upon seven days written notice if Engineer believes that Engineer is being requested by Owner to furnish or perform services contrary to Engineer's responsibilities as a provider of professional services; or
 - 2) Upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
 - 3) Engineer shall have no liability to Owner on account of such termination.
 - c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under paragraph 4.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
 - 2. For convenience,
 - a. By Owner effective upon Engineer's receipt of notice from Owner.
- B. The terminating party under paragraphs 4.01.A.1 or 4.01.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Project site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

5.01 Controlling Law

- A. This Agreement is to be governed by the law of the state in which the Project is located.

6.01 Successors, Assigns, and Beneficiaries

- A. Owner and Engineer each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by paragraph 6.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

7.01 General Considerations

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Engineer and its engineers may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.
- B. Engineer shall not at any time supervise, direct, or have control over any contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractor's work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work.
- C. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor.
- D. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any contractor's agents or employees or any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any of construction work; or for any decision made on interpretations or clarifications of the construction contract given by Owner without consultation and advice of Engineer.
- E. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract as prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2007 Edition).

- F. All project documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed.
- G. To the fullest extent permitted by law, Owner and Engineer agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.
- H. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (i) retains appropriate specialist engineers or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

8.01 KL&J Additions to EJCDC E-520

- A. The Owner and Engineer each agree to assume its own liability for claims of any nature including all costs, expenses and reasonable attorney's fees, which may in any manner result from or arise out of this agreement. Neither the Owner nor the Engineer shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.
- B. The Owner shall not reuse or make any modification to the project documents without Engineer's prior written authorization. The Owner agrees, to the fullest extent permitted by law, to indemnify and hold harmless Engineer's officers, directors, employees and sub-engineers (collectively) against any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from or allegedly arising from or in any way connected with the unauthorized reuse or modification of the project documents by the Owner or any person or entity that acquires or obtains the project documents from or through the Owner without Engineer's written authorization.
- C. In the event of a dispute arising out of or relating to the agreement or the services to be rendered hereunder, both parties hereby agree to (1) attempt to resolve such disputes through direct negotiations between the appropriate representatives of each party, (2) if such negotiations are not fully successful, the parties agree to attempt to resolve any remaining dispute by formal nonbinding mediation conducted in accordance with rules and procedures to be agreed upon by both parties, and (3) if the dispute or any issues remain unresolved after the first two steps, either party may seek to have the dispute resolved by a court of competent jurisdiction.
- D. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Owner nor the Engineer, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential

damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Owner and the Engineer shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.

- E. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of the respective party whom the individual represents. Each Party may change its designated individual(s) at any time by written notice to the other Party.

9.01 Total Agreement

- A. This Agreement (together with any expressly incorporated exhibits and appendices), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

10.01 Payment and Schedules

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:
 - 1. In accordance with Exhibit B - Payment of Services.
- B. The Engineer's compensation is conditioned on the time to complete the services by September 1, 2016. Should the time to complete services be extended beyond this period, total compensation to Engineer may be appropriately adjusted. Engineer is authorized to begin rendering services as of the Effective Date.

11.01 Sovereign Immunity

The Owner, a federally recognized Indian Tribe, hereby provides a limited waiver of its Sovereign Immunity that is expressly limited only to the specific terms of the Agreement including specific performance. As provided in Section 8.01.D, no consequential, incidental and /or indirect damages shall be awarded including attorney's fees and costs.

This is **EXHIBIT A**, consisting of 12 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated July 30, 2014.

Engineer's Services

The Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

PART 1 - BASIC SERVICES

A1.01 Purpose

- A. The following scope is presented to identify the proposed services for the *Owner's Representative* related to the proposed 4 Bears Event Center, Parking Structure and Casino Renovation Project.
- B. As the *Owners Representative*, *KLJ* will provide personnel as required to assist *4 Bears Casino & Lodge* in managing the project while minimizing the daily involvement of the *Owner's* staff to allow for the continuation of the staff's daily duties and business. *KLJ* shall report directly to *4 Bears Casino & Lodge* on all matters; or report to specific staff as directed by the *Owner*.
- C. *KLJ* shall be responsible exclusively to the *Owner* and act in the *Owner's* best interests at every stage of the project. Advice and recommendations will be offered on project related matters such as optimum use of available funds, control of the scope of work, project scheduling, optimum use of design and construction firm's capabilities, avoidance of delays, changes and disputes, enhancing project design and construction quality, optimum flexibility in contracting and procurement.

A1.02 Preconstruction Phase

- A. Throughout the preconstruction services phase, *KLJ* staff will provide guidance in conjunction with the architect on selection of materials, building systems, equipment and methods of project delivery. We will evaluate and make recommendations on the availability of materials and labor, time requirements for procurement, installation and factors related to cost, including but not limited to, the cost of alternative designs or materials.
- B. During preconstruction, the project is fully programmed from all aspects of budgeting and pricing to schedule and project execution. It is during preconstruction that the plan is developed and during construction where it is executed. Key services provided during preconstruction will include:

1. Project Scope Development
 - a) Coordinate and advise the owner on the development of and adherence to the proposed project scope, schedule and budget as it is developed by the Architect during the design phase.
2. Project Schedule
 - a) Coordinate overall project scheduling with the *Owner*, Architect and additional contracted firms.
 - b) Review project schedule monthly.
 - c) Schedule will include, as a minimum, specific milestones that significantly impact the progress of the project effort. A separate construction schedule would be developed and maintained by the successful contractor(s) for the project.
3. Project Design Development
 - a) Conceptual drawing review - develop construction alternates.
 - b) Participate in plan reviews and evaluate the construction documents for control of costs, basic constructability, alternatives, schedule and adherence to the overall design intent.
 - c) Advise the *Owner* in identifying opportunities for cost savings by making recommendations during review of the preliminary & design documents.
 - d) Seek involvement of General Contractors or solicit interest relative to the construction phasing and budget of the project.
4. Project Delivery
 - a) Identify options for procurement of design and construction services
 - b) Identify options for procurement of materials and equipment
 - c) Recommend project delivery system
 - d) Make award based on pre-determined criteria
 - e) Make recommendations to Owner pursuant to the pre-determined criteria
 - f) Oversee the General Contractor selection process and make recommendations to the *Owner*
5. Administer Construction Contracts
 - a) Prepare and administer General Contractor contracts
 - b) Establish and monitor project schedules, report to *Owner* on program and project progress
 - c) Conduct project meetings
 - d) Establish and manage claim avoidance and dispute resolution systems
 - e) Provide construction, program, and project coordination

6. Contractor Bidding and/or Selection
 - a) Review bid documents generated by the Architect and/or subconsultants.
 - b) Prepare an agenda, facilitate the pre-selection meeting for General Contractor and respond to questions as needed.
 - c) Develop and assist *Owner* with the distribution of contract bid packages.
 - d) Observe the Subcontractor bidding and/or selection process at the *Owner's* designated location.
 - e) Review General Contractor Guaranteed Maximum Price (GMP) proposals and selection forms.
 - f) Provide *Owner* with award recommendations.

7. General Project Management
 - a) Analyze and communicate the *Owner's* needs during the design portion of the project.
 - b) Attend monthly meetings as requested by the *Owner* to provide project specific updates.

8. Project Start Up Tasks
 - a) Coordinate with *Owner*, General Contractor, Architect and stakeholders to determine project construction start date.
 - b) Communicate project start date to *Owner* and stakeholders.
 - c) Coordinate Notice to Proceed and required documentation and notices with *Owner* and General Contractor.
 - d) Pre-Construction Conference: Participate in a Pre-Construction Conference prior to commencement of Work at the Site.

A1.03 *Construction Phase*

- A. *KLJ* will provide comprehensive construction observation and management services. As the clients advocate *KLJ* coordinates, manages, and supervises construction activities to ensure that the project is complete, safe, and properly built in strict accordance with the contract documents.

- B. *KLJ* will have an on-site presence by a Resident Project Representative (RPR) during the construction phase. The on-site staff will be supplemented with construction observers as the project work schedule requires. The staffing levels will be reduced during the closeout phase as construction activity lessens. Some of the office and general support work will be completed by the others not at the job site.

- C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final

Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.

D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is three (3), the Event Center, Parking Structure and Casino Renovation. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

E. Key services provided during construction will include:

1. Construction Observation

- a) Provide daily site monitoring of the contractor's work for compliance with the contract documents.
- b) Prepare construction observation reports.
- c) Attend meetings with architect, contractor, and *Owner*.
- d) In coordination with the Architect, interpret the contract plans and specifications to assure compliance with the intent of the design.
- e) Coordinate responses to contractor's Requests for Information (RFI) by the Design Team and maintain a log of the receipt, review, and disposition of all RFI.
- f) Receive and coordinate all submittals and shop drawing distribution activities. Develop Shop Drawing Log and coordinate the timely review and response to the contractor's Shop Drawings and other required submittals by the Design Team. Maintain a log of the receipt, review, and disposition of all submittals.
- g) Document issues and processes that may result in a change order or claim by the contractor for additional payment or schedule relief.
- h) Witness necessary samples, tests, and inspections by the Independent Testing Laboratory hired by the Contractor.
- i) Observe work quantity and quality.
- j) Prepare and issue monthly project status reports
- k) Attend monthly meetings as requested by the *Owner* to provide project specific updates.

2. Construction Administration

- a) Analyze and communicate *Owner's* needs during the construction portion of the project.

- i. General Administration of Construction Contract: Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer as assigned in the Construction Contract shall not be modified, except as Engineer may otherwise agree in writing. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.
- ii. Establish and manage claim avoidance and dispute resolution systems
- iii. Provide construction, program, and project coordination
- b) Review the General Contractors site logistics plan to ensure minimum impact to ongoing owner operations.
- c) Selecting Independent Testing Laboratory: Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.0.
- d) Schedules: Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
- e) Baselines and Benchmarks: As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
- f) Defective Work: Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work (i) is defective under the standards set forth in the Contract Documents, (ii) will not produce a completed Project that conforms to the Contract Documents, or (iii) will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
- g) Clarifications and Interpretations; Field Orders: Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Subject to any limitations in the Contract Documents, Engineer may issue field orders authorizing minor variations in the Work from the requirements of the Contract Documents.
- h) Change Orders and Work Change Directives: Recommend change orders and work change directives to Owner, as appropriate, and prepare change orders and work change directives as required.
- i) Shop Drawings and Samples: Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance

with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.

- j) Substitutes and "or-equal": Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.
- k) Inspections and Tests: Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Engineer shall be entitled to rely on the results of such tests.
- l) Disagreements between Owner and Contractor: Render formal written decisions on all duly submitted issues relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance, or progress of Contractor's Work; review each duly submitted Claim by Owner or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if Engineer in its discretion concludes that to do so would be inappropriate. In rendering such decisions, Engineer shall be fair and not show partiality to Owner or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.
- m) Applications for Payment: Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
 - i. Determine the amounts that Engineer recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial

Completion, to the results of any subsequent tests called for in the Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe Contractor's Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of Contractor's Work (subject to any subsequent adjustments allowed by the Contract Documents).

- ii. By recommending any payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control Contractor's Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to Owner free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.
 - iii. Verify that all equipment/systems have been approved.
 - iv. Verify that materials/equipment have been delivered and/or installed in accordance with the contract documents.
 - v. Verify that the percentage of work complete is accurate and reflects the appropriate balance of work to be completed.
- n) Contractor's Completion Documents: Receive, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided under Paragraph

A1.03.E.2.i, and transmit the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such review by Engineer will be limited as provided in Paragraph A1.03.E.2.i.

- o) Substantial Completion: Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Project to determine if the Work is substantially complete. If after considering any objections of Owner, Engineer considers the Work substantially complete; Engineer shall deliver a certificate of Substantial Completion to Owner and Contractor.
- p) Final Notice of Acceptability of the Work: Conduct a final visit to the Project to determine if the completed Work of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice using *KL&J's* Final Review and Acceptance form that the Work is acceptable to the best of Engineer's knowledge, information, and belief and based on the extent of the services provided by Engineer under this Agreement
- q) Review General Contractor and Subcontractor safety programs for conformance to owner specific safety program.
- r) Coordinate with the Architect and Contractor to identify and resolve construction issues.
- s) Review General Contractor change order requests and provide recommendations to the *Owner*.
- t) Monitor the project schedule throughout the construction phase.
- u) Coordinate deliveries of *Owner* provided items.
- v) Record project progress through photographic documentation.

3. Project Close-Out

- a) Coordinate the substantial completion meeting and final inspection
- b) Coordinate preparation of the Project punch-list and verify that all punch-list items are completed
- c) Review the red-line Record Drawings as produced by the General Contractor and the observation reports and forward the Record Drawings to the Architect to prepare the Project Record Drawings
- d) Coordinate the final inspection of the Project with the Architect and Owner representatives to determine the attainment of substantial completion in accordance with the Contract Documents and recommend final acceptance of the Project
- e) Manage project closeout including assistance to the Owner in settling any claims or disputes, and processing Certificates of Substantial Completion and Certificates of Final Completion.

- f) Coordinate Project final review and acceptance meetings with all contracted parties
- g) Coordinate development of final checklist and monitor completion of items noted for all contracted parties.
- h) Document outstanding issues and resolutions
- i) Coordinate final warranties, Record Drawings, equipment and material manuals, operations manuals, contacts, etc
- j) Coordinate final possession transfer
- k) Catalog and package Project Records for *Owner* storage

F. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.C, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative Services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

G. *Limitation of Responsibilities:* Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor or Supplier, or other individuals or entities performing or furnishing any of the Work, for safety or security at the Site, or for safety precautions and programs incident to Contractor's Work, during the Construction Phase or otherwise. Engineer shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

A1.04 *Post-Construction Phase*

- A. Upon written authorization from Owner during the Post-Construction Phase Engineer shall:
 - 1. Together with Owner, visit the Project to observe any apparent defects in the Work, assist Owner in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of defective Work, if any.
 - 2. Together with Owner or Owner's representative, visit the Project within one month before the end of the correction period to ascertain whether any portion of the Work is subject to correction.
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

PART 2 - ADDITIONAL SERVICES

A2.01 *Additional Services Requiring Owner's Written Authorization*

- A. If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
 2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
 3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
 4. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
 5. Providing renderings or models for Owner's use.
 6. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of financial feasibility and cash flow studies, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting Owner in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by Owner.
 7. Furnishing services of Consultants for other than Basic Services.
 8. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.
 9. Services during out-of-town travel required of Engineer other than for visits to the Site or Owner's office.

10. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.
11. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.
12. Assistance in connection with General Contractor protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required by Exhibit F.
13. Providing *Owner's Representative* services beyond the original date for completion and readiness for final payment of Contractor.
14. Providing assistance in responding to the presence of any Constituent of Concern at the Site, in compliance with current Laws and Regulations.
15. Preparing Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor, and furnishing such Record Drawings to Owner.
16. Preparation of operation and maintenance manuals.
17. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.
18. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
19. Assistance in connection with the adjusting of Project equipment and systems.
20. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
21. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
22. Assistance to Owner in developing procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related record-keeping.
23. Overtime work requiring higher than regular rates.
24. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.

A2.02 Additional Services Not Requiring Owner's Written Authorization

- A. Engineer shall advise Owner in advance that Engineer will immediately commence to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner.
1. Services in connection with work change directives and change orders to reflect changes requested by Owner.
 2. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
 3. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work (advance notice not required), (2) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.
 4. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by Owner prior to Substantial Completion.
 5. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.
 6. Services during the Construction Phase rendered after the original date for completion of the Work referred to in A1.03.F.
 7. Reviewing a Shop Drawing more than three times, as a result of repeated inadequate submissions by Contractor.

While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, state, or local safety authorities for similar construction sites

This is **EXHIBIT B**, consisting of 2 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated July 30, 2014.

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET BC-1: Owner's Representative Services - Lump Sum

The Agreement is supplemented to include the following agreement of the parties:

B1.01 Compensation for Owner's Representative Services - Lump Sum Method of Payment

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A as follows:

1. A Lump Sum amount of One Million Five Hundred Sixty Six Thousand Eight Hundred and no dollars (\$1,566,800.00) based on the following estimated distribution of compensation:

a. Preconstruction Phase	\$ <u>179,000.00</u>
b. Construction Phase	\$ <u>1,326,360.00</u>
c. Project Closeout Phase	\$ <u>58,690.00</u>
d. Post-Construction Phase	\$ <u>2,750.00</u>

2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner.

3. The Lump Sum includes compensation for Engineer's services and services of Engineer's Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.

4. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period.

B. *Period of Service*: The compensation amount stipulated is conditioned on a period of service not exceeding 22 months. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted.

**COMPENSATION PACKET AS-1:
Additional Services - Standard Hourly Rates**

The Agreement is supplemented to include the following agreement of the parties:

B1.05 Compensation for Additional Services - Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Additional Services, if any, as follows:

1. *General:* For services of Engineer's personnel engaged directly on the Project pursuant to Paragraph A2.01 or A2.02 of Exhibit A, except for services as a consultant or witness under Paragraph A2.01.A.20, (which if needed shall be separately negotiated based on the nature of the required consultation or testimony) an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant charges, if any.

B. *Compensation For Reimbursable Expenses:*

1. For those compensations that are not accounted for in the compensation for Basic Services under Paragraph B1.01 and are directly related to the provision of Additional Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit B.
2. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a factor of 1.2.
4. The Reimbursable Expenses Schedule will be adjusted annually (as of 2014) to reflect equitable changes in the compensation payable to Engineer.

C. *Other Provisions Concerning Payment For Additional Services:*

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.2.
2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant Factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

This is **Appendix 1 to EXHIBIT B**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated July 30, 2014.

Standard Hourly Rates Schedule

A. *Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Appendix 1 to this Exhibit B and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.

B. *Schedule:*

Hourly rates for services performed on or after the date of the Agreement are:

Practice Area Leader	\$ <u>198.00</u> /hour
Program Manager	<u>171.00</u> /hour
Project Manager	<u>136.00</u> /hour
Resident Engineer	<u>109.00</u> /hour
Admin/Clerical	<u>80.00</u> /hour



August 21, 2014

Mr. Patrick Packineau, General Manager
4 Bears Casino and Lodge
202 Frontage Road
New Town, ND 58763

RE: 4 Bears Casino and Lodge
Event Center and Parking Ramp Addition
New Town, ND

Project No. 13-089

Dear Mr. Packineau:

Enclosed for your review and signature are two (2) copies of the Standard Form of Agreement Between Owner and Architect for the above referenced project. Please review the agreement, sign both copies, keep one (1) for your records and return one (1) to our office.

If you have any questions, please feel free to call. We look forward to working with you on this project.

Sincerely,

Brian C. Berg
BCB/ald

Enclosure

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER: Three Affiliated Tribes
By: [Signature]
(signature)

By: Tex Hall Fred Fox
(printed or typed name)

Title: Chairman Vice Chairman

Date Signed: _____

By: [Signature]
(signature)

By: Patrick Packineau
(printed or typed name)

Title: General Manager- 4 Bears Casino & Lodge

Address for giving notices:
202 Frontage Road
New Town, ND 58763

Designated Representative:
Attn: Patrick Packineau

Title: General Manager

Phone Number: 701-627-7539

E-Mail Address: pwp@4bearscasino.com

ENGINEER: Kadrmas, Lee & Jackson, Inc.
By: [Signature]
(signature)

By: Barry Schuchard
(printed or typed name)

Title: Vice President

Date Signed: August 1, 2014

Witnessed By: _____
(signature)

Witnessed By: Diana Barta
(printed or typed name)

Title: Administrative Assistant

Address for giving notices:
2611 Gable Road
Billings, MT 59102

Designated Representative:
Attn: Tracy Haag

Title: Program Manager

Phone Number: 406-245-5499

E-Mail Address: tracy.haag@kljeng.com