

**ROAD CONSTRUCTION CONTRACT**  
**FOR** \_\_\_\_\_  
**(BIA Project I.D. No. \_\_\_\_\_)**  
**(TTP Route No. \_\_\_\_\_)**

**THIS CONTRACT** is by and between the **Stockbridge-Munsee Community** (“TRIBE”), whose address is P.O. Box 70, Bowler, WI 54416, and \_\_\_\_\_ (“CONTRACTOR”), whose address is \_\_\_\_\_.

WHEREAS, the Tribe has a Tribal Transportation Program Agreement (“TTP Agreement”) with the U.S. Department of Interior, Bureau of Indian Affairs (“BIA”), that was entered into in accordance with federal law; and

WHEREAS, in this TTP Agreement, the BIA transfers responsibility for transportation-related activities to the Tribe and provides funding to carry out such responsibilities; and

WHEREAS, the Tribe is entering into this Contract as part of fulfilling the responsibilities transferred to it under the TTP Agreement with the BIA; and

WHEREAS, the Contractor wishes to provide services required by the Tribe to complete the road construction work identified in this Contract;

NOW THEREFORE, that the Tribe and the Contractor, for the consideration provided for herein, agree as follows:

**I. SCOPE OF WORK**

**Section 1. Purpose.** The general purpose of this Contract is for the **reconstruction of approximately \_\_\_\_\_ feet of \_\_\_\_\_ Road**, which includes, but is not limited to, **pulverizing, grading, bituminous surfacing, shouldering, seeding, mulching, signage and new culverts** (the “Project”). The Contractor shall be responsible for all services necessary to complete this Project. For this Project, \_\_\_\_\_, shall be the Tribe’s primary point of contact with the Contractor.

**Section 2. Contract Documents.** The contract documents for the Project are incorporated into this Contract by reference and include: the Project plans and specifications; the Contractor’s proposal; other construction plans developed for the Project; change orders that are made in writing and signed by both parties, as well as \_\_\_\_\_.

In addition, the Wisconsin Department of Transportation Standard Specification for Highway and Structure Construction, as current at the time of the Contract, are incorporated into the Contract, unless superseded by federal construction standards identified under the Project plans and specifications.

If the Contractor discovers a discrepancy, error, or omission in the contract documents, the Contractor shall promptly report it to the Tribe for clarification or correction. If the Contractor believes that additional cost or time is required for the work due to the clarification or instruction, Contractor may submit a change order to modify the Contract.

The Contractor shall be responsible for costs, including those that would have been avoided, when Contractor recognized or should have recognized the discrepancy, error or omission and did not report it to the Tribe.

**Section 3. Services.** Contractor agrees to use a high standard of care. Except as otherwise specifically stated in the Contract, the Contractor shall provide and pay for all materials, tools, equipment, liability insurance, transportation and all other services and facilities of every nature whatsoever to execute the Project and deliver it complete. The Contractor shall be responsible for such cutting, fitting or patching as necessary for the Project without damaging or endangering the work.

**Section 4. Supervision and Construction Procedures.** Contractor shall supervise and direct the work and shall be responsible for job site safety. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, as well as for coordinating the work, unless the contract documents give other specific instructions concerning these matters. Contractor shall be responsible to Tribe for acts and omissions of Contractor's employees, subcontractors and other persons performing portions of the work for or on behalf of the Contractor or its subcontractors.

The Contractor shall take appropriate measures to prevent damage, injury or loss to persons or property in the event of an emergency. Adjustments to compensation or time may be claimed by the Contractor based on an emergency, except that no adjustment will be made if the emergency was the result of the Contractor's misconduct or negligence.

**Section 5. Access.** Contractor shall provide the Tribe and the BIA with access to visit the Project. The Tribe and BIA will abide by the Contractor's reasonable Project site safety rules.

**Section 6. Right to Carry Out Work.** If Contractor defaults or persistently fails or neglects to carry out work in accordance with the contract documents, the Tribe, after 10 days' written notice to Contractor and without prejudice to other remedies, may make good such deficiencies and may deduct the reasonable cost thereof from payment then or thereafter due to Contractor.

**Section 7. Subcontractors.** The Contractor shall require each subcontractor comply with the terms of the Contract Documents for this Project and assume all appropriate obligations and responsibilities for the work thereunder. This provision does not limit or otherwise affect the Contractor's responsibility for the quality of labor, services, and materials furnished by subcontractors and for the acts and omissions of subcontractors.

## **II. SPECIAL CONDITIONS**

**Section 1. Contract Times.** The Contractor shall begin work on the Project following full execution of this Contract and the work, without change orders, shall be completed within \_\_\_\_\_ **calendar days**. No extensions will be granted because of inclement weather. However, Contractor shall be entitled to reasonable extensions of time for other conditions beyond its control. Contractor shall be required to:

- (a) commence work as authorized under this Contract;
- (b) prosecute the work diligently; and
- (c) complete the entire work ready for use not later than the specified timeframes, which includes final cleanup of the premises.

**Section 2. Performance and Payment Bonds.** If required, Contractor shall furnish performance bond for **100%** of the contract price and a payment bond for **50%** of the contract price to the Tribe as security for the faithful performance and payment of all obligations under this Contract prior to starting work. These bonds shall be in such form and with such sureties as are acceptable to the Tribe. The bonds are made part of the Contract by reference. Failure to provide bonds as required under the Contract shall result in immediate termination of this Contract, unless otherwise agreed upon by the parties.

**Section 3. Contractor's Insurance.** The Contractor shall purchase and maintain insurance for protection from claims under worker's compensation laws, disability benefits laws or other similar employee benefit laws; for damages due to injury, occupational disease, or death of employees; from personal injury claims; and from property damage claims, including loss of use resulting therefrom -- any and all of which may arise out of or result from the Contractor's operations under the Contract. The Contractor's insurance shall be written for not less than any limits of liability specified in the Contract or required under Wisconsin law, whichever is greater, and shall include contractual liability insurance. Liability coverage shall be written on an occurrence basis. The Contractor waives all rights of subrogation in relation to such insurance. The Tribe shall be named as an additional insured or loss payee, as appropriate, on the Contractor's insurance. Before starting the work, the Contractor shall file with Tribe certificates of such insurance, acceptable to the Tribe, these certificates shall contain a provision that the coverage afforded under the policies will not be canceled or materially changed during the course of this Contract. The certificate shall be incorporated herein by reference and become a part of this Contract.

**Section 4. Liquidated Damages.** If the Contractor fails to complete the work within the time specified hereunder, the Contractor shall be liable for and shall pay to the Tribe the sum of **\$100 for each calendar day of delay** until the work is substantially completed and accepted by the Tribe, except for delays caused because of force majeure.

If the Tribe terminates the Contractor's right to proceed as a result of Contractor's wrongful act or omission, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the Tribe in completing the work. If the Tribe does not terminate the Contractor's right to proceed, but subsequently terminates the contract for cause, the resulting damage caused by Contractor's breach will consist of liquidated damages until work is completed or accepted.

**Section 5. Tribal Preference in Hiring.** Contractor agrees, that to the greatest extent feasible, preferences and opportunities for training and employment in connection with the administration of this Contract shall be given to Native Americans; and preference in the award of any additional subcontracts in connection with the administration of this Contract shall be given to Indian organizations and to Indian-owned economic enterprises as defined in Section 3 of the Indian Financing Act of 1974 (88 Stat. 77). The Contractor will provide a list of jobs to the Stockbridge-Munsee Human Resources Department upon signing this Contract. Contractor will ensure that subcontractors also comply with this provision.

**Section 6. Site Examination.** It is understood that the Contractor has examined the site and is familiar with all conditions that might affect the execution of this Contract and has

made provisions therefore in its bid. When the site contains concealed or unknown conditions that differ materially from those indicated in the contract documents, the parties agree that the contract sum or time shall be equitably adjusted.

If, as part of completing the work under this Contract, the Contractor encounters hazardous or toxic materials on the site, the Contractor shall immediately stop work in the affected area, take immediate measures to protect against injury to persons or property and report the condition to the Tribe in writing. The Contractor has no responsibility for such hazardous or toxic materials on the site unless the Contractor, or someone for whom the Contractor is liable, introduces such materials to the site.

In the event human remains or items of historical or archeological significance are found, the Contractor is responsible for immediately halting all operations and informing the Tribe of what was found in writing. Operations will be suspended until the Tribe can review and determine what steps are necessary to protect and preserve the site.

**Section 7. Permits and Inspections.** Unless otherwise provided in the Contract or construction documents, the Contractor shall be responsible to secure and pay for any required permits, fees and inspections required to properly execute and complete the Project. Any Required certificates relating to such tests, inspections or approvals shall be secured by the Contractor and delivered to the Tribe.

If an area greater than one (1) acres will be disturbed by the Project, Contractor shall prepare and comply with a site-specific Stormwater Pollution Prevention Plan ("SWPPP") that meets all applicable standards, as well as prepare and submit a Notice of Intent form. For work completed on trust lands, such Notice of Intent shall be submitted to the U.S. Environmental Protection Agency and, for work completed on fee simple lands, the Notice of Intent shall be submitted to the Wisconsin Department of Natural Resources. A copy of the SWPPP shall be kept onsite and available for inspection during construction activities.

**Section 8. Cleanup.** Contractor shall keep the Project site free from the accumulation of construction rubbish and debris and shall be responsible for the proper disposal of waste materials.

**Section 9. Prevailing Wage Rates.** Contractor is required to pay its employees not less than the Tribe's prevailing wage rates as provided for under Chapter 55-A. As permitted by law, such tribal wage rates supersede federal prevailing wages (Davis-Bacon Act).

**Section 10. Texting Ban.** Contractor and its employees, subcontractors and agents shall not engage in text messaging while driving when performing services under this Contract.

**Section 11. Sales and Use Tax Exemption.** As a federally-recognized Indian tribe, the Tribe is exempt from Wisconsin sales and use tax. If the Project is constructed on land held in trust by the United States of America on the Tribe's behalf, then all material used for the construction of the Project shall be shipped free on board (FOB) to the trust land and be exempt from sales and use tax. If the Project is constructed on fee simple land, then the Tribe may require the Contractor to implement an owner-direct purchase program that meets the requirements of the Wisconsin Department of Revenue standards so that the Tribe's tax exemption shall apply to the purchase of materials.

### III. CONTRACT SUM

**Section 1. Contract Sum.** The Tribe shall pay the Contractor, subject to adjustments, the sum of \_\_\_\_\_ (\$\_\_\_\_\_). The contract sum shall not exceed this cost without express written permission from the Tribe.

#### IV. PAYMENTS

**Section 1. Application for Payment.** Payments shall be payable upon application for payment from Contractor. Applications for progress payments shall be based on work completed. Each application for payment shall be accompanied by support for the requested payment, such as a schedule of values, invoices or other evidence supporting disbursements to contractors, laborers and suppliers, as well as lien waivers or partial lien waivers. No payments shall constitute a waiver of the Tribe's right to withhold payment for any grounds stated in this Contract, nor shall any payment estop the Tribe from recovering from the Contractor any money paid for work that subsequently proves to be defective or otherwise not in conformity with the Contract.

**Section 2. Payments Withheld.** The Tribe, in its discretion, may withhold payment in whole or in part, as it deems necessary to protect against: a) defective work not remedied; b) claims filed or reasonable evidence indicating probable filing of claims; c) failure of the Contractor to make payments promptly to subcontractors or for labor, materials or equipment; d) reasonable probability that the work will not be completed for the unpaid balance of the contract sum; e) damage to other contractors; f) reasonable probability that the work will not be completed within the contract time; or g) unsatisfactory performance or execution of the work by the Contractor.

Regardless of the above, all progress payments shall be subject to a retainage of ten percent (10%). This retention is held to ensure successful completion of the work.

**Section 3. Liens and Encumbrances.** Work located on trust land is not subject to Wisconsin construction liens. Nonetheless, submission of any application for payment by the Contractor shall constitute a warranty and guarantee by the Contractor that title to all work, materials and equipment covered by the application for payment, is free and clear of all liens, claims, security interests or encumbrances. Such lien releases may be conditional on payment. Contractor shall timely pay all subcontractors and suppliers.

**Section 4. Change Order.** Changes in the work after execution of the Contract will typically be handled through written change orders. A change order is a written document that is signed by both Tribe and Contractor stating their agreement upon the following: the change to the identified contract work and the amount of adjustment, if any, to the contract sum and contract time. No changes to the contract sum or contract time will be honored without an approved change order or an amendment to the Contract.

**Section 5. Completion and Joint Final Inspection.** Contractor shall provide notice to the Tribe when it has fully performed the work under the Contract, not including any responsibilities that extend past the date of final completion. In addition, Contractor shall provide the Tribe with a final construction report and as-built plans upon completion of the Project. The Tribe will provide a copy of such materials to the BIA as part of the final inspection process.

The BIA, Tribe and Contractor shall schedule and complete a joint inspection of the job site. As part of this inspection, a punch list will be prepared as to all incomplete and

unsatisfactory items. It is hereby understood that the decision as to whether the Project or any particular item is complete and satisfactory is reserved solely to the Tribe and BIA. When the Contractor feels that the items on the punch list are satisfactorily corrected or completed, notice will again be given the Tribe and another joint inspection shall be made. This method shall be used for further inspections until all items are satisfactorily completed.

**Section 6. Final Payment.** Upon completion, Contractor shall submit the final application for payment to the Tribe. The final payment shall be made following final acceptance of the work by the Tribe and the BIA. Proper completion of the requirements set forth in the contract documents shall be a condition precedent to any such payment.

## **V. WARRANTY AND CORRECTIONS**

**Section 1. Warranty.** Contractor warrants that materials and equipment furnished under the Contract will be of good quality and new, unless otherwise required or permitted by the contract documents; that the Project will be free from defects; and that the Project will conform to the requirements of the contract documents. Work not conforming to the contract documents, including substitutions not properly authorized, may be considered defective. Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear.

**Section 2. Correction of Work.** Contractor shall promptly correct work rejected by Tribe or failing to conform to the requirements of the contract documents whenever discovered during the Project. Costs of correcting such work and/or replacing damaged materials and equipment, including additional testing, inspections, and expenses made necessary thereby, shall be at Contractor's expense.

In addition, Contractor covenants and agrees to remedy without cost to the Tribe any defects, excepting normal wear and tear and those by reasons of force majeure, that may arise within two (2) years from the date of final completion.

## **VI. OTHER CONDITIONS AND PROVISIONS**

**Section 1. Employment Status of Contractor.** It is understood and agreed by both parties the Contractor is and will be considered to be an independent contractor. The Contractor acknowledges that it is operating as an independent contractor and will be completely responsible for required insurance, worker compensation and withholding for payroll taxes for itself and its employees.

**Section 2. Governing Law.** This Contract shall be construed in accordance with the laws of the Stockbridge-Munsee Community and, in absence of tribal law on point, Wisconsin law.

**Section 3. Notice.** All notices required or authorized to be served shall be in person or by first class mail to the address written above or the last business address known by the party giving notice.

**Section 4. Indemnification.** Contractor agrees to indemnify and hold the Tribe and its employees and agents harmless from claims, damages, losses and expenses arising out of or resulting from the performance of the Project, but only to the extent caused by the negligent

or willful acts or omissions of the Contractor, subcontractor or anyone for whose acts they may be liable. This indemnity obligation shall not be limited as to the amount or type of damages, compensation or benefits payable by or for the Contractor or subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

**Section 5. Integration.** This Contract and any exhibits, attachments and documents incorporated by reference constitute the entire agreement and understanding between the parties hereto and supersedes any and all prior agreements and understandings, oral or written, relating to the subject matter hereof. This Contract shall control when there is any conflict between the provisions of it and any exhibit, attachment or incorporated document.

**Section 6. Assignment.** Neither this Contract nor any part thereof shall be assigned to a third party without prior authorization, in writing, from the Tribe.

**Section 7. Severability.** Any part of this Contract that is held void or unenforceable shall be stricken and all remaining provisions shall continue to valid and binding.

**Section 8. Termination.** The Contractor may terminate the Contract if work is stopped for a period of 30 consecutive days through no act or fault of the Contractor. The Contractor shall be equitably compensated for work completed prior to this termination.

The Owner may terminate the Contract for cause (e.g., if the Contractor fails to supply properly skilled workers or proper materials or otherwise substantially breaches the contract documents) or for convenience. If the Owner terminates the Contract for convenience, the Contractor is entitled to payment for work executed and costs incurred due to such termination. However, if Owner terminates the Contract for cause, the Contractor is not entitled to receive further payment until the work is completed. Owner shall notify Contractor in writing of its plan to terminate the contract for cause, and allow Contractor a period of seven (7) days to cure the matter to Owner's reasonable satisfaction. If the unpaid balance of the contract sum exceeds the actual cost of finishing the work, including damages incurred by the Owner, the excess shall be paid by Contractor to Owner. This obligation survives the termination of this Contract.

**Section 9. Electronic Signatures.** The parties agree the contract documents may be executed and delivered by facsimile or other electronic means and such electronic signatures shall have the same effect as an original executed document.

**EXECUTED** this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**TRIBE:**

**CONTRACTOR:**

BY: \_\_\_\_\_  
*Tribal President or Vice President*

BY: \_\_\_\_\_

\_\_\_\_\_  
*Print name and title*