

# INTERGOVERNMENTAL AGREEMENT

By and Between DeKalb County, Illinois

and

The Prairie Band Potawatomi Nation

This Intergovernmental Agreement ("Agreement") is made this \_\_\_\_day of \_\_\_\_\_ 2008, by and between DeKalb County, Illinois, and the Prairie Band Potawatomi Nation (collectively referred to as the "Parties"), and is founded on the recitations and contents hereof.

**WHEREAS**, DeKalb County ("County") is a political subdivision of the State of Illinois organized as a county with all the rights and powers attendant thereto; and

**WHEREAS**, the Prairie Band Potawatomi Nation ("Nation") is a federally-recognized Indian tribe with all the rights and powers attendant thereto; and

**WHEREAS**, Article III of the Treaty of Prairie du Chien of 1829 (7 Stat. 320, July 29, 1829) reserved for Chief Shab-eh-nay and his band "two sections at his village near Paw-paw Grove," which consisted of Twelve Hundred Eighty (1280) acres of land located near the present-day Village of Shabbona, Illinois and located within the County ("Shab-eh-nay Reserve"); and

**WHEREAS**, the Nation, which is the political successor-in-interest to Chief Shab-eh-nay's band, purchased land within the Shab-eh-nay Reserve: (1) One Hundred Twenty-Eight (128) acres of land within the Shab-eh-nay Reserve ("Tribal Project Lands") and (2) a residence on one (1) acre of land which is located outside the Tribal

Project Lands within the Shab-eh-nay Reserve at 8930 Tomahawk Trail, Shabbona, Illinois ("Tribal Residential Lands") (collectively known as "Tribal Lands"); and

**WHEREAS**, the presence of the Nation within the County has been enhanced through its purchase of the Tribal Lands; and

**WHEREAS**, the County and the Nation have a mutual interest in promoting cooperation between the County and the Nation that will provide for the general welfare of all people in the County and within the Shab-eh-nay Reserve with respect to issues including public finance, natural resources, education, health and safety, and land use and development; and

**WHEREAS**, the County and the Nation respect each other's governmental responsibilities and priorities for serving the people living within the County and the Shab-eh-nay Reserve; and

**WHEREAS**, the Nation intends to develop the Tribal Project Lands and the County supports such development according to the terms and conditions set forth in this Agreement; and

**WHEREAS**, the Nation and the County wish to enter into this Agreement, which respects the jurisdiction of both Parties, to ensure orderly and efficient delivery of services and to provide similar governing standards between the two jurisdictions; and

**WHEREAS**, the Nation and the County have entered into this Agreement in reliance on the commitments made herein.

**NOW THEREFORE**, in consideration of the foregoing, the covenants and agreements contained herein and for good and valuable consideration, the receipt and

sufficiency of which are hereby acknowledged, the County and the Nation enter into this Agreement upon the following terms.

**Section 1. Tribal Lands Subject to This Agreement.**

This Agreement concerns the Nation's development and use of the Tribal Lands. A map and legal description of the Tribal Lands are attached hereto as Exhibit A.

**Section 2. Nation's Use of Tribal Project Lands.**

The Nation's initial development of the Tribal Project Lands is limited to the following: (1) a Class II gaming facility under the Indian Gaming Regulatory Act, 25 U.S.C. § 2701, *et seq.* ("IGRA"), including limited amenities such as food service and complementary retail; (2) a 2,500 square foot government center consisting of limited office space and a welcome center; and (3) parking to service both. Later development of the Tribal Project Lands is limited to the following: (a) Indian gaming under the Indian Gaming Regulatory Act, 25 U.S.C. § 2701, *et seq.*; (b) aesthetically appropriate lodging; (c) additional food service; and (d) amenities normally associated with gaming operations.

The County agrees to support the opening and continued operation of the Nation's gaming facility, the government center and parking to service both. The Parties agree to consult and cooperate in good faith with the County with regard to future plans for the Tribal Project Lands.

**Section 3. Payments in Lieu of Taxes.**

**A. Payments in lieu of taxes from the Nation to the County.**

Upon execution of this Agreement, the Nation agrees to make annual payments in lieu of real property taxes for the Tribal Lands to the County ("PILOT Payments"). The amount of each PILOT Payment shall be equal to the real property tax assessments, which assessments shall be arrived at through the same methodology as if the Tribal Lands were otherwise subject to real property taxes. The Parties agree that

each PILOT Payment shall be calculated by the County Tax Extension Clerk in the same manner as such calculations for all real property located within the County, and shall be comprised of an annual assessment multiplied by a proportionate rate of the assessment. The County agrees to receive each PILOT Payment and agrees that PILOT Payments are in full satisfaction of the tax liability that would otherwise apply were the Tribal Lands otherwise subject to taxation.

**1. Annual Assessment.**

For the purpose of calculating the annual assessment, the Nation agrees to permit the County Supervisor of Assessments, or her designee, and the Shabbona Township Assessor access to the Tribal Lands as required to assess the value of the Tribal Lands. However, access to the Tribal Lands shall not exceed the minimal level of access required to complete the assessment of all other real property within the County. The County agrees that the real property assessments of the Tribal Lands shall be made in a manner consistent with the County's real property assessment procedures applicable to other landowners located in the County.

**2. Rate.**

The County agrees that the method for calculating the rate for the PILOT Payments shall be the same as the method used to calculate the tax rate for all other parcels in the County.

**B. Remittance of PILOT Payments from the County to the County Treasurer.**

Within three (3) business days of receiving a PILOT Payment from the Nation, the County agrees to remit the PILOT Payment to the County Treasurer in full satisfaction of the real property assessments for the Tribal Lands, as further described in sub-section A. Within seven (7) business days of remittance of each PILOT Payment to the County Treasurer the Office of the County Administrator shall obtain a receipt

from the County Treasurer that the PILOT Payment has been applied in full satisfaction of the tax liability that would apply to the Tribal Lands if they were otherwise subject to taxation, and shall promptly transmit such receipt to the Nation. If necessary, the County agrees to take all necessary and proper legal action to cause such payment to be properly credited, consistent with applicable laws and regulations of the State of Illinois, including 35 ILCS 200/20-40.

**C. Disputes.**

Any dispute arising under this Section is subject to the dispute resolution procedures set forth in Section 14 of this Agreement, *provided* however that for any disputes over the Annual Assessment or related calculation of the amount of annual PILOT Payments under Section 3(A) of this Agreement that allege that the amount of any PILOT Payment should be other than the amount that has been calculated and stated by the County Tax Extension Clerk or the County Supervisor of Assessments, the Parties agree to the following:

1. The Parties may jointly contest the annual assessment before the Board of Review at the local level and if unresolved to the mutual satisfaction of the Parties, the Parties may jointly appeal the Board of Review's determination to the State Property Tax Appeal Board; and may seek judicial review of the determination of the State Property Tax Appeal Board in the Circuit Court for DeKalb County.

2. In addition, if review by the Board of Review is not available for any reason, or if the dispute alleges that the County has applied an incorrect rate for the PILOT Payments:

(a) The Nation shall timely remit the PILOT Payment together with a letter to the County Treasurer indicating its disagreement with the annual assessment or related calculation of the amount of the annual payment;

(b) The Parties shall invoke the provisions of Section 14 of this Agreement; and

(c) The Nation shall receive a credit applied to the Nation's Annual Contributions to the County set forth in Section 8 in the amount of the difference between the calculated and stated amount of the PILOT Payment and the amount of the PILOT Payment, as determined by the arbitrator.

**Section 4. Applicable Standards and Permits.**

The Parties agree that the Nation's development and use of the Tribal Lands shall be consistent with the following:

**A. Nation's Enactment of Laws Consistent with County Laws.**

The Nation shall enact laws applicable to the Tribal Project Lands which shall require that all development projects occurring on the Tribal Project Lands be consistent with the substantive requirements of County laws in the subject areas set forth in Exhibit B in effect at the time of any particular development on the Tribal Project Lands, *provided* that the Nation shall not be required to acquire any permits from the County.

**B. Permits Required.**

The Parties acknowledge that the County does not have authority to issue permits for water and sewer on the project as proposed by the Nation. The Nation shall

obtain applicable permits for water wells, sewage treatment facilities and any other permits required by the federal Clean Water Act.

**C. Certificate of Occupancy or Equivalent.**

Prior to the use of any structure on the Tribal Project Lands, the Nation shall, at its own expense, obtain written certification to the Nation by an architect of record or by a building inspector selected by the Nation and certified by the County or State that said structure has been constructed in accordance with the standards identified in this Section and provide a duplicate of said certification to the County prior to occupancy.

**D. Nation's Development Plans.**

Prior to the commencement of any construction or development within the Tribal Project Lands, the Nation agrees to allow the County to examine, review and comment on the Nation's construction plans for the development of the Tribal Project Lands for the purpose of ensuring consistency with the laws identified in this Section.

**E. County Site Visits.**

1. The Nation agrees that the County may conduct site visits as are reasonable and customary to verify that the Nation's activities are being conducted consistent with this Section. The County shall provide reasonable and customary notice to the Nation such that the Nation can accommodate the site visit in a timeframe consistent with the purpose of the visit. Any alleged violations of the standards contained in Subsection A shall be identified in writing to the Nation and the Nation agrees to promptly cure any material violations.

2. The Parties shall each identify a representative to serve as its respective point of contact for coordinating the County's site visits. The Parties agree to cooperate with each other in good faith to ensure said visits are coordinated as necessary to achieve the objectives of this Section.

**F. Public Health and Safety.**

The Parties also agree, as appropriate, to consult and cooperate regarding public health and safety issues of mutual concern.

The Parties shall each identify a representative to serve as its respective point of contact for coordinating the handling of events that pose an imminent threat to public health or safety. The Parties agree that this coordination function is an integral step in mitigating threats to public health and safety which may obviate the need for arbitration. The Parties also agree that such coordination (which, at a minimum, consists of notification to the point of contact of an imminent threat) is a condition precedent to the expedited arbitration procedure for threats to public health and safety set forth in Section 14.D of this Agreement in the instance arbitration is necessary.

Should there be an immediate and imminent threat to public health or safety, the County may, upon notifying the Nation's representative, conduct an emergency site visit. Immediately following the site visit, the County shall provide written explanation to the Nation of the basis for the emergency site visit.

**Section 5. Acquisition and Preservation of Other Lands.**

**A. Future Land Acquisitions by the Nation within the Lands That Constitute the Shab-eh-nay Reserve.**

The Nation acknowledges that it is important to landowners within the boundaries of the Shab-eh-nay Reserve to have security in the use and occupation of

the lands upon which they reside or work. Except through fair market value transactions, gift-deed or equal trade with willing landowners, the Nation agrees that it will not take any action to remove landowners, make a claim of ownership or jurisdiction over any land belonging to private individuals or other entities or acquire other lands in addition to the Tribal Lands within the boundaries of the Shab-eh-nay Reserve.

**B. Fair Market Value Purchase Guarantee by Nation.**

The Nation desires to alleviate concerns within the local community regarding the preservation of the full value of real property located in proximity to the Tribal Project Lands, and to preserve equity in those properties. The Nation agrees to guarantee that any owner of real property set forth in Exhibit C can obtain fair market value for their respective premises as set forth in this Section 5.B.

The Parties agree that, in the event that any owner of real property set forth in Exhibit C seeks to sell his or her respective real property, the owner may make a written request that the Nation purchase the real property for full fair market value. Written requests to the Nation shall contain a statement of any and all attempts to list the property for sale since April 25, 2006, and shall state the amount of any and all written offers of purchase, in whatever form, that have been received by the owner of the subject real property since April 25, 2006.

The Nation agrees to pay full fair market value for each parcel of real property, the full fair market value of which shall be established by a full narrative appraisal prepared in accordance with applicable state standards and regulations by a fully qualified professional appraiser to be agreed upon by the Nation and the owner of the

real property, the cost of which shall be prepaid and borne exclusively by the property owner.

The appraiser shall be licensed by the State of Illinois, not related to the owner of any of the subject properties contained in Exhibit C, and must be a member in good standing of at least one national professional appraisal association.

The appraiser shall determine the fair market value of the subject property as follows:

- a. assume that no development on the Tribal Project Lands were being undertaken;
- b. any comparables selected by the appraiser shall be located a sufficient distance away from the Tribal Project Lands so that the selling price was not, in the opinion of the appraiser, influenced by the presence of the Tribal Project Lands; and,
- c. through a full narrative appraisal prepared by the appraiser which shall note and document the condition of the premises, both interior and exterior at the time of the appraisal.

In the event the Nation purchases the property, the property owner shall receive a credit at the time of closing in the amount of fifty percent of the cost of the appraisal. If the owner desires to sell to the Nation for the value as established in the appraisal, the Nation will accept an offer of sale in the form of a standard Multi-Board Residential Real Estate Contract, or its equivalent, containing standard apportionment of costs, evidence of title and pre-closing requirements.

**C. Preservation of the Character of the Area.**

The Nation appreciates and understands the importance of the character of DeKalb County and acknowledges that the preservation of this character is a priority for the County and its residents. In consideration of this priority, the Nation and the County agree to consult and cooperate with each other regarding efforts to preserve the character of the area.

**D. DeKalb County Forest Preserve.**

The Nation appreciates and understands the importance of the DeKalb County Forest Preserve to the County and its residents. The Nation waives any claim to ownership or jurisdiction over the Forest Preserve. In the event that ownership of the Forest Preserve is transferred to the Nation, the Nation agrees that it will take no action to alter its character and shall only assert jurisdiction in accordance with the provisions of this Agreement and applicable law.

**E. Shabbona State Park.**

The Nation appreciates and understands the importance of Shabbona State Park to the County and its residents. The Nation waives any claim to ownership or jurisdiction over the Shabbona State Park. In the event that ownership of the Shabbona State Park is transferred to the Nation, the Nation agrees that it will take no action to alter its character and shall only assert jurisdiction in accordance with the provisions of this Agreement and applicable law .

**Section 6. Traffic, Transportation and Highways.**

**A. Transportation Impact Analysis.**

The Nation, at its sole expense, will analyze all impacts to the transportation systems directly attributable to the Nation's development of the Tribal Project Lands. The analysis and any identified mitigation measures must be approved by the Nation, and such approval is not to be unreasonably withheld.

**B. Mitigation of Transportation Impacts.**

The Nation shall mitigate traffic and circulation impacts on the County roads identified in the transportation impact analysis of Subsection A consistent with County standards as established by the County Code and identified in Section 4. The Nation agrees to pay for all improvements of County roads and bridges that are reasonable and necessary and are uniquely attributable to the Nation's development of the Tribal Project Lands.

The Nation further agrees that, if an increase in traffic is found pursuant to Subsection A to be directly attributable to the Nation's undertaking of other development projects on the Tribal Project Lands and additional road improvements or expansions are required, the Nation shall grant suitable rights-of-way to the County for the necessary improvements or expansions, and shall cooperatively seek additional approvals as may be required under applicable law.

**C. Separate Agreement for Shabbona Township.**

The Nation acknowledges the importance of road safety and mitigating increased traffic in the area. For this reason, the Nation will seek to enter into an agreement with the Shabbona Township to address these concerns in an effort to ensure that the main road to the Tribal Project Lands is adequately maintained and that increased traffic flow to the Tribal Project Lands does not unduly strain the Township's road system. The Nation hereby agrees to diligently uphold and carry out its duties relating to road maintenance and traffic mitigation pursuant to any agreement between the Nation and the Shabbona Township. The County agrees to honor any agreement between the Shabbona Township Road Commissioner and the Nation.

**Section 7. Fire Protection and Emergency Medical Services.**

The Nation acknowledges the importance of having adequate fire protection and emergency medical services for any persons or properties on the Tribal Lands. The Parties acknowledge that the County does not provide fire protection or emergency medical services to anyone in the County. Accordingly, the Nation has contracted for fire protection and emergency medical services with the Shabbona Fire Protection District to ensure adequate and efficient fire protection and emergency medical coverage for the Tribal Project Lands, attached hereto as Exhibit D.

**Section 8. Annual Contributions to the County to Mitigate the Nation's Impacts on County Services.**

The Nation recognizes the broad range of services the County provides to its residents, landowners and businesses. The Nation is a landowner in DeKalb County, but agrees not to burden the County's resources which are used to provide said services to other individuals and entities in the County. In light of the aforementioned, and consistent with IGRA, the Parties agree to the following:

**A. Pre-development Mitigation.**

The County agrees to bear its own costs for staff and time associated with reviewing and analyzing the Tribe's development plans for the Tribal Project Lands as described in Section 4. However, the Parties agree that the Nation will reimburse the County's costs for hiring outside consultants such as engineers, architects, planners, surveyors and lawyers, provided that in no event shall the Nation be liable for payments to the County in excess of \$125,000. The County agrees that the Nation shall be credited such actual costs from the Nation's first Annual Contribution as described in subsection B.

**B. Post-development Mitigation.**

Upon commencement of gaming activities within the gaming facility located upon the Tribal Project Lands, the Nation agrees to make an annual contribution to the County in the amount of (a) \$800,000 or (b) 2.5% of the net revenues from the gaming operations on the Tribal Project Lands, whichever is greater ("Annual Contributions").

The County agrees to accept the Annual Contributions. However, notwithstanding the above, no annual contribution shall accrue or be paid during the periods that the gaming facility is closed and not in operation, due to pending litigation. If for this reason the gaming facility is closed for a portion of any year, the Annual Contribution shall be calculated and paid on a pro rata basis. The Annual Contribution will be for the benefit of the DeKalb County government agency operations to mitigate impacts resulting from this Agreement, *provided* that such impacts do not include capital investments or improvements to infrastructure. For purposes of this Agreement, "Net Revenue" is defined as the total amount of money wagered at the Gaming Facility, minus the amounts paid out as, or paid for, prizes.

The annual contribution shall be made by the Nation to the County in monthly installments of 2.5% of the Net Revenue, payable to the County following the Nation's receipt of audit figures for the preceding month. The Nation agrees to have an independent audit of its operation conducted on an annual basis no later than May 15<sup>th</sup> of the following year, with an annual adjustment of payments to the County in accordance with the annual audit. The entity conducting the audit shall verify in writing that annual contributions made to the County pursuant to this Section are in accordance

with the terms of this Section. The Nation agrees to provide a copy of such verification and adjustment payment to the County within 30 days of the completion of the audit.

**Section 9. Local Charitable Organizations.**

The Nation supports the important work of local charitable organizations and recognizes the benefits they provide to their local community. In light of this, the Nation pledges to provide donations pursuant to the policies and decisions of its Tribal Charitable Contribution Committee to a variety of local charitable organizations located in DeKalb County in the minimum aggregate amount of \$25,000 per year, beginning one year after the date on which the gaming facility commences gaming operations and continuing each year as long as the gaming facility is in operation.

**Section 10. Compulsive Behavior.**

Within 90 days of commencement of gaming operations, the Nation shall make a one-time payment to the local chapter of the Illinois Council on Problem and Compulsive Gambling, Inc. or any successor organization or similar organization dedicated to the same purposes in the amount of \$15,000 for the treatment of compulsive behavior, including problem gambling. Thereafter, the Nation will make annual contributions in the amount of \$5,000 for this purpose.

**Section 11. Prohibited Activities.**

In addition to the limitation on uses set forth in Section 2, the Nation agrees that the following activities shall not be permitted at any time on the Tribal Project Lands and agrees to adopt an ordinance prohibiting them and providing for the enforcement of these prohibitions.

**A.** Persons under the age of 21 shall not be allowed to gamble or remain in any room or area in which gaming activities are being conducted. Individuals under the age of 21 may pass through gaming rooms or areas only if they are en route to a non-gaming room or area of the gaming facility.

**B.** Persons under the age of 21 shall not be allowed to purchase, consume, or otherwise possess alcoholic beverages. All alcoholic beverage service shall be subject to the Tribe's Liquor Ordinance and in conformity with applicable State Liquor Laws. The sale and consumption of alcoholic beverages shall be only during the hours permitted by the applicable ordinances of the County or the Village of Shabbona, as the Nation elects.

**C.** Nude entertainment, nude dancing, or venues containing nudity or sexually oriented business activities shall not be permitted on the Tribal Project Lands.

**D.** Retail fuel dispensing facilities for motor vehicles shall not be operated on the Tribal Project Lands.

**E.** Retail establishments that are not normally associated with gaming operations shall not be permitted on the Tribal Project Lands.

**Section 12. Civil Jurisdiction.**

Civil jurisdiction shall be exercised in a manner consistent with federal law.

**Section 13. Law Enforcement and Criminal Prosecution.**

Consistent with federal law, the Nation, in the exercise of its sovereign authority, agrees to not exercise its criminal jurisdiction over persons who are not members of any federally recognized Indian tribe. Accordingly, the Nation will seek to enter into an agreement for law enforcement services with the DeKalb County Sheriff to ensure adequate and efficient law enforcement services are provided on the Tribal Project Lands.

**Section 14. Dispute Resolution.**

The County and the Nation agree to the following dispute resolution procedures.

**A. Meet and Confer.**

In the event that the County or the Nation believes that the other has committed a possible violation of this Agreement, it may request in writing that the Parties meet and confer in good faith for the purpose of attempting to reach a mutually

satisfactory resolution of the problem within fifteen (15) days of the date of service of said request; provided that if the complaining party believes that the problem identified creates a threat to public health or safety, the complaining party may proceed directly to arbitration as provided in Section 14.E.

**B. Notice of Disagreement.**

Within 30 days of holding the meet and confer in Subsection A, if the complaining party is not satisfied with the result of the meet and confer process, the complaining party shall provide written notice to the other identifying and describing any alleged violation of this Agreement ("Notice of Disagreement"), with particularity, if available, and setting forth the action required to remedy the alleged violation.

**C. Response to Notice of Disagreement.**

Within 15 days of service of a Notice of Disagreement, the recipient party shall provide a written response denying or admitting the allegations set forth in the Notice of Disagreement, and, if the truth of the allegations is admitted, setting forth in detail the steps it has taken and/or will take to cure the violations. Failure to serve a timely response shall entitle the complaining party to proceed directly to arbitration, as provided in Section 14.E.

**D. Expedited Procedure for Threats to Public Health or Safety.**

Within 90 days of executing this Agreement, the Parties shall select an arbitrator to handle the resolution of disputes occurring under this Subsection.

If the County or the Nation reasonably believes that in violation of this Agreement the other's conduct has caused or will cause a significant threat to public health or safety, resolution of which cannot be delayed for the time periods otherwise specified in this Section, the complaining party may proceed directly to arbitration as set forth in Section 14.E, without regard to the Meet and Confer or Notice of Disagreement procedures set forth in Sections 14.A, 14B, and 14.C, and seek immediate equitable relief.

**E. Binding Arbitration Procedure.**

Subject to prior compliance with the Meet and Confer process set forth in Section 14.A, and the Notice and Response process in Sections 14.B and 14.C, and except as provided in Section 14.D, either party has the right to initiate binding arbitration to enforce the terms of this Agreement. The arbitration shall be conducted in accordance with the following procedures:

The arbitration shall be administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. The arbitrator shall be selected pursuant to such rules; provided that he/she must be a licensed attorney, and knowledgeable in federal Indian law and federal Indian gaming law if the issue involves federal Indian law or federal Indian gaming law. The parties and the arbitrator shall maintain strict confidentiality with respect to the arbitration.

The arbitration shall be held in DeKalb County, Illinois, unless otherwise agreed to by the Parties in writing. The arbitrator shall be empowered to grant equitable and injunctive relief and specific performance. The arbitrator shall not have the power to award punitive damages or non-contract damages. The provisions of the Illinois Code of Civil Procedure Section 2-1003 are incorporated herein, and made part of this Agreement; provided that no discovery authorized by said section may be conducted without leave of the arbitrator, who shall decide to grant leave based on the need of the requesting party and the burden of such discovery in light of the nature and complexity of the dispute.

If either party requests a hearing, the arbitrator shall set the matter for hearing. Otherwise, the arbitrator shall decide whether to set the matter for hearing.

The resulting award shall be in writing and give the reasons for the decision. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The costs and expenses of the American Arbitration

Association and the arbitrator shall be shared equally by and between the Parties unless the arbitrator rules otherwise.

An action to compel arbitration or to enforce any award in an arbitration held pursuant to Section 14 may be brought in either a United States District Court or the Circuit Court for DeKalb County.

**Section 15. Limited Waiver of Sovereign Immunity.**

Notwithstanding any rule of the Commercial Arbitration Rules of the American Arbitration Association, the Nation expressly and irrevocably waives its immunity from suit only as provided for and limited by this Section. This Nation's waiver of sovereign immunity is limited for the purposes of compelling arbitration as agreed to under Section 14.E. of this Agreement or enforcing an arbitration award made under Section 14.E of this Agreement. The waiver granted herein shall commence as of the effective date of this Agreement and shall continue for one year following the expiration, termination, or cancellation hereof, or for the duration of any litigation or dispute resolution proceeding then pending, all appeals therefrom, and the satisfaction of any awards or judgment that may issue from such proceedings, whichever is later. This waiver is granted only to the County and not to any other individual or entity. The Tribe hereby waives its sovereign immunity from suit concerning the specific matters covered by this Section of this Agreement (compelling arbitration or enforcing an arbitration award) in accordance with the Resolution of the Prairie Band Potawatomi Tribal Council, which is attached to this Agreement as Exhibit E. Any monetary award to the County by the Nation as determined by the arbitrator's decision shall not exceed the amounts due and owing under Sections 8, 9, and 10, and the share of the costs and expenses of arbitration.

Recovery of such award shall be limited solely to the Nation's net revenue as defined in Section 8 from the Nation's gaming operations on the Tribal Project Lands.

**Section 16. Tribal Reimbursements to County.**

The Nation agrees to reimburse the County for all fees and expenses incurred by the County for the law firm of Dickinson Wright PLLC, which has been retained by the County for the purposes of negotiating this Agreement. As of November 20, 2007 the total of such fees and expenses is approximately \$152,460.27 (\$129,394.02 of which has been paid by the Nation), and that any outstanding amounts together with sums required for representation of the County through and including the date of this Agreement, shall be reimbursed to the County within 30 days of execution of this Agreement.

**Section 17. Indemnification.**

The Nation agrees to and shall indemnify, defend, protect, and hold harmless the County, its elected officials, officers and employees acting in their official capacities from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs, and expenses (including reasonable attorneys' fees), arising from or in connection with, or caused by any act, omission, or negligence of the Nation or its contractors, licensees, invitees, agents, lessees, servants or employees, related to or in connection with any obligations on the Nation's part to be performed under the terms of this Agreement or any such claim or any action or proceeding brought thereon or any action or proceeding filed against the County which challenges the County's approval, execution, or delivery of this Agreement; and in any case, any action or proceeding brought against the County by reason of any such claim, the Nation upon notice from the County shall have the option to defend the same at the Nation's expense by counsel reasonably satisfactory to the County. However, in the event that the Nation does not elect to defend the action or proceeding, the County shall defend the same at the

Nation's expense, and shall consult with the Nation during the pendency of the action or proceeding. In any case, offers of settlement must be approved by the County and Nation, which approval shall not be unreasonably withheld.

**Section 18. Notices.**

Any notice required under this Agreement shall be sent to the following:

For the County:  
DeKalb County Board  
Attn: Ray Bockman, County Administrator  
200 North Main Street  
Sycamore, Illinois 60178

For the Tribe:  
Prairie Band Potawatomi Tribal Council  
Attn: The Hon. Steve Ortiz, Chairperson  
16281 Q Road  
Mayetta, Kansas 66509

Copy to:  
Office of the State's Attorney  
Attn: Ronald G. Matekaitis, Esquire  
200 North Main Street  
Sycamore, Illinois 60178

**Section 19. Miscellaneous Provisions.**

**A. Effective Date and Term.**

This Agreement shall become effective upon approval of the governing bodies of the County and the Nation and execution of this Agreement by the appropriate officers of the Parties, and shall remain in effect unless otherwise terminated by the mutual written consent of the Nation and the County or for cause as provided in and subject to Section 19.B.

**B. Termination.**

This Agreement shall immediately terminate upon issuance of a written Indian land determination by the National Indian Gaming Commission ("NIGC") or the U.S. Department of the Interior concluding that the Shab-eh-nay Reserve legally does not qualify for gaming under the Indian Gaming Regulatory Act.

Otherwise, during the life of this Agreement, no breach or violation of any of the terms of this Agreement by either party shall operate to void or terminate or provide grounds for termination hereof, it being the intent of the Parties that the provisions of this Agreement 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 Agreement 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 Agreement shall not apply.

**C. Authorization.**

The Nation and the County each represent and warrant that each has performed all acts required by its own laws for the validity of adoption of this Agreement, including, but not limited to, matters of procedure and notice, and each has the full power and authority to execute this Agreement and to perform its obligations in accordance with the terms and conditions thereof, and that the representative executing this Agreement on behalf of such party is duly and fully authorized to so execute and deliver this Agreement.

The Nation has authorized its officers to execute this Agreement by the adoption of Resolution No. \_\_\_\_\_, adopted \_\_\_\_\_, 2008 a copy of which is attached hereto as Exhibit E.

The County has approved this Agreement at a duly noticed meeting of the County Board held on \_\_\_\_\_, 2008 and a resolution of the Board is attached hereto as Exhibit F.

**D. Interpretation.**

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

**E. Severability.**

Any term of this Agreement ruled by the arbitrator to be invalid or unenforceable will be severed, and the remainder of this Agreement will be enforced.

**F. Good Faith and Fair Dealing.**

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

**G. Captions.**

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

**H. Amendment or Modifications.**

This Agreement may not be modified or amended except by a writing of equal formality signed by both Parties.

**I. Complete Agreement.**

This Agreement 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 Agreement.

**Section 20. Section 81 Review by the Department of the Interior.**

One hundred twenty (120) days following the execution of this Agreement, or within three (3) days of receipt of a written Indian Lands determination by the National Indian Gaming Commission, whichever is sooner, the Nation will submit this Agreement to the United States Department of the Interior for either (a) approval pursuant to 25 U.S.C. § 81, or (b) a written response that this Agreement does not require approval under 25 U.S.C. § 81 to be enforceable.

**Section 21. Insurance.**

The Parties understand that it is the Nation's practice to maintain appropriate insurance coverage for itself and Nation-entities. Consistent with that practice, the Nation agrees to obtain and maintain with responsible insurance carriers licensed to do business in the State of Illinois insurance (including coverage of public liability and property loss or damage) satisfactory to the County covering the Tribal Project Lands and all structures constructed thereon naming the Nation and all Nation-entities as insured parties. The tort liability insurance coverage shall be at least \$1 million per occurrence and \$20 million annual aggregate. In addition, the Nation will maintain liquor liability coverage of at least \$1 million per occurrence. The Nation will also provide coverage benefits comparable to those benefits under the Illinois Workers' Compensation Act as well as provide unemployment insurance at least as favorable as provided by comparable state programs.

**IN WITNESS HEREOF**, the County and the Nation have signed this Agreement and caused their seals to be affixed and attested as of \_\_\_\_\_, 2008.

Attest:

\_\_\_\_\_

DEKALB COUNTY, ILLINOIS

By:

\_\_\_\_\_  
Ruth Anne Tobias, Chairperson  
DeKalb County Board

Attest:

\_\_\_\_\_

PRAIRIE BAND POTAWATOMI NATION

By:

\_\_\_\_\_  
Steve Ortiz, Chairperson  
Prairie Band Potawatomi Nation