

Prairie Band Potawatomi Entertainment Corporation

REQUEST FOR PROPOSAL (RFP) Owners' Representative Services

CASINO REFRESH & EXPANSION
Prairie Band Potawatomi Entertainment Corporation
12305 150th Rd
Mayetta, Kansas 66509
Phone: | Fax:

August 3, 2018

REQUEST FOR PROPOSAL
CASINO REFRESH & EXPANSION
Mayetta - Kansas

RFP TIMELINE

- **Question Submission Deadline: No later than August 17, 2018 at 5:00 p.m.**
 - Questions may be submitted in written form via email only no later than August 17, 2018, 5:00 p.m., to William Marsh at wmarsh@pbpgaming.com
- **Indication of Interest Deadline: No later than August 17, 2018 at 5:00 p.m.**
 - Prospective bidders wishing to receive copies of questions and responses to questions must submit a brief indication of interest via email only no later than August 17, 2018, 5:00 p.m., to William Marsh at wmarsh@pbpgaming.com
- **Distribution of Collected Questions and Owner Responses: August 22, 2018**
 - All timely questions with Owner's responses will be distributed via email to all prospective bidders which have submitted a timely indication of interest.
- **Submission Deadline: No later than August 29, 2018 at 5:00 p.m. NO LATE PROPOSALS WILL BE ACCEPTED.**

INTRODUCTION

Prairie Band Potawatomi Entertainment Corporation ("Owner") invites and welcomes proposals for Owner's Representative services in connection with its Casino Refresh & Expansion project. Please take the time to carefully read and become familiar with the proposal requirements. All proposals submitted for consideration must be received by the time as specified above under the "Submission Deadline."

BIDDERS SHOULD NOTE THAT ANY AND ALL WORK INTENDED TO BE SUBCONTRACTED AS PART OF THE BID SUBMITTAL MUST BE ACCOMPANIED BY BACKGROUND MATERIALS AND REFERENCES FOR PROPOSED SUBCONTRACTOR(S) – NO EXCEPTIONS.

PROJECT OVERVIEW

The planned Casino Refresh & Expansion project for Prairie Band Casino & Resort, located at 12305 150th Rd, Mayetta, Kansas 66509, includes the following components:

- Hotel Expansion - Eighty new rooms and new spa, pool and fitness facilities
- Food and Beverage Expansion – Expand current food outlet
- Parking Expansion – New parking structure and additional surface parking
- Property Access Corridor Enhancements, including road and bridge work from US Highway 75/150 Road interchange to property

PROJECT OBJECTIVE

The objective and ultimate goal for the successful bidder is to serve as the Owner's Representative throughout the Casino Refresh and Expansion project. The Owner's Representative will work with the Owner's Board of Directors and General Manager, the architect and general contractor(s) to administer the construction of the Casino Refresh and Expansion project in accordance with the contract documents, on schedule, on budget, and on a level commensurate with Owner's requirements. The Owner's Representative

will serve as a consultant to the Owner but not as an employee of Owner. The selection process will be based on the successful candidate's qualifications to carry out the following scope and specifications

SCOPE AND SPECIFICATIONS FOR OWNER'S REPRESENTATIVE SERVICES

The Scope and Specifications for the Owner's Representative are:

- Represent the Owner throughout the Casino Refresh and Expansion project.
- Consult with Owner's Board of Directors and General Manager through the project.
- Ensure the project moves forward successfully with regard to scope, timelines, and budget.
- Work closely with the General Manager to mitigate business interruptions as much as possible.
- Provide progress updates to the Board of Directors and General Manager on a weekly basis.
- Bring forth any significant concerns to the attention of the Board of Directors and General Manager for discussion and resolution.
- Assist Owner's Board of Directors in the selection of a general contractor for those portions of the Casino Expansion and Refresh project which have not already been awarded.
- Supervise and monitor the general contractor(s) and any subcontractors working on the Casino Expansion and Refresh project.
- Arrange for storage of any Owner-purchased items.
- General oversight of construction project activities, including but not limited to regular on-site construction management and oversight coordination responsibilities, preparation of construction project schedules, preparation of project status reports, and maintenance of job site records.
- Project budgeting work, including tracking of construction costs, maintaining detailed construction cost records, maintaining a cost control system and conducting cost review meetings with the Owner's Board of Directors and General Manager.
- Review, evaluate and report on the necessity of all change orders, changes to submittals, requests for information, and make recommendations to Owner's Board of Directors and General Manager.
- Assist with informal resolution of disputes.
- Ensure that all building systems are functional and that the equivalent of a certificate of occupancy is received.
- Coordinate system commissioning work.
- Coordinate transfer of building operations to Owner.
- Review and verify site logistics planning.
- Assist with all applicable regulatory compliance and review coordination.
- Establish and maintain quality control/quality assurance standards.
- Review, validate and provide recommendations to Owner's General Manager regarding approval of all pay request applications, including maintaining records of retainage.
- Provide all project record keeping and reporting as may be required by Tribal, Federal, State and/or Local authorities.
- Implement safety monitoring program.
- Coordinate third-party testing or inspections as required or necessary.
- Manage close-out period, including:
 - Upon general contractor determination of "substantial completion," coordinate list of incomplete, unsatisfactory or non-conforming "punch list items" required for completion or remedy prior to certification of substantial completion;
 - Facilitate and monitor general contractor's completion and architect's review and approval of all punch list work;
 - Coordinate with Owner's maintenance personnel and monitor inspection of utilities, operation systems and equipment for readiness and assist in initial start-up and testing;

- Facilitate any required training of Owner’s maintenance personnel;
- Coordinate architect’s determination of final completion and provide written notice to Owner and architect that the project is ready for final inspection;
- Secure and transmit to Owner and/or architect required guarantees, affidavits, releases, bonds and waivers;
- Turn over to Owner all keys, manuals, records drawings and maintenance stocks.
- Coordination and documentation of receipt of warranties, O&M manuals, “as-built” documents, temporary and permanent certificates of occupancy and filed notices of completion, coordination of final payment and securing final conditional lien releases, and any other activities which may be required to occupy the project;
- Other related tasks as may be assigned by Owner’s Board of Directors.

PROJECT SCHEDULED TIMELINE

The following timeline has been established to ensure that our project objective is achieved; however, the following project timeline shall be subject to change when deemed necessary by management.

MILESTONE	DATE
Design phase:	Complete
Owner review of draft construction bid documents	October 19, 2018
Construction bid documents issued	November 13, 2018
Construction pre-bid conference	December 4, 2018
Construction bids due	January 8, 2019
Construction contract award	February 12, 2019
Begin construction:	Spring 2019
Complete construction:	September 30, 2020

PROPOSAL BIDDING REQUIREMENTS

PROJECT PROPOSAL EXPECTATIONS

Prairie Band Potawatomi Entertainment Corporation shall award the contract to the proposal that best accommodates the various project requirements. Prairie Band Potawatomi Entertainment Corporation reserves the right to award any contract prior to the proposal deadline stated within the "Scheduled Timeline" or prior to the receipt of all proposals, award the contract to more than one Bidder, and refuse any proposal or contract without obligation to either Prairie Band Potawatomi Entertainment Corporation or to any Bidder offering or submitting a proposal. Your proposal should take into account the terms and provisions set forth in this Request for Proposal, any additional information provided by Owner in accordance with the RFP Timeline set forth above, and the terms and provisions of the form of Owner’s Representative Agreement attached hereto as Exhibit A.

INTENT TO SUBMIT PROPOSAL

All interested Bidders are strongly encouraged to submit a "Letter of Intent" or expression of interest via email no later than 5:00 p.m. on August 17, 2018 informing Owner of their intent to submit a proposal. Only

interested Bidders who submit a timely “Letter of Intent” or expression of interest will receive copies of timely questions submitted by interested Bidders and the accompanying Owner responses.

DEADLINE TO SUBMIT PROPOSAL

All proposals must be received by Prairie Band Potawatomi Entertainment Corporation no later than 5:00 p.m. on August 29, 2018 for consideration in the project proposal selection process.

PROPOSAL SELECTION CRITERIA

In general, proposals must be clear, concise, and clearly follow the format stated in this RFP. Respondents must, at a minimum, include all information sought in this RFP. Owner reserves the right to reject proposals that are non-conforming in any respect. Owner also reserves the right to change the evaluation criteria or any other provision of this RFP, provided that all Respondents are notified of the change(s). Only those proposals received by the stated deadline will be considered. All proposals, submitted by the deadline, will be reviewed and evaluated based upon information provided in the submitted proposal. In addition, consideration will be given to cost and performance projections.

This RFP does not obligate Owner to award a contract or enter into a contract for Owner’s Representative services, nor does it obligate Owner to complete the project. Owner reserves the absolute right to cancel this RFP or any other solicitation at any time if it is considered to be in the Owner’s best interest.

Any verbal explanations of instructions or discussion of any aspect of this RFP provided to any Respondent before the award of a contract is not binding, nor does it form a contract of any kind. Respondents with questions regarding the RFP must submit them via email on a timely basis as described in “RFP Timeline” above.

Respondents may propose additional tasks, activities, or alternative suggestions if they will substantially improve the results of the project. Any additional items must be separated and identified as such in the cost portion of the proposal.

Owner reserves the right to:

- Reject any or all proposals received in response to this RFP;
- Select, for contract negotiation, a proposal other than the one with the lowest cost;
- Waive or modify any informalities, irregularities, or inconsistencies in the proposals received and/or accept a late written modification requested by Owner if the proposal itself was submitted on time and if the modification is more favorable to the Owner;
- Negotiate with more than one Respondent at a time;
- If negotiations fail to result in an agreement, terminate negotiations and select the next most responsive proposal, prepare and release a new RFP, or take any other action the Owner deems appropriate;
- Select more than one proposal;
- Conduct or decide not to conduct interviews, in the Owner’s sole discretion; and
- Cancel this RFP or any other solicitation at any time if it is considered to be in the Owner’s best interest.

The following criteria will be given considerable weight in the proposal selection process:

- Proposals received by the stipulated deadline must be in the correct format.
- Bidder's alleged performance effectiveness of their proposal's solution regarding the Project Objective and the Scope and Specifications for Owner's Representative Services .
- Bidder's performance history and alleged ability to timely deliver proposed services.
- Bidder's ability to provide and deliver qualified personnel having the knowledge and skills required to effectively and efficiently execute proposed services.
- Overall cost effectiveness of the proposal.

PROPOSAL SUBMISSION FORMAT

Proposals must be provided in electronic format only; sufficient electronic signatures are: use of email signature in transmittal email letter, graphic representation of signature, or used of “/s/” preceding Bidder’s name. Proposals may be submitted to Owner, care of William Marsh, at wmarsh@pbpgaming.com. In addition to addressing all matters discussed above under the heading “Proposal Selection Criteria,” the following is a list of information that the Bidder should include in its proposal submission:

Summary of Bidder Background

- Bidder's Name(s)
- Bidder's Address
- Bidder's Contact Information (and preferred method of communication)
- Legal Form of Bidder (e.g. sole proprietor, partnership, corporation) and, if applicable, jurisdiction of formation
- Date Bidder's Company Formed (if applicable)
- List of equity owners of Bidder’s company, if applicable
- Description of Bidder's company in terms of size, range and types of services offered and clientele.
- Bidder's principal officers (e.g. President, Chairman, Vice President(s), Secretary, Chief Operating Officer, Chief Financial Officer, General Managers) and length of time each officer has performed in his/her field of expertise.
- Bidder's Federal Employee Identification Number (FEIN)
- Evidence of current Prairie Band Potawatomi Nation business license or ability to obtain such a business license prior to October 1, 2018
- Evidence of established track record for providing services and/or deliverables that are the subject of this proposal.
- Detailed resumes for key personnel which highlight experience relevant to the required Owner’s Representative services.
- Evidence of tribal affiliation, if any, of all key personnel and equity owners.

Construction Experience

- Evidence of a history of extensive construction experience, including any experience with Tribal casino resort properties and related amenities.

Communication Skills

- Evidence of ability to work with a wide variety of people as well as excellent written and oral communication skills. The ability to communicate with the Owner’s Board of Directors, senior management, architectural and engineering consultants, construction project personnel, and tribal governmental staff will be critical.

Financial Information

- State whether the Bidder or its parent company (if any) has ever filed for bankruptcy or any form of Reorganization under the Bankruptcy Code.
- State whether the Bidder or its parent company (if any) has ever received any sanctions or is currently under investigation by any regulatory or governmental body.

Proposed Outcome

- Summary of timeline and work to be completed.

Equipment or Service

- List any accommodation, services, or space required from Prairie Band Potawatomi Entertainment Corporation, along with a brief explanation.

Cost Proposal Summary and Breakdown

- A detailed list of any and all expected costs or expenses related to the proposed project.
- Summary and explanation of any other contributing expenses to the total cost.
- Brief summary of the total cost of the proposal.

Contract Terms

- Describe any proposed changes to the form of Owner's Representative Agreement attached hereto as Exhibit A.

Licensing and Bonding

- Provide details of licenses and bonds (if any) for any proposed services that the bidder/contractor may plan on providing for this project.

Insurance

- Details of any liability or other insurance provided with regard to the staff or project. The successful Respondent must obtain and provide evidence of satisfactory insurance coverage, to be determined during the contract negotiation.

References

- Include a list of all construction projects in the last five (5) years and include contact information for the project owners. Bidder agrees that Owner may contact the project owners to verify construction management expertise and obtain information regarding Bidder's performance.

OTHER INFORMATION

- Signed Proposals – All proposals must be signed by a person authorized to sign on behalf of the Respondent and to bind the Respondent to statements made in response to this RFP.
- Irrevocability of Proposals – By submission of a clear and detailed written notice, the Respondent may amend or withdraw its proposal prior to the closing date and time. A Respondent who has withdrawn a proposal may submit a new proposal prior to the closing, provided that such proposal is done in accordance with the terms and conditions of the RFP.

- Changes to Proposal Wording – The Respondent will not change the wording of its proposal after closing, and no words or comments will be added to the proposal unless requested by the Owner for purposes of clarification or as otherwise specified in this RFP.
- Acceptance of Terms – Unless specifically excluded in writing, all the terms and conditions of this RFP, including the form of Owner’s Representative Agreement attached hereto as Exhibit A, are accepted by the Respondent and incorporated in its proposal.
- Respondent’s Expenses – Respondents are solely responsible for their own expenses in preparing, and submitting, a proposal and for subsequent negotiations with the Owner, if any. The Owner will not be liable to any Respondent for any claims, whether for costs or damages incurred by the Respondent in preparing, and submitting, the proposal, loss of anticipated profit in connection with any final contract, or any other matter whatsoever.
- Currency – Prices quoted are to be in U.S. Dollars.
- Acceptance of Proposals – This RFP shall not be construed as an agreement to procure goods or services by the Owner. The Owner is not bound to enter into a contract with the Respondent who submits the lowest cost proposal or with any Respondent. Proposals will be assessed in light of the evaluation criteria. The Owner will be under no obligation to receive further information, whether written or oral, from any Respondent.
- Form of Owner’s Representative Agreement – By submission of a proposal, the Respondent agrees that, should it be identified as the preferred Owner’s Representative, it is willing to enter into a written agreement with the Owner substantially in the form of the attached Exhibit A, subject to successful negotiations by both parties.
- Liability for Errors – While the Owner has expended considerable efforts to provide an accurate representation of information in this RFP, the information contained herein is supplied solely as a guideline for Respondents. The information is not guaranteed or warranted to be accurate by the Owner, nor is it necessarily comprehensive or exhaustive. Nothing in this RFP is intended to relieve Respondents from forming their own opinions and conclusions with respect to the matters addressed in this RFP.
- Modification of Terms – The Owner reserves the right to modify the terms of this RFP at any time in its sole discretion. This includes the right to cancel this RFP at any time prior to entering into a Contract with the preferred Owner’s Representative.
- Ownership of Proposals – All documents, including proposals submitted by Respondents in response to this RFP become the property of the Owner.
- Confidentiality of Information – Information pertaining to the Owner obtained by the Respondent as a result of participation in this project is confidential and must not be disclosed without written authorization from the Owner.
- By submission of a proposal, the Respondent declares and stipulates that the proposal is made in good faith, without collusion or connection with any other person or entity bidding for the same work, and that it is made subject to all the terms and conditions of the RFP.

EXHIBIT A

OWNER'S REPRESENTATIVE AGREEMENT

THIS OWNER'S REPRESENTATIVE AGREEMENT ("Agreement") is made and entered into as of _____, 2018 by and between Prairie Band Potawatomi Entertainment Corporation ("Owner") and _____ ("Owner's Representative").

WHEREAS, Owner and Owner's Representative desire to enter into this Agreement to set forth the understanding and agreement regarding Owner's Representative's efforts to assist Owner in the construction of expanded facilities and related improvements at Owner's casino and resort premises (the "Project") located at 12305 150th Road, Mayetta, Kansas 66509, and to set forth the rights, responsibilities and duties of Owner's Representative and Owner in connection therewith;

WHEREAS, Owner desires to engage and utilize Owner's Representative as an independent contractor and construction advisor to Owner, upon the terms and conditions set forth herein, to supervise and to manage the development and construction of such facilities and improvements; and

WHEREAS, Owner's Representative desires to perform such advisory and consultation services for and on behalf of Owner in consideration of the compensation set forth herein to be paid by Owner to Owner's Representative.

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

1. Meetings. Owner's Representative shall coordinate, attend, conduct, record, and assist the Owner at all Project meetings. In the absence of meeting minutes prepared by others, Owner's Representative will provide Owner with minutes from such meetings. Owner's Representative shall review for accuracy the minutes of such meetings prepared by either the Architect, Contractor, or others. Owner's Representative shall promptly clarify, amend and report via email any discrepancies affecting the Project to Owner, Architect, Contractor and all other affected persons.

2. Project Coordination. Owner's Representative, in general, shall coordinate all Project matters. The Owner's Representative shall develop and continuously update a Master Schedule for the Project. This shall include:

- (a) All development, design and construction activities conducted by:
 - Architect;
 - Owner (Board of Directors, General Manager, Other Staff);
 - Owner's Representative;
 - Additional third-party consultants (if any); and
 - Contractors; and
- (b) All Activities required for:
 - Agency interface, reviews, and approvals, if any;
 - Additional Consultant selection, if any;
 - Project development; and
 - Planning, design, bidding, construction and occupancy.

In addition to the Master Schedule, Owner's Representative shall prepare revolving 30 day look ahead task schedules on a continuous basis. Owner's Representative shall also develop and continuously update a comprehensive team roster.

Owner's Representative shall develop a comprehensive Roles and Responsibility Matrix. This matrix shall define all tasks related to the activities above and clearly define who is

responsible, who is to be informed/consulted and who has approval authority. This matrix will be updated each time a role changes or a task is added. Through the course of the Project, Owner's Representative shall utilize the Rolls and Responsibility Matrix to identify any third-party resources required. Should an additional resource be required, the Owner's Representative shall define their scope of work and recommend a method of procurement for Owner approval. Owner's Representative shall then develop, for Owner's approval, any RFQ's/RFP's required for selection. Owner's Representative will facilitate the Owner's solicitation, evaluation, selection and contracting of successful parties.

3. Weekly Reports. Owner's Representative shall furnish to the Owner weekly reports containing: (a) the status of the Project; (b) a comparison of the Project budget to costs incurred through the date of the report; (c) a comparison of the Project schedule to the work actually completed through the date of the report; (d) any revision to the Project schedule or Project budget made during the period covered by the report; (e) a summary of change orders made during the period covered by the report; (f) a list of all pending change orders and all outstanding issues requiring action or approval by Owner; (g) the status of any governmental requirements and activities required to facilitate approval of the Project; and (h) any other reports concerning the Project as Owner may reasonably request. Owner's Representative shall provide such reports in an electronic format in a form acceptable to Owner.

4. Financial Oversight. Owner's Representative shall provide financial oversight services for the Project, including but not limited to (a) preparing budgets; (b) preparing monthly variance reports in an electronic format in a form acceptable to Owner; (c) monthly Project payment application processing related to assembling, reviewing and forwarding to Owner for payment the invoices from the Architect, General Contractor and other consultants; and (d) processing and coordinating the payment for applications for payment.

5. Documentation. Owner's Representative shall review, become familiar with and document all existing information currently available on the projects. Owner's Representative shall provide and maintain a document management system for the Project. At Project completion, Owner's Representative will deliver the document(s) and record(s) to the Owner, or at any time during the Term at the Owner's request.

6. Master Budget. Owner's Representative shall review current estimates and build a comprehensive proposed Master Budget for the Project. The Master Budget should include all costs related to Project development, design and construction. Owner's Representative shall assist Owner in setting the final Master Budget, based on the approved design and the Project Schedule, the Project Program, the Project Costs Estimate and financial constraints identified by Owner.

7. Pre-Construction Phase Services.

(a) Owner's Representative shall advise the Owner with regards to the constructability, schedule, site logistics and construction budget of the proposed projects.

(b) If necessary, Owner's Representative shall assist the Architect and Owner in the selection of consultants for geological testing, surveying, construction testing and other special consultants. The Owner's Representative shall coordinate the work of these special consultants.

(c) Owner's Representative shall review information relevant to each Project, including pre- design studies, preliminary site plans, current building program/utilization, Owner research, project concepts, proposed building program, environmental investigation and remediation reports, building systems analysis reports, and applicable legal requirements.

(d) Upon approval by Owner of design development plans and specifications, Owner's Representative shall: (a) lead the process on behalf of the Owner in reviewing and coordinating the

preparation by the Architect and other Project consultants of the Construction Documents for the Project; and (b) make recommendations regarding alternative solutions whenever design details appear to (i) adversely affect construction feasibility, the Project Program, Budget or Schedule, or (ii) cause the Project to deviate from the approved drawings or requirements of Owner.

(e) Owner's Representative shall advise the Owner if the construction cost estimates exceed the latest approved budget. In consultation with the Architect, Owner's Representative shall provide value engineering services to analyze and make recommendations concerning availability of materials and labor, time requirements for installation and construction, and other factors related to costs, including costs of alternative designs or materials, and possible cost reductions and economies.

(f) Owner's Representative shall act as Owner's representative in coordinating and assisting the Architect and Owner in the preparation of bid documents. Owner's Representative shall assist Owner with management of the bid process in accordance with Owner's requirements. Without limitation of the foregoing, the Owner's Representative shall coordinate the notice to bidders and any advertisement the Owner will publish. The Owner's Representative shall coordinate all requirements for insurance, bonds, and other such financial and legal document requirements.

(g) For any work that is to be separated into separate bid sections, Owner's Representative shall review the working drawings and make recommendations to the Architect to: (i) coordinate the work of the separate bid portions, (ii) allocate the work to the separate bid portions, (iii) provide the proper coordination for phased construction, and (iv) advise Owner with respect to whether major portions of the work should be bid as separate prime contracts.

(h) Owner's Representative shall become familiar with the applicable contractual and legal requirements as they relate to the process for contractor selection and make recommendations for pre-qualification criteria for bidders, including bonding capabilities of any bidder if selected as a contractor, and develop a bid list for prospective contractors and subcontractors.

(i) Owner's Representative shall coordinate the receipt of permits for each project and monitor the Architect's review and submission process; coordinate with the various governmental agencies having permit responsibilities for the project; represent the Owner at meetings of the applicable governmental units; coordinate with the Contractor to obtain the necessary building permit or other necessary construction approvals for the project; and inform/advise Owner as to any material issues noted.

(j) Owner's Representative shall meet with the Owner and its risk management/insurance consultants to discuss and make recommendations regarding the development and implementation of an effective risk management program for the Project.

(k) Owner's Representative shall meet with the Owner and Owner's legal counsel to discuss and make recommendations regarding the form and content of all bid materials as well as all agreements to be entered into by Owner in connection with the Project.

(l) Owner's Representative shall consult with and advise Owner concerning appropriate construction delivery methods, such as separate prime contractors and sequenced bid packages.

(m) Owner's Representative shall assist with coordination of the design, acquisition and integration of any Owner Directly procured items such as information technology, security, audio/visual, signage, etc.

(n) Owner's Representative shall prepare preliminary site logistics plans, traffic flow diagrams, staging plans and operational impact plans prior to bid and for inclusion in the bid documents.

(o) Owner's Representative shall conduct pre-bid conferences to familiarize bidders with the bid documents and any special or unique systems, materials or methods.

(p) Owner's Representative shall review bids, prepare analyses and make recommendations to Owner for award of a contract for each Project.

(q) Owner's Representative shall provide recommendations regarding each Contractor's proposed mobilization schedule, temporary Project facilities, equipment, materials and services during construction and the assignment of responsibilities relating to same.

(r) Owner's Representative shall conduct pre-award conferences with the best and lowest respondent for a Project construction contract; advise Owner and Owner's legal counsel regarding the negotiation of business terms of each Project construction contract; and advise Owner on the acceptability of Contractor for the Project.

(s) Owner's Representative shall review and process vendor insurance certificates, surety bonds, sworn statements and waivers for contract compliance.

(t) Owner's Representative shall make recommendations as to the timely and economical purchases of materials and equipment and monitor the purchase of such items. To the extent cost-effective and feasible, Owner's Representative will assist Owner in developing a program for Owner to acquire building materials directly in order to minimize or eliminate state sales and use taxes in accordance with applicable law.

(u) Owner's Representative shall ensure that a safety, health and environmental protection plan has been provided by each prime Contractor prior to the commencement of work. Furthermore, Owner's Representative shall also notify the Contractor and Owner of any safety violation witnessed on the jobsite.

(v) After Owner awards the Project general contractor construction contract and before the Contractor commences work on the site, Owner's Representative shall assist Owner in the preparation of all necessary site logistics plans, traffic flow diagrams and plans for the performance of the work as a result of the review and coordination of the contractor's implementation plan, showing the use of designated roadways or street lights, the closing of any roadways, streets and/or sidewalks, and the re-routing of any traffic; and assist in obtaining necessary government approvals required to implement such traffic plans.

8. Construction Phase Services

(a) Owner's Representative shall provide continuous onsite management services, including being responsible for the coordination of all construction activity, including recommending various alternative courses of action when construction contractors are not performing work in accordance with the contract documents. Owner's Representative shall conduct weekly onsite coordination meetings and daily quality control.

(b) Owner's Representative shall coordinate with the Contractors for site access control.

(c) Owner's Representative shall conduct a general pre-construction meeting prior to the start of construction and in-depth pre-construction meetings with all major trade contractors prior to the start of their work activities.

(d) Owner's Representative shall represent the Owner in its communications with the Architect, Contractor, and any other Consultant(s); schedule, attend, and conduct progress meetings, regular on-site meetings to review construction progress and pay requests and to provide appropriate recommendations to the Owner concerning the Owner's decisions on construction

matters, including, where necessary, alternative designs or materials; and coordinate, review and advise the Owner concerning, change orders, submittals, and requests for information.

(e) Owner's Representative shall: (i) assist and review the processing of change orders, (ii) advise Owner concerning the necessity for, scope of and recommended cost of change orders, and (iii) negotiate, on Owner's behalf, all change orders with Contractor for Owner approval. The final Project Budget and/or Project Schedule, as applicable, will be revised to reflect approved change orders.

(f) Owner's Representative shall review applications for payment by Architect and Contractor, review and certify certificates for payment issued by Architect and make written recommendations to Owner concerning payment. Owner's Representative's certification for payment shall constitute a representation to the Owner that, to the best of the Owner's Representative's knowledge, information, and belief, the work has progressed to the point indicated and the quality of the work is in accordance with the Contract Documents. The issuance of a certificate for payment shall further constitute a representation that the Contractor or Architect is entitled to payment in the amount certified.

(g) Owner's Representative shall direct prime Contractor(s) (and others, where appropriate) to prepare and update a critical path schedule for completion of the applicable work. In the event of delays impacting the critical path schedule, Owner's Representative shall make recommendations to Owner for corrective action by Contractor and review Contractor's recommendations for corrective action.

(h) Owner's Representative shall coordinate Architect review and approval of shop drawings, product data and other submittals by a Contractor.

(i) In conjunction with the Contractor who has prime contractual responsibility, the Owner's Representative shall additionally review and advise the Owner concerning the adequacy of the Contractor's personnel and equipment, and the availability of materials and supplies to meet the Contractor's schedules in relation to the Project Schedule.

(j) Owner's Representative shall enforce each Contractor's contract requirement to maintain a daily log containing the number of workers, equipment, work accomplished, daily weather, problems encountered and other relevant data as the Owner may require. Although Owner's Representative shall not guarantee the performance by Contractor, Owner's Representative shall recommend courses of action to the Owner when Owner or Owner's Representative becomes aware that requirements of any Project construction contract are not being fulfilled, or when Contractor falls behind in its schedule; shall communicate recommendations, as directed by the Owner, to Contractor on behalf of the Owner; shall monitor Contractor's performance of such recommendations; and shall report Contractor's progress to the Owner on at least a weekly basis.

(k) Owner's Representative shall notify Owner in writing, with photos and supporting documentation, if Owner's Representative becomes aware that the work of Contractor is not being performed in accordance with the requirements of the Contract Documents. As appropriate, Owner's Representative shall, with written authorization from the Owner, require additional inspection or testing of the work in accordance with the provisions of the Contract Documents, whether or not such work is covered, installed or completed. Owner's Representative shall review any and all test reports and notify the Owner, the Architect and the Contractor, as appropriate, of deficiencies in the work of which Owner's Representative becomes aware and shall advise the Owner of projected consequences of such default and shall make recommendations to Owner with respect thereto. With the written authorization of Owner, Owner's Representative shall reject work which does not conform to the requirements of the applicable Contract Documents.

(l) Owner's Representative shall advise the Owner concerning the procurement of materials by Contractor or Owner, as applicable, regarding budget and schedule implications and in connection with the program described in Section 7(w) with respect to minimization or elimination of state sales and use taxes.

(m) Owner's Representative shall attend on-site review of each Project to confirm substantial completion of the Project and notify Owner when Owner's Representative believes the work under a Project construction contract is substantially complete and that a punch-list should be prepared.

(n) Owner's Representative shall coordinate with the Architect in its review of the work to enable the Architect to determine the date of substantial completion. At the substantial completion by Contractor of the work, Owner's Representative shall monitor the Architect in its inspection of the work and preparation of a detailed "punch-list" specifying any items which require completion, installation, correction or repair. Owner's Representative will consult with Owner and/or Architect in connection with recommendations for the rejection and replacement of all nonconforming work, as appropriate.

(o) Owner's Representative shall obtain from Contractor record drawings or, if required by the applicable Project construction contract, "as-built" drawings, as construction completes.

(p) Together with the Architect and Owner, Owner's Representative shall monitor and observe the testing and start-up of all utilities, systems and equipment for a Project and review test reports.

(q) Owner's Representative shall complete the final close-out of the Project by: (i) obtaining, or causing the Contractor to obtain, all government approvals required for the legal use and occupancy of the Project, (ii) obtaining all warranties, guarantees, bonds, insurance certificates, installation manuals, and other items required pursuant to the Project construction contracts, (iii) obtaining all affidavits, waivers, and releases the Contractors are required to provide pursuant to the Project construction contracts to achieve final completion of the Project, (iv) analyzing all claims (including change order disputes and other claims for extra compensation) asserted by the Contractors and the Architect, (v) collecting and/or otherwise resolving any and all back charge claims that Owner may assert against any Architect or Contractors, including assistance with any legal proceedings or other dispute resolution instituted by Owner and/or any Architect or Contractor, and/or (vi) representing Owner at meetings and/or inspections scheduled by Owner and held to resolve problems relating to design, physical condition or operation of the Project to seek enforcement of warranties.

(r) While performing services hereunder, the Owner's Representative shall promptly inform the Owner if the Owner's Representative becomes aware of any security concerns and/or unsafe conditions.

9. Owner's Responsibilities.

(a) Owner shall retain all professional design consultants and construction contractors required for the Project. In its capacity hereunder, Owner's Representative does not assume any responsibility for design errors/omissions or work performed by the licensed design professionals and/or contractors contracted by the Owner.

(b) The Owner shall identify a representative authorized to act on the Owner's behalf with respect to each Project. The Owner shall render decisions in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of Owner's Representative's services.

(c) The Owner shall retain the services of testing agencies to furnish all tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

(d) The Owner shall furnish all legal, insurance and accounting services, including auditing services that may be reasonably necessary at any time for each Project to meet the Owner's needs and interests.

10. Liability.

(a) Owner's Representative shall indemnify, defend and hold harmless the Owner, together with its employees, agents, architects and engineers, and authorized representatives, from and against any and all losses, suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, reasonable attorney fees, costs and expenses of whatsoever kind or nature whether arising before or after completion of the work and in any manner directly or indirectly caused, occasioned or contributed to in whole or in part, by reason of any action, omission, fault or negligence whether active or passive of Owner's Representative, or of anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of the Contract. Owner's Representative's indemnity and hold harmless obligations shall apply to the fullest extent permitted by law.

(b) Owner's Representative and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement.

11. Mediation.

(a) Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Owner's Representative's services, the Owner's Representative may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

(b) The Owner and Owner's Representative shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the American Arbitration Association's Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 30 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator and agree upon a schedule for later proceedings.

(c) The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof; provided, however, that neither party waives any available defenses including, but not limited to, sovereign immunity from unconsented suit and requiring the exhaustion of tribal remedies.

(d) If the parties do not resolve a dispute through mediation pursuant to this Section 11, the method of binding dispute resolution shall be by arbitration per section 12 of this Agreement.

12. Arbitration.

(a) The parties acknowledge that Owner is an instrumentality of a federally recognized Indian tribe that retains and, except as specifically provided in this Section 12, has not waived and does not waive, sovereign immunity from unconsented suit. Nothing in any other provision of this Agreement is intended, nor shall it be interpreted, to subject Owner to the jurisdiction of the federal courts or the courts of any state or political subdivision thereof. The parties expressly agree that in the event of any conflict between the terms and provisions of this Section 12 and any other term or provision of this Agreement, the terms and provisions of this Section 12 shall control.

(b) Any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association (“AAA”) in accordance with its Construction Industry Arbitration Rules and in accordance with the Federal Arbitration Act in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the AAA.

(c) A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

(d) Arbitration shall be conducted by one disinterested and independent arbitrator having construction experience. The AAA shall select the arbitrator, subject to the consent of each party. The arbitration shall be conducted at a place designated by the arbitrator in Topeka, Kansas or any other location as the parties may mutually agree in writing. The reasonable expenses of dispute resolution shall be paid equally by the parties, who shall also pay their own expenses. The arbitrator is empowered, but not required, to award the cost of attorney fees, costs, expenses and disbursements to the prevailing party. The cost of enforcing an award of the arbitrator, including reasonable attorneys’ fees, shall be paid by the party against whom the award was entered. The arbitrator shall have the power to grant equitable or injunctive relief and specific performance as provided in this Agreement. The arbitrator shall not have the power to award punitive damages or any other damages not permitted by the terms of this Agreement. Except for complaints seeking equitable or injunctive relief similar to motions for temporary restraining orders, which shall be heard as quickly as possible, the arbitrator shall commence proceedings within 30 days after its appointment. The arbitration award shall be signed by the arbitrator and shall be made within 30 days from the date of closing the hearing, or, if oral hearings have been waived, from the date of the AAA’s transmittal of the final statements and proofs to the arbitrator. The parties and the arbitrator shall maintain strict confidentiality with respect to the arbitration. Without waiving the sovereign immunity of owner or of the Prairie Band Potawatomi Nation, the parties agree that this Agreement shall be interpreted by the arbitrator (without adding to, modifying or changing the terms in any respect) pursuant to the laws of the Prairie Band Potawatomi Nation (to the extent not inconsistent with applicable laws of the United States) and the United States, without regard to conflicts of laws principles. In the event the governing law of Prairie Band Potawatomi Nation looks to the law of a particular state for its content, the law applicable in that instance will be the

laws of the State of Kansas. In the event the governing law of the United States looks to the law of a particular state or jurisdiction for its content, the law applicable in that instance will be, first, the laws of the Prairie Band Potawatomi Nation and, second, in the event there is no such applicable law, the laws of the State of Kansas.

(e) Subject to Section 12(g), the foregoing agreement to arbitrate, other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, and any order of the arbitrator shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

(f) Subject to Section 12(g), the award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

(g) Owner hereby waives its sovereign immunity to the limited extent necessary to permit enforcement against Owner of agreements to arbitrate, orders of the arbitrator, or any award rendered by the arbitrator, each to the extent specified in Section 12; provided, however, that the source of recovery for satisfaction of any monetary award against Owner shall be limited to unencumbered funds of Owner's gaming facility know as Prairie Band Casino & Resort located at 12305 150th Road, Mayetta, Kansas 66509 and no recovery may be had against any other assets of Owner or its affiliates, including the Prairie Band Potawatomi Nation.

13. Termination or Suspension.

(a) If the Owner fails to make payments to Owner's Representative in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at Owner's Representative's option, cause for suspension of performance of services under this Agreement. If Owner's Representative elects to suspend services as permitted hereunder, Owner's Representative shall give seven days' written notice to the Owner before suspending services. In the event of such a suspension of services, Owner's Representative shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, Owner's Representative shall be paid all sums due hereunder prior to suspension and any reasonable expenses incurred in the interruption and resumption of Owner's Representative's services. Owner's Representative's fees for the remaining services and the time schedules shall be equitably adjusted.

(b) If the Owner suspends the Project, Owner's Representative shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, Owner's Representative shall be compensated for reasonable expenses incurred in the interruption and resumption of Owner's Representative's services. Owner's Representative's fees for the remaining services and the time schedules shall be equitably adjusted.

(c) Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

(d) The Owner may terminate this Agreement upon not less than thirty days' written notice to Owner's Representative for the Owner's convenience and without cause.

(e) In the event of termination, Owner's Representative shall be compensated for services performed prior to termination and expenses then due.

14. Insurance.

(a) Owner's Representative shall obtain and maintain the follow insurance with the coverages stated below:

- (1) Statutory workers' compensation and other benefits as required by law, and employer's liability as required by law;
- (2) Commercial general liability insurance, with \$5,000,000 annual aggregate coverage and \$3,000,000 per occurrence;
- (3) Contractor's protective personal injury liability, \$3,000,000 each occurrence;
- (4) Contractor's protective property, all risk coverage for all contractors' equipment, \$3,000,000 each occurrence;
- (5) Comprehensive automobile liability, including coverage for owned, non-owned, and hired automobiles, \$2,000,000 per occurrence for personal injury and \$2,000,000 per occurrence for property damage; and
- (6) Professional liability insurance, \$3,000,000 per occurrence.

(b) All policies of insurance required pursuant to Section 14(a) shall be written on an "occurrence" basis and issued by insurance companies authorized to do business in the State of Kansas having an A.M. Best Rating of B+ VII or better, or a comparable rating if A.M. Best ceases to publish its ratings or materially changes its rating standards or procedures. All such policies of insurance shall have attached thereto (a) an endorsement that such policy shall not be cancelled or materially changed without at least thirty (30) days prior written notice to Owner, and (b) an endorsement to the effect that no act or omission of Owner's Representative or of Owner, other than nonpayment, after written notice thereof, of the premiums for such policy, shall affect the obligation of the insurer to pay the full amount of any loss sustained (but not to exceed, in any event, the policy limits). All such policies of insurance shall contain an endorsement to the effect that such insurance shall be primary and non-contributory and an endorsement that any aggregate limits are on a "per project" basis.

15. COMPENSATION.

(a) Owner's Representative shall be paid the following fees:

[TO COME]

Rates apply to all services performed during the entire Project.

(b) All profit, overhead and direct personal expenses are included in the fees set forth in Section 15(a). For periods prior to the construction phase, no additional expenses will be charged with the exception of Owner directed and approved out of town travel. During the construction phase, expenses anticipated for on-site field management and operations will be identified prior to the start of construction for Owner Approval.

(c) Unless otherwise agreed, payments for services shall be made monthly based on services performed, subject to applicable caps. Payments are due and payable upon presentation of Owner's Representative's invoice.

16. Miscellaneous.

(a) Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Owner's Representative.

(b) Unless otherwise required in this Agreement, Owner's Representative shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

(c) If Owner's Representative or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information, or (4) as otherwise required by law.

(d) This Agreement represents the entire and integrated agreement between the Owner and Owner's Representative and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Owner's Representative.

(e) Owner and Owner's Representative, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Owner's Representative shall assign this Agreement without the written consent of the other. Owner's Representative shall not subcontract all or any portion of this Agreement.

(f) With respect to Owner, Owner's Representative shall at all times be an independent contractor. No provision hereof shall be construed to constitute Owner's Representative or any of its officers or employees as an employee or employees of Owner nor shall any provision of this Agreement be construed as creating a partnership or joint venture between Owner's Representative and Owner. Neither Owner nor Owner's Representative shall have the power to bind the other party except pursuant to the terms of this Agreement.

IN WITNESS WHEREOF, each party has caused this Agreement to be duly executed as of the date and year first above written.

OWNER:

OWNER'S REPRESENTATIVE:

Prairie Band Potawatomi Entertainment Corporation

[Insert Name Here]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____