



SQUAXIN ISLAND TRIBE

RESOLUTION NO. 06- 32

of the

SQUAXIN ISLAND TRIBAL COUNCIL

WHEREAS, the Squaxin Island Tribal Council is the Governing Body of the Squaxin Island Tribe, its members, its lands, its enterprises and its agencies by the authority of the Constitution and Bylaws of the Squaxin Island Tribe, as approved and adopted by the General Body and the Secretary of the Interior on July 8, 1965; and

WHEREAS, under the Constitution, Bylaws and inherent sovereignty of the Tribe, the Squaxin Island Tribal Council is charged with the duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources and rights of the Tribe; and

WHEREAS, the Tribe is a federally-recognized Indian Tribe possessing reserved powers, including the powers of self-government; and

WHEREAS, the Squaxin Island Tribal Council has been entrusted with the creation of ordinances and resolutions in order to fulfill their duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources of the Tribe; and

WHEREAS, the Squaxin Island Tribal Council directed staff to negotiate for a construction proposal for the purpose of adding a second hotel tower to the Little Creek Casino-Resort; and

WHEREAS, staff has negotiated the terms of a contract for construction services with John Korsmo Construction, Inc. referred to as Contractor, as is evidenced by the attached Agreement for Construction Services, AIA Document A111 - 1997; and

WHEREAS, in order to induce Contractor to complete and execute the Agreement for Construction Services and perform the same, it is necessary for the Tribal Council to ratify and approve the terms of the Agreement for Construction Services; to authorize execution of any and all documents required; to issue a limited waiver of sovereign immunity; to consent that the Tribe be sued in state, federal and tribal courts pertaining to the transaction; and to consent to the application of the substantive laws of the State of Washington.

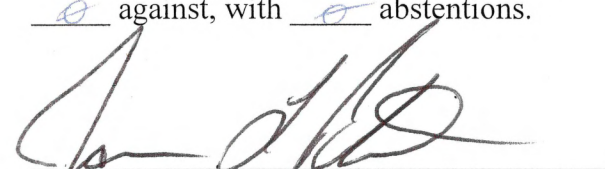
NOW, THEREFORE, BE IT RESOLVED AND ENACTED by the Council as follows:

Section 1. Agreement for Construction Services. The terms and conditions of the above-described drafts of the Agreement for Construction Services are hereby authorized and ratified. The Chairman, or in his absence the Vice-Chairman, or the CEO of the Little Creek Casino-Resort, is hereby authorized to execute and deliver on behalf of the Tribe the Agreement as well as any non-material revisions of the same prior to their execution as they shall determine.

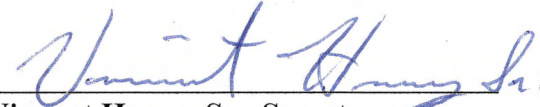
Section 3. Waiver of Sovereign Immunity and Waiver of Jury Trial. The Council, for itself and on behalf of the Tribe, expressly and irrevocably waives its sovereign immunity from suit or claims by the Contractor with respect to the obligations and indebtedness evidenced by the Agreement for Construction Services, which include but are not limited to the AIA Document A111 standard form of agreement between the owner and contractor. The Tribe consents to be sued consistent with the terms of Article 14, Section 6. The waiver of sovereign immunity expressed therein is specifically limited to John Korsmo Construction, Inc., and its successors and assigns. Provided further, recourse of the Contractor under this waiver of sovereign immunity is limited to recovery of the Retained Loan Proceeds in the Loan Agreement, the net gaming revenues of the Owner's Gaming Enterprise, and insurance proceeds available from Owner's liability or property insurance thereunder.

CERTIFICATION


The Squaxin Island Tribal Council hereby certifies that the foregoing Resolution was adopted at the regular meeting of the Squaxin Island Tribal Council, held on this 27th day of April, 2006, at which time a quorum was present and was passed by a vote of 6 for and 0 against, with 0 abstentions.



James L. Peters, Chairman

Attested by: 

Vincent Henry, Sr., Secretary



Andrew D. Whitener, Vice Chairman

AIA DOCUMENT | A111-1997

Standard Form of Agreement Between Owner and Contractor

Where the basis for payment is the COST OF THE WORK PLUS A FEE with a negotiated Guaranteed Maximum Price

AGREEMENT made as of the **2ND** day of **MARCH**
in the year **2006**
(In words, indicate day, month and year)

BETWEEN the Owner:
(Name, address and other information)

SQUAXIN ISLAND TRIBE d/b/a LITTLE CREEK CASINO
70 S.E. Squaxin Lane
Shelton, WA 98584
Phone: (360) 432-3953
Fax: (360) 427-2789

and the Contractor:
(Name, address and other information)

John Korsmo Construction, Inc.
P.O. Box 99846
11150 Gravelly Lake Drive SW
Lakewood, WA 98499
Phone: (253) 582-6712
Fax: (253) 582-6788

The Project is:
(Name and address)

Little Creek Casino Hotel – Tower 2
91 West State Route 108
Shelton, WA 98584-9270

The Architect is:
(Name, address and other information)

Ambia Enduring Architecture
724 Columbia Street N.W., Suite 400
Olympia, WA 98501
Phone: (360) 943-4650
Fax: (360) 357-9022

The Owner and Contractor agree as follows.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is not intended for use in competitive bidding.

AIA Document A201-1997, General Conditions of the Contract for Construction, is adopted in this document by reference.

This document has been approved and endorsed by The Associated General Contractors of America.

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 15. If anything in the other Contract Documents is inconsistent with this Agreement, this Agreement shall govern.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

In addition to performing the actual construction Work, Contractor shall perform pre-construction services as requested by the Owner and the Architect to assist in the development of the final Construction Documents by furnishing recommendations to the Owner and Architect, and by performing value engineering services to assist the Owner to achieve its objectives, including, but not limited to, the cost of construction, the time of construction, functional performance, and aesthetic goals. Contractor's pre-construction services will involve the preparation of periodic estimates of the Cost of the Work and construction schedules as the design documents are developed and various alternatives are considered. Contractor shall be compensated for such services at the rates specified in Article 7.2. Contractor is entitled to compensation for attending meetings with the Owner, Architect, other design professionals, and others in connection with performing pre-construction services. The cost of pre-construction services shall be included in the Cost of the Work, and together with all other components of the Cost of the Work and Contractor's Fee is subject to the Guaranteed Maximum Price as further addressed in Article 5.2.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

4.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

If, prior to commencement of the Work, the Owner requires time to file mortgages, mechanic's liens and other security interests, the Owner's time requirement shall be as follows:

4.2 The Contract Time shall be measured from the date of commencement.

4.3 The Contractor shall achieve Substantial Completion of the entire Work not later than _____ days from the date of commencement, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

Contractor and Owner acknowledge that at the time this Agreement is executed, Design Development Documents are being prepared. Owner is furnishing Contractor with Design Development Documents. Contractor and Owner agree on the Date of Substantial Completion of December 4th, 2006. Contractor shall be entitled to an increase in the contract time in the event construction documents are not furnished in a timely manner in relationship to the progress of the work, or the construction documents increase the scope of the Contractor's work consistent with Article 7 of the General Conditions. Failure of the Contractor to complete the work within the contract time shall result in liquidated damages of \$500 per day until Substantial Completion is achieved. Both parties agree to do everything within their power in order that the deadline for Substantial Completion is achieved.

, subject to adjustments of this Contract Time as provided in the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to complete on time, or for bonus payments for early completion of the Work.)

ARTICLE 5 BASIS FOR PAYMENT

5.1 CONTRACT SUM

5.1.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor's Fee.

5.1.2 The Contractor's Fee is:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee, and describe the method of adjustment of the Contractor's Fee for changes in the Work.)

5.45% of the Cost of the Work as defined in Article 7, and 5.45% of the Cost of the Work as defined in Article 7 which is applicable to changes in the Work.

5.2 GUARANTEED MAXIMUM PRICE

5.2.1 The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed _____ Dollars

(\$ _____), subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid the Contractor without reimbursement by the Owner.

(Insert specific provisions if the Contractor is to participate in any savings.)

Based upon on the status of the development of the design documents, it is not possible at this time for Contractor to provide, and for the parties to agree upon, a Guaranteed Maximum Price. The current cost estimate presented to the Owner on February 9th, 2006 of \$17,200,045 is based on Design Development Documents and meeting minutes dated January 18th and 26th, 2006. Contractor shall provide owner monthly estimates during the contract document phase. The contract team will use

these monthly updates to make informed decisions to stay within the GMP range established in the attached contractor's estimate of February 9th, 2006. The Owner will furnish Contractor with Construction Documents and the parties shall agree upon a GMP no later than May 5, 2006. Contractor and Owner agree to use their best efforts to work to keep the GMP below \$17,200,045. Contractor and Owner agree to share any savings in the event the actual cost of the work plus contractor's fee is less than the GMP, plus additions and deductions by Change Order as provided in the Contract Documents. Savings will be shared 25% to Contractor, 75% to Owner, with a max. of \$175,000 to be received by Contractor.

5.2.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

5.2.3 Unit prices, if any, are as follows:

5.2.4 Allowances, if any, are as follows:

(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)

5.2.5 Assumptions, if any, on which the Guaranteed Maximum Price is based are as follows:

5.2.6 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Contractor has provided in the Guaranteed maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

ARTICLE 6 CHANGES IN THE WORK

6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Subparagraph 7.3.3 of AIA Document A201-1997.

6.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Clause 7.3.3.3 of AIA Document A201-1997 and the terms "costs" and "a reasonable allowance for overhead and profit" as used in Subparagraph 7.3.6 of AIA Document A201-1997 shall have the meanings assigned to them in AIA Document A201-1997 and shall not be modified by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-1997 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the terms "fee" and "a reasonable allowance for overhead and profit" shall mean the Contractor's Fee as defined in Subparagraph 5.1.2 of this Agreement.

6.4 If no specific provision is made in Paragraph 5.1 for adjustment of the Contractor's Fee in the

case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Paragraph 5.1 will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the basis of the Fee established for the original Work, and the Guaranteed Maximum Price will be adjusted accordingly.

ARTICLE 7 COSTS TO BE REIMBURSED

7.1 COST OF THE WORK

The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work or by application of the labor rates specified in Article 7.2. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the terms set forth in this Article 7.

7.2 LABOR COSTS

7.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's approval, at off-site workshops.

~~**7.2.2** Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's approval.~~

~~*(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify in Article 14 the personnel to be included and whether for all or only part of their time, and the rates at which their time will be charged to the Work.)*~~

The following rates shall be charged for the following categories of supervision, project management, and project engineering regardless of whether the work is performed at the site of the Project or not. Contractor is entitled to charge for the time expended by the following categories of supervision, project management, and project engineering for attending meetings with the Owner, Architect, other design professionals, and others in connection with performing pre-construction services, and in connection with the performance of the Work.

<u>John Korsmo</u>	<u>\$82.22/hr</u>
<u>Estimator (Tracy Cutler)</u>	<u>\$65.00/hr</u>
<u>Estimator (Stan Birkedah)</u>	<u>\$55.00/hr</u>
<u>General Superintendent (Kim Anderson)</u>	<u>\$70.00/hr</u>
<u>Superintendent (Will Stocking)</u>	<u>\$65.00/hr</u>
<u>Project Manager</u>	<u>\$60.00/hr</u>
<u>Project Manager Assistant</u>	<u>\$40.00/hr</u>
<u>Project Engineer</u>	<u>\$50.00/hr</u>

The rates specified above include all taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements. They do not include Contractor's Fee as specified in Article 5.1.2.

To the extent that there are any provisions of this Agreement that contradict this Section 7.2.2, then such provisions are superseded by this Section 7.2.2.

7.2.3 Wages and salaries of the Contractor's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

7.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Subparagraphs 7.2.1 through 7.2.3.

7.3 SUBCONTRACT COSTS

7.3.1 Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

7.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

7.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

7.4.2 Costs of material described in the preceding Subparagraph 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

7.4.3 Title to materials and equipment passes to the Owner upon delivery to the Owner's reservation.

7.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

7.5.1 Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the Contractor at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Contractor. Cost for items previously used by the Contractor shall mean fair market value. **Title to such materials, supplies, temporary facilities, machinery, equipment, and hand tools passes to the Owner at such time as such items are delivered to the Owner's reservation.**

7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, whether rented from the Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval. **Rental rates shall be per Contractor's rate sheet.**

7.5.3 Costs of removal of debris from the site.

7.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

7.5.5 That portion of the reasonable expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the Work.

7.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance by the Owner.

7.6 MISCELLANEOUS COSTS

7.6.1 That portion of insurance and bond premiums that can be directly attributed to this Contract.

7.6.2 ~~Sales, use or similar taxes imposed by a governmental authority that are related to the Work.~~ **Contractor shall make reasonable arrangements for the delivery of goods and services to Indian country, so that the Contractor and/or Owner may qualify for any applicable exemption from state taxation as may be provided under WAC 458-20-192. The Owner represents that 91 W. State Route 108 is Indian country as defined by the WAC and understands that Contractor shall act in reliance on this representation. Sales, use,**

B&O taxes, and similar taxes related to the Work imposed by either the Owner or any governmental authority shall not be part of the Cost of the Work for purposes of determination of the Guaranteed Maximum Price. Contractor shall take reasonable steps to ensure that it does not become liable for sales, use, B&O, or similar taxes imposed by a non-Owner governmental authority. In the event that Contractor becomes liable for sales, use B&O, or similar taxes imposed either the Owner or another governmental authority, they shall become Costs of the Work to be reimbursed by the Owner, and the Guaranteed Maximum Price shall be increased to the extent of the Contractor's liability.

7.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay.

7.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Subparagraph 13.5.3 of AIA document A201-1997 or other provisions of the Contract Documents, and which do not fall within the scope of Subparagraph 7.7.3.

7.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee of subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Subparagraph 3.17.1 of AIA Document A201-1997 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

7.6.6 Data processing costs related to the Work.

7.6.7 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility to the Owner as set forth in the Contract Documents.

7.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor in the performance of the Work and with the Owner's prior written approval; which approval shall not be unreasonably withheld.

7.6.9 Expenses incurred in accordance with the Contractor's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved by the Owner.

7.7 OTHER COSTS AND EMERGENCIES

7.7.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

7.7.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Paragraph 10.6 of AIA Document A201-1997.

7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recoverable by the Contractor from insurance, sureties, Subcontractors or suppliers.

ARTICLE 8 COSTS NOT TO BE REIMBURSED

8.1 The Cost of the Work shall not include:

8.1.1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Subparagraph's 7.2.2 and 7.2.3 or as may be provided in Article 14.

8.1.2 Expenses of the Contractor's principal office and offices other than the site office.

8.1.3 Overhead and general expenses, except as may be expressly included in Article 7.

8.1.4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.

8.1.5 Rental costs of machinery and equipment, except as specifically provided in Subparagraph 7.5.2.

8.1.6 Except as provided in Subparagraph 7.7.3 of this Agreement, costs due to the negligence or failure to fulfill a specific responsibility of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.

8.1.7 Any cost not specifically and expressly described in Article 7.

8.1.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be secured.

9.2 Amounts that accrue to the Owner in accordance with the provisions of Paragraph 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Owner may designate specific persons or entities from whom the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Contractor and the Architect, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

10.2 If a specific bidder among those whose bids are delivered by the Contractor to the Architect (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement signed with the person or entity designated by the Owner.

10.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract, and the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to, and shall be permitted to audit and copy, the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Contract, and the Contractor shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 12 PAYMENTS

12.1 PROGRESS PAYMENTS

12.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

12.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

Applications for payment shall be submitted to the Owner and Architect bi-monthly on the first day and the 16th day of each month. Within 7 days after receipt, the Architect shall issue its Certificate for Payment to Owner and Contractor. Within 7 days after receipt, the Owner shall pay Contractor. In the event Payment is not made to Contractor within 7 days of its due date, Contractor may stop the Work until Payment is received. The Contract Time shall be extended appropriately, and the Contract Sum shall be increased by the amount of Contractor's reasonable cost of shut-down, delay, and start-up.

~~12.1.3 Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment to the Contractor not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than days after the Architect receives the Application for Payment.~~

12.1.4 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

12.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Contractor's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

12.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been

completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

12.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Subparagraph 7.3.8 of AIA Document A201-1997;
- .2 add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 add the Contractor's Fee, less retainage of **five** percent (**5** %). The Contractor's Fee shall be computed upon the Cost of the Work described in the two preceding Clauses at the rate stated in Subparagraph 5.1.2 or, if the Contractor's Fee is stated at a fixed sum in that Subparagraph, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work in the two preceding Clauses bears to a reasonable estimate of the probably Cost of the Work upon its completion;
- .4 subtract the aggregate of previous payments made by the Owner;
- .5 subtract the shortfall, if any, indicated by the Contractor in the documentation required by Paragraph 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and
- .6 subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 9.5 of AIA Document A201-1997.

12.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retainage of not less than **five** percent (**5** %). The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retention for Subcontractors. **Retainage shall be held in an interest bearing account in the Contractor's name. A written notice from the Owner shall be required before retainage can be released to the Contractor.**

12.1.9 In taking action on the Contractor's Application for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Subparagraph 12.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections or that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

12.2 FINAL PAYMENT

12.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when:

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Subparagraph 12.2.2 of AIA Document A201-1997, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

12.2.2 The Owner's final payment to the Contractor shall be made no later than **3015** days after the

issuance of the Architect's final Certificate for Payment, or as follows:

12.2.3 The Owner's accountants will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Architect by the Contractor. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Contractor's final accounting, and provided the other conditions of Subparagraph 12.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's accountants, either issue to the Owner in writing of the Architect's reasons for withholding a certificate as provided in Subparagraph 9.5.1 of the AIA Document A201-1997. The time periods stated in this Subparagraph 12.2.3 supersede those stated in Subparagraph 9.4.1 of the AIA Document A201-1997.

12.2.4 If the Owner's accountants report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to demand arbitration of the disputed amount without a further decision of the Architect. Such demand for arbitration shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment; failure to demand arbitration within this 30-day period shall result in the substantiated amount reported by the Owner's accountants becoming binding on the Contractor. Pending a final resolution by arbitration, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

12.2.5 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs described in Article 7 and not excluded by Article 8 to correct defective or nonconforming Work, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Contractor has participated in savings as provided in Paragraph 5.2, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor.

ARTICLE 13 TERMINATION OR SUSPENSION

13.1 The Contract may be terminated by the Contractor, or by the Owner for convenience, as provided in Article 14 of AIA Document A201-1997. However, the amount to be paid to the Contractor under Subparagraph 14.1.3 of AIA Document A201-1997 shall not exceed the amount the Contractor would be entitled to receive under Paragraph 13.2 below, except that the Contractor's Fee shall be calculated as if the Work had been fully completed by the Contractor, including a reasonable estimate of the Cost of the Work for Work not actually completed.

13.2 The Contract may be terminated by the Owner for cause as provided in Article 14 of AIA Document A201-1997. The amount, if any, to be paid to the Contractor under Subparagraph 14.2.4 of AIA Document A201-1997 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

13.2.1 Take the Cost of the Work incurred by the Contractor to the date of termination;

13.2.2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Subparagraph 5.1.2 or, if the Contractor's Fee is stated as a fixed sum in that Subparagraph, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probably Cost of the Work upon its completion; and

13.2.3 Subtract the aggregate of previous payments made by the Owner.

13.3 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and

that is not otherwise included in the Cost of the Work under Subparagraph 13.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

13.4 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-1997; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Subparagraph 14.3.2 of AIA Document A201-1997 except that the term "profit" shall be understood to mean the Contractor's Fee as described in Subparagraphs 5.1.2 and Paragraph 6.4 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

14.1 Where reference is made in this Agreement to a provision AIA Document A201-1997 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

14.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing ~~from time to time at the place where the Project is located.~~ in the State of Washington.
(Insert rate of interest agreed upon, if any.)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

14.3 The Owner's representative is:
(Name, address and other information.)

91 West State Route 108
Shelton, WA 98584-9270

14.4 The Contractor's representative is:
(Name, address and other information.)

John S. Korsmo, Jr.
11150 Gravelly Lake Drive SW
Lakewood, WA 98499

14.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days' written notice to the other party.

14.6 ~~Other provisions:~~ Mediation, Arbitration, and Waiver of Sovereign Immunity

14.6.1 This paragraph concerns the resolution of any controversies or claims between the Owner and the Contractor whether arising in contract, tort or by statute that arise out of or relate to the Contract Documents, including claims relating to the

disbursement of the Retained Loan Proceeds as defined in the Owner's Loan Agreement with Bank of America, as amended ("Loan Agreement") or for claims for coverage under Owner's liability or property insurance policies (collectively "Claims").

14.6.2 Owner expressly and irrevocably waives its sovereign immunity from compulsory, mediation, arbitration and judicial enforcement or any arbitration award or awards for Claims by Contractor with respect to the obligations and indebtedness that arise out of or relate to the Contract Documents, disbursement of the Retained Loan Proceeds and for the Contractor's claims for coverage under Owner's liability or property insurance policies. Provided, the waiver of sovereign immunity expressed herein is limited to the Contractor and its successors and assigns. Provided further, the waiver granted the Contractor is limited to recovery of the Retained Loan Proceeds in the Loan Agreement, the net gaming revenues of the Owner's Gaming Enterprise, and insurance proceeds available from Owner's liability or property insurance hereunder. Neither Owner nor Owner's insurers shall assert sovereign immunity as a bar to coverage by Contractor as an additional named insured on such policies. Mediation, arbitration, and judicial enforcement shall be as specified in Articles 4.5 and 4.6 of the General Conditions of the Contract for Construction, AIA Document A201-1997, as modified by the Supplemental Terms and Conditions.

14.6.3 The filing of a court action is not intended to constitute a waiver of the right of Owner, or Contractor, including the suing party, thereafter to require submittal of Claims to arbitration.

14.6.4 Owner expressly and irrevocably waives its sovereign immunity from suit for Claims by Contractor with respect to the obligations and indebtedness Owner may have pursuant to the Contract Documents, disbursement of the Retained Loan Proceeds and for the Contractor's claims for coverage under Owner's liability or property insurance policies and consents to be sued in the courts of the State of Washington to compel or enforce arbitration. If it is determined that the foregoing court does not enjoy proper jurisdiction, then the Owner consents to suit to compel or enforce arbitration in any federal or tribal court of competent jurisdiction, including the Squaxin Island Tribal Court, if any. Owner hereby waives any requirement of exhaustion of tribal remedies. Provided, the waiver of sovereign immunity expressed herein is limited to the Contractor and its successors and assigns. Provided further, recourse of the Contractor under this waiver of sovereign immunity is limited to recovery of the Retained Loan Proceeds in the Loan Agreement, the net gaming revenues of the Owner's Gaming Enterprise, and insurance proceeds available from Owner's liability or property insurance hereunder. Neither Owner nor Owner's insurers shall assert sovereign immunity as a bar to coverage by Contractor as an additional named insured on such policies. Mediation, arbitration, and judicial enforcement shall be as specified in Articles 4.5 and 4.6 of the General Conditions of the Contractor for Construction, AIA Document A201-1997, as modified by the Supplemental Terms and Conditions.

14.6.5 This Agreement and the Contract Documents shall be governed by the law of the State of Washington.

14.7 Contractor shall be entitled to inspect the Loan Agreement, any amendments to the Loan Agreement and correspondence between Owner and Lender to ensure the Retained Loan Proceeds remain available to fund the Owner's obligations under the Contract Documents.

ARTICLE 15 ENUMERATION OF CONTRACT DOCUMENTS

15.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

15.1.1 The Agreement is this executed 1997 edition of the Standard Form of Agreement Between Owner and Contractor, AIA Document A111-1997.

15.1.2 The General Conditions are the 1997 edition of the General Conditions of the Contract for Construction, AIA Document A201-1997.

15.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated _____, and are as follows:

Document	Title	Pages
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Supplemental Terms and Conditions

15.1.4 The Specifications are those contained in the Project Manual dated as in Subparagraph 15.1.3, and are as follows:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section	Title	Pages
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Design Development Documents are being prepared. The Owner shall furnish Contractor with final Construction Documents by April 21st, 2006.

15.1.5 The Drawings are as follows, and are dated unless a different date is shown below:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date
--------	-------	------

Design Development Documents are being prepared. The Owner shall furnish Contractor with final Construction Documents by April 21st, 2006.

15.1.6 The Addenda, if any, are as follows:

Number	Date	Pages
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Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 15.

15.1.7 Other Documents, if any, forming part of the Contract Documents are as follows:

(List here any additional documents, such as a list of alternates that are intended to form part of the Contract Documents. AIA Document A201-1997 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

1. Loan Agreement between Owner and Bank of America

2. Contractor's Little Creek Casino Resort Hotel Tower #2 Estimate dated February 9th, 2006.

ARTICLE 16 INSURANCE AND BONDS

(List required limits of liability for insurance and bonds, AIA Document A201-1997 gives other specific requirements for insurance and bonds.)

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.

OWNER *(Signature)*

CONTRACTOR *(Signature)*

(Printed name and title)

(Printed name and title)



**LITTLE CREEK CASINO RESORT
HOTEL TOWER #2**

February 9, 2006

CONSTRUCTION BUDGET & SCOPE - PHASE I

SITE WORK

Earthwork & Site Demolition	152,302	bsf	\$6.70	\$1,020,423
Utilities	152,302	bsf	\$3.35	\$510,212
Relocate Generator & Other Services	152,302	bsf	\$3.10	\$472,136
Auger-Cast Piles	150	ea	\$3,375.00	\$506,250
Service Road Extension Tail & New Entry Circle	4,000	sy	\$49.50	\$198,000
Dewatering	5	mos	\$34,500.00	\$172,500
Temporary Erosion Control	10	mos	\$3,500.00	\$35,000
SITE WORK TOTAL				\$2,914,521

HOTEL TOWER #2 **

Foundation Complexities/Bldg & Wkg Pad	16,165	sf	\$55.00	\$889,075
Hotel Tower #2 - Less Super Suites	76,300	sf	\$117.00	\$8,927,100
Hotel Tower #2 - Super Suites	2,700	sf	\$147.00	\$396,900
Lobby & Vestibules - 1st Flr	4,775	sf	\$150.00	\$716,250
Lobby Tower - Flrs 2-5	11,456	sf	\$82.52	\$945,349
HOTEL TOWER #2 TOTAL				\$11,874,674

SHOPS & RESTAURANT SHELL

Restaurant [Shell]	6,288	sf	\$100.00	\$628,800
Shops & Corridor [Shell]	4,746	sf	\$100.00	\$474,600
Corridor Finishes Upgrade	3,475	sf	\$60.00	\$208,500
Service Corridor - 1st Floor	832	sf	\$100.00	\$83,200
SHOPS & RESTAURANT SHELL TOTAL				\$1,395,100

CASINO 2ND FLOOR LINK

2nd Floor Corridor	1,650	sf	\$200.00	\$330,000
Escalator	1	pair	\$289,500.00	\$289,500
CASINO 2ND FLOOR LINK TOTAL				\$619,500

PORTE-COCHERE

Port-Cochere Structure	1	ea	\$300,000.00	\$300,000
Glass Skywall & Structure	875	sf	\$110.00	\$96,250
PORTE-COCHERE TOTAL				\$396,250

CONSTRUCTION BUDGET TOTAL - PHASE I				\$17,200,045
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** Based on eliminating 3 bays from original concept.



**LITTLE CREEK CASINO RESORT
HOTEL TOWER #2**

February 9, 2006

CONSTRUCTION BUDGET & SCOPE - PHASE I

SITE WORK

Earthwork & Site Demolition	152,302	bsf	\$6.70	\$1,020,423
Utilities	152,302	bsf	\$3.35	\$510,212
Relocate Generator & Other Services	152,302	bsf	\$3.10	\$472,136
Auger-Cast Piles	150	ea	\$3,375.00	\$506,250
Service Road Extension Tail & New Entry Circle	4,000	sy	\$49.50	\$198,000
Dewatering	5	mos	\$34,500.00	\$172,500
Temporary Erosion Control	10	mos	\$3,500.00	\$35,000
SITE WORK TOTAL				\$2,914,521

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HOTEL TOWER #2 TOTAL				\$11,874,674

SHOPS & RESTAURANT SHELL

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Shops & Corridor [Shell]	4,746	sf	\$100.00	\$474,600
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SHOPS & RESTAURANT SHELL TOTAL				\$1,395,100

CASINO 2ND FLOOR LINK

2nd Floor Corridor	1,650	sf	\$200.00	\$330,000
Escalator	1	pair	\$289,500.00	\$289,500
CASINO 2ND FLOOR LINK TOTAL				\$619,500

PORTE-COCHERE

Port-Cochere Structure	1	ea	\$300,000.00	\$300,000
Glass Skywall & Structure	875	sf	\$110.00	\$96,250
PORTE-COCHERE TOTAL				\$396,250

CONSTRUCTION BUDGET TOTAL - PHASE I				\$17,200,045
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** Based on eliminating 3 bays from original concept.

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OWNER *(Signature)*

CONTRACTOR *(Signature)*

(Printed name and title)

(Printed name and title)