

**REVENUE AGREEMENT
BETWEEN
THE CITY OF MT. PLEASANT
AND
THE SAGINAW CHIPPEWA INDIAN TRIBE OF MICHIGAN**

Introduction

This agreement (the "Agreement") is between the City of Mt. Pleasant (the "City") and the Saginaw Chippewa Indian Tribe of Michigan (the "Tribe") (collectively, the "Parties").

The City is a Michigan home rule city duly organized under 1909 PA 279, as amended, MCL 117.1 *et seq.* and is authorized to enter into this Agreement pursuant to the Urban Cooperation Act of 1967, MCL 124.501 *et seq.*

The Tribe is a federally recognized Indian tribe possessing inherent powers of self-government, and is authorized to enter into this Agreement pursuant to Articles VI(1)(a), (i), (j), (n), and (o) of its Amended Constitution and By-laws (approved Nov. 4, 1986).

Recitals

The parties to this Agreement recognize a mutual interest in resolving issues related to certain lost City taxes in circumstances where Tribal Fee Lands within the City Limits (defined below) are taken into trust by the United States for the benefit of the Tribe.

Accordingly, the Parties agree as follows:

Terms

1. **Definitions**

As used in this Agreement:

- A. "BIA" stands for Bureau of Indian Affairs.
- B. "City Limits" means the jurisdictional boundaries of the City as of the effective date of this Agreement.
- C. "DOI" stands for Department of the Interior.
- D. "Isabella Indian Reservation" or "Reservation" has the meaning specified in the Order for Judgment entered by the United States District Court for the Eastern District of Michigan in *Saginaw Chippewa Indian Tribe of Michigan v. Granholm, et al.*, Case No. 05-10296-BC (the "Court Order").
- E. "City Taxes" means taxes levied by the City or a public body corporate created by the City that is a component entity of the City for auditing purposes and that operates only within the City's jurisdictional limits for operating and debt purposes (*e.g.*, the Downtown Development Authority). Except as otherwise stated in the preceding

sentence, City Taxes do not include any taxes collected by the City on behalf of any other governmental entity, or any taxes levied by an entity other than the City.

- F. "PILOT" stands for payment in lieu of taxes.
 - G. "SEV" stands for State Equalized Value.
 - H. "Tribal Fee Lands" means any parcel of land within the Reservation that is owned in fee simple by the Tribe.
 - I. "Tribal Member" means an enrolled member of the Tribe.
 - J. "Tribal-Member-Fee Lands" means any parcel of land within the Reservation that is owned in fee simple by any Tribal Member.
2. PILOT Payments to the City
- A. For Tribal Fee Lands within the City Limits and within the Isabella Reservation that that the DOI approves to be placed into trust on behalf of the Tribe, the Tribe must annually pay in perpetuity a PILOT equal to 50% of the amount of the City-Tax due if calculated at the rate last levied against the property the year it was placed in trust. To calculate this amount, the parties must use: (i) the last Property-Tax rate in place as of the year the property was placed in trust; and (ii) the highest SEV of the property at any time from the date the Tribe acquired it to the time it is accepted into trust. This means that the PILOT must be calculated using the last Property-Tax rate at the time the property is placed in trust, regardless of whether it is higher or lower than earlier rates. But the PILOT must be calculated using the highest SEV that applied to the property at any time that the Tribe owned the property, regardless of whether the property has a lower SEV when taken into trust than when the Tribe first acquired it.
 - B. The SEV and Property-Tax rate(s) may not be adjusted to calculate the PILOT for each subsequent year that the PILOT is due. This means that the SEV and Property-Tax rate(s) may not be adjusted for projected inflation, fluctuation in property values, the consumer price index, or other any other reason. For example, if the highest SEV at the time the property is placed into trust is \$250,000, and if the last-applicable City-Tax rate is 2% (*i.e.* 20 mils or \$20 per every \$1,000 of SEV), the City Tax due would be \$5,000. 50% of that is \$2,500. Consequently, after the land is placed into trust, under this Agreement the Tribe would annually pay the City a PILOT of \$2,500 for that property. The City may not asses any City Taxes on a parcel taken into trust, no City Taxes are due or payable on the parcel, and the Tribe does not owe the City any other payment, PILOT or otherwise.
 - C. If a parcel of Tribal Fee Land is placed in trust on or before November 30 of a given year, then the Tribe must pay the entire amount of the PILOT for that parcel by December 31 of that same year. If a parcel of Tribal Fee Land is placed in trust after November 30 of a given year, then the Tribe must pay the entire amount of the PILOT for that parcel by January 31 of the following year. The PILOT includes all City Tax otherwise owed or assessed for the year in which the property is taken into trust. To the extent that the Tribe

made any property tax payments on that parcel for City Taxes for that year, the City must credit those payments against the PILOT.

- D. If the PILOT is not paid by the due date in Paragraph 2(C), the Tribe must also pay interest at the rate of .75 percent per month, or portion of a month that it has not been paid.
- E. The City maintains the right to object to the Tribe's trust applications after the date of this Agreement, but if it does so, the PILOT described in Paragraph 2(A) must be reduced according to the following formula:
 - i. If the City offers comments related to the Tribe's written request to the Superintendent of the relevant BIA agency office (or other relevant official) to take land into trust, and the City objects to placement of the land into trust based upon assertions of potential impacts on property-tax collection, special assessments, regulatory jurisdiction, or any other ground, but does not thereafter appeal the Superintendent's decision to take land into trust (if and when issued), the City forfeits the first six years of the PILOT. *See* 25 C.F.R. §§ 151.10, 151.12 (as may be amended from time to time).
 - ii. If the City appeals the Superintendent's decision to take land into trust to the BIA Regional Director (or other relevant official), but does not appeal an adverse decision further, and the land is thereafter taken into trust, the City forfeits the first 10 years of the PILOT. *See id.*; 25 C.F.R. Part 2 (as may be amended from time to time).
 - iii. If the City appeals the BIA Regional Director's adverse decision to the Interior Board of Indian Appeals (or other relevant appeals body) or beyond, and if at the conclusion of the City's appeals, the land is taken into trust, the City forfeits the first 14 years of the PILOT. *See id.*
- F. The City has not objected to and must not offer objections to any of the Tribe's trust applications pending as of the date of this Agreement, and the City must not appeal the Superintendent's decision to take these lands into trust (if and when issued).
- G. Tribal Fee Lands and Tribal-Member-Fee Lands within the City Limits are subject to all applicable real- and personal-property taxes unless the United States Supreme Court rules otherwise. The Tribe must not seek such a ruling from the United States Supreme Court or the Sixth Circuit Court of Appeals.
- H. The Tribe must continue to timely pay City Taxes that the City could otherwise collect on Tribal Fee Lands until the year that the land is put in trust, regardless of whether the City objects to the trust application or appeals a decision of the DOI, as described in Section 2(E) of this Agreement. "Timely" means on or before the date before which interest or penalties accrue under the City's normal tax-collection rules.
- I. The City must not specially assess any Tribal Fee Lands or personal property owned by the Tribe without the Tribe's prior written consent.

- J. If the Tribe acquires fee land against which the City has already levied special assessments and the land is then taken into trust, and if by the terms of the special assessment the assessments would have otherwise continued to be collected for any period of time after the land is then taken into trust, the Tribe may either: (i) pay as a lump sum the outstanding principal amount of that special assessment plus any accrued interest in full within 30 days of the date the land is put into trust; or (ii) agree in writing to continue to pay the special-assessment installments when they would otherwise be due if the property were not in trust. The City must not impose any new special assessments on any land held in trust, and is not be entitled to any payments in lieu of any special assessments the City might have imposed on the land if it was held in fee.

3. Duration, Revocation, and Disputes

- A. This Agreement remains in effect in perpetuity unless the Parties terminate the Agreement by mutual written consent of both Parties. The Parties do not require Court approval or other filing to terminate the Agreement under this provision.
- B. To the extent that the City Limits change in the future and such change either excludes or incorporates any Tribal Fee Lands that would not otherwise have been included within the City, the Parties may by mutual consent negotiate in good faith regarding any needed changes to this Agreement.
- C. On or before the five-year anniversary of the effective date of this Agreement, and at five-year intervals after the first meeting, the Parties must meet to discuss in good faith any issues or concerns regarding any aspect of this Agreement.
- D. The United States District Court for the Eastern District of Michigan (the "Court") has continuing jurisdiction to resolve disputes under this Agreement under the terms set forth in this Agreement.
- E. Notwithstanding the foregoing, neither Party may initiate an action in the Court until and unless the Parties have mediated their disputes as provided herein. The Parties intend to resolve any disputes informally and promptly through good-faith negotiations between the Parties. If a dispute arises under or concerning this Agreement, the Parties must proceed as follows:
- i. The initiating Party must send written notice to the recipient Party setting forth the particulars of the dispute and a suggested resolution of the issue. The recipient Party must respond in writing within 30 days and must respond with specificity to the initiating Party's dispute and suggested resolution.
 - ii. If this does not resolve the dispute, the Parties must meet and confer in person within 30 days after the recipient Party's response to attempt to resolve the matter.
 - iii. If this does not resolve the dispute, the Parties must submit to mediation with a mutually acceptable private mediator. Either Party may initiate this mediation at any time after the meeting contemplated above. The Parties agree to select a mediator with background and experience in: the subject matter that gave rise to the dispute;

tribal governments; local governments; and relevant laws, practices, procedures, and operations. In order to decide upon an acceptable mediator, the Parties agree to timely exchange lists of proposed mediators, including the mediators' résumés, confirmation of each proposed mediator's willingness to act as mediator in the dispute, any potential conflicts (if known), any other qualifications, and the proposed mediators' hourly rates. Each Party may strike unacceptable names from the list and number the remaining names in order of preference. The Parties retain the right to reject any proposed mediator, but must make good-faith efforts to select an acceptable mediator under this Agreement. The Parties agree to abide by the mediator's own rules regarding the conduct of the mediation or such other rules upon which the Parties may agree. The Parties must evenly split the costs of mediation.

- iv. If mediation is unsuccessful, either Party may then petition the Court, and either Party may lodge appeals with the 6th Circuit Court of Appeals and/or the Supreme Court of the United States, but no other court has jurisdiction to hear the dispute. The Court may not award either Party any monetary damages (except that the Court may order payments that it determines are due under this Agreement), but it may declare the rights of the Parties and order compliance under this Agreement. The losing Party must bear the prevailing Party's Court costs and attorney's fees. Each Party expressly and irrevocably waives any right to trial by jury.

4. Retention of Legal Rights

- A. This Agreement does not affect any other agreements that either Party may enter in to with any third party now or in the future.
- B. This Agreement may not be construed as a waiver of either Party's sovereign immunity except and only to the extent that both Parties waive their sovereign immunity to the limited extent necessary to effectuate Paragraph 3(D) of this Agreement. This limited waiver of sovereign immunity does not waive the immunity of any official, employee, or agent of either Party.
- C. This Agreement does not affect any ability the City has under applicable state law to levy and collect real and personal property taxes or other revenues from any other lands within the City Limits that are not Tribal Trust Lands, Tribal Fee Lands, or Tribal-Member-Fee Lands.

5. Amendments

This Agreement can only be amended by a written instrument signed by the duly authorized representative of each Party. The Parties do not require Court approval or other filing to amend the Agreement under this provision.

6. Severability

The provisions of this Agreement are severable. If any provision of this Agreement is held invalid or unenforceable, the remainder of the Agreement remains in effect, unless

terminated as provided for in this Agreement. However, if any provision of this Agreement is severed from the Agreement, then the Parties must promptly meet and negotiate in good faith to achieve the intended purpose of the severed provision in a manner that is valid and enforceable under applicable law.

7. Relationship to Other Agreements

- A. This Agreement constitutes the entire Agreement between the Parties.
- B. Upon the execution of this Agreement, the Parties mutually rescind all previously entered written Agreements between them regarding the topics in this Agreement.
- C. If this Agreement conflicts with the Court Order, the terms of this Agreement governs.

8. Notice

Written notices required or permitted to be given under this Agreement are sufficient if they are sent by registered or certified mail, or by other means mutually acceptable to the Parties.

In the case of the City, notices must be sent to:

City Manager
City of Mt. Pleasant
320 West Broadway
Mt. Pleasant, MI 48858

With a copy to:

City Treasurer
City of Mt. Pleasant
320 West Broadway
Mt. Pleasant, MI 48858

In the case of the Tribe, notices must be sent to:

Tribal Chief Financial Officer
Saginaw Chippewa Indian Tribe
7070 East Broadway
Mt. Pleasant, MI 48858

With a copy to:

General Counsel
Legal Department
Saginaw Chippewa Indian Tribe
7070 East Broadway
Mt. Pleasant, MI 48858

9. Counterparts

This Agreement may be executed in several counterparts, each of which is an original, but all of which together constitute a single instrument.

10. Authority

The undersigned represent that they are authorized to execute this Agreement on behalf of the Tribe and City, respectively.

11. Preparation of Agreement

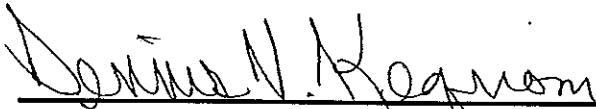
The Parties drafted this Agreement and entered into it after careful review and upon the advice of competent counsel. It must be construed as if it were mutually drafted, and may not be construed more strongly for or against either Party.

12. Effective Date

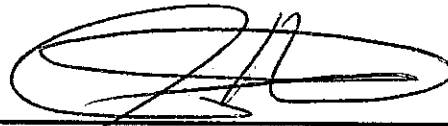
This Agreement is effective on the date that the Court Order is signed by the Court, provided that the Court enters the Court Order as it was approved by the City and Tribe. Changes to the form of the Court Order (e.g., pagination, fonts, margins, etc.) do not affect the effective date of this Agreement, but this Agreement is not effective and does not bind the parties if the language of the Court Order is not identical to the language approved by the City and Tribe.

**SAGINAW CHIPPEWA INDIAN TRIBE
OF MICHIGAN**

CITY OF MT. PLEASANT



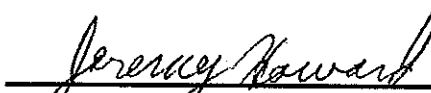
Dennis Kequom, Sr., Tribal Chief



James Holton, Mayor

11-8-10
Date signed

11/8/10
Date signed



Jeremy Howard, City Clerk

11/8/10
Date signed

The United States District Court for the Eastern District of Michigan entered the Order for Judgment in Case No. 05-10296 on _____, 2010.