

**ZONING AND LAND USE 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 recognize that each of them has historically employed different approaches to land-use planning and zoning.

The Parties recognize that, without further agreement, individual parcels of land within the Isabella Reservation in Isabella County may fall under different zoning regulations based upon whether the Tribe, Tribal Members, or non-Tribal Members own the land at a given time.

The Parties have varying views of their jurisdiction over land use and zoning within the Reservation, but agree that the Tribe has jurisdiction over Tribal Lands (as defined below) and acknowledge that the City has jurisdiction over zoning and land use on any land owned in fee simple by non-Tribal Members within the City Limits (also defined below).

The Parties acknowledge a need to eliminate uncertainty regarding the scope of each Party's zoning authority within the City Limits.

The Parties wish to limit disputes regarding which zoning regulations apply to particular parcels of land, avoid disputes regarding proposed land uses and procedures, and ensure that each Party is employing consistent policies.

The Parties agree that there must be a free exchange of information between the Parties' zoning and planning agencies.

Accordingly, the Parties agree as follows:

Terms

1. Definitions

As used in this Agreement:

- A. "City Land-Use and Zoning Ordinances" means the City's Zoning, Floodplain, (Rental) Housing Licensing, Subdivision, and Land Division Ordinances, currently Chapters 151, 152, 153, 154 and 155 of the City's Code of Ordinances, as they, from time to time, may be amended, revised, or replaced, except that, unless the Tribe otherwise first agrees in writing, the City may not amend, revise, or replace the City Land Use and Zoning Ordinances to address subject matter(s) reserved to the Tribe under the Parties' Agreement Regarding Local Regulation (such as, for example, those matters to be addressed by the Tribe's general nuisance ordinance under that Agreement), or to address subject matter(s) beyond the scope of what municipalities commonly address in zoning, floodplain, rental-housing-licensing, subdivision, and land-division ordinances. This provision does not limit the City's ability to address evolving land-use issues, but ensures that the City does not amend, revise, or replace the City Land Use and Zoning Ordinances to expand the scope of these Ordinances beyond land-use issues.
- B. "City Limits" means the jurisdictional boundaries of the City as of the effective date of this Agreement;
- C. "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").
- D. "Tribal Lands" means land either owned in fee by the Tribe or held by the United States in trust for the benefit of the Tribe or a Tribal Member.
- E. "Tribal Member" means an enrolled member of the Tribe.
- F. "Tribal-Member-Fee Lands" means any parcel of land within the Reservation that is owned in fee simple by any Tribal Member.

2. Scope of Agreement

This Agreement concerns the application of the City Land-Use and Zoning Ordinances to Tribal-Member-Fee Lands within the City Limits but does not address any issues regarding the application for or enforcement of variances from these City Land-Use and Zoning Ordinances.

3. Zoning and Land-Use Requirements for Tribal-Member-Fee Lands Within the City Limits

- A. The City Land-Use and Zoning Ordinances apply to all lands within the City Limits (including, without limitation, Tribal-Member-Fee Lands), except Tribal Lands that lie within the Reservation. City administrative procedures (*e.g.*, application, review and approval procedures, and enforcement procedures that do not involve judicial action) apply to any zoning and land-use action on these lands, except as otherwise stated in this Agreement.
- B. If any judicial action is necessary to enforce City Land-Use and Zoning Ordinances on Tribal-Member-Fee Lands located within the Reservation, that action must be brought in the Tribal Court.
- C. Appeals of administrative actions must be addressed as follows:
 - i. If a City administrative action affects a Tribal Member with respect to Tribal-Member Fee Lands, and State law allows an appeal from the administrative action, the Tribal Member may appeal to the Tribal Court or other appropriate Tribal hearing body (“Tribal Adjudicator”). The Tribal Adjudicator has exclusive jurisdiction over such appeals, and the City waives its sovereign immunity and consents to suit before the Tribal Adjudicator with respect to the taking of these appeals and enforcement of any decision made by the Tribal Adjudicator. The Tribal Adjudicator must apply Michigan law regarding the City Land-Use and Zoning Ordinances. The Tribal Adjudicator’s decision is binding on both the Tribal Member and the City, and may not, unless Tribal law provides otherwise, be appealed to any other jurisdiction.
 - ii. Under applicable Michigan law, aggrieved persons other than Tribal Members may appeal City administrative actions to state courts. In order to avoid placing the City at risk of inconsistent state-court and tribal-adjudicator decisions:
 - a. If the Tribal Adjudicator enters an order or judgment resolving an issue as to a Tribal Member or Tribal-Member-Fee land, and a subsequent state-court action affects the same Tribal Member or Tribal-Member-Fee Land, the City must seek full faith and credit of the Tribal Adjudicator’s decision in the state-court action under Mich. Ct. Rule 2.615, and must seek to uphold the validity of the Tribal decision.
 - b. If an aggrieved person other than a Tribal Member appeals a City administrative action to a state court, and the state court enters an order or judgment resolving an issue as to a Tribal Member or Tribal-Member-Fee land, then the City must domesticate the state-court order

or judgment with the Tribal Adjudicator before it may take any action against the Tribal Member or Tribal-Member-Fee land.

- D. If any changes are needed to City Land-Use and Zoning Ordinances in order to provide for Tribal Court jurisdiction as required by this Agreement, the City must promptly make such amendments.

4. Data Collection and Sharing Information

- A. The Parties recognize that the Tribe and the City are bound by different laws, policies, and fiduciary responsibilities regarding confidentiality and the Tribe cannot publicly disclose proprietary information. Nevertheless, to the extent possible and to promote coordination and collaboration, at appropriate intervals in the decision-making process, the Tribe must make best efforts to inform the City of development and land-use plans.
- B. The Parties agree to meet on an annual or as-needed basis to discuss current and future planning and zoning issues. Unless otherwise provided by law, the comments of a Party are not binding on the other Party. This provision does not alter any procedural requirements under law otherwise applicable to the City with respect to notices, public hearings, comment periods, etc.

5. Duration, Termination, 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. If the City Limits change to either exclude or incorporate any Tribal Land or Tribal-Member-Fee Lands lying within the Reservation 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, 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.

6. Retention of Legal Rights and Sovereign Immunity

- A. This Agreement may not be construed to modify the legal rights of any person, to accomplish any act that violates state or federal law, or to subject the Parties to any liability to which they would not be subject by law.
- B. Notwithstanding any other provision of this Agreement, this Agreement does not apply to any current or future Tribal Lands lying within the City Limits and within the Reservation, or to lands owned by the City within the Reservation. The Parties acknowledge that the Tribe is entitled to set its own priorities and make decisions regarding planning, zoning, and land use on Tribal Lands anywhere

within the Reservation. The Parties also acknowledge that under applicable state law, the City has certain rights to set its own priorities and make decisions regarding planning, zoning, and use of its lands.

- C. This Agreement does not affect the City's rights under state law to adopt or amend its Land Use and Zoning Ordinances. This Agreement does not affect the rights of the City to administer and enforce its Land Use and Zoning Ordinances, except as such administration and enforcement might affect the Tribe, Tribal Lands, Tribal-Member-Fee Lands or Tribal Members.
- D. This Agreement does not affect any other agreements that either Party may enter in to with any third party now or in the future.
- E. This Agreement may not be construed as a waiver of either Party's sovereign immunity, except as expressly stated in Paragraph 3(C) of this Agreement and to the extent that both Parties waive their sovereign immunity to the limited extent necessary to effectuate Paragraph 5(D) of this Agreement. These limited waivers of sovereign immunity do not waive the immunity of any official, employee, or agent of either Party.

7. Amendments

This Agreement may 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.

8. 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.

9. 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.

10. Notices

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 the Planning Department at the same address.

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

Director
Planning Department
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

11. Counterparts

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

12. Authority

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

13. Preparation of Agreement

This Agreement was drafted and entered into 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.

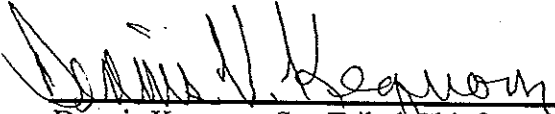
14. Effective Date

This Agreement is effective on the date that the Court Order is signed by the Court,

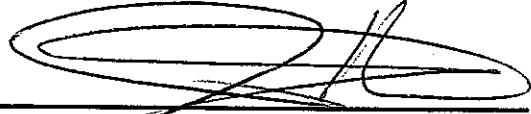
provided that the Court enters the Court Order as it was approved by the City and Tribe. Changes to the form of the Court Order (e.g., pagination, fonts, margins, etc.) do not affect the effective date of this Agreement, but this Agreement is not effective and does not bind the parties if the language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



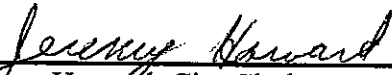
James Holton, Mayor

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.