

**REVENUE AGREEMENT
BETWEEN
THE COUNTY OF ISABELLA
AND
THE SAGINAW CHIPPEWA INDIAN TRIBE OF MICHIGAN**

Introduction

This agreement (the "Agreement") is entered into by County of Isabella (the "County") and the Saginaw Chippewa Indian Tribe of Michigan (the "Tribe") (collectively, the "Parties").

The County is authorized to enter this Agreement pursuant to the provisions of the Urban Cooperation Act, MCL 124.501 *et seq.*, and other authority.

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 local taxes in circumstances where Tribal Fee Lands within the County 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. "County Limits" means the jurisdictional boundaries of the County 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. "PILOT" stands for payment in lieu of taxes.
- F. "Property Taxes" means all local taxes or assessments collected during the year in which the land is placed in trust, other than City Taxes as that term is defined in the Revenue

Agreement between the City of Mt. Pleasant and the Saginaw Chippewa Tribe of Michigan, the State Education Tax, and taxes dedicated to a township.

- 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 County
- A. Except as to those parcels addressed in Section 3 of this Agreement, for Tribal Fee Lands that the DOI approves to be placed into trust on behalf of the Tribe, starting from the date that the property is placed in trust on behalf of the Tribe, the Tribe must pay the County a single PILOT equal to the amount of the Property Tax otherwise due if calculated at the rate last levied against the property the year it was placed in trust, multiplied by seven years, unless reduced according to the formula described in Paragraph 2(E) of this Agreement. To calculate the amount of Property Tax otherwise due, 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 same SEV and Property-Tax rate(s) applies to each year of the Property Tax amounts included in the PILOT. 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 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 Property-Tax rate is 2% (*i.e.* 20 mils or \$20 per every \$1,000 of SEV), the Property Tax due would be \$5,000 per year. Consequently, the PILOT for the property would be a lump sum of \$5,000 times seven years (\$35,000), unless reduced according to the formula described in Paragraph 2(E) of this Agreement. The County may not assess any Property Taxes on a parcel taken into trust, no Property Taxes are due or payable on the parcel, and the Tribe does not owe the County 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 Property 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 for that year on that land, the County 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 County 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 County 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 County 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 Tribe's PILOT is reduced to four years. *See* 25 C.F.R. §§ 151.10, 151.12 (as may be amended from time to time). Using the example from Paragraph 2(B), the PILOT would be reduced to the \$5,000 per year property tax times four years, or \$20,000.
 - ii. If the County 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 Tribe's PILOT is reduced to two years. *See id.*; 25 C.F.R. Part 2 (as may be amended from time to time). Using the example from Paragraph 2(B), the PILOT would be reduced to the \$5,000 per year property tax times two years, or \$10,000.
 - iii. If the County appeals the BIA Regional Director's adverse decision to the Interior Board of Indian Appeals (or other relevant body) or beyond, and if at the conclusion of the County's appeals, the land is taken into trust, the Tribe does not owe the County a PILOT, but must pay taxes for those months during the year that the land remained in fee status. *See id.* For example, if the property is taken into trust in June, at the end of the year, the Tribe would pay six months of Property Tax to the County. The County may not assess any Property Taxes on a parcel taken into trust, no Property Taxes are due or payable on the parcel, and the Tribe does not owe the County any other payment, PILOT or otherwise.
- F. If the County decides not to challenge a particular trust application, or at any time decides to stop asserting objections it had earlier raised to a trust application, then the County will not advocate for or support in any way a challenge from any other entity, local unit of government, or person to the trust application.

- G. The Tribe must continue to pay applicable Property Taxes on its Tribal Fee Lands unless the United States Supreme Court rules otherwise. The Tribe must not seek such a ruling.
- H. Except as provided by Section 3, the Tribe must continue to pay applicable Property Taxes on Tribal Fee Lands until the year that the land is placed in trust, regardless of whether the County objects to a trust application or appeals a decision of the DOI, as described in Paragraph 2(E) of this Agreement.

3. Additional Exceptions

The following additional exceptions apply to this Agreement:

- A. Trust applications that are pending as of the date of this Agreement and to which the County made objections as of June 1, 2010: As to these parcels, the County must not appeal the Superintendent's decision to take the land into trust (if and when issued). The Tribe must continue paying Property Taxes on these parcels unless and until they are taken into trust. If such parcels are taken into trust, for the year in which the parcels are taken into trust, the Tribe must pay the entire year's taxes, regardless of the month during the year the parcel was taken into trust. For example, even if the property is taken into trust in June, at the end of the year, the Tribe must still pay the County the amount of Property Tax that would have been assessed and payable if the property had remained in fee status for all 12 months of that year. The County may not assess any Property Taxes on a parcel taken into trust, no Property Taxes are due or payable on the parcel, and the Tribe does not owe the County any other payment, PILOT or otherwise.
- B. Trust applications that are pending as of the date of this Agreement and to which the County has not made objections: As to these parcels, the County must not object to or otherwise challenge the Tribe's application for trust for such properties. The Tribe must continue paying Property Taxes on these parcels unless and until they are taken into trust. Should such parcels be taken into trust, for the year in which the parcels are taken into trust, the Tribe must pay the entire year's taxes, regardless of the month during the year the parcel was taken into trust, as stated in Paragraph 3(A) above. The County may not assess any Property Taxes on a parcel taken into trust, no Property Taxes are due or payable on the parcel, and the Tribe does not owe the County any other payment, PILOT or otherwise.

The following parcels are all those included under this provision:

- i. Koopman Parcels (totaling 3.19 acres):
 - (a) PARCEL A: Tax Identification Numbers 02-090-00-001 and 02-090-002-00 (combined as a single parcel on the title commitment); and
 - (b) PARCEL B: Tax Identification Number 02-018-20-004-01;
- ii. Drury Parcel: Tax Identification Number 14-013-20-041-00, 0.36 acres;

iii. Howell Theatre: Tax Identification Number 02-007-40-009-01, 22.81 acres; and

iv. McClintic: Tax Identification Number 02-018-20-007-00, 10.63 acres.

C. Trust application for the Docktor Parcel: As to the parcel known as the "Docktor Parcel," Tax Identification Number 14-024-40-002-01, 2.61 acres, the County must not object to or otherwise challenge the Tribe's application to place the parcel into trust. The Tribe must continue paying Property Taxes on these parcels unless and until the United States takes it into trust. If the parcel is taken into trust, for the year in which it is taken into trust, the Tribe must pay the County a single \$10,000 payment, which will account for all payments and taxes that would otherwise be due on the parcel. The County may not assess any Property Taxes on a parcel taken into trust, no Property Taxes are due or payable on the parcel, and the Tribe does not owe the County any other payment, PILOT or otherwise.

D. Trust applications for the Brehm Parcel, if and when filed: As to those parcels collectively referred to as "the Brehm Parcel," Tax Identification Numbers 14-012-30-001-00, 14-012-40-002-03, 14-012-40-002-04, 14-012-40-007-05 and 14-012-40-007-06, totaling 151.76 acres, just as for the Tribe's other fee lands, the Tribe must continue to pay Property Taxes until such time as these parcels or portions thereof may be placed in trust. The County must not file or make any objections to the BIA or the DOI as to any application by the Tribe to place these parcels or any portion of these parcels in trust. If any of these parcels or portions of these parcels are placed into trust, the Tribe must make a one-time payment to the County of \$864,000 when the first such parcel or portion of a parcel is placed into trust. The Tribe does not owe the County any further lump-sum payments or PILOT on any additional parcels or portions of parcels within the Brehm Parcel that may be taken into trust at any time thereafter. Just as for other trust lands, the County may not assess any Property Taxes a Brehm Parcel or any portion of a Brehm Parcel taken into trust, no Property Taxes are due or payable on such a parcel, and the Tribe does not owe the County any other payment, PILOT or otherwise.

4. Preexisting Disputes

This Agreement fully and finally resolves any disputes regarding parcels taken into trust prior to the date of this Agreement, whether the County has charged or assessed Property Taxes and/or any penalties or interest, and the Tribe does not owe the County any assessments or other payments in connection with these parcels. This specifically resolves any obligations that the County has previously claimed for parcels taken into trust in 1997 and 2003. The County may not assess any Property Taxes on a parcel taken into trust, no Property Taxes are due or payable on these parcels, and the Tribe does not owe the County any other payment, PILOT or otherwise.

5. 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 County 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 County, 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.

6. 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 5(D) of this Agreement. This limited waiver of sovereign immunity does not waive the immunity of any official, employee, or agent of either Party.

7. 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.

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. 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 County, notices must be sent to:

Timothy Dolehanty
Controller/Administrator
200 N. Main Street
Mount 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
Legal Department
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 County, respectively.

13. 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.

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 County 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 County and Tribe.

**SAGINAW CHIPPEWA INDIAN TRIBE
OF MICHIGAN**

COUNTY OF ISABELLA

Dennis Kequom, Sr., Tribal Chief

David Ling, Chairperson of Isabella County
Commission

Date signed

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.