

SANITARY SEWAGE DISPOSAL AGREEMENT
BETWEEN
THE LITTLE RIVER BAND OF OTTAWA INDIANS
AND
THE TOWNSHIP OF MANISTEE

SANITARY SEWAGE DISPOSAL AGREEMENT

THIS AGREEMENT (the "Agreement") is made as of _____, 2014, between the LITTLE RIVER BAND OF OTTAWA INDIANS, a federally recognized tribe, as reaffirmed under P.L. 103-324, enacted on September 21, 1994, 2608 Government Center Drive, Manistee, Michigan 49660 (the "Tribe"), and the TOWNSHIP OF MANISTEE, a Michigan general law township, 410 Holden St., Manistee, Michigan 49660-1100 (the "Township");

RECITALS:

WHEREAS, the Tribe owns, operates and maintains a sanitary sewer system, including a Wastewater Treatment Plant, on tribal trust lands (the "Tribal Sewer System") which has sufficient capacity to provide sanitary service to certain lands located within the Township; and

WHEREAS, the Tribe is willing and able to provide public sanitary sewer service to certain lands located in the Township on the terms and conditions set forth in this Agreement; and

WHEREAS, the Tribe and the Township are entering this Contract under the authority of the Urban Cooperation Act of 1967, which is Act 7 of the Public Acts of Michigan of 1967 (Ex. Sess.), as amended ("Act 7") to provide for the joint exercise of powers that the Tribe and the Township share in common and that each may exercise separately; and

WHEREAS, the Tribe, for purposes of Act 7, is an agency of the United States Government as provided by Section 2(e) of Act 7; and

NOW, THEREFORE, in consideration of their respective undertakings, the parties agree as follows:

1. **The Tribal Sewer System.** The Tribe owns, operates and maintains the Tribal Sewer System. The Tribe is authorized by applicable law, the Tribe's Constitution and the Tribe's Utility Ordinance, which is Tribal Ordinance No. 01-500-05 (the "Utility Ordinance") to provide wastewater services to lands located outside tribal trust lands but within the 1836 Treaty Reservation Boundaries.

2. **Consent to Use of Public Rights-of-Way; Access to Tribal Sewer System Facilities.**

a. **Consent to Use of Public Rights-of-Way and to Provide Utility Services Within the Township.** In accordance with Article VII, Section 29 of the Michigan Constitution of 1963, the Township hereby grants to the Tribe, and the Tribe accepts, the right and privilege to own, construct, install, maintain, operate, repair, replace, and remove all necessary components of an extension (the "Tribal Commercial Extension") of the Tribal Sewer System including, but not limited to, pumping facilities, treatment facilities, collection pipelines, transportation mains, and related valves, meters, service leads, and all other necessary equipment and appurtenances, in the designated public highways, streets, alleys and other public places in the Township, for the purpose of providing public sanitary service to Tribal Sewer System customers located in the Township Retail Service Area. To evidence and effectuate the foregoing consent and agreement, the Township will execute and deliver to the Tribe such grants

of easement, right-of-way, license, permit or consent as may be reasonably requested and required by the Tribe for the foregoing purposes. To the extent required by the Michigan Constitution, the Township further consents to the Tribe conducting business and providing sewer services within the Township pursuant to this Agreement.

b. **Access to Tribal Sewer System Facilities Within The Township.** The Township, through this Agreement, grants the Tribe sole access to Tribal Sewer System facilities located within the Township Retail Service Area (whether above or below ground), and the Township shall not undertake any construction, improvement or modification to any portion of the Tribal Sewer System within the Township Retail Service Area without the Tribe's prior written consent. Should the Township require the Tribe to relocate any portion of the Tribal Commercial Extension as an extension of the Tribal Sewer System located within the public rights-of-way in the Township for any reasonable reason related to use of the public rights-of-way, the Tribe shall pay all costs of such relocation including, but not limited to, engineering, permitting, inspection, legal, interests in land, and construction.

c. **Construction of Tribal Commercial Extension as an Extension of the Tribal Sewer System within Township.** In any case where the Tribe is authorized and undertakes to construct Tribal Commercial Extension as an extension of the Tribal Sewer System infrastructure and appurtenances within the Township, the Township hereby consents to such construction and hereby agrees and consents to the use of its streets, highways, alleys, rights of way and other public places for such purposes by the Tribe. If the construction of any Tribal Sewer System infrastructure by the Tribe within the Township disturbs or damages any street or road or disturbs or damages any property owned by the Township or a property owner in the Township, the Tribe shall restore all roads and such Township and private property to the condition that existed before the Tribe's project was commenced. The Tribe shall be the exclusive owner and operator of the Tribal Commercial Extension, and the Township shall have no ownership interest in either the Tribal Commercial Extension or the Tribal Sewer System. The Township further shall have no right to directly or indirectly discharge into either the Tribal Commercial Extension or the Tribal Sewer System.

d. **Fees for Consent to Use Right of Way.** The Tribe shall pay the Township one dollar (\$1.00) as an application fee to the Township for use of the Right of Way under this Agreement. The Township shall not charge the Tribe any additional fees or charges, including but not limited to any franchise fees, during the term of this Agreement and any extensions of this Agreement.

3. **Treatment and Disposal of Sanitary Sewage; Township Retail Service Area; Prohibition on Other Sanitary Sewage Service.**

a. **Treatment and Disposal of Sanitary Sewage.** The Tribe agrees to receive for transportation, treatment and disposal sanitary sewage from the Township Retail Service Area, subject to the terms and conditions of this Agreement.

b. **Township Retail Service Area.** The Township Retail Service Area is defined as that portion of the Township, which is described in Exhibit A attached to and made a part hereof.

c. **Prohibitions on Other Sanitary Sewage Services.** The Tribe shall not directly provide wastewater service to any public or private user in the Township except as may be mutually agreed upon in writing by the parties, this provision shall not apply to other Tribal Developments. The Township shall not accept sanitary sewage for transportation to the Tribal Sewer System from any user outside the Township Retail Service Area, except as provided in Paragraph 14 of this Agreement or as may be mutually agreed upon in writing by the parties. The Township shall not receive or make available sanitary sewage treatment and disposal services for areas located within the Township Retail Service Area from any other source except as may be mutually agreed upon in writing by the Tribe and the Township.

4. **Agents of the Tribe.** The Tribe's Utility Department shall be the Tribe's agent for the purpose of billing and collecting rates and charges from customers of the Tribal Sewer System located in the Township, all matters pertaining to the flow and quality of the sanitary sewage coming to the Tribe from the Township.

5. **Tribal Commercial Extension.**

a. **Construction and Ownership of Tribal Commercial Extension.** The Tribe shall be responsible to construct and pay the cost of all sanitary sewers and appurtenances (the "Tribal Commercial Extension") to collect sanitary sewage within the Township Retail Service Area and convey the same to the Tribal Sewer System at the Point of Reception approved in Paragraph 5c. The Tribe voluntarily agrees to participate as a member of "MISS DIG", the association of utilities formed pursuant to Act 53 of the Public Acts of 1974, as amended, MCLA 460.701 et seq., and conduct its business in conformance with the statutory provisions and regulations promulgated thereunder.

b. **Design.** All plans and specifications for the construction, alteration, or extension of the Tribal Commercial Extension shall be prepared by a registered professional engineer retained by the Tribe and reviewed by the Township Engineer, and all approvals required by any duly authorized federal regulatory agency shall be a prerequisite to any construction, alteration or extension of the Tribal Commercial Extension.

c. **Point of Reception.** The sanitary sewage from the Tribal Commercial Extension shall be delivered to the Tribal Sewer System at the intersection of US 31 and M22 (the "Point of Reception").

The maximum allowable flow for the Point of Reception (in each case expressed in millions of gallons per day ("MGD")) shall be a Maximum Allowable Flow of 0.075 MGD.

The Maximum Allowable Flow for the Point of Reception are limits on the maximum wastewater flow the Tribe will accept from the Tribal Commercial Extension.

If the Maximum Allowable Flow for the Point of Reception are exceeded, the Tribe shall have the option of 1) accepting the flow and charging extra for the cost of processing the additional waste and/or 2) require actions be taken to reduce the flow. If the problem persists then no additional hookups will be allowed and the Tribe shall have the option of not accepting waste above the agreed upon amount.

At the time that the Tribe's Wastewater Treatment Plant reaches 80% capacity, the Tribe and Township shall meet and discuss the potential for an expansion of the Wastewater Treatment Plant. The Tribe shall be under no obligation to undertake any expansion of the Wastewater Treatment Plant.

d. **Responsibility for Tribal Commercial Extension.** The Tribe shall be responsible for and shall bear all costs of the Tribal Commercial Extension including but not limited to those incurred in the preparation and review of plans and specifications, securing rights of way, construction, alteration, repair, replacement and relocation of sewers, pumping stations, and appurtenances, inspection of construction, and preparation of records. The installation of sewer leads and services and building connections shall be the responsibility of the customer connecting to the Tribal Commercial Extension, unless the Tribe agrees to install the sewer lead and building connection.

e. **Street Vacation.** If the Township vacates or consents to the vacation of a street or alley within its jurisdiction, and such vacation necessitates the removal and relocation of the Tribe's facilities in the vacated Public Way, the Tribe agrees, as a condition of this Agreement, to consent to the vacation and to move its facilities at no cost to the Township when asked to do so by the Township or a court of competent jurisdiction.

f. **Relocation.** If the Township requests the Tribe to relocate, protect, support, disconnect, or remove its facilities because of street or utility work, the Tribe shall relocate, protect, support, disconnect, or remove its facilities, at its sole expense, to such alternate route as the Township, acting reasonably and in good faith, shall designate.

g. **Public Emergency.** The Township shall have the right to sever, disrupt, dig up or otherwise destroy facilities of the Tribe, without any prior notice, if such action is deemed necessary because of a public emergency. Public emergency shall be any condition which in the opinion of any of the Township elected officials poses an immediate threat to the lives or property of the citizens of the Township, caused by any natural or man-made disaster, including, but not limited to, storms, floods, fire, accidents, explosions, major water main or sewer line breaks, hazardous material spills, etc. The Township shall not be responsible for repair of any of Tribe's facilities damaged pursuant to any such action taken by the Township.

6. **Sewage Disposal Service by Tribe.** The Tribe agrees to furnish the following services to the Township in accordance with the provisions of this Agreement:

a. **Transportation and Disposal.** The Tribe shall collect the sanitary sewage which originates from customers in the Township Retail Service Area and transport the same by the Tribal Commercial Extension to the Tribal Sewer System at the Point of Reception; convey said sanitary sewage through the Tribal Sewer System to the Tribe's Wastewater Treatment Plant; provide primary treatment, secondary treatment, and phosphate removal of said sanitary sewage and finally dispose of the same. The Tribal Sewer System has, as of the Effective Date and shall have for the term of this Agreement, sufficient capacity to receive sanitary sewage from the Township within the flow limitations set forth in Paragraph 5c for the Point of Reception.

b. **Financing of Facilities.** The Tribe shall finance, construct, operate and maintain all facilities which are part of the Tribal Sewer System necessary to transport, treat and dispose of sanitary sewage received at the Point of Reception. These facilities, which are under the jurisdiction of the Tribe's Utility Department, include but are not limited to the necessary interceptor sewers and the Wastewater Treatment Plant.

c. **Operating Liability.** The Tribe will use reasonable diligence to provide and maintain regular and uninterrupted service to customers in the Township Retail Service Area but does not guarantee uninterrupted service and shall not be liable for injuries or damages by such interruptions whether caused by defects in original construction, cave-ins, accidents, repairs, sewer backups or other causes. The Tribe shall have exclusive legal authority to repair, correct, or remedy any defect causing the sewer overflow and the Township shall have no authority to take any of these actions for the Tribal Commercial Extension. The Tribe shall hold the township harmless from any and all liability related to the installation, maintenance and operation of the Tribal Sewer System and shall indemnify and defend the township from and all claims made against the township with respect to the construction, operation and maintenance of the Tribal Sewer System, inclusive of all lines located within the township whether on tribal property or located on any other right-of-way or property within the township. The Township shall give the Tribe prompt notice of the making of any claim or the commencing of any actions, suit or other proceeding covered by the provisions of this Agreement. Upon tendering of the defense by the Township, the Tribe shall take over and pay for all defense costs of the Tribe. Nothing herein shall be deemed to prevent the Township from cooperating with the Tribe and participating in the defense of any litigation by the Township's own counsel.

d. **Insurance.** The Tribe shall obtain and maintain in full force an effect, for the entire effective period of this Agreement, the following insurance covering all insurable risks associated with its ownership and use of its system:

(i) A comprehensive general liability insurance policy, including Completed Operations Liability, Independent Contractors Liability, Contractual Liability coverage and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage, in an amount not less than Five Million Dollars (\$5,000,000.00). The Township shall be listed as an additional insured on this policy.

(ii) An Automobile Liability Insurance Policy to cover any vehicles used in connection with its activities under this Ordinance, in an amount not less than Two Million Dollars (\$2,000,000.00).

(iii) Workers' Compensation and Employer's Liability Insurance.

7. Wastewater Rates.

a. **Retail Rates.** The retail rates to be charged to and paid by customers of the Tribal Sewer System located in the Township Retail Service Area (the "Retail Rates") shall be established in accordance with the Tribe's Utility Ordinance any other relevant Tribal Ordinance or policy.

b. **Billing and Collection.** The Tribe shall be responsible for providing accurate metering information for billing to the township of retail rates and other applicable charges to customers of the Tribal Sewer System located in the township retail service area. In turn, the township shall be responsible for billing and collecting such charges and forwarding it to the Tribe. In the event any such customer fails or neglects to pay bills for Retail Rates or applicable charges when due, the Tribe may in its sole discretion discontinue service to such delinquent customer. Discontinued service need not be re-established until all delinquent Retail Rates, charges, (including the costs incurred by the Tribe to disconnect and reconnect the service), interest, penalties, and other Tribal Sewer System customer obligations have been paid in full in the manner provided by applicable Township and Tribal ordinances, including the Utility Ordinance, and any applicable Tribal policy. In addition, properties in the Township Retail Service Area served by the Tribal Sewer System shall be subject to a first lien to secure payment of Retail Rates and charges pursuant to applicable laws of the State of Michigan, including but not limited to Act 94 of the Public Acts of Michigan of 1933, as amended, and Act 178 of the Public Acts of Michigan of 1939, as amended. Not later than September 1 annually, the Tribe may certify to the Township the names of the customers of the Tribal Sewer System located in the Township Retail Service Area who are more than six (6) months delinquent in payment of the Retail Rates or other charges together with the amount of the delinquency and applicable penalties, and the amounts of such delinquent Retail Rates, charges and penalties shall be assessed upon the Township's property tax roll not later than the following December 1 and thereafter collected by the Township in the manner provided by law. Upon collection, said delinquent Retail Rates, charges and penalties shall be promptly paid by the Township to the Tribe.

c. **Annual Meeting.** In October of each year the Tribe and the Township shall meet and confer regarding wastewater flow projections, operational issues, system maps, expansion and improvement projects, and any other matters relevant to the operation of the Tribal Sewer System, the Tribal Commercial Extension or this Agreement. The annual meeting may be canceled in any particular year upon the mutual consent of the Township and the Tribe.

d. **System Revenues.** The proceeds of all rates and charges established by the Tribe in accordance with this Agreement shall be accounted for and used in accordance with the Tribe's Utility Ordinance and any other relevant Tribal Ordinance or Policy.

e. **Capacity Charge.** Any capacity charge or connection fee payable by any customer located in the Township Retail Service Area to the Tribe for connection of the Tribal Commercial Extension to the Tribal Sewer System or for the connection of any customer to the Tribal Commercial Extension shall be established in the Tribe's Utility Ordinance.

f. **Excess Flows.** When the maximum allowable flows for any month exceed 90% of the daily flow limitation for the Point of Reception, as specified in Paragraph 5c hereof, the Township and the Tribe shall discuss the flow limits at the Point of Reception and appropriate related factors e.g. whether the Tribal Sewer System can accommodate a higher flow limit at the Point of Reception, whether an upgrade of infrastructure is appropriate to enable the Point of Reception to receive increased flows, or whether the Township should limit additional flows from the Township Retail Service Area.

9. **Inspection and Record Plans.**

a. **Inspection Rights and Notice Requirements.** The Tribe, at the cost of the Tribal Sewer System, shall at all times have the right to enter upon and inspect the Tribal Commercial Extension and all properties connected therewith, for the purpose of protecting its rights under this Agreement. As and when the Township has notice that major connections to the Tribal Commercial Extension are anticipated, the Township will give prompt notice to the Tribe thereof and state, if known, the estimated flow anticipated from the premises connected.

b. **Records and Plans.** Detailed records of any construction, alteration, addition or relocation of the Tribal Commercial Extension shall be kept on file in the Tribe's office, along with the as-built construction plans showing all facilities which comprise the Tribal Commercial Extension as finally constructed; altered, repaired, replaced or relocated. Upon request of the Township, the Tribe shall promptly provide all records and plans to the Township upon their availability.

10. **Emergency Discontinuance.** The Tribe hereby reserves the right to temporarily discontinue the service from the Tribal Commercial Extension or the Tribal Sewer System, without notice in times of emergency, or whenever the Tribe shall, upon its determination and after not less than forty-eight (48) hours notice to the Township, find it necessary for purposes of testing, repairing, or replacing lines, meters, pumps, or other facilities serving the Township Retail Service Area. No claim for damages for such discontinuance shall be made against the Tribe.

. Commercial user connection

a. The Township shall adopt, authorize the Tribe to enforce and assist the Tribe in the enforcement of a Township ordinance which is substantially identical to the Utility Ordinance, as amended from time to time (the "Tribal Sewer Use Ordinance"). If at any time the provisions of the Tribal Sewer Use Ordinance applicable to the Tribal's Wastewater Treatment Plant are more restrictive than the Township ordinance, said more restrictive provisions shall apply. The Township shall file with the Tribe a certified copy of its ordinance and any amendments thereto. The Township's Ordinance shall require all new construction within the Retail Service Area to connect to the Tribal Commercial Extension so long as the new construction would not cause the limits in Paragraph 5c to be exceeded.

b. The Tribe shall notify the Township and all affected Commercial connection users of pertinent categorical standards and monitoring and reporting requirements contained in the Tribal Sewer Use Ordinance.

c. If the Tribe adopts an amendment to its Utility Ordinance to comply with changed discharge permit requirements or applicable laws, the Township shall adopt a comparable amendment to its applicable ordinances within 90 days following notification by the Tribe of the necessity for the amendment, or earlier if required by law or regulation.

d. The Tribe shall make the final determination whether a particular non-domestic discharger is a significant industrial user or a nonsignificant categorical industrial user, or if the discharger is a domestic user, all in accordance with the Tribal Sewer Use Ordinance and 40 CFR 403. The Township will be provided a written notification by determination. The Tribe

shall control, through discharge permits, industrial waste discharges from significant industrial users and commercial users discharging into the Tribal Commercial Extension.

e. The Township hereby appoints the Tribe, pursuant to Act 7, as the authorized representative of the Township with the legal authority and responsibility for the performance of technical and administrative activities necessary for implementation of commercial user connections and to insure compliance with the Tribal Sewer Use Ordinance discharge limits within the Township. These activities shall be performed reasonably and uniformly in the tribal trust lands and the Township Retail Service District and may include, among others: (1) updating the industrial waste survey; (2) providing technical services such as inspection, sampling, process chemical analysis and engineering advice; (3) issuing industrial user permits; (4) compliance monitoring; and (5) enforcement action by the Tribe's Attorney in any court proceeding required. The costs incurred by the Tribe in conjunction with the administration of the commercial user connection on behalf of the Township shall be recovered by the Tribe, based upon costs incurred for each domestic or non-domestic user, by the use of monitoring fees, surcharges and fines directly from each domestic or non-domestic user that is part of the Program. The Tribe shall provide the Township with a detailed accounting of such costs upon request of the Township.

f. As part of the administration of the commercial user connections any authorized officer or employee of the Tribe may enter and inspect at any reasonable time any part of the Tribal Commercial Extension. The right of entry and inspection shall extend to public streets, easements and property within which the Tribal Commercial Extension is located. Additionally, the Tribe shall be permitted insofar as the Township has the authority to grant permission as appropriate to enter onto private property to inspect a specific discharger. The Township shall assist the Tribe in making all necessary legal and administrative arrangements for these inspections. The right of inspection shall include on-site inspection of pretreatment and sewer facilities, observation, measurement, sampling, testing and access to (with the right to copy) all pertinent compliance records located on the premises of the industrial user. The Tribe shall immediately notify the Township of any non-compliant results or enforcement action involving a significant industrial user or commercial user within the Township.

g. When a discharge to the Tribal Sewer System reasonably appears to present an imminent danger to the health and welfare of persons or presents or may present an imminent danger to the environment, or threatens to cause or causes Pass Through or Interference as defined in 40 CFR 403, or causes the Tribe to violate the provisions of 40 CFR 503, the Tribe may immediately initiate steps to identify the source of the discharge, and to halt or prevent said discharge. The Tribe shall, as soon as reasonably practicable, notify the Township of the discharge and the action the Tribe intends to take to halt or prevent the discharge. The Tribe, on its own or jointly with the Township, may seek injunctive relief against any discharger contributing to the emergency condition, and may pursue other remedies.

12. Wastewater Control.

a. **Township Ordinances.** During the term of this Agreement, the Township shall have in effect a plumbing code and such other ordinances, rules, and regulations as may be necessary to maintain standards for the construction, maintenance, repair, and use of the Tribal

Commercial Extension. The ordinances, rules and regulations, and the penalties for violation thereof, shall be at least as stringent as those of the Tribe, including but not limited to the pertinent provisions of the Tribe's Utility Ordinance, as the Utility Ordinance exists at present or may be amended from time to time. Any changes in Federal law or regulations or in the Utility Ordinance which set stricter standards shall automatically become part of this Agreement. The Tribal Commercial Extension shall be used for only such wastewater as is permitted under such laws, ordinances, rules and regulations as are in effect at the time of the given use.

b. **Termination of Service.** The Tribe may terminate service to any sewer customer which fails to comply with said ordinances, rules, and regulations. If from time to time the Tribe has evidence of violations of the plumbing code(s) and sewage ordinance(s) applicable to the Tribal Commercial Extension, the Tribe, after notification to the Township, may enter upon any portion of the Tribal Commercial Extension, including the premises of Tribal Commercial Extension customers, in order to inspect and make necessary tests to find said violation. The costs of such inspection and testing shall be considered an expense of the Tribal Sewer System.

c. **Permits and Approvals.** The Tribe has entered into a Memorandum of Understanding with the State of Michigan concerning the Tribal Commercial Extension, which requires the Township to apply for a Part 41 permit for the extension. The Township agrees to apply for the Part 41 permit for the sewer lines within the township only and not for any treatment facility. The Tribe shall assist the Township in any way necessary with that application. The Tribe shall be responsible for obtaining any other permits, consents, or other required approvals as may be necessary for the installation, operation and maintenance of the Tribal Commercial Extension from such governmental or regulatory board, commission, unit or entity as may have jurisdiction over the same. If there is any allegation of a violation of the Part 41 permit obtained by the township, the Tribe shall fully cooperate with the township to resolve any such violation or alleged violation.

13. **Maintenance, Operation and Repair of Systems.** The Tribe shall be responsible for and shall maintain, operate and repair the Tribal Sewer System and the Tribal Commercial Extension in the manner required by all applicable federal laws and regulations.

14. **Additional Areas of Service.** The Township Retail Service Area shall remain as described in Paragraph 3b. If the Township desires additional areas to be served by the Tribal Sewer System, those additional areas shall constitute additions to the Township Retail Service Area and may be served by amendment to this Agreement under terms and conditions mutually agreed to between the Tribe and the Township, provided, the Tribe shall be under no obligation to serve any such additional areas. A single residential, commercial or industrial establishment located on a parcel outside the Township Retail Service Area which abuts a service area boundary line and can be served with a single six-inch diameter lateral may be served under this Agreement without amendment so long as the limitations of flow in Paragraph 5c are not exceeded.

a. **Connection of properties served by existing County System to Tribal Sewer System, Future Connection of New Customers.** The Tribe and the Township agree that the Township shall pass a Sewer Ordinance requiring existing non-residential buildings currently utilizing the City of Manistee's Sewer System to hook-up directly to the Tribal Sewer System

upon its completion and certification for full operation. The Ordinance shall also require all future non-residential within the Township Retail Service Area to hook-up to the Tribal Sewer System. Existing residential structures within the Township Retail Area may hook-up to the Tribal Sewer System as desired and after payment of all fees associated with hooking up to the sewer. All new residential construction along the Tribal Commercial Extension as well as any residential structures along the line whose existing septic treatment field and system fails shall also be required to hook-up to the Tribal Sewer System.

b. Procedures for connection of new customers. The Tribe shall provide for procedures for connection of new customers to the Tribal Commercial Extension in the Tribe's Utility Ordinance.

15. Force Majeure. No failure or delay in performance of this Agreement by either party shall be deemed to be a breach thereof when such failure or delay is occasioned by or due to any Act of God, strikes, lockouts, wars, terrorism, riots, epidemics, explosions, sabotage, breakage or accident to machinery or lines of pipe, the binding order of any court or governmental authority, or any other cause, not within the control of the party claiming suspension.

16. Term of Agreement; Termination.

a. This Agreement shall take effect as of the Effective Date and, subject to the rights of the parties set forth in subparagraph (c) and subparagraph (d), shall continue from the Effective Date for a term of thirty (30) years (the "Initial Term").

b. Subject to the rights of the parties set forth in subparagraph (c) and subparagraph (d), upon the expiration of the Initial Term or any Renewal Term (as herein defined), this Agreement shall automatically be renewed for successive additional terms of five (5) years each (with each additional 5-year term being a "Renewal Term").

c. This Agreement may be terminated prior to the end of the Initial Term or any Renewal Term:

(1) by the Township, in its sole discretion and for any reason at all, with thirty (30) months notice to the Tribe and subject to the Buyout provision in Paragraph 18;

(2) by the Tribe in its sole discretion and for any reason at all with thirty (30) months notice to the Tribe and subject to the Buyout and Liquidated Damages provision in Paragraph 18; or

(3) by one party because of a breach of the other party of a material provision or undertaking herein which is not corrected within six (6) months after written notice of breach is given in accordance with Paragraph 18 by the non-breaching party to the alleged breaching party, which notice shall specify the nature of the breach and how the same may be corrected.

e. In addition to the above, either of the parties may terminate this Agreement effective upon the expiration of the Initial Term or any Renewal Term by giving a written notice of termination, in accordance with Paragraph 18, at least thirty months prior to the

expiration of the Initial Term or the applicable Renewal Term, and, in that event, this Agreement shall terminate, without renewal, upon the expiration of the then current term.

17. Transition Upon Termination; Buyout of Extension.

a. In the event written notice to terminate this Agreement is given by any party pursuant to Paragraph 18, the Tribe shall, prior to, and through, the effective date of the termination of this Agreement, continue the operation, administration and maintenance of the Tribal Sewer System and Tribal Commercial Extension infrastructure. Upon the effective date of the termination of this Agreement, the mutual obligations of the parties hereunder shall cease subject to the requirements below, and the Township shall have no rights in the Tribal Sewer System or to service from the Tribal Sewer System and the Tribe shall have no rights to provide service to the Township Retail Service Area.

b. If the Township invokes its right to terminate the Agreement pursuant to Paragraph 17c(1), above, then the Township shall pay the Tribe the appraised value of the Tribal Commercial Extension infrastructure in exchange for all right, title and interest in the Tribal Commercial Extension infrastructure. The Tribe and the Township shall mutually agree upon an appraiser for purposes of valuing the infrastructure. If the parties cannot come to agreement upon an appraiser, then each party may obtain their own appraisal of the infrastructure. If the value of the infrastructure in the appraisals obtained by the parties is within ten percent (10%) of each other, then the amount of the payment shall be the higher of the two. If the values are greater than ten percent, then the appraisers for the Township and Tribe shall select a third appraiser to review the appraisals and select an appropriate value of the infrastructure that is an amount no less than the lower of the two appraisals and no greater than the higher of the two appraisals. Upon payment of the amount specified, the Tribe shall execute all necessary documents to transfer title to the Tribal Commercial Extension infrastructure to the Township. The Tribe shall retain all infrastructure required to properly operate the Tribal Sewer System.

c. If the Tribe invokes its right to terminate the Agreement pursuant to Paragraph 17c(2), above, then the Tribe shall convey and the Township shall accept, for no monetary consideration, all right title and interest in the Tribal Commercial Extension infrastructure. The Tribe shall execute all necessary documents to transfer title to the Tribal Commercial Extension infrastructure to the Township. The Tribe shall retain all infrastructure required to properly operate the Tribal Sewer System.

18. Notices. All written notices and other documents to be delivered or transmitted hereunder shall be addressed to the respective parties at the below specified addresses or at such other address or addresses as shall be specified by the parties from time to time. The addresses of the parties are as follows:

Little River Band of Ottawa Indians
Attention: Water and Wastewater Director
2608 Government Center Drive
Manistee, Michigan 49660

Township of Manistee
Attention: Supervisor
410 Holder Street
Manistee, Michigan 49660

Written notices or other documents may be delivered in person, transmitted by facsimile, or by ordinary or certified mail, properly addressed with sufficient postage.

19. **Dispute Resolution and Agreement Enforcement.** The Tribe expressly does not waive sovereign immunity nor is this Agreement intended to be a modification of any part of Article XI of the Tribe's Constitution. This Agreement may be enforced as provided in Article XI of the Tribe's Constitution.

20. **Conditions Precedent to Effectiveness of Contract; Effective Date.**

a. As conditions precedent to the effectiveness of the Agreement, this Contract shall be submitted to the Governor of the State of Michigan for approval in the manner required by Section 10 of Act 7 and to the Michigan Department of Environmental Quality for approval in the manner required by Section 11 of Act 7.

b. As a condition precedent to the effectiveness of this Agreement, a fully executed copy of this Agreement shall be filed with the Manistee County Clerk and the Michigan Secretary of State as required by Section 10(4) of Act 7.

c. This Agreement shall be effective as of the date (the "Effective Date") which is the later of the (1) date of approval and execution of this Agreement by the Tribe, (2) date of approval and execution of this Agreement by the Township, (3) date of approval of this Agreement by the Governor in accordance with Subparagraph a, (4) date of approval of this Agreement by the Michigan Department of Environmental Quality in accordance with Subparagraph a, and (5) the date(s) of filing this Agreement with the County Clerk and the Secretary of State in accordance with Subparagraph b.

21. **Miscellaneous.**

a. **Assignment.** No party to this Agreement shall, without the prior written consent of the other party, assign, transfer, or convey its interest to any other entity, private or public, except that the Tribe and the Township shall retain the right to assign all of their rights, obligations, and liabilities under this Agreement to a wastewater or utility authority or other entity created to serve the area. If any party shall by operation of law be merged into or be succeeded by another governmental agency, municipal corporation or legal entity, its successor shall be bound by the terms of this Agreement as if originally a party hereto.

b. **Waiver.** The waiver by any party of a breach or violation of any

provision of this Agreement shall not be a waiver of any subsequent breach or violation of the same or any other provision of this Agreement.

c. **Unenforceability.** If any paragraph or provision of the Agreement is unenforceable for any reason, the unenforceability thereof shall not impair the remainder of this Agreement, which shall remain in full force and effect.

d. **Entire Understanding.** This Agreement represents the entire understanding and agreement between the parties hereto.

e. **Captions.** The captions in this Agreement are for convenience only and shall not be considered as part of this Agreement or in any way to amplify or modify the terms and provisions hereof.

f. **Modification.** This Agreement may be changed or modified only by a written document signed by all the parties.

g. **Review and Modification Procedure.** If, as a result of changed circumstances, it becomes necessary to modify this Agreement, the parties agree to negotiate, in good faith and with mutual fair dealing, any necessary modification of this Agreement.

h. **Alternate Dispute Resolution.** The parties may mutually agree upon an alternate dispute resolution mechanism for resolving any disputes which may arise under this Agreement. Any such Agreement shall not constitute a waiver of Sovereign Immunity by the Tribe.

i. **Interpretation of Agreement.** The Tribe and the Township acknowledge that each party has had the opportunity to participate in the drafting of this Agreement. As a result, in the event of any ambiguity in this Agreement, it shall not be interpreted for or against any party on account of the drafting by any party.

j. **Definition of Sanitary Sewage and Wastewater.** For purposes of this Agreement, the terms "sanitary sewage" and "wastewater" are intended to be used interchangeably and to refer to any liquid or water carried waste received from sewer customers including domestic sewage, industrial wastes and any infiltration or inflow as may be present.

k. **Definition of Agreement.** This Agreement is intended to be a contract within the meaning of Act 7.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the dates set forth below.

LITTLE RIVER BAND OF OTTAWA INDIANS

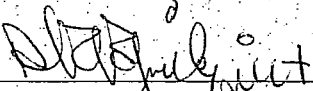
Dated: Sept 10, 2014

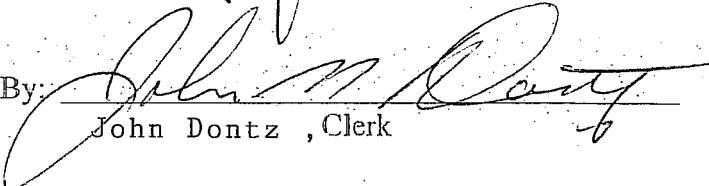
By: Larry B Romanelli
Larry Romanelli, Ogema

By: _____

TOWNSHIP OF MANISTEE

Dated: _____, 2014.

By: 
John Anderson, Supervisor

By: 
John Dontz, Clerk

This Agreement is hereby approved in accordance with Section 10 of the Urban Cooperation Act of 1967 (Ex. Sess.), as amended (MCL 124.510).

STATE OF MICHIGAN

Dated: _____, 2014

By: _____
Richard D. Snyder
Governor



This Agreement is hereby approved in accordance with Section 11 of the Urban Cooperation Act of 1967 (Ex. Sess.), as amended (MCL 124.511).

STATE OF MICHIGAN

Dated: _____, 2014

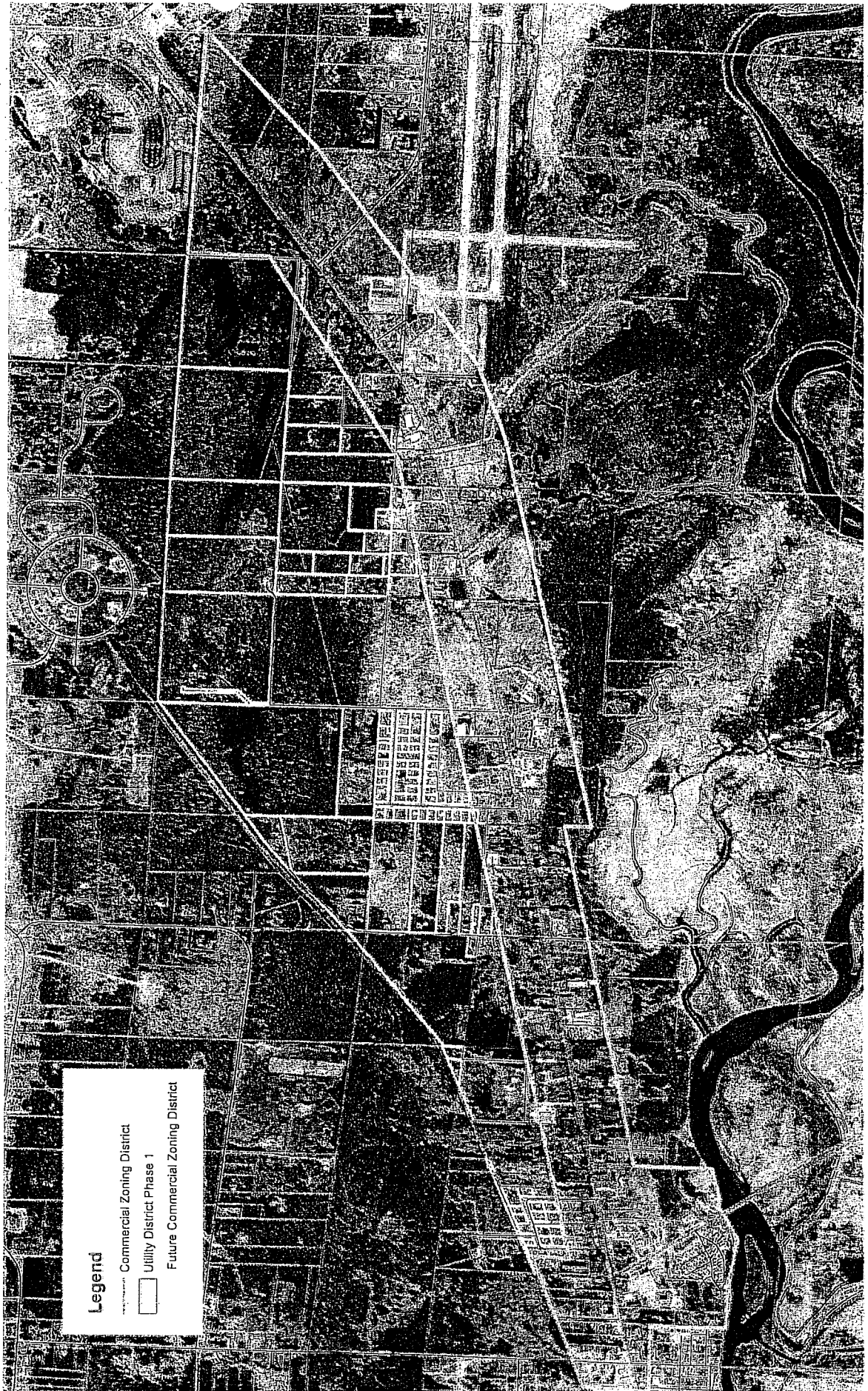
By: _____
Dan Wyant
Director, Department of Environmental Quality

EXHIBIT A

Attach Map of Township Retail Service Area

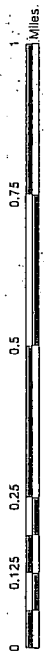
Draft Manistee Township Utility Service District - Phase I

February 19, 2013



Legend

- Commercial Zoning District
- Utility District Phase 1
- Future Commercial Zoning District




MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into between the Little River Band of Ottawa Indians (LRBOI) and the State of Michigan Department of Environmental Quality (MDEQ) concerning the Tribal sewer line extension in Manistee Township. The parties agree to the following:

1. LRBOI will invite MDEQ staff to tour the LRBOI's current wastewater treatment plant (WWTP) before the sewer line extension is built. After the sewer line extension is completed LRBOI will share, upon written request, the annual Sanitation Survey completed by a Professional Engineer from the U.S. Public Health Service.
2. LRBOI will provide to MDEQ a certification from a Professional Engineer that the existing facilities have sufficient hydraulic and organic capacity to handle the proposed sewer extension. LRBOI will share with MDEQ the complete basis of design for the existing WWTP and any proposed upgrades, as well as current data on the existing WWTP flow rate and pollutant loading rates.
3. A local unit of state government will apply for a Part 41 permit for the sewer line extension that will not be on LRBOI trust land.
4. LRBOI agrees to design and construct the sewer main according to the current "Recommended Standard for Wastewater Facilities." MDEQ may appoint a representative to the LRBOI Design Task Force that will be implementing the sewer line extension.
5. This agreement shall not be construed as an admission of any kind by either party and both LRBOI and MDEQ reserve all rights, claims and defenses with respect to the sovereign immunity of the State and the jurisdiction of the MDEQ over any activities that would normally require a permit and the sovereign immunity, tribal trust land boundaries and jurisdiction of LRBOI. Any disputes regarding this agreement shall be discussed respectfully between the parties, including holding face to face, government to government meetings as appropriate.
6. Either party may terminate this agreement at any time with 30 day written notification to the other party.

Little River Band of Ottawa Indians

By:  Date: 8/20/14

Larry B. Romanelli, Ogema

Michigan Department of Environmental Quality

By:  Date: 9.8.14

Dan Wyant, Director