

Appendix A
Tribal Documents

Appendix A

Fee-to-Trust

**POKAGON BAND OF POTAWATOMI INDIANS
MICHIGAN AND INDIANA**

**APPLICATION TO ACQUIRE LAND IN TRUST
(SOUTH BEND, INDIANA CONSOLIDATION SITE)**

Submitted to the Bureau of Indian Affairs

May 14, 2012

Pokagon Band of Potawatomi Indians, Michigan and Indiana

**Application To Acquire Land In Trust
(South Bend, Indiana Consolidation Site)**

TABLE OF CONTENTS

I. THE PROPERTY4

A. Location and Title Status 4

B. Current Use 5

II. STATUTORY AUTHORITY FOR THE ACQUISITION OF THE PROPERTY (25 C.F.R. § 151.10(A)) 5

III. THE NEED FOR ADDITIONAL LAND (25 C.F.R. § 151.10(B))..... 6

A. Background Regarding the Band’s Efforts to Fulfill its Governmental Responsibilities in the State of Indiana 6

B. Specific Need for Trust Acquisition of the Subject Property..... 8

IV. PURPOSES FOR WHICH THE SUBJECT PROPERTY WILL BE USED (25 C.F.R. § 151.10(C))..... 10

V. IMPACT ON STATE AND POLITICAL SUBDIVISIONS (25 C.F.R. 151.10(E)) 11

VI. POTENTIAL JURISDICTIONAL PROBLEMS AND LAND USE CONFLICTS (25 C.F.R. 151.10(F)) 12

A. Potential Jurisdictional Problems 12

B. Potential Land Use Conflicts 13

VII. ADDITIONAL BIA RESPONSIBILITIES (25 C.F.R. 151.10(G))..... 14

VIII. COMPLIANCE WITH NEPA (516 DM 6, APPENDIX 4), NHPA, AND CERCLA (602 DM 2) 15

A. NEPA Compliance 15

B. NHPA Compliance..... 15

C. CERCLA compliance 15

IX. COMPLIANCE WITH THE IGRA (25 U.S.C. § 2701 *ET SEQ.*)..... 16

X. OFF-RESERVATION ACQUISITIONS (25 C.F.R § 151.11) 16

Pokagon Band of Potawatomi Indians, Michigan and Indiana

**Application to Acquire Land In Trust
(South Bend, Indiana Consolidation Site)**

A. Consideration of the location of the land relative to state boundaries, and its distance from the boundaries of the tribe’s reservation (25 C.F.R. § 151. 11(b)) 16

B. Where land is being acquired for business purposes, the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use (25 C.F.R. § 151. 11 (c)) 17

 1. Demographic and Competitive Environment17

 2. Proposed Facility.....19

 3. Anticipated Economic Benefits.....19

XI. EVIDENCE OF TITLE (25 C.F.R. § 151.13)20

XII. DRAFT DEEDS21

POKAGON BAND OF POTAWATOMI INDIANS, MICHIGAN AND INDIANA

APPLICATION TO ACQUIRE LAND IN TRUST (SOUTH BEND, INDIANA CONSOLIDATION SITE)

INTRODUCTION

The Pokagon Band of Potawatomi Indians, Michigan and Indiana, a federally-recognized Indian tribe (the “Band”), acting by and through its Tribal Council (the “Council”), requests that the Secretary of the Interior accept in trust status for the benefit of the Pokagon Band of Potawatomi Indians certain real property consisting of seventeen parcels of land with a total acreage of 164.22, more or less, which are located in St. Joseph County, Indiana, as more specifically described below (the “Property”). The Band submits this application (“Application”) pursuant to Public Law 103-323, September 21, 1994, 108 Stat. 2152, as codified at 25 U.S.C. § 1300j – 1300j-8 (“An Act to Restore Federal Services to the Pokagon Band of Potawatomi Indians”, hereinafter referred to as the “Pokagon Restoration Act”, Exhibit 1), the January 11, 1999 Memorandum of Understanding between the Pokagon Band and the Secretary of the United States Department of the Interior (the “MOU”, Exhibit 2) and as authorized in Tribal Council Resolution No. 11-04-25-01, adopted April 25, 2012, Exhibit 3.

Pursuant to the Restoration Act and the MOU, the Band is continuing to reestablish its reservation homelands in consolidation sites located in the vicinity of Dowagiac, Michigan; New Buffalo, Michigan; Hartford, Michigan; and South Bend, Indiana. The Band is federally-recognized as an Indian tribe in the state of Indiana and remains the only federally-recognized Indian tribe in Indiana. See Sections 1, 2, and 7, Pokagon Restoration Act; and List of “Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs”, 75 Fed.Reg. 60810-60814 (Oct. 1, 2010), as supplemented by 75 Fed.Reg. 66124 (Oct. 27, 2011). This Application is for property in South Bend, which will be used as the initial and primary site in South Bend for residential, governmental and economic development purposes, with a gaming resort being the center of the economic development efforts. This Application is thus for non-gaming and gaming purposes.

The Band currently has no trust land in the State of Indiana. The following brief history of the Band’s efforts over more than ten years to reestablish reservation homelands in Indiana provides background and context that should be helpful to the BIA’s consideration of this Application. A trust land application that the Band filed with the Bureau of Indian Affairs (“BIA” or “Bureau”) in 2001 included 1,460 acres located in St. Joseph County and LaPorte County, Indiana (the “North Liberty” site), 1,434 acres located in Cass County, Michigan, and 775 acres located in Van Buren County, Michigan. In February of 2002, the Band amended the trust land application to remove the North Liberty site in order to enroll 1,147 acres of the North Liberty site in a Wetland Reserve Program administered by the U.S. Department of Agriculture, Natural Resources Conservation Service. The Band determined that the best use of the 1,147 acre-portion of

Pokagon Band of Potawatomi Indians, Michigan and Indiana

Application to Acquire Land In Trust (South Bend, Indiana Consolidation Site)

the North Liberty site would be to use it to help restore a portion of the Grand Kankakee Marsh in northwestern Indiana, which would serve important Band environmental objectives. In 2007, the Band submitted a trust land application for the 313-acre portion of the North Liberty site that did not qualify for inclusion in the Wetland Reserve Program. In 2009, the Band withdrew its trust land application for the North Liberty acreage upon concluding that the site was not well-suited to achieve the Band's housing, economic development, and other governmental objectives in the State of Indiana. In 2011, the Band submitted a trust land application for housing, governmental offices, light commercial development, and other non-gaming purposes for fifteen parcels of land with a total of 193.16 acres located in and near South Bend, Indiana. Thereafter, the Band began a planning process for a casino it intended to develop on land located in Elkhart County, Indiana. The Band eventually decided to abandon the Elkhart casino plans out of concern that the Elkhart County location might not be considered to be part of the South Bend consolidation site and also because the Band did not consider the Elkhart County site to be a suitable location for a casino. For the reasons explained in Section X.B of this Application, the Band determined that the land included in its 2011 trust land application would be a suitable location for the planned casino. This trust land Application includes fourteen of the fifteen parcels of land that were included in the 2011 application along with three additional contiguous parcels of land that the Band purchased this year. As a result, concurrently with its submission of this Application, the Band is withdrawing its pending 2011 trust land application for the South Bend lands.

The Band's current trust lands are limited to a 674-acre site located within the New Buffalo consolidation site in Berrien County, Michigan (taken into trust on January 27, 2006), 775 acres of land located within the Hartford consolidation site in Van Buren County, Michigan (taken into trust on June 10, 2008), and 1,434 acres of land located within the Dowagiac consolidation site (taken into trust on June 10, 2008), for a total of approximately 2,883 acres of trust land. The Pokagon Band and the Secretary of the Interior agreed in the MOU that a trust land base of up to 4,700 acres would be "commensurate with the anticipated future needs of the Band". Exhibit 2 at paragraph 3. The Band purchased the Property in fee in reliance on the MOU as the focus of its planned South Bend trust land consolidation site.

By acquiring the Property in trust for the Band, the Secretary of the United States Department of the Interior ("Secretary") will continue to carry out the mandate to establish in trust the homeland consolidation sites for the Band contemplated by the Restoration Act and the MOU. The Band needs the Property to establish an inalienable tribal land base in Indiana. A land base located in Indiana in proximity to the Band's Indiana residents will vastly improve the Band's ability to fulfill its governmental responsibilities to its citizens residing in Indiana, and will significantly improve the

Pokagon Band of Potawatomi Indians, Michigan and Indiana

Application to Acquire Land In Trust (South Bend, Indiana Consolidation Site)

Band's ability to provide for the welfare of all of the Band's citizens¹, preserve and promote Band culture and traditions, and pursue the goals of self-governance and self-determination, which are critical to ensuring that the Pokagon Band of Potawatomi Indians will endure as a sovereign tribal nation.

The Property will also be used by the Band for economic development purposes to produce revenue to pay for the land acquisition costs of the Property, the development and construction of residential housing and governmental buildings on the Property, and the provision of governmental services. The Band will develop a gaming resort operation (the "Gaming Project") on the Property. Consistent with the findings of Congress expressed in the Indian Gaming Regulatory Act of 1988 ("IGRA", Pub. L. 100-497, U.S.C. § 2701 *et seq.*) the Gaming Project will serve a principal goal of Federal Indian policy by promoting the Band's tribal economic development, tribal self-sufficiency, and a strong tribal government. 25 U.S.C. § 2701(4). There is a great need among Band citizens and other persons that reside in the vicinity of the Property for the employment and career opportunities that will be produced by the Gaming Project. The Gaming Project is projected to create approximately 2,000 permanent jobs with good pay and benefits in a region that suffers from chronically high unemployment, especially among Band citizens. The revenue sources generated by the Gaming Project will be used, consistent with the purposes set forth in the IGRA, 25 U.S.C. § 2710(b)(2)(B), to help to secure a stable economic future for the Band and its citizens, to continue the Band's efforts to restore and develop the tribal land base in the consolidation sites, to fund Band governmental institutions and to fund essential tribal government programs and services for Band citizens. The Gaming Project will also support and enhance local and regional economic development efforts by non-native governments.

Although the Band does not presently have a Class III gaming compact with the State of Indiana, the Band anticipates that Indiana will engage in good-faith negotiations with the Band for a Class III gaming compact, which would allow the Band to develop the Gaming Project as a Class III gaming facility. If the Band is unable to obtain a Class III gaming compact with Indiana by the time the BIA issues a decision on this Application, the Band expects it will proceed with the Gaming Project by initially developing a Class II gaming facility. A description of the Gaming Project and the expected economic benefits of the Gaming Project are provided in Section X(B) below.

The Pokagon Restoration Act mandates that the Secretary acquire trust lands for the Band.² The Act does not, however, specify where such lands should be located or how

¹ The term "citizen" is used herein to refer to enrolled members of the Band.

² Congress did not allocate any funds for the Secretary to carry out the mandate in the Restoration Act to restore the Band's land base. The acquisition of the lands that have been

Pokagon Band of Potawatomi Indians, Michigan and Indiana

Application to Acquire Land In Trust (South Bend, Indiana Consolidation Site)

much land should be acquired. The Band and the Department of the Interior agreed in the MOU that a trust land base of up to 4,700 acres “is commensurate with anticipated future needs of the Band” and that the Band would concentrate its land holdings in four “consolidation sites,” consistent with 25 C.F.R. § 151.3(a)(1). All of the consolidation sites described in the MOU lie within the Band’s ten-county service area (“Service Area”) located in southwest Michigan and northern Indiana, as provided in Section 7 of the Pokagon Restoration Act (25 U.S.C. § 1300j-6). The Property is located within the South Bend, Indiana consolidation site identified in paragraph 3 of the MOU. Exhibit 2.

The Band agreed in the MOU that any applications for trust acquisitions pursuant to the Pokagon Restoration Act would be submitted in the form required by 25 C.F.R. Part 151. Accordingly, pursuant to the MOU, the factors described in 25 C.F.R. § 151.10 are fully addressed in this Application in order to provide all necessary information to assist the Secretary in making an informed decision on the Band’s Application for trust land.

I. THE PROPERTY.

A. Location and Title Status.

The Property consists of approximately 164.58 acres, and is located in the northwestern portion of the State of Indiana, within the municipal limits of the City of South Bend. South Bend, which is the county seat of St. Joseph County, has a population of 101,168 (2010 census), which represents a 9.4% decline in population since the 2000 census.

The Property consists of seventeen contiguous parcels of land, which are identified as follows by the grantor name: (1) Jacobs, 4.5 acres; (2) Crady, 9.95 acres; (3) Bill Marvin, 85.53 acres; (4) Miltenberger, 1 acre; (5) Santana, 0.67 acre; (6) Jurgonski, 1.7 acres; (7) Sedam, 3.28 acres; (8) Horrall, 1.33 acres; (9) Hutchins, 3.16 acres; (10) Jones, 1.63 acres; (11) Cataldo, 9.71 acres; (12) Haverstock, 10.63 acres; (13) Geyer, 20.7 acres; (14) Shafer, 6.64 acres; (15) Jantzi, 0.66 acre; (16) Bova, 1.71 acres; and (17) Gary Marvin, 1.42 acres. ALTA/ACSM Land Title Surveys, including legal descriptions, of each of the seventeen parcels, which were prepared by Wightman & Associates, Inc. are attached hereto³. (Exhibit 4A, Jacobs, “Parcel 2”); (Exhibit 4B, Crady, “Parcel 3”); (Exhibit 4C, Bill Marvin, “Parcel 4”); (Exhibit 4D, Miltenberger, “Parcel 5”); (Exhibit 4E, Santana,

taken into trust to date was accomplished by the Band through private loans from the Band’s former gaming management contractor.

³ The ALTA/ACSM Land Title Surveys identify each parcel of land by numbers that the Pokagon Band assigned during the land acquisition process. The Band did not purchase all of the parcels of land that were assigned numbers and, as a result, the parcel numbers used to identify the parcels in Exhibits 4A – 4Q are not in a continuous sequence.

Pokagon Band of Potawatomi Indians, Michigan and Indiana

Application to Acquire Land In Trust (South Bend, Indiana Consolidation Site)

“Parcel 6”); (Exhibit 4F, Jurgonski, “Parcel 7”); (Exhibit 4G, Sedam, “Parcel 8”); (Exhibit 4H, Horrall, “Parcel 9”); (Exhibit 4I, Hutchins, “Parcel 10”); (Exhibit 4J, Jones, “Parcel 11”); (Exhibit 4K, Cataldo, “Parcel 14”); (Exhibit 4L, Haverstock, “Parcel 16”); (Exhibit 4M, Geyer, “Parcel 17”); (Exhibit 4N, Shafer, “Parcel 23”); (Exhibit 4O, Jantzi, “Parcel 24”); (Exhibit 4P, Bova, “Parcel 43”); and (Exhibit 4Q, Gary Marvin, “Parcel 49”). Attached hereto is a map depicting the general location of the Property (Exhibit 5A) and a graphic representation of the Property depicting areas of planned development (Exhibit 5B).

B. Current Use.

These particular parcels of land comprising the Property were selected and assembled to meet the goals of the Pokagon Restoration Act. The Band’s selection of these parcels was also intended to fulfill the Band’s obligations under the MOU concentrate its land acquisitions within the consolidation sites.

Land cover of the Property is dominated by undeveloped woodlands and open meadow with no commercial use and no active agricultural use. See Exhibit 10. The Subject Property is bounded by Indiana State Road 23 on the northwest border, U.S. Highway 31/20 on the southwest border, and Locust Street on the east border. The topography of the property is characterized by valleys with intermittent stream flows and elevations that range from 840 feet above sea level (“ASL”) to approximately 733 feet ASL with an overall dip to the northwest. The soils on the Property are described as Coloma-Spinks-Oshtemo and Guilford-Maumee-Sparta associations soil, which the United States Department of Agriculture characterizes as possessing slight to moderate limitations for building site development. Observations of the Property made by qualified personnel in the Band’s Department of Natural Resources revealed the presence of deer, rabbit, squirrel, muskrat, and various common birds. There are five residential structures located on the Property, all of which are habitable.

II. STATUTORY AUTHORITY FOR THE ACQUISITION OF THE PROPERTY (25 C.F.R. § 151.10(a)).

The statutory authority for the acquisition of the Property is found in Section 6 of the Pokagon Restoration Act (25 U.S.C. § 1300j-5), Exhibit 1, which provides in relevant part: “The Secretary shall acquire real property for the Band. Any such real property shall be taken by the Secretary in the name of the United States in trust for the benefit of the Band and shall become part of the Band’s reservation.” See also page 2 of the Opinion of the Solicitor, U.S. Department of the Interior, September 19, 1997 (M-36991) (the “Solicitor’s Opinion”, Exhibit 6), which states that the Pokagon Restoration Act “mandates” that the Secretary of the Interior acquire land in trust for the Band. The

Pokagon Band of Potawatomi Indians, Michigan and Indiana

Application to Acquire Land In Trust (South Bend, Indiana Consolidation Site)

Pokagon Restoration Act contains no language that would limit the Secretary's authority to acquire land in trust for the Band. As the Solicitor concluded in describing the Secretary's authority to acquire land in trust for the Band, "[t]here is no limitation or direction in the [Pokagon Restoration] Act as to where such lands should be located, or how much land should be acquired. See Solicitor's Opinion, Exhibit 6, at p. 2. A challenge to the constitutionality of the Pokagon Restoration Act, specifically including Section 6 of the Act (25 U.S.C. § 1300j-5), which authorizes the Secretary to acquire land in trust for the Band, was soundly rejected by the federal Court of Appeals for the District of Columbia Circuit in Taxpayers of Michigan Against Casinos (TOMAC) v. Norton, 433 F.3d 852, at 867 (D.C. Cir. 2006).

III. THE NEED FOR ADDITIONAL LAND (25 C.F.R. § 151.10(b)).

A. Background Regarding the Band's Efforts to Fulfill its Governmental Responsibilities in the State of Indiana.

The Band's current trust lands are located entirely in the State of Michigan. The Band has no trust land in the State of Indiana to assist it in restoring its status as a sovereign tribal nation and fulfilling its governmental responsibilities to its citizens that reside in the State of Indiana, which have been critical objectives for the Band since long before the enactment of the Pokagon Restoration Act. The Band cannot achieve these objectives without a permanent, inalienable land base in Indiana. These governmental objectives were at the heart of the Band's struggle to obtain reaffirmation by the United States of the Band's status as a sovereign, federally-recognized Indian tribe, which the United States finally provided in 1994 by enactment of the Pokagon Restoration Act. A brief description of the Band's efforts to restore the Band's status as a federally-recognized Indian tribe and to secure a reservation homeland will help to explain the Band's need for the Property to be taken into trust for the Band.

Prior to the formation of the United States, the Potawatomi Tribe, of which the Pokagon Band is a constituent part, occupied the area between Detroit and Chicago in southern Michigan, northern Indiana and northern Illinois. Various Potawatomi bands lived in villages throughout this territory, including the ancestral villages of the Pokagon Band located in the St. Joseph-Paw Paw River Valley in the southwest corner of Michigan's lower peninsula. These Potawatomi bands shared common bonds of kinship, commerce, culture, and geography. The Potawatomi villages in the St. Joseph River Valley were united behind the leadership of Leopold Pokagon in the negotiations that led to the 1833 Treaty of Chicago (the "Treaty"). As a result of the Treaty, a majority of the Potawatomi were removed from Michigan and Indiana. The Pokagon Band, as the Potawatomi villages in the St. Joseph River Valley came to be known, remained in Michigan and

Pokagon Band of Potawatomi Indians, Michigan and Indiana

Application to Acquire Land In Trust (South Bend, Indiana Consolidation Site)

Indiana and was paid money in lieu of being given reservation land in the Indian territories out west under the terms of the Treaty.

In the years following the ratification of the Treaty, the Band was landless and had few of the resources needed for its support as it struggled with the enormous challenge of learning and adapting to farming and small-town commerce after its traditional subsistence economy and culture of hunting and fishing could no longer sustain the Band. Throughout this time, although the Band remained landless, it continued to maintain a tribal government, which enabled the Band to advocate for rights and benefits for its citizens, including the recognition of treaty rights and payments, and provided a structure that maintained the Band's sense of common identity and purpose.

The Band petitioned for reorganization and assistance pursuant to the Indian Reorganization Act of 1934. Although the legitimacy of the Band's petition was not at issue, the federal government made an administrative decision to decline to provide the benefits of the Indian Reorganization Act to the Band due to the poor financial condition of the federal government during the Great Depression. Consequently, the federal government never acquired land for the Band during the nineteenth and twentieth centuries and neglected its government-to-government relationship with the Band.

The Pokagon Restoration Act reaffirmed the government-to-government relationship between the Pokagon Band of Potawatomi Indians and the United States. Section 2 of the Pokagon Restoration Act, 25 U.S.C. § 1300j-1, Exhibit 1. See also the Solicitor's Opinion, Exhibit 6, at p. 4. In enacting the Pokagon Restoration Act, Congress made legislative findings that the Band is the political successor to the signatories of numerous treaties that ceded vast amounts of territory in the Band's ancestral homeland, the St. Joseph River Valley. The St. Joseph River Valley is located in southwestern Michigan and northern Indiana and lies partially within the Band's Service Area, which consists of the counties of Allegan, Berrien, Van Buren and Cass in the State of Michigan, and LaPorte, Saint Joseph, Elkhart, Starke, Marshall and Kosciusko in the State of Indiana. See Section 7 of the Pokagon Restoration Act, 25 U.S.C. § 1300j-6, Exhibit 1. The Property is located within the Band's Service Area, the South Bend consolidation site, and the Band's ancestral homeland in the St. Joseph River Valley.

The Pokagon Restoration Act confirmed that the Pokagon Band possessed all the attributes of tribal sovereignty recognized under federal law. The Band has determined that a critical foundation for preserving and strengthening its tribal sovereignty and culture is the restoration of the Band's land base. The importance of restoring a tribal land-base is emphasized in the Pokagon Band Constitution, which states in Article IV (Tribal Lands): "The Pokagon Band is dedicated to re-establishing a tribal land base." A copy of the Pokagon Band Constitution is attached as Exhibit 7. The Property is needed

Pokagon Band of Potawatomi Indians, Michigan and Indiana

Application to Acquire Land In Trust (South Bend, Indiana Consolidation Site)

to further the goal of restoring the Band's land base in its homeland in the St. Joseph River Valley. The Property is also needed to consolidate tribal land ownership within the Band's Service Area, which, in the case of the Property, will facilitate the provision of tribal government services to Band citizens residing in or near the northern Indiana portion of the Band's Service Area. Until the Secretary provides the Band with an inalienable land base, the Band will be unable to properly fulfill its responsibilities as a tribal government and will be hindered in its effort to provide services, support and protection for the Band community in Indiana.

B. Specific Need for Trust Acquisition of the Subject Property.

Over the past three years, the Band has been engaged in land use master planning for all Band land holdings, including the Property, in accordance with the requirements of Article IV of the Pokagon Band Constitution as a means of addressing Band citizen concerns. The master planning process included several steps to identify the Band's current and future needs. First, basic site information was gathered about the Property and other Band lands, which included site environmental information and demographic and socio-economic information for the surrounding area. Second, two surveys were conducted to identify the needs of Band citizens with focus on the northern Indiana area. Third, inventories of Band citizen needs were compiled from Band government departments. Fourth, community meetings were held to collect Band citizen input on the development of tribal lands, which included two "charrette" style meetings to facilitate direct input regarding development options in the area of the South Bend consolidation site.

Four essential needs for the Band will be addressed by the requested transfer of the Property into trust:

1. An increased tribal land base and the first tribal land base in Indiana, which will provide suitable and healthy housing for a growing Band citizenship.

The Band has a substantial unmet housing need in Indiana, which presents the Band with significant ongoing challenges in addressing the basic needs of the Band's Indiana residents. Between December of 2010 and February of 2012, Band citizenship grew from 4338 to 4578. Over the last year, the number of Band citizens living in Indiana grew from 458 to 507, over a third of which live within a 10-mile radius of the Property. The median age for the Band population is approximately 23 years and approximately 40% of the Band's citizens are minors. The Band's Indiana citizens face a growing need for suitable housing.. Many Band citizens, including Band elders and children, live in substandard housing and some Band citizens are homeless. The Property will establish the Band's first

Pokagon Band of Potawatomi Indians, Michigan and Indiana

Application to Acquire Land In Trust (South Bend, Indiana Consolidation Site)

permanent suitable land base in Indiana to serve the growing needs of Band citizens.

2. The need for community-focused spaces.

The transfer of the Property into trust will also assist the Band in its goal of developing community focused spaces for its Indiana residents. The size of the Property is sufficiently large to provide the Band with the ability to develop community facilities in close proximity to Band citizen housing, which is particularly important for ensuring that Band elders will remain integrated in Band community life.

3. The need for a suitable location for the delivery of tribal government services to the Band's Indiana community.

The Property is also of sufficient size to provide space for the development of Band government offices, including health services and satellite office space for various other Band government programs and service agencies. There is an underserved and growing need among the Band's Indiana citizens for medical services, education, language training, and cultural enrichment. An at-risk population among Band citizens presents an urgent, underserved need for assisted living for elders and emergency shelters for victims of domestic violence.

4. The need for a suitable location for commercial development to provide economic and employment opportunities for the Band's South Bend area community.

The location of the Subject Property along State Road 23 and U.S. Highway 31/20 and within the South Bend city limits is an especially good location to develop the Gaming Project. The fact that there are no competitive gaming facilities located close to the Property helps ensure that the Gaming Project will be successful. The anticipated benefits of the Gaming Project to provide funds for paying for and developing the Property, restoring the Band's land base in the South Bend and other consolidation sites, funding tribal governmental institutions and services, promoting tribal economic development, as well as supporting area economic development and the operations of local government agencies and charities. Further expected economic benefits include providing vital economic resources for restoring and rebuilding tribal homelands for future generations, and providing critically needed employment and career opportunities to Band members and other Native Americans.

Pokagon Band of Potawatomi Indians, Michigan and Indiana

Application to Acquire Land In Trust (South Bend, Indiana Consolidation Site)

The land use master planning process strongly supports mixed-use development of the Property with residential, government, and commercial development. The proposed trust acquisition of the Property and the Band's mixed-use development plans for the Property will address the specific unmet needs of Band citizens in the area of the South Bend consolidation site. Many of these needs cannot be adequately addressed unless the Property is taken into trust, which will provide access to resources under a variety of federal programs, including for example reservation housing programs available under the Native American Housing Assistance and Self-Determination Act of 1996 ("NAHASDA", 25 U.S.C. § 4101 *et seq.*), contracting and compacting opportunities under the Indian Self-Determination and Education Assistance Act of 1975 ("ISDEAA", 25 U.S.C. § 450 *et seq.*), and the Indian Reservation Roads program under the Safe, Accountable, Flexible and Efficient Transportation Equity Act – A Legacy for Users ("SAFETEA-LU", 23 U.S.C. § 101 *et seq.*).

IV. PURPOSES FOR WHICH THE SUBJECT PROPERTY WILL BE USED (25 C.F.R. § 151.10(c)).

The Band plans to develop housing, community spaces, and government office space on the Property as a mixed-use "tribal village" to facilitate the re-establishment of a distinct Pokagon community within Northern Indiana. The tribal village concept will revive aspects of traditional Pokagon social, political, and economic structure and organization in the State of Indiana. The tribal village development concept includes the following components or uses on the Property: a multi-purpose facility to serve as a community gathering place; educational facilities; and governmental office space, including health service offices. Also included in the tribal village concept would be approximately 44 housing units, which are planned to be comprised of one 12-unit apartment building, 4 duplex homes, and 24 single-family homes.⁴

In addition to the residential and governmental structures included in the tribal village, the Band will also develop the Gaming Project, which will be located entirely on Parcel 3 of the Property. Details of the intended scope of the Gaming Project development are contained in Section X(B) of this Application.

The City of South Bend Comprehensive Plan and the St. Joseph County – South Bend Comprehensive Plan recognize the appropriateness of the Property for economic development by identifying the area in which the Property is located as a growth area and a regional commercial node. Among the attributes of the Property that make it suitable

⁴ Some of this housing need may be met through one or more of the five existing homes located on parcels 11-17 of the Property. At present and for the next year or so, the Band intends to continue to lease some or all of the habitable houses located on the Property for housing and governmental use.

Pokagon Band of Potawatomi Indians, Michigan and Indiana

Application to Acquire Land In Trust (South Bend, Indiana Consolidation Site)

for economic development are its proximity to major transportation routes and other required infrastructure, and a large base of potential customers. The location of the Property within the South Bend city limits in the eastern corner of the intersection of State Road 23 and U.S. Highway 31/20 provides a very high likelihood of success for the Band's Gaming Project, and allows the Band to rely on the Gaming Project to pay for the Property and its development and the provision of governmental services to Band members in Indiana.

V. IMPACT ON STATE AND POLITICAL SUBDIVISIONS (25 C.F.R. 151.10(e)).

Property tax amounts for 2011 on all of the Parcels comprising the Property, including estimates from 2010 records for some parcels, in the cumulative amount of \$28,605.54 are shown in the Property Tax Summary, Attached as Exhibit 8. The Band is not aware of any special assessments on the Property. The Band will provide evidence that all taxes and assessments have been paid prior to conveyance of title to the United States of America. Based on the total amount of property tax owed on the Property for the 2011 tax year, removal of the Property from the tax rolls will eliminate approximately \$29,000.00 in annual tax revenue to the state and/or local taxing jurisdictions.

The Band consistently spends substantial portions of its annual budget in the communities located in the vicinity of Band lands. In 2011, the Band contracted with approximately 2,000 vendors for the variety of goods and services it needed. The substantial level of commercial activity and significant expenditure of tribal revenues by the Band provides direct economic benefit to local economies and local governments within the Band's Service Area. Due to the absence of a Band land base in Indiana, little of the Band's commercial activity and spending benefits the communities in the vicinity of the Property. Vastly increased spending by the Band government and its citizens in the Indiana portions of the Band's Service Area after the Property is taken into trust will boost local economies and increase the level of local government revenue. A variety of federal and state grant, contract, and other funds, including inter-governmental agreements between the Band and local governments, will also become available to offset any impacts to the local communities after the Property is taken into trust. For these reasons, the Band believes that transferring the Property into trust and the loss of property tax revenue will not result in adverse impacts on local governments or the State government that will not be fully mitigated by increased revenues generated by new commercial activity and spending by the Band in the vicinity of the Property.

The State of Indiana and the local jurisdictions around the Property will be partially relieved of the burden of providing law enforcement services for the Property. The Pokagon Band has a fully-staffed and fully-equipped Police Department that patrols all

Pokagon Band of Potawatomi Indians, Michigan and Indiana

Application to Acquire Land In Trust (South Bend, Indiana Consolidation Site)

Band lands, including the Property. When the Property is taken into trust, the Police Department will exercise full jurisdiction over the Subject Property. The Band currently has cross-deputization law enforcement agreements with Berrien County, Cass County, and Van Buren County in Michigan, which allows these jurisdictions to share enforcement personnel and resources in the Michigan portions of the Band's Service Area. The Band's Police Department has had discussions with local law enforcement authorities in the Indiana portion of the Band's Service Area, including St. Joseph County, Indiana, regarding entering into similar law enforcement agreements with those jurisdictions. These cooperative efforts will relieve the local governments around and near the Property from the financial burden of providing law enforcement services, thus off-setting the loss of tax revenue in those jurisdictions when the Property is taken into trust.

The Band receives a variety of federal contract and grant funds to assist it in fulfilling its governmental responsibilities related to Pokagon land, including activities such as road improvements under the Indian Reservation Roads Program and infrastructure development through block grants under the U.S. Department of Housing and Urban Development – Indian Community Development program. The Band will continue to review its funding needs and will pursue federal funds related to the Property as needed. Any such additional funding will provide direct and indirect benefits to the local communities around and near the Property.

VI. POTENTIAL JURISDICTIONAL PROBLEMS AND LAND USE CONFLICTS (25 C.F.R. 151.10(f)).

A. Potential Jurisdictional Problems.

The Band does not believe that any jurisdictional problems with the State of Indiana or any of its political subdivisions will result from the transfer of the Property into trust. Criminal jurisdiction will be shared over the Property between the Band, the State and the federal government. The Band has an independent judiciary, the Pokagon Band Tribal Court, which was established by the Pokagon Band Constitution. The Tribal Court is fully prepared to hear all criminal and civil matters within the Band's jurisdiction regarding activities on or related to the Property. Indiana is not a Public Law 280 state. Consequently, the State and its political subdivisions do not have civil or criminal law enforcement powers over Indians for crimes that may occur on the Property after it is taken into trust. Primary law enforcement services will be provided by the Pokagon Band Police Department. The Pokagon Band Police Department has been working to develop good lines of communication and cooperative relationships with Indiana state and local law enforcement authorities. The Pokagon Band Police Department anticipates

Pokagon Band of Potawatomi Indians, Michigan and Indiana

Application to Acquire Land In Trust (South Bend, Indiana Consolidation Site)

that the Band will eventually enter into cross-deputization agreements with the Indiana police agencies that exercise jurisdiction in the vicinity of the Property, similar to the Band's existing cross-deputization agreements with the BIA and three Michigan county sheriff's departments.

B. Potential Land Use Conflicts.

The Band is not aware of any potential land use conflicts that may arise from the Property being taken into trust and the planned development of the Property. As indicated in Section IV and in accordance with the requirements of Article IV of the Pokagon Band Constitution, Exhibit 7, the Band has been engaged in land use master planning for all tribal land holdings, including the Subject Property in accordance with the Pokagon Band Land Use and Conservation Code, attached as Exhibit 9. In 2011, the Band enacted a "Land Use and Conservation Code" in order to fulfill the requirements of Article IV of the Pokagon Band Constitution and to facilitate the creation of a "Long Term Land Acquisition and Development Plan" that would govern Band decisions regarding additions to the tribal land base and development activities on tribal land. Based on the land use master planning process and the recommendations of the Pokagon Band Land Use Board, the Tribal Council made the following classifications of the seventeen parcels of land that comprise the Property:

1. Commercial. Parcel Nos. 3a (the portion of parcel 3 that lies to the west of the electric power easement), 11, 12, 13a (a lesser portion of parcel 13 that is subject to a lease involving a commercial antennae tower located on the parcel), 14, 15, 16, and 17.
2. Non-Commercial. Parcel Nos. 1, 2, 3b (the portion of parcel 3 that lies to the east of the electric power easement that runs in a north-south direction through parcel 3), 4, 5, 6, 7, 8, 9, 10 and 13b (the greater portion of parcel 13 that is not subject to a lease).

The Band enacted a Health, Environmental Protection and Building Codes Act "Building Codes Act") in 2002 and enacted comprehensive amendments to the Building Codes Act in 2010. The Building Codes Act established a regulatory framework that governs sanitation, activities affecting the environment, and construction on Band trust lands. This body of regulatory standards and enforcement mechanisms will minimize and mitigate potential land use conflicts that may arise when the Property is taken into trust. The Band is committed to fulfilling all of its governmental responsibilities for regulating the use and development of the Property.

Pokagon Band of Potawatomi Indians, Michigan and Indiana

Application to Acquire Land In Trust (South Bend, Indiana Consolidation Site)

The Band carefully chose the parcels that comprise the Property to comply with the terms of the MOU and to fulfill the Band's needs without causing any significant impact on the environment. The Property is zoned SF-1 (Single Family Residential) under the Municipal Code of the City of South Bend, which includes as permitted uses single family dwellings, two-family dwellings, governmental use, public facilities. See Section 21-02.02, South Bend Municipal Code. Although the SF-1 zoning designation does not include commercial development, as stated above in Section IV, the City of South Bend Comprehensive Plan and the St. Joseph County – South Bend Comprehensive Plan recognize the economic development potential of the Property by identifying the area in which the Property is located as a growth area and the intersection of State Road 23 and U.S. Highway 31/20 as a regional commercial node.

The Band has been engaged in ongoing efforts to foster an open, constructive relationship with officials in local jurisdictions in and around the Property. The Band will continue to pursue cooperative relationships with adjacent zoning jurisdictions to minimize any possible land use conflicts. The Band has excellent relationships with the communities and local governments surrounding its three land consolidation sites in Michigan and expects to develop and maintain a similar relationship with the City of South Bend and the local communities and governments in the vicinity of the South Bend consolidation site.

As a result of the Band's enactment of law and development of regulatory programs and its efforts to develop cooperative agreements with the local governments in the vicinity of the Property, the Band does not anticipate any jurisdictional problems resulting from the Secretary's action to take the Property into trust.

VII. ADDITIONAL BIA RESPONSIBILITIES (25 C.F.R. 151.10(g)).

The Band does not expect that the trust acquisition of the Property will result in any significant additional BIA responsibilities. The Band manages and provides a variety of programs and services to its trust land consolidation sites in Michigan with minimal involvement, if any, from the BIA.

The development of Band governmental offices, housing and community facilities and related infrastructure may involve, to some extent, federal programs, contracting, and compacting. However, the Band does not anticipate that its plans to develop the Property and serve its citizens that will reside on and near the Property will require any significant involvement by the BIA. The Property has no forestry or mineral resources that would require BIA management. Any leases, rights-of-way, or other transactions that may require Secretarial approval under federal law are expected to be few in number.

Pokagon Band of Potawatomi Indians, Michigan and Indiana

**Application to Acquire Land In Trust
(South Bend, Indiana Consolidation Site)**

Consequently, the Band has no reason to expect that the BIA will experience any meaningful increase in its responsibilities as a result of the transfer of the Property into trust. The Band believes that the BIA is adequately equipped without any increase in funding or staffing levels to discharge any modest additional responsibilities that may result from the acquisition of the Property into trust.

VIII. COMPLIANCE WITH NEPA (516 DM 6, Appendix 4), NHPA, AND CERCLA (602 DM 2).

A. NEPA Compliance.

The Band will cooperate with and assist the BIA as needed regarding the preparation of an Environmental Impact Statement in order to ensure that all reasonably foreseeable environmental impacts from the action of having the Subject Property taken into trust are identified and fully assessed and mitigated. The Band will coordinate with the BIA regarding all aspects of NEPA compliance, including the publication of the Notice of Intent at the earliest opportunity and the engagement of qualified environmental consultants to assist the BIA with the preparation of an Environmental Impact Statement.

B. NHPA Compliance.

The Band is not aware of any historic properties located on or near the Property that would qualify for inclusion on the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. § 470 *et seq.*). The Band, including its Tribal Historic Preservation Office, will assist the BIA with its efforts to consult and coordinate with the Indiana State Historic Preservation Office to determine if there may be any historic properties or archaeological resources located on or adjacent to the Property that may qualify for inclusion on the National Register of Historic Places. In addition, if there is any indication that the Band's development plans for the Property have the potential to cause effects to historic properties or archaeological resources that may be located on or adjacent to the Property, the Band will comply fully with applicable federal law, including 36 C.F.R. §§ 800.13.

C. CERCLA compliance.

The Band engaged a qualified private contractor to conduct Phase I Environmental Site Assessments ("ESA") on each of the seventeen parcels of land that comprise the Subject Property. Copies of the Phase I ESA's for each of the seventeen parcels and Limited Phase II ESA's for Parcels 4, 6, and 9 are attached hereto and marked as Exhibit 10.

Pokagon Band of Potawatomi Indians, Michigan and Indiana

**Application to Acquire Land In Trust
(South Bend, Indiana Consolidation Site)**

IX. COMPLIANCE WITH THE IGRA (25 U.S.C. § 2701 *et seq.*).

The IGRA contains a general prohibition against gaming on lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988 (so called “after acquired lands”). See 25 U.S.C. §2719(a). The IGRA also provides an exemption from the prohibition against gaming on after acquired lands for “restored lands”, which are lands that are taken into trust as part of “the restoration of lands for an Indian tribe that is restored to Federal recognition.” See 25 U.S.C § 2719(b)(1)(B)(iii). Pursuant to the Pokagon Restoration Act, the Band qualifies as an Indian tribe that has been “restored to federal recognition”. See Solicitor’s Opinion, Exhibit 6, at page 7 and MOU, Exhibit 2, at paragraph 3. As noted in paragraph 3 of the MOU, lands located in the vicinity of one of the four consolidation sites, such as the Property, when taken into trust for the Band pursuant to the Pokagon Restoration Act are considered “restored lands” within the meaning of Section 20 of the IGRA, 25 U.S.C. § 2719. See also the Solicitor’s Opinion, Exhibit 6, at pages 7 and 8. As stated above, IGRA exempts “restored lands” from the general prohibition against gaming on after acquired lands.

X. OFF-RESERVATION ACQUISITIONS (25 C.F.R § 151.11).

The Band maintains the position that trust acquisition of the Property (i) is a mandated acquisition under the Restoration Act, and (ii) should be treated as an “on-reservation” acquisition and should not be subject to the requirements of 25 C.F.R. § 151.11(b) and (c). Pursuant to the Restoration Act and the MOU, trust acquisition of the Property is part of the federally contemplated and intended re-establishment of the Band’s reservation trust land base. In addressing in this Application the criteria for off-reservation acquisitions as set forth in 25 C.F.R. § 151.11, the Band does not waive any contention that the trust acquisition of the Property should be treated as an on-reservation acquisition or any contention that, pursuant to Section 6 of the Pokagon Restoration Act (25 U.S.C. § 1300j-5), the Secretary should process this trust land Application as a mandatory acquisition. However, pursuant to the MOU the Band is submitting this Application in the form set forth in 25 C.F.R. Part 151, and the Band is confident that this Application meets all criteria set forth in 25 C.F.R. Part 151, regardless of whether the Property is treated as an “on reservation” or “off reservation” acquisition. The reasons supporting the Band’s position that this Application should be treated as an on-reservation acquisition are set forth below in this Section.

A. Consideration of the location of the land relative to state boundaries, and its distance from the boundaries of the tribe’s reservation (25 C.F.R. § 151.11(b)).

Pokagon Band of Potawatomi Indians, Michigan and Indiana

**Application to Acquire Land In Trust
(South Bend, Indiana Consolidation Site)**

The distance from the Jones parcel (#10) on the Property to the Michigan border is 8 miles. The distance from the Jones Parcel to the southernmost parcel at the Dowagiac consolidation site (the Branch Parcel) is 20.22 miles.⁵

25 U.S.C. § 151.11(b) provides in relevant part: "... as the distance between the tribe's reservation and the land to be acquired increases, the Secretary shall give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition. The Secretary shall give greater weight to the concerns raised pursuant to paragraph (d) of this section." There are two reasons why this additional scrutiny should not apply to this trust acquisition. First, consideration of the location of the Property relative to the Michigan border would be relevant only in the circumstance where the Band was applying to have land taken into trust in a state where the Band is not federally recognized, which is not the case. Second, the Property is, pursuant to Section 3 of the MOU and 25 C.F.R. § 151.2(h), a tribal consolidation area. Pursuant to 25 C.F.R. § 151.3(a)(1), tribal consolidation areas are treated similar to on-reservation acquisitions.

B. Where land is being acquired for business purposes, the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use (25 C.F.R. § 151. 11 (c)).

As noted above, only part of the Property (Parcel 3) will be used for commercial purposes. The Band intends to develop the Gaming Project on Parcel 3 to pay for the land acquisition costs of the Property, the development and construction of residential housing and governmental buildings on the Property, and the provisions of governmental services to Band members. The Band currently operates two gaming facilities through the Pokagon Gaming Authority: the Four Winds Casino Resort in New Buffalo, Michigan, and the Four Winds Casino in Hartford, Michigan. This section of the Application describes the demographic and competitive environment for the Gaming Project and the intended scope of the Project.

1. Demographic and Competitive Environment.

- a. *Market.* The Property on which the Gaming Project will be developed is located within the City of South Bend. According to a study published by the South Bend Visitor's Bureau, a total of 4.1 million people visited South Bend in 2009, with an additional 1.7 million people passing through. The Gaming Project will have access to almost 620,000 people within 25 linear miles, which includes the cities of South Bend, Mishawaka, Elkhart, Goshen and La Porte. Over 1.3 million people live within a 50-mile radius

⁵ Calculation made using the Google Earth ruler application.

Pokagon Band of Potawatomi Indians, Michigan and Indiana

Application to Acquire Land In Trust (South Bend, Indiana Consolidation Site)

and one-hour drive of the Property in and around the cities of Portage, Valparaiso and Michigan City, Indiana. There are more than 11.8 million people within a 100-mile radius and a two-hour drive of the Property, which includes the cities of Fort Wayne, Hammond, and Gary in Indiana, Grand Rapids, Kalamazoo, Portage and Battle Creek in Michigan, and Chicago, Joliet and Kankakee in Illinois.

- b. *Transportation.*** As stated above, the Property is located at the intersection of U.S. Highway 31/20 and Indiana State Road 23. From the Property, State Road 23 travels northeast several miles to downtown South Bend. U.S. Highway 31/20 provides direct access to other major transportation routes and population centers in the region, including U.S. Highways 6,12, 24 and 30 and Interstates 65, 69, 70, 74, 80, 90 and 94. A new U.S. Highway 31/20 upgrade is currently under construction, which will significantly improve traffic capacity along the north-south corridor between Indianapolis and South Bend. The project is scheduled to be completed in phases between 2013 and 2015.
- c. *Income.*** Although average household income levels in the South Bend area are lower than the national average of \$71,000, median household income levels in the broader region are higher than the national median of \$52,795. Over the next five years, average household income is expected to increase between 4.7 and 6.1 percent. Overall, this indicates a reasonably strong middle class in the regional market to support the Gaming Project.
- d. *Employment.*** The Property is located in St. Joseph County. According to statistics provided by the U.S. Department of Labor, Bureau of Labor Statistics, St. Joseph County had a labor force of 127,457 in 2010, with an average annual unemployment rate of 11.5 percent. The labor force in 2009 was 128,404 and an annual average unemployment rate of 11.2 percent.
- e. *Competition.*** There are three existing gaming operations located within a 0 – 50-mile radius and a one-hour drive of the Property, including the two existing Four Winds properties in New Buffalo, Michigan and Hartford, Michigan, as well as the Blue Chip Casino, Hotel & Spa in Michigan City. Combined, the three casinos have almost 5,400 slot machines and more than 140 table games. There are another eight existing gaming operations located within a 50 – 100-mile radius and a two-hour drive of the Property. These operations house another 16,400 slot machines and 550 table games.

Pokagon Band of Potawatomi Indians, Michigan and Indiana

Application to Acquire Land In Trust (South Bend, Indiana Consolidation Site)

Combined, the eleven casinos that will comprise the primary competition for the Gaming Project contain a total of approximately 21,800 slot machines and 690 table games.

2. Proposed Facility. Based on its analysis of the market, the Band currently intends to develop a facility roughly comparable in scope to the Four Winds Casino Resort in New Buffalo. The table below sets out the currently anticipated development scope of the proposed Gaming Project in South Bend.⁶

KEY GAMING PROJECT SPECIFICATIONS

Slot Machines	3,000
Table Games	75
Hotel Rooms	500
F&B Outlets	10
Meeting/Banquet Space (sq.ft.)	20,000
Garage Parking Spaces	3,500
Surface Parking Spaces	500
Employees	2,000
Gaming Floor Space (sq.ft.)	216,500

The Gaming Project will be very similar in size, quality, and amenities to the Band's existing Four Winds Casino Resort in New Buffalo, Michigan. By way of comparison, the planned Gaming Project and the existing Four Winds New Buffalo facility have identical or nearly identical specifications regarding square footage of gaming floor space, number of slot machines and table games, F&B outlets, total parking spaces, and number of employees.⁷

3. Anticipated Economic Benefits. The Band expects that the Gaming Project will have a positive economic impact for the Band as well as non-native citizens, vendors and the regional South Bend, Indiana economy.

- a. *New Employment.* With the creation of approximately 2,000 new jobs, the Gaming Project will provide abundant new employment opportunities for

⁶ The Band expects that the precise details of development of the Gaming Project development will be refined and finalized during the scoping process for preparation of the Environmental Impact Statement.

⁷ An expansion project is currently underway at Four Winds New Buffalo, which will increase the number of hotel rooms and F&B outlets and will add a new multi-purpose event center. As a consequence, the number of employees needed for the Four Winds New Buffalo facility will also increase. Completion of the expansion project is expected in July of 2012.

Pokagon Band of Potawatomi Indians, Michigan and Indiana

**Application to Acquire Land In Trust
(South Bend, Indiana Consolidation Site)**

Band citizens and non-natives living in South Bend and the surrounding communities. Due to the significant number of new jobs, the Band expects that non-natives will fill the vast majority of the new jobs. Currently, Four Winds New Buffalo employs 129 Band citizens and Four Winds Hartford employs 77 Band citizens, which represents a combined average of nearly 11% Band citizen employment. Of the 206 total Band citizen employees, 58 are in a supervisory or management position. Also, since 2007 when the Band commenced gaming, there have been 240 instances where Band citizen employees have been promoted to a supervisory position or transferred to another position with higher pay. These existing jobs created by the Pokagon Band have paid a total of over \$23 million in salary and benefits, which has raised the standard of living for hundreds of Pokagon Band families. The Gaming Project, along with the Band's governmental facilities to be located on the Property, is expected to provide similar employment opportunities and economic benefits to Band citizens and non-natives living in the South Bend area.

- b. Payments to Vendors.* The Band expects that the Gaming Project will have a positive impact on local businesses and suppliers in the area of the Gaming Project. For example, excluding project development and construction costs, the Band's existing Four Winds properties have paid an approximate total of \$466 million in payments to over 1,900 vendors over the last five years, of which approximately 341 vendors that are based in Indiana have collected \$24.5 million.

XI. EVIDENCE OF TITLE (25 C.F.R. § 151.13).

For each parcel included in the Property the following title evidence is attached:

- A.** Copies of the deeds conveying the Property to the WJC Holdings, LLC, an Indiana limited liability company that is wholly owned by the Pokagon Band. (Exhibit 11A, Jacobs); (Exhibit 11B, Crady); (Exhibit 11C, Bill Marvin); (Exhibit 11D, Miltenberger); (Exhibit 11E, Santana); (Exhibit 11F, Jurgonski); (Exhibit 11G, Sedam); (Exhibit 11H, Horrall); (Exhibit 11I, Hutchins); (Exhibit 11J, Jones); (Exhibit 11K, Cataldo); (Exhibit 11L, Haverstock); (Exhibit 11M, Geyer); (Exhibit 11N, Shafer); (Exhibit 11O, Jantzi); (Exhibit 11P, Bova); and (Exhibit 11Q, Gary Marvin).
- B.** Title insurance commitments for policies to be issued on ALTA U.S. Policy Form (revised 9/28/91) that will name the United States in trust for the Pokagon Band of

Pokagon Band of Potawatomi Indians, Michigan and Indiana

**Application to Acquire Land In Trust
(South Bend, Indiana Consolidation Site)**

Potawatomi Indians as the insured party (Exhibit 12A, Jacobs); (Exhibit 12B, Crady); (Exhibit 12C, Bill Marvin); (Exhibit 12D, Miltenberger); (Exhibit 12E, Santana); (Exhibit 12F, Jurgonski); (Exhibit 12G, Sedam); (Exhibit 12H, Horrall); (Exhibit 12I, Hutchins); (Exhibit 12J, Jones); (Exhibit 12K, Cataldo); (Exhibit 12L, Haverstock); (Exhibit 12M, Geyer); (Exhibit 12N, Shafer); (Exhibit 12O, Jantzi); (Exhibit 12P, Bova); and (Exhibit 12Q, Gary Marvin).

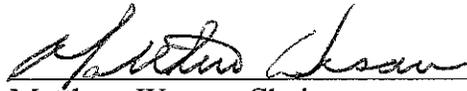
XII. DRAFT DEEDS.

Draft warranty deeds from WJC Holdings, LLC to the United States of America in trust for the Pokagon Band of Potawatomi Indians conveying the seventeen parcels are attached. (Exhibits 13A – 13Q).

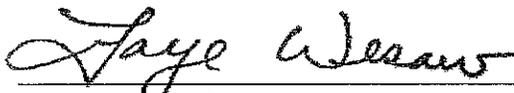
Date: May 14, 2012

Respectfully submitted,

**POKAGON BAND OF POTAWATOMI
INDIANS**



Matthew Wesaw, Chairman



Faye Wesaw, Secretary

**POKAGON BAND OF POTAWATOMI INDIANS
MICHIGAN AND INDIANA**

**APPLICATION TO ACQUIRE LAND IN TRUST
(SOUTH BEND, INDIANA CONSOLIDATION SITE)**

Submitted to the Bureau of Indian Affairs

May 14, 2012

Amended March 5, 2015

Pokagon Band of Potawatomi Indians, Michigan and Indiana

**Application To Acquire Land In Trust
(South Bend, Indiana Consolidation Site)**

TABLE OF CONTENTS

I. THE PROPERTY4

A. Location and Title Status 4

B. Current Use 5

II. STATUTORY AUTHORITY FOR THE ACQUISITION OF THE PROPERTY (25 C.F.R. § 151.10(A)) 5

III. THE NEED FOR ADDITIONAL LAND (25 C.F.R. § 151.10(B))..... 6

A. Background Regarding the Band’s Efforts to Fulfill its Governmental Responsibilities in the State of Indiana 6

B. Specific Need for Trust Acquisition of the Subject Property..... 8

IV. PURPOSES FOR WHICH THE SUBJECT PROPERTY WILL BE USED (25 C.F.R. § 151.10(C))..... 10

V. IMPACT ON STATE AND POLITICAL SUBDIVISIONS (25 C.F.R. 151.10(E)) 11

VI. POTENTIAL JURISDICTIONAL PROBLEMS AND LAND USE CONFLICTS (25 C.F.R. 151.10(F)) 12

A. Potential Jurisdictional Problems 12

B. Potential Land Use Conflicts 13

VII. ADDITIONAL BIA RESPONSIBILITIES (25 C.F.R. 151.10(G))..... 14

VIII. COMPLIANCE WITH NEPA (516 DM 6, APPENDIX 4), NHPA, AND CERCLA (602 DM 2) 15

A. NEPA Compliance 15

B. NHPA Compliance..... 15

C. CERCLA compliance 15

IX. COMPLIANCE WITH THE IGRA (25 U.S.C. § 2701 *ET SEQ.*)..... 16

X. OFF-RESERVATION ACQUISITIONS (25 C.F.R § 151.11) 16

Pokagon Band of Potawatomi Indians, Michigan and Indiana

**Application to Acquire Land In Trust (amended March 5, 2015)
(South Bend, Indiana Consolidation Site)**

A. Consideration of the location of the land relative to state boundaries, and its distance from the boundaries of the tribe’s reservation (25 C.F.R. § 151. 11(b)) 16

B. Where land is being acquired for business purposes, the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use (25 C.F.R. § 151. 11 (c)) 17

 1. Demographic and Competitive Environment17

 2. Proposed Facility.....19

 3. Anticipated Economic Benefits.....19

XI. EVIDENCE OF TITLE (25 C.F.R. § 151.13)20

XII. DRAFT DEEDS21

POKAGON BAND OF POTAWATOMI INDIANS, MICHIGAN AND INDIANA

APPLICATION TO ACQUIRE LAND IN TRUST (SOUTH BEND, INDIANA CONSOLIDATION SITE)

INTRODUCTION

The Pokagon Band of Potawatomi Indians, Michigan and Indiana, a federally-recognized Indian tribe (the “Band”), acting by and through its Tribal Council (the “Council”), requests that the Secretary of the Interior accept in trust status for the benefit of the Pokagon Band of Potawatomi Indians certain real property consisting of eighteen parcels of land with a total acreage of 165.81, more or less, which are located in St. Joseph County, Indiana, as more specifically described below (the “Property”). The Band submits this application (“Application”) pursuant to Public Law 103-323, September 21, 1994, 108 Stat. 2152, as codified at 25 U.S.C. § 1300j – 1300j-8 (“An Act to Restore Federal Services to the Pokagon Band of Potawatomi Indians”, hereinafter referred to as the “Pokagon Restoration Act”, Exhibit 1), the January 11, 1999 Memorandum of Understanding between the Pokagon Band and the Secretary of the United States Department of the Interior (the “MOU”, Exhibit 2) and as authorized in Tribal Council Resolution No. 11-04-25-01, adopted April 25, 2012, Exhibit 3.

Pursuant to the Restoration Act and the MOU, the Band is continuing to reestablish its reservation homelands in consolidation sites located in the vicinity of Dowagiac, Michigan; New Buffalo, Michigan; Hartford, Michigan; and South Bend, Indiana. The Band is federally-recognized as an Indian tribe in the state of Indiana and remains the only federally-recognized Indian tribe in Indiana. See Sections 1, 2, and 7, Pokagon Restoration Act; and List of “Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs”, 75 Fed.Reg. 60810-60814 (Oct. 1, 2010), as supplemented by 75 Fed.Reg. 66124 (Oct. 27, 2011). This Application is for property in South Bend, which will be used as the initial and primary site in South Bend for residential, governmental and economic development purposes, with a gaming resort being the center of the economic development efforts. This Application is thus for non-gaming and gaming purposes.

The Band currently has no trust land in the State of Indiana. The following brief history of the Band’s efforts over more than ten years to reestablish reservation homelands in Indiana provides background and context that should be helpful to the BIA’s consideration of this Application. A trust land application that the Band filed with the Bureau of Indian Affairs (“BIA” or “Bureau”) in 2001 included 1,460 acres located in St. Joseph County and LaPorte County, Indiana (the “North Liberty” site), 1,434 acres located in Cass County, Michigan, and 775 acres located in Van Buren County, Michigan. In February of 2002, the Band amended the trust land application to remove the North Liberty site in order to enroll 1,147 acres of the North Liberty site in a Wetland Reserve Program administered by the U.S. Department of Agriculture, Natural Resources Conservation Service. The Band determined that the best use of the 1,147 acre-portion of

Pokagon Band of Potawatomi Indians, Michigan and Indiana

Application to Acquire Land In Trust (amended March 5, 2015) (South Bend, Indiana Consolidation Site)

the North Liberty site would be to use it to help restore a portion of the Grand Kankakee Marsh in northwestern Indiana, which would serve important Band environmental objectives. In 2007, the Band submitted a trust land application for the 313-acre portion of the North Liberty site that did not qualify for inclusion in the Wetland Reserve Program. In 2009, the Band withdrew its trust land application for the North Liberty acreage upon concluding that the site was not well-suited to achieve the Band's housing, economic development, and other governmental objectives in the State of Indiana. In 2011, the Band submitted a trust land application for housing, governmental offices, light commercial development, and other non-gaming purposes for fifteen parcels of land with a total of 193.16 acres located in and near South Bend, Indiana. Thereafter, the Band began a planning process for a casino it intended to develop on land located in Elkhart County, Indiana. The Band eventually decided to abandon the Elkhart casino plans out of concern that the Elkhart County location might not be considered to be part of the South Bend consolidation site and also because the Band did not consider the Elkhart County site to be a suitable location for a casino. For the reasons explained in Section X.B of this Application, the Band determined that the land included in its 2011 trust land application would be a suitable location for the planned casino. This trust land Application includes fourteen of the fifteen parcels of land that were included in the 2011 application along with three additional contiguous parcels of land that the Band purchased this year. As a result, concurrently with its submission of this Application, the Band is withdrawing its pending 2011 trust land application for the South Bend lands.

The Band's current trust lands are limited to a 674-acre site located within the New Buffalo consolidation site in Berrien County, Michigan (taken into trust on January 27, 2006), 775 acres of land located within the Hartford consolidation site in Van Buren County, Michigan (taken into trust on June 10, 2008), and 1,434 acres of land located within the Dowagiac consolidation site (taken into trust on June 10, 2008), for a total of approximately 2,883 acres of trust land. The Pokagon Band and the Secretary of the Interior agreed in the MOU that a trust land base of up to 4,700 acres would be "commensurate with the anticipated future needs of the Band". Exhibit 2 at paragraph 3. The Band purchased the Property in fee in reliance on the MOU as the focus of its planned South Bend trust land consolidation site.

By acquiring the Property in trust for the Band, the Secretary of the United States Department of the Interior ("Secretary") will continue to carry out the mandate to establish in trust the homeland consolidation sites for the Band contemplated by the Restoration Act and the MOU. The Band needs the Property to establish an inalienable tribal land base in Indiana. A land base located in Indiana in proximity to the Band's Indiana residents will vastly improve the Band's ability to fulfill its governmental responsibilities to its citizens residing in Indiana, and will significantly improve the

Pokagon Band of Potawatomi Indians, Michigan and Indiana

Application to Acquire Land In Trust (amended March 5, 2015) (South Bend, Indiana Consolidation Site)

Band's ability to provide for the welfare of all of the Band's citizens¹, preserve and promote Band culture and traditions, and pursue the goals of self-governance and self-determination, which are critical to ensuring that the Pokagon Band of Potawatomi Indians will endure as a sovereign tribal nation.

The Property will also be used by the Band for economic development purposes to produce revenue to pay for the land acquisition costs of the Property, the development and construction of residential housing and governmental buildings on the Property, and the provision of governmental services. The Band will develop a gaming resort operation (the "Gaming Project") on the Property. Consistent with the findings of Congress expressed in the Indian Gaming Regulatory Act of 1988 ("IGRA", Pub. L. 100-497, U.S.C. § 2701 *et seq.*) the Gaming Project will serve a principal goal of Federal Indian policy by promoting the Band's tribal economic development, tribal self-sufficiency, and a strong tribal government. 25 U.S.C. § 2701(4). There is a great need among Band citizens and other persons that reside in the vicinity of the Property for the employment and career opportunities that will be produced by the Gaming Project. The Gaming Project is projected to create approximately 2,000 permanent jobs with good pay and benefits in a region that suffers from chronically high unemployment, especially among Band citizens. The revenue sources generated by the Gaming Project will be used, consistent with the purposes set forth in the IGRA, 25 U.S.C. § 2710(b)(2)(B), to help to secure a stable economic future for the Band and its citizens, to continue the Band's efforts to restore and develop the tribal land base in the consolidation sites, to fund Band governmental institutions and to fund essential tribal government programs and services for Band citizens. The Gaming Project will also support and enhance local and regional economic development efforts by non-native governments.

Although the Band does not presently have a Class III gaming compact with the State of Indiana, the Band anticipates that Indiana will engage in good-faith negotiations with the Band for a Class III gaming compact, which would allow the Band to develop the Gaming Project as a Class III gaming facility. If the Band is unable to obtain a Class III gaming compact with Indiana by the time the BIA issues a decision on this Application, the Band expects it will proceed with the Gaming Project by initially developing a Class II gaming facility. A description of the Gaming Project and the expected economic benefits of the Gaming Project are provided in Section X(B) below.

The Pokagon Restoration Act mandates that the Secretary acquire trust lands for the Band.² The Act does not, however, specify where such lands should be located or how

¹ The term "citizen" is used herein to refer to enrolled members of the Band.

² Congress did not allocate any funds for the Secretary to carry out the mandate in the Restoration Act to restore the Band's land base. The acquisition of the lands that have been

Pokagon Band of Potawatomi Indians, Michigan and Indiana

**Application to Acquire Land In Trust (amended March 5, 2015)
(South Bend, Indiana Consolidation Site)**

much land should be acquired. The Band and the Department of the Interior agreed in the MOU that a trust land base of up to 4,700 acres “is commensurate with anticipated future needs of the Band” and that the Band would concentrate its land holdings in four “consolidation sites,” consistent with 25 C.F.R. § 151.3(a)(1). All of the consolidation sites described in the MOU lie within the Band’s ten-county service area (“Service Area”) located in southwest Michigan and northern Indiana, as provided in Section 7 of the Pokagon Restoration Act (25 U.S.C. § 1300j-6). The Property is located within the South Bend, Indiana consolidation site identified in paragraph 3 of the MOU. Exhibit 2.

The Band agreed in the MOU that any applications for trust acquisitions pursuant to the Pokagon Restoration Act would be submitted in the form required by 25 C.F.R. Part 151. Accordingly, pursuant to the MOU, the factors described in 25 C.F.R. § 151.10 are fully addressed in this Application in order to provide all necessary information to assist the Secretary in making an informed decision on the Band’s Application for trust land.

I. THE PROPERTY.

A. Location and Title Status.

The Property consists of approximately 165.81 acres, and is located in the northwestern portion of the State of Indiana, within the municipal limits of the City of South Bend. South Bend, which is the county seat of St. Joseph County, has a population of 101,168 (2010 census), which represents a 9.4% decline in population since the 2000 census.

The Property consists of eighteen contiguous parcels of land, which are identified as follows by the grantor name: (1) Jacobs, 4.5 acres; (2) Crady, 10.24 acres; (3) Bill Marvin, 85.98 acres; (4) Miltenberger, 1.03 acres; (5) Santana, 0.78 acre; (6) Jurgonski, 1.7 acres; (7) Sedam, 3.28 acres; (8) Horrall, 1.33 acres; (9) Hutchins, 2.89 acres; (10) Jones, 1.63 acres; (11) Cataldo, 9.71 acres; (12) Haverstock, 10.63 acres; (13) Geyer, 20.7 acres; (14) Shafer, 6.64 acres; (15) Jantzi, 0.66 acre; (16) Bova, 1.71 acres; (17) Gary Marvin, 1.42 acres; and Reliance, 0.98 acre. ALTA/ACSM Land Title Surveys, including legal descriptions, of each of the eighteen parcels, which were prepared by Wightman & Associates, Inc. are attached hereto³. (Exhibit 4A, Jacobs, “Parcel 2”); (Exhibit 4B, Crady, “Parcel 3”); (Exhibit 4C, Bill Marvin, “Parcel 4”); (Exhibit 4D,

taken into trust to date was accomplished by the Band through private loans from the Band’s former gaming management contractor.

³ The ALTA/ACSM Land Title Surveys identify each parcel of land by numbers that the Pokagon Band assigned during the land acquisition process. The Band did not purchase all of the parcels of land that were assigned numbers and, as a result, the parcel numbers used to identify the parcels in Exhibits 4A – 4R are not in a continuous sequence.

Pokagon Band of Potawatomi Indians, Michigan and Indiana

Application to Acquire Land In Trust (amended March 5, 2015) (South Bend, Indiana Consolidation Site)

Miltenberger, “Parcel 5”); (Exhibit 4E, Santana, “Parcel 6”); (Exhibit 4F, Jurgonski, “Parcel 7”); (Exhibit 4G, Sedam, “Parcel 8”); (Exhibit 4H, Horrall, “Parcel 9”); (Exhibit 4I, Hutchins, “Parcel 10”); (Exhibit 4J, Jones, “Parcel 11”); (Exhibit 4K, Cataldo, “Parcel 14”); (Exhibit 4L, Haverstock, “Parcel 16”); (Exhibit 4M, Geyer, “Parcel 17”); (Exhibit 4N, Shafer, “Parcel 23”); (Exhibit 4O, Jantzi, “Parcel 24”); (Exhibit 4P, Bova, “Parcel 43”); (Exhibit 4Q, Gary Marvin, “Parcel 49”); and Exhibit 4R, Reliance). Attached hereto is a map depicting the general location of the Property (Exhibit 5A) and a graphic representation of the Property depicting areas of planned development (Exhibit 5B).

B. Current Use.

These particular parcels of land comprising the Property were selected and assembled to meet the goals of the Pokagon Restoration Act. The Band’s selection of these parcels was also intended to fulfill the Band’s obligations under the MOU concentrate its land acquisitions within the consolidation sites.

Land cover of the Property is dominated by undeveloped woodlands and open meadow with no active agricultural use and commercial use limited to an antennae tower on Parcel 13. See Exhibit 10-M. The Subject Property is bounded by Indiana State Road 23 on the northwest border, U.S. Highway 31/20 on the southwest border, and Locust Street on the east border. The topography of the property is characterized by valleys with intermittent stream flows and elevations that range from 840 feet above sea level (“ASL”) to approximately 733 feet ASL with an overall dip to the northwest. The soils on the Property are described as Coloma-Spinks-Oshtemo and Guilford-Maumee-Sparta associations soil, which the United States Department of Agriculture characterizes as possessing slight to moderate limitations for building site development. Observations of the Property made by qualified personnel in the Band’s Department of Natural Resources revealed the presence of deer, rabbit, squirrel, muskrat, and various common birds. There are five residential structures located on the Property, all of which are habitable.

II. STATUTORY AUTHORITY FOR THE ACQUISITION OF THE PROPERTY (25 C.F.R. § 151.10(a)).

The statutory authority for the acquisition of the Property is found in Section 6 of the Pokagon Restoration Act (25 U.S.C. § 1300j-5), Exhibit 1, which provides in relevant part: “The Secretary shall acquire real property for the Band. Any such real property shall be taken by the Secretary in the name of the United States in trust for the benefit of the Band and shall become part of the Band’s reservation.” See also page 2 of the Opinion of the Solicitor, U.S. Department of the Interior, September 19, 1997 (M-36991) (the “Solicitor’s Opinion”, Exhibit 6), which states that the Pokagon Restoration Act “mandates” that the Secretary of the Interior acquire land in trust for the Band. The

Pokagon Band of Potawatomi Indians, Michigan and Indiana

Application to Acquire Land In Trust (amended March 5, 2015) (South Bend, Indiana Consolidation Site)

Pokagon Restoration Act contains no language that would limit the Secretary's authority to acquire land in trust for the Band. As the Solicitor concluded in describing the Secretary's authority to acquire land in trust for the Band, "[t]here is no limitation or direction in the [Pokagon Restoration] Act as to where such lands should be located, or how much land should be acquired. See Solicitor's Opinion, Exhibit 6, at p. 2. A challenge to the constitutionality of the Pokagon Restoration Act, specifically including Section 6 of the Act (25 U.S.C. § 1300j-5), which authorizes the Secretary to acquire land in trust for the Band, was soundly rejected by the federal Court of Appeals for the District of Columbia Circuit in Taxpayers of Michigan Against Casinos (TOMAC) v. Norton, 433 F.3d 852, at 867 (D.C. Cir. 2006).

III. THE NEED FOR ADDITIONAL LAND (25 C.F.R. § 151.10(b)).

A. Background Regarding the Band's Efforts to Fulfill its Governmental Responsibilities in the State of Indiana.

The Band's current trust lands are located entirely in the State of Michigan. The Band has no trust land in the State of Indiana to assist it in restoring its status as a sovereign tribal nation and fulfilling its governmental responsibilities to its citizens that reside in the State of Indiana, which have been critical objectives for the Band since long before the enactment of the Pokagon Restoration Act. The Band cannot achieve these objectives without a permanent, inalienable land base in Indiana. These governmental objectives were at the heart of the Band's struggle to obtain reaffirmation by the United States of the Band's status as a sovereign, federally-recognized Indian tribe, which the United States finally provided in 1994 by enactment of the Pokagon Restoration Act. A brief description of the Band's efforts to restore the Band's status as a federally-recognized Indian tribe and to secure a reservation homeland will help to explain the Band's need for the Property to be taken into trust for the Band.

Prior to the formation of the United States, the Potawatomi Tribe, of which the Pokagon Band is a constituent part, occupied the area between Detroit and Chicago in southern Michigan, northern Indiana and northern Illinois. Various Potawatomi bands lived in villages throughout this territory, including the ancestral villages of the Pokagon Band located in the St. Joseph-Paw Paw River Valley in the southwest corner of Michigan's lower peninsula. These Potawatomi bands shared common bonds of kinship, commerce, culture, and geography. The Potawatomi villages in the St. Joseph River Valley were united behind the leadership of Leopold Pokagon in the negotiations that led to the 1833 Treaty of Chicago (the "Treaty"). As a result of the Treaty, a majority of the Potawatomi were removed from Michigan and Indiana. The Pokagon Band, as the Potawatomi villages in the St. Joseph River Valley came to be known, remained in Michigan and

Pokagon Band of Potawatomi Indians, Michigan and Indiana

Application to Acquire Land In Trust (amended March 5, 2015) (South Bend, Indiana Consolidation Site)

Indiana and was paid money in lieu of being given reservation land in the Indian territories out west under the terms of the Treaty.

In the years following the ratification of the Treaty, the Band was landless and had few of the resources needed for its support as it struggled with the enormous challenge of learning and adapting to farming and small-town commerce after its traditional subsistence economy and culture of hunting and fishing could no longer sustain the Band. Throughout this time, although the Band remained landless, it continued to maintain a tribal government, which enabled the Band to advocate for rights and benefits for its citizens, including the recognition of treaty rights and payments, and provided a structure that maintained the Band's sense of common identity and purpose.

The Band petitioned for reorganization and assistance pursuant to the Indian Reorganization Act of 1934. Although the legitimacy of the Band's petition was not at issue, the federal government made an administrative decision to decline to provide the benefits of the Indian Reorganization Act to the Band due to the poor financial condition of the federal government during the Great Depression. Consequently, the federal government never acquired land for the Band during the nineteenth and twentieth centuries and neglected its government-to-government relationship with the Band.

The Pokagon Restoration Act reaffirmed the government-to-government relationship between the Pokagon Band of Potawatomi Indians and the United States. Section 2 of the Pokagon Restoration Act, 25 U.S.C. § 1300j-1, Exhibit 1. See also the Solicitor's Opinion, Exhibit 6, at p. 4. In enacting the Pokagon Restoration Act, Congress made legislative findings that the Band is the political successor to the signatories of numerous treaties that ceded vast amounts of territory in the Band's ancestral homeland, the St. Joseph River Valley. The St. Joseph River Valley is located in southwestern Michigan and northern Indiana and lies partially within the Band's Service Area, which consists of the counties of Allegan, Berrien, Van Buren and Cass in the State of Michigan, and LaPorte, Saint Joseph, Elkhart, Starke, Marshall and Kosciusko in the State of Indiana. See Section 7 of the Pokagon Restoration Act, 25 U.S.C. § 1300j-6, Exhibit 1. The Property is located within the Band's Service Area, the South Bend consolidation site, and the Band's ancestral homeland in the St. Joseph River Valley.

The Pokagon Restoration Act confirmed that the Pokagon Band possessed all the attributes of tribal sovereignty recognized under federal law. The Band has determined that a critical foundation for preserving and strengthening its tribal sovereignty and culture is the restoration of the Band's land base. The importance of restoring a tribal land-base is emphasized in the Pokagon Band Constitution, which states in Article IV (Tribal Lands): "The Pokagon Band is dedicated to re-establishing a tribal land base." A copy of the Pokagon Band Constitution is attached as Exhibit 7. The Property is needed

Pokagon Band of Potawatomi Indians, Michigan and Indiana

Application to Acquire Land In Trust (amended March 5, 2015) (South Bend, Indiana Consolidation Site)

to further the goal of restoring the Band's land base in its homeland in the St. Joseph River Valley. The Property is also needed to consolidate tribal land ownership within the Band's Service Area, which, in the case of the Property, will facilitate the provision of tribal government services to Band citizens residing in or near the northern Indiana portion of the Band's Service Area. Until the Secretary provides the Band with an inalienable land base, the Band will be unable to properly fulfill its responsibilities as a tribal government and will be hindered in its effort to provide services, support and protection for the Band community in Indiana.

B. Specific Need for Trust Acquisition of the Subject Property.

Over the past three years, the Band has been engaged in land use master planning for all Band land holdings, including the Property, in accordance with the requirements of Article IV of the Pokagon Band Constitution as a means of addressing Band citizen concerns. The master planning process included several steps to identify the Band's current and future needs. First, basic site information was gathered about the Property and other Band lands, which included site environmental information and demographic and socio-economic information for the surrounding area. Second, two surveys were conducted to identify the needs of Band citizens with focus on the northern Indiana area. Third, inventories of Band citizen needs were compiled from Band government departments. Fourth, community meetings were held to collect Band citizen input on the development of tribal lands, which included two "charrette" style meetings to facilitate direct input regarding development options in the area of the South Bend consolidation site.

Four essential needs for the Band will be addressed by the requested transfer of the Property into trust:

1. An increased tribal land base and the first tribal land base in Indiana, which will provide suitable and healthy housing for a growing Band citizenship.

The Band has a substantial unmet housing need in Indiana, which presents the Band with significant ongoing challenges in addressing the basic needs of the Band's Indiana residents. Between December of 2010 and February of 2012, Band citizenship grew from 4338 to 4578. Over the last year, the number of Band citizens living in Indiana grew from 458 to 507, over a third of which live within a 10-mile radius of the Property. The median age for the Band population is approximately 23 years and approximately 40% of the Band's citizens are minors. The Band's Indiana citizens face a growing need for suitable housing. Many Band citizens, including Band elders and children, live in substandard housing and some Band citizens are homeless. The Property will establish the Band's first

Pokagon Band of Potawatomi Indians, Michigan and Indiana

Application to Acquire Land In Trust (amended March 5, 2015) (South Bend, Indiana Consolidation Site)

permanent suitable land base in Indiana to serve the growing needs of Band citizens.

2. The need for community-focused spaces.

The transfer of the Property into trust will also assist the Band in its goal of developing community focused spaces for its Indiana residents. The size of the Property is sufficiently large to provide the Band with the ability to develop community facilities in close proximity to Band citizen housing, which is particularly important for ensuring that Band elders will remain integrated in Band community life.

3. The need for a suitable location for the delivery of tribal government services to the Band's Indiana community.

The Property is also of sufficient size to provide space for the development of Band government offices, including health services and satellite office space for various other Band government programs and service agencies. There is an underserved and growing need among the Band's Indiana citizens for medical services, education, language training, and cultural enrichment. An at-risk population among Band citizens presents an urgent, underserved need for assisted living for elders and emergency shelters for victims of domestic violence.

4. The need for a suitable location for commercial development to provide economic and employment opportunities for the Band's South Bend area community.

The location of the Subject Property along State Road 23 and U.S. Highway 31/20 and within the South Bend city limits is an especially good location to develop the Gaming Project. The fact that there are no competitive gaming facilities located close to the Property helps ensure that the Gaming Project will be successful. The anticipated benefits of the Gaming Project to provide funds for paying for and developing the Property, restoring the Band's land base in the South Bend and other consolidation sites, funding tribal governmental institutions and services, promoting tribal economic development, as well as supporting area economic development and the operations of local government agencies and charities. Further expected economic benefits include providing vital economic resources for restoring and rebuilding tribal homelands for future generations, and providing critically needed employment and career opportunities to Band members and other Native Americans.

Pokagon Band of Potawatomi Indians, Michigan and Indiana

Application to Acquire Land In Trust (amended March 5, 2015)
(South Bend, Indiana Consolidation Site)

The land use master planning process strongly supports mixed-use development of the Property with residential, government, and commercial development. The proposed trust acquisition of the Property and the Band’s mixed-use development plans for the Property will address the specific unmet needs of Band citizens in the area of the South Bend consolidation site. Many of these needs cannot be adequately addressed unless the Property is taken into trust, which will provide access to resources under a variety of federal programs, including for example reservation housing programs available under the Native American Housing Assistance and Self-Determination Act of 1996 (“NAHASDA”, 25 U.S.C. § 4101 *et seq.*), contracting and compacting opportunities under the Indian Self-Determination and Education Assistance Act of 1975 (“ISDEAA”, 25 U.S.C. § 450 *et seq.*), and the Indian Reservation Roads program under the Safe, Accountable, Flexible and Efficient Transportation Equity Act – A Legacy for Users (“SAFETEA-LU”, 23 U.S.C. § 101 *et seq.*).

IV. PURPOSES FOR WHICH THE SUBJECT PROPERTY WILL BE USED
(25 C.F.R. § 151.10(c)).

The Band plans to develop housing, community spaces, and government office space on the Property as a mixed-use “tribal village” to facilitate the re-establishment of a distinct Pokagon community within Northern Indiana. The tribal village concept will revive aspects of traditional Pokagon social, political, and economic structure and organization in the State of Indiana. The tribal village development concept includes the following components or uses on the Property: a multi-purpose facility to serve as a community gathering place; educational facilities; and governmental office space, including health service offices. Also included in the tribal village concept would be approximately 44 housing units, which are planned to be comprised of one 12-unit apartment building, 4 duplex homes, and 24 single-family homes.⁴

In addition to the residential and governmental structures included in the tribal village, the Band will also develop the Gaming Project, which will be located on the portion of Parcel 3 classified as commercial and on Parcels 1, 2, 4, 5, 6, 7, 8, 9, 10, and 18 of the Property. Details of the intended scope of the Gaming Project development are contained in Section X(B) of this Application.

The City of South Bend Comprehensive Plan and the St. Joseph County – South Bend Comprehensive Plan recognize the appropriateness of the Property for economic development by identifying the area in which the Property is located as a growth area and

⁴ Some of this housing need may be met through one or more of the five existing homes located on parcels 11-17 of the Property. At present and for the next year or so, the Band intends to continue to lease some or all of the habitable houses located on the Property for housing and governmental use.

Pokagon Band of Potawatomi Indians, Michigan and Indiana

Application to Acquire Land In Trust (amended March 5, 2015) (South Bend, Indiana Consolidation Site)

a regional commercial node. Among the attributes of the Property that make it suitable for economic development are its proximity to major transportation routes and other required infrastructure, and a large base of potential customers. The location of the Property within the South Bend city limits in the eastern corner of the intersection of State Road 23 and U.S. Highway 31/20 provides a very high likelihood of success for the Band's Gaming Project, and allows the Band to rely on the Gaming Project to pay for the Property and its development and the provision of governmental services to Band members in Indiana.

V. IMPACT ON STATE AND POLITICAL SUBDIVISIONS (25 C.F.R. 151.10(e)).

Property tax amounts for tax year 2010 (payable in 2011) on all of the Parcels comprising the Property total \$36,240.71, as shown in the Property Tax Summary, Attached as Exhibit 8. The Band is not aware of any special assessments on the Property. The Band will provide evidence that all taxes and assessments have been paid prior to conveyance of title to the United States of America. Based on the total amount of property tax owed on the Property for the 2010 tax year, removal of the Property from the tax rolls will eliminate approximately \$36,000.00 in annual tax revenue to the state and/or local taxing jurisdictions.

The Band consistently spends substantial portions of its annual budget in the communities located in the vicinity of Band lands. In 2011, the Band contracted with approximately 2,000 vendors for the variety of goods and services it needed. The substantial level of commercial activity and significant expenditure of tribal revenues by the Band provides direct economic benefit to local economies and local governments within the Band's Service Area. Due to the absence of a Band land base in Indiana, little of the Band's commercial activity and spending benefits the communities in the vicinity of the Property. Vastly increased spending by the Band government and its citizens in the Indiana portions of the Band's Service Area after the Property is taken into trust will boost local economies and increase the level of local government revenue. A variety of federal and state grant, contract, and other funds, including inter-governmental agreements between the Band and local governments, will also become available to offset any impacts to the local communities after the Property is taken into trust. For these reasons, the Band believes that transferring the Property into trust and the loss of property tax revenue will not result in adverse impacts on local governments or the State government that will not be fully mitigated by increased revenues generated by new commercial activity and spending by the Band in the vicinity of the Property.

The State of Indiana and the local jurisdictions around the Property will be partially relieved of the burden of providing law enforcement services for the Property. The

Pokagon Band of Potawatomi Indians, Michigan and Indiana

Application to Acquire Land In Trust (amended March 5, 2015) (South Bend, Indiana Consolidation Site)

Pokagon Band has a fully-staffed and fully-equipped Police Department that patrols all Band lands, including the Property. When the Property is taken into trust, the Police Department will exercise full jurisdiction over the Subject Property. The Band currently has cross-deputization law enforcement agreements with Berrien County, Cass County, and Van Buren County in Michigan, which allows these jurisdictions to share enforcement personnel and resources in the Michigan portions of the Band's Service Area. The Band's Police Department has had discussions with local law enforcement authorities in the Indiana portion of the Band's Service Area, including St. Joseph County, Indiana, regarding entering into similar law enforcement agreements with those jurisdictions. These cooperative efforts will relieve the local governments around and near the Property from the financial burden of providing law enforcement services, thus off-setting the loss of tax revenue in those jurisdictions when the Property is taken into trust.

The Band receives a variety of federal contract and grant funds to assist it in fulfilling its governmental responsibilities related to Pokagon land, including activities such as road improvements under the Indian Reservation Roads Program and infrastructure development through block grants under the U.S. Department of Housing and Urban Development – Indian Community Development program. The Band will continue to review its funding needs and will pursue federal funds related to the Property as needed. Any such additional funding will provide direct and indirect benefits to the local communities around and near the Property.

VI. POTENTIAL JURISDICTIONAL PROBLEMS AND LAND USE CONFLICTS (25 C.F.R. 151.10(f)).

A. Potential Jurisdictional Problems.

The Band does not believe that any jurisdictional problems with the State of Indiana or any of its political subdivisions will result from the transfer of the Property into trust. Criminal jurisdiction will be shared over the Property between the Band, the State and the federal government. The Band has an independent judiciary, the Pokagon Band Tribal Court, which was established by the Pokagon Band Constitution. The Tribal Court is fully prepared to hear all criminal and civil matters within the Band's jurisdiction regarding activities on or related to the Property. Indiana is not a Public Law 280 state. Consequently, the State and its political subdivisions do not have civil or criminal law enforcement powers over Indians for crimes that may occur on the Property after it is taken into trust. Primary law enforcement services will be provided by the Pokagon Band Police Department. The Pokagon Band Police Department has been working to develop good lines of communication and cooperative relationships with Indiana state

Pokagon Band of Potawatomi Indians, Michigan and Indiana

Application to Acquire Land In Trust (amended March 5, 2015) (South Bend, Indiana Consolidation Site)

and local law enforcement authorities. The Pokagon Band Police Department anticipates that the Band will eventually enter into cross-deputization agreements with the Indiana police agencies that exercise jurisdiction in the vicinity of the Property, similar to the Band's existing cross-deputization agreements with the BIA and three Michigan county sheriff's departments.

B. Potential Land Use Conflicts.

The Band is not aware of any potential land use conflicts that may arise from the Property being taken into trust and the planned development of the Property. As indicated in Section IV and in accordance with the requirements of Article IV of the Pokagon Band Constitution, Exhibit 7, the Band has been engaged in land use master planning for all tribal land holdings, including the Subject Property in accordance with the Pokagon Band Land Use and Conservation Code, attached as Exhibit 9. In 2011, the Band enacted a "Land Use and Conservation Code" in order to fulfill the requirements of Article IV of the Pokagon Band Constitution and to facilitate the creation of a "Long Term Land Acquisition and Development Plan" that would govern Band decisions regarding additions to the tribal land base and development activities on tribal land. Based on the land use master planning process and the recommendations of the Pokagon Band Land Use Board, the Tribal Council made the following classifications of the eighteen parcels of land that comprise the Property:

1. Commercial. Parcel Nos. 1, 2, 3a (the portion of parcel 3 that lies to the west of the electric power easement), 4, 5, 6, 7, 8, 9, 10, 13a (a lesser portion of parcel 13 that is subject to a lease involving a commercial antennae tower located on the parcel), and 18.
2. Non-Commercial. Parcel Nos. 3b (the portion of parcel 3 that lies to the east of the electric power easement that runs in a north-south direction through parcel 3), 11, 12, 13b (the greater portion of parcel 13 that is not subject to a lease), 14, 15, 16, and 17.

The Band enacted a Health, Environmental Protection and Building Codes Act "Building Codes Act") in 2002 and enacted comprehensive amendments to the Building Codes Act in 2010. The Building Codes Act established a regulatory framework that governs sanitation, activities affecting the environment, and construction on Band trust lands. This body of regulatory standards and enforcement mechanisms will minimize and mitigate potential land use conflicts that may arise when the Property is taken into trust. The Band is committed to fulfilling all of its governmental responsibilities for regulating the use and development of the Property.

Pokagon Band of Potawatomi Indians, Michigan and Indiana

Application to Acquire Land In Trust (amended March 5, 2015) (South Bend, Indiana Consolidation Site)

The Band carefully chose the parcels that comprise the Property to comply with the terms of the MOU and to fulfill the Band's needs without causing any significant impact on the environment. The Property is zoned SF-1 (Single Family Residential) under the Municipal Code of the City of South Bend, which includes as permitted uses single family dwellings, two-family dwellings, governmental use, public facilities. See Section 21-02.02, South Bend Municipal Code. Although the SF-1 zoning designation does not include commercial development, as stated above in Section IV, the City of South Bend Comprehensive Plan and the St. Joseph County – South Bend Comprehensive Plan recognize the economic development potential of the Property by identifying the area in which the Property is located as a growth area and the intersection of State Road 23 and U.S. Highway 31/20 as a regional commercial node.

The Band has been engaged in ongoing efforts to foster an open, constructive relationship with officials in local jurisdictions in and around the Property. The Band will continue to pursue cooperative relationships with adjacent zoning jurisdictions to minimize any possible land use conflicts. The Band has excellent relationships with the communities and local governments surrounding its three land consolidation sites in Michigan and expects to develop and maintain a similar relationship with the City of South Bend and the local communities and governments in the vicinity of the South Bend consolidation site.

As a result of the Band's enactment of law and development of regulatory programs and its efforts to develop cooperative agreements with the local governments in the vicinity of the Property, the Band does not anticipate any jurisdictional problems resulting from the Secretary's action to take the Property into trust.

VII. ADDITIONAL BIA RESPONSIBILITIES (25 C.F.R. 151.10(g)).

The Band does not expect that the trust acquisition of the Property will result in any significant additional BIA responsibilities. The Band manages and provides a variety of programs and services to its trust land consolidation sites in Michigan with minimal involvement, if any, from the BIA.

The development of Band governmental offices, housing and community facilities and related infrastructure may involve, to some extent, federal programs, contracting, and compacting. However, the Band does not anticipate that its plans to develop the Property and serve its citizens that will reside on and near the Property will require any significant involvement by the BIA. The Property has no forestry or mineral resources that would require BIA management. Any leases, rights-of-way, or other transactions that may require Secretarial approval under federal law are expected to be few in number.

Pokagon Band of Potawatomi Indians, Michigan and Indiana

**Application to Acquire Land In Trust (amended March 5, 2015)
(South Bend, Indiana Consolidation Site)**

Consequently, the Band has no reason to expect that the BIA will experience any meaningful increase in its responsibilities as a result of the transfer of the Property into trust. The Band believes that the BIA is adequately equipped without any increase in funding or staffing levels to discharge any modest additional responsibilities that may result from the acquisition of the Property into trust.

VIII. COMPLIANCE WITH NEPA (516 DM 6, Appendix 4), NHPA, AND CERCLA (602 DM 2).

A. NEPA Compliance.

The Band will cooperate with and assist the BIA as needed regarding the preparation of an Environmental Impact Statement in order to ensure that all reasonably foreseeable environmental impacts from the action of having the Subject Property taken into trust are identified and fully assessed and mitigated. The Band will coordinate with the BIA regarding all aspects of NEPA compliance, including the publication of the Notice of Intent at the earliest opportunity and the engagement of qualified environmental consultants to assist the BIA with the preparation of an Environmental Impact Statement.

B. NHPA Compliance.

The Band is not aware of any historic properties located on or near the Property that would qualify for inclusion on the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. § 470 *et seq.*). The Band, including its Tribal Historic Preservation Office, will assist the BIA with its efforts to consult and coordinate with the Indiana State Historic Preservation Office to determine if there may be any historic properties or archaeological resources located on or adjacent to the Property that may qualify for inclusion on the National Register of Historic Places. In addition, if there is any indication that the Band's development plans for the Property have the potential to cause effects to historic properties or archaeological resources that may be located on or adjacent to the Property, the Band will comply fully with applicable federal law, including 36 C.F.R. §§ 800.13.

C. CERCLA compliance.

The Band engaged a qualified private contractor to conduct Phase I Environmental Site Assessments ("ESA") on each of the eighteen parcels of land that comprise the Subject Property. Copies of the Phase I ESA's for each of the eighteen parcels and Limited Phase II ESA's for Parcels 4, 6, and 9 are attached hereto and marked as Exhibit 10.

Pokagon Band of Potawatomi Indians, Michigan and Indiana

Application to Acquire Land In Trust (amended March 5, 2015)
(South Bend, Indiana Consolidation Site)

IX. COMPLIANCE WITH THE IGRA (25 U.S.C. § 2701 *et seq.*).

The IGRA contains a general prohibition against gaming on lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988 (so called “after acquired lands”). See 25 U.S.C. §2719(a). The IGRA also provides an exemption from the prohibition against gaming on after acquired lands for “restored lands”, which are lands that are taken into trust as part of “the restoration of lands for an Indian tribe that is restored to Federal recognition.” See 25 U.S.C § 2719(b)(1)(B)(iii). Pursuant to the Pokagon Restoration Act, the Band qualifies as an Indian tribe that has been “restored to federal recognition”. See Solicitor’s Opinion, Exhibit 6, at page 7 and MOU, Exhibit 2, at paragraph 3. As noted in paragraph 3 of the MOU, lands located in the vicinity of one of the four consolidation sites, such as the Property, when taken into trust for the Band pursuant to the Pokagon Restoration Act are considered “restored lands” within the meaning of Section 20 of the IGRA, 25 U.S.C. § 2719. See also the Solicitor’s Opinion, Exhibit 6, at pages 7 and 8. As stated above, IGRA exempts “restored lands” from the general prohibition against gaming on after acquired lands.

X. OFF-RESERVATION ACQUISITIONS (25 C.F.R § 151.11).

The Band maintains the position that trust acquisition of the Property (i) is a mandated acquisition under the Restoration Act, and (ii) should be treated as an “on-reservation” acquisition and should not be subject to the requirements of 25 C.F.R. § 151.11(b) and (c). Pursuant to the Restoration Act and the MOU, trust acquisition of the Property is part of the federally contemplated and intended re-establishment of the Band’s reservation trust land base. In addressing in this Application the criteria for off-reservation acquisitions as set forth in 25 C.F.R. § 151.11, the Band does not waive any contention that the trust acquisition of the Property should be treated as an on-reservation acquisition or any contention that, pursuant to Section 6 of the Pokagon Restoration Act (25 U.S.C. § 1300j-5), the Secretary should process this trust land Application as a mandatory acquisition. However, pursuant to the MOU the Band is submitting this Application in the form set forth in 25 C.F.R. Part 151, and the Band is confident that this Application meets all criteria set forth in 25 C.F.R. Part 151, regardless of whether the Property is treated as an “on reservation” or “off reservation” acquisition. The reasons supporting the Band’s position that this Application should be treated as an on-reservation acquisition are set forth below in this Section.

A. Consideration of the location of the land relative to state boundaries, and its distance from the boundaries of the tribe’s reservation (25 C.F.R. § 151.11(b)).

Pokagon Band of Potawatomi Indians, Michigan and Indiana

**Application to Acquire Land In Trust (amended March 5, 2015)
(South Bend, Indiana Consolidation Site)**

The distance from the Jones parcel (#10) on the Property to the Michigan border is 8 miles. The distance from the Jones Parcel to the southernmost parcel at the Dowagiac consolidation site (the Branch Parcel) is 20.22 miles.⁵

25 U.S.C. § 151.11(b) provides in relevant part: "... as the distance between the tribe's reservation and the land to be acquired increases, the Secretary shall give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition. The Secretary shall give greater weight to the concerns raised pursuant to paragraph (d) of this section." There are two reasons why this additional scrutiny should not apply to this trust acquisition. First, consideration of the location of the Property relative to the Michigan border would be relevant only in the circumstance where the Band was applying to have land taken into trust in a state where the Band is not federally recognized, which is not the case. Second, the Property is, pursuant to Section 3 of the MOU and 25 C.F.R. § 151.2(h), a tribal consolidation area. Pursuant to 25 C.F.R. § 151.3(a)(1), tribal consolidation areas are treated similar to on-reservation acquisitions.

B. Where land is being acquired for business purposes, the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use (25 C.F.R. § 151.11 (c)).

As noted above in Section IV and VI(B), only part of the Property will be used for commercial purposes. The Band intends to develop the Gaming Project on the portion of Parcel 3 classified as commercial and on Parcels 1, 2, 4, 5, 6, 7, 8, 9, 10, and 18. The Gaming Project is needed to pay for the land acquisition costs of the Property, the development and construction of residential housing and governmental buildings on the Property, and the provisions of governmental services to Band members. The Band currently operates two gaming facilities through the Pokagon Gaming Authority: the Four Winds Casino Resort in New Buffalo, Michigan, and the Four Winds Casino in Hartford, Michigan. This section of the Application describes the demographic and competitive environment for the Gaming Project and the intended scope of the Project.

1. Demographic and Competitive Environment.

- a. Market.* The Property on which the Gaming Project will be developed is located within the City of South Bend. According to a study published by the South Bend Visitor's Bureau, a total of 4.1 million people visited South Bend in 2009, with an additional 1.7 million people passing through. The Gaming Project will have access to almost 620,000 people within 25 linear miles, which includes the cities of South Bend, Mishawaka, Elkhart,

⁵ Calculation made using the Google Earth ruler application.

Pokagon Band of Potawatomi Indians, Michigan and Indiana

Application to Acquire Land In Trust (amended March 5, 2015) (South Bend, Indiana Consolidation Site)

Goshen and La Porte. Over 1.3 million people live within a 50-mile radius and one-hour drive of the Property in and around the cities of Portage, Valparaiso and Michigan City, Indiana. There are more than 11.8 million people within a 100-mile radius and a two-hour drive of the Property, which includes the cities of Fort Wayne, Hammond, and Gary in Indiana, Grand Rapids, Kalamazoo, Portage and Battle Creek in Michigan, and Chicago, Joliet and Kankakee in Illinois.

- b. *Transportation.*** As stated above, the Property is located at the intersection of U.S. Highway 31/20 and Indiana State Road 23. From the Property, State Road 23 travels northeast several miles to downtown South Bend. U.S. Highway 31/20 provides direct access to other major transportation routes and population centers in the region, including U.S. Highways 6, 12, 24 and 30 and Interstates 65, 69, 70, 74, 80, 90 and 94. A new U.S. Highway 31/20 upgrade is currently under construction, which will significantly improve traffic capacity along the north-south corridor between Indianapolis and South Bend. The project is scheduled to be completed in phases between 2013 and 2015.
- c. *Income.*** Although average household income levels in the South Bend area are lower than the national average of \$71,000, median household income levels in the broader region are higher than the national median of \$52,795. Over the next five years, average household income is expected to increase between 4.7 and 6.1 percent. Overall, this indicates a reasonably strong middle class in the regional market to support the Gaming Project.
- d. *Employment.*** The Property is located in St. Joseph County. According to statistics provided by the U.S. Department of Labor, Bureau of Labor Statistics, St. Joseph County had a labor force of 127,457 in 2010, with an average annual unemployment rate of 11.5 percent. The labor force in 2009 was 128,404 and an annual average unemployment rate of 11.2 percent.
- e. *Competition.*** There are three existing gaming operations located within a 0 – 50-mile radius and a one-hour drive of the Property, including the two existing Four Winds properties in New Buffalo, Michigan and Hartford, Michigan, as well as the Blue Chip Casino, Hotel & Spa in Michigan City. Combined, the three casinos have almost 5,400 slot machines and more than 140 table games. There are another eight existing gaming operations located within a 50 – 100-mile radius and a two-hour drive of the Property.

Pokagon Band of Potawatomi Indians, Michigan and Indiana

**Application to Acquire Land In Trust (amended March 5, 2015)
(South Bend, Indiana Consolidation Site)**

These operations house another 16,400 slot machines and 550 table games. Combined, the eleven casinos that will comprise the primary competition for the Gaming Project contain a total of approximately 21,800 slot machines and 690 table games.

2. Proposed Facility. Based on its analysis of the market, the Band currently intends to develop a facility roughly comparable in scope to the Four Winds Casino Resort in New Buffalo. The table below sets out the currently anticipated development scope of the proposed Gaming Project in South Bend.⁶

KEY GAMING PROJECT SPECIFICATIONS

Slot Machines	3,000
Table Games	75
Hotel Rooms	500
F&B Outlets	10
Meeting/Banquet Space (sq.ft.)	20,000
Garage Parking Spaces	3,500
Surface Parking Spaces	500
Employees	2,000
Gaming Floor Space (sq.ft.)	216,500

The Gaming Project will be very similar in size, quality, and amenities to the Band's existing Four Winds Casino Resort in New Buffalo, Michigan. By way of comparison, the planned Gaming Project and the existing Four Winds New Buffalo facility have identical or nearly identical specifications regarding square footage of gaming floor space, number of slot machines and table games, F&B outlets, total parking spaces, and number of employees.⁷

3. Anticipated Economic Benefits. The Band expects that the Gaming Project will have a positive economic impact for the Band as well as non-native citizens, vendors and the regional South Bend, Indiana economy.

⁶ The Band expects that the precise details of development of the Gaming Project development will be refined and finalized during the scoping process for preparation of the Environmental Impact Statement.

⁷ An expansion project is currently underway at Four Winds New Buffalo, which will increase the number of hotel rooms and F&B outlets and will add a new multi-purpose event center. As a consequence, the number of employees needed for the Four Winds New Buffalo facility will also increase. Completion of the expansion project is expected in July of 2012.

Pokagon Band of Potawatomi Indians, Michigan and Indiana

**Application to Acquire Land In Trust (amended March 5, 2015)
(South Bend, Indiana Consolidation Site)**

- a. New Employment.* With the creation of approximately 2,000 new jobs, the Gaming Project will provide abundant new employment opportunities for Band citizens and non-natives living in South Bend and the surrounding communities. Due to the significant number of new jobs, the Band expects that non-natives will fill the vast majority of the new jobs. Currently, Four Winds New Buffalo employs 129 Band citizens and Four Winds Hartford employs 77 Band citizens, which represents a combined average of nearly 11% Band citizen employment. Of the 206 total Band citizen employees, 58 are in a supervisory or management position. Also, since 2007 when the Band commenced gaming, there have been 240 instances where Band citizen employees have been promoted to a supervisory position or transferred to another position with higher pay. These existing jobs created by the Pokagon Band have paid a total of over \$23 million in salary and benefits, which has raised the standard of living for hundreds of Pokagon Band families. The Gaming Project, along with the Band's governmental facilities to be located on the Property, is expected to provide similar employment opportunities and economic benefits to Band citizens and non-natives living in the South Bend area.
- b. Payments to Vendors.* The Band expects that the Gaming Project will have a positive impact on local businesses and suppliers in the area of the Gaming Project. For example, excluding project development and construction costs, the Band's existing Four Winds properties have paid an approximate total of \$466 million in payments to over 1,900 vendors over the last five years, of which approximately 341 vendors that are based in Indiana have collected \$24.5 million.

XI. EVIDENCE OF TITLE (25 C.F.R. § 151.13).

For each parcel included in the Property the following title evidence is attached:

- A.** Copies of the deeds conveying the Property to the WJC Holdings, LLC, an Indiana limited liability company that is wholly owned by the Pokagon Band. (Exhibit 11A, Jacobs); (Exhibit 11B, Crady); (Exhibit 11C, Bill Marvin); (Exhibit 11D, Miltenberger); (Exhibit 11E, Santana); (Exhibit 11F, Jurgonski); (Exhibit 11G, Sedam); (Exhibit 11H, Horrall); (Exhibit 11I, Hutchins); (Exhibit 11J, Jones); (Exhibit 11K, Cataldo); (Exhibit 11L, Haverstock); (Exhibit 11M, Geyer); (Exhibit 11N, Shafer); (Exhibit 11O, Jantzi); (Exhibit 11P, Bova); (Exhibit 11Q, Gary Marvin); and (Exhibit 11R, Reliance).

Pokagon Band of Potawatomi Indians, Michigan and Indiana

**Application to Acquire Land In Trust (amended March 5, 2015)
(South Bend, Indiana Consolidation Site)**

- B.** Title insurance commitments for policies to be issued on ALTA U.S. Policy Form (revised 9/28/91) that will name the United States in trust for the Pokagon Band of Potawatomi Indians as the insured party (Exhibit 12A, Jacobs); (Exhibit 12B, Crady); (Exhibit 12C, Bill Marvin); (Exhibit 12D, Miltenberger); (Exhibit 12E, Santana); (Exhibit 12F, Jurgonski); (Exhibit 12G, Sedam); (Exhibit 12H, Horrall); (Exhibit 12I, Hutchins); (Exhibit 12J, Jones); (Exhibit 12K, Cataldo); (Exhibit 12L, Haverstock); (Exhibit 12M, Geyer); (Exhibit 12N, Shafer); (Exhibit 12O, Jantzi); (Exhibit 12P, Bova); (Exhibit 12Q, Gary Marvin); and (Exhibit 12R, Reliance).

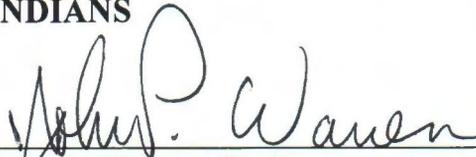
XII. DRAFT DEEDS.

Draft warranty deeds from WJC Holdings, LLC to the United States of America in trust for the Pokagon Band of Potawatomi Indians conveying the eighteen parcels are attached. (Exhibits 13A – 13R).

Date: March 5, 2015

Respectfully submitted,

**POKAGON BAND OF POTAWATOMI
INDIANS**



John P. Warren, Chairman



Faye Wesaw, Secretary

Appendix A

**South Bend Local Agreement
Resolution No. 4554-16**

LOCAL AGREEMENT

This “**Agreement**” is made on the 11th day of April, 2016 by and between the POKAGON BAND OF POTAWATOMI INDIANS (the “**Band**”), the POKAGON GAMING AUTHORITY, an unincorporated instrumentality of the Band (“**PGA**”), and the CITY OF SOUTH BEND, a municipal corporation existing under the laws of Indiana (the “**City**”).

RECITALS

A. The Band, pursuant to 25 U.S.C. §§ 1300j *et seq.* (the “**Restoration Act**”), is a federally recognized Indian tribe recognized as eligible by the Secretary of the Interior for the special programs and services provided by the United States to Indians because of their status as Indians, and is recognized as possessing powers of self-government.

B. The Restoration Act sets forth a 10 county service area in southwestern Michigan and northern Indiana in recognition of the Band’s ancestral homelands, and the anticipated acquisition by the Band of lands within its service area to be taken into trust by the federal government. The Band and the Secretary of the Interior have entered into a Memorandum of Understanding, executed by the Secretary on January 11, 1999 (the “**MOU**”), that establishes general principles setting forth the geographic areas within which the Band will acquire land to submit to the Secretary to be taken into trust. The Band is directed pursuant to the MOU to concentrate such acquisitions within four geographic areas, known as “consolidation sites”, in the vicinity of: New Buffalo, Michigan; Hartford, Michigan; Dowagiac, Michigan; and South Bend, Indiana.

C. The Band acquired approximately 166 contiguous acres of land located within the City and bounded by Prairie Avenue (State Road 23), U.S. Highway 31, and Locust Road, as identified in the attached Exhibit A (the “**Site**”).

D. On or about May 14, 2012, as provided in the Restoration Act and the MOU, the Band filed an application with the U.S. Department of the Interior, Bureau of Indian Affairs (“**Trust Land Application**”), to have the Secretary of the Interior take title to the Site in trust for the Pokagon Band of Potawatomi Indians, Michigan and Indiana.

E. The Band’s plans and foreseeable development for the Site include a tribal village with 44 housing units and a multi-purpose facility with health service and other tribal government facilities (“**Tribal Village**”). In accordance with Pokagon Band law and the Indian Gaming Regulatory Act of 1988, P.L. 100-497, 25 U.S.C. § 2701 *et seq.* (“**IGRA**”), planned and foreseeable development of the Site also includes a casino

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gaming resort facility which shall bear the Band's gaming brand, "Four Winds" (the "**Resort**").

F. The purpose of this Agreement is to establish and memorialize the various and beneficial commitments that the Band and PGA ("**Band Parties**") and the City have made to each other out of recognition and respect for the sovereignty and mutual best interests of each party.

G. The City recognizes that representations and agreements made by the Band Parties under this Agreement are voluntary on the part of the Band Parties and are not required by any Indiana law or any federal law, including without limitation IGRA.

H. The City recognizes and agrees that the Tribal Village and Resort and the Band Parties' undertakings under this Agreement are intended and expected to substantially benefit the South Bend community, and the City wishes to formally acknowledge its support for the Trust Land Application and the Tribal Village and Resort.

I. The City represents that it was authorized to enter into this Agreement by duly adopted resolution of the City Common Council, a true copy of which is attached as Exhibit B-1.

J. The Band represents that it was authorized to enter into this Agreement by duly adopted resolution of the Band Tribal Council, a true copy of which is attached as Exhibit B-2.

K. PGA represents that it was authorized to enter into this Agreement by duly adopted resolution of the Pokagon Gaming Authority Board of Directors, a true copy of which is attached as Exhibit B-3.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises herein contained, the receipt and sufficiency of which are expressly acknowledged, the Band, PGA, and the City agree as follows:

1. Recitals true. The above recitals are true.
2. Tribal Laws Concerning Health, Environment and Building Construction. The Band, in the exercise of its sovereign powers, has enacted and shall sustain as enacted Band law a Health and Safety Act ("**Tribal Health and Safety Act**"), which establishes standards that are at least as rigorous as state and local laws concerning but, not limited to, health, environment, fire protection, and building construction. The Band shall ensure through implementation and enforcement of

the Tribal Health and Safety Act that the design and construction of the Resort meets standards that are at least as rigorous as state and local laws.

3. Tribal Tax Code. The Band, in the exercise of its sovereign powers, has enacted and shall sustain as enacted Band law a Tribal Tax Revenue and Administration Code (“**Tribal Tax Code**”), which includes Tribal taxes on retail sales, food and beverage service, and hotel occupancy (“**Tribal Resort Taxes**”). The Band shall take all necessary steps to ensure that the Tribal Resort Taxes are equal to or greater than any state and local taxes which would be applicable to the Resort if it were not located on land held by the federal government in trust for the Band (“**Trust Land**”).
4. Local Preference Policy. PGA agrees that it shall in hiring and purchasing for the Resort give preference to residents of St. Joseph County, Indiana and businesses located in St. Joseph County, Indiana, provided that: (a) any such preference shall be subordinate to preferences PGA gives to citizens of the Band, their spouses and children, and to businesses owned by, or affiliated with citizens of, the Band; (b) as to hiring, the resident is qualified, holds any licenses that may be required by the Band or PGA, and complies with employment policies established by PGA; and (c) as to purchasing, the vendor is qualified and holds any licenses that may be required by the Band or PGA, the vendor’s price and other terms are reasonably competitive, and the proposed vendor can meet bonding and other requirements established by the Band or PGA. For purposes of this Section 4, qualifications, licensing, competitiveness and compliance with requirements shall be reasonably determined by the Band Parties.
5. Minority and Women’s Business Participation. PGA agrees that in the operation of the Resort it shall make a good faith effort to utilize minority and women owned businesses in an amount that is consistent with the most recent disparity study conducted by the Indiana Gaming Commission (“**IGC**”) under IC 4-33-14-5(b) and IC 4-35-11-6(b). To the extent that there may be a conflict between the Pokagon Band Employment and Contracting Preferences Code or any successor law and related policies and procedures (“**Pokagon Preference Requirements**”) and this Section 5, the Pokagon Preferences Requirements shall take precedence. No later than the first business day of February of each calendar year, PGA shall file a written report with the City demonstrating its good faith efforts consistent with this Section 5 relating to the most recent calendar year.
6. Joint Marketing Contribution. PGA agrees that it will contribute to the St. Joseph County Convention and Exhibition Center Fund (“**Fund**”) a portion of the Tribal Resort Taxes it assesses under the Tribal Tax Code in association with its operation of any hotel located on the Site (“**Tribal Hotel Taxes**”). Such contribution to the Fund shall be for the promotion of travel, business, and tourism

in St. Joseph County, which the Fund's Board of Managers shall pool with funds it receives from other hotels in the local assessment area pursuant to Indiana Code § 6-9-1 *et seq.* (the "**Innkeeper's Tax**"). The Tribal Hotel Taxes collected by the PGA for this purpose shall be equal to the amount that would have been payable to local government by PGA, as owner of a hotel, pursuant to the Innkeeper's Tax. In computing the amount of Tribal Hotel Tax owed under this Section 6, PGA shall exclude amounts based on the use and occupancy of any hotel room or rooms it furnishes to its guests on a complimentary basis. No amount shall be payable under this Section 6 unless and until PGA owns and operates a hotel located on the Site. PGA's agreement to make payments as provided in this Section 6 shall be enforceable under this Agreement, but the Band expressly does not subject itself to, or waive its sovereign immunity as to, the Innkeeper's Tax or any other Indiana statute. PGA's obligations under this Section 6 are subject to the condition that PGA enjoys all the same rights under the Innkeepers Tax as all other parties that are subject to and pay the Innkeepers Tax, including without limitation the eligibility of persons affiliated with PGA to be appointed and serve on the Fund's Board of Managers.

7. Tort Claims Act. The Band, in the exercise of its sovereign powers, has enacted and shall sustain as enacted Band law a "**Tort Claims Act**" to provide tort remedies to guests and business invitees of the Band Parties for injuries and illness sustained within the territorial jurisdiction of the Band. PGA shall take reasonable steps to inform invitees of the applicability of the Tort Claims Act and other Band law by posting in a prominent location within Resort facilities a Notice to patrons at least two (2) feet by three (3) feet in dimension with the following language:

NOTICE

THIS FACILITY IS REGULATED BY ONE OR MORE OF THE
FOLLOWING:

THE NATIONAL INDIAN GAMING COMMISSION, BUREAU OF INDIAN
AFFAIRS OF THE U.S. DEPARTMENT OF THE INTERIOR, AND THE
GOVERNMENT OF THE POKAGON BAND OF POTAWATOMI INDIANS.

THIS FACILITY IS NOT REGULATED BY THE STATE OF INDIANA.

8. Tribal Court. The Band, in the exercise of its sovereign powers, has established under its Constitution and shall maintain during the Term an independent judicial forum for the enforcement of rights under the Tort Claims Act.
9. Support of the City. The City agrees, upon request from the Band and at all times subject to the City's determination that the relevant support activity would not be contrary to state or local law, to support in good faith the Band's efforts to:

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- (a). Have the United States take the Site into trust, by:
- (1). Submitting a letter and other pertinent documents to the Secretary of the Interior expressing support for the Trust land Application;
 - (2). Reasonably supporting the Band's efforts in legal or administrative proceedings relating to any decision by the Secretary of the Interior to take the Site into trust, including the filing of amicus briefs to assist in bringing about benefits associated with taking the Site into trust, provided this provision shall not be deemed to diminish the City's autonomy in determining the particular legal arguments or positions to be made by the City in any such amicus brief to the extent that they are not inconsistent with the legal arguments or positions of the Band Parties and the U.S. government in such proceedings;
 - (3). Reasonably communicating with and, when needed, traveling to meet with officials of the Department of the Interior and other federal officials, whether at Minneapolis, Minnesota, Washington, D.C., or elsewhere.
- (b). Negotiate a class III gaming compact ("**Compact**") with the state of Indiana, that is not inconsistent with the express terms of this Agreement, including ratification of the Compact by the Indiana general assembly and approval of the Compact by the Secretary of the U.S. Department of the Interior.
- (c). Obtain: (i) a wetland permit from the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act (33 U.S.C. § 1251 *et seq.*); (ii) a water quality certification from the Indiana Department of Environmental Management and/or the Indiana Department of Natural Resources under Section 401 of the Clean Water Act and applicable Indiana law; and (iii) all other environmental permits, certifications, and approvals for the development of the Site that may be required from federal or state agencies under applicable law.
- (d). In general, facilitate the earliest possible opening of the Resort or any phases thereof, which shall be in compliance with the requirements of Section 2 of this Agreement.

The Band Parties shall reimburse in a timely manner the City's costs in fulfilling its obligations under this Section 9, including but not limited to reasonable professional fees and travel expenses.

10. City Services to the Site. The City shall use reasonable efforts, subject to the limitations of applicable law, to cause the Department of Public Works to enter

into, without unnecessary delay, an agreement with the Band Parties to provide any and all services to the Site requested by the Band Parties that the Department of Public Works usually and customarily provides to other residential and commercial customers, which shall include without limitation the extension of water service and sewer service, and may, as needed, include residential refuse collection and recycling service. To the extent needed to secure services, the City shall also use reasonable efforts, subject to the limitations of applicable law, to cause any other appropriate department or agency of the City to enter into, without unnecessary delay, one or more agreements with the Band Parties to provide any other services reasonably requested by the Band or PGA that the City usually and customarily provides to other residential and commercial customers. Subject to applicable law, the City shall provide all such services to the Site upon terms and conditions and at costs that are consistent with the City's usual and customary practices regarding its other commercial and residential customers.

Notwithstanding the foregoing, the parties understand and agree that the ILT Payments required under Section 14 fulfill all obligations the Band Parties might have to pay an equitable share of the operational costs and the costs for services that the City would recover through taxation or other form of assessment if the Site were subject to taxation by the state and its political subdivisions. Any agreements entered into under this Section 10 shall be included as separate exhibits and incorporated into this Agreement.

11. No Other Gaming. The City agrees to not solicit, encourage, induce, endorse or support the establishment, operation, or conduct of riverboat gambling and inland casino gambling under IC 4-33, *et seq.* and any other types of gaming in the City, except for the Indiana state lottery authorized under IC 4-30 *et seq.*, charity gaming activities authorized under IC 4-32.2 *et seq.*, and type II gaming authorized under IC 4-36 *et seq.*, all to the extent permitted under Indiana law as of the date of this Agreement written above. Upon the written request of the Band Parties, the City agrees to actively oppose any proposed expansion of the foregoing gaming activities in the City beyond the gaming activities that are already permitted in the City under Indiana law as of the date of this Agreement written above. Nothing in this Section 11 shall be construed as requiring the City to oppose, avoid or otherwise act or fail to act in a manner that hinders or prevents the conduct of gaming activity in the City, provided such gaming activity is being lawfully conducted in the City on the date of this Agreement written above under applicable state and federal laws.
12. Upfront Costs of Development. The Band Parties will pay for all upfront costs to develop the Site, including related professional fees, whether associated with the initial and/or future development of the Site. Such development costs shall include, but not be limited to: (i) all costs of road improvements and traffic and safety control devices reasonably related to ensuring safe and efficient means of

ground transportation to, from and around the Site, as required by the Record of Decision to be issued by the Bureau of Indian Affairs, U.S. Department of the Interior (“BIA”) in Compliance with the National Environmental Policy Act of 1970 (42 U.S.C. § 4321 *et seq.*) upon its approval of the Trust Land Application; and (ii) all costs of bringing water, wastewater treatment, and other City-supplied utility services and infrastructure to the Site and, subject to the limitations of Section 10, the reasonable and necessary operational expenses of such services.

13. Public Nuisances. The Band Parties shall be responsible for ensuring that the Resort operates in compliance with the following provisions of the City’s Municipal Code: Sections 13-57(a)-(b), 13-82, and 17-8, as such sections exist at the time of the execution of this Agreement as well as any amendments and/or successor provisions to each. The Band Parties’ agreement to comply with these provisions shall be enforceable solely under the terms of this Agreement, but the Band expressly does not subject itself to, or waive its sovereign immunity as to any enforcement action undertaken pursuant to the foregoing provisions or other provisions of the City’s Municipal Code.

14. Payments in Lieu of Taxes to the City.

(a). The City, the Band, and PGA recognize that:

- (1). When the Site is taken into trust, it will be removed from the property tax rolls and thereafter neither the Band nor PGA shall be under any legal obligation to make property tax payments for the Site;
- (2). The City will experience increases in some operating costs as a direct result of the operation of the Resort;
- (3). IGRA subsection 2710(b)(2)(B) strictly limits the use of net revenues from tribal gaming, but expressly permits payments to, among other things, help fund operations of local government agencies; and
- (4). Establishing financial incentives to the City will encourage, promote and contribute to the success of the Resort and will benefit both parties and the region.

Based on those considerations, the City and the Band Parties have determined that it is in their mutual best interests to establish the requirements in this Section 14 for the Band Parties to make payments in lieu of taxes (“**ILT Payments**”) to the City from revenue generated by the operation of Class II Games at the Resort.

(b). Definitions.

- (1). As used in this Section 14, "**Net Win**" means the total amount wagered on each Class II Game, minus the total amount of prizes paid to players for winning wagers at such Class II Games. For purposes of calculating Net Win, the total amount wagered shall not include the value of "Promotional Wagers." The term "**Promotional Wagers**" shall include wagers made using non-cashable vouchers, coupons, electronic credits or electronic promotions provided by the Band or the PGA. The total amount of prizes paid to players for winning wagers at Class II Games shall include all prizes, consisting of electronic credits to the Game, cash, check, or merchandise from all wagers, including Promotional Wagers. The formula prescribed here for calculating Net Win applies only to the calculation of the payments due under this Agreement and is not intended to preclude the Band from otherwise following accepted GAAP and AICPA Guidelines in its general accounting practices.

- (2). As used in this Section 14, "**Class II Games**" means server based electronic bingo system games that are within the IGRA definition of "class II gaming" (25 U.S.C. § 2703(7)(a) and 25 C.F.R. § 502.3) and "**Class III Games**" means "slot machines" and "electronic or electromechanical facsimiles of any game of chance" as those terms are defined at 25 C.F.R. § 502.4(b). For avoidance of doubt, Class III Games shall include slot machines and electronic or electromechanical facsimiles of any game of chance located inside the Resort that are electronically linked through one or more progressive jackpot systems, to other electronic gaming devices or systems located anywhere inside or outside the Resort for the purpose of generating larger jackpots. The terms Class II Games and Class III Games do not include any gaming activity that is conducted through the world wide web or any other internet connection wherein both the player and the gaming or network hardware are not present within the Resort.

- (c). If requested by the City, the Band Parties shall permit a certified public accounting firm ("**CPA Firm**") reasonably selected by the City to verify for the ILT Payment period in question the Net Win at the Resort, provided that if an Indiana Compact includes provisions for verifying the Net Win, then such procedures shall be the exclusive method for verifying Net Win and this subsection (c) shall not apply. The Band Parties shall fully cooperate with all generally-accepted accounting procedures employed by the CPA Firm and shall be responsible for paying one half (1/2) of the CPA Firm's fees and costs associated with this Subsection 14(c).

(d). *Revenue Sharing from Class II Gaming*. This Section exclusively addresses ILT Payments and any other form of gaming revenue sharing by PGA with the City from a Resort that cannot lawfully include “**Class III Gaming**”, as that term is defined in subsection 2703(8) of IGRA, due to the absence of: (i) a Class III Gaming compact entered into between the Band and the State of Indiana that is approved by the Secretary of the Interior pursuant to the requirements of subsection 2710(d)(8) of IGRA; or (ii) administrative procedures for the conduct of Class III Gaming by the Band on Indian lands located in the State of Indiana that are prescribed by the Secretary of the Interior pursuant to subsection (d)(7)(B)(vii) of IGRA (either such approved compact or administrative procedures are referred to hereunder as “**Indiana Compact**”).

(1). In furtherance of the determinations described above in subsection (a), to help fund operations of local government agencies, and as consideration for valuable concessions contained in this Agreement, the Band Parties agree that PGA shall make an annual ILT Payment to the City comprised of the following: (i) one percent (1%) of the Net Win from Class II Games at the Resort shall be paid directly to the City; and (ii) one percent (1%) of the Net Win from Class II Games at the Resort shall be paid directly to the South Bend Redevelopment Commission (“**Redevelopment Commission**”) (each such ILT Payment made annually under this Section 14(d) or any payment of Net Win from Class III Gaming under Section 14(e) of this Agreement, an “**Annual ILT Payment**”). It is the parties’ mutual intent that the Redevelopment Commission use and direct the Annual ILT Payment proceeds it receives from PGA pursuant to this Section 14 to fund initiatives broadly aimed at contributing to the improvement of educational opportunities in the City and to address poverty and unemployment in the City.

(2). The Annual ILT Payments shall be based on a twelve-month fiscal period beginning on August 1 and ending on July 31 of each year, provided that the first Annual ILT Payment under this provision may be for a period of less than twelve full months of operations beginning on the day the Resort opens to the public through July 31 immediately subsequent thereto. Annual ILT Payments shall be made within sixty (60) days of the end of each fiscal period. Interest on any Annual ILT Payment made more than sixty (60) days from the end of the fiscal period shall accrue at the annual rate of three percent (3%) on the unpaid balance due until paid in full. Any partial payments of the unpaid balance due shall first be applied to accrued interest with the remainder, if any, next applied to the unpaid balance.

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- (3). Provided that the Resort was the only casino conducting gaming that is substantially equivalent to “**Class II Gaming**”, as that term is defined in subsection 2703(7) of IGRA, or Class III Gaming within a twenty-five (25) mile radius of the Resort, excluding any other casino that may be operated by or on behalf of the Band or PGA, PGA guarantees that each Annual ILT Payment made to the City pursuant to this subsection (d) will not be less than:
- (A) ONE MILLION DOLLARS (\$1,000,000.00) if throughout the Annual ILT Payment period, excluding events or circumstances within PGA’s control, PGA had the physical infrastructure and legal right to conduct gaming at the Resort at a minimum capacity of not less than 850 Class II Games and not more than 1,699 Class II Games; or
 - (B) TWO MILLION DOLLARS (\$2,000,000.00) if throughout the Annual ILT Payment period, excluding events or circumstances within PGA’s control, PGA had the physical infrastructure and legal right to conduct gaming at the Resort at a minimum capacity of not less than 1,700 Class II Games.
- (e). **Revenue Sharing from Class III Gaming.** This Section exclusively addresses revenue sharing by PGA with the City from a Resort that can lawfully conduct Class III Gaming under an Indiana Compact.
- (1). If the Band, or any person or entity on its behalf, operates Class III Gaming pursuant to an Indiana Compact and IGRA and the Indiana Compact contains provisions for the use of net revenues from Class III Gaming to help fund operations of City agencies (regardless of the amount of such payments or method of control or distribution), then the provisions in the Indiana Compact that govern payments of such net revenue to the City shall: (i) be applicable and control and shall supersede the ILT Payment requirements for Class II Games in subsection (d) of this Section 14; and (ii) except as expressed in Section 14(e)(2) of this Agreement, PGA’s obligations regarding payments of such net revenue to the City shall be solely limited to those provided in the Indiana Compact.
 - (2). If the Band, or any person or entity on its behalf, operates Class III Gaming pursuant to an Indiana Compact and IGRA and the Indiana Compact contains no provisions for the use of net revenues from Class III Gaming to help fund operations of City agencies, or if such payments are less than two percent (2%) of the Net Win from Class III Games, then in such case PGA shall, upon the City’s request and subject to any

prohibitions or limitations under IGRA or other applicable federal law, make payments of net revenue from Class III Games under this Agreement such that the total of the payments made under this Agreement and those made under the Indiana Compact equal two percent (2%) of the Net Win from Class III Games operated at the Resort. Except to the extent that the Indiana Compact provides otherwise, such payments shall be made in accordance with the standards and procedures in Section 14(d) applicable to ILT Payments from Class II Games.

(3). Provided that the Resort was the only casino conducting gaming that is substantially equivalent to Class II Gaming or Class III Gaming within a twenty-five (25) mile radius of the Resort, excluding any other casino that may be operated by or on behalf of the Band or PGA, PGA guarantees that each Annual ILT Payment made to the City pursuant to this subsection (e) will not be less than:

(A) ONE MILLION DOLLARS (\$1,000,000.00) if throughout the Annual ILT Payment period, excluding events or circumstances within PGA's control, PGA had the physical infrastructure and legal right to conduct gaming at the Resort at a minimum capacity of not less than 850 Class III Games and not more than 1,699 Class III Games; or

(B) TWO MILLION DOLLARS (\$2,000,000.00) if throughout the Annual ILT Payment period, excluding events or circumstances within PGA's control, PGA had the physical infrastructure and legal right to conduct gaming at the Resort at a minimum capacity of not less than 1,700 Class III Games.

15. Community Development Initiatives. IGRA subsection 2710(b)(2)(B) strictly limits the use of net revenues from tribal gaming, but expressly permits donations to, among other things, charitable organizations. In consideration of the Band Parties' and the City's mutual commitment to the health and welfare of the residents of the South Bend area and as an additional incentive for the City to fulfill its obligations under this Agreement, the Band Parties agree to: (i) fund the initiatives described below in this Section in accordance with the terms stated therein; and (ii) with respect to subsections (b) through (j) of this Section provide the City with an annual report demonstrating the Band Parties' full compliance with its obligations under each such subsection.

(a). *Howard Park Improvements.* The Band Parties shall contribute \$2,225,000.00 to the City for the purpose of renovating, modernizing and making other improvements to Howard Park, located at 219 S. St. Louis Blvd. in South

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Bend, which contribution shall be paid over a period of five (5) years at \$445,000.00 per year, with the first payment due twelve (12) months after the Resort commences gaming operations. The City shall use the entirety of the contributions made by the Band Parties under this subsection (a) exclusively for the express purposes stated herein. The City shall provide the Band parties with an annual report demonstrating the City's full compliance with its obligations under this subsection.

- (b). *Memorial Children's Hospital.* The Band Parties shall contribute \$500,000.00 to Memorial Children's Hospital of South Bend for the renovation and modernization of the Newborn Intensive Care Unit (NICU), which contribution shall be paid over a period of five (5) years at \$100,000.00 per year with the first payment due twelve (12) months after the Resort commences gaming operations.
- (c). *Bowman Creek Project.* The Band Parties shall contribute \$500,000.00 to the Bowman Creek Project for initiatives intended to restore and protect the Creek and educate the public regarding its importance to the region, which contribution shall be paid over a period of five (5) years at \$100,000.00 per year with the first payment due twelve (12) months after the Resort commences gaming operations. The use and purpose of each annual donation shall be determined by the Band Parties in consultation with the Bowman Creek Project representatives designated by the City.
- (d). *South Bend Community Schools.* The Band Parties shall donate \$500,000.00 to the South Bend Community School Corporation, which donation shall be paid over a period of five (5) years at \$100,000.00 per year with the first payment due twelve (12) months after the Resort commences gaming operations. The use and purpose of each annual donation shall be determined by the Band Parties in consultation with the Superintendent of the South Bend Community School Corporation.
- (e). *Prairie Avenue Resurfacing.* The Band Parties shall cover all costs to resurface Prairie Avenue from US-31 to Locust Road, which costs shall not exceed \$500,000.00 and shall be payable in accordance with the payment requirements of a contract between INDOT and the contractor engaged to perform the work.
- (f). *Prairie Avenue Landscaping.* The Band Parties shall cover all costs to enhance the landscape of Prairie Avenue within the public right-of-way from US-31 to Locust Road, which costs shall not exceed \$200,000.00 and shall be payable in accordance with the payment requirements of a contract between INDOT and the contractor engaged to perform the work.

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- (g). *YMCA Women's Shelter of South Bend*. The Band Parties shall donate \$125,000.00 to the YMCA Woman's Shelter of South Bend, which donation shall be paid over a period of five (5) years at \$25,000.00 per year with the first payment due twelve (12) months after the Resort commences gaming operations.
- (h). *Jobs for Americas Graduates-Indiana*. The Band Parties shall donate \$250,000.00 to Jobs for America's Graduates-Indiana, which donation shall be paid over a period of five (5) years at \$50,000.00 per year with the first payment due twelve (12) months after the Resort commences gaming operations. The use and purpose of each annual donation shall be determined by the Band Parties in consultation with JAG-Indiana.
- (i). *Food Bank of Northern Indiana*. The Band Parties shall donate \$100,000.00 to the Food Bank of Northern Indiana, which donation shall be paid over a period of five (5) years at \$20,000.00 per year with the first payment due twelve (12) months after the Resort commences gaming operations. The use and purpose of each annual donation shall be determined by the Band Parties in consultation with the Food Bank of Northern Indiana.
- (j). *Boys and Girls Clubs of St. Joseph County*. The Band Parties shall donate \$100,000.00 to the Boys and Girls Clubs of St. Joseph County, which donation shall be paid over a period of five (5) years at \$20,000.00 per year with the first payment due twelve (12) months after the Resort commences gaming operations. The use and purpose of each annual donation shall be determined by the Band Parties in consultation with the Boys and Girls Clubs of St. Joseph County.
16. Term. The term of this Agreement ("**Term**") shall commence upon its full execution, and shall continue in effect so long as the Band Parties, or any person or entity on their behalf, develop the Resort and, after the Resort opens, so long as the Band Parties, or any person or entity on their behalf, operate Class II Games or Class III Games at the Resort; provided that the term shall not exceed 99 years.
17. Dispute Resolution. The Band, PGA, and the City agree that the dispute resolution process set forth in this Section shall be the exclusive process available to the parties to resolve Disputes. The parties agree that through this Dispute resolution process, the parties shall be entitled to all forms of relief allowed by Governing Law for breach of contract, as defined below, not otherwise prohibited by this Agreement including, but not limited to, injunctive relief, specific performance, and actual damages.

- (a). *Negotiation*. In the event of a dispute between either or both of the Band Parties and the City that arises out of or is related to this Agreement, including but not limited to, the validity, interpretation and/or enforcement of this Agreement (“**Dispute**”), the aggrieved party shall, prior to pursuing mediation or Arbitration, make a written request of the other party to engage in good faith negotiations aimed at resolving the Dispute (“**Negotiation**”). Upon submission of such request, each party will promptly appoint one or more representative(s) to participate in direct discussions regarding the Dispute. The written request shall set forth, with specificity, the issues to be resolved. The location, format, and frequency of these discussions shall be left to the discretion of the representatives. Except to the extent expressly provided otherwise by applicable law, all discussions and correspondence among the representatives for purposes of the Negotiation shall be treated as confidential and shall be inadmissible in any judicial proceeding or other dispute resolution forum, including mediation or arbitration, without the agreement of the parties. If the parties are unable to fully resolve the Dispute within thirty (30) days from the date either party submits a written request for Negotiation to the other party, or either party terminates the Negotiation before all of the elements of the Dispute are resolved, or the parties agree in writing to forego Negotiation, the Dispute, or any unresolved portion thereof, shall be submitted to Mediation.
- (b). *Mediation*. If a Dispute is not resolved through Negotiation, the Band Parties and the City shall submit the Dispute to nonbinding mediation (“**Mediation**”) before a single mediator (“**Mediator**”) prior to initiating Arbitration. The Mediation shall be administered by the American Arbitration Association (“**AAA**”) under its Commercial Arbitration Rules and Mediation Procedures or any successor rules adopted by the AAA (“**Rules**”), current as of the date the request for Mediation is filed with the AAA. The Mediation shall be commenced by either party filing a request for mediation with the AAA in accordance with the Rules. The Mediator shall be selected pursuant to the Rules. The Mediation shall take place in South Bend, Indiana, unless the parties agree in writing to a different location. The responsibility for the fees and expenses of the Mediation and the Mediator shall be allocated equally between the City and the Band Parties. The Mediation may be terminated at any time by either party. If the Band Parties and the City are unable to fully resolve the Dispute within sixty (60) days from the date the request for Mediation is filed with the AAA, unless the parties agree to extend the time for Mediation, either party may initiate Arbitration to resolve the Dispute, or any unresolved portion thereof.
- (c). *Arbitration*. If the Dispute is not resolved through Negotiation or Mediation, the Band Parties and the City shall submit the Dispute to arbitration

(“**Arbitration**”), pursuant to this Agreement, which shall be commenced by either party filing a demand for Arbitration with the AAA in accordance with the Rules. The Band Parties and the City agree to avoid all unnecessary delays and expenses in Arbitration and to pursue in good faith a prompt and just resolution of their Dispute. The Arbitration shall occur within thirty (30) miles of South Bend, Indiana unless the parties agree in writing to a different location. Each party shall bear its own Arbitration costs and an equal share of the administrative cost of the Arbitration proceeding pending a final resolution of the Dispute. The following requirements shall apply to the Arbitration process:

- (1). Selection of Neutral Arbitrators. Arbitration shall occur before a panel of three (3) neutral arbitrators (“**Arbitrators**”), unless the parties agree in writing prior to commencing the arbitrator selection process to use a single neutral arbitrator. Each Arbitrator shall be a licensed attorney or a retired judge who has been actively engaged for at least ten years in the practice of law, the judicial process, or in alternative dispute resolution. Unless the parties agree otherwise in writing, an Arbitrator shall not have also served as a Mediator in any Mediation under this Section. No Arbitrator shall have or previously have had any significant relationship with either party. If the Arbitration will be held before a single neutral Arbitrator, the Arbitrator shall be selected by agreement of the parties within thirty (30) calendar days from the date a demand for arbitration is filed with the AAA. If the parties are unable to agree on the selection of an Arbitrator within thirty (30) calendar days, the Arbitrator shall be selected according to the process set forth in the Rules. If the Arbitration is held before a panel of three neutral Arbitrators, each party shall select a single Arbitrator within fifteen (15) calendar days from the date the demand for Arbitration is filed with the AAA. The two Arbitrators selected by the parties shall select the third Arbitrator with due consideration to any recommendations made jointly by the parties. The third Arbitrator shall be the chairperson of the panel. If all three Arbitrators have not been selected within thirty (30) calendar days from the date the demand for Arbitration is filed with the AAA, the panel of three Arbitrators shall be selected according to the process set forth in the Rules.
- (2). Arbitration Rules, Governing Law, and the Authority of the Arbitrators. The Arbitration shall be administered by the AAA under the requirements of this Section and the Rules, current as of the date the demand for Arbitration is filed with the AAA. The parties and the arbitrator(s) shall maintain strict confidentiality with respect to the arbitration. The requirements of this Section shall supersede any conflicting provisions in

the Rules. The law to be applied in the Arbitration shall be the Governing Law, as stated in subsection 18(a) of this Agreement. The authority of the Arbitrators is derived solely from this Section and is limited to the enforcement of the rights of the Band Parties and the City under the express terms of this Agreement.

- (3). Discovery and Arbitration Procedure. Each party shall, upon the request of the other party, promptly provide the other with copies of all documents relevant to the issues raised as claims or defenses in the Arbitration. Notwithstanding any provision of Governing Law or Rule to the contrary, any party may avail itself of discovery procedures, including depositions, interrogatories, requests for production and inspection of documents and reports as provided in the Federal Rules of Civil Procedure then applicable in United States district courts. Discovery shall be completed within sixty (60) days from the date the Arbitrators are appointed, provided that at either party's request, the Arbitrators may order reasonable extensions of the time for discovery, but only to the extent that the Arbitrators determine that such discovery will be relevant, will not unduly burden the party against whom discovery is sought, and will further the goal of resolving the Dispute in an economic and expeditious manner. The parties shall have a continuing obligation to provide each other with all additional relevant documents and information within the scope of the discovery request that may thereafter become available. The Arbitrators may, at the request of a party or on their own initiative, impose upon any party who fails to comply with this subsection sanctions, penalties, or both, including an order that prohibits the non-complying party from introducing certain testimony or evidence or eliminates one or more claims or defenses of the non-complying party.
- (4). Statement of Claims. At least sixty (60) calendar days prior to the date of the first hearing on the merits, each party shall provide to the other party a detailed written statement of all claims, defenses, and counterclaims such party will present at the hearing and the witnesses, documents, and other evidence such party intends to offer in support each claim, defense, and counterclaim. Each party shall have seven (7) calendar days to serve on the other party a request for explanation of claims, defenses and counterclaims made and further identification of supporting evidence intended to be offered. Responses to requests for explanation of claims, defenses and counterclaims shall be served on the requesting party within ten (10) calendar days from the date such request is received.
- (5). Arbitration Award. The Arbitrators shall issue a well-reasoned written decision with findings of fact, conclusions of law, and a calculation of

how damages, if any, were determined. The Arbitrators shall have no authority to award consequential, punitive, or other damages not measured by the prevailing party's actual damages. The Arbitrators may assess the costs of the Arbitration, excluding attorneys' fees, against a party or among the parties in such amount or amounts as the Arbitrators deems just, provided that such assessment bears a reasonable relationship to the relative fault of the parties stated in the final decision. The Arbitration award shall be final and binding upon the parties and shall be subject to judicial enforcement in accordance with the terms of this Agreement and Governing Law.

- (d). *Judicial Action.* Judicial actions under this Agreement shall be limited to actions to enforce (1) the agreement to arbitrate contained in this Agreement, (2) any interim order issued by the Arbitrators, including any grant of injunctive relief or order for specific performance, and (3) any Arbitration award or decision, (collectively, "**Judicial Actions**"). A Judicial Action may only be brought in: (1) the United States District Court for the Northern District of Indiana, the United States Court of Appeals for the Seventh Circuit, and the United States Supreme Court, and (2) if the United States District Court lacks jurisdiction, a Judicial Action may be brought in the Indiana State Court system (collectively, "**Courts of Competent Jurisdiction**"). The Band appoints the Chairman of the Pokagon Band Tribal Council and General Counsel for the Band as its agents for service of all process under or relating to this Agreement. PGA appoints the President and CEO of PGA and General Counsel for PGA as its agents for service of all process under or relating to this Agreement. The Band Parties agree that service in hand or by certified mail, return receipt requested, shall be effective for all purposes under or relating to this Agreement if served on such agents.
- (e). *Limited Waiver of Sovereign Immunity.* The Band Parties expressly waive their sovereign immunity from suit and consent to be sued for any Judicial Action in any of the Courts of Competent Jurisdiction. The Band Parties waive any requirement of exhaustion of tribal remedies.
- (f). *Limited Recourse.* The liability of the Band Parties under this Agreement shall always be payable solely from undistributed or future Revenues of PGA as governed by the Pokagon Band Revenue Allocation Plan ("**RAP**") enacted on January 21, 2012 and approved by the U.S. Secretary of the Interior ("**Secretary**") on June 8, 2012, or any subsequent version of the RAP that is from time to time lawfully approved by the Secretary. Without in any way limiting the foregoing, the Band Parties expressly authorize any governmental authorities who have the right and duty under Governing Law to take actions authorized or ordered by any such court to give effect, subject to such limited

recourse, to any judgment entered; provided, however, that liability of the Band Parties under any judgment shall always be payable solely from undistributed or future Revenues of PGA as described in this subsection, and in no instance shall any enforcement of any kind whatsoever be allowed against any assets of the Band. For purposes of this Section, "**Revenues**" shall mean: (a) the gross gaming revenue (win) of PGA from Class II Gaming or Class III Gaming, plus the gross revenues of PGA from all other sources in support of Class II Gaming or Class III Gaming, including but not limited to food and beverage, entertainment and retail, and any hotel; less (b) all amounts paid out as, or paid for, prizes, all operating expenses, amortization and depreciation, in each case determined in accordance with generally accepted accounting principles.

- (g). *Limitations Period to Commence Dispute Resolution.* No claim included within the definition of Dispute or the definition of Judicial Action under this Agreement may be commenced by any party more than four (4) years from the date the aggrieved party has knowledge, or reasonably should have knowledge, of the facts or circumstances giving rise to the Dispute, provided that the applicable statute(s) of limitation under Governing Law shall be tolled and any requirement under such statute(s) regarding a notice of claim with respect to the Dispute shall be suspended for the duration of any Negotiation, Mediation, and Arbitration.

18. Miscellaneous.

- (a). Governing Law. This Agreement shall be deemed entered into in Indiana and shall be subject to the laws of the State of Indiana and any applicable federal laws ("**Governing Law**").
- (b). Notice. Any notice required to be given pursuant to this Agreement shall be delivered to the appropriate party by Certified Mail Return Receipt Requested, or by overnight mail or courier service, to the following addresses:

If to the Band:

Pokagon Band of Potawatomi Indians
58620 Sink Road
Dowagiac, MI 49047
Attn: Chairman, Tribal Council

with a copy to:

Pokagon Band of Potawatomi Indians

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58620 Sink Road
Dowagiac, MI 49047
Attn: Office of General Counsel

and to:

Robert Gips
Drummond, Woodsum, MacMahon
84 Marginal Way, Suite 600
Portland, ME 04101-2480

If to the City:

Mayor of South Bend
227 W. Jefferson Blvd., Ste. 1400 N
South Bend, Indiana 46601

with a copy to:

Corporation Counsel
City of South Bend
227 W. Jefferson Blvd., Ste. 1200
South Bend, Indiana 46601

And to:

Joe Champion
Bingham Greenebaum Doll LLP
2700 Market Tower
10 West Market Street
Indianapolis, Indiana 46204

A party may designate a different address for notification under this subsection by notifying the other parties of such change in writing.

- (c). Further Actions. Each party agrees to execute all documents and to take all actions reasonably necessary to comply with the provisions of this Agreement and its intent.
- (d). Waivers. No failure or delay by a party to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement, or to exercise any right or remedy upon the breach thereof, shall constitute a waiver of any such breach or any subsequent breach of such covenant, agreement,

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term or condition. No covenant, agreement, term, or condition of this Agreement and no breach thereof shall be waived, altered or modified except by written instrument.

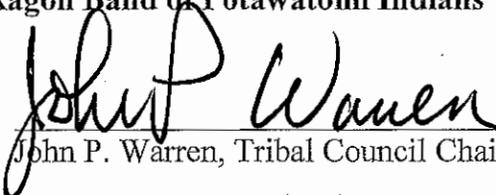
- (e) Captions. The captions for each section and subsection are intended for convenience only.
- (f) Severability. If any provision, or any portion of any provision, of this Agreement is found to be invalid or unenforceable, such unenforceable provision, or unenforceable portion of such provision, shall be deemed severed from the remainder of this Agreement and shall not cause the remainder of this Agreement to be invalid or unenforceable. If any provision, or any portion of any provision, of this Agreement is deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.
- (g) Third Party Beneficiary. This Agreement is exclusively for the benefit of the parties hereto. It may not be enforced by any party other than the parties to this Agreement, and shall not give rise to liability to any third party.
- (h) Successors and Assigns. The benefits and obligations of this Agreement shall inure to and be binding upon the parties hereto and their respective successors and assigns. The parties cannot assign their rights or obligations under this Agreement except with the written consent of the other parties, except that the PGA may, without the consent of the City, assign this Agreement to an instrumentality of the Band organized to conduct the business of the Resort for the Band if that instrumentality assumes all obligations of the PGA. No such assignment shall relieve the Band of any obligation under this Agreement, unless otherwise agreed by the City.
- (i) Modification. Any change to or modification of this Agreement must be in writing signed by the parties to this Agreement.
- (j) Entire Agreement. This Agreement contains the entire understanding and agreement of the parties hereto and supersedes all other prior agreements and understandings, written or oral between the parties. There are no oral agreements.
- (k) Preparation of Agreement. This Agreement was drafted and entered into after careful review and upon the advice of competent counsel; it shall not be construed more strongly for or against any party.

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- (l) Execution. This Agreement may be executed in counterparts, all of which taken together shall constitute one document.
- (m) Authorization. Each person signing on behalf of the Band, the PGA and the City represents and warrants that he or she is duly authorized to do so and that the consent to enforcement and jurisdiction by Courts of Competent Jurisdiction referenced in Section 17 of this Agreement has been authorized in accordance with all legal requirements applicable to each such party to this Agreement.

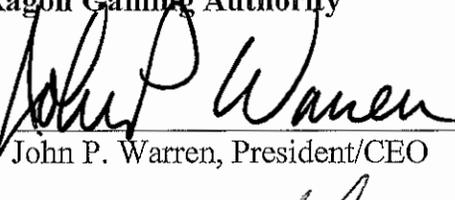
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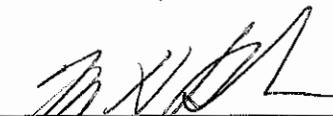
Pokagon Band of Potawatomi Indians

By: 
John P. Warren, Tribal Council Chairman

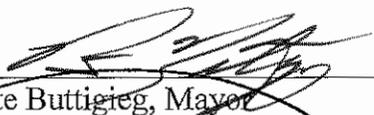
By: 
Mark Parrish, Tribal Council Secretary

Pokagon Gaming Authority

By: 
John P. Warren, President/CEO

By: 
Mark Parrish, Board Secretary

City of South Bend

By: 
Pete Buttigieg, Mayor

By: 
Tim Scott, Common Council President

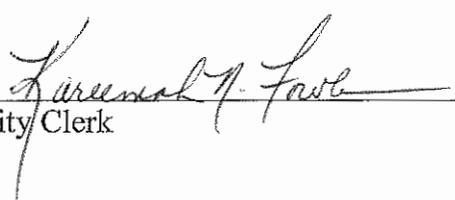
By: 
City Clerk

Exhibit A

Description of the Site

Exhibit A is comprised of the recorded deeds for each of the eighteen (18) parcels of land that comprise the Site.

Exhibit B-1

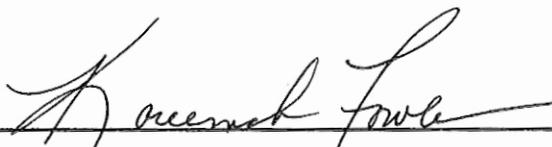
Resolution of the City of South Bend Common Council

RESOLUTION

No. 4554-16

Passed by the Common Council of the City of South Bend, Indiana _____

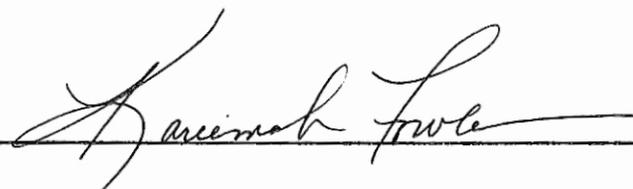
_____ April 11, _____ 2016 _____

Attest:  City Clerk

Attest:  President of Common Council

Presented by me to the Mayor of the City of South Bend, Indiana _____

_____ April 12, _____ 2016 _____

 City Clerk

Approved and signed by me April 12 2016

 Mayor

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF SOUTH BEND,
INDIANA, APPROVING AN AGREEMENT WITH THE POKAGON BAND OF
POTAWATOMI INDIANS**

WHEREAS, under 25 U.S.C. §§1300j *et seq.* (**the Restoration Act**), the Pokagon Band of Potawatomi Indians (**the Band**) is a federally recognized Indian tribe eligible for special programs and services provided by the United States to Indians because of their status as Indians, as recognized by the United States Secretary of the Interior; and

WHEREAS, the Restoration Act sets out a ten (10) county service area in southwestern Michigan and northern Indiana in recognition of the Band's ancestral homelands, and the Band and the U.S. Secretary of the Interior (**the Secretary**) entered into a Memorandum of Understanding on January 11, 1999 (**the MOU**) establishing general principles for the geographic areas within which the Band will acquire land to submit to the Secretary to be taken into trust. The Band is directed under the MOU to concentrate its land acquisition within four "consolidation sites" within four geographic areas, three of which are in the State of Michigan and one of which is in the vicinity of South Bend, Indiana; and

WHEREAS, the Band acquired approximately 166 contiguous acres of land located within the City of South Bend (the City), bounded by Prairie Avenue (State Road 23), U.S. Highway 31, and Locust Road (**the Site**); and

WHEREAS, pursuant to the Restoration Act and the MOU, the Band on or about May 14, 2012, filed an application with the U.S. Department of the Interior, Bureau of Indian Affairs (**Trust Land Application**) to have the Secretary take title to the Site in trust for the Pokagon Band of Potawatomi Indians; and

WHEREAS, the Band plans to develop the Site into a tribal village with 44 housing units and a multi-purpose facility with health service and other tribal government facilities; and

WHEREAS, the Tribe's development plan for the Site also includes a casino gaming resort facility, in accordance with Pokagon Band law and the Indiana Gaming Regulatory Act of 1988, P.L. 100-497, 25 U.S. C. § 2701 *et seq.* (**IGRA**), which shall bear the Band's naming brand "Four Winds" (**the Resort**); and

WHEREAS, a "Local Agreement" has been negotiated among the Band, the City, through its Mayor and its Corporation Counsel, and the Pokagon Gaming Authority, an unincorporated instrumentality of the Band (**PGA**), which establishes and memorializes the various and beneficial mutual commitments made out of recognition and respect for the sovereignty and best interests of each party, a full, complete copy of which is attached hereto as Exhibit 1; and

WHEREAS, among the beneficial provisions of the Local Agreement, the City is assured

that design, construction, and health and safety standards for the Tribal Village and the Resort are at least as rigorous as state and local laws; that in hiring and purchasing for the Resort, preference will be given to residents of St. Joseph County, Indiana, including a good faith effort to use minority and women owned businesses; and that for as long as the Site includes an operating hotel, a contribution from Tribal Resort Taxes under the Tribal Tax Code will be made annually to the St. Joseph County Convention and Exhibition Center Fund for promotion of travel, business and tourism in St. Joseph County, Indiana; and

WHEREAS, the Site, upon being taken into trust by the Secretary and pursuant to federal law, will be removed from the State and local property tax rolls; however, the Band and the PGA have agreed to make payments in lieu of taxes for utility, infrastructure, and other services provided by the City under a formula based on the Resort Gaming revenue which guarantees the City a minimum, annual fixed amount (between one to two million dollars), and in addition, the Band and the PGA shall contribute fixed sums over a period of years to South Bend Community Development initiatives and to several important South Bend non-profit organizations. These are Howard Park Improvements, the Bowman Creek Project, Prairie Avenue Landscaping and Resurfacing, South Bend Community School Corporation, Memorial Children's Hospital, YMCA Women's Shelter, Jobs for Americas Graduates-Indiana, Food Bank of Northern Indiana, and Boys and Girls Clubs of St. Joseph County; and

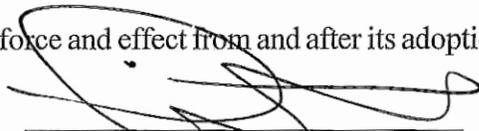
WHEREAS, the Common Council finds that the Local Agreement provides significant benefit to the City and its residents, and that it should be approved.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF SOUTH BEND AS FOLLOWS:

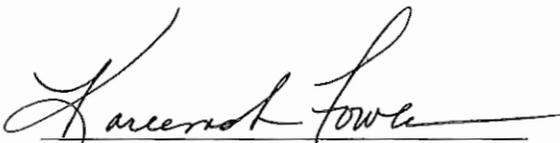
Section I. The Common Council of the City of South Bend, Indiana has considered and hereby approves the Local Agreement, attached hereto as Exhibit 1 between and among the City of South Bend, the Pokagon Band of Potawatomi Indians, and the Pokagon Gaming Authority.

Section II. The Mayor is authorized to execute the Local Agreement in form and substance the same as or similar to that of the Agreement attached hereto as Exhibit 1.

Section III. This Resolution shall be in full force and effect from and after its adoption by the Common Council and approval by the Mayor.



Member, Common Council



City Clerk

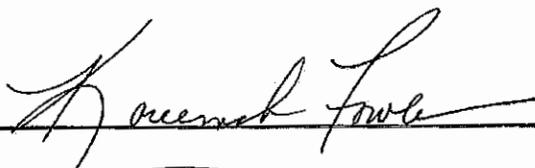
PRESENTED 4/11/16
NOT APPROVED
ADOPTED 4/11/16

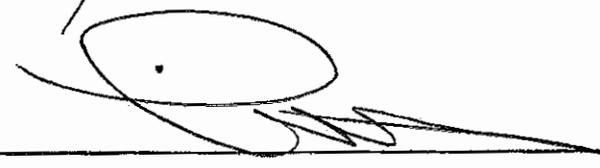
Filed in Clerk's Office
MAR 23 2016
KAREN FOWLER
CITY CLERK - SOUTH BEND, IN

RESOLUTION
No. 4554-16

Passed by the Common Council of the City of South Bend, Indiana _____

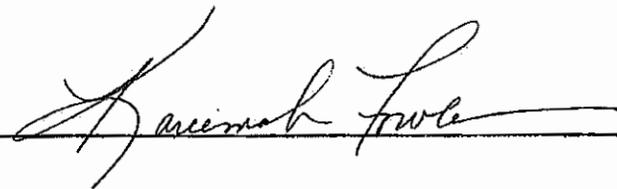
April 11, _____ 2016.

Attest:  City Clerk

Attest:  President of Common Council

Presented by me to the Mayor of the City of South Bend, Indiana _____

April 12, _____ 2016.

 City Clerk

Approved and signed by me April 12 2016.

 Mayor

RESOLUTION NO. 4554-14

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF SOUTH BEND,
INDIANA, APPROVING AN AGREEMENT WITH THE POKAGON BAND OF
POTAWATOMI INDIANS**

WHEREAS, under 25 U.S.C. §§1300j *et seq.* (**the Restoration Act**), the Pokagon Band of Potawatomi Indians (**the Band**) is a federally recognized Indian tribe eligible for special programs and services provided by the United States to Indians because of their status as Indians, as recognized by the United States Secretary of the Interior; and

WHEREAS, the Restoration Act sets out a ten (10) county service area in southwestern Michigan and northern Indiana in recognition of the Band's ancestral homelands, and the Band and the U.S. Secretary of the Interior (**the Secretary**) entered into a Memorandum of Understanding on January 11, 1999 (**the MOU**) establishing general principles for the geographic areas within which the Band will acquire land to submit to the Secretary to be taken into trust. The Band is directed under the MOU to concentrate its land acquisition within four "consolidation sites" within four geographic areas, three of which are in the State of Michigan and one of which is in the vicinity of South Bend, Indiana; and

WHEREAS, the Band acquired approximately 166 contiguous acres of land located within the City of South Bend (**the City**), bounded by Prairie Avenue (State Road 23), U.S. Highway 31, and Locust Road (**the Site**); and

WHEREAS, pursuant to the Restoration Act and the MOU, the Band on or about May 14, 2012, filed an application with the U.S. Department of the Interior, Bureau of Indian Affairs (**Trust Land Application**) to have the Secretary take title to the Site in trust for the Pokagon Band of Potawatomi Indians; and

WHEREAS, the Band plans to develop the Site into a tribal village with 44 housing units and a multi-purpose facility with health service and other tribal government facilities; and

WHEREAS, the Tribe's development plan for the Site also includes a casino gaming resort facility, in accordance with Pokagon Band law and the Indiana Gaming Regulatory Act of 1988, P.L. 100-497, 25 U.S. C. § 2701 *et seq.* (**IGRA**), which shall bear the Band's naming brand "Four Winds" (**the Resort**); and

WHEREAS, a "Local Agreement" has been negotiated among the Band, the City, through its Mayor and its Corporation Counsel, and the Pokagon Gaming Authority, an unincorporated instrumentality of the Band (**PGA**), which establishes and memorializes the various and beneficial mutual commitments made out of recognition and respect for the sovereignty and best interests of each party, a full, complete copy of which is attached hereto as Exhibit 1; and

WHEREAS, among the beneficial provisions of the Local Agreement, the City is assured

that design, construction, and health and safety standards for the Tribal Village and the Resort are at least as rigorous as state and local laws; that in hiring and purchasing for the Resort, preference will be given to residents of St. Joseph County, Indiana, including a good faith effort to use minority and women owned businesses; and that for as long as the Site includes an operating hotel, a contribution from Tribal Resort Taxes under the Tribal Tax Code will be made annually to the St. Joseph County Convention and Exhibition Center Fund for promotion of travel, business and tourism in St. Joseph County, Indiana; and

WHEREAS, the Site, upon being taken into trust by the Secretary and pursuant to federal law, will be removed from the State and local property tax rolls; however, the Band and the PGA have agreed to make payments in lieu of taxes for utility, infrastructure, and other services provided by the City under a formula based on the Resort Gaming revenue which guarantees the City a minimum, annual fixed amount (between one to two million dollars), and in addition, the Band and the PGA shall contribute fixed sums over a period of years to South Bend Community Development initiatives and to several important South Bend non-profit organizations. These are Howard Park Improvements, the Bowman Creek Project, Prairie Avenue Landscaping and Resurfacing, South Bend Community School Corporation, Memorial Children's Hospital, YMCA Women's Shelter, Jobs for Americas Graduates-Indiana, Food Bank of Northern Indiana, and Boys and Girls Clubs of St. Joseph County; and

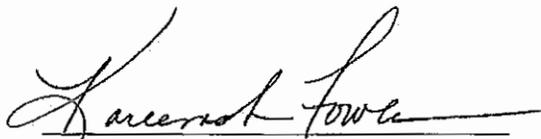
WHEREAS, the Common Council finds that the Local Agreement provides significant benefit to the City and its residents, and that it should be approved.

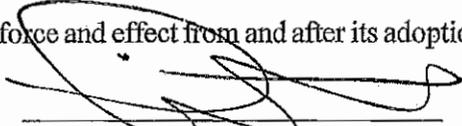
NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF SOUTH BEND AS FOLLOWS:

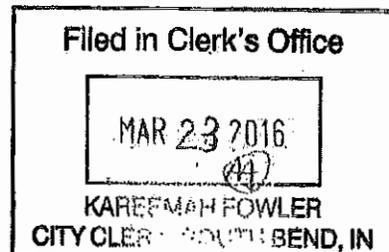
Section I. The Common Council of the City of South Bend, Indiana has considered and hereby approves the Local Agreement, attached hereto as Exhibit 1 between and among the City of South Bend, the Pokagon Band of Potawatomi Indians, and the Pokagon Gaming Authority.

Section II. The Mayor is authorized to execute the Local Agreement in form and substance the same as or similar to that of the Agreement attached hereto as Exhibit 1.

Section III. This Resolution shall be in full force and effect from and after its adoption by the Common Council and approval by the Mayor.


City Clerk


Member, Common Council



PRESENTED 4/11/16

NOT APPROVED

ADOPTED 4/11/16

Exhibit B-2

Resolution of the Pokagon Band Tribal Council



Pokégnek Bodéwadmik • Pokagon Band of Potawatomi
Tribal Council

P.O. Box 180 • 58620 Sink Road • Dowagiac, MI 49047 • www.PokagonBand-nsn.gov
(269) 782-6323 • (888) 376-9988 toll free • (269) 782-9625 fax

POKAGON BAND OF POTAWATOMI INDIANS

TRIBAL COUNCIL

RESOLUTION No. 16-03-10-01

WHEREAS: The Pokagon Band of Potawatomi Indians of Michigan and Indiana (“Pokagon Band”) is a sovereign, federally-recognized Indian tribe, as reaffirmed under P.L. 103-323, enacted September 21, 1994; and

WHEREAS: The Pokagon Band is organized under a constitution, which was adopted on November 1, 2005 and became effective on December 16, 2005 (“Constitution”); and

WHEREAS: In accordance with P.L. 103-323 and pursuant to Article IX of the Constitution, the Tribal Council is the governing body of the Pokagon Band; and

WHEREAS: The Tribal Council is vested with the sovereign powers of the Band not inconsistent with any provisions of the Constitution, including without limitation those enumerated powers set forth in Article IX, Section 2, of the Constitution; and

WHEREAS: The Pokagon Band acquired approximately 166 contiguous acres of land located within the City of South Bend (the “City”) and bounded by Prairie Avenue (State Road 23), U.S. Highway 31, and Locust Road (the “Site”) and on or about May 14, 2012, as provided in Section 6 of the Pokagon Restoration Act, 25 U.S.C. § 1300j-5, the Band filed an application with the U.S. Department of the Interior, Bureau of Indian Affairs, to have the Secretary of the Interior take title to the Site in trust for the Pokagon Band of Potawatomi Indians, Michigan and Indiana; and

WHEREAS: The Pokagon Band’s and the Pokagon Gaming Authority’s (“Authority”) plans and foreseeable development for the Site

include a tribal village with 44 housing units and a multi-purpose facility with health service and other tribal government facilities and, in accordance with Pokagon Band law and the Indian Gaming Regulatory Act of 1988, P.L. 100-497, 25 U.S.C. § 2701 *et seq.*, planned and foreseeable development of the Site also includes a casino gaming facility; and

WHEREAS: Pokagon Band and Authority representatives have been negotiating with City representatives concerning the terms of a local agreement (the "Local Agreement") to address matters of mutual concern regarding the Site and planned and foreseeable development for the Site; and

WHEREAS: The purpose of the Local Agreement is to establish and memorialize the various and beneficial commitments that the Pokagon Band, the Authority, and the City have made to each other out of recognition and respect for the sovereignty and mutual best interests of each party; and

WHEREAS: The Tribal Council has reviewed the Local Agreement and has concluded that the Local Agreement is in the best interests of the Pokagon Band and will further the Pokagon Band's long term interests and objectives.

NOW, THEREFORE, BE IT RESOLVED that the Tribal Council approves the Local Agreement attached hereto and made a part of the record of this Council session and authorizes the Tribal Council Chairman and the Tribal Council Secretary to execute the Local Agreement, substantially identical to the attached Local Agreement, on behalf of the Pokagon Band of Potawatomi Indians; and

BE IT FURTHER RESOLVED that, as provided in Section 17 of the Local Agreement and subject to all conditions and limitations stated therein, the Tribal Council agrees to participate in any Mediation process and any Arbitration procedure commenced under the Local Agreement; and

BE IT FURTHER RESOLVED that, as provided in Section 17 of the Local Agreement and subject to all conditions and limitations stated therein and in this resolution, the Tribal Council (i) approves, authorizes and confirms in accordance with the Pokagon Band Constitution and enacted Pokagon

Band law the limited waiver of the Pokagon Band's tribal sovereign immunity from suit, (ii) consents to be sued for any Judicial Action in any of the Courts of Competent Jurisdiction, and (iii) waives any requirement of exhaustion of tribal remedies; and

BE IT FURTHER RESOLVED that, as provided in Section 16 of the Local Agreement and subject to all conditions and limitations stated therein and in this resolution, the Local Agreement and the limited waiver of the Pokagon Band's tribal sovereign immunity shall become effective upon the commencement of the Term of the Local Agreement and shall continue in effect during the Term so long as the Local Agreement remains enforceable against the City.

CERTIFICATION

We do hereby certify that the foregoing Resolution was presented and voted upon with a quorum present at a duly convened Special meeting of the Tribal Council held on the 10th day of March, 2016 by a vote of 11 in favor, 0 opposed, 0 absent, and 0 abstaining.



John P. Warren
Tribal Council Chairman



Mark Parrish
Tribal Council Secretary

Exhibit B-3

Resolution of the Pokagon Gaming Authority Board of Directors



Pokégnek Bodéwadmik • Pokagon Band of Potawatomi
Gaming Authority

Box 180 • Dowagiac, MI 49047 • www.PokagonBand-nsn.gov
(269) 782-6323 • (269) 782-9625 fax

**POKAGON BAND OF POTAWATOMI INDIANS
BOARD OF DIRECTORS
RESOLUTION NO. 16-03-10-01**

WHEREAS: The Pokagon Gaming Authority is a wholly-owned unincorporated instrumentality of the Pokagon Band of Potawatomi Indians of Michigan and Indiana (a sovereign, federally-recognized Indian tribe organized under a constitution adopted on November 1, 2005); and

WHEREAS: The Pokagon Gaming Authority (the “Authority”) was chartered by the Pokagon Band Tribal Council through enactment of the Pokagon Gaming Authority Ordinance on May 25, 2006; and

WHEREAS: In accordance with Article IX, Section 2, of the Pokagon Band Constitution and pursuant to Section VIII of the Pokagon Gaming Authority Ordinance (the “Charter”), the Pokagon Gaming Authority Board of Directors is the duly recognized governing body of the Authority; and

WHEREAS: The Authority Board of Directors is authorized pursuant to subsection VI (C)(v) of the Charter to “make and enter into contracts in furtherance of the Gaming Business” and, pursuant to subsection VIII (C) of the Charter, is “delegated the power to manage and control the business, property and affairs of the Authority”; and

WHEREAS: The Pokagon Band acquired approximately 166 contiguous acres of land located within the City of South Bend (the “City”) and bounded by Prairie Avenue (State Road 23), U.S. Highway 31, and Locust Road (the “Site”) and on or about May 14, 2012, as provided in Section 6 of the Pokagon Restoration Act, 25 U.S.C. § 1300j-5, the Band filed an application with the U.S. Department of the Interior, Bureau of Indian Affairs, to have the

Secretary of the Interior take title to the Site in trust for the Pokagon Band of Potawatomi Indians, Michigan and Indiana; and

WHEREAS: The Pokagon Band's and the Authority's plans and foreseeable development for the Site include a tribal village with 44 housing units and a multi-purpose facility with health service and other tribal government facilities and, in accordance with Pokagon Band law and the Indian Gaming Regulatory Act of 1988, P.L. 100-497, 25 U.S.C. § 2701 *et seq.*, planned and foreseeable development of the Site also includes a casino gaming facility; and

WHEREAS: Pokagon Band and Authority representatives have been negotiating with City representatives concerning the terms of a local agreement (the "Local Agreement") to address matters of mutual concern regarding the Site and planned and foreseeable development for the Site; and

WHEREAS: The purpose of the Local Agreement is to establish and memorialize the various and beneficial commitments that the Pokagon Band, the Authority, and the City have made to each other out of recognition and respect for the sovereignty and mutual best interests of each party; and

WHEREAS: The Authority Board of Directors ("Board") has reviewed the Local Agreement and has concluded that the Local Agreement is in the best interests of the Authority and will further the Authority's long term interests and objectives.

NOW, THEREFORE, BE IT RESOLVED that the Board approves the Local Agreement attached hereto and made a part of the record of this Board session and authorizes the President/CEO and the Board Secretary to execute the Local Agreement, substantially identical to the attached Local Agreement, on behalf of the Authority; and

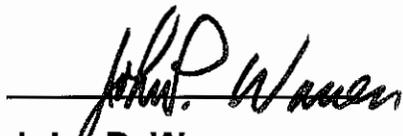
BE IT FURTHER RESOLVED that, as provided in Section 17 of the Local Agreement and subject to all conditions and limitations stated therein, the Board agrees to participate in any Mediation process and any Arbitration procedure commenced under the Local Agreement; and

BE IT FURTHER RESOLVED that, as provided in Section 17 of the Local Agreement and subject to all conditions and limitations stated therein and in this resolution, the Board (i) approves, authorizes and confirms in accordance with the Pokagon Band Constitution and enacted Pokagon Band law the limited waiver of the Authority's tribal sovereign immunity from suit, (ii) consents to be sued for any Judicial Action in any of the Courts of Competent Jurisdiction, and (iii) waives any requirement of exhaustion of tribal remedies; and

BE IT FURTHER RESOLVED that, as provided in Section 16 of the Local Agreement and subject to all conditions and limitations stated therein and in this resolution, the Local Agreement and the limited waiver of the Authority's tribal sovereign immunity shall become effective upon the commencement of the Term of the Local Agreement and shall continue in effect during the Term so long as the Local Agreement remains enforceable against the City.

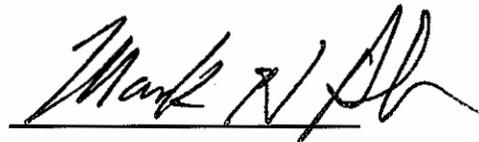
CERTIFICATION

We do hereby certify that the foregoing Resolution was presented and voted upon with a quorum present at a duly convened meeting of the Board of Directors held on the 10th day of March, 2016 by a vote of 11 in favor, 0 opposed, 0 absent, and 0 abstaining.



John P. Warren

President and CEO



Mark Parrish

Secretary

Appendix A

**South Bend Sewer and Water Service Agreement
Resolution No. 19-2016**

WATER SERVICE AND SEWER SERVICE AGREEMENT

This Agreement is made on the 22nd day of March, 2016 by and between the POKAGON BAND OF POTAWATOMI INDIANS (the "Band"), the POKAGON GAMING AUTHORITY, an unincorporated instrumentality of the Band ("PGA"), and the CITY OF SOUTH BEND, a municipal corporation existing under the laws of Indiana (the "City").

RECITALS

A. Concurrently with their approval of this Agreement, the Band Parties and the City are entering into a separate "Local Agreement" concerning the intended development by the Band of a Tribal Village and the development by PGA of a Resort on an approximately 166-acre site located within the City, which planned development as well as foreseeable but as yet unplanned development will require water service and sewer service.

B. On or about May 14, 2012, as provided in 25 U.S.C. §§ 1300j et seq. (the "Restoration Act"), the Band filed an application with the U.S. Department of the Interior, Bureau of Indian Affairs to have the Secretary of the Interior take title to the Site in trust for the Pokagon Band of Potawatomi Indians, Michigan and Indiana.

C. The City owns, operates and maintains a water supply system, including a filtration plant, storage and transmission facilities, and pumping stations, and furnishes filtered and treated water to customers. The City also owns, operates and maintains a complete sanitary sewer system, including a treatment plant, pump stations, lift stations, and sewer mains, and collects and treats wastewater from customers.

D. While the parties recognize that the Band Parties have the right and the ability to create a private water system and a private sewer system on the Site, the Band Parties and the City desire to extend City water services and sewer services to the Site for the Initial Phase and Full Build-Out Phase of development and to establish terms and conditions for upgrading and improving the systems that supply those services when the need arises, as determined by the City's standards and the obligations set forth in this Agreement. An engineer's drawing showing the layouts for the Initial Phase and Full Build-Out Phase of the water system and sewer system that will serve the Site is attached hereto as **Exhibit A**.

E. The City desires that the water system extension and the sewer system extension described in this Agreement be designed and constructed in a manner that will serve the City's plans for expanding services to future customers and the Band Parties share the City's desire and wish to assist the City in fulfilling its goal under the terms and conditions of this Agreement.

F. The City recognizes that representations and obligations made by the Band Parties under this Agreement are voluntary and are not required by any federal or state law.

G. The City represents that it is authorized to enter into this Agreement by a duly adopted resolution of the Board of Public Works, a true copy of which is attached as **Exhibit B-1**.

H. The Band represents that it is authorized to enter into this Agreement by a duly adopted resolution of the Band Tribal Council, a true copy of which is attached as **Exhibit B-2**.

I. PGA represents that it is authorized to enter into this Agreement by a duly adopted resolution of the Pokagon Gaming Authority Board of Directors, a true copy of which is attached as **Exhibit B-3**.

NOW, THEREFORE, in consideration of the obligations, terms and conditions contained herein, the adequacy of which the parties expressly acknowledge, the Band, PGA, and the City agree as follows:

1. Recitals true. The above recitals are true.
2. Definitions. The following terms, whenever used or referred to in this Agreement, shall have the respective meanings stated below:
 - (a). **"Agreement"** means this Water and Sewer Service Agreement.
 - (b). **"Band"** means the Pokagon Band of Potawatomi Indians, a sovereign federally-recognized Indian tribe, as reaffirmed in the Pokagon Restoration Act of 1994, 25 U.S.C. §§ 1300j et seq.
 - (c). **"Band Parties"** means the Band and PGA and **"Band Party"** means either the Band or PGA.
 - (d). **"Calvert Street Lift Station"** means the sewer system lift station located at or near the intersection of W. Calvert Street and Renewable Road.
 - (e). **"City"** means the City of South Bend, a municipal corporation existing under the laws of Indiana.
 - (f). **"Extension"** means the water system extension and/or the sewer system extension as described in Section 4, Section 5, and Exhibit A of this Agreement.

- (g). **“Full Build-Out Phase”** means the phase of on-site and off-site development of the water system and sewer system with a scope and design described more fully in Section 4 and Exhibit A of this Agreement, which will serve the needs of the Site after the Full-Build-Out Threshold is met.
- (h). **“Full Build-Out Threshold”** means that, due to projected increases in the demands on the system from planned development of the Site, the total use of the sewer system by all customers on the Site will exceed a threshold of 190 gallons per minute (“gpm”) discharged to the Locust Road gravity sewer. Under normal conditions, the lift station located on the Site will operate one pump at a time with a maximum individual pump capacity of 180 gpm. The Full Build-Out Threshold shall be considered exceeded when the flow meter installed at the lift station located on the Site measures a flow rate in excess of 190 gpm more than three times in any month.
- (i). **“Initial Phase”** means the phase of on-site and off-site development of the water system and sewer system with a scope and design described more fully in Section 4 and Exhibit A of this Agreement, which will serve the needs of the Site until the Full Build-Out Threshold is reached.
- (j). **“Local Agreement”** means the agreement titled “Local Agreement”, which is being entered into between the Band Parties and the City concurrently with their approval of this Agreement and that concerns the Band Parties’ intended development on the Site of a “Tribal Village” and a “Resort”, as those terms are defined in the Local Agreement.
- (k). **“PGA”** means the Pokagon Gaming Authority, an unincorporated governmental instrumentality of the Band.
- (l). **“Residential Site Customer”** means a Site Customer who is not a Band Party and receives water and sewer services to a residential location on the Site.
- (m). **“Resort”** means a casino gaming resort facility proposed to be developed on the Site, as show on Exhibit A.
- (n). **“Site”** means the approximately 166 acre site of land described in Exhibit A to the Local Agreement. The term Site also includes any other real property that is owned by the Band, including its agencies, instrumentalities, and enterprises, at the time this Agreement is entered into or in the future, will be served by the portion of the Extension located on the Site, and is located contiguous to:

- (1). the Site boundaries, notwithstanding any easements or right-of-way running between such real property and the Site, or
 - (2). other real property owned by the Band that is contiguous to the Site boundaries.
- (o). “**Site Customer**” means a customer, including an individual residential customer, that receives from the City water services and/or sewer services from a connection or discharge point located on the Site.

3. Water System and Sewer System Service Requirements

- (a). All Site Customers shall become customers of the City water system and sewer system and each Site Customer shall be individually and solely responsible for the payment of charges for the water services and sewer services such Site Customer receives from the City.
- (b). Except as expressly provided otherwise in this Agreement, the City shall provide water service and sewer service to Site Customers under the same terms and conditions, as amended from time to time, as the City provides such services to its other customers located within the City.
- (c). All charges and fees for water and sewer service provided by the City to Site Customers shall be in accordance with the City’s water tariff, as approved by the Indiana Utility Regulatory Commission (“IURC”) from time to time; the City’s sewer tariff as adopted by the Common Council; and the City’s ordinances as applicable to water and sewer service; provided that under the City’s water tariff and sewer tariff the Site shall be considered to be within the City and the Site Customers shall not be part of any special rate category that imposes rates that are higher than rates paid by other City customers for substantially similar uses.
- (d). Provided there are no cross connections with City water, the Band Parties reserve the right to use one or more onsite wells for irrigation purposes and, regardless of the water source for such irrigation purposes, the City shall not include charges for sewer services when billing for water service for irrigation uses by Site Customers who are Band Parties.

4. Description of Water System and Sewer System Improvements.

(a). *Initial Phase.*

- (1). Water Extension.

- (A) Extend a 12" water main and services, including valves, hydrants, and fittings, from the existing main on Locust Road through the residential development on the Site to the hydrants and utility building located on the Site with tees and valves to extend and loop the water main offsite under US-31 and to Prairie Avenue to accommodate future off-site need;
- (B) Design and construct the system to City, State, and any other applicable regulatory standards, including hydrants, and valves; and
- (C) Include individual meters for all potable uses on the Site, including each residential unit, and for all irrigation uses, whether such potable and irrigation uses currently exist on the Site or will be developed in the future.

(2). Sewer Extension.

- (A) Install gravity sewers from existing and proposed development on the Site to a central lift station to be located on the Site near the detention basin, which lift station will discharge wastewater through a forcemain to the existing sewer on Locust Road and shall have a back-up power supply;
- (B) Install a section of 24" trunkline sewer from the truck dock area of the proposed casino development to the lift station on the Site, which will serve as a future trunkline; and
- (C) Construct the system in accordance with City, IDEM, and any other applicable regulatory standards, including a backup power supply and bypass pump connections.

(b). **Full Build-Out Phase.**

- (1). Water Extension. In the interest of increasing the reliability of the water system and depending on the needs for water in the area of the Site when the Full Build-Out Threshold is met or at another earlier time if mutually agreeable to the Band Parties and the City, the parties, pursuant to the terms herein agree as follows:

- (A) To loop the watermain located on the Site around the Resort to connect to the low-pressure system at Prairie Avenue or, in the

alternative at the Band Parties' sole discretion, complete the loop that is located off the Site; and

(B) To bore and jack to install a 12" diameter waterline Extension from the Site boundary south under US-31.

(2). Sewer Extension. The Band Parties agree to abandon the existing lift station and forcemain located on the Site and extend, at the Band Parties' cost, the trunkline sewer from the lift station located on the Site north under Prairie Avenue to the Calvert Street Lift Station.

5. Band Parties Obligations. The Band Parties shall fulfill the following obligations regarding water system and sewer system services and improvements:

(a). At the Band Parties' cost, design, apply for City and State permits required by law, and construct the Extension for the Initial Phase improvements to the water system and sewer system located on the Site.

(b). Provide all design plans for the Initial Phase improvements and the Full Build-Out Phase improvements to the City. The design plans will be prepared at the Band Parties' expense by an engineering firm that meets all Indiana professional registration and licensing requirements. The design plans will be performed in accordance with the City's standards and specifications and must be submitted and approved by the City, the applicable regulatory agencies, and other governmental bodies prior to construction.

(c). In order to allow the system improvements located on Site to serve adjacent property owners in the future, the Band Parties shall, upon completion of the Initial Phase, convey an easement, not less than thirty (30) feet, and dedicate to the City within such easement all water system and sewer system improvements located on the Site, including the gravity sewer, forcemain, and lift station. Upon completion of the Full Build-Out Phase, the Band Parties shall also convey an easement and dedicate to the City within such easement all water system and sewer system improvements related to the Full Build-out Phase located on the Site *provided*, however, that at the Band Parties' discretion and to the extent feasible the Band Parties may, upon the written consent of the City, convey such easement to the City prior to the date of completion of the Full Build-Out Phase improvements. Prior to dedicating the Initial Phase and Full Build-Out Phase improvements to the City, the Band Parties shall be responsible for all maintenance and repairs to the improvements and shall be responsible for all costs related to such maintenance and repairs. Accordingly, the Band Parties must present the City

with a three (3) year maintenance bond from the contractor that installed the improvements effective the date of dedication to the City.

- (d). Use their best efforts to acquire at market value an easement or easements in the City's name from one or more property owners located adjacent to the Site on the north side of Prairie Avenue in order to permit the installation of a 36" sewer trunkline Extension from the Site to the Calvert Street Lift Station.
- (e). Contribute \$400,000 to the City to assist with the cost of replacement and upgrading the Calvert Street Lift Station, which contribution shall be made by the Band within fifteen (15) days from the date the City issues a notice to proceed to a contractor engaged by the City to perform the work.
- (f). Within eighteen (18) months, or twenty-four (24) months in the event of delays not within the Band Parties' control, from the date that the Full Build-Out Threshold is reached, at the Band Parties' cost, design, obtain all City, State or other regulatory permits required by law, and construct the Full Build-Out Phase improvements to the water system and sewer system located off the Site. Such improvements are limited to the following:
 - (1). Loop the watermain located on the Site around the Resort to connect to the low-pressure water supply system at Prairie Avenue or, in the alternative at the Band Parties' sole discretion, complete the loop that is located off the Site;
 - (2). Bore and jack to install a 24" diameter sewer trunkline Extension from the Site Boundary north under Prairie Avenue;
 - (3). Install a 36" diameter sewer trunkline Extension from Prairie Avenue along an easement to be acquired and continuing through an existing easement to the Calvert Street Lift Station;
 - (4). During the 18-month build out, the discharge from the lift station cannot exceed 225 gpm due to the existing capacity of the Locust Road sewer main; and
- (g). Pay charges for water services and sewer services provided by the City to Site Customers who are Band Parties in accordance with the charges in effect at that time as specified by the City's IURC-approved water tariff, the City's sewer tariff and the City's ordinances, subject to the qualifications stated in paragraph 3(c) of this Agreement.

(h). During construction of the public portions of the water and sewer Extension located on the Site and until dedication to the City in accordance with the terms of this Agreement, carry and maintain comprehensive general liability and casualty insurance with regard to bodily injury, sickness, disease or death, and damage to or destruction of tangible property, including the loss of use resulting therefrom, for which the Band Parties may be liable, including, but not limited to damages, costs, claims, and expenses arising from or directly related to the public portions of the water and sewer Extension located on the Site. Such insurance shall, at a minimum, be in amounts equal to cover the repair and full replacement of the public portion of either the Initial Phase or the Full Build-Out Phase of the water and sewer Extension located on the Site, depending on which phase is being constructed.

6. City Obligations. The City shall fulfill the following obligations regarding water system services and sewer system services and improvements:

- (a). Review and approve in a timely and expeditious manner pursuant to applicable law and regulation and in accordance with the City's standards and specifications all design plans submitted by a Band Party to the City regarding upgrades and extensions of the water system and sewer system, and any approvals and permits required from the City shall not be unreasonably withheld.
- (b). Conduct inspections and testing during construction of the Initial Phase and Full Build-Out Phase improvements. The inspections and testing will be done as necessary in order to ensure compliance with the design plans and the City's standards and specifications. The Band Parties and the City shall endeavor in good faith to reach agreement regarding the selection of a qualified firm to conduct the inspections and testing, which will be done at the Band Parties' expense.
- (c). Within six (6) months prior to dedication of the Initial Phase and Full Build-Out Phase improvements from the Band Parties to the City, a final inspection will be conducted by the City at the City's expense. The City shall provide a copy of the results of such inspection along with a list of defects, if any, the Band Parties must rectify prior to dedicating the improvements to the City. Any defects reported shall be repaired by the Band Parties at their sole expense prior to dedication.
- (d). Provide water services and sewer services to the Site and all current and future Site Customers in the full capacities of the systems.

- (e). Upon assurances that all good faith efforts were exhausted and receipt of written notice from the Band Parties that they were unable to acquire the easements described in subsection 5(c) of this Agreement, the City shall acquire, by purchase or condemnation, all such easements as may be necessary for the construction of the sewer trunkline Extension *provided*, however, that the Band Parties shall reimburse the City for their reasonable costs, including legal costs, in acquiring such easements, at either the cost of any easement voluntarily obtained after notice and approval to the Band Parties, which approval shall not be unreasonably withheld, or the cost of any easement obtained through condemnation or eminent domain.
- (f). Within eighteen (18) months from the date that the Full Build-Out Threshold is reached, design and complete construction of the replacement and upgrade to the Calvert Street Lift Station, and all costs for such improvements over and above the \$400,000 contribution due from the Band Parties under paragraph 5(d) of this Agreement shall be paid by the City.
- (g). Accept the dedication of, and operate the public portions of the water system and sewer system located on the Site, including the lift station, in accordance with all applicable laws and regulations in the same manner as the City operates the parts of such systems that are located off the Site, which obligation includes at the City's sole expense the provision of electrical, gas, telephone, diesel fuel, and other energy and support services needed for the operation of such systems.
- (h). Rebate to the Band Parties all amounts the City receives from –
 - (1). Subsequent connector charges and assessment fees paid by customers for non-mainline connections that connect to a trunkline sewer Extension or a water supply Extension directly extending from the Site but located off the Site if such Extension was paid for entirely by the Band Parties.
- (i). Maintain, repair, and replace the public portion of the water system and sewer system improvements located on the Site as needed in order to ensure the full and reliable function of such systems and their components, consistent with the City's standards and practices for the parts of such systems that are located off the Site. The public portion of the water and sewer Extension is described in Exhibit C-1, Exhibit C-2, and Exhibit C-3 attached and incorporated hereto.
- (j). Read the meters and directly bill each Site Customer for water services and sewer services and the due date for payment of such bills shall be consistent with the due dates that apply to the City's customers located off the Site;

- (k). Assist and cooperate with the Band Parties in their effort to obtain any necessary approvals and permits from the Indiana Department of Environmental Management and any other state or local agencies needed to construct the upgrades and extensions of the water system and the sewer system;
- (l). Allow the Band and PGA to expand water services and sewer services on the Site with timely and expeditious review, approval, and permitting procedures up to 190 gpm flow for sewer services at the Band Parties' cost;
- (m). The City is a municipal corporation organized under the laws of the State of Indiana, and is self-insured under provisions of Indiana statutes and local ordinance and as such, maintains blanket insurance coverage over real and personal property, and is covered by a non-reverting insurance premium and liability reserve fund created by the City, pursuant to Indiana Code 34-13-3-4, as amended from time to time. Under said statute, the City's liability is limited to:
 - (1). Three Hundred Thousand Dollars (\$300,000) for a cause of action that accrues before January 1, 2006;
 - (2). Five Hundred Thousand Dollars (\$500,000) for a cause of action that accrues on or after January 1, 2006, and before January 1, 2008; or
 - (3). Seven Hundred Thousand Dollars (\$700,000) for a cause of action that accrues on or after January 1, 2008; and
 - (4). for injury to or death of all persons in that occurrence, Five Million Dollars (\$5,000,000); and
 - (5). A governmental entity or an employee of governmental entity acting within the scope of employment is not liable for punitive damages.
- (n). Maintain, in a workmanlike manner, any and all other improvements off the Site that are not identified in this Agreement, but are required now or will be required in the future to provide the required water service and sewer service to the Site.

7. Residential Site Customers.

- (a). The Band Parties and the City acknowledge that upon the transfer of the Site by the Band to the United States Secretary of the Interior in trust for the Band, limitations under applicable law will prevent the City from placing a lien

against any portion of the Site in order to secure the payment of delinquent charges owed for water services and sewer services provided by the City to a Residential Site Customer. Therefore, the Band Parties and the City agree that the procedures set forth in this Section 7 shall be the exclusive process for addressing delinquencies by Residential Site Customers for water and sewer service:

- (b). In order to provide the Band an opportunity to address any delinquency regarding charges owed by a Residential Site Customer prior to the certification of such delinquent charges by the City, as provided below in subsection 7(c), the City shall provide written notice each month to the Band's Finance Director of delinquent charges owed by Residential Site Customers, which notice shall, at a minimum, include the name and address of each Site Customer that owes a delinquent charge and an itemized breakdown of the delinquent charges showing the month when each delinquent charge was first incurred and all interest and penalties added thereto.
 - (c). The City shall also provide the Finance Director with a written notice by the first day of April of each year regarding every delinquent charge that has been delinquent for at least sixty (60) days, which notice shall, at a minimum, meet the requirements of subsection 7(b) above and shall also include a statement that certifies the accuracy of the information contained in the notice according to the City's records.
 - (d). The Band shall pay in full to the City the amount of the certified delinquent charges for each Residential Site Customer within thirty days of receipt of a notice that conforms to the requirements of subsection 7(c).
 - (e). Upon its receipt of payment by the Band of any certified delinquent charges, the City shall be deemed to have assigned to the Band all of the City's rights in the certified delinquent charges and thereafter the City shall cease any and all efforts to collect such certified delinquent charges from the Residential Site Customer.
 - (f). The City may, in accordance with the standards and procedures of applicable law, regulations, and any validly adopted policy, temporarily suspend water service for any Residential Site Customer with delinquent charges owed to the City until such charges are paid in full.
8. Scope of Agreement. This agreement applies to the Site and all development located on the Site.

9. Force Majeure. The Band Parties and the City shall not be excused from the performance of any of their obligations under this Agreement except when such performance is prevented by causes which are beyond the reasonable control and without the fault of the party affected, such as acts of God, war, terrorism, civil unrest, labor shortages and acts of a government in its sovereign capacity. The party whose performance is delayed shall promptly notify the other party of any such cause for non-performance and, upon such notification, such party's performance shall be excused on a day-to-day basis only for the duration of the cause of non-performance and only to the extent that performance is actually prevented *provided*, however, that such party diligently pursues all reasonable efforts to eliminate the cause of non-performance. Where the performance of one party is excused, the performance of the other parties shall likewise be excused and all parties shall promptly resume performance upon the cessation of the cause of non-performance.
10. Term and Breach. This Agreement shall remain in full force and effect for ninety-nine (99) years and may only be terminated by the City due to a breach of material terms of this Agreement by a Band Party after first providing both Band Parties with a written notice of default and an opportunity to cure the default within thirty (30) days from the date of such notice. The Band Parties' remedies for a breach of material terms of this Agreement by the City include, without limitation, specific performance. If the City breaches its duty to provide water to Site Customers, as required by this Agreement, the Band Parties may obtain water from an alternative source including, without limitation, another municipal water supply system or a private water supply system located on the Site. In the event the Band Parties obtain water from an alternative source, as permitted in this subsection, or upon the expiration or termination of this Agreement, the City shall dedicate to the Band the public portion of the water system and sewer system located within the easements granted to the City on the Site, including the lift station and all other improvements.
11. Limitation on Liability. The Band Parties and the City may recover monetary damages incurred as a result of any material breach of this Agreement, including the failure of the Band Parties to complete their obligations related to the Full Build-Out Phase; provided, however, that in no event shall any party be liable for any special, incidental, consequential, or punitive damages.
12. Dispute Resolution. The Band Parties and the City shall resolve every controversy, question, claim, or dispute between the Band Parties and the City that arises out of this Agreement, including the validity of this Agreement ("Dispute") in accordance with the requirements of Subsections 17(a) through 17(d) of the Local Agreement, which provisions are incorporated herein and made a part of this Agreement as if restated herein in their entirety.

13. Governing Law. This Agreement shall be deemed entered into in Indiana and shall be subject to the laws of the State of Indiana and any applicable federal laws, including the approval provisions of 25 U.S.C. § 81.

14. Miscellaneous Provisions.

(a). *Notice.* Except for notices to the Band's Finance Director for delinquent charges as provided in Section 7, which may be delivered by U.S. Mail, first class postage pre-paid, or by other method acceptable to the City and the Finance Director, any notice required to be given pursuant to this Agreement shall be delivered to the appropriate party by Certified Mail Return Receipt Requested, or by overnight mail or courier service, to the following addresses:

If to the Band or PGA:

Pokagon Band of Potawatomi Indians
58620 Sink Road
Dowagiac, MI 49047
Attn: Chairman, Tribal Council

with a copy to:

Pokagon Band of Potawatomi Indians
58620 Sink Road
Dowagiac, MI 49047
Attn: Office of General Counsel

and to:

Robert Gips
Drummond, Woodsum, MacMahon
84 Marginal Way, Suite 600
Portland, ME 04101-2480

and if to the Finance Director regarding delinquent charges under Section 7 to:

Pokagon Band of Potawatomi Indians
58620 Sink Road
Dowagiac, MI 49047
Attn: Finance Director

If to the City:

The Mayor of South Bend
1400 County-City Building
227 West Jefferson Boulevard
South Bend, Indiana 46601

With a copy to:

Corporation Counsel
1200 County-City Building
227 West Jefferson Boulevard
South Bend, Indiana 46601

With a copy to:

Bingham Greenebaum Doll, LLP
Attn: Joe Champion
2700 Market Tower
10 West Market Street
Indianapolis, Indiana 46204

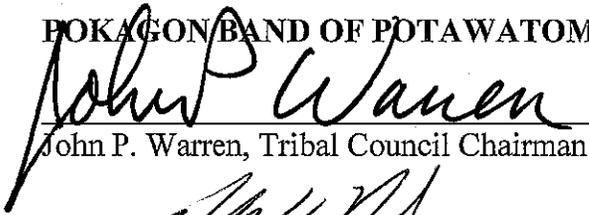
A party may designate a different address for notification under this subsection by notifying the other parties of such change in writing.

- (b). **Further Actions.** Each party agrees to execute all documents and to take all actions reasonably necessary to comply with the provisions of this Agreement and its intent.
- (c). **Waivers.** No failure or delay by a party to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement, or to exercise any right or remedy upon the breach thereof, shall constitute a waiver of any such breach or any subsequent breach of such covenant, agreement, term or condition. No covenant, agreement, term, or condition of this Agreement and no breach thereof shall be waived, altered or modified except by written instrument.
- (d). **Captions.** The captions for each section and subsection are intended for convenience only.

- (e). **Severability.** If any provision, or any portion of any provision, of this Agreement is found to be invalid or unenforceable, such unenforceable provision, or unenforceable portion of such provision, shall be deemed severed from the remainder of this Agreement and shall not cause the remainder of this Agreement to be invalid or unenforceable. If any provision, or any portion of any provision, of this Agreement is deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.
- (f). **Third Party Beneficiary.** This Agreement is exclusively for the benefit of the parties hereto. It may not be enforced by any party other than the parties to this Agreement, and shall not give rise to liability to any third party.
- (g). **Successors and Assigns.** The benefits and obligations of this Agreement shall inure to and be binding upon the parties hereto and their respective successors and assigns. The parties cannot assign their rights or obligations under this Agreement except with the written consent of the other parties, except that the PGA may, without the consent of the City, assign this Agreement to an instrumentality of the Band organized to conduct the business of the Resort for the Band if that instrumentality assumes all obligations of the PGA. No such assignment shall relieve the Band of any obligation under this Agreement, unless otherwise agreed to by the City.
- (h). **Modification.** Any change to or modification of this Agreement must be in writing signed by the parties to this Agreement.
- (i). **Entire Agreement.** This Agreement contains the entire understanding and agreement of the parties hereto and supersedes all other prior agreements and understandings, written or oral between the parties. There are no oral agreements.
- (j). **Preparation of Agreement.** This Agreement was drafted and entered into after careful review and upon the advice of competent counsel; it shall not be construed more strongly for or against any party.
- (k). **Execution.** This Agreement may be executed in counterparts, all of which taken together shall constitute one document.
- (l). **Authorization.** Each person signing for an entity warrants that he or she is duly authorized to do so.

This Agreement was executed as of March 22, 2016.

POKAGON BAND OF POTAWATOMI INDIANS

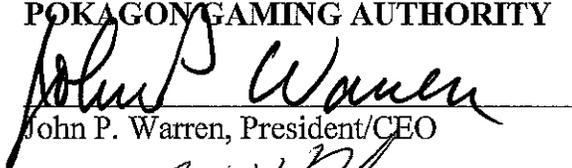


John P. Warren, Tribal Council Chairman

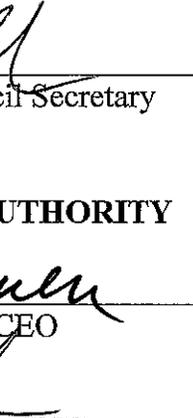


Mark Parrish, Tribal Council Secretary

POKAGON GAMING AUTHORITY



John P. Warren, President/CEO



Mark Parrish, Board Secretary

**CITY OF SOUTH BEND
BOARD OF PUBLIC WORKS**



Gary A. Gilot



James A. Mueller



Elizabeth A. Maradik



David P. Relos

Therese J. Dorau

ATTEST:



Linda Martin, Clerk

WATER SERVICE AND SEWER SERVICE AGREEMENT

Exhibit A

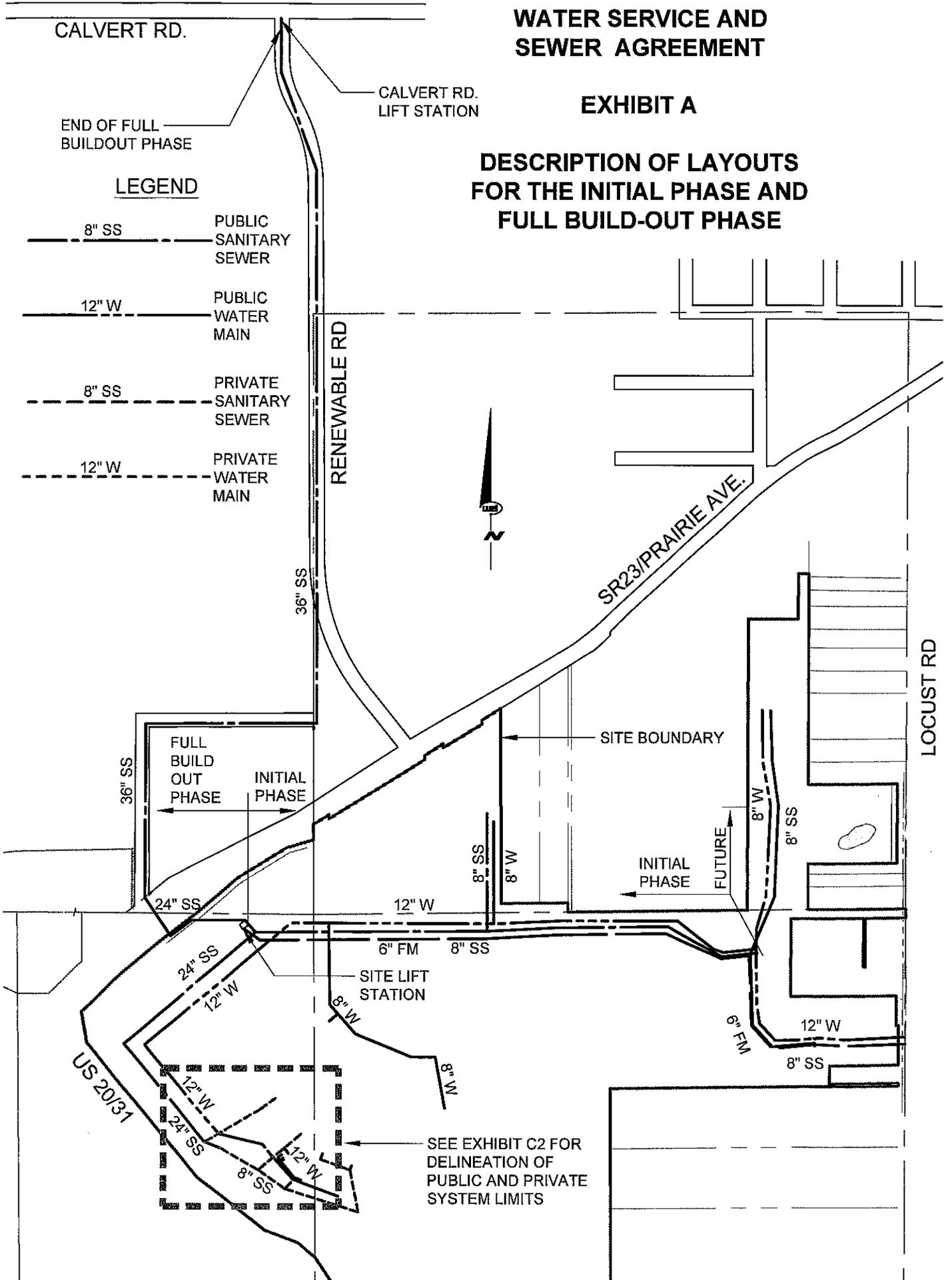
Description of Layouts for the Initial Phase and Full Build-Out Phase

Exhibit A is an engineer's drawing showing the layouts for the Initial Phase and Full Build-Out Phase of the water system and sewer system serving the Site.

WATER SERVICE AND SEWER AGREEMENT

EXHIBIT A

DESCRIPTION OF LAYOUTS FOR THE INITIAL PHASE AND FULL BUILD-OUT PHASE



CALVERT RD.

END OF FULL BUILDOUT PHASE

CALVERT RD. LIFT STATION

LEGEND

- 8" SS PUBLIC SANITARY SEWER
- 12" W PUBLIC WATER MAIN
- 8" SS PRIVATE SANITARY SEWER
- 12" W PRIVATE WATER MAIN

RENEWABLE RD

SR23/PRAIRIE AVE.

LOCUST RD

FULL BUILD OUT PHASE INITIAL PHASE

SITE BOUNDARY

INITIAL PHASE FUTURE

SITE LIFT STATION

SEE EXHIBIT C2 FOR DELINEATION OF PUBLIC AND PRIVATE SYSTEM LIMITS

US 20/31

Exhibit B-1

Resolution of the City of South Bend Board of Public Works

RESOLUTION NO. 19-2016
A RESOLUTION OF THE BOARD OF PUBLIC WORKS FOR THE CITY OF SOUTH BEND, INDIANA APPROVING THE WATER SERVICE AND SEWER SERVICE AGREEMENT POKAGON BAND OF POTAWATOMI INDIANS AND THE POKAGON GAMING AUTHORITY

WHEREAS, the City of South Bend Board of Public Works ("Board") is the contracting body for the City of South Bend, Indiana ("City") and the Board has the authority under the laws of Indiana to enter into contracts on behalf of the City; and

WHEREAS, the Board has determined that a need exists, for the betterment of the City, to extend water and sewer service within the City's 6th district for the non-exclusive benefit of the Pokagon Band of the Potawatomi Indians ("Pokagon Band"); and

WHEREAS, in furtherance of the extension of water and sewer service within the City's 6th district, the Board has entered into a certain Water Service and Sewer Service Agreement in the form attached and incorporated hereto at Exhibit A; and

WHEREAS, time is of the essence in this matter.

NOW, THEREFORE, BE IT RESOLVED by the City of South Bend Board of Public Works as follows:

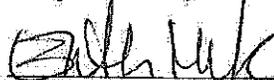
1. The Water Service and Sewer Service Agreement is hereby approved.
2. This Resolution shall be in full force and effect after its adoption by the City of South Bend Board of Public Works.

ADOPTED at a meeting of the Board of Public Works of the City of South Bend, Indiana held on March 22, 2016, at 1308 County-City Building, 227 West Jefferson Boulevard, South Bend, Indiana 46601.

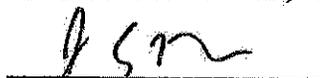
**CITY OF SOUTH BEND,
BOARD OF PUBLIC WORKS**

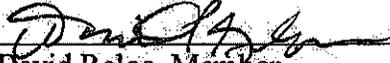


Gary A. Gilot, President



Elizabeth A. Maradik, Member


James Mueller, Member


David Relos, Member

Therese Dorau, Member

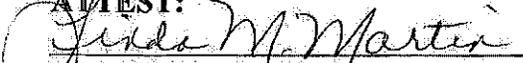
ATTEST:

Linda M. Martin, Clerk

Exhibit B-2

**Resolution of the Tribal Council of the
Pokagon Band of Potawatomi Indians**



Pokégnek Bodéwadmik • Pokagon Band of Potawatomi
Tribal Council

P.O. Box 180 • 58620 Sink Road • Dowagiac, MI 49047 • www.PokagonBand-nsn.gov
(269) 782-6323 • (888) 376-9988 toll free • (269) 782-9625 fax

POKAGON BAND OF POTAWATOMI INDIANS

TRIBAL COUNCIL

RESOLUTION No. 16-03-10-02

WHEREAS: The Pokagon Band of Potawatomi Indians of Michigan and Indiana is a sovereign, federally-recognized Indian tribe, as reaffirmed under P.L. 103-323, enacted September 21, 1994; and

WHEREAS: The Pokagon Band is organized under a constitution, which was adopted on November 1, 2005 and became effective on December 16, 2005 ("Constitution"); and

WHEREAS: In accordance with P.L. 103-323 and pursuant to Article IX of the Constitution, the Tribal Council is the governing body of the Pokagon Band; and

WHEREAS: The Tribal Council is vested with the sovereign powers of the Band not inconsistent with any provisions of the Constitution, including without limitation those enumerated powers set forth in Article IX, Section 2, of the Constitution; and

WHEREAS: The Pokagon Band acquired approximately 166 contiguous acres of land located within the City of South Bend (the "City") and bounded by Prairie Avenue (State Road 23), U.S. Highway 31, and Locust Road (the "Site") and on or about May 14, 2012, as provided in Section 6 of the Pokagon Restoration Act, 25 U.S.C. § 1300j-5, the Band filed an application with the U.S. Department of the Interior, Bureau of Indian Affairs, to have the Secretary of the Interior take title to the Site in trust for the Pokagon Band of Potawatomi Indians, Michigan and Indiana; and

WHEREAS: The Pokagon Band's and the Pokagon Gaming Authority's ("Authority") plans and foreseeable development for the Site include a tribal village with 44 housing units and a multi-purpose facility with health service and other tribal government facilities and, in accordance with Pokagon Band law and the Indian Gaming Regulatory Act of 1988, P.L. 100-497, 25 U.S.C. § 2701 *et seq.*, planned and foreseeable development of the Site also includes a casino gaming facility; and

WHEREAS: Pokagon Band and Authority representatives have been negotiating with City representatives concerning the terms of a "water and sewer agreement" (the "Water and Sewer Agreement") to establish terms and conditions for extending City water services and sewer services to the Site and for upgrading and improving the systems that supply those services when the need arises; and

WHEREAS: The Tribal Council has reviewed the Water and Sewer Agreement and has concluded that the Water and Sewer Agreement is in the best interests of the Pokagon Band and will further the Pokagon Band's long term interests and objectives.

NOW, THEREFORE, BE IT RESOLVED that the Tribal Council approves the Water and Sewer Agreement attached hereto and made a part of the record of this Council session and authorizes the Tribal Council Chairman and the Tribal Council Secretary to execute the Water and Sewer Agreement, substantially identical to the attached Water and Sewer Agreement, on behalf of the Pokagon Band of Potawatomi Indians; and

BE IT FURTHER RESOLVED that, as provided in Section 12 of the Water and Sewer Agreement and subject to all conditions and limitations stated therein and in this resolution, the Tribal Council (i) agrees to participate in any Mediation process and any Arbitration procedure commenced under the Water and Sewer Agreement, (ii) approves, authorizes and confirms in accordance with the Pokagon Band Constitution and enacted Pokagon Band law a limited waiver of the Pokagon Band's tribal sovereign immunity from suit for any Judicial Actions in any of the Courts of Competent Jurisdiction for enforcement of the Water and Sewer Agreement, and (iii) waives any requirement of exhaustion of tribal remedies; and

BE IT FURTHER RESOLVED that, as provided in Section 10 of the Water and Sewer Agreement and subject to all conditions and limitations stated therein and in this resolution, the Water and Sewer Agreement and the limited waiver of the Pokagon Band's tribal sovereign immunity shall become effective upon the approval and execution by all parties and shall continue in effect during the Term so long as the Water and Sewer Agreement remains enforceable against the City.

CERTIFICATION

We do hereby certify that the foregoing Resolution was presented and voted upon with a quorum present at a duly convened Special meeting of the Tribal Council held on the 10th day of March, 2016 by a vote of 11 in favor, 0 opposed, 0 absent, and 0 abstaining.



John P. Warren
Tribal Council Chairman



Mark Parrish
Tribal Council Secretary

Exhibit B-3

**Resolution of the Board of Directors
of the Pokagon Gaming Authority**



Pokégnek Bodéwadmik • Pokagon Band of Potawatomi
Gaming Authority

Box 180 • Dowagiac, MI 49047 • www.PokagonBand-nsn.gov
(269) 782-6323 • (269) 782-9625 fax

POKAGON GAMING AUTHORITY

BOARD OF DIRECTORS

RESOLUTION No. 16-03-10-02

WHEREAS: The Pokagon Gaming Authority is a wholly-owned unincorporated instrumentality of the Pokagon Band of Potawatomi Indians of Michigan and Indiana (a sovereign, federally-recognized Indian tribe organized under a constitution adopted on November 1, 2005); and

WHEREAS: The Pokagon Gaming Authority (the "Authority") was chartered by the Pokagon Band Tribal Council through enactment of the Pokagon Gaming Authority Ordinance on May 25, 2006; and

WHEREAS: In accordance with Article IX, Section 2, of the Pokagon Band Constitution and pursuant to Section VIII of the Pokagon Gaming Authority Ordinance (the "Charter"), the Pokagon Gaming Authority Board of Directors is the duly recognized governing body of the Authority; and

WHEREAS: The Authority Board of Directors is authorized pursuant to subsection VI (C)(v) of the Charter to "make and enter into contracts in furtherance of the Gaming Business" and, pursuant to subsection VIII (C) of the Charter, is "delegated the power to manage and control the business, property and affairs of the Authority"; and

WHEREAS: The Pokagon Band acquired approximately 166 contiguous acres of land located within the City of South Bend (the "City") and bounded by Prairie Avenue (State Road 23), U.S. Highway 31, and Locust Road (the "Site") and on or about May 14, 2012, as provided in Section 6 of the Pokagon Restoration Act, 25

U.S.C. § 1300j-5, the Band filed an application with the U.S. Department of the Interior, Bureau of Indian Affairs, to have the Secretary of the Interior take title to the Site in trust for the Pokagon Band of Potawatomi Indians, Michigan and Indiana; and

WHEREAS: The Pokagon Band's and the Authority's plans and foreseeable development for the Site include a tribal village with 44 housing units and a multi-purpose facility with health service and other tribal government facilities and, in accordance with Pokagon Band law and the Indian Gaming Regulatory Act of 1988, P.L. 100-497, 25 U.S.C. § 2701 *et seq.*, planned and foreseeable development of the Site also includes a casino gaming facility; and

WHEREAS: Pokagon Band and Authority representatives have been negotiating with City representatives concerning the terms of a "water and sewer agreement" (the "Water and Sewer Agreement") to establish terms and conditions for extending City water services and sewer services to the Site and for upgrading and improving the systems that supply those services when the need arises; and

WHEREAS: The Authority's Board of Directors ("Board") has reviewed the Water and Sewer Agreement and has concluded that the Water and Sewer Agreement is in the best interests of the Authority and will further the Authority's long term interests and objectives.

NOW, THEREFORE, BE IT RESOLVED that the Board approves the Water and Sewer Agreement attached hereto and made a part of the record of this Board session and authorizes the President/CEO and the Board Secretary to execute the Water and Sewer Agreement, substantially identical to the attached Water and Sewer Agreement, on behalf of the Pokagon Gaming Authority; and

BE IT FURTHER RESOLVED that, as provided in Section 12 of the Water and Sewer Agreement and subject to all conditions and limitations stated therein and in this resolution, the Board (i) agrees to participation by the Authority in any Mediation process and any Arbitration procedure

commenced under the Water and Sewer Agreement, (ii) approves, authorizes and confirms in accordance with the Pokagon Band Constitution and enacted Pokagon Band law a limited waiver of the Authority's tribal sovereign immunity from suit for any Judicial Actions in any of the Courts of Competent Jurisdiction for enforcement of the Water and Sewer Agreement, and (iii) waives any requirement of exhaustion of tribal remedies; and

BE IT FURTHER RESOLVED that, as provided in Section 10 of the Water and Sewer Agreement and subject to all conditions and limitations stated therein and in this resolution, the Water and Sewer Agreement and the limited waiver of the Authority's tribal sovereign immunity shall become effective upon the approval and execution by all parties and shall continue in effect during the Term so long as the Water And Sewer Agreement remains enforceable against the City.

CERTIFICATION

We do hereby certify that the foregoing Resolution was presented and voted upon with a quorum present at a duly convened meeting of the Board of Directors held on the 10th day of March, 2016 by a vote of 11 in favor, 0 opposed, 0 absent, and 0 abstaining.



John P. Warren
President and CEO



Mark Parrish
Secretary

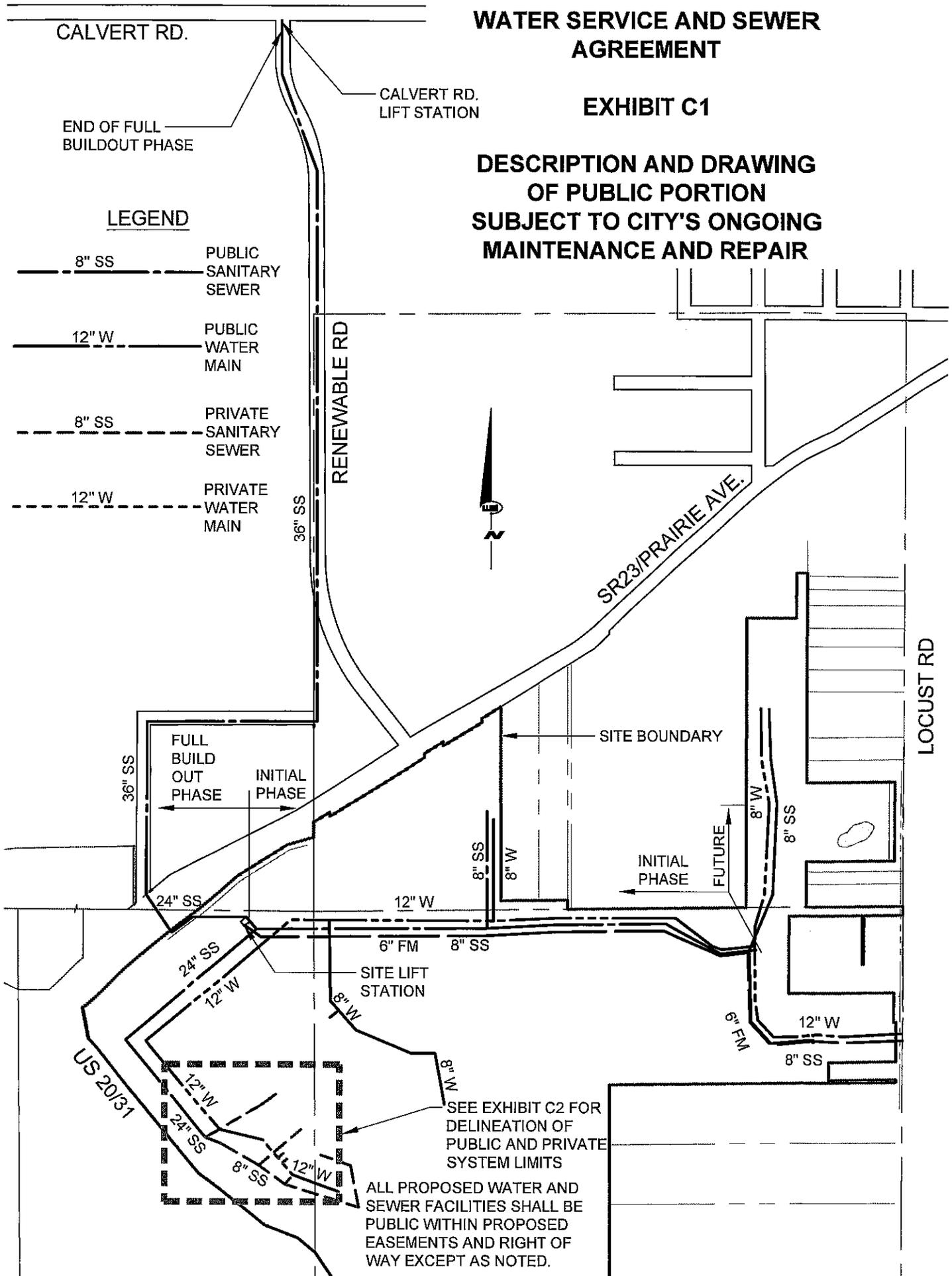
Exhibit C-1

**Description and Drawing of Public Portion
Subject to City's Ongoing Maintenance and Repair**

WATER SERVICE AND SEWER AGREEMENT

EXHIBIT C1

DESCRIPTION AND DRAWING OF PUBLIC PORTION SUBJECT TO CITY'S ONGOING MAINTENANCE AND REPAIR



LEGEND

- 8" SS PUBLIC SANITARY SEWER
- 12" W PUBLIC WATER MAIN
- 8" SS PRIVATE SANITARY SEWER
- 12" W PRIVATE WATER MAIN

FULL BUILD OUT PHASE
INITIAL PHASE

SITE BOUNDARY

INITIAL PHASE
FUTURE

SITE LIFT STATION

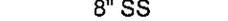
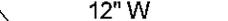
SEE EXHIBIT C2 FOR DELINEATION OF PUBLIC AND PRIVATE SYSTEM LIMITS

ALL PROPOSED WATER AND SEWER FACILITIES SHALL BE PUBLIC WITHIN PROPOSED EASEMENTS AND RIGHT OF WAY EXCEPT AS NOTED.

Exhibit C-2

**Description and Drawing of Public Portion
Subject to City's Ongoing Maintenance and Repair**

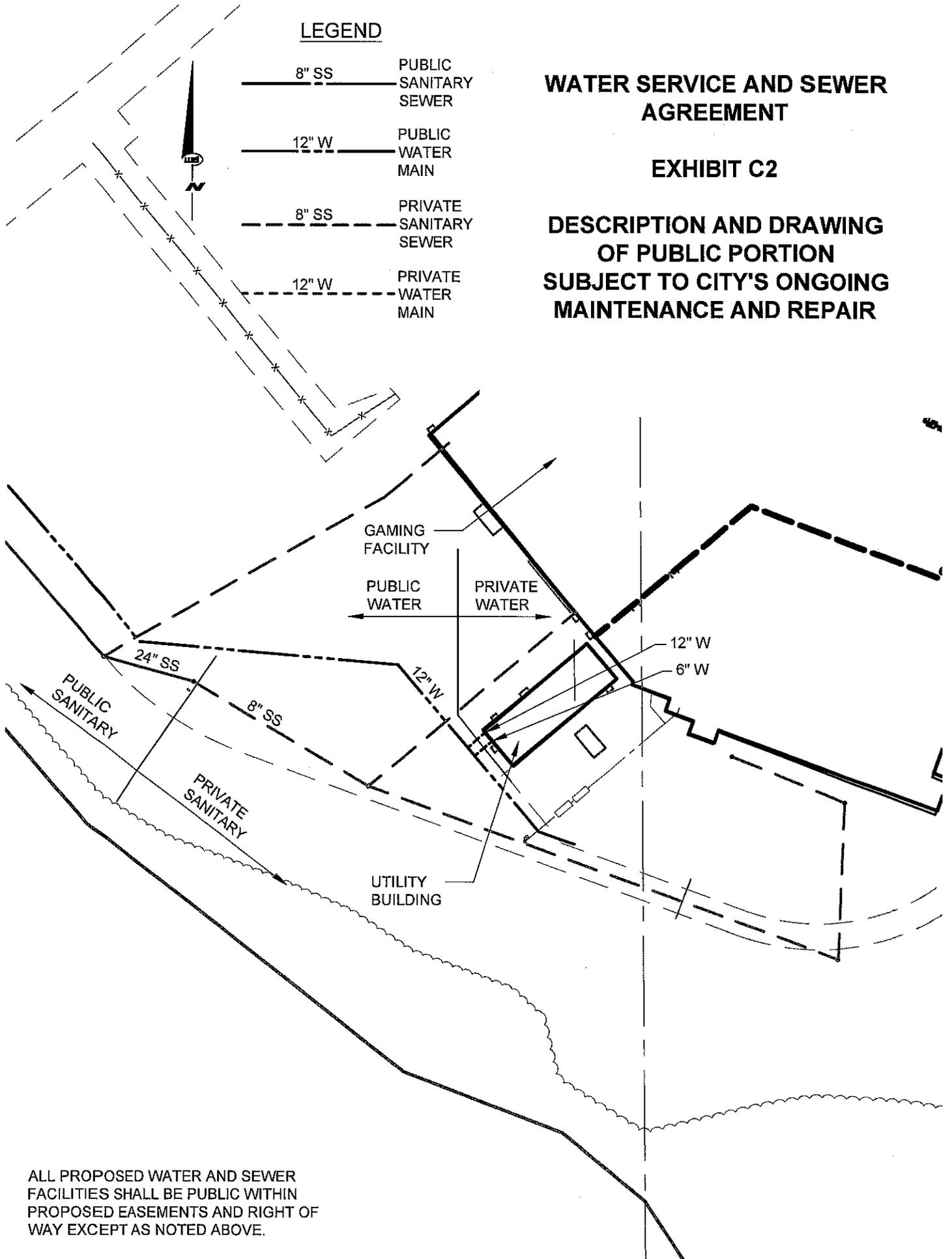
LEGEND

	8" SS	PUBLIC SANITARY SEWER
	12" W	PUBLIC WATER MAIN
	8" SS	PRIVATE SANITARY SEWER
	12" W	PRIVATE WATER MAIN

**WATER SERVICE AND SEWER
AGREEMENT**

EXHIBIT C2

**DESCRIPTION AND DRAWING
OF PUBLIC PORTION
SUBJECT TO CITY'S ONGOING
MAINTENANCE AND REPAIR**



ALL PROPOSED WATER AND SEWER
FACILITIES SHALL BE PUBLIC WITHIN
PROPOSED EASEMENTS AND RIGHT OF
WAY EXCEPT AS NOTED ABOVE.

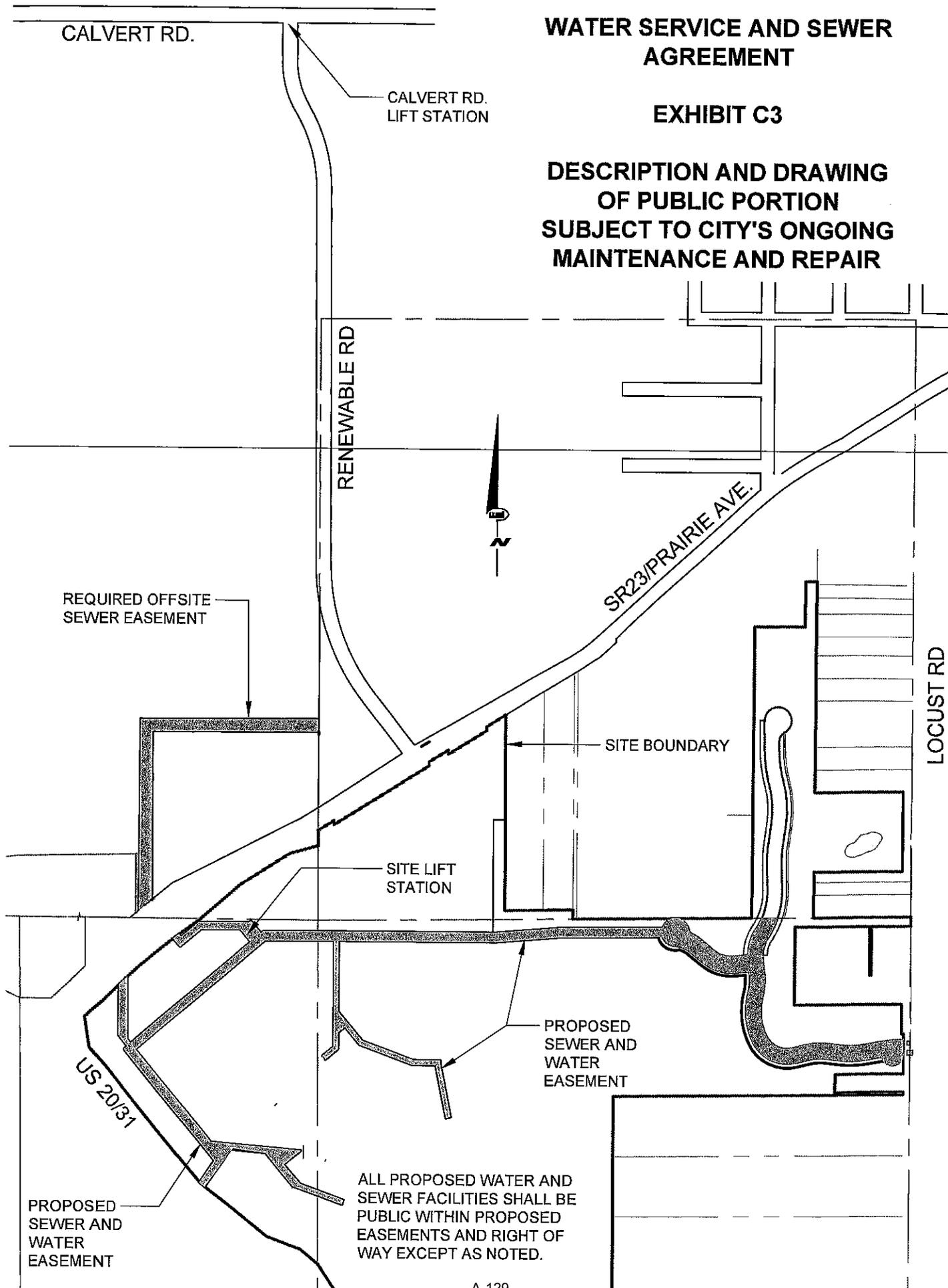
Exhibit C-3

**Description and Drawing of Public Portion
Subject to City's Ongoing Maintenance and Repair**

WATER SERVICE AND SEWER AGREEMENT

EXHIBIT C3

DESCRIPTION AND DRAWING OF PUBLIC PORTION SUBJECT TO CITY'S ONGOING MAINTENANCE AND REPAIR



Appendix A

**St. Joseph County Law Enforcement Agreement
Resolution R-12-C-2014**

LAW ENFORCEMENT AGREEMENT

Between
The Pokagon Band of Potawatomi Indians
and
The County of St. Joseph, Indiana

This Agreement is made by and between the Pokagon Band of Potawatomi Indians (“Pokagon Band” or “Band”), a federally-recognized Indian tribe, including the Pokagon Band Police Department (“Tribal Police”), St. Joseph County, Indiana (“County”), and the St. Joseph County Sheriff (“Sheriff”).

WHEREAS, the County and the Pokagon Band wish to maintain and promote the health, welfare and safety of County residents and visitors as well as Band citizens; and

WHEREAS, the Pokagon Band and the County desire to maintain and promote effective law enforcement for all persons present in the County; and

WHEREAS, the Band desires to have its Tribal Police officers deputized as Sheriff’s deputies and the County wishes to deputize said officers to act throughout the County and the State of Indiana; and

WHEREAS, the County desires to have its Sheriff’s deputies deputized as Tribal Police officers, and the Band wishes to deputize said Sheriff’s deputies to act on lands located in the State of Indiana that are held by the United States of America in trust for the Pokagon Band (“Trust Lands”); and

WHEREAS, the Band and the County wish to enable the Tribal Police officers and Sheriff’s deputies to have reciprocal law enforcement jurisdiction and authority throughout St. Joseph County and the State of Indiana, including on Trust Lands located in Indiana; and

WHEREAS, the Band and the County mutually desire to extend governmental and sovereign immunity to protect all Band and County law enforcement personnel from tort liability for any injuries to persons or damage to property caused by said officers or deputies while acting in the course and within the scope of his or her employment or service.

THEREFORE, in consideration of the above and foregoing provisions, as well as the covenants and conditions contained herein, the County and the Band agree as follows:

I. TERM OF AGREEMENT

The initial term of this Agreement (the "Term") shall be for ten (10) years, which period shall commence on the date the Agreement is executed by both parties. Either party, in its sole discretion and without cause, may terminate this Agreement at any time upon written notice to the other party, which termination shall be effective upon receipt of such notice by the other party. If this Agreement is not terminated before the end of the Term, the Term shall be extended without further action of the parties for additional one-year periods unless terminated by either party as provided herein.

II. SCOPE OF DEPUTIZATION

The County shall deputize, in accordance with applicable Indiana laws, those Tribal Police officers who meet applicable law enforcement officer training and certification standards under Indiana law. The Band shall deputize, in accordance with applicable Band laws, the Sheriff and the Sheriff's deputies who meet applicable law enforcement officer training and certification standards under Pokagon Band law, provided that the Sheriff and Sheriff's deputies shall also participate in a law enforcement training program administered by the Band to familiarize themselves with Band laws, law enforcement procedures, and jurisdictional issues. Accordingly, all law enforcement personnel deputized pursuant to the terms of this Agreement ("Deputized Officers") shall have the police powers conferred upon County Sheriff's Deputies under the laws of the State of Indiana and the ordinances of the County, as well as the police powers conferred upon Tribal Police officers by the laws of the Band and federal law.

Tribal Police officers and Sheriff's deputies shall have the same powers and duties as each other's corresponding personnel, but only for the period they are engaged in activities authorized by the entity they are visiting, and are subject to all provisions of law as if they were providing services within their own jurisdiction.

Notwithstanding the foregoing, the Sheriff and the Tribal Police Captain (the "Captain") may decline to deputize any law enforcement officer for good cause. The Sheriff or Captain may also immediately suspend for

good cause the authority conferred under this Agreement on any Deputized Officer upon written notice provided to the other party of such action. The parties agree that the authority conferred under the Agreement upon a Deputized Officer is a privilege and that any determination of whether good cause exists to refuse to deputize an officer, or to suspend the deputy status of a Deputized Officer, shall be at the sole discretion of the deputizing authority and shall not be reviewable. The County and the Band shall jointly maintain a list of Deputized Officers who both parties agree are duly deputized and authorized to act pursuant to this Agreement.

III. TERRITORIAL LIMITATION

The territorial limits of the law enforcement powers conferred upon the Deputized Officers under this Agreement shall be coextensive with the territorial limits of the Sheriff within the State of Indiana and of the Tribal Police within the Band's Trust lands located within Indiana, without limitation regarding the powers of law enforcement personnel when engaged in "fresh pursuit" or "hot pursuit" of an offender, as defined under applicable Indiana law. Any such "fresh pursuit" or "hot pursuit" shall be undertaken in accord with the Sheriff's written policies regarding such matters.

IV. EMPLOYMENT AND SUPERVISION AND REPORTING

Tribal Police officers shall remain employees of the Band, and at all times shall report to and remain under the supervision of the Captain, regardless of whether or not said officers are acting under the authority conferred upon them under this Agreement; provided, that when acting pursuant to the law enforcement powers conferred by this Agreement, Tribal Police officers shall also report to and coordinate with the Sheriff. Sheriff's deputies shall remain employees of the County, and at all times shall report to and remain under the supervision of the Sheriff, regardless of whether or not said deputies are acting under the authority conferred upon them under this Agreement; provided, that when acting pursuant to the law enforcement powers conferred by this Agreement, the Sheriff's deputies shall also report to and coordinate with the Captain.

V. COSTS

The parties shall be responsible for all salaries, benefits and other employment expenses related to employment of their respective law

enforcement personnel, including without limitation all medical expenses and the cost of worker's compensation and/or other statutory benefits

VI. CIVIL IMMUNITY; INSURANCE

All privileges and immunities provided by the United States Constitution, and all other Federal, State and Band, laws, as well as County ordinances shall apply to all law enforcement personnel while acting in the course and within the scope of his or her employment or service. Each party shall be responsible for the negligent acts or omissions of its law enforcement personnel. Under no circumstances shall either the Band or the County be liable for the acts or omissions of employees of the other party, to the extent said acts or omissions fall within the scope of this Agreement.

The Parties recognize that the County is self-insured and that its liability for torts is limited pursuant to Indiana's Tort Claim Act, IC 34-13-3; accordingly, the County shall not be required to purchase insurance. At the Band's request, the County shall verify self-insurance coverage up to the limits of the Tort Claims Act

The Parties also recognize that Band liability for torts may be covered under the Federal Tort Claims Act, 28 U.S.C. § 1346(b), and the Pokagon Band Tort Claims Ordinance. In addition to any tort liability coverage available under federal and tribal law, the Band agrees to maintain an insurance policy with supplemental coverage for torts that is not less than the limitations on liability stated in Section 4 of the Indiana Tort Claims Act. The Band shall, at its sole cost, maintain the policy in full force and effect during the term of this Agreement and shall submit to the County upon its request proof of the insurance required by this Section VI.

VII. ARRESTS

The Band agrees to make arrests for the County on Trust Lands pursuant to any valid State court warrant and to deliver the arrestee to the County. The County agrees to make arrests for the Band outside of Trust Lands pursuant to any valid Pokagon Band Tribal Court ("Tribal Court") warrant and to deliver the arrestee to the Tribal Police.

VIII. SEARCH WARRANTS

Sheriff's deputies shall prepare and present search warrants relating to

County law enforcement cases and authorizing the search for evidence located on Trust Lands to the State court and the Tribal Court for enforcement, and for execution by Tribal Police officers. Such warrants shall be prepared in accordance with applicable Band laws. The Tribal Police shall observe all requirements of Band, Indiana and federal law regarding the conduct of such searches, and Sheriff's deputies may accompany Tribal Police officers when such searches are executed.

Tribal Police officers shall prepare and present search warrants relating to Band law enforcement cases and authorizing the search for evidence located outside Trust Lands to the State court and Tribal Court for enforcement, and for execution by Sheriff's deputies. Such search warrants shall be prepared in accordance with applicable Indiana laws. Sheriff's deputies shall observe all requirements of Band, Indian and federal law regarding the conduct of such searches, and Tribal Police officers may accompany Sheriff's deputies when such searches are executed.

IX. COMPLIANCE WITH I.C. 36-1-7-4

This Agreement was previously submitted to the Attorney General for the State of Indiana for review pursuant to I.C. 36-1-7-4.

X. GENERAL PROVISIONS

1. Entire Agreement.

This Agreement supersedes all prior written or oral agreements and is not contingent upon or conditioned on the performance of any other agreement which may have been entered into by the parties. This Agreement and any exhibits or attachments incorporated herein by reference constitute the entire Agreement of the parties and there are no other written or oral agreements, representations, or understandings of any kind.

2. Modifications.

This Agreement may only be modified by a written agreement that is signed by a duly authorized representative for each party.

3. Severability and Headings.

The provisions of this Agreement are severable. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, it shall be considered deleted from this Agreement and the invalidity of such provision shall not affect the validity or enforceability of any other provisions, which shall remain in effect in the absence of the invalid provision. The headings of this Agreement are for reference purposes only and only the text of each provision shall be construed to be the terms and conditions of this Agreement.

The undersigned execute this Agreement as duly authorized representatives of the respective parties:

POKAGON BAND OF POTAWATOMI INDIANS

Date: 11/10/14 By: John P. Warren
John Warren, Tribal Chairman
By: Faye Wesaw
Faye Wesaw, Tribal Secretary

ST. JOSEPH COUNTY SHERIFF

Date: 11/12/14 By: Michael D. Grzegorek
Michael D. Grzegorek, Sheriff

**ST. JOSEPH COUNTY
BOARD OF COMMISSIONERS**

Date: 11-12-14 By: Andy Kostielney
Andy Kostielney, President