MEMORANDUM OF AGREEMENT

BETWEEN

THE LAC du FLAMBEAU TRIBE ENVIRONMENTAL RESPONSE PROGRAM

AND

THE U. S. ENVIRONMENTAL PROTECTION AGENCY REGION 5

REGARDING

REGULATORY AUTHORITY OVER UNDERGROUND STORAGE TANKS

This Memorandum of Agreement (MOA) is between the Environmental Response Program of the Lac du Flambeau Tribe (LDF) and Region 5 of the U.S. Environmental Protection Agency (EPA).

1. Purpose and Parties. The purpose of this MOA is to provide for joint enforcement by LDF and EPA pursuant to each sovereign's inherent authority to protect human health and the environment within the exterior boundaries of the Lac Du Flambeau Indian Reservation (Reservation). Under 42 U.S.C. § 6908a, EPA is authorized to enter into assistance agreements with federally recognized Indian tribes on such terms and conditions as deemed appropriate for the development and implementation of programs to manage hazardous waste, and underground storage tanks (USTs). This MOA is intended to provide a framework for good faith government-to-government coordination of response activities at leaking underground storage tanks (LUST) sites located within the Reservation and to further the policy of the United States and EPA to consult with tribal governments before taking action which may affect tribal rights and resources.

1.1 General Program: LUST's present an imminently serious concern to human health and the environment on the Reservation. Hence, it is paramount that all LUSTs be remediated in a timely fashion. The regulation of USTs and LUSTs located within the Reservation do not come within the scope of state regulation. Accordingly, the LDF, a federally recognized Indian tribe, acting in its sovereign capacity, and EPA, as the agency exercising delegate authority under federal law are responsible for implementing and enforcing the LUST program to protect the health of all persons either residing or doing business within the exterior boundaries of the Reservation (Reservation Population) and to protect the quality of all lands, waters and natural resources within the Reservation (the Reservation Environment).

1.2 LDF: The Lac Du Flambeau Tribe is a sovereign Indian Tribe, whose government is recognized by the United States and is responsible for protecting the health of the Reservation Population and for developing, implementing and enforcing applicable Tribal environmental standards in a manner consistent with and not less stringent than applicable EPA standards and regulations, to protect the quality of the Reservation Environment. The LDF is a party to the 1837 Treaty with the Chippewa, the 1842 Treaty, and the 1854 Treaty with the

Chippewa (collectively the Treaties). The LDF's entry into this MOA is in furtherance of those duties and responsibilities.

1.3 EPA Authority: EPA is the federal agency responsible for implementation of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, §§ 1002 - 3023 of RCRA, 42 U.S.C. §§6901- 6939(e). Under the Treaties the United States, acting through EPA, has a fiduciary obligation to honor the obligations of the United States to protect the LDF's treaty guaranteed and protected interests and rights. The EPA has a fiduciary duty under the Treaties, federal law and EPA Indian Policy to actively support and, when necessary, support the work of the LDF in protecting the health of the Reservation Population and the quality of the Reservation Environment. EPA enters into this MOA in furtherance of its statutory and regulatory responsibilities and authorities under RCRA Subtitle I Underground Storage Tank requirements, Subchapter IX, 42 U.S.C § 6991 et seq. and EPA's Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks, 40 CFR Part 280.

1.4 LDF Authority. Article 6 Section 1 (a) of the Lac du Flambeau Tribal Constitution and By Laws provides that the Tribal Council has the power, "subject to any limitations imposed by the statutes or the Constitution of the United States, and subject to all express restrictions upon such powers contained in this Constitution and Bylaws: (a) To regulate the use and disposition of tribal property to protect and preserve the tribal property, wild life and natural resources of the Lac du Flambeau Band of Lake Superior Chippewa Indians, to cultivate Indian arts, crafts, and culture, to administer charity, to protect the health, security, and general welfare of the Tribe." LDF enters into this MOA in furtherance of its constitutional, statutory and regulatory responsibilities and authorities under Lac du Flambeau Tribal law and policy, in particular, Section 2, Chapter 200, Hazardous Substance Control Code.

2. General Objectives. The agreed objectives of this MOA are as follows:

2.1 Maximize coordination between EPA and LDF in all LUST activities in accordance with EPA's Indian Policy;

2.2 Improve the existing data on LUST sites and their characteristics;

2.3 Cleanup LUST sites primarily through oversight of responsible party financed cleanups and, where appropriate, as agreed through either selected tribal-lead cleanups or federal-lead cleanups using the LUST Trust Fund;

2.4 As appropriate, provide for direct EPA implementation of the federal UST regulations;

2.5 Facilitate development of tribally run self-sustaining LUST regulatory and cleanup programs.

3. Pilot Project.

3.1 The Haskell Lake Area Petroleum Contamination Site (Haskell Lake Site), which was previously known as the Tower Site, is of immediate concern to the LDF and EPA because it poses a threat to the health of the Reservation Population and the quality of the Reservation Environment. The Haskell Lake Site is located at 14267 Hwy. 70, Lac du Flambeau, Wisconsin, within the Reservation Environment, on fee property owned by non-tribal members.

3.2 A service station was previously located on the Haskell Lake Site, beginning operations in the 1940s, with several USTs used at the Site for the storage and sale of petroleum products. Investigations conducted to date have recommended remedial action under Wisconsin's State Petroleum Environmental Cleanup Fund Award (PECFA) program. Pursuant to the PECFA program, a contractor retained by the property owner conducted certain remedial action at the Haskell Lake Site, including the activities described in **Exhibit A**. In 2006, Wisconsin Department of Natural Resources (WDNR) determined that conditions at the Haskell Lake Site, were appropriate for closure under WDNR closure standards. However, in 2011, based on sampling at an adjacent location, the LDF discovered petroleum contamination at depth, which in 2013 was found to be originating from the Haskell Lake Site

3.3 The owners of the Haskell Lake Site have been found to be responsible parties under both federal and tribal law, and have been provided with notice by EPA and the LDF under their respective regulatory programs. Notices issued by EPA and the LDF are attached as **Exhibits B and C**. Although the WDNR continues to perform work at the Haskell Lake Site, subject to written permission of the LDF and EPA, the work performed to date has not fully characterized the Haskell Lake Site. Accordingly, EPA and LDF have determined that active participation by EPA and the LDF is necessary to ensure that the Haskell Lake Site is properly remediated in accordance with applicable LDF standards. EPA is acting to support the work of the LDF by exercising its fiduciary duty to take action to protect the health, and welfare of the Reservation Population and the quality of the soils, ground water, surface waters, and other natural resources that comprise the Reservation Environment.

3.4 LDF Responsibilities. LDF will provide timely responses (within 10 business days) to technical submittals, draft decision documents, and decision documents provided by WDNR or EPA for LDF's review. LDF , or its contractor or representative shall arrange to be available at the Haskell Lake Site and collect split samples or collect other data, at the LDF's discretion, whenever EPA or owner's contractor is doing work at the Haskell Lake Site. LDF will also be completing an investigation of the source area, in order to categorize the source. The investigation procedures are further defined in **Exhibit D**.

3.5 EPA Responsibilities. EPA will provide timely responses (within 10 business days) to technical submittals, draft decision documents, and decision documents provided by WDNR, Owners' contractor or the LDF for EPA's review during the work conducted under PECFA funding. Where EPA or the LDF identify additional testing or work at the Haskell Lake Site that is beyond the scope of work to be performed under WDNR's PECFA rules at Chapter 747, Wisc. Adm. Code, EPA shall take action at the same time as the State's

work is taking place to implement the more stringent of federal authorities or Tribal standards to fully remediate the Haskell Lake Site. Such action may include the initiation of a joint EPA/LDF enforcement action against the property owner, or other responsible parties including use of the federal LUST fund, to pay for the additional testing or work, consistent with EPA's regulations for Release Response and Corrective Action for UST Systems Containing Petroleum or Hazardous Substances, 40 C.F.R. Part 280, subpart F and EPA's fiduciary obligations under Federal laws, Treaties and EPA's Indian Policy.

3.5.1 On or before January 31, 2017, EPA will resample wells, sample groundwater below the lake bed, and conduct lake bed pore water sampling to determine whether there is an impact to Haskell Lake. EPA shall also map the full extent of contamination below the lake. If contaminants are found to be entering the lake water or sediments EPA shall also begin to assess the ecological risk to the lake.

3.5.2 On or before September 15, 2016 an evaluation of the source area alternatives will be completed in cooperation with the Tribe. EPA will use all available data to delineate the source area including source soils located above and below groundwater.

3.5.3 On or before September 30, 2016 EPA will work with the Tribe to develop a source area remedial alternative plan.

3.5.4 On or before November 1, 2016 EPA will implement the source area remedial alternative.

3.5.5 On or before November 30, 2016 EPA will complete a site investigation report that evaluates and interprets all data collected to date, identifies site investigation data gaps, and includes a site investigation plan to collect identified deficiencies needed for a complete site investigation.

3.5.6 On or before March 1, 2017, EPA will delineate the dissolved phase plume both on land and beneath the lake with appropriate sampling technology.

3.5.7 On or before September 1, 2017, EPA will provide a complete site investigation report.

3.5.8 On or before December 1, 2017, EPA will complete a remedial alternative/corrective action analysis.

3.5.9 On or before May 30, 2018, EPA will implement corrective action.

3.6 Applicable Risk Based Cleanup Levels and Standards. It is understood that work conducted by the Haskell Lake Site owner's contractor under the PECFA program, will be conducted in a manner consistent with the more stringent of applicable Federal risk-based cleanup levels or applicable risk-based LDF numeric cleanup standards. A copy of the LDF Hazardous Substance Control Act is attached as **Exhibit E**. EPA and the LDF may not know whether applicable risk based levels will require cleanup to the LDF numeric standards until the remedial plan development stage. EPA and the LDF agree that if the PECFA funded cleanup

does not achieve applicable LDF numeric cleanup standards EPA, in consultation with LDF, will evaluate what additional cleanup may be needed to achieve LDF numeric cleanup standards and then engage in direct government to government consultation to determine the scope and timing of any required additional remedial action.

4. **Other Costs.** Except for eligible reimbursements and grant funding it is understood that EPA and LDF are responsible for their own costs of performance under this MOA. Nothing in this MOA shall obligate either the EPA or the LDF to expend funds in excess of those authorized and available to them for the purposes set out in this MOA.

5. **Collaborative Effort.** LDF and EPA will collaborate on a government-to-government basis, in the exercise of their respective responsibilities to investigate, remediate and abate soil and groundwater contamination at and about the Haskell Lake Site.

5.1 **Sharing Data.** EPA and the LDF shall promptly share information regarding the Haskell Lake Site. EPA will concurrently provide all new data and documents to both LDF and the State. To bring LDF up to date regarding past data collected at the Site, EPA will provide LDF with an index of all data and other documentation about the Haskell Lake Site that it has collected to date. This index of information will be updated as new information become available and the LDF will keep this information on file at the LDF headquarters to so that it is accessible to the public, to further LDF's commitment to provide for public participation.

5.2 **Prior Approval.** To further the joint clean up objectives of EPA and LDF, and do so in compliance with applicable Tribal law and process, EPA and the LDF agree that certain aspects of the investigation, remediation, and ultimate closure of the Haskell Lake Site may utilize available PECFA program funding, as well as funding from the EPA Leaking Underground Storage Tank (LUST) trust fund. However, use of all such funds for work at the Haskell Lake Site shall be subject to prior approval by the LDF and all remedial activities to be undertaken at the Haskell Lake Site shall be subject to prior approval by the LDF before any such funding or work may take place at the Haskell Lake Site.

5.3 **Quarterly Reports.** To ensure transparency for expenditures by LDF and EPA, each party agrees to provide the other with quarterly funding reports. These line item reports will serve as a check and balance mechanism for spending allocations to ensure that both EPA and LDF understand how available funds are being allocated.

5.4 **Third Party Communication.** To facilitate clear lines of communication between LDF and EPA, outside technical communication generated or received by EPA or LDF, to other agencies or entities, including but not limited, to the BIA, USGS, and the State concerning the Haskell Lake Site or other LUST sites within the Reservation Environment, shall promptly be exchanged by the EPA and LDF within 10 business days of receipt. Any documentation or reports generated by EPA or LDF with the intent to be released to third parties will first be exchanged between the EPA and Tribe to ensure accuracy and clarity.

5.5 **Monthly Status Calls.** To ensure that the LUST Site cleanup goals

proceed on schedule, EPA and the LDF agree to conduct coordinated status calls on the first Wednesday of every third month from the Effective Date of this MOA.

6. **Reserved Rights.** EPA and the LDF specifically reserve any and all rights and authority that they each have, including but not limited to legal, equitable or administrative rights. Each party will retain full responsibility for its own actions, and no party assumes any responsibility for the actions of the other parties.

7. **Sovereign Immunity.** This MOA does not create any right or benefit, substantive or procedural, enforceable by law or equity against the LDF, or EPA, their officers or employees, or any other person. Nothing herein affects or limits the sovereign authority of the LDF, or EPA or ability to undertake any individual compliance monitoring or enforcement action authorized by law. Nothing herein waives the LDF's sovereign immunity from suit by either the U.S., EPA, or any third party.

8. **Authorization to Execute/Terminate.** Each of the undersigned signatories to this MOA certifies that he or she is fully authorized to enter into this MOA on behalf of the Party that he or she represents. It is the intent of the LDF and EPA that this MOA remain in force and effect an indefinite period of time so long as both parties with the MOA to remain in force and effect. However, it is understood that each party reserves all of its rights and authorities including its rights to withdraw from this MOA upon thirty (30) days advance written notice to the other party.

9. **Notice.** Notices provided pursuant to this MOA shall be deemed to have been given when delivered by email (with receipt confirmed by addressee) or deposited in the United States mail, postage prepaid, at the addresses listed below, unless the party in question notifies the other parities of a different address in writing.

Environmental Response Program
Lac du Flambeau Tribe
PO Box 67
2549 Hwy. 47 North
Lac du Flambeau, WI 54538

UST Program
Region 5
United States Environmental Protection Agency
Land and Chemicals Division, Underground Storage Tank Section
77 West Jackson Blvd., LC-8J
Chicago, IL 60604

10. **Good Faith.** Each entity shall act reasonably and in good faith and in a timely manner in all activities under this MOA so that each of them may obtain the benefits contemplated under this MOA. No party shall unreasonably deny, withhold, or delay any consent or approval required or contemplated for any action or transaction proposed to be taken or made in this MOA. The parties, shall consult with and assist each other in good faith and without delay as to all matters that require their cooperation.

11. Dispute Resolution. In the event of any controversy or claim arising out of or relating to this MOA, the parties hereto shall consult and negotiate with each other and, recognizing their mutual interests, attempt to reach a solution satisfactory to both parties. if they do not reach a solution within a period of 10 business days, then either party may, by notice to the other party, demand mediation between the respective Division Directors. If settlement is not reached within 30 days after the date of the mediation, the unresolved controversy or claim arising out of this contract will be addressed in mediation between the respective Regional Administrators. Provided that where such resolution is not possible, the MOA may be terminated. No action may be taken in any court to enforce this MOA against any of the parties.

12. Amendment. This Understanding may not be amended, modified, or altered except by written amendment executed by LDF and EPA.

13. Effective Date. This MOA shall become effective upon execution by LDF and EPA.

IN WITNESS WHEREOF the Parties have executed this MOA on the dates noted below.

LAC DU FLAMBEAU
ENVIRONMENTAL RESPONSE PROGRAM

By: _____ _____ _____ _____ _____ Date: _____ _____ _____
Larry Wawronowicz
Natural Resource Director

U.S. ENVIRONMENTAL PROTECTION
AGENCY REGION 5

By: _____ _____ _____ _____ _____ Date: _____ _____ _____
Title: _____ _____ _____ _____ _____
Michael Harris
Deputy Director