

INTERGOVERNMENTAL SERVICE AGREEMENT

BETWEEN

ONEIDA TRIBE OF INDIANS OF WISCONSIN

AND

OUTAGAMIE COUNTY DRAINAGE BOARD

THIS AGREEMENT, by and between the ONEIDA TRIBE OF INDIANS OF WISCONSIN (the "Tribe"), a federally recognized and treaty Tribe, and the OUTAGAMIE COUNTY DRAINAGE BOARD (the "Board"), governed under Chapter 88 of the Wisconsin Statutes (collectively, the "parties"),

WITNESSETH:

WHEREAS, the Tribe and the Board have been good neighbors and desire the spirit of cooperation between the two governments to continue; and

WHEREAS, the Oneida Reservation was established pursuant to the 1838 Treaty with the Oneida, 7 Stat., 566, and encompasses approximately 65,400 acres; and

WHEREAS, the Oneida/Hobart Legal Drainage District (the "Drainage District") comprises of approximately 5,720 acres of land in both Brown and Outagamie County, within the Village of Hobart, the Town of Freedom, the Town of Kaukauna and the Town of Oneida and was established for the purposes of moving rain water away from agricultural land; and

WHEREAS, the boundaries of the Oneida Reservation and the boundaries of the Drainage District overlap, and portions of the Drainage District are within the Oneida Reservation; and

WHEREAS, the Tribe owns fee title to parcels of land located within the Drainage District ("Tribal Fee Lands"); and

WHEREAS, the United States holds title to parcels of land within the Drainage District in trust for the benefit of the Tribe ("Tribal Trust Lands"); and

WHEREAS, the Tribe and the Board provide services which benefit properties within the Oneida Reservation and the Drainage District; and

WHEREAS, the Board derives revenue from imposing special assessments against real property; and

WHEREAS, Tribal Trust Lands are exempt from state taxation, including special assessments, due to the Tribe's status as a sovereign; and

WHEREAS, the Tribe and the Board enjoy a relationship of mutual trust and respect; and

WHEREAS, both the Tribe and the Board exercise jurisdiction and provide governmental services within their respective territories, and both recognize the importance of collaborative efforts to mitigate costs associated with providing governmental services; and

WHEREAS, the Tribe is willing to pay for services provided by the Board which benefit Tribal Trust Lands and Tribal Fee Lands and the Board is willing to recognize the value of services provided by the Tribe by agreeing to coordinate drainage efforts with the Tribe in the future; and

WHEREAS, it is mutually beneficial to both governments to put their understandings in writing;

The Tribe and the Board hereby agree to the following terms and conditions:

1. **DEFINITIONS.** For purposes of this Agreement, the following terms shall have the following meanings:
 - a. "Class III Gaming" has the meaning ascribed to it in the Indian Gaming Regulatory Act, 25 U.S.C. § 2703(8).
 - b. "Gaming Compact" means an agreement entered into between the Tribe and the State of Wisconsin pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. § 2701, et seq., for the conduct of Class III Gaming on the Tribe's Indian lands within the State of Wisconsin.
 - c. "Oneida Reservation" or "Reservation" means the land set aside for the use and occupancy of the Tribe and its members pursuant to the 1838 Treaty with the Oneida, 7 Stat., 566, encompassing approximately 65,400 acres.
 - d. "Tribal Fee Land" means land to which the Tribe holds title in fee simple.
 - e. "Tribal Land" means Tribal Fee Land on the Reservation and Tribal Trust Land.
 - f. "Tribal Trust Land" means land to which the United States holds title for the benefit of the Tribe pursuant to federal law.
2. **TERM.** The term of this Agreement shall be 10 years, commencing on the date the Agreement is executed by both parties, and ending on December 31, 2019, unless earlier terminated pursuant to section 9 below.
3. **DRAINAGE DISTRICT SPECIAL ASSESSMENTS.**

- a. The Board includes special assessments on Outagamie County real estate tax bills to pay for the cost to ensure proper water drainage from all the properties located in the Drainage District, including Tribal Land. The Tribe disputes the ability of the Board to impose these charges against Tribal Land. In the interest of positive government-to-government relations, the Tribe is willing to pay for drainage district management services provided by the Board which is limited to inspections on Tribal Land. When drainage issues involve Tribal Land, coordination will occur on a case-by-case basis, taking into account the Tribe's desires to balance drainage with watershed protection. Thus, the Tribe may drain some areas, restore wetlands on others, and put in vegetated buffers along all waterways at least 35 feet on each side of the waterway.
 - b. The Tribe does not currently own any land within the Drainage District which is located in Brown County. In the event the Tribe purchases land within the portion of the Drainage District that lies in Brown County, the Parties agree the Drainage Board will send invoices directly to the Tribe for services provided to Tribal Land within the Drainage District which is located within Brown County.
 - c. Payment. The Tribe agrees to pay special assessments levied against Tribal Lands for services the Board provides to the Tribal Lands when they become due and payable, unless the Tribe disputes the special assessments by initiating the dispute resolution procedures set forth herein, in which cases the Tribe may make partial payment or may withhold payment.
4. **INFORMATION SHARING.** The Tribe and the Board will collaborate on mapping and share data bases concerning issues of mutual interest and concern such as, but not limited to, parcel information, zoning, land use, land ownership status, census information, archeological/historical background (with certain limitations on sensitive sites and public access), utilities, roads and rights of way, etc.
 5. **COST MITIGATION.** The Tribe and the Board shall designate representatives to accept and review proposals regarding potential cost saving measures related to governmental services provided by both the Tribe and the Board.
 6. **DISPUTE RESOLUTION.**
 - a. Negotiation. If either party believes the other has failed to comply with the requirements of this Agreement, or if a dispute arises over the proper interpretation of any provision of this Agreement or the valuation of Tribal Trust Land, then either party may initiate negotiation by serving a written notice on the other identifying the specific provision or provisions of the Agreement in dispute and specifying in detail the factual basis for any alleged non-compliance and/or the interpretation of the provision of the Agreement or the valuation of Tribal Trust Land. Within thirty (30)

days of service of such notice, representatives designated by each party shall meet in an effort to resolve the dispute through negotiation.

- b. **Mediation.** If either party believes the other has failed to comply with the requirements set forth in this Agreement, or if there is a dispute over the proper interpretation of any provision of this Agreement or the valuation of tribal trust property, the parties may agree in writing to settle the dispute by non-binding mediation.
- c. **Arbitration.** If a dispute is not resolved within ninety (90) days of service of notice as provided for in subparagraph (a) above, either party may serve on the other a written demand for arbitration, and the dispute shall thereafter be resolved by arbitration which shall be conducted in conformance with the rules set forth below and such other rules as the parties may in writing agree.
 - i. **Arbitration Panel.** Each party shall appoint one arbitrator. The two party-appointed arbitrators shall then appoint a third arbitrator, and the three arbitrators shall constitute the panel.
 - ii. **Cost of Arbitration.** The cost of arbitration shall be borne equally by the parties, with one-half (1/2) of the cost charged to the Tribe and one-half (1/2) of the cost charged to the Board, and each shall bear its own expenses.
- d. **Limited Waiver of Immunity.** The Board and Tribe specifically waive sovereign immunity and consent to suit in Outagamie County Circuit Court solely for the limited purposes of compelling arbitration in accordance with the provisions of this Agreement or enforcement of any arbitration award rendered pursuant to this Agreement.

7. **ENTIRE AGREEMENT.** This agreement constitutes the entire agreement of the parties and supersedes all prior oral and written agreements between the parties on the subject matter of payment for governmental services which benefit Tribal Lands within the Drainage District.

8. **AMENDMENTS.** Either party may propose amendments to this Agreement at any time. No amendment or modification of this Agreement will be effective unless the amendment or modification is set forth in writing and agreed to and executed by both parties. The parties may agree to non-binding mediation for disputes regarding proposed amendments, but such disputes shall not otherwise be subject to dispute resolution or arbitration.

9. **TERMINATION.** This Agreement may be terminated in one of two ways: 1) this Agreement will immediately terminate and cease to be effective in the event the Tribe ceases to conduct Class III Gaming pursuant to a Gaming Compact with the State of Wisconsin; or 2) the parties may terminate this Agreement by mutual agreement, provided that such agreement is reduced to writing and signed by both parties. Upon

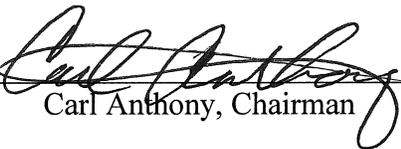
termination, neither party shall have any further obligation under this Agreement. In the event this Agreement terminates because the Tribe ceases to conduct Class III Gaming pursuant to a Gaming Compact with the State of Wisconsin, the parties agree to engage in good faith discussions regarding the possibility of entering into a successor agreement.

10. **NOTICE.** Notice provided under this Agreement must be in writing and must be sent by certified mail, return receipt requested, to the appropriate representative(s) of the party receiving notice as set forth in Attachment A.
11. **SEVERABILITY.** If any provision of this Agreement is determined to be invalid under the laws of the United States, the Tribe or the State, such invalidity will not affect the validity of the remaining provisions of this Agreement.
12. **PRESERVATION OF JURISDICTION.** Nothing in this Agreement is intended to be a grant of jurisdiction from one party to another. This Agreement is not intended to alter the existing jurisdiction of any party, and by approving this Agreement, neither party is agreeing or conceding to any jurisdiction of the other party which would not otherwise exist under the law.
13. **NO THIRD PARTY BENEFICIARIES.** This Agreement is made and entered into for the sole protection and benefit of the Tribe and the Board, and is not intended to create any right, benefit, obligation, or cause of action, whether direct or indirect, for any person or entity not a signatory to this Agreement.

IN WITNESS WHEREOF the parties have set their hands and seal on the date listed below.

OUTAGAMIE COUNTY DRAINAGE BOARD

Date: 10-23-09

By: 
Carl Anthony, Chairman

ONEIDA TRIBE OF INDIANS

Date: 10-23-09

By: 
Richard G. Hill, Chairman

Attachment A

List of Parties' Designated Representatives for Notice in Paragraph 10

Oneida Tribe

Fred Muscavitch
Division of Land Management
Post Office Box 365
Oneida, WI 54155
920-869-1690

Drainage Board

Carl Anthony
Outagamie County Drainage Board
410 S. Walnut Street,
Appleton, WI 54911
(920) 832-5010