

**SERVICE AGREEMENT
BETWEEN
ONEIDA TRIBE OF INDIANS OF WISCONSIN
AND
TOWN OF ONEIDA**

THIS AGREEMENT, by and between the ONEIDA TRIBE OF INDIANS OF WISCONSIN (the "Tribe"), a federally recognized and Treaty Tribe, and the TOWN OF ONEIDA (the "Town"), a town government organized under the laws of the State of Wisconsin (collectively, the "parties"),

WITNESSETH:

WHEREAS, the Tribe and the Town 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 boundaries of the Oneida Reservation and the boundaries of the Town overlap, and the Town is entirely within the Oneida Reservation; and

WHEREAS, the Tribe and the Town provide services which benefit properties within the Oneida Reservation and the Town; and

WHEREAS, the Town derives revenue from the taxation of real property, among other things; and

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

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

WHEREAS, both the Tribe and the Town 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 Town which benefit Tribal Trust Lands and the Town is willing to recognize the value of services provided by the Tribe by applying credits against the Tribe's payment for services; and

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

THEREFORE, The Tribe and the Town 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. "Governmental Purposes" means the use of land by Tribal programs, departments, or agencies in furtherance of Tribal governmental services or responsibilities, or the dedication of land for the promotion of the general health and welfare. Governmental Purposes include, but are not limited to, use of land for law enforcement facilities, social service facilities, health care facilities, governmental offices, and parks and trails. Governmental Purposes does not include the use of land for gaming facilities or other commercial activities which are intended to generate revenue.
 - d. "Neighborhood, Peace and Safety Laws" means zoning, building code, nuisance, land use, and fire regulations.
 - e. "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.
 - f. "Tribal Fee Land" means land to which the Tribe holds title in fee simple.
 - g. "Tribal Land" means Tribal Fee Land on the Reservation and Tribal Trust Land.
 - h. "Tribal Member" means a duly enrolled member of the Oneida Tribe of Indians of Wisconsin.
 - i. "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 three (3) years, commencing on August 1, 2012 unless earlier terminated pursuant to section 13 below.
3. **TOWN OF ONEIDA FIRE DEPARTMENT.** The Tribe recognizes the Town's commitment to ensure the safety of the community through the establishment of the Town of Oneida Fire Department and further recognizes the financial and human resources the Town must commit to maintaining its Fire Department. The Town's Fire Department responds to fire emergencies involving properties owned by the Tribe and Tribal Members. In order to assist the Town's Fire Department to be prepared to respond to fire emergencies on the Tribe's properties used for business and government, the Tribe

shall forward floor plans of the buildings located on such properties to the Town. In the event the Town determines it needs to view such properties in order to better prepare to respond to a fire emergency, the Town and the Tribe shall coordinate a time for the Town to view such properties.

4. NEIGHBORHOOD PEACE AND SAFETY

- a. The Town retains all of its legislative and enforcement powers.
- b. Nothing in this Agreement is meant to impair any individual from bringing a private cause of action against Tribal Members for actions including, but not limited to, trespass or contract disputes.
- c. Nothing in this Agreement is meant to exempt Tribal Members from the application of state criminal laws.
- d. Tribal law addresses zoning, building, nuisance, land use and fire safety regulations (“Peace and Safety Regulations”) which are applicable to the Tribe, Tribal Members, and individuals and businesses leasing, occupying or otherwise using Tribal Land in recognition of Federal Law. These include, but are not limited to, the following chapters of the Tribe’s Code of Laws:
 - 1) Chapter 66, Building Code
 - 2) Chapter 69, Zoning and Shoreland Protection LawThese are available at <https://oneida-nsn.gov> under Laws and Regulations.
- e. Town ordinances addressing Peace and Safety Regulations do not apply to Tribal Members on the Reservation, however, to maintain consistency, the Tribe will enact Peace and Safety Regulations at least as stringent as the Town’s Peace and Safety Regulations to be applicable to the Tribe, Tribal Members, and individuals and businesses leasing, occupying or otherwise using Tribal Land in those portions of Reservation where the Town is located.
- f. Town ordinances addressing Peace and Safety Regulations may have fees associated with permits which are less costly than those charged by the Tribe. To maintain consistency within the Town limits, the Tribe will match the Town permit fee (if the fee is lower) for Tribal Members in those portions of Reservation where the Town is located. (See attachment A for comparable fees.) In addition, the Tribe through the Law Office will collaborate with the Town to investigate the possibility of a shared/dual/reciprocal permitting process.
- g. The Town agrees to forward Peace and Safety Regulation issues concerning the Tribe, Tribal Members, and individuals and businesses leasing, occupying or otherwise using Tribal Land to the Tribal Chairman for Tribal action.

5. STREET IMPROVEMENTS. The Tribe agrees to pay the actual, proportional cost of street improvements benefitting Tribal Land including, but not limited to, grading,

graveling, storm and sanitary sewer and laterals, water mains and laterals, paving and any relays, reconstructions, overlays or repairs thereof, to the same extent as such costs are charged to other property owners. The Tribe agrees to pay those costs in accordance with the following procedure: The Town will not take any action to levy assessments for such improvements but will inform the Tribe of the proposed improvement and the estimated cost thereof not less than thirty (30) days prior to commencement of the project. The Town agrees to give due consideration to all comments which the Tribe may submit regarding the project. The Town will bill the Tribe the cost of any such street improvement attributable to the Tribal Land upon completion of such improvement. The Tribe will pay such bill in full within thirty (30) days of receipt thereof.

6. COMPENSATION.

- a. The Tribe and the Town have used the formula below to determine the value of services offered by each entity. For the ease of payment, this agreement will set the annual service agreement payment from the Tribe to the Town at \$17,000 for each of the three years of this agreement. **The Formula:** An amount equal to the value of the Tribal Trust Land (V) multiplied by the Town's tax rate (TR), and then multiplied by 50%. This payment may be expressed as follows: $V \times TR \times 50\%$. The value of Tribal Trust Land (V) is the value of all Tribal Trust Land within the Town excluding the value of Tribal Trust Land used for or dedicated to Governmental Purposes. The tax rate (TR) will be the actual tax rate for the preceding calendar year.
- b. Annual Meeting. There will be no required annual meeting.
- c. Invoices and Payment. On or before September 1st of each year, the Town will submit an invoice to the Tribe reflecting the amount agreed upon in this agreement. The Tribe will make payment to the Town on or before November 1st of each year.
- d. Town of Oneida Fire Department and First Responders. The Tribe recognizes the Town's commitment to ensure the safety of the community through the establishment of the Town of Oneida Fire Department and First Responders and further recognizes the financial and human resources the Town must commit to maintaining its Fire Department and First Responders. The Tribe desires to assist this endeavor and agrees to make an annual contribution in the amount of \$25,000 for Fire Department and First Responders expenses, for each of the three years of this agreement.
- e. The Tribe wishes to acknowledge the Town's excellent customer service in providing safe and well maintained roads, efficient voting processes, and dependable fire and emergency response services to Tribal Members who reside in the Town by including an annual \$55,000 towards equipment improvement and Town Staff salaries for each of the three years of this agreement.
- f. The Tribe recognizes the Town's commitment to the environment by an additional annual contribution of \$3,000 for an annual event to collect trash from Town of

Oneida residents similar to the Tribe's Clean Sweep event for each of the three years of this agreement.

- g. **TOTAL.** For each of the three years of this agreement, and as described above, the Tribe will contribute to the Town:
 - \$ 17,000 based on the services formula
 - \$ 25,000 toward the Fire Department and First Responders
 - \$ 55,000 toward equipment improvement and Town Staffing
 - \$ 3,000 toward a Trash Clean-up Event
 - \$100,000 TOTAL

7. **ONEIDA LAND INTO TRUST.** The Town encourages and will not oppose the Tribe's applications to place Tribal Fee Land into trust during the term of this Agreement.

8. **INFORMATION SHARING.** The Tribe and the Town 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.

9. **COST MITIGATION.** The Tribe designates its Chairman and the Town designates its Chairman (or their delegates) to accept and review proposals regarding potential cost saving measures related to governmental services provided by both the Tribe and the Town. One area to be discussed will be the improvement of Seminary Road.

10. **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, 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. 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, 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 Town, and each shall bear its own expenses.
 - d. Limited Waiver of Immunity. The Town and Tribe specifically consent to suit in Outagamie County Circuit Court and waive sovereign immunity 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.
11. **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 Trust Lands within the Town. This Agreement does not affect the current Payment In Lieu of Taxes agreement currently in place between the Town and the Tribe relating to property under the control of the Oneida Housing Authority.
 12. **AMENDMENT.** 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.
 13. **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.
 14. **NOTICE.** Notice provided under this Agreement must be in writing and must be sent by certified mail, return receipt requested, to:
Oneida Tribe Chairman, P.O. Box 365, Oneida, WI 54155 and/or
Oneida Town Chairman, N6593 County Rd H, Oneida, WI 54155
 15. **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.
 16. **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.

17. **NO THIRD PARTY BENEFICIARIES.** This Agreement is made and entered into for the sole protection and benefit of the Tribe and the Town, 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.

TOWN OF ONEIDA

Date: 7-27-12

By: Norman Austin
Norman Austin, Chairman

Date: 7-27-12

By: Mary Olson
Mary Olson, Clerk

Seal of Town of Oneida

ONEIDA TRIBE OF INDIANS

Date: 7-~~28~~²⁷-12

By: Edward Delgado
Edward Delgado, Chairman

Seal of the Oneida Tribe of Indians of Wisconsin