EXCHANGE OF SERVICES AGREEMENT
BETWEEN
ONEIDA TRIBE OF INDIANS OF WISCONSIN
AND
BROWN COUNTY

This Service Agreement ("Agreement") is entered into by and between the ONEIDA TRIBE OF INDIANS OF WISCONSIN (the "Tribe"), a federally recognized and treaty Tribe, and BROWN COUNTY (Department of Public Safety Communications) (the "County"), a county government organized under the laws of the State of Wisconsin (collectively, the "Parties").

WHEREAS: The Tribe and the County have been good neighbors and desire the spirit of cooperation between the two governments to continue;

WHEREAS: The Oneida Reservation was established pursuant to the 1838 Treaty with the Oneida, 7 Stat., 566;

WHEREAS: The boundaries of the Oneida Reservation and the boundaries of the County overlap, and portions of the County are within the Oneida Reservation;

WHEREAS: The Tribe owns fee title to parcels of land located on the Reservation and within the County and the United States holds title to certain parcels of land on the Reservation and within the County in trust for the benefit of the Tribe ("Tribal Property");

WHEREAS: The Tribe and the County enjoy a relationship of mutual trust and respect;

WHEREAS: The Tribe is willing to permit the County to utilize tribal property to allow the County to construct thereon certain telecommunication structures, more fully described herein, for purposes of enhancing tribal and County emergency response services throughout the Reservation and the County;

WHEREAS: The County recognizes the value of the parcel the Tribe is permitting the County to utilize; and thus, is willing to construct, at the County's sole cost, the above-referenced telecommunication structures thereon at no cost to the Tribe for purposes of benefitting the Tribe and the County in the manner more fully set forth below; and

WHEREAS: In lieu of requiring the County to enter into a Master Ground Lease, and at the request of the County, the Tribe and the County agree that entering into an Exchange of Services Agreement is in the best interest of both parties and serves to

enhance the government-to-government relationship between the County and the Tribe; and

WHEREAS: It is mutually beneficial to both governments to put their understanding in writing.

NOW THEREFORE: The Tribe and the County hereby agree to the following terms and conditions:

1. Definitions: For purposes of this Agreement, the following terms shall have the following meanings:

   a. "Premises" shall refer to a parcel, 2500 square feet, more or less 0.06 acres of property commonly known as a portion of the property of Government Lot 1 , located in the Town of Oneida, Outagamie County, Wisconsin, together with Access and Utility Easements providing access to and from a public road, as described in the Easement Agreement attached hereto and incorporated herein by reference as Exhibit B; as well as the legal description and survey map of which is also attached hereto and incorporated herein by reference as Exhibit A, with the survey controlling in the event of any discrepancy between it and the description of the Premises as defined herein

   b. "Structures" shall refer to the telecommunication facility being constructed and eventually operated on the Premises, which includes but is not limited to, up to a 195 foot tower ("Tower"), a 12' X 16'6 equipment shelter, an LP gas tank, and an 8' chain link fence with barbed wire on top around the Tower base and such other structures as the County deems necessary in carrying out the intent thereof.

   c. "Easements" shall refer to the easements, more fully defined within the Easement Agreement attached hereto as Exhibit B and incorporated herein by reference, for Access (ingress and egress), Utility Service and Temporary Construction on and over the Tribe's contiguous, adjoining property as may be reasonably required for construction, maintenance, and operation of the Structures on the Premises, for the installation, construction and maintenance of power lines in connection with the County's use of the Premises, and for access to the Premises from a public road.

   d. "Oneida Reservation" or "Reservation" shall refer to 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.

2. Premises: The Tribe hereby permits the County to utilize the Premises, together with Easements, as more fully defined in Section 1, above, with both Parties acknowledging that the location of the Structures located thereon may be subject

to change. The Tribe is conveying the Premises for the express purpose of allowing the County to construct and operate a telecommunications facility, the facilities of which are more fully referred to herein as "Structures" in Section 1, above, to be utilized for the sole purpose of enhancing emergency response services throughout the County, which the County expressly acknowledges.

3. Use Fees: The Tribe hereby waives any fees associated with the County's use of Tribal Property.

4. Term: The term of this Agreement shall be for a period of thirty (30) years ("Term"), commencing on the Commencement Date of: _____, 2012.

5. Access, Utility and Temporary Construction Easement: The Tribe hereby agrees to convey to the County the Easements as more fully described in Section 1, above. The term of the Easements shall commence upon the Commencement Date of this Agreement and shall continue until the last to occur of: (i) expiration of the Term, or (ii) removal by the County of all of its property from the Premises after expiration of the Term. When the Term has ended and the County has removed its property from the Premises, the County shall execute and deliver a release of easements document to the Tribe to be recorded with the Register of Deeds. The County shall reimburse the Tribe for any damages to areas used during the construction, maintenance or operation of the Structures, including crop damage. The location and configuration of the Access and Utility Easements are currently depicted and described on Exhibit A. Notwithstanding the final location thereof, the Parties agree to execute a separate Easement Agreement in which the County shall have recorded as an encumbrance on the Premises that shall be binding upon all subsequent owners, successors and assigns.

6. Use of the Structures/Premises: In exchange for permitting the County to utilize the Premises at no cost to the County, the County agrees to incur the cost of construction, operation, and maintenance of the Structures, granting to the Tribe, at no cost, the right to the consistent use of the Premises, Easements and Structures for such purposes that will not interfere with the County's full enjoyment of the same.

7. Title and Quiet Possession: The Tribe represents and warrants to the County that the Tribe has the full right to make this Agreement and to grant the related Easements and that the County shall have quiet and peaceful possession of the Premises and Easements throughout the Term.

8. Subordination and Non-disturbance: The County agrees that, if requested by the Tribe, this Agreement shall be subject and subordinate to any mortgages or deeds of trust now or hereafter placed upon the Premises and to all modifications thereto, and to all present and future advances made with respect to any such mortgage or deed of trust; provided that the County's possession of the Premises

and use of the Easements shall not be disturbed so long as the County shall continue to perform its duties and obligations under this Agreement and the County's obligation to perform such duties and obligations shall not be in any way increased or its rights diminished by the provisions of this Section, absent written consent by both Parties.

9. Governmental Approvals and Compliance: During the Term of this Agreement, the County shall comply with all applicable laws affecting the Premises, the breach of which might result in any penalty to the Tribe or forfeiture of the Tribe's title to the Premises. The County shall obtain any necessary governmental licenses or authorizations required for the construction and use of the Structures on the Premises and shall comply with government regulations application to its operations, including those of the FAA and FCC.

10. Assignment: The County shall not assign its rights under this Agreement or any interest herein without the prior written consent of the Tribe, the consent of which shall not be unreasonably withheld, delayed or conditioned, and consent to an assignment shall not be deemed to be consent to a subsequent assignment.

11. Notices: All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to this Agreement shall be in writing, signed by the notifying party or officer, agent or attorney of the notifying party, and shall be deemed to have been effective upon delivery if served personally, including but not limited to, delivery by messenger, overnight courier service, or overnight express mail, or upon posting if sent by registered or certified mail, postage prepaid, return receipt requested and addressed as follows:

To Tribe: Division of Land Management
Attention: Division Director
P.O. Box 365, Oneida, WI 54155

With copy to: Oneida Law Office
P.O. Box 109, Oneida, WI 54155

To County: The Brown County Department of Public Safety Communications
Attention: Director
3028 Curry Lane, Green Bay, Wisconsin 54311

With copy to: Brown County Corporation Counsel
P.O. Box 23600 Green Bay, Wisconsin 54305

The address to which any notice, demand or other writing may be delivered to any party as above provided may be changed by written notice given by such party as above provided.

12. County Improvements: The County shall have the right, at its sole expense, to make such improvements to the Premises as it may deem necessary, including site improvements and constructing Structures for the creation and operation of a telecommunications transfer facility. All of the County's improvements, including but not limited to all Structures, shall remain the property of the County. Upon termination of this Agreement, the County shall, at its sole expense, restore the Premises to its condition at the Commencement Date, except for ordinary wear and tear and damages by the elements or damages over which the County had no control. The Parties agree restoring the Premises to its condition at the Commencement Date will include the removal of all equipment, the fence, the Tower, the building, the generator, the LP gas tank, and any concrete or cement slabs.

13. Insurance: At all times during the Term of this Agreement, the County shall maintain in full force a comprehensive public liability insurance policy covering the County's operations, activities and liabilities on the Premises, having singly or in combination limits not less than One Million Dollars ($1,000,000.00). Upon the Tribe's request, the County shall give the Tribe a certificate of insurance evidencing that the insurance required under this Agreement is in force.

14. Operating Expenses: The County shall fully and promptly pay for all gas, electric power, and other public utilities furnished to the Premises and used by the County throughout the Term hereof, and for all other costs and expenses of every kind whatsoever in connection with the use, operation and maintenance of the Premises and all activities conducted thereon.

15. Taxes and Liens: The County shall pay when due all real property taxes and all other fees and assessments properly attributable to the entire tax parcel that the Premises is located on. The County shall be the sole owner of all improvements to the Premises. Nothing contained in this Agreement shall be deemed to constitute a waiver of applicable laws providing tax immunity to trust or restricted Indian property or any interest therein or income therefrom. The County shall not permit to be enforced against the Premises, or any part thereof, any obligations incurred by the County, and the County shall discharge or post bond against all such liens before any action is brought to enforce same.

16. Maintenance: The County shall maintain the Premises in good condition and state of repair. The Tribe shall maintain its property adjacent to the Premises in good condition and state of repair to avoid interference with the County's use of the Premises and Easements.

17. Hold Harmless: The County shall hold the Tribe harmless from any liability (including reimbursement of reasonable legal fees and all costs) for damages to any person or any property in or upon the Premises at the County's invitation, or for damages to property resulting from the Structures or actions of the County or

any of the County's agents, servants, employees, or licensees (including damages caused by or resulting from the existence of the Structures on the Premises), unless such damages are caused by, or are the result of, the misconduct or negligence of the Tribe or any of the Tribe's agents, servants, employees or licensees. Notwithstanding any provisions herein to the contrary, it is understood and agreed that all property kept, installed, stored, or maintained in or upon the Premises by the County shall be so installed, kept, stored, or maintained at the risk of the County. The Tribe shall not be responsible for any loss or damage to equipment owned by the County that might result from tornadoes, lightning, windstorms or other Acts of God; provided, however, the Tribe shall be responsible for, and agrees to hold the County harmless from any liability (including reimbursement of reasonable legal fees and all costs), for damages to any person or any property in or upon the Premises arising out of the misconduct or negligence of the Tribe or any of the Tribe's agents, servants, employees or licensees. Neither the Tribe nor the County shall in any event be liable in damages for each other's business loss, business interruption or other consequential damages of whatever kind or nature, regardless of the cause of such damages, and each party, and anyone claiming by or through them, expressly waives all claims for such damages.

18. Right to Terminate: The County may terminate this Agreement, at its option, after giving not less than thirty (30) days' notice to the Tribe. In the event of termination by the County pursuant to this Section, the County shall be relieved of all further liability hereunder except its obligations to remove its improvements as provided herein and restoring the Premises to its condition at the Commencement Date.

19. Binding on Successors: The covenants and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties hereto.

20. Access to Premises: In addition to the Easements granted in the Easement Agreement attached hereto as Exhibit B, the County and its engineers, officers, employees, agents and contractors shall have full access to the Premises during the Term.

21. 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 provisions of this Agreement, then either party may initiate negotiation by serving a written notice on the other identifying the specific provision or provisions of this Agreement in dispute and specifying in detail the factual basis for any alleged non-compliance and/or the interpretation of the provision of this 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 Subsection (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 County, and each shall bear its own expenses.

(d) Limited Waiver of Immunity. The County and the Tribe specifically waive sovereign immunity and consent to suit in Brown County Circuit Court and/or the United States District Court for the Eastern District of Wisconsin 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.

22. Entire Agreement: This Agreement constitutes the full and complete agreement of the Parties. No supplement, modification or amendment of this Agreement shall be binding unless in writing and executed by all of the Parties to this Agreement. The following exhibits are attached and made part of this Agreement: Exhibit A and Exhibit B.

23. Hazardous Waste:

(a) The term Hazardous Materials shall mean any substance, material, waste, gas or particulate matter that is regulated by any local governmental authority, the State of Wisconsin, or the United States Government, including, but not limited to, any material or substance which is: (i) defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," or "restricted hazardous waste" under any provision of state or local law; (ii) petroleum; (iii) asbestos; (iv) polychlorinated biphenyl; (v) radioactive material; (vi) designated as a "hazardous substance" pursuant to Section 311 of the Clean

Water Act, 33 U.S.C. Sections 1251 *et seq.* (33 U.S.C. Section 1317); (vii) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901 *et seq.* (42 U.S.C. Section 6903); or (viii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Sections 9601 *et seq.* (42 U.S.C. Section 9601). The term Environmental Laws shall mean all statutes specifically described in the foregoing sentence and all applicable federal, state, and local environmental health and safety statutes, ordinances, codes, rules, regulations, orders, and decrees regulating, relating to, or imposing liability or standards concerning or in connection with Hazardous Materials.

(b) The Tribe represents and warrants that, to the best of the Tribe's knowledge: (i) the Premises have not been used for the use, manufacturing, storage, discharge, release or disposal of Hazardous Materials; (ii) neither the Premises nor any part thereof is in breach of any Environmental Laws; (iii) there are no underground storage tanks located on or under the Premises; and (iv) the Premises are free of any Hazardous Materials that would trigger response or remedial action under any Environmental Laws or any existing common law theory based on nuisance or strict liability. If any such representation is in any manner inaccurate or any such warranty is in any manner breached during the term of this Agreement (collectively, a "Breach"), and if such Breach gives rise to or results in liability (including, but not limited to, a response action, remedial action or removal action) under any Environmental Laws or any existing common law theory based on nuisance or strict liability, or causes a significant effect on public health, the Tribe shall promptly take any and all remedial and removal action as required by law to clean up the Premises and mitigate exposure to liability arising from, and keep the Premises free of any lien imposed pursuant to, any Environmental Laws as a result of such Breach.

(c) In addition, the Tribe agrees to indemnify, defend and hold harmless the County, its officers, partners, successors, and assigns from and against any and all debts, liens, claims, causes of action, administrative orders and notices, costs (including, without limitation, response and/or remedial costs), personal injuries, losses, damages, liabilities, demands, interest, fines, penalties and expenses, including reasonable attorneys' fees and expenses, consultants' fees and expenses, court costs, and all other out-of-pocket expenses, suffered or incurred by the County and its grantees as a result of: (a) any Breach; or (b) any matter, condition or state of fact involving Environmental Laws or Hazardous Materials that existed on or arose during the Term of this Agreement and that failed to comply with: (i) the Environmental Laws then in effect; or (ii) any existing common law theory based on nuisance or strict liability.

(d) The Tribe represents and warrants to the County that the Tribe has received no notice that the Premises or any part thereof is, and, to the best of its knowledge

and belief, no part of the Premises is located within, an area that has been designated by the Federal Emergency Management Agency, the Army Corps of Engineers, or any other governmental body as being subject to special hazards.

(e) The covenants of this Section shall survive and be enforceable and shall continue in full force and effect for the benefit of the County and its subsequent transferees, successors, and assigns and shall survive the Term of this Agreement and any renewal periods thereof.

24. Mechanic's Liens. The County will not cause any mechanic's or materialman's lien to be placed on the Premises, and the County agrees to indemnify, defend and hold harmless the Tribe from any such lien from a party claiming by, through or under the County.

25. Headings: The headings of sections and subsections are for convenient reference only and shall not be deemed to limit, construe, affect, modify, or alter the meaning of such sections or subsections.

26. Time of Essence: Time is of the essence for the Tribe's and the County's obligations under this Agreement.

27. 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.

28. Land Into Trust: The County will not oppose the Tribe's applications to place tribal fee land into trust during the Term of this Agreement if the tribal fee land meets either of the following criteria: 1) the Tribe has held fee title to the land for a period of three (3) years or more prior to the date of the application; or 2) prior to the Tribe's acquisition, a tax exempt entity held title to the property for a period of five (5) years or more. If a parcel of land does not meet either of the above-listed criteria, the County may comment on or object to an application to place the parcel in trust as provided for in 25 C.F.R. Part 151.

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

BROWN COUNTY

Date: 9-17-12

By: _____

Date: 9/17/12
Seal of Brown County

By: _____

ONEIDA TRIBE OF INDIANS OF WISCONSIN

Date: 9-17-12
Seal of the Oneida Tribe

By: _____
Edward Delgado , Tribal Chairman