



RESOLUTION OF THE GOVERNING BODY OF THE  
THREE AFFILIATED TRIBES OF THE  
FORT BERTHOLD INDIAN RESERVATION

A Resolution entitled, "Contract for Legal Services with Fredericks, Pelcyger & Hester"

**WHEREAS,** This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act; and

**WHEREAS,** The Three Affiliated Tribes Constitution authorizes and empowers the Mandan, Hidatsa & Arikara Tribal Business Council to engage in activity on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and

**WHEREAS,** Article VI, Section 3(a) of the Three Affiliated Tribes Constitution authorizes and specifically authorizes and empowers the Tribal Business Council to employ legal counsel; and

**WHEREAS,** Article VI, Section 3(c) of the Three Affiliated Tribes Constitution specifically authorizes and empowers the Tribal Business Council to administer any funds within the exclusive control of the Tribe and to make expenditures from available Tribal funds for the public purposes of the Tribe, including payment of salaries and other compensation to Tribal officials and employees, which includes consultants and legal counsel; and

**WHEREAS,** The Tribe needs additional work to bring its Tribal Code up to date, including development of a Commercial Code, various other business oriented codes, and in general to revise and review the Tribal Code so that it comports with the needs of the Tribe and the wishes of the members of the Mandan, Hidatsa an Arikara Nation, and the Fredericks, Pelcyger and Hester law firm is capable of making such revisions; and

**WHEREAS,** The Tribal Business Council has reviewed and considered the proposed attorney contract between Fredericks, Pelcyger & Hester of Boulder, Colorado, whose senior partner is Tom Fredericks, a Tribal member, in the maximum amount of \$50,000 per year; which relates to miscellaneous assignments by the Tribe, including code development, as contained in the attached proposal, and deems it advisable and beneficial to the interests of the Tribe to enter into an attorney contract with the terms as listed in the attached proposed contract; and

**NOW THEREFORE BE IT RESOLVED,** that the Tribal Business Council hereby formally approves an attorney services contract with Fredericks, Pelcyger and Hester, consistent with the attached proposed contract, subject to legal review, and authorizes and directs the Tribal Chairman to execute such contract.

CERTIFICATION

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Indian Reservation hereby certify that the tribal Business Council is composed of seven (7) members of whom five (5) constitute a quorum. 6 were present at Regular meeting thereof duly called, noticed, convened and held on the 8th day of January 2003, that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of 5 members, 1 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.

Chairman  Voting. [ ] Not Voting.

Dated this 8th day of January, 2003.

Randy Phelan  
Secretary, Randy Phelan  
Tribal Business Council

ATTEST:

\_\_\_\_\_  
Chairman, Tex G. Hall  
Tribal Business Council

## SPECIAL COUNSEL CONTRACT

This Agreement is made and entered into effective November \_\_\_\_\_, 2002, by and between the Three Affiliated Tribes of the Fort Berthold Indian Reservation (hereafter "the Tribes@), whose governmental headquarters and business address is Tribal Administration Building, HC3 Box 2, 404 Frontage Road, New Town, North Dakota 58763, and Fredericks, Pelcyger & Hester, LLC (hereafter AAttorneys@), 1075 South Boulder Road, Suite 305, Louisville, Colorado 80027.

WHEREAS, the Three Affiliated Tribes desire to retain the services of the Attorneys for the purposes of representing the Tribes with respect to reviewing the tribal laws, including the Constitution, tribal Ordinances, Law and Order Codes, and tribal regulations, and to advise the Tribes on how best to revise tribal law so as to best protect and exercise the sovereign authority of the Mandan, Hidatsa, and Arikara Nation; and

WHEREAS, the Attorneys are agreeable to representing the Tribes in said review and revision of the tribal laws, and possess the necessary expertise to provide the legal representation to the Tribes for the purpose of reviewing and revising tribal law, including the Tribes' Constitution, tribal Ordinances, and the tribal Law and Order Code.

### IT IS HEREBY AGREED AS FOLLOWS:

1. Employment. The Tribes hereby agree to employ and does employ the Attorneys to perform the work and professional services as set forth in this Contract and the Attorneys, in consideration thereof, hereby agree to faithfully execute their duties in a good and professional manner and to conduct themselves in such a way as shall serve the best interest of the Three Affiliated Tribes.

2. Term. This Special Counsel Contract shall cover all of the legal work and expenses for which the Tribal Chairman and/or Council authorizes and provides funds until the review and revision of tribal laws is developed to the satisfaction of the Tribes, provided that this Special Counsel Contract will not exceed two years in duration. This Special Counsel Contract may, however, be terminated as hereinafter provided and may be renewed by the Tribal Business Council at its expiration.

3. Legal Services. It shall be the duty of the Attorneys to advise, assist, and represent the Tribes in any and all matters assigned to the Attorneys by the Tribes through their Chairman, including, but not limited to, reviewing the tribal laws of the Tribes', including their Constitution, tribal Ordinances and the Law and Order Code, and to develop a plan to revise the Tribes' laws in a manner that will protect and strengthen the sovereign authority of the Mandan, Hidatsa, and Arikara Nation. Where necessary or desirable in the performance of legal services hereunder, the Attorneys are authorized to enter into an association with local counsel in the State of North Dakota, only for the specific purpose of moving the admission of the law firm of Fredericks, Pelcyger & Hester, LLC and for filing routine documents in the North Dakota or tribal courts, who shall be paid out of the compensation provided under paragraphs 4 and 9 of this Agreement.

4. Compensation. The Attorneys shall receive compensation for services rendered pursuant to the terms of this Contract at the hourly rate of \$150.00 for partners, \$125.00 for senior associates, \$100.00 for junior associates, and \$60.00 for law clerks and paralegals. The billing for such services shall be accomplished in the manner described in paragraph 7.

5. Expenses. The Attorneys shall be allowed necessary and proper travel expenses paid or incurred in connection with the performance of the duties under this Contract. When such travel is in automobiles, they shall be allowed 35 cents per mile therefore. When in the performance of such duties they are away from their residences overnight, they shall be allowed the actual, reasonable cost of meals and hotel or motel accommodations. In addition, the Attorneys shall be allowed the following expenses: copy expense, expert assistance and witness fees, expense of preparation of exhibits, transcripts, long distance telephone calls, facsimiles, telegrams, court costs and fees, and printing, postage and outside contracted stenographic expenses.

6. Contract Ceiling on Fees and Expenses. The fees paid by the Tribes under this Contract shall not exceed \$ 50,000 per year for the duration of this Contract and expenses shall not exceed \$10,000 per year without amendment in writing signed by the Tribes and Attorneys.

7. Payment of Fees and Expenses. All fees and expenses shall be paid upon the basis of vouchers prepared and supported as prescribed by the Tribes, each voucher to be accompanied by a statement showing that the services were performed and the expenses incurred by the Attorneys. Unless specifically requested, vouchers need not be accompanied by receipts or sub-vouchers for individual items.

8. Non-assignability. It is agreed that no assignment of the obligations of this Contract in whole or in part shall be made without the consent of the Tribes. No assignment of said obligation shall be effected by the mere employment or association of expert assistance, including, without limitation, legal assistance pursuant to paragraph 3 and 5 of this Contract. In addition, no assignment or encumbrance of any interest of the Attorneys in the compensation agreed to be paid under this Contract shall be made without the approval of the Tribes. Any assignment of the obligations of this Contract or any assignments or encumbrances of any interest in the compensation agreed to be paid made in violation of the provisions of this paragraph shall operate to terminate this Contract. In the event that an assignment is made in violation of the provisions of this Contract, the Attorneys shall not be entitled to any compensation whatever for any services rendered from the date of assignment of the Contract.

9. Termination. This Contract may be terminated by either party giving thirty (30) days notice in writing to the other party. In the event of termination as herein provided, the Attorneys shall receive compensation on a quantum meruit basis for their services to the date of termination. In the event of the termination of this Contract as herein provided and in the further event that the Tribes shall retain or employ other counsel to continue any of the matters which may theretofore have been undertaken pursuant to the provisions of this Contract, the Attorneys agree to make available to

the subsequent attorneys for the Tribes any and all files pertinent to the prosecution of such matters and to disclose to such counsel or attorneys any and all facts and information requested pertinent to such matters, it being understood and agreed that the time and expenses, if any, expended by the Attorneys in such activity as well as the Attorneys' outstanding and reasonable bills shall be subject to reimbursement in the matter hereinbefore specified as to services.

10. Dispute Resolution.

(a) Arbitration. Upon the demand of any party, any Dispute (as defined in the next sentence) shall be resolved by binding arbitration in accordance with the terms of this Agreement. A "Dispute" shall mean any action, dispute, claim or controversy of any kind, whether in contract or tort, statutory or common law, legal or equitable, now existing or hereafter arising under or in connection with, or in any way pertaining to the Special Counsel Contract, or any past, present or future extensions of credit and other activities, transactions or obligations of any kind related directly or indirectly to the same. Any party may by summary proceedings bring an action in court to compel arbitration of a Dispute. Any party who fails or refuses to submit to arbitration following a lawful demand by any other party shall bear all costs and expenses incurred by such other party in compelling arbitration of any Dispute.

(b) Governing Rules. Arbitration proceedings shall be administered by the American Arbitration Association ("AAA") or such other administrator, as the parties shall mutually agree upon in accordance with the AAA Commercial Arbitration Rules. All Disputes submitted to arbitration shall be resolved in accordance with the Federal Arbitration Act (Title 9 of the United States Code). The arbitration shall be conducted at a location in North Dakota selected by the AAA or other administrator. If there is any inconsistency between the terms hereof and any such rules, the terms and procedures set forth herein shall control. All statutes of limitation applicable to any Dispute shall apply to any arbitration proceeding. All discovery activities shall be expressly limited to matters directly relevant to the Dispute being arbitrated. Judgment upon any award rendered in an arbitration may be entered in any court having jurisdiction (including, without limitation, any Tribal Court which may be created or become effective after the date of this Agreement) and may be confirmed and enforced by a special master appointed by the Executive Council.

(c) Arbitrator Qualifications and Powers; Awards. Arbitrators must be active members of the North Dakota State Bar or retired judges of the state or federal judiciary of North Dakota, with expertise in the substantive laws applicable to the subject matter of the Dispute. Arbitrators are empowered to resolve Disputes by summary rulings in response to motions filed prior to the final arbitration hearing. Arbitrators (i) shall resolve all Disputes in accordance with the substantive law of the State of North Dakota, (ii) may grant any remedy or relief that a court of the State of North Dakota could order or grant within the scope hereof and such ancillary relief as is necessary to make effective any award, and (iii) shall have the power to award recovery of all costs and fees, to impose sanctions and to take such other actions as they deem necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the North Dakota Rules of Civil Procedure, or other applicable law. Any Dispute in which the amount in controversy is

\$100,000 or less shall be decided by a single arbitrator who shall not render an award of greater than \$100,000 (including damages, costs, fees and expenses). By submission to a single arbitrator, each party expressly waives any right or claim to recover more than \$100,000. Any Dispute in which the amount in controversy exceeds \$100,000 shall be decided by majority vote of a panel of three arbitrators; provided, however, that all three arbitrators must actively participate in all hearings and deliberations.

(d) Miscellaneous. To the maximum extent practicable, the AAA, the arbitrators and the parties shall take all action required to conclude any arbitration proceeding within 180 days of filing of the Dispute with the AAA. No arbitrator or other party to an arbitration proceeding may disclose the existence, content or results thereof, except for disclosures of information by a party required in the ordinary course of its business, by applicable law or regulation, or to the extent necessary to exercise any judicial review rights set forth herein. This arbitration provision shall survive termination, amendment or expiration of any of the Special Counsel Contract or any relationship between the parties.

11. Notices. Any notice required by this Contract shall be given as follows: (a) If by the Tribes to the Attorneys, by delivery thereto to the Attorneys personally or by mailing thereof to the address of the Attorneys last shown on the records of the Tribes; and (b) If by the Attorneys to the Tribes, by delivery at or mailing to the Three Affiliated Tribes, Tribal Administration Building, HC3 Box 2, New Town, ND 58763.

12. Attorneys' Standing. The undersigned Attorney stipulates that he is a fully licensed member in good standing of the bar of the State of North Dakota and to the best of his knowledge, no disciplinary proceedings have been instituted against him or any member of or Attorneys employed by the firm by any bar association of any jurisdiction of the United States or its territories which are pending or unresolved and they have not been disbarred or suspended from the practice of law in any jurisdiction in the United States or its territories to the best of their knowledge.

13. Severability. If any part or provision of this Contract or the application thereof shall be adjudged invalid, the validity of any other parts or provisions hereof shall not be affected thereby.

14. Amendment by Written Endorsement. It is expressly understood and agreed that this instrument embodies all agreements existing between the Tribes and the Attorneys and that no term, provision or condition of this Contract shall be held to be altered, amended, changed or waived in any respect except by written endorsement attached hereto.