



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

A Resolution Entitled: “*Approval of Consultant Contract for Legal Services with the Van Ness Feldman Law Firm.*”

WHEREAS, This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act and having adopted a Constitution and By-laws pursuant to said Act; and

WHEREAS, Article III of the Constitution of the Three Affiliated Tribes provides that the Tribal Business Council is the governing body of the Tribes; and

WHEREAS, The Constitution of the Three Affiliated Tribes authorizes and empowers the Tribal Business Council to engage in activities 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 5 (l) of the Constitution of the Three Affiliated Tribes provides that the Tribal Business Council has the power to adopt resolutions regulating the procedure of the Tribal Business Council and other Tribal agencies and Tribal officials on the Reservation; and

WHEREAS, Article VI, Section 5(c) of the Constitution of the Three Affiliated Tribes specifically authorizes and empowers the Tribal Business Council to administer funds within the exclusive control of the Tribes and to make expenditures from available Tribal funds for public purposes of the Tribes, including payment of salaries and other compensation to Tribal Officials and employees, which includes consultants and legal counsel; and

WHEREAS, The Tribal Business Council has reviewed and considered the proposed attorney contract for 2007 between the Three Affiliated Tribes and the law firm Van Ness Feldman located in Washington D.C., to perform services and representation in Washington D.C. in matters involving federal issues before Congress and federal agencies and on certain economic development projects, as contained in the attached proposal for the maximum amount of \$50,000.00 per year, and deems it advisable and beneficial to the interests of the Tribe to enter into a consultant contract with the terms as listed in the attached proposal.

The firm will be paid a total of \$ 50,000.00 for providing all of the services set out in Part 2 above. Said amount shall be paid in four quarterly payments of \$ 12,500.00 beginning March 31, 2007. The firm will submit quarterly reports detailing its activities under this retainer agreement.

5. **FURTHER**, that is hereby stipulated that compensation as described shall constitute full payment for services rendered, and that additional assessments of expenses not identified herein shall be the sole responsibility of the Consultant; and
6. **FURTHER**, that such compensation shall be paid to the Consultant in accordance with the Three Affiliated Tribes payment Policies and in accordance with the special Terms of this Agreement as provided for within Parts 4, 5 and 6 above. The request for final payment of services rendered under this agreement shall have all required reports and other times specified within Parts 8 and 9 attached and that the invoice shall note this is a "Final Payment Request Due To Completion"; and
7. **FURTHER**, that the Consultant shall submit the periodic reports as requested by the Party of the First Part and is required by this Agreement to submit a Final Consultant Project Report, both narrative and financial, pertaining to the performance of services rendered. The consultant is required to keep an accurate record of time incurred in connection with such services, and he shall, when requested, furnish additional information to the Party of the First Part. He shall not be entitled to any information with respect thereto, in form and substance acceptable to the authorized representative of the Party of the First Part; and
8. **FURTHER**, that the Consultant hereby agrees that during time that he is retained by the Party of the First Part as a Consultant under this Agreement, he will not render services, give advice or counsel, release, give or disclose information, documents or any like instruments to any other person or entity which is engaged in or with the interests of the Three Affiliated Tribes;

Nor shall the consultant, when retained by the Party of the First Part; compete with the Three Affiliated Tribes on his own account or for his own benefit or engage in any activity which creates or is likely to create a conflict of interest between himself and the Three Affiliated Tribes;

Nor shall the consultant make any other use of information provided, compiled or gathered pertaining to the Three Affiliated Tribes such as business methods, operations, costs, proposals, budgets, projections and/or any other information of a confidential or sensitive nature to which the consultant was privy to for the period of time which he was retained under this Agreement.

And, that upon termination or completion of his service to the Party of the first Part, the consultant agrees to return and/or submit all written and other materials, which are not matters of public record, furnished by the Three Affiliated Tribes or accumulated by him in performance of this Agreement;

And, that all reports and/or other documents compiled, developed and/or written by the Consultant - i.e. proposals, analyses, writings, sound recordings, pictorial reproductions or other materials connected with the performance of services under this Agreement are now and shall

remain the sole property of the Three Affiliated Tribes and that all rights to such materials are also the sole property of the Three Affiliated Tribes; and

9. **FURTHER**, that this Agreement may be terminated at any time, with or without cause, by either Party, upon notice in writing. This written notice shall be deemed sufficiently given if posted by certified mail and shall be effective on or before 10 working days after receipt of this notice to terminate by the other Party.

And, any and all services performed up to and including the final date of this Agreement due to terminations shall be deemed allowable for payment after the final review and acceptance of the items specified within Parts 8 and 9 of this Agreement. The request for payment shall be submitted along with these required items and shall clearly note that this is a request for "**Final Payment Due To Termination**"; and,

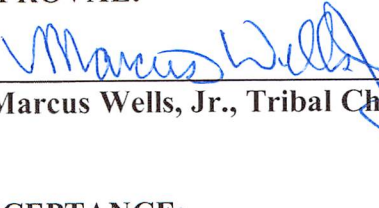
10. **FURTHER**, that each Party shall have the right to seek legal redress for any alleged breach of this Agreement by the other Party by instituting the appropriate cause of action in a court of competent jurisdiction;

11. **FURTHER**, that the consultant hereby states that this Agreement is not his/her sole source of income for the Calendar year(s) applicable to the period stated within Part 3 of this Agreement.

12. **AND FINALLY**, that this Agreement constitutes the entire understanding between the Party of the First Part and the Party of the Second Part, and that no amendment or modification hereof shall be effective unless reduced to writing and executed by both Parties with the appropriate approvals.

IN WITNESS HEREOF, the Parties hereto identified have executed this Agreement as of the date first written, and do hereby certify that the signatures signifying Approval and acceptance are true authorized representatives of respective Parties involved in this Agreement.

APPROVAL:

/s/ 

Marcus Wells, Jr., Tribal Chairman

Date: _____

ACCEPTANCE:

/s/ 

Dan Press, Consultant

Social Security # 109-32-3898 _____

Client name	Matter Number	Billing Attorney	Matter Description	Other Successes	Practice Area 1	Practice Area 2	Practice Area 3	Years	Attorney who obtained permission
FREEPORT-MCMORAN ENERGY LLC	02813	TJZ		Van Ness Feldman is FECC regulatory counsel to Freeport McMoran Energy L.L.C. in its application to construct and operate the Main Pass Energy Hub, a proposed offshore LNG import terminal, undersea storage field and the associated natural G pipeline.	LNG				

Client name	Matter Number	Billing Attorney	Matter Description	Other Successes	Practice Area 1	Practice Area 2	Practice Area 3	Years	Attorney who obtained permission
U.S. GREEN BUILDING COUNCIL	02763	SNF			ET	CC			

Client name	Matter Number	Billing Attorney	Matter Description	Other Successes	Practice Area 1	Practice Area 2	Practice Area 3	Years	Attorney who obtained permission
AD HOC CA INDUSTRIAL CUST GRP	02929	TCR			Misc				
AGRIUM U.S. INC.	02965	TCR			ET	CC			
AMERICAN CHEMISTRY COUNCIL	02594	TCR			E	G			
BERMAN DEVALERIO PEASE TABACCO	02807	TCR			Misc				
CALIFORNIA COGENERATION COUNCIL	02721	TCR			E				
HARDY ENERGY CONSULTING	02472	TCR			E	PP			
NEWPORT NEWS, CITY OF	02306	TCR			LW				
TRANSCANADA				The firm provides comprehensive legal, regulatory (including ETL) and legislative counseling for TransCanada G Pipelines with respect to the Alaska Natural G Trans System (ANGTS) which includes a proposed 700-mile natural G pipeline from Prudhoe Bay to the Canadian border connecting with Canadian facilities to be built from the Alaska - Yukon border to interconnects with the Alberta Hub. This system has been the subject of several special acts of Congress (the Alaska Natural G Trans Act and the Alaska Natural G Pipeline Act). The systems being discussed are designed to transport approximately 4.5 Bcf/d of natural G.	G				
	02741	TCR							
TRANSCANADA CORPORATION	02913	TCR			G				
TRANSCANADA CORPORATION	02992	TCR			G				

THREE AFFILIATED TRIBES CONSULTANT AGREEMENT

This Agreement is made this 8th day of March, 2007, by and between the THREE AFFILIATED TRIBES Tribal Council and Van Ness Feldman Law Firm, 1050 Thomas Jefferson Street N.W. Washington D.C. 20007

WITNESSTH:

1. **BE IT KNOWN**, that for the purposes of this Agreement, the Parties involved shall hereinafter be known as the "Tribal Council" or as the "Party of the First Part", Three Affiliated Tribes, and Van Ness Feldman as the "Consultant" or as the "Party of the Second Part"; and

2. **FURTHER**, that in consideration of the undertaking set forth and described herein, Tribal Council, as per the stipulations specified within this Agreement, hereby retains the Consultant for the following purpose(s) and as further provided for in the attached proposal from Consultant.

a. Washington Representation

The firm will assist the Tribe on all of its matters before Congress and the Federal agencies in Washington, including but not limited to:

- (a) New Health Care Facility
- (b) Return of Lakeshore
- (c) Funding for Municipal Water System
- (d) Such other Congressional and Executive Branch matters the Tribe may so direct Consultant to work on.

b. Economic Development

The firm will assist the Tribe on economic development issues, including but not limited to:

- (a) developing new tribal business opportunities;
- (b) Provide legal advice on 8(a) and related matters to the tribally-owned businesses.

3. **FURTHER**, that the Consultant shall be retained for the period beginning January 1, 2007 and ending on December 31, 2007.

4. **FURTHER**, that the Consultant will be entitled to compensation for services rendered in connection with the performance of the scope as stated in Part 2 above for which he has been retained; and that the payments shall not be authorized until after the Tribe has received the actual award of funds for which this Agreement is a part of; and, that the payments shall not be authorized until after the required approvals for this agreement have been obtained; and, that compensation and method of payments shall be as follows:

Proposal and Work Plan

Van Ness Feldman proposes to serve as lead counsel to the Three Affiliated Tribes in the proposed negotiation and development of a water rights settlement of reserved water rights for the Fort Berthold Indian Reservation. In this role, Van Ness Feldman will provide strategic and legal counsel on the development of a proposed water rights settlement. In addition, the firm will serve as primary contact with federal agencies and Congressional offices on behalf of the firm's water right settlement efforts.

As an initial matter, Van Ness Feldman would work with the Tribal Council, its employees and other experts designated by the Council to develop an assessment of the Tribes' potential claims for reserved water rights. This will involve the review of historical documents in the Tribes' possession, any prior legal analyses and memorandum and other material that would inform a judgment on the scope of claims that can be raised by the Tribes. Upon completion of the initial analysis, Van Ness Feldman will report to the Tribal Council on the team's findings and make recommendations on whether the Tribes should proceed towards the negotiation and development of a water rights settlement. It also will identify possible sources of funding for the costs the Tribe will incur in working on the settlement, including BIA funding.

The cost of developing the initial assessment and recommendation to the Tribes would be \$25,000. The primary team representing the Tribes on the water rights settlement matter will be Dan Press, Joe Nelson and Matt Love. Their resumes are attached. Once the assessment is completed and the firm has reported to the Council on our findings and recommendations, we will work with the Tribes on developing a plan of action and budget for moving forward. At that point the Council will decide whether to approve the plan and budget, but in agreeing to move forward with the assessment, it is understood that there is no obligation on the part of the Council to approve that budget or to use Van Ness Feldman to help implement the plan. At this point, it is premature to predict what the costs might be. Each water rights settlement is unique in both timing and scope. Further, the overall work plan may expand or narrow as additional information is identified and a better understanding of the Tribes' potential claims develops.

The tribes should expect that a water rights settlement could involve the following steps:

- Research and development of initial position
 - Review of Historical Documents and Legal Analyses
 - Quantification of Rights
 - Effect of Treaties & Prior Federal Acts
 - Contractual Relationships/Agreements
 - Nature of Rights – Surface Water, Groundwater, Storage Rights
 - Identification of Existing and Future Uses
 - Identification of Infrastructure Needs

- Initial Discussions with State, Municipalities, Interior and Army Corps of Engineers
- Negotiation of Settlement Terms
 - General Statement of the Tribal Water Right
 - Authorization of Persons Who May Use the Tribal Water Right
 - Measure of Consumptive Use for Irrigation/Storage Losses
 - Purposes for Which the Tribal Water Right May be Used
 - Off-Reservation Use (if any)
 - Storage Reservoir Operations
 - Non-use of the Tribal Water Right not a Forfeiture
 - Identification of Sources of Diversions
 - Conditions Upon Diversions and Uses of the Tribal Water Right
 - Instream Flows
 - Reservation Clauses re Non-Forfeiture for Lack of Diversion
 - Terms of Use re Existing and Proposed Uses of Water
 - Changes of Protected Uses
 - Administration of Rights (U.S., Tribes and States)
 - Regulation of Ground Water
 - Effectiveness of Agreement
 - Ratification
 - Disposition of Claims
- Legislative Codification and Authorization

Water rights settlements typically require the retention of technical personnel, local counsel and, as necessary, lobbyists or other professionals that have contacts with the State Administration and Legislature. Accordingly, the Tribes' water rights negotiation team may include:

- Designated Tribal Council Member/Employees
- Legal Counsel (Federal Counsel/BIA & Interior Contact and Congressional Relations)
- Local Water Rights Counsel
- Water Rights/Engineering Consultant on Technical Issues
- State Administration/Legislature Contacts

Client's name	Matter Number	Billing Attorney	Matter Description	Other Successes	Practice Area 1	Practice Area 2	Practice Area 3	Years	Attorney who obtained permission
KFC NORTH AMERICA CORPORATION	02553	RRN, SCF			E	CC			

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ACE BASIN WETLANDS MITIGATION	02569	RSR			LW				
EAST KENTUCKY POWER COOP.	02961	RSR			LW				
ETAL BANC & EXCHANGE	02614	RSR			Misc				
GEORGIA TRANSMISSION CORP.				Van Ness Feldman served as project counsel for the transmission expansion projects undertaken by Georgia Transmission Corporation ("GTC") in Georgia.	LW				
	02302	RSR							
ORBIT RESOURCE CORPORATION	02918	RSR			LW				
PENSUS GROUP	02996	RSR			ET				

Client name	Matter Number	Billing Attorney	Matter Description	Other Successes	Practice Area 1	Practice Area 2	Practice Area 3	Years	Attorney who obtained permission
Pacific Northwest Security Coordinator	09075	SDL			E				

Client name	Matter Number	Billing Attorney	Matter Description	Other Successes	Practice Area 1	Practice Area 2	Practice Area 3	Years	Attorney who obtained permission
ARIZONA RAFT ADVENTURES	02801	SMK			LW				
COLORADO RIVER DISCOVERY, LLC	02972	SMK			LW				
DELAWARE VALLEY FISH CO.	02991	SMK			LW				



NOW THEREFORE BE IT RESOLVED, that the Three Affiliated Tribes Tribal Business Council hereby formally approves the attached Consultant Agreement for legal services with Van Ness Feldman, consistent with the attached proposal, and hereby authorizes the Tribal Chairman, Marcus Wells, Jr. to execute said Consultant Agreement.

BE IT FINALLY RESOLVED,

CERTIFICATION

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Forth Berthold Reservation, hereby certify that the Tribal Business Council is composed of 7 members of whom 5 constitute a quorum, 7 were present at a Regular Meeting thereof duly called, noticed, convened, and held on the 9th day of March 2007; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 7 members, 0 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 9th day of March 2007.

ATTEST:

Secretary, V. Judy Brugh
Tribal Business Council

Chairman, Marcus Wells, Jr.
Tribal Business Council