



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

A Resolution entitled, "Approval of Letter of Intent for a Pipeline Joint Venture with Och Ziff Capital Investments, Zenergy, Inc. and the Three Affiliated Tribes"

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, The Constitution and By-laws of the Three Affiliated Tribes was adopted by membership of the Tribes on May 15th, 1936 pursuant to the Indian Reorganization Act of 1934 and duly approved by the Secretary of Interior; 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 of the Constitution of the Three Affiliated Tribes provides the Tribal Business Council the authority to protect and preserve the property, wildlife and natural resources of the Tribes; to regulate hunting and fishing on all lands within the jurisdiction of the Tribes; and to cultivate and preserve native arts, crafts, culture, ceremonies and traditions; and

WHEREAS, the Three Affiliated Tribes previously approved a term sheet with Och Ziff Capital Investments, Inc. ("Och Ziff") and Zenergy, Inc., to form a joint venture company that would undertake the financing, construction and operation of such a oil, gas and water gathering and transportation system; and

WHEREAS, the Three Affiliated Tribes now desires to enter a formal letter of intent with Och Ziff and Zenergy to draft a final joint venture agreement for the financing, construction and operation of such a oil, gas and water gathering and transportation system; and

NOW THEREFORE BE IT RESOLVED, that the Tribal Business Council of the Three Affiliated Tribes hereby approves the attached Letter of Intent for a joint venture between Och Ziff Capital Investments, Inc., Zenergy, Inc and the Three Affiliated Tribes to finance, construct and operate an oil, gas and water gathering and transportation system within and for the benefit of oil and gas production within the Fort Berthold Reservation; and

EXHIBIT A

CONFIDENTIAL FOR DISCUSSION PURPOSES ONLY
OZ DRAFT - 10/14/2008

Term Sheet Between Three Affiliated Tribes and Och-Ziff Capital Investments, L.L.C.

Transaction: OCH-ZIFF CAPITAL INVESTMENTS, L.L.C. or one or more of its affiliates (collectively "OZ") through a newly formed entity to be jointly owned by OZ and Zenergy, Inc. ("Zenergy") (collectively with affiliates "OZ/Z Midstream"), the Three Affiliated Tribes a/k/a the Mandan, Hidatsa and Arikara Nation or one or more of its affiliates (collectively the "Tribe") and potentially other equity participants intend to jointly pursue a gathering system on the Fort Berthold Reservation (the "Reservation") for the gathering of crude oil, natural gas and water produced from wells on the Reservation.

Overall Structure: Pursuant to the terms set forth below, OZ/Z Midstream and the Tribe plan to form a new entity, defined as "Newco" below, to jointly invest up to \$50 million (the Initial Commitment") over a period of two (2) years, drawable on call by the Board of Directors of Newco (as defined below), to acquire, construct and operate oil and natural gas gathering assets on the Reservation, including without limitation right-of-ways, pipelines, connections, acreage, permits and any other equipment, material or documentation required to gather oil, natural gas and any other by-products from the production of oil and natural gas (including water, natural gas liquids, etc.) from a well or wells on the Reservation to a central gathering point or points (collectively the "Assets").

Pursuant to the terms set forth below, capital committed to Newco will consist of up to \$45 million (90%) from OZ/Z Midstream ("OZ/Z Midstream's 90% Commitment") and up to \$5 million (10%) from the Tribe ("Tribe's 10% Commitment").

The Tribe shall have the right to defer its portion of a capital contribution to Newco pursuant to a draw called by the Board of Directors of Newco (any such unfunded balance referred to as the "Funding Shortfall"), during the two year period following the execution of definitive transaction documents (the "Development Period"). OZ/Z Midstream shall fund any such Funding Shortfall on the Tribe's behalf, provided, that: (i) the unpaid Funding Shortfall, if any, shall first be paid out of any Distributions (as defined below) of Newco and shall be subject to the Special Preferred Return (as defined below) on any unpaid Funding Shortfall balance for the time that it is outstanding; (ii) a portion of the funds which the Tribe receives from royalties, bonus payments and rentals received from oil and gas leasing and production under the Indian Mineral Development Agreement between the Tribe and Dakota-3 E&P, in a percentage and amount to be mutually determined by the parties (but shall not be less than 35%), shall be used to fund the Tribe's portion of capital contributions and/or to reduce the Funding Shortfall during the Development Period; and (iii) within 30 days following the end of the Development Period, the Tribe shall make such deferred capital contribution by contributing the amount of any unpaid Funding Shortfall to Newco, plus the Special Preferred Return thereon, which shall simultaneously be distributed to OZ/Z Midstream. Any unpaid Funding Shortfall shall be secured by the Tribe's equity interest in Newco. Notwithstanding the foregoing, the Tribe shall at all times be obligated to satisfy the Tribe's 10% Commitment.

OZ/Z Midstream (and any other operator or consultant employed by OZ/Z

CONFIDENTIAL FOR DISCUSSION PURPOSES ONLY
OZ DRAFT - 10/14/2008

Midstream to assist with the design, construction or operations of the Assets) shall have primary responsibility to design, construct and operate the gathering system to gather oil and natural gas from the acreage on the Reservation to the south of Lake Sakakawea. It is expected that the oil and natural gas will be gathered on behalf of a marketing company. OZ/Z Midstream intends to design the Assets to gather oil and natural gas produced from wells owned by D-3 E&P as well as other well owners on the Reservation at a competitive price, provided that any marketer who purchases D-3 E&P's oil and natural gas will be granted priority access to the extent there are capacity limitations on the gathering system. To the extent the Tribe has leased other mineral interests which it owns on the Reservation to other operators ("Third Party Tribal Leases"), the Tribe also agrees to use commercially reasonable efforts to encourage said operators to connect their wells to Newco's gathering system. The Tribe will rely upon OZ/Z Midstream to design, construct and operate the Assets, and to manage the day-to-day operations of Newco, but will receive regular reports regarding progress and activity on the Assets and will also be involved in key decisions through its participation on the Board of Directors as described below.

Newco Structure:

A newly formed Delaware limited partnership or limited liability company ("Newco"), to be formed by OZ/Z Midstream and the Tribe shall acquire, construct, own and operate the Assets. During the Development Period, OZ/Z Midstream will invest 90% of the equity commitments and the Tribe will invest 10% of the equity commitments required from Newco to acquire, own and operate the Assets. Following the Development Period, to the extent the Board of Directors of Newco determine that additional capital is required for the development and expansion of the Assets and to other operational expenses of Newco, OZ/Z Midstream and the Tribe shall have the option to fund any such incremental amounts pro rata based upon their respective ownership percentages. If OZ/Z Midstream or the Tribe choose not to fund such incremental amounts, or fund a portion and additional funding opportunities exist after the exercise of any preemptive rights, then Newco shall be permitted to pursue outside third party capital for any incremental amount and OZ/Z Midstream and the Tribe shall use commercially reasonable efforts to assist Newco in such capital raising activity. Any such additional capital raising activity, whether funded by OZ/Z Midstream, the Tribe or such third party, will have a dilutive effect on the equity ownership of any shareholder that does not participate in such capital funding.

| | | | |
|---|---------------------------------|-------------------------|---|
| <p>Tribe's Increase Newco:</p> | <p>Option Equity</p> | <p>to in</p> | <p>The Tribe will also have the option, following the Development Period and repayment in full of the unpaid Funding Shortfall and the Special Preferred Return payable thereon, to acquire additional equity in Newco over time of up to a maximum of 49% equity ownership of Newco; provided, however, the Tribe shall only be permitted to acquire an additional 10% of the equity in Newco within the first year after the expiration of the Development Period, and then no more than an additional 10% of the equity in Newco in each of the four succeeding years up to a maximum of 49% equity ownership in Newco. The Tribe's option to acquire additional equity in Newco pursuant to the terms set forth herein shall expire, to the extent it has not been exercised, on the eighth anniversary of the date of execution of definitive transaction documents. The acquisition of additional equity interest will be at the Tribe's discretion and can be funded through either (i) purchases of existing equity interests, together with any unfunded capital commitment attributable thereto, from OZ/Z Midstream (calculated as the gross capital contribution attributable to that interest to be transferred by OZ/Z Midstream times an annualized rate of 15% from</p> |
|---|---------------------------------|-------------------------|---|

CONFIDENTIAL FOR DISCUSSION PURPOSES ONLY
OZ DRAFT - 10/14/2008

the actual date of contribution by OZ/Z Midstream until such purchase) or (ii) increased proportionate funding of future expansions of the Assets (calculated assuming the same 15% annualized rate of equity appreciation for the Tribe's interest, as well as OZ/Z Midstream's interest, for past investments weighed against the current expenditures). In the event the Tribe increases its equity ownership in Newco as provided for above, all future capital calls shall be funded prorata based upon OZ/Z Midstream and the Tribe's equity ownership at the time of such capital call.

Distributions:

Once all expenses have been paid, the Board of Directors of Newco, in their sole discretion, shall distribute all available cash generated from the operations of Newco as follows:

- (i) As an advance repayable out of subsequent distribution, to OZ/Z Midstream and the Tribe to fund actual taxes paid on their respective ownership of Newco;
- (ii) 100% to OZ/Z Midstream equal to the unpaid Funding Shortfall plus a 10% annual preferred return on such Funding Shortfall ("Special Preferred Return");
- (iii) 100% to OZ/Z Midstream and the Tribe in proportion to the funded capital contributions of each such party, which during the Development Period shall be 90% to OZ/Z Midstream and 10% to the Tribe.

Additionally, the Tribe, OZ/Z Midstream or any other equity owner may elect to reinvest all or a portion of distributions back into Newco as an additional capital contribution (if additional investment is required within a reasonable period of time) in lieu of receiving the distribution in cash.

**Management/
Governance:**

OZ/Z Midstream and/or any affiliates shall have primary responsibility to manage the day-to-day operations of Newco, including the design, construction and operational phase of Newco's Assets, subject to the supervision and direction of a Board of Directors, as discussed in greater detail immediately below. Status reports, including expenditures, earnings and operational statistics for Newco, will be generated and sent to equity owners on a regular basis (no less than one per calendar quarter). Additionally, equity owners may request additional information and Newco will comply with the request in a commercially reasonable manner.

A Board of Directors (the "Board") will be formed to govern key decisions for Newco. The Board will be comprised of at least five members, including at least two representatives of the Tribe and three representatives of OZ/Z Midstream. Major decisions to be governed by the Board of Directors shall include without limitation: (i) acquisitions and future expansions of the Assets, (ii) yearly capital budgets for Newco, (iii) size and timing of distributions to equity owners of Newco, and (iv) decisions regarding the sale of Newco and/or Assets or Newco interests. Voting rights on the Board will be in-line with equity ownership at the time of the decision. The Board of Directors shall meet as often as necessary, but no less than twice per year.

CONFIDENTIAL FOR DISCUSSION PURPOSES ONLY
OZ DRAFT - 10/14/2008

Event of Default

In the event that the Tribe enacts, passes or seeks to enforce any new tribal laws, legislation, order, regulation, ordinance, resolution or other law ("Law"), including without limitation any Laws causing an increase in costs to any oil and gas exploration activity on the Reservation, which as a result thereof, adversely impacts such oil and gas exploration activity on the Reservations and/or reduces the oil and gas volumes available for gathering on the Reservation, thereby causing a material adverse effect on the business, operations and prospects of Newco and OZ/Z Midstream's ability to design, construct and/or operate an economically successful gathering system on the Reservation, as determined by the Board of Newco, then the Tribe, upon Newco's request, shall first endeavor in good faith to amend or modify any such Law so as to unwind any such adverse impact resulting from such Law, but in the event such Law is not amended or such adverse impact is not removed, then Newco or its designee, including without limitation OZ/Z Midstream, shall have the right to buy back the Tribe's equity interest in Newco for a price equal to 75% of the lower of (x) the Tribe's cost of such equity interest in Newco and (y) the fair market value of such equity interest in Newco.

Transfers of Interest:

Except for permitted transfers, including without limitation any transfers to affiliates of any member of OZ/Z Midstream or transfers to a strategic operator, for a period of two years all equity interests in Newco will be subject to restrictions on resale and in all cases shall not be transferred or pledged without the express consent of the Board of Directors; provided, however, any member of OZ/Z Midstream may transfer its equity interests in Newco at any time to an "accredited investor" (as such term is defined in Regulation D of the Securities Act of 1933) or a "qualified purchaser" (as such term is defined under the Investment Company Act of 1940) subject to the Tribe's Right of First Offer set forth below.

Right of First Offer

Except for permitted transfers, including without limitation any transfers to affiliates of any member of OZ/Z Midstream or transfers to a strategic operator, for any proposed transfer of equity interests by OZ/Z Midstream to an unaffiliated third party, OZ/Z Midstream will grant the Tribe a right of first offer (the "Right of First Offer") to purchase the equity interests of OZ/Z Midstream proposed to be transferred for a purchase price equal to the fair market value of the interest. If the parties cannot agree to the fair market value of the interest, the transferring member of OZ/Z Midstream will be permitted to transfer its interest to such third party without any restrictions.

Right of First Refusal

In the event the Tribe proposes to transfers its equity interest in Newco to a third party, then OZ/Z Midstream shall also have the right of first refusal (the "Right of First Refusal") to purchase the Tribe's equity interests proposed to be transferred on the same terms as the Tribe has proposed to accept from said third party.

Preemptive Rights

Other than with regard to customarily excluded issuances of securities, including without limitation strategic issuances for business development purposes, each equityholder in Newco shall have pro rata preemptive rights in respect of any new issuances of equity (including appreciation rights and other securities or rights having equity features) by Newco.

Drag-Along Rights

In the event OZ/Z Midstream proposes to transfer a majority of the outstanding equity securities of Newco to a third party at any time, then all the Tribe and other

CONFIDENTIAL FOR DISCUSSION PURPOSES ONLY**OZ DRAFT – 10/14/2008**

equityholders, if any, shall be required to transfer their interests pursuant to such sale and take any and all other steps required to consummate such sale.

Tag-Along Rights

All equityholders shall have the right to tag along in any permitted sales of equity to unaffiliated third parties on a pro rata basis on the same terms as the selling equityholder have proposed to accept.

Conflicts

OZ/Z Midstream and the Tribe will work to ensure that, subject to and with the exception of the priority gathering of volumes related to D-3 E&P's oil and natural gas production on the Reservation, all parties on the Reservation that wish to contract the excess capacity on the gathering system may do so at market based prices, and OZ/Z Midstream and the Tribe will take no action to discriminate against potential third party volumes on the system.

Alternative Structure:

The parties acknowledge and agree that, to the extent an alternative structure for the transaction contemplated by this term sheet will provide incremental benefits (whether tax, regulatory or otherwise) to OZ/Midstream or the Tribe, the final form of the investment may be modified so long as the economic terms reflected in this term sheet remain the same and as mutually agreed upon.

Governing Law:

THIS TERM SHEET AND THE DEFINITIVE TRANSACTIONS DOCUMENTS (AS APPLICABLE), OTHER THAN APPLICABLE FORMATION AND ENTITY GOVERNING DOCUMENTATION, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE.

Use of Name:

The Tribe shall not use the names "OZ," "Och" "Och-Ziff" "Zenergy" or "OZ/Z Midstream" (or any of OZ/Z Midstream's affiliates' or members' names) without the written consent of OZ/Z Midstream. OZ/Z Midstream will not use the Three Affiliated Tribes or any of its affiliates' or members' names without the prior consent of the Tribe or that member.

**Exclusivity/
Confidentiality:**

The Tribe and OZ/Z Midstream, as well as any other party involved in the discussion of this term sheet, agree to keep the existence of this term sheet, and ongoing negotiations and discussions concerning the proposed investment in strict confidence and will not disclose such without the consent of OZ/Z Midstream, except to those representatives and advisers on a need to know basis. This confidentiality obligation shall survive any termination of negotiations regarding the proposed investment.

Notwithstanding the foregoing, the parties (and each employee, representative, or other agent of the parties) may disclose to any and all persons, without limitation of any kind, the tax treatment and any facts that may be relevant to the tax structure of the transaction, *provided, however*, that no party (and no employee, representative, or other agent thereof) shall disclose any other information that is not relevant to understanding the tax treatment and tax structure of the transaction (including the identity of any party and any information that could lead another to determine the identity of any party), or any other information to the extent that such disclosure could reasonably result in a violation of any applicable securities law.

Non-Binding:

This term sheet will be used only as a guideline for the preparation and negotiation

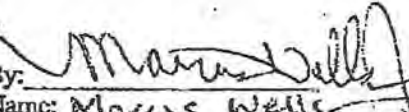
CONFIDENTIAL FOR DISCUSSION PURPOSES ONLY
OZ DRAFT - 10/14/2008

of the definitive agreements. Except as set forth under "Exclusivity/Confidentiality" and "Governing Law" which shall be binding on the parties, no binding obligations shall arise under this term sheet unless and until definitive contracts are entered into by the parties. No person shall be entitled to rely upon this term sheet or any other oral or written representations or be entitled to any recourse, in the form of damages or otherwise, in the event there is a failure, for any reason, of the parties to agree to the terms and provisions of definitive agreements.

CONFIDENTIAL FOR DISCUSSION PURPOSES ONLY
OZ DRAFT - 10/14/2008

ACCEPTED AND AGREED
AS OF OCTOBER 16th 2008

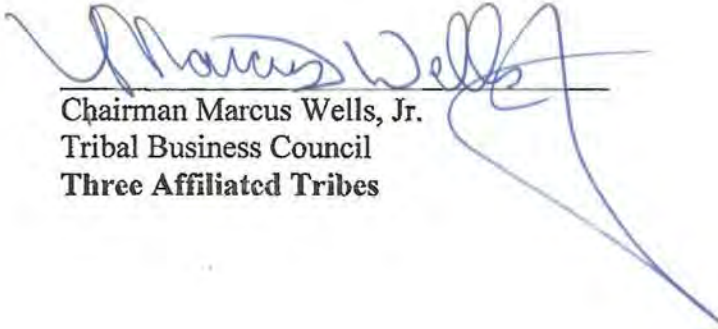
By: The Three Affiliated Tribes (Mandan, Hidatsa and Arikara)

By: 
Name: Marcus Wells
Title: Chairman

OCH-ZIFF CAPITAL INVESTMENTS, L.L.C.

By: 
Name: Joel M. Frank
Title: Chief Financial Officer

AGREED TO THIS __ day of OCTOBER, 2008:

A handwritten signature in blue ink, appearing to read "Marcus Wells, Jr.", is written over a horizontal line. The signature is stylized and extends to the right of the line.

Chairman Marcus Wells, Jr.
Tribal Business Council
Three Affiliated Tribes

Och-Ziff Capital Investments, L.L.C.
9 West 57th Street, 13th Floor
New York, NY 10028

October 23, 2008

Chairman Marcus Wells, Jr.
Three Affiliated Tribes Business Council
404 Frontage Road
New Town, ND 58763


RE: FBIR Midstream Term Sheet
Dated October 16, 2008

Dear Chairman Wells and Members of the Tribal Business Council:

At a meeting of the Three Affiliated Tribes Business Council (the "Council") on October 16, 2008, the Council approved and executed that certain Term Sheet between The Three Affiliated Tribes (the "Tribe") and Och-Ziff Capital Investments, L.L.C. ("OZ"), a copy of which is attached hereto as Exhibit A (the "Term Sheet"), which among other things sets forth the terms under which OZ or affiliates thereof and the Tribe (and potentially other equity participants) would jointly pursue a gathering system on the Fort Berthold Reservation (the "Reservation") for the gathering of crude oil, natural gas and water produced from the Reservation (the "Transaction").

By its signature below, the Council hereby confirms and approves the terms of the Transaction, including without limitation, the financial terms and proposed ownership structure set forth in the Term Sheet, and agrees to proceed with the drafting and negotiation of final documentation incorporating the provisions of the Term Sheet, which documentation shall include customary provisions for a transaction of this size, including without limitation, customary representations, warranties, covenants and events of default (the "Closing Documents"). The Council further authorizes the Chairman and Secretary of the Council, or each of them as may be necessary, to execute the Closing Documents and any further documentation, and take any other actions necessary or appropriate to carry out the intent of the Council to finalize the Transaction on the terms set forth in the Term Sheet.

OCH-ZIFF CAPITAL INVESTMENTS, L.L.C.

By: 
Name: Joel M. Frank
Title: Chief Financial Officer



BE IF FURTHER RESOLVED, the final Joint Venture Agreement shall be completed between the parties pending legal review by the parties but shall include all agreed upon terms contained within the attached Letter of Intent and the approved Term Sheet; and

BE IT FINALLY RESOLVED, the Tribal Chairman and Tribal Council Secretary are hereby authorized to sign the final Joint Venture Agreement upon final legal review by legal counsels for the parties.

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, 7 were present at a Special Meeting thereof duly called, noticed, convened and held on the 23 day of October, 2008, that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of 5 members, 2 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 23 day of October, 2008.

ATTEST:

Acting Executive Secretary, Barry L. Benson
Tribal Business Council

Chairman, Marcus D. Wells, Jr.
Tribal Business Council