



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

*A Resolution entitled, "Triad Project Corporation Clean Fuels Refinery Agreement"*

**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 of the Three Affiliated Tribe generally 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 III of the Constitution of the Three Affiliated Tribes provides that the Tribal Business Council is the governing body of the Tribes; and

**WHEREAS,** On November 28, 2008, the Triad Project Corporation, the engineering firm that completed the Front End Engineering and Design (FEED) study on behalf of the Tribe's Clean Fuels Refinery Project located on land purchased by the Tribe for this project near the City of Makoti, ND in Ward County; and

**WHEREAS,** It would be in the Tribe's interest to enter into an agreement with Triad for Triad to complete the engineering and construction portion of the refinery; and

**NOW THEREFORE BE IT RESOLVED** that the Tribal Business Council hereby approves the attached Agreement to Engineering Contract and authorizes the Tribal Chairman to execute it on behalf of the Tribe.



November 28, 2008

## **CONFIDENTIAL INFORMATION**

Marcus Wells, Jr.  
Chairman  
MHA Nation  
HC3 Box 2  
New Town, ND 58763-9402  
USA

## **HAND DELIVERED**

### **Re: MHA Triad Project Agreement**

Dear Chairman Wells:

As the permit is pending BIA signature, and financing is then imminent, we offer our commitment to undertake the execution of the Clean Fuels Project. Given the current economy, we have prepared a Master Service Agreement containing scope, terms and conditions for execution of the complete refinery from the permit through mechanical completion, startup, and stable operation. As each phase of the work becomes defined, a Service Agreement will be prepared to cover the associated scope, cost and schedule. This relationship between MHA and Triad will see us through the entire project.

Our close working relationship and perseverance has gotten us the first grass roots Refinery Permit in over 30 years from EPA within the United States. Triad Engineers Limited had the honor and privilege in building the last Grass Roots Refinery built in North America. Our experience in the refining industry has paid great dividends for the MHA refinery project and will continue to do so as we bring the refinery on line.

As the project develops we foresee the following phases.

- 1) Front End Loading One – Define project scope.
- 2) Front End Loading Two – Develop the master engineering documents.
- 3) Front End Loading Three – Develop a "Schedule A" package.
- 4) Detailed Engineering and Design.
- 5) Construction.
- 6) EPCM Closing.
- 7) Commissioning and Start-Up.
- 8) Operation.

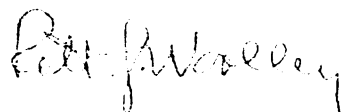
The Master Service Agreement we have prepared will accomplish this.

Both the Tribe and Triad have demonstrated good faith and loyalty. The results are in the EPA Permit. We offer the vehicle to achieve realization of the finished product.

Triad is committed to the project and offers this agreement to get it done.

Yours sincerely,

**Triad Project Corporation**

A handwritten signature in cursive script, appearing to read "Robert G. Woolley".

Robert G. Woolley, P. Eng.  
President and CEO

# **Master Service Agreement No. 060101**

The Mandan, Hidatsa and Arikara Nations ("MHA") of the Fort Berthold Reservation located in Northwestern North Dakota, propose to build and operate a 15,000 bpsd clean fuels refinery, on land purchased by MHA near Makoti, North Dakota and contract with Triad Project Corporation ("Triad"), a Utah corporation, to be the sole provider for a complete refinery solution from conception to start-up including all engineering, procurement, subcontracting and construction management (EPCM) as well as assisting MHA with the contracting or subcontracting an operating company and financing arrangements. This Master Service Agreement (MSA) is between MHA and Triad wherein Triad will represent MHA in all refinery related interests.

The proposed refinery will be a fully integrated, modern petroleum refinery capable of producing propane, butane, reformulated gasoline, summer and winter diesel, bio-diesel, and jet fuel. Using best available technology, the refinery will produce finished products in an environmentally friendly manner and as clean as possible. The refinery shall be in compliance with the Final Environmental Impact Statement (FEIS) issued by the Environmental Protection Agency (EPA) and Bureau of Indian Affairs (BIA).

The refinery and related support industries will provide employment opportunities for MHA and the community. All employment opportunities shall be based upon Federal and Local laws, qualified personnel, integrity, work ethic and safety. Triad will be an advocate to MHA and the Tribal Employment Rights Office (TERO) in advising and counseling regarding local employment opportunities. As owner of the refinery, MHA can reasonably expect long-lasting employment opportunities as well as significant revenue stream.

With the help of Triad, MHA has been pursuing this refinery project for approximately six years. During this time Triad has completed a conceptual engineering study for the proposed refinery, assisted in the purchase of land for the proposed refinery site, and lead the way for environmental permitting which is nearing completion. Entry into the Federal Register and issuance of the permit to construct from the EPA is expected in the near future. Therefore, the time is right to solidify the Master Service Agreement (MSA) between MHA and Triad to position both for expediting the construction of the refinery.

Triad proposes the following phases of work. At the beginning of each phase MHA and Triad will jointly define and approve in writing the scope of work to be accomplished during the phase. At the end of each phase, MHA will have a formal review and comment opportunity coupled with approval of the scope of work for the next phase with associated funding. It is recommended that MHA assign a project representative or Single Point of Contact (SPOC) for timely coordination and alignment; one who has both the technical understanding and authority to speak for MHA. The right empowered MHA SPOC will significantly improve and expedite the communication process thus reducing cost and schedule. Proceeding with each phase of work is conditional upon MHA financing with the assistance of Triad.

#### **Phases of Work:**

- Phase 1 Front End Loading One (FEL1) - Define project scope, review the most current and updated information available to right size the project considering all parameters (i.e. crude slates, regional markets, future expandability, economics, environmental, etc.). Then create the appropriate Process Flow Diagrams (PFD's). Infrastructure and Utility conceptual planning. Engineering will be approximately 10% complete.
  
- Phase 2 Front End Loading Two (FEL2) - Develop the master engineering documents such as Process and Instrument Diagrams (P&ID's), equipment sizing for Plot Plans, Electrical Single Line Diagrams, Basic Process Control System (BPCS) Philosophy and Architecture. Develop business office building design, maintenance shops, etc. for review. A preliminary estimate would be completed at this stage. Engineering will be approximately 20% complete.

- Phase 3 Front End Loading Three (FEL3) – Develop a “Schedule A” package including a detailed estimate, equipment quotes, instrument index, Motor Control Center (MCC) line-ups, Distributive Control System (DCS), more definition to Plot Plans, Utilities, Logistics (i.e. pipelines, rail/truck loading/unloading racks, etc.) and similar basic design documents fundamental to sufficient project definition. Front End Loading will be complete and engineering will be approximately 30% complete.
- This is a major phase gate for the project wherein MHA will be required to commit 100% of the project funding for execution and construction.
  - Immediately upon commencement of Phase 4, Triad will order all major equipment and long-lead items. This reduces project costs, minimizes escalation and expedites schedule.
- Phase 4 Detailed Engineering and Design - Develop all necessary construction related details, drawings and work packages. This is the largest engineering effort. Prepare, bid, evaluate and award construction contracts. Issue drawings for construction. Operating entity to bring on key leadership positions and begin writing operating procedures, maintenance procedures, etc. and coordinating with engineering. Engineering will be approximately 90% complete.
- Phase 5 Construction – This is when the bulk of the physical work takes place. Triad is to manage all subcontractors and construction. Operating entity to increase staffing, training, and preparing for refinery start-up.
- Phase 6 EPCM Closing – Finalize all engineering including as-builts drawings, equipment data books, inspection records, and any other related documents. Engineering will be 100% complete.
- Phase 7 Commissioning and Start-Up – Operating entity shall now take full responsibility for the refinery. This is a transfer of responsibility from Triad to the operating entity. Triad will assist in this effort to ensure a smooth start-up. Triad's EPCM commitment is now 100% complete.
- Phase 8 Operation – Operating entity soloing.

Each phase of work will have a Service Agreement (SA) that details the scope of work, schedule and budget. Each SA will refer to this MSA and will be approved by MHA before execution.

Some phases will overlap to insure that there is efficiency with the schedule and no lost time waiting for one phase to be completed. This would be reviewed and approved by MHA prior to starting the second phase. The phases that this will happen with would be Phase 4 and 5 with grading and office building construction and the other Phases would be Phase 6 and 7 when as-built drawings are being completed and this will prevent a prolonged or late start-up of the plant.

## DEFINITIONS

- 1.1 “Agreement” means this Master Service Agreement, including all exhibits and any items specifically incorporated by reference and any amendments hereto as accepted by MHA and Triad.
- 1.2 “Construction Labor” means the labor required to assemble materials either on-site or in fabrication shops.
- 1.3 “Compensation” means payment by MHA to Triad or Triad’s subcontractors for services and expenses.

- 1.4 "Contract Price" means the compensation to be paid by MHA to Triad for a scope of Work as agreed to in writing by MHA and Triad on an individual Service Agreement (SA) issued against this Master Service Agreement (MSA). The Contract Price may be composed of two types of costs: Triad's direct and indirect costs for its EPCM services and third party costs issued on Triad purchase orders or contracts.
- 1.5 "Cost Plus" means payment by MHA to Triad for all direct and indirect related costs plus a percentage for Triad's profit.
- 1.6 "Days" means consecutive calendar days.
- 1.7 "Direct Costs" means substantiated, reasonable direct costs necessarily incurred and directly attributable to the task to which the term refers. For example, Triad employees, subcontracted industry experts and consultants, etc.
- 1.8 "EPCM" means engineering, procurement and construction management/liaison.
- 1.9 "Facility" means the product of the Work, such as an improvement to real property, designs or data.
- 1.10 "Force Majeure" means an event or condition that is unforeseeable and beyond either party's control. Force Majeure may include orders of government agencies; strikes, lockouts and other labor disturbances (even if terminable by the affected party acceding to the demands of any labor group); war, riots and civil insurrection; fires, floods, earthquakes or other Acts of God; and loss of public utilities beyond the control of either party. Force Majeure shall not include severe weather conditions and other events that are foreseeable by experienced firms familiar with the locality of the job site.
- 1.11 "Indirect Costs" means substantiated, reasonable indirect costs necessarily incurred and attributable to the task to which the term refers. For example, office expenses, travel expenses, per diem, equipment, communications, postage, etc.
- 1.12 "Infrastructure" means necessary power, road, rail, communication, etc. to/from refinery.
- 1.13 "ISBL" or "On-Sites" mean Inside a process unit's Battery Limits.
- 1.14 "MSA" means Master Service Agreement (this document).
- 1.15 "Material" or "Materials" means all material, supplies and equipment to be incorporated into a Facility.
- 1.16 "Mechanical Completion" means the date on which structural components, equipment, piping, interconnections, wiring, instruments and electrical devices comprising the Facility have been installed in accordance with the design drawings and specifications and all systems have been turned over to operations for commissioning.
- 1.17 "OSBL" or "Off-Sites" means Outside a process unit's Battery Limits.
- 1.18 "Reimbursable Price" means compensation by MHA to Triad in consideration for Work performed by Triad as set forth in the appropriate SA.
- 1.19 "Sales Tax" means tax on materials supplied within the taxing state or supplied by a vendor registered to collect the sales tax for that jurisdiction.

- 1.20 "Service Agreement" (SA) means a specific scope of Work issued against a MSA detailing a scope of Work, estimated schedule and budget. Each SA will refer to this MSA number and will have a unique two-digit sequence number attached (i.e., SA • 01) and will be substantially in the form shown in Exhibit A.
- 1.21 "Subcontract" means contracting out a portion of the Work to another engineering firm, specialty consulting group, construction entity, fabricator, supplier, or operating entity , etc. (i.e., specialty equipment design, fabricating process, waste water treatment, etc.)
- 1.22 "Total Installed Cost" means all direct (material & labor costs etc.), indirect (small tools, construction equipment, construction facilities etc. & consumable etc.) and engineering costs for the refinery at Mechanical Completion.
- 1.23 "Turnover" means the exchange of responsibility for a Facility from construction to operations. This normally takes place shortly after Mechanical Completion and prior to commissioning.
- 1.24 "Use Tax" means tax on materials supplied from outside the taxing state by a vendor not registered to collect sales tax for that jurisdiction.
- 1.25 "Utilities" mean power, steam, communications, etc. within the refinery.
- 1.26 "Work" means, unless the context otherwise requires, all work to be performed by Triad under this Agreement.

## **2.0 TERM OF THE AGREEMENT**

- 2.1 The MSA shall be commenced upon date of signature and diligently executed through commissioning and start-up of the refinery unless terminated earlier by either party by giving one hundred twenty (120) days prior written notice of termination to the other party.
- 2.2 The Effective Date of Termination shall be one year subsequent to start-up or the prior termination of the Agreement. All obligations and liabilities of the parties hereunder with respect to the Facility shall terminate on the Effective Date of Termination except with respect to any claim or demand which shall have been made in writing to Triad or MHA prior to the Effective Date of Termination.

## **3.0 CONTRACT PRICE**

- 3.1 Due to the nature of creating a grass-roots project which required flexibility within each phase as the scope of work is further developed and refined, the compensation package must likewise remain flexible. Therefore the compensation price for this MSA will be structured as "Cost Plus".
- 3.2 MHA shall reimburse Triad for all substantiated, reasonable direct and indirect costs necessarily incurred and directly attributable to the tasks related to fulfilling this MSA and subsequent Service Agreements. Triad's employee Rate Sheet will be attached as part of each subsequent Service Agreement for a particular Phase of Work or group of Phases. Rates are effective for current calendar year and are subject to revision January 1<sup>st</sup> of each year to reflect current business conditions and the B.L.S. index. All other charges including but not limited to subcontractors, indirect costs, travel, offices, etc. will be billed as Cost Plus 15%.

- 3.3 Triad's profit shall be subject to adjustment for changes in Work as described in Article 5; Force Majeure occurrences; and revisions in codes, regulations, laws, or interpretation adopted subsequent to the date of this Agreement.
- 3.4 Triad shall pay to personnel used by it for performance of the Work, all salaries, wages, fringe benefits, other forms of compensation and reimbursement payable as a result of the Work and shall withhold and pay to the appropriate authorities all Federal, State and local income or other payroll taxes payable with respect to such compensation.

**4.0 PAYMENT TERMS**

- 4.1 Payment of the Contract Price shall be made in accordance with the schedule set forth in a Service Agreement. Where no payment schedule is issued with a Service Agreement, payment will be per monthly statements prepared by Triad. Payment is due on receipt of invoice and shall be made within 15 days following invoice receipt. MHA shall pay the invoice amounts via wire transfer to:

Bank Name:	Wells Fargo Bank
Bank Address:	381 East Broadway Salt Lake City, UT 84111
Account Name:	Triad Project Corporation
Transit #:	121000248
Account #:	0895 396505

- 4.2 MHA shall pay Triad a mobilization fee and retainer of US\$ 4,000,000 within 15 days after project is funded to begin setting up necessary project offices, staff and begin preparations for FEL1. This fee will be used only for project related expenses.
- 4.3 Triad's subsequent monthly invoices shall indicate services provided in sufficient detail to assure MHA and its peer review experts that satisfactory implementation of this MSA is taking place.
- 4.3 MHA shall have access to any documents, books, papers and records of Triad that are directly related to this Agreement for the purpose of making audit examinations, excerpts and transcriptions. Triad shall maintain all such records for at least three years after the termination of Work under this Agreement.

**5.0 CHANGES IN WORK**

- 5.1 MHA may, by written instruction to Triad, direct changes in Work. If such modifications, alterations or omissions should result in an increase or decrease in the cost of the Work or affect the schedule, Triad shall notify MHA by way of a Work Change Notice (WCN) and shall not undertake such changes unless thereafter notified by MHA to do so in writing. No Work with respect to a change shall be done without a written agreement between MHA and Triad reflecting an equitable adjustment of the Contract Price.
- 5.2 Any new laws or modified codes or regulations enacted or promulgated after the effective date of this Agreement which require an addition, deletion or revision in the Work and/or the cost of the Work shall be deemed a change in work and a Work Change Notice shall be issued by Triad. If Triad observes that any information furnished by MHA or others is at variance with any law, it shall promptly notify MHA in writing.



- 5.3 The home office cost of any change shall be based on Triad's current compensation sheet. For the purposes of determining whether an instruction by MHA or some other alteration or modification to the Work, whether explicit or implied, constitutes a change, the scoping documents in the Service Agreement shall govern. Whether a change is a change in scope or design is immaterial to the determination of a change in Work.
- 5.4 Whether or not a WCN is approved, MHA agrees to pay Triad for administrative / project costs required to prepare and trend any potential change as shown on the WCN.

## **6.0 SCHEDULE**

- 6.1 Triad agrees to perform the Work of this Agreement with promptness and shall use reasonable diligence and efforts to achieve completion of the Work in accordance with the Service Agreement schedule which shall set forth, in detail, the items of work to be completed and the timelines for each work item. Such schedule shall be adjusted for any changes in the Work that may affect progress of the Work, Force Majeure occurrences, or other delays in the Work not caused by Triad or its subcontractors.

## **7.0 TITLE TO AND USE OF TECHNICAL INFORMATION / CONFIDENTIALITY**

- 7.1 Title to all technical data including but not limited to drawings, bills of material, flow diagrams, layout details and specifications and the contents thereof furnished to Triad by MHA shall remain the property of MHA. Such work product shall not be disclosed to others, reproduced in any manner or used for any other purpose whatsoever except by written permission or as provided in a signed agreement with both parties relating to such data. Within the scope of these rules Triad shall retain a copy of all such documents.
- 7.2 Triad agrees to use all such information for the performance of the Work and to hold all such information in confidence and not to disclose same to any third party, duplicate or use the information in any manner without the prior written consent of MHA.
- 7.3 Subcontractors of Triad will be required to sign confidentiality agreements where applicable.
- 7.4 The restrictions above shall not apply with respect to any portion of such information (i) which corresponds in substance to that developed by Triad and in its possession prior to receipt of same from MHA, (ii) which at the time of disclosure thereof by MHA to Triad is, or thereafter becomes through no act or failure to act on Triad's part, part of the public domain by publication or otherwise, or (iii) which corresponds in substance to that furnished to Triad by others as a matter of right without restriction of disclosure. Any combination of features shall not be deemed to be within the foregoing exceptions merely because individual features are in the public domain or in Triad's possession, but only if the combination itself and its principle of operation are in the public domain or in Triad's possession.
- 7.5 Title to all Work product prepared by Triad, shall remain with Triad. MHA shall have the exclusive right to copy and use any data furnished to it by Triad for the construction, operation, repair and maintenance of the Facility and for replacing any part thereof. Work product shall not be disclosed to others, reproduced in any manner or used for any other purpose whatsoever except by written permission or as provided in a signed agreement with Triad relating to such Work product.

## **8.0 SUBCONTRACTS AND ASSIGNMENTS**

- 8.1 Triad may elect to subcontract certain work to others, which, in Triad's opinion, needs to be subcontracted in order to implement this Agreement. However, subcontracting any part of the Work under this Agreement shall not relieve Triad of any of its obligations. Work may not be subcontracted without MHA's prior approval which shall not be unreasonably withheld. A signature line for MHA's approval shall be included in each subcontract. The duties and obligations of this agreement shall apply to all subcontractors that subcontract any part of the work under this Agreement.
- 8.2 Triad will comply with applicable Tribal Employment Rights Office (TERO) employment opportunities related to construction. Triad will pay a one time only \$500 license fee to TERO. MHA agrees that all other TERO fees for subcontractor and service charges will be waived. All employment opportunities shall be based upon Federal and Local laws, qualified personnel, integrity, work ethic and safety.

## **9.0 PROFESSIONAL SERVICES AND LIABILITY**

- 9.1 Triad warrants that the Work performed by it under this Agreement shall conform to that degree of care, skill and diligence normally provided in the performance of services of a similar nature to those contemplated under this Agreement at the time and place such services are rendered. Triad's services shall conform to appropriate engineering and professional standards. Triad's total liability for breach of the foregoing, if any, or otherwise for any losses, damages, claims or demands arising out of the Work performed by it under this Agreement shall be limited to Ten percent of all the payments made to Triad by MHA under this Agreement, provided that any such claim or demand shall be made in writing to Triad prior to the Effective Termination Date of this Agreement. The Parties shall execute a Notice terminating this Agreement which shall govern the expiration of claims and demands made to Triad under this provision.
- 9.2 Triad shall indemnify and save MHA harmless from and against any and all loss, damage, injury, liability and claims thereof for any patent infringement resulting directly or indirectly from Triad's performance of the Work including provision of designs by Triad; except for royalties that may be required for licensed processes to be used in the execution of the Work. MHA and Triad shall have the right to be present and represented by counsel at its own expense at all times during litigation and/or other discussions relating to claims of patent infringement arising under this article. Neither MHA nor Triad shall settle or compromise any such litigation without the consent of the other if such settlement or compromise obligates the other to make any payment or part with any property or assume any obligation or grant, any license or other rights to or be subject to any injunction by reason of such settlement or compromise. Notwithstanding the foregoing, MHA shall hold Triad harmless from and against any claim and resulting loss, damage, injury, or liability for any patent infringement resulting directly or indirectly from the process design of the Facility provided to Triad by MHA.
- 9.3 Triad shall not be responsible or liable for property damage or bodily injury arising out of the Work performed under this Agreement unless caused by the willful misconduct or negligence of Triad, including actions of Triad's subcontractors where Triad is negligent in its oversight, review or approval of subcontract deliverables. Except as otherwise provided by this article, Triad shall not be liable for or obligated in any manner to pay any losses, damages, claims or demands arising out of the Work performed by it under this Agreement.
- 9.4 In no event shall Triad be liable for or obligated in any manner to pay any consequential, liquidated or indirect damages.

- 9.5 Triad acknowledges that MHA shall rely upon Triad to furnish professional services under this Agreement. No review or approval by MHA shall relieve Triad of responsibility for errors or omissions in the performance of the Work or of the responsibility for satisfying obligations on the part of Triad under this Agreement.
- 9.6 The liability of the MHA under this Agreement shall be strictly limited to any amounts due Triad for work performed pursuant to this Agreement.

#### 10.0 FORCE MAJEURE / RECISSION

- 10.1 Delay in or failure to carry out the duties imposed upon either party under this Agreement shall not be deemed a breach of the Agreement if such delay or failure results from labor disputes, accidents or disaster, epidemics, cyclones, floods, declared or undeclared war, revolution, civil commotion, terrorist acts, or blockades.
- 10.2 If either party is prevented or delayed in the performance of any obligation under this Agreement by a Force Majeure event, the effected party shall give written notice to the other party, either by letter or fax, within five days from discovery of the Force Majeure event specifying the cause and the estimated duration of such delay.
- 10.3 In the event a Force Majeure occurrence under this article shall last more than ninety days, either party may rescind this Agreement upon written notice to the other party.
- 10.4 In the event that Triad fails in a timely and professional manner to perform the tasks identified herein, MHA may terminate this Agreement. Termination of this Agreement by MHA shall require the written notice setting forth where MHA believes Triad is not in compliance with this Agreement and Triad will have thirty days thereafter to cure the deficiency. In the event Triad fails to cure the problem in a timely manner, MHA reserves the right to terminate this Agreement. In the event of termination, Triad will be compensated for its fees and expenses up until the date that MHA first notified Triad of the material failure to perform.

#### 11.0 NOTICES

- 11.1 All notices required under this agreement shall be in writing (registered air mail letters, courier mail or fax) and shall be sufficient in all respects if sent to the parties at their address as stated below:

Chairman  
Legal Department  
Mandan, Hidatsa and Arikara Nations  
HC3 Box 2  
New Town, ND  
USA 58763-9402  
Facsimile: (701) 627-4748

Triad Project Corporation  
1280 West 300 South  
Lindon, UT  
USA 84042  
Facsimile: (801) 785-1571

## 12.0 PROJECT REPRESENTATIVES

- 12.1 Triad's project representative for the work shall be the project director who shall direct the Work performed by Triad and who will furnish MHA's project representative with progress reports. Initially, the project representative for Triad will be Robert Woolley.
- 12.2 MHA's project representative shall be designated within ten days of the effective date of this Agreement and shall have such authority as authorized by MHA to give project instructions to Triad and to review and approve the Work during its execution. The decision to approve Service Agreement shall be reserved to the Tribal Business Council. MHA review and approval does not relieve Triad of its obligations to properly perform the Work. Initially, the project representative for MHA shall be Horace Pipe.

## 13.0 COMPLETION

- 13.1 Triad shall notify MHA in writing when it has completed the Work of a Service Agreement, including but not limited to, the deliverables described in a Service Agreement and made a part hereof. Within thirty (30) days after receipt of Triad's notification, MHA shall inspect the Work and furnish Triad with written notification that a completion of the Work has been accomplished or alternatively furnish Triad with a statement setting forth in which respect MHA considers that completion of the Work has not been accomplished. Upon receipt of such statements Triad will, within twenty (20) days or such other period as may be reasonably required, promptly make such adjustments as are necessary to accomplish completion of the Work and shall re-notify MHA thereof in writing. If MHA fails to notify Triad as required by this Article, within thirty (30) days, completion of the Work shall be deemed to have been accomplished as of the date of Triad's notification. The same procedure shall govern re-notification except that MHA time limits shall be twenty (20) days to respond to a re-notification by Triad and twenty (20) days for deemed completion.

## 14.0 DISPUTE RESOLUTION

- 14.1 In the event a dispute arises with respect to the interpretation or performance of, or the relationship created by, this Agreement, the parties shall attempt in good faith to resolve the dispute.
- 14.2 If good faith efforts prove unsuccessful, either party may submit any dispute arising under the terms of this Agreement to binding arbitration including a claim that a party has breached this Agreement and that the Agreement should therefore be terminated. Such arbitration shall be the exclusive means of resolving disputes between the parties under this Agreement that cannot otherwise be resolved by negotiation. Arbitration proceedings shall take place under the procedures set forth in this article.
- 14.2.1 Any dispute, claim or controversy arising out of or relating to this Agreement or the breach thereof shall be settled by arbitration under the then effective rules of commercial arbitration of the American Arbitration Association ("AAA") as modified by this article. Such arbitration shall occur before a panel of arbitrators consisting of three members. One member shall be appointed by the party demanding arbitration and one member shall be appointed by the other party, with the second arbitrator being appointed within ten working days following the giving of the notice submitting a dispute to arbitration. If a party fails to timely appoint an arbitrator or fails to appoint a successor arbitrator within ten days after the incapacity or resignation of its previously appointed arbitrator then the arbitrator for such party shall be chosen by the AAA. The third member shall be

selected by agreement of the other two members. In the event that two members cannot agree upon the third arbitrator within fifteen days time following the appointment of the second arbitrator, then the third arbitrator shall be chosen by the AAA.

- 14.2.2 The governing law shall be the law of the appropriate federal or tribal jurisdiction as codified by the tribal laws of the Three Affiliated Tribes concerning the issue. If there is no federal or tribal law concerning the issue, North Dakota law shall apply.
- 14.2.3 The arbitrator shall follow such rules of discovery and evidence as the courts of the United States District Court of North Dakota would apply. The arbitrator shall have the authority to award any remedy in connection with this Agreement, any remedy or relief that a court of competent jurisdiction could order or grant including without limitation equitable remedies, specific performance of any obligation created under this Agreement, and the issuance of an injunction. The award of the arbitrator shall be conclusive and binding upon the parties. Any award rendered therein shall be enforced first in the Tribal Court of the Three Affiliated Tribes of the Fort Berthold Reservation or, if such court shall not have jurisdiction or shall fail to act timely, the United States District Court of the District of North Dakota (or any federal appellate court).
- 14.2.4 Review of the arbitration decision and award shall be limited to enforcement of the decision and award and the findings of the arbitrators shall not be re-litigated. The parties further acknowledge and agree that either party may apply to the Tribal Court of the Three Affiliated Tribes or to the United States District Court for the District of North Dakota to seek injunctive relief so as to maintain the status quo until such time as the arbitration award is rendered or the controversy is otherwise resolved.
- 14.2.5 MHA hereby expressly waive any application of the exhaustion of Tribal remedies that might otherwise require as a matter of law or comity that a dispute be heard first in a Tribal Court.
- 14.2.6 Expenses of arbitration other than the expenses incurred by each party in presenting its position to the arbitration panel shall be shared equally by the parties except each party shall also be responsible for the fees and expenses of the arbitrator selected by it. Meetings of the arbitrators may be in person or in the appropriate circumstances by telephone. All decisions of an arbitration panel shall be by a majority vote of the panel, shall be in writing, shall be signed by the arbitrators and together with any dissenting opinion shall be delivered to both parties.
- 14.2.7 Nothing in this Agreement shall constitute or be construed as a waiver of sovereign immunity except to the limited extent necessary to permit arbitration and judicial review including any decision by an arbitrator requiring MHA to adhere to their obligations and/or to specifically perform the terms of this Agreement.

## **15.0 PERMITS**

- 15.1 Unless otherwise provided in this Agreement, MHA shall secure all environmental, development, building and electrical permits required by local authorities. Triad will assist as required by MHA in these applications and Triad or its sub-contractor will secure all

**23.0 HEADINGS**

23.1 Section headings herein are for quick reference only and are not to be construed as part of this Agreement.

**24.0 ENTIRE AGREEMENT**

24.1 When this Agreement is executed by the authorized representatives of MHA and Triad, it shall constitute the entire Agreement between the Parties hereto. All figures, proposals and agreements submitted by Triad to MHA prior to the effective date hereof, either orally or written, pertaining to the Work covered by this Agreement, are hereby canceled. No oral representations of any officer, agent or employees of Triad or MHA, either before or after the execution of this Agreement, shall affect or modify any obligation of either party hereunder. MHA agrees that it has not been induced to enter into this Agreement by any representations, statements or warranties by Triad other than those herein expressed.

In witness whereof, the parties have caused this Agreement to be executed by their duly authorized representatives.

**Mandan, Hidatsa and Arikara Nations:**

Signature \_\_\_\_\_ Date \_\_\_\_\_  
                        Marcus Wells, Jr, Chairman

Signature \_\_\_\_\_ Date \_\_\_\_\_  
                        Scott Eagle Vice Chairman

Signature \_\_\_\_\_ Date \_\_\_\_\_  
                        V, Judy Secretary

Signature \_\_\_\_\_ Date \_\_\_\_\_  
                        Frank White Calfe Treasurer

**Triad Project Corporation:**

Signature \_\_\_\_\_ Date November 28, 2008  
                        Robert G. Woolley, President & CEO

**EXHIBIT A**  
**Service Agreement Form**

**SERVICE AGREEMENT**

Triad shall perform the Work outlined herein per the terms and conditions set out in Master Service Agreement (MSA) as follows:

**SCOPE OF WORK:**

**SCOPING DOCUMENTS:**

**WORK TO COMMENCE:** \_\_\_\_\_ **WORK TO COMPLETE:** \_\_\_\_\_

**CONTRACT TYPE:** Cost Plus  Other Price  \_\_\_\_\_

**CONTRACT PRICE:**  
TRIAD EPCM  
THIRD PARTY COSTS

**DELIVERABLES:**

**SIGNATURES:** MHA \_\_\_\_\_ TRIAD \_\_\_\_\_

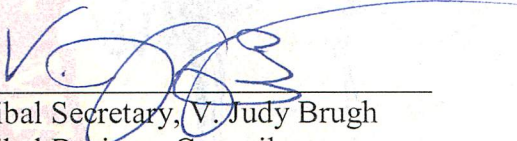


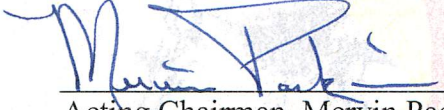
CERTIFICATION

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 a Regular Meeting thereof duly called, noticed, convened and held on the 8<sup>th</sup> day of January, 2009, that the forgoing Resolution was duly adopted at such meeting by the affirmative vote of 6 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 8<sup>th</sup> day of January, 2009.

  
\_\_\_\_\_  
Tribal Secretary, V. Judy Brugh  
Tribal Business Council  
Three Affiliated Tribes

  
\_\_\_\_\_  
Acting Chairman, Mervin Packineau  
Tribal Business Council  
Three Affiliated Tribes



- 21.5 Neither this Agreement nor money due Triad hereunder shall be assigned, sublet or transferred in whole or in part by Triad, except with the prior written consent of MHA, and any attempt to do so without such written consent shall be void.
- 21.6 MHA may assign its rights and delegate the duties arising under this agreement with the consent of Triad provided said consent shall not be unreasonably withheld.
- 21.7 During the time of this Contract, Consultant will not enter into any activity, employment, or business arrangement that conflicts with MHA's interests or Triad's status. The MHA shall have the option of terminating this Contract at any time if in MHA's sole judgment, a conflict of interest exists or is imminent. Triad will advise the MHA of Triad's position with respect to any activity, employment, or business arrangement contemplated by Triad that may be relevant to this Section. For this purpose, Triad agrees to disclose any such plans to the MHA prior to implementation.
- 21.8 Triad represents and warrants that, (a) all payments under this Contract constitute compensation for services performed, and (b) this Contract and all payments, and the use of the payments by Triad, do not and shall not constitute an offer, payment, or promise, or authorization of payments, and of any money or gift to an office or political party of, or candidate for political office in, any jurisdiction within or outside the United States. These payments may not be used to influence any act or decision of any official, party, or candidate to use his, her or its influence with a government to affect or influence any act or decision of such government to assist the MHA in obtaining, retaining, or directing business to the MHA or any person or other corporate entity. As used in this paragraph, the term "official" means any officer or employee of a government, or any person acting in an official capacity for or on behalf of any government; the term "government" includes department, agency, or instrumentality of a government.
- 21.9 It is understood and agreed by the parties hereto that if any term or provision of this Contract is held to be illegal, void or in conflict with any applicable Tribal, State or Federal law, the validity of the remaining terms and provisions shall not be affected. And the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 21.10 The Parties acknowledge and understand that the refinery project is dependent upon financing. Accordingly, this Agreement may be amended to satisfy any and all requirements necessary by a third party that may partner or otherwise finance the refinery project.

## **22.0 DECLARATION OF THE PARTIES**

- 22.1 The parties herein declare that to the best of their knowledge, no clause or clauses herein transgress laws presently in force. In the event of any conflict, the parties hereto shall amend such clause or clauses in order to comply with the respective law.
- 22.2 Triad is an independent contractor, maintaining complete control over its personnel, operations and sub-contractors. Except as expressly set forth in this Agreement, neither Triad nor its employees or sub-contractors shall be MHA's employees or agents or have any authority to represent or bind MHA.