



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

*A Resolution Entitled: Approval of Water Supply Contract between the Three Affiliated Tribe and the City of Parshall”.*

**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 (d) of the Constitution provides that the Tribal Business Council has the power to negotiate with the federal state and local government on behalf of the Tribes; and

**WHEREAS,** The Tribes thought its constituent agency, the Fort Berthold Rural Water Supply System operates under a government to government Indian Self Determination Contract with the United States Department of Interior Bureau of Reclamation(hereafter Reclamation) pursuant to the Indian Self determination and Education Assistance Act and the Dakota Water resources Act; and

**WHEREAS,** The Tribes and the City of Parshall have entered into a Memorandum of understanding on June 24, 2008, to jointly work together to construct a raw water intake, water treatment plant, main supply line and elevated storage tank to provide treated water to the City of Parshall, the Northeast and East Segment of the Fort Berthold Water Supply System and adjacent lands to the Fort Berthold Indian Reservation; and

**WATER SUPPLY CONTRACT  
BY AND BETWEEN  
THE THREE AFFILIATED TRIBES OF THE  
FORT BERTHOLD RESERVATION  
AND  
THE CITY OF PARSHALL, NORTH DAKOTA**

**(Draft version 9-2-09)**

**October XX, 2009**

This contract (hereafter "Contract") is entered into by and between the Three Affiliated Tribes of the Fort Berthold Reservation, a federally recognized Indian tribe (hereafter "Tribes"), with its principal government offices located at 404 Frontage Road, New Town, North Dakota 58763-9402, and the City of Parshall, a North Dakota municipality (hereafter "City"), with its principal government offices located at P.O. Box 159, Parshall, North Dakota 58770, for the purchase of potable drinking water by the Tribes from the City, and delivered from the water treatment plant to mutually agreed upon connection points. The Tribes and the City hereafter are referred together as the "parties".

**WITNESSETH:**

The following Recitals are an integral part of this Contract and set forth the factual circumstances upon which this Contract is based.

**Whereas**, the Tribes, through their constituent agency - the Fort Berthold Rural Water-Natural Resources Department (hereafter "FBRW"), operates rural water facilities to serve the domestic water needs on the Fort Berthold Reservation (hereafter the "Fort Berthold Rural Water Supply System" or "FBRWSS") under a government-to-government Indian Self-Determination Contract with the United States Department of the Interior, Bureau of Reclamation (hereafter "Reclamation"), pursuant to the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§ 450 *et seq.* and the Dakota Water Resources Act of 2000, Pub. L. No. 106-554; and

**Whereas**, the FBRW is currently planning, designing, and constructing the FBRWSS (hereafter the "Project"), pursuant to the Tribes' Indian Self-Determination Contract, in accordance with the Dakota Water Resources Act, and any capital fund expenditures by the Tribes under this Contract are subject to the terms of the Self-Determination

Construction Contract Number 04NA601873 between Reclamation and the Three Affiliated Tribes of the Fort Berthold Reservation for the Planning, Design and Construction of the Fort Berthold Rural Water System; and

**Whereas**, the Project shall continue in FY 2009 and thereafter until its completion, subject to the availability of federal funding; and

**Whereas**, the City is a municipal corporation organized under the laws of the State of North Dakota; and

**Whereas**, the City will construct its Parshall Water Treatment Plant and Raw Water Intake (hereafter "City Treatment Plant") to meet the City's foreseeable municipal, rural and industrial water supply needs now and in the future and has incurred debt associated therewith; and

**Whereas**, the City Treatment Plant will be constructed with sufficient production capability to supply potable treated water to meet the current and future needs of the FBRWSS, as more particularly described in Attachment A (Map) as set forth herein; and

**Whereas**, the City will own, operate, and maintain the raw water intake and City Treatment Plant. FBRWS will purchase treated water in bulk from the City treatment plant. FBRWSS will convey the water through its distribution facilities to the City, FBRW rural customers, North Central Rural Water Consortium, and other bulk customers serving areas adjacent to the Fort Berthold Reservation; and

**Whereas**, the Tribes and the City have entered into a Memorandum of Understanding (MOU), on June 24, 2008, to jointly work together to construct a raw water intake, water treatment plant, main supply line and elevated water storage to provide treated water to the City of Parshall, ND, the Northeast and East Segment of the FBRWSS, and adjacent lands to the Fort Berthold Reservation; and

**Whereas**, the Tribes, the City and Reclamation understand and acknowledge that, at this time, the purchase of potable treated water from the City Treatment Plant to supply the FBRWSS is a more cost-efficient solution than the construction of a separate water treatment facility to supply this same Project area; and

**Whereas**, the Tribes and Reclamation understand and acknowledge that the purchase of potable treated water to supply the FBRWSS best serves the purposes of the Dakota Water Resources Act of 2000, Pub. L. No. 106-554, and that the funds expended under this Contract are subject to the terms of the Indian Self Determination Contract No. 04NA601893 between Reclamation and the Tribes for the Operation, Maintenance, and

Replacement of the Fort Berthold Rural Water System, and any amendments thereto; and

**Whereas**, on \_\_\_\_\_, the Tribal Business Council of the Three Affiliated Tribes, did pass a resolution authorizing the Tribal Chairman to enter into this Contract with the City for the purchase of potable treated water from the City Treatment Plant, under the terms and conditions set forth herein (or included in any modification or addendum hereto); and

**Whereas**, on \_\_\_\_\_, the City of Parshall did pass a resolution authorizing the Mayor to enter into this Contract with the Tribes for the sale of potable treated water from the City Treatment Plant, under the terms and conditions set forth herein:

**Now therefore be it resolved that**, in consideration of the foregoing and the mutual promises and agreements set forth herein, the parties agree as follows:

**A. FOR WATER SUPPLY TO BE FURNISHED BY THE CITY:**

1. **City Constructed Facilities:** For the purposes of this Contract, the City shall fund, construct and operate the water supply facilities (including the intake facility) and the City Treatment Plant and facilities of the project. Such facilities are entitled the 'City Constructed Facilities'.
2. **Water Quality and Quantity:** The City shall furnish to the Tribes potable treated water in such quantity as may be required by FBRW, not to exceed the maximum flow rate of 1800 gallons per minute (gpm) and as specified in Subsection A.4. The water supplied by the City under this Contract shall meet all applicable health and water quality standards established by the United States Environmental Protection Agency and the Tribes' Self-Determination Contract No. 04NA601893 with Reclamation.
3. **Points of Delivery and Connection:** The City shall provide potable treated water to the point which shall be mutually agreed upon by both parties. Any additional locations shall be mutually agreed to by the parties of this Contract through a written amendment to this Contract and approved by Reclamation. The City further agrees to supply to the Tribes adequate space through a right-of-way or easement sufficient for the Tribes to install, maintain, and operate meter and control vaults at the points of delivery and connection.
4. **Minimum Delivery Capacity and Optional Delivery Capacity:** From the City Constructed Facilities, the City shall supply the Tribes with a potable treated water capacity of at least 2,592,000 gallons per day (GPD), on a constant flow basis. If additional capacity above this capacity is required by the Tribes, the parties agree to

make a good faith effort to renegotiate the cost-sharing terms set forth in this Contract.

The allocation of this firm capacity shall be as follows:

Three Affiliated Tribes	1,080,000 GPD
City of Parshall	936,000 GPD
<u>North Central Rural Water Consortium</u>	<u>576,000 GPD</u>
<b>Total</b>	<b>2,592,000 GPD</b>

- 5. Good Utility/Business Practices and Remedial Action:** The City shall perform all routine maintenance, operation, repairs, service and upgrades for the City Constructed Facilities at no cost to the Tribes, consistent with nationally accepted standards, practices, methods and procedures of the water utility industry; sound business practices related to safety, reliability, and environmental protection; and the City's statutory, regulatory and permit obligations. The City shall secure and keep in force during the term of this Contract - from a private insurance company, government self-insurance pool or government self-retention fund authorized to do business in the State of North Dakota - commercial general liability insurance with minimum limits of liability of \$250,000 per person and \$1 million per occurrence. In the event the City neglects, fails, or is unable to perform its obligations under this section, the Tribes may provide written notice to the City that it must perform such required action within 30 days. In the event that the City fails to attain compliance within the 30-day period, the Tribes may cause the maintenance, repairs or other required action to be made for and on behalf of the City, subject to prior approval by Reclamation. The City shall reimburse the Tribes for any and all costs incurred under this section through reductions and/or credits to the monthly water purchase invoices described in Section A.7 of this Contract.
- 6. Meter Reading & Billing Procedure:** The City shall: (1) read the water meters provided for under Section B.4 of the Contract on or about the first day of each month; (2) maintain accurate and contemporaneous written records of the meter readings; and (3) use the meter readings to prepare a written monthly invoice for the Tribes. On or before the seventh day of each month, the City shall prepare and send a written invoice to the Tribes, in care of the FBRW Director at the FBRW Department office, 308 4 Bears Complex, New Town ND 58763.

7. **Right of Access and Inspection:** During the term of this Contract, the City shall provide the Tribes and Reclamation with a right of access for inspection of any and all of the City Constructed Facilities upon reasonable notice to the City and at an agreed upon time. The City shall grant Fort Berthold Rural Water personnel access to the office and shop at no cost to the Tribes.
8. **Indemnity and Hold Harmless:** The City agrees to indemnify and hold the Tribes and all of its representatives and the United States and all of its representatives harmless from any and all liability express or implied, arising out of or in connection with the City's performance under this Contract, including but not limited to violations of applicable water quality standards.
9. **Capacity and Capital Cost Allocation:** The City agrees to construct the City Constructed Facilities to accommodate the required flow and pressure at the agreed point of delivery as noted herein. Use of capacity and sharing of the capital costs for such facilities shall be as follows:
  - a. The capacity of the City Treatment Plant shall be allocated in the following method and under the following conditions:
    - i. Of the total capacity provided by the facilities, the City of Parshall shall have a water right to 36.11% not to exceed 650 gpm.
    - ii. Of the total capacity provided by the facilities, the Tribes shall have a water right to the remaining balance of 63.89% not to exceed 1150 gpm. It is the intent of the Tribe to market approximately 400 gpm of their allocated capacity to third parties including but not limited to the North Central Water Consortium. These third parties will compensate the Tribe for capital costs associated with their allocated capacity.
  - b. The capital costs of the City Constructed Facilities shall be funded as follows:
    - i. The City shall secure the loans and grants as needed for the construction of the City Constructed Facilities.
    - ii. For that portion of the funding which is loan and which the City is obligated to repay, the City and Tribes shall pay as follows:
      - a. The Tribes will pay no cost for a base flow of 750 gpm from the facilities.
      - b. If the Tribes take delivery of water in excess of 750 gpm, they will pay a cost based on a ratio of that excess amount of gpm over the total gpm capacity of the City Treatment Plant multiplied times the total amount borrowed for the City Constructed Facilities, plus interest accrued on that portion of the borrowed amount. It is currently estimated that the cost for



the full 400 gpm for which the Tribes may take delivery of under this provision is \$300,000; however, such cost is an estimate based on this amount being prorated to the total borrowed amount of the facilities. Capital costs for excess plant capacity shall be paid to the City prior to delivery of such excess capacity

- c. The City will pay all other costs.
- d. If the Tribes do not exercise and receive the full 400 gpm of capacity (as noted in subpart *b* above), the City shall have the obligation to receive and pay for that portion of the cost and capacity not exercised and received by the Tribes.

**10. Water Purchase Rates and Payment Procedure:** Operation and maintenance of the City Constructed Facilities will be by the City as follows:

- a. Any Water Purchase Rate charged by the City shall be a fair and reasonable water purchase rate, will correlate to the costs incurred by the City in producing and providing water from the City Constructed Facilities, and will not include initial capital construction costs of the City Constructed Facilities. The parties acknowledge that the Tribes' Water Purchase Rate shall reflect an economy of scale as more water is produced and provided from the City Constructed Facilities. Therefore, the parties agree to a water purchase rate as follows:

- i. **Initial Water Purchase Rate:** The City shall provide their best estimate of a Water Purchase Rate which shall include all expected operational, maintenance, and repair costs to the Tribes for operations of the City Constructed Facilities for the first year of water production and operation. Such estimates shall be in a detailed fashion which identifies all categories of expected cost and shall be provide in a total category cost and by a cost per 1000 gallon basis. Upon acceptance by the Tribes and the USBR of such estimate, the Tribes will pay to the City the initial Water Purchase Rate of \$2.84 per thousand gallons of finished water produced and provided to the Tribes according to the terms of this Contract. For a detailed breakdown of the Water Purchase Rate see Exhibit A.

- ii. **Annual Cost Analysis:** The City shall perform and share with the Tribes an Annual Cost Analysis, within 30 days after the close of each calendar year during the life of this Contract, to determine the actual cost to the City of the total water production during that calendar year.

The Annual Cost Analysis will also identify the quantity of water supplied to the FBRWSS and water users within the city limits of Parshall. Costs that must be included in the Annual Cost Analysis are those which are directly applicable to water production and provision. At the request of the Tribes the Annual Cost Analysis may be subject to independent audit, the costs of which shall be paid by the Tribes.

iii. **Subsequent Calendar Years and Revised Water Purchase Rate:** Beginning with the second calendar year of this Contract, and continuing through the life of this Contract, the City shall revise the Water Purchase Rate based on the Annual Cost Analysis, as follows:

(a) Using the data from the Annual Cost Analysis, the Water Purchase Rate shall be revised to reflect a fair and reasonable amount to reimburse the City for costs directly attributable to the production and provision of water to the Tribes during the coming year from City Constructed Facilities. The Tribes and the City shall determine the revised Water Purchase Rate within 30 days after the City shares the Annual Cost Analysis with the Tribes.

(b) If the Annual Cost Analysis reflects that the Tribes either underpaid or overpaid for actual costs directly attributable to the production and provision of water to the Tribes during the preceding year, the Water Purchase Rate for the coming year shall be adjusted to recoup the overpayment or to repay the underpayment, as appropriate, over a twelve-month period.

(c) The revised Water Purchase Rate shall be applied to the next written invoice generated by the City in its normal course of business and shall remain in effect until the Water Purchase Rate is revised in accordance with this Section during the next calendar year.

**11. Annual Financial Reports:** The City shall provide an annual financial report of the operations and maintenance of the City Treatment Plant, inclusive of any State or Federal reporting requirements, to the Tribes and Reclamation.

**12. Temporary Water Service From City of Parshall to Tribes:** As a part of this Contract, the City of Parshall may be requested by the Tribes to provide a temporary water service. If requested, the City shall provide a temporary water service to the



Tribes. The connection point of such service will be by facilities constructed (in part) as defined herein as the Tribal Constructed Facilities. The temporary connection point will be the same connection point as envisioned to be used by the Tribal Constructed Facilities. The amount of water requested from the Tribes will not exceed 20 gpm and will only be used by Tribes until such time as the City Constructed Facilities and the Tribal Constructed Facilities are in place and utilized by both parties. The Tribes agrees to pay the City a cost of \$3.00 per thousand gallons plus a \$269.25 monthly service charge for use of water under this temporary arrangement. Invoices, coordination, and other logistics of this temporary water service agreement shall be according to the provisions of this Contract.

**B. FOR WATER SUPPLY TO BE PURCHASED BY THE TRIBES:**

1. **Tribal Constructed Facilities:** For the purposes of this Contract, the Tribes shall fund, construct and operate the water transmission facilities (including the high service pump station, the Main Transmission Line, an Elevated Storage Tank, and connection facilities to the City of Parshall). Such facilities are entitled the 'Tribal Constructed Facilities'.
2. **Water Purchase Rates and Payment Procedure:** The parties acknowledge that operation and maintenance of the Tribal Constructed Facilities will be by the Tribes with the City portion of the water which is produced at the City Constructed Facilities conveyed and delivered to the City as follows:
  - a. This Contract secures a water capacity of 650 gpm for the City. It is the intent that such water be used by the City for the benefit of domestic, municipal, and commercial uses and users of the City. Water conveyed by the Tribal Constructed Facilities for such purposes will be at no cost to the City subject to the provisions of this Contract.
  - b. For any sale or use of water from the City water system being conveyed by Tribes other than for municipal, domestic, or commercial purposes, the City agrees to pay the Tribes a fee for water conveyance at the rate equal to the water conveyance costs and current and applicable Water Purchase Rate from the City Constructed Facilities to the specified point of delivery. Municipal, domestic, and commercial water use shall be defined as water withdrawn by populations in cities, towns, housing estates, domestic and public service enterprises for human consumption/use or for City water system maintenance activities such as flushing. This definition does not include uses for industrial needs or industrial development. For any service provided for industrial needs or development, the City agrees to furnish, install, operate, and maintain, at their own expense, at such point of delivery and connection, all necessary metering equipment and backflow prevention devices, including meter vaults, visual remotes, water sampling devices, flow recording devices and other devices of standard type required to measure the quantity of water conveyed via the FBRW main transmission line to the specified point of delivery.
  - c. Any such rate charged by the Tribes shall be a fair and reasonable water purchase rate and will correlate to the costs incurred by the Tribes in conveying water from the City Constructed Facilities and in purchasing water from the City under the applicable Water Purchase Rate. The costs will not

include initial capital construction costs of the Tribal Constructed Facilities. The parties acknowledge that the Tribes' water conveyance-rate should reflect an economy of scale as more water is conveyed from the City Constructed Facilities. Therefore, the parties agree to a water conveyance rate as follows: (Note the conveyance charge is limited to industrial water including associated conveyance losses per the terms of this Contract; conveyance of domestic, municipal, and commercial water is at no charge per the terms of this Contract)

- i. **Initial Water Conveyance Rate:** The Tribes shall provide their best estimate of a Water Conveyance Rate which shall include all expected operational, maintenance, and repair costs to the City for operations of the Tribal Constructed Facilities for the first year of water conveyance. Such costs shall also include, on a dollar by dollar cost replacement, any costs charged for the production of such water under the Water Purchase Rate. Such estimates shall be in a detailed fashion which identifies all categories of expected cost and shall be provided in a total category cost and by a cost per 1000 gallon basis. Upon acceptance by the City and the USBR of such estimate, the City will pay to the Tribes the initial Water Conveyance Rate of \$0.35 per thousand gallons of finished water used for industrial purposes by the City according to the terms of this Contract. For a detailed breakdown of the Water Conveyance Rate see Exhibit B.
- ii. **Annual Cost Analysis:** The Tribes shall perform and share with the City an Annual Cost Analysis, within 30 days after the close of each calendar year during the life of this Contract, to determine the actual cost to the Tribes of the total water conveyed during that calendar year. The Annual Cost Analysis will also identify the quantity of water conveyed to the FBRWSS and other bulk users as supplied by FBRWSS. Costs that must be included in the Annual Cost Analysis are those which are directly applicable to water conveyance. At the request of the City, the Annual Cost Analysis may be subject to independent audit, the costs of which shall be paid by the City.
- iii. **Subsequent Calendar Years and Revised Conveyance Rate:** Beginning with the second calendar year of this Contract, and continuing through the life of this Contract, the City and the Tribes shall revise the Water Conveyance Rate, based on the Annual Cost Analysis, as follows:



required to measure the quantity of water delivered from the City Constructed Facilities. Said equipment shall meet or exceed standard engineering or plumbing code requirements.

5. **Supervisory Control and Data Acquisition (SCADA):** All parties shall make SCADA/Telemetry data available that is needed for the operation of the water supply system.
6. **City Limits of Use:** The City agrees to utilize the water provided in accordance with this Contract within the corporate boundaries of the City.

**C. OTHER PROVISIONS:**

1. **Primary Term and Extended Term of the Contract:** This Contract shall have a primary term which shall run from the date of execution by all authorized parties until 11:59 p.m. Central Standard Time on December 31, 2050. Thereafter, the Contract may be renewed or extended for such additional term as the City and the Tribes may mutually agree, and as approved by Reclamation. At least 60 days before the expiration of the original term or an additional term, a party may provide written notice of its intent to terminate the Contract, and upon the expiration of that term, this Contract shall terminate. In the event that no party provides written notice of intent to terminate the Contract after the expiration of its primary term, the Contract shall automatically be renewed in one-year increments until a party provides written notice of its intent to terminate the Contract.
2. **Emergency Failure of Pressure or Supply:** Emergency outages of the water supply and/or reductions in the water pressure required under this Contract due to main supply breaks, power failure, flood, drought, fire, earthquake or other catastrophe beyond the reasonable control of the City or the Tribe shall excuse the City or the Tribes from the requirements set forth herein of this Contract only for such reasonable period of time as may be necessary to restore service, using all due diligence and dispatch. In the event of an extended reduction of water pressure or a shortage of water supply, for whatever reason under this Contract, the City agrees to supply potable treated water to the Tribes at a delivery rate based on the actual production capacity proportioned according to the full capacity demands for each entity as defined in Section A.4. The Tribes' right to receive a proportionally reduced water supply is in addition any other rights and remedies the Tribes may have under this Contract.
3. **Calibration of Metering Equipment and Adjustments of Invoices:**

- a. If either party believes a meter reading and/or invoice is in error, it shall present its written claim of error to the other party's business office before the due date for payment of the invoice. Following the filing of such a claim by either party, the Tribes may elect to pay the invoice and said payment shall not prejudice either party's claim of error.
  - b. The party claiming error must initially pay the cost to have the meter calibrated and tested. If the meter is found to over-register water delivery by more than two percent (2%) of the correct volume, the City shall bear the cost of calibration and testing. If the meter is found to under-register water delivery by more than two percent (2%) of the correct volume, the Tribes shall bear the cost of calibration. Calibration errors of less than two percent (2%) shall not relieve the party claiming error of the costs of calibration and testing, but the disputed invoice shall be readjusted to reflect the actual volume of water delivery.
  - c. If water volume adjustments are required based upon the calibration and testing, the adjusted water volume shall be made to the disputed invoice and the previous month's invoice, but not to earlier invoices.
  - d. Invoice adjustments that are required due to meter failure shall be negotiated in good faith by the parties based upon the best records available.
- 4. Federal Obligations and Limitations on the Tribes' Payment Obligation:** The parties understand and agree that the Tribes are constructing, maintaining and operating the FBRWSS on behalf of the Secretary of the Interior pursuant to the Tribes' government-to-government Indian Self-Determination Contracts with Reclamation. The parties further understand and agree that the Tribes' payment obligations under this Contract are expressly made contingent upon the Tribes' receipt of sufficient federal funds budgeted by the Tribes to fulfill the Tribes' payment obligations to the City. In the event that sufficient federal funds are not made available to the Tribes to fulfill its payment obligations under this Contract, the Tribes shall be excused from these payment obligations, and the City may temporarily suspend water deliveries until such time as the Tribes have sufficient federal funds to pay for connection fees and continued water deliveries. Notwithstanding the foregoing, the Tribes may elect to use tribal funds, on a temporary basis, to meet these payment obligations in order to avoid disruptions in water deliveries and service. The City agrees to comply with any and all permit conditions, contract obligations, Federal laws, regulations and Executive orders, which may apply to this Contract due to the Tribes' use of federal funds to meet its payment obligations under this Contract.

5. **Water Quality and Testing Procedures:** On a quarterly basis, the City shall provide the Tribes with documents establishing that the potable treated water supplied under this Contract meets the water quality standards set forth in Section A.2 of this Contract. Upon three (3) business days' written notice to the City, the Tribes may, at their own expense, test the water quality to ensure compliance with the Contract's water quality standards.
6. **Assignment of Contract:** This Contract may not be assigned to another party without the express written consent of authorized representatives of the Tribes and the City except that such assignment may be made to Reclamation, upon Reclamation's acceptance of such assignment and in accordance with the applicable laws in effect at the time of the assignment.
7. **Choice of Law, Limited Waiver of Sovereign Immunity and Dispute Resolution:**
- a. The Tribes and the City expressly acknowledge and affirm that this Contract has been negotiated on the Fort Berthold Indian Reservation, and that the laws of the Three Affiliated Tribes shall govern and control the construction, interpretation and enforcement of this Contract. In the absence of applicable Tribal law, the substantive laws of the State of North Dakota and applicable federal law shall be used to construe the Contract. It is expressly understood and agreed by the parties that North Dakota State law has no application or effect on the Fort Berthold Reservation and is referenced solely as an interpretive aid for the convenience to the parties. The Tribes and the City expressly acknowledge that each entity is governed by a separate set of laws, with the Tribes being governed by the federal and tribal law, and the City governed by North Dakota law and the City's ordinances. Further, the parties do hereby acknowledge that the City has only that authority as it has been given by statute or by city ordinance, and that it may not exercise any power beyond the limits specified therein. The parties, in contemplation of this contractual agreement, have specifically provided for the rights, duties and obligations that each entity will assume under this Contract. This document shall alone be used to interpret the intention of the parties in the event of any dispute that may arise during the term of this Contract.
  - b. It is understood and agreed that the Tribes are a federally-recognized Indian tribe which possesses sovereign immunity from suit. Nothing in this Contract shall be construed as a waiver of the Tribes' sovereign immunity, except to the limited extent necessary to permit arbitration and judicial action to enforce an arbitration award, as further specified in this section. Sovereign immunity is expressly not waived as to any Tribal employee, Council member, or agent of



the Tribes. The Tribes expressly submits to and consents to the jurisdictions of the Tribal Court of the Three Affiliated Tribes of the Fort Berthold Reservation in the first instance and, after seeking relief in such Tribal Court, to the United States District Court for the District of North Dakota, in connection with any injunctive relief sought prior to arbitration, or to give effect to any relief ordered or award obtained in an arbitration proceeding brought pursuant to this section. Nothing in this Contract shall be construed as exposing the City or the City's employees, Council members, Mayor, Auditor, Deputy Auditor or agent to judicial process or liability except to the limited extent necessary to permit arbitration and judicial action to enforce an arbitration award, as further specified in this section.

- c. The Tribes and the City shall make every reasonable effort to resolve any dispute that may arise under this Contract through informal, good faith mediation with the USBR serving or appointing a mediator. Should informal discussions fail to resolve the dispute, either party, the Tribes or the City, may submit the dispute to binding arbitration under this section, including a claim that the other party has breached this Contract and that the Contract should therefore be terminated. Arbitration shall be the exclusive means of resolving any dispute between the parties which cannot otherwise be resolved by informal discussion. Any dispute, claim or controversy arising out of or relating to this Contract that cannot be resolved through informal means shall be subject to binding arbitration under the rules of commercial arbitration of the American Arbitration Association (the "AAA") and Title 9 of the U.S. Code. The sole remedy available as against the Tribes in arbitration (or any other forum) shall be an award of specific performance: (1) to pay any unpaid invoices due to the City under this Contract; (2) to order that water meters and other related equipment be maintained, replaced, removed or otherwise treated in a manner that is reasonably required to carry out the purposes of this Contract; or (3) that the Contract be terminated and all points of delivery and connection between the City's and the Tribes' water distribution systems be disconnected. No court or arbitration panel may order that any Tribal property, income, or assets shall be otherwise payable to the City pursuant to this paragraph or this Contract. Any review of the arbitration decision and award shall be limited to enforcement of the decision and award and the findings of the arbitrator(s) shall not be re-litigated. Each party hereby agrees that this arbitration provision is valid and enforceable and therefore waives any defense or assertion to the contrary.

**8. Entire Agreement and Amendments:** The terms and conditions set forth herein constitute the entire understanding of the parties relating to this Contract. This

Contract may be amended only by a written instrument signed by authorized representatives of both parties and accompanied by authorizing resolutions of the City and the Three Affiliated Tribes' Business Council. Any amendments to this Contract shall be subject to review and approval by Reclamation, and notification of such amendments will be provided by the City to the USDA.

- 9. Waivers:** The failure by any party to object to a default or to exercise any rights or remedies under this Contract shall not constitute a waiver, either express or implied, of the right to do so in the future.
- 10. Notices:** Any notices required or permitted to be sent shall be delivered personally, or by overnight courier service or certified mail return-receipt requested to the addresses set forth in the opening paragraph or such other address as either party may designate by written notice to the other. Any notices sent the Tribes shall be copied to the Tribal Chairman (address at c/o Tribal Business Council, 404 Frontage Road, Parshall, ND, 58763) and the FBRW Director (address at c/o Fort Berthold Rural Water, 308 Four Bears Complex, Parshall, ND, 58763). Any notices sent to the City shall be to the City Auditor (address at PO Box 159, Parshall, ND, 58770). Any notices sent by either party shall be copied to Reclamation (address at c/o Area Manager, Dakota Area Office, PO Box 1017, Bismarck, ND, 58502-1017).
- 11. Severability:** If any provision of this Contract is adjudged to be invalid by a court of competent jurisdiction, the judgment shall not affect the validity of any other provision of this Contract, nor does it constitute any cause of action in favor of either party as against the other.
- 12. Jurisdictional Limits of Each Party:** Each party recognizes that jurisdictional limits and service protection is provided to both the City and the Tribes under various State or Federal statute(s) or administrative law(s). It is acknowledged that both Parties have incurred debt through the USDA Rural Utilities Service Water and Wastewater Program and both parties are subject to the provisions of 7 U.S.C. 1926(b). Both parties will confer with each other and negotiate water delivery service within their respective and overlapping jurisdictions.

In Witness Whereof, the parties hereto, acting under authority of their respective governing bodies, have caused this Contract to be duly executed in three (3) counterparts, each which shall constitute an original.

THE THREE AFFILIATED TRIBES OF THE  
FORT BERTHOLD RESREVATION

Attest:

\_\_\_\_\_

BY: \_\_\_\_\_  
Hon. Marcus Levings, Tribal Chairman

DATE: \_\_\_\_\_

CITY OF PARSHALL, NORTH DAKOTA

Attest:

\_\_\_\_\_  
SECRETARY

BY: \_\_\_\_\_  
Hon. Richard Bolkan, Mayor

DATE: \_\_\_\_\_

\_\_\_\_\_, NORTH DAKOTA

ACKNOWLEDGEMENT OF AGREEMENT:

\_\_\_\_\_  
BUREAU OF RECLAMATION

\_\_\_\_\_  
DATE

## Exhibit A – Water Purchase Rate

**Parshall Regional Water Treatment Plant  
Immersed/NF Membrane Treatment Process  
Projected Annual O&M Costs (Year 1 Operation)**

A. O&M Expenses:	Units	Quantity	Rate	Total Expense
1. Salaries (Including Benefits, Workmen's Comp., etc.)				
a. Water Treatment Plant Operator(s)	hrs	3,000	\$ 40.00	\$ 120,000.00
b. Auditor	hrs	100	\$ 45.00	\$ 4,500.00
2. Dues & Memberships	l.s.	1	\$ 2,500.00	\$ 2,500.00
3. Operator Training	l.s.	1	\$ 5,000.00	\$ 5,000.00
4. Computers & Software	l.s.	1	\$ 2,500.00	\$ 2,500.00
5. Water Treatment Chemicals				
a. Coagulant	lbs.	20,000	\$ 1.15	\$ 23,000.00
b. Potassium Permanganate	lbs.	1,800	\$ 4.00	\$ 7,200.00
c. Chlorine (gas)	lbs.	10,000	\$ 2.00	\$ 20,000.00
d. Hydrofluoroacetic Acid	gals.	1,000	\$ 6.75	\$ 6,750.00
e. Orthophosphosphate	lbs.	1,800	\$ 2.30	\$ 4,140.00
f. Sodium Bisulfite	lbs.	4,000	\$ 1.05	\$ 4,200.00
g. Ammonia	lbs.	1,000	\$ 3.75	\$ 3,750.00
6. Clean-In-Place Chemicals				
a. Sodium Hypochlorite	gals.	500	\$ 4.00	\$ 2,000.00
b. Citric Acid	lbs.	1,200	\$ 1.20	\$ 1,440.00
c. Sodium Hydroxide	lbs.	1,200	\$ 0.70	\$ 840.00
d. Sodium Bisulfite	lbs.	500	\$ 1.05	\$ 525.00
7. Raw Water Pumping Costs	kw-hrs.	735,000	\$ 0.08	\$ 58,800.00
8. UF Process Electrical Costs	kw-hrs.	135,000	\$ 0.08	\$ 10,800.00
9. NF Process Electrical Costs	kw-hrs.	190,000	\$ 0.08	\$ 15,200.00
10. General Building Mechanical & Electrical Costs	kw-hrs.	100,000	\$ 0.08	\$ 8,000.00
11. Immersed Membrane Replacement	l.s.	1	\$ 50,000.00	\$ 50,000.00
12. UF Membrane Replacement	l.s.	1	\$ 25,000.00	\$ 25,000.00
13. General Process Mtrc.	l.s.	1	\$ 35,000.00	\$ 35,000.00
14. Testing and Lab Supplies (Equipment, Buffers, Reagents, etc.)	l.s.	1	\$ 5,000.00	\$ 5,000.00
15. Misc. Expense (Insurance, Telephone, etc.)	l.s.	1	\$ 3,500.00	\$ 3,500.00
16. Membrane System Service Agreements	l.s.	1	\$ 15,000.00	\$ 15,000.00
17. Contingencies (10%)	l.s.	1	\$ 43,464.50	\$ 43,464.50
18. Estimated Total Annual O&M Expense				\$ 479,109.50
19. Reserve Fund (10% of O&M)				\$ 47,810.95
20. Estimated Annual Operating Cost:				\$ 525,920.45
21. Estimated Average Annual Demand				185,000,000
22. Estimated O&M Cost (cost per 1,000 gallons):				\$ 2.84

B. Assumed Water Demands:	Gallons/Year	Production Cost
1. City of Parshall (Residential/Commercial)	35,000,000	\$ 99,498
2. City of Parshall (Bulk)	85,000,000	\$ 241,839
3. Fort Berthold Rural Water*	65,000,000	\$ 184,793
4. North Central Rural Water Consortium	0	\$ -
5. Estimated Bureau of Reclamation O&M Cost (1 + 3)		\$ 284,281

\*Estimated as 1/3 of Peak Plant Capacity x C 5

\*\*Assumes NCRWC will not be operation first year of plant operations

## Exhibit B – Water Conveyance Rate

Costs are estimated for conveyance of water from the planned Parshall WTP to the City of Parshall according to the following schedule:

Item	Cost per 1000 gallons
Pumping at WTP (1)	\$0.143
Incidental power at WTP pump (2)	\$0.020
Demand charge at WTP (3)	\$0.021
Incidental power at Meter vault (4)	\$0.020
Operator cost at 1/2 time (5)	\$0.035
Misc. Expense, plugged (6)	\$0.030
FBRW admin. costs, plugged (7)	\$0.020
Subtotal	\$0.289
Contingencies at 20%	\$0.058
Total Estimated Cost of conveyance	\$0.347

- Notes: (1) Cost of power at \$.080 per kwh  
(2) Incidental, estimated  
(3) Demand charge estimated at \$7 kw per month  
(4) Incidental, estimated  
(5) Assume full time operator at \$40K per year plus 34% overhead  
(6) For accommodation of gas, tools, routine expenses  
(7) Incidental, estimated

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**WHEREAS,** The Tribes The City and Reclamation understand and acknowledge that purchase of potable treated water from the City Treatment Plant to supply the FBRWS is a more cost-efficient solution than the construction of a separate water treatment facility to supply this the same Project area; and

**WHEREAS,** The Tribes, the City and Reclamation understand and acknowledge that the purchase of potable treated water to supply FRWSS best serves the purposes of the Dakota Water Resources Act of 2000, and the funds expended under this contract are subject to the terms of the Indian Self Determination Act Contract No.)SNA601893 between Reclamation and the Tribes for Operation, Maintenance and of the Fort Berthold Rural Water System and any amendments thereto; and

**WHEREAS,** The City, the Tribe and Reclamation have jointly negotiated a contract that has been approved by all parties; and

**NOW, THEREFORE BE IT RESOLVED,** that the Tribal Business Council of the Three Affiliated Tribes hereby approves the Water Supply Contract Between the Tee Affiliated Tribes and the City of Parshall; and

**NOW THEREFORE BE IT FURTHER RESOLVED** that the Tribal Business Council hereby authorizes Tribal Chairman Marcus Levings to sign said Water Supply Contract on behalf of the Tribes.

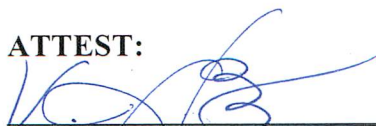
**CERTIFICATION**

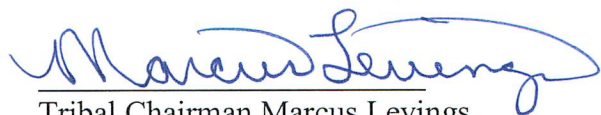
I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 7 members of whom 5 constitute a quorum, 5 were present at a Special Meeting thereof duly called, noticed, convened, and held on the 28<sup>th</sup> day of September 2009; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 5 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 28<sup>th</sup> day of September 2009.

**ATTEST:**

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

  
Tribal Chairman Marcus Levings  
Tribal Business Council  
**Three Affiliated Tribes**