



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

A Resolution: "Approval of Water Supply and Load-Out Facility Agreement with Lake Sakakawea Water Depot, LLC."

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, Lake Sakakawea Water Depot, LLC ("LSWD") desires to enter into a Water Supply and Load-Out Facility Agreement (*See Attached*) with the Three Affiliated Tribes to provide water to the oil industry on the Fort Berthold Indian Reservation; and

WHEREAS, In exchange for a surface use lease and right-of-ways on Tribal lands and two water leases of 1,000 acre feet per water depot (Mandaree Water Depot and New Town Water Depot) and land leases as described in the attached agreement, LSWD will remit to the Tribe a gross royalty of twenty-two (22%) percent of all proceeds derived from the sale of water from the proposed water depots in the North Segment and the West Segment on the Fort Berthold Reservation; and

WHEREAS, the Tribe desires to enter into the Water Supply and Load-Out Facility Agreement with Lake Sakakawea Water Depot, LLC.

NOW THEREFORE BE IT RESOLVED, that the Three Affiliated Tribes Tribal Business Council hereby approves the Water Supply and Load-Out Facility Agreement with Lake Sakakawea (*See Attached*) which includes a surface use lease and right-of-ways on Tribal lands and two water leases of 1,000 acre feet per lease in exchange for a 22% gross royalty on all water sales collected from the Mandaree and New Town Water Depots.

WATER SUPPLY & LOAD-OUT FACILITY AGREEMENT

This "Water Supply and Load-Out Facility Agreement" is between the Lake Sakakawea Water Depot, LLC ("LSWD") with an address of 3891 87th Ave. N.W., New Town, ND 58763 and the Three Affiliated Tribes (TAT) with an address of 404 Frontage Road, New Town, ND 58763 and entered into on this ____ day of May, 2010.

WHEREAS, LSWD desires to work with the TAT to build a Water Load Out Facility in the West Segment and the North Segment of the Fort Berthold Reservation; and

WHEREAS, the TAT desires to encourage and support LSWD in its efforts to build the proposed water load out facilities in said segments in an effort to cut down truck traffic on the Fort Berthold Reservation.

NOW, THEREFORE, THE PARTIES HEREBY AGREE:

1. APPROVAL OF PROJECTS

In consideration of One Dollar and other valuable consideration, receipt of which is hereby acknowledged, TAT does hereby grant to LSWD the right and approval to construct a Water Load-Out Facility which includes necessary pipelines and water intake facilities in the Mandaree Segment (the "Mandaree Water Depot" and the North Segment (the "New Town Water Depot") on the Fort Berthold Indian Reservation. The New Town Water Depot load out facility shall be located on surface land owned by the Tribe in S. 22 of T152N R92W. The Mandaree Water Depot load out facility shall be located on surface land owned by the Tribe in S. 28 of T150N R94W.

2. SURFACE USE/ LOCATION

TAT shall grant to LSWD a Surface Use Lease and Right of Way on 5 acres of Tribal land in the E2NE4 of S. 22 T152N R92 W for the New Town Water Depot. TAT shall grant to LSWE a Surface Use Lease and Right of Way on 5 acres of Tribal land in the S2NE4, N2SE4 of S. 28 of T150N R94W. The term of these Surface Use Leases shall be for 25 years with an option for an additional 25 years. LSWD shall have and hold the described premises for a term of 25 years beginning on the date of approval of this Agreement by the Tribe. LSWD shall give TAT a thirty (30) day written notice of its intent to renew said surface lease for an additional 25 years and the TAT reserves the right to approve or disapprove said renewal. This lease may be terminated by the TAT for non-payment of royalties due or a violation of any applicable tribal law or policy. In the event of non-payment or any other violation, the Tribe shall give LSWD written notice of the default and thirty-days to cure the default prior to terminating this agreement or lease.

TAT shall grant to LSWD a Right of Way for access roads and pipelines for all lands necessary for the construction of a water load out facility on said lands. The term for said right of ways shall be for

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twenty years. TAT shall grant LSWD additional twenty year Right of Ways as needed as long as each water load out facility provided all term of the Right of Ways and the surface use lease are met.

LSWD shall have the right to use the described land surface for the respective load out facilities and any lawful purpose. LSWD may sublease or allow the use of any portion of the surface to any third party that purchases water from the LSWD and uses the water as a component of its business.

3. WATER ALLOCATION

The TAT hereby agrees to lease LSWD 1,000 acre feet per year for use at the Mandaree load out facility and another 1000 acre feet per year for use at the New Town water facility.

4. PROJECT DESCRIPTION

It is intended by LSWD that water will be conveyed to the respective load out facilities as follows:

New Town Water Depot:

- LSWD will construct a caisson style intake, approximately 50" in diameter that would be placed vertically to an approximate depth of 1785'. The Caisson will be connected to the lake bottom by approximately 950' of 12" HDPE pipe and stainless steel screen.
- Based on pre-Garrison Dam USGS Quad maps, a screen elevation of 1785' – 1790' should be attainable which puts the intake well below the 41 year historic low lake elevation of 1806'. The current lake level is around 1840'.
- approximately 1 mile away from the intake using a 100 hp vertical turbine pump and an appropriate length of 10" class 160 PVC pipe. The system will be a constant pressure system utilizing two buried pressure vessels to maintain constant system pressure. The load out station will consist of dual frost free valving to allow for the filling of 2 tanker trucks (expandable to 4) at a time. Until Electric power is available at the location, power will be supplied by a 125 KW diesel powered generator.

Mandaree Water Depot

- LSWD will construct a caisson style intake, approximately 50" in diameter that would be placed vertically to an approximate depth of 1785'. The Caisson will be connected to the lake bottom by approximately 950' of 12" HDPE pipe and stainless steel screen.

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- Based on pre-Garrison Dam USGS Quad maps, a screen elevation of 1785' – 1790' should be attainable which puts the intake well below the 41 year historic low lake elevation of 1806'. The current lake level is around 1840'.
- approximately 1 mile away from the intake using a 100 hp vertical turbine pump and an appropriate length of 10" class 160 PVC pipe. The system will be a constant pressure system utilizing two buried pressure vessels to maintain constant system pressure. The load out station will consist of dual frost free valving to allow for the filling of 2 tanker trucks (expandable to 4) at a time. Until Electric power is available at the location, power will be supplied by a 125 KW diesel powered generator.

Key Components of the Water Intake Facilities

The following is a list of components to be utilized in the facility:

- 1000 GPM system expandable to 2000 GPM. Fills 125 barrel truck in approximately 5 minutes or two trucks in 10 minutes.
- 125 KW diesel generator provides power.
- Load station located approximately 5500 feet from intake.
- Caisson style intake provides low maintenance and expandability
- Load station set up to be lit using power from generator.
- Load station designed to accommodate 1 to 4 trucks at a time.
- Vertical turbine pump housed in heated building.
- Pressure demand system auto-starts generator when system requires water.
- Pressurized pipeline using bladder tanks (no large storage required).
- Frost free design allows for maintenance free winter operations.

The parties hereby understand and agree that these specifications are subject to change and are not a material term of this agreement.

5. COMPENSATION

LSWD will incur all costs associated with the initial construction, operation and maintenance of the facilities.

- The TAT will receive a gross royalty of twenty-two percent (22%) of all proceeds collected from the sale of water from the intake facility and revenues derived from the disposal of water to the water disposal facility. No deduction shall be assessed against the gross royalty for operational costs including personnel costs, electricity costs, maintenance charges, and other operational expenses.
- LSWD shall make payment of its royalty on all money collected by LSWD in one month within 30 days of the last day of the month the monies were collected. For instance, if LSWD collects

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\$10,000 in January, it shall pay TAT \$2,200 by no later than March 2nd (thirty days after January 31st.)

- LSWD will sell water to operators at its sole discretion. The rates charged for both water intake and disposal will be on a competitive basis.

6. LAW & ARBITRATION OF DISPUTES

LSWD shall make its best efforts to insure and secure all the necessary permits and decrees, including Right of Ways and Easements as needed for the Project and LSWD shall conduct all operations in accordance with the applicable laws and decrees related to the contracted water. This Agreement shall be governed by and construed in accordance with the laws of the Three Affiliated Tribes.

Limited Waiver of Sovereign Immunity . Nothing in this Limited Waiver of Sovereign Immunity shall be deemed to be a waiver of the Tribe's sovereign immunity from suit, except to the extent that the Tribe hereby provides a limited waiver of its sovereign immunity and consents to be sued should an action be commenced to determine and enforce the obligations of the parties under any Agreement; and provided further that the Tribe's consent to suit is only as to arbitration and to court action initiated consistent with this Limited Waiver of Sovereign Immunity. The Tribe 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 any arbitration proceedings. This Limited Waiver of Sovereign Immunity is intended to allow LSWD to enforce the agreement and recover any monetary resulting from and upon the unlikely event of breach by the Tribe.

Arbitration. Any dispute, claim or controversy arising out of or relating to this Agreement shall be settled by arbitration under these rules of commercial arbitration of the American Arbitration Association (the "AAA") and Title 9 of the U.S. Code. Any award rendered through arbitration against the Tribe may be entered in and/or enforced in Tribal Court, or if such court shall not have jurisdiction or shall otherwise fail to timely act in the United States District Court of the State of North Dakota (or any federal appellate court), or if such Court shall not have jurisdiction or shall otherwise fail to timely act, in any other court of competent jurisdiction. 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. The parties further acknowledge and agree that any party may apply to the Tribal Court of the Tribe in the first instance and, after seeking relief from such Tribal Court, to the United States District Court for the State of

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North Dakota, and 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. Each of the parties hereby agrees that this arbitration provision is valid and enforceable and therefore waives any defense or assertion to the contrary.

7. ACCOUNTING OF USE

LSWD shall meter all produced water being produced and disposed and shall maintain an accounting of such. LSWD shall submit its accounting forms and records to the TAT on a quarterly basis or promptly upon request and shall assist the TAT as it may reasonably request in presenting and/or verifying such evidence of use in court or before the appropriate administrative agencies.

8. TERM

This agreement shall be effective as of the date of the Agreement set forth herein and shall endure for so long as the facility is being utilized by LSWD and/or its successors and/or assigns.

9. IMPROVEMENTS

All improvements constructed on land leased from the Tribe shall remain the property of LSWD or its sublessee or assignee until thirty days after the expiration of the contract. If LSWD does not remove said improvements within the thirty days, all such improvements shall then become the property of the Tribe upon the expiration the thirty subsequent to the termination of the Agreement or Lease.

8. LIABILITY INSURANCE

The Tribe agrees that it, or its sublessee, shall obtain and maintain for the Tribe and LSWD public liability insurance, excluding property damage, at no cost to the Tribe. LSWD and its successors and assigns shall hold the United States harmless from any claim of whatsoever nature arising out of the use or occupancy of the leased or subleased premises.

10. NOTICES

Any notice required by this Agreement shall be in writing, addressed as follows:

LSWD

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Attn: Steve Kelly
P.O. Box 849
New Town, ND 58763

Attention: Mike Ames
5547 Hwy 85 N.
Williston, ND 58801

Three Affiliated Tribes

If either party changes its address during the term of this Agreement, it shall advise the other party in writing.

11. SEVERABILITY

If any provision of this Agreement is held to be illegal, invalid or unenforceable under applicable laws, such provision shall be severable from the remainder of this Agreement, which shall remain in full force and effect.

12. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between LSWD and TAT and supersedes all other oral or written communications.

13. VIOLATION OF AGREEMENT

It is understood that violations of this Lease may be acted upon by the Tribe in accordance with applicable laws and regulations.

14. QUIET ENJOYMENT

The Tribe agrees to defend the title of the leased premises and also especially agrees that LSWD and any assigns or sub-lessees shall peaceably and quietly hold, enjoy and occupy the leased premises for the duration of the Lease without any hindrance, ejection, interruption or molestation by the Tribe or by any other person or persons whomsoever.

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15. SURRENDER OF POSSESSION

Upon the expiration or other termination of this Agreement, the LSWD, subleasee or assigns shall without further action by the Tribe remove themselves from and surrender to the Tribe complete and peaceable possession of the premises provided that LSWD shall have thirty days from the expiration of the agreement to remove any improvements.

16. ASSIGNABILITY

LSWD agrees that it shall not assign any interest in this Agreement, any surface lease or Rights of Way except with the written consent of TAT, which consent shall not be unreasonably withheld, and approval of the Tribe and in accordance with any applicable federal and tribal regulations.

17. RELATIONSHIP OF THE PARTIES

This Agreement is not intended to create, and nothing herein shall be construed to create, an agency relationship or association, trust, joint venture, mining partnership, or other partnership or entity of any kind for the purposes of federal taxation.

18. MISCELLANEOUS

This Agreement may not be altered or amended, nor may any rights hereunder be waived, except by an instrument in writing and executed by the party to be charged with such amendment or waiver.

19. SOVEREIGN IMMUNITY

Nothing in this agreement shall be construed, held or interpreted as a waiver of the sovereign immunity of the Three Affiliated Tribes, its elected officials, officer and/or agents.

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IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the day and year first above set forth.

Lake Sakakawea Water Depot, LLC.

By: _____

Steven A. Kelly

Title: Manager

By: _____

Mike Ames

Title: Manager

THREE AFFILIATED TRIBES

By: _____

Name (print): _____

Title: _____




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, 5 were present at a Special Meeting thereof duly called, noticed, convened and held on the 25th day of May, 2010, 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.

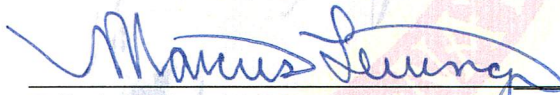
Chairman [] Voting. [] Not Voting.

Dated this 25th day of May, 2010.

ATTEST:



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



Tribal Chairman, Marcus D. Levings
Tribal Business Council
Three Affiliated Tribes