



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

*A Resolution Entitled: "Approval of a Memorandum of Agreement Between the Three Affiliated Tribes of the Fort Berthold Indian Reservation and Bartlett and West Inc."*

**WHEREAS**, This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act; and

**WHEREAS**, The Constitution of the Three Affiliated Tribes, the Mandan Hidatsa and Arikara Nation (MHA Nation) 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 MHA Nation and of the enrolled members thereof; and

**WHEREAS**, Bartlett and West, Inc. (Bartlett) has assisted MHA Nation in ongoing development of their water supply and distribution system within the Fort Berthold Indian Reservation, and

**WHEREAS**, The MHA Nation has completed, or nearly completed, the installation of a water supply and distribution system in a significant portion of the Reservation, and

**WHEREAS**, Bartlett has obtained a knowledge of third party (energy companies) need for water for their oil and gas well development activities, and

**WHEREAS**, Bartlett is able to provide management and marketing and infrastructure development experience and assistance to assist the MHA Nation in providing excess Fort Berthold Rural Water (FBRW) system water to such companies, and desires to enter into a Memorandum of Agreement with the MHA Nation to accomplish these ends (the MOA), and

**WHEREAS**, The Tribal Business Council finds it in the interest of the MHA Nation to sell excess water to energy development companies through a tribal corporation wholly owned by the MHA Nation, which will provide revenue for the MHA Nation and promote economic development and employment on the Reservation.

**NOW, THEREFORE, BE IT RESOLVED**, The Tribal Business Council of the Three Affiliated Tribes does hereby consent to, authorize and approve the MOA attached hereto between the Three Affiliated Tribes and Bartlett and West, Inc. and authorizes the Chairman to execute the MOA on behalf of the MHA Nation.



**MEMORANDUM OF AGREEMENT**

**BETWEEN**

**BARTLETT AND WEST, INC., BISMARCK, ND  
AND  
THREE AFFILIATED TRIBES OF THE  
FORT BERTHOLD INDIAN RESERVATION, NEW TOWN, ND**

**THIS MEMORANDUM OF AGREEMENT (MOA) IS ENTERED INTO BETWEEN BARTLETT AND WEST, INC (BARTLETT) AND THE THREE AFFILIATED TRIBES (TAT)** according to the following declarations, agreements, and understandings.

**WHEREAS BARTLETT** has assisted TAT in ongoing development of their water supply and distribution system within the Fort Berthold Indian Reservation, and

**WHEREAS, BARTLETT** has obtained a knowledge of third party (energy companies) need for water for their oil and gas well development activities, and

**WHEREAS, BARTLETT** believes that they can provide management and marketing and infrastructure development experience and assistance to assist TAT in providing excess Fort Berthold Rural Water (FBRW) system water to such companies, and

**WHEREAS TAT** has completed, or nearly completed, the installation of a water supply and distribution system in a significant portion of the Reservation, and

**WHEREAS TAT** has an ability and desire to provide water to energy development companies under provisions as discussed by this MOA,

**THEREFORE, BARTLETT AND TAT** (collectively as parties) enters into this MOA which documents and confirms an agreement between such parties, as follows:

- 1. Future Formal Agreement.** The parties agree that this MOA is meant as a temporary document which recognizes the importance of timing of this issue. This document allows the parties to proceed but it is acknowledged that a more formal agreement, incorporating the provisions of this MOA, will be prepared at a future date.
- 2. Intent of Agreement.** This MOA documents the intent and ability for Bartlett to act on behalf of TAT in soliciting of, contracting with, and marketing of excess raw water and/or finished water from the FBRW to interested oil companies or other water purchasers. Bartlett shall make no subsidiary or auxiliary agreements with any party which may benefit Bartlett unless such benefit is shared in the prorated basis with TAT as defined herein.

- 3. Ability to Contract.** This agreement allows Bartlett the ability and franchise to enter into agreements for sale of FBRW water with interested oil companies or other water purchasers. Such contracts will be in the form of 'accounts' which shall be administered by Bartlett under the terms of this agreement. All such 'accounts' will be subject to management review and oversight by the TAT and shall follow the 'Water Account Procedures' as attached to this Agreement. This agreement includes all water purchasers except those who may be under a signed contract with TAT at the date of this agreement.
- 4. Capital Investment by Bartlett.** It is envisioned that this agreement allows and anticipates that Bartlett may and will make significant development and capital investment in existing FBRW infrastructure in order to fulfill any contractual obligations which may result with water purchasers. All such development costs and capital improvements costs are solely at the risk of Bartlett and shall be documented and provided to TAT upon request at any time during this agreement. The TAT shall have no cost obligation for any development or capital improvements costs.
- 5. Obligations of Bartlett.** Bartlett shall have the responsibility and obligation to provide all development and capital investment as needed to secure market and provide water to water purchasers according to this agreement. Bartlett shall provide all record keeping and accounting of funds and reporting requirements as listed herein. Bartlett shall bear sole responsibility for all regulatory requirements of this effort. Bartlett shall have sole responsibility for negotiation and administration of contracts with water purchasers.
- 6. Contribution by TAT.** TAT shall not have any financial contribution of any kind for this agreement. The contribution of TAT shall solely be to provide BW access and use of facilities as noted herein and to allow access to, and rights to use all tribal lands and easements. For purposes of all such work, the easements shall be held in the name of Bartlett subject to tribal regulations. Additionally, TAT shall support and assist Bartlett with marketing and operational issues relative to assisting with regulatory compliance as may be needed.
- 7. Operation and Maintenance of Facilities.** Bartlett shall have the sole responsibility to operate and maintain all raw water facilities used in this effort or with any contract entered into with any water purchases. The TAT shall have no cost obligation for any operation and maintenance.
- 8. Ownership of Facilities.** Nothing in this agreement intends that TAT relinquish any ownership of any facilities of the FBRW.
- 9. Collection of Revenue.** Bartlett shall open and maintain a separate dedicated checking account which shall be used for all financial transactions relative to this agreement. This shall be a 'Special Water Account' (to be more formally named at a future time) and shall be a complete record of all revenue and all expenses of



this effort. Copies of all statements shall be provided to TAT and the TAT, at any time, may request a detailed audit of the transactions.

- 10. Record Keeping and Reporting.** Bartlett shall provide a detailed monthly report of all financial and operational activities to TAT. Such report shall clearly show revenues received and expenses incurred and shall include a detailed breakdown of revenue allocations. It is acknowledged that TAT is in the process of forming a Section 17 Tribal Corporation. The Section 17 Corporation will be the responsible party for all Tribal management and accounting for this Agreement. However, until the Section 17 Corporation is formed the TAT Tribal Tax Office will be assigned management and oversight functions.
- 11. Issuance of Payments to TAT.** At the time of each such report, Bartlett will issue a payment to TAT according to the terms of this agreement. Such payment will be for the full amount as noted herein with the exception of money held for a 'contingency' operating fund which will be mutually agreed upon by both parties.
- 12. Revenue Allocation for Raw Water.** This intent of this agreement is to generate a stream of revenue on raw water sales which is anticipated to be allocated as follows:
  - a. Approximately 5% of the generated revenue will be used to repay Bartlett for the development costs and capital investment costs which Bartlett may incur. The 5% estimate is based on a 10 repayment schedule for capital investment return to Bartlett; actual costs may be modified to achieve a 10 year schedule. Such costs will be paid only until full cost recovery by Bartlett has been achieved. Bartlett may defer, on a quarterly basis, to receive this money, either in whole or in part in which case the funds shall be part of the full amount paid to TAT under the provisions of subparagraph c herein. After this cost is paid, TAT shall receive this full amount in addition to other amounts listed herein. The TAT has the right to accelerate this payment to BW at their option to achieve an earlier 100% payment of Bartlett's capital investment costs.
  - b. All of the generated revenue will be paid to the tribal corporation after the amounts due under subparagraph's a and c have been paid. From that amount the tribal corporation shall determine and pay the FBRW for the water it users, at a price not to exceed the OMR costs of providing such water.
  - c. Approximately 10% of the generated total annual revenue will be paid to Bartlett for the first \$3,000,000 of such annual generated revenue. After \$3,000,000 has been generated in total annual revenue, then Bartlett shall be paid 7.5% of any revenue generated beyond \$3,000,000 up to a limit of \$5,000,000. After total annual generated revenue has reached \$5,000,000, then Bartlett will be paid an amount not to exceed 5% of any remainder revenue generated during the year.

**13. Revenue Allocation for Finished Water.** This intent of this agreement is to generate a stream of revenue on finished water which is anticipated to be allocated as follows:

- a. Approximately 2% of the generated revenue will be used to repay Bartlett for the development costs and capital investment costs which Bartlett may incur. The 2% estimate is based on a 10 repayment schedule for capital investment return to Bartlett; actual costs may be modified to achieve a 10 year schedule. Such costs will be paid only until full cost recovery by Bartlett has been achieved. Bartlett may defer, on a quarterly basis, to receive this money, either in whole or in part in which case the funds shall be part of the full amount paid to TAT under the provisions of subparagraph c herein. After this cost is paid, TAT shall receive this full amount in addition to other amounts listed herein. The TAT has the right to accelerate this payment to BW at their option to achieve an earlier 100% payment of Bartlett's capital investment costs.
- b. All of the generated revenue will be paid to the tribal corporation after the amounts due under subparagraph's a and c have been paid. From that amount the tribal corporation shall determine and pay the FBRW for the water it users, at a price not to exceed the OMR costs of providing such water.
- c. Approximately 10% of the generated total annual revenue will be paid to Bartlett for the first \$3,000,000 of such annual generated revenue. After \$3,000,000 has been generated in total annual revenue, then Bartlett shall be paid 7.5% of any revenue generated beyond \$3,000,000 up to a limit of \$5,000,000. After total annual generated revenue has reached \$5,000,000, then Bartlett will be paid an amount not to exceed 5% of any remainder revenue generated during the year.

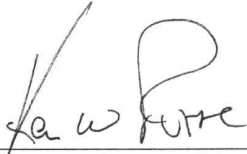
**14. Time of Performance.** This agreement shall stay in effect a minimum of time to allow Bartlett to recover their documented development costs and capital investment costs. After that has occurred, the TAT may terminate with a 3 month written notice to Bartlett; such notice shall be a certified letter signed by the Chairman of the TAT.

**15. TAT Authorized Representative and Administration of Agreement.** For purposes of administration of this agreement, TAT intends to form a tribal entity with which Bartlett will make all reports and submit all other required items and documents. Until such tribal entity is formed, the TAT appoints the Tribal Tax Department as administrator and representative. Such representative shall be the recipient of all monthly and quarterly reports issued by BW as required by this agreement. Such representative shall have the authority to review and/or approve any agreements which BW may seek to put in place with third parties for the execution of this agreement.

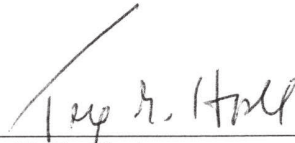
**16. Re-Negotiation Clause.** Either party to this agreement shall have the ability to request a contract re-negotiation of the terms after two (2) years has passed from

the start of the first delivery of water to any purchaser under this contract. Any re-negotiation which shortens the capital recovery period for the capital investment made by Bartlett shall include a provision for the TAT to accelerate the capital repayment schedule in order to achieve full payment as may be left due and unpaid. If no re-negotiation request is made within 30 days of the 2 year anniversary of this agreement, then this agreement shall renew for a new 2 year term.

**ACCEPTANCE OF THIS AGREEMENT** is verified by signature from authorized representatives of each Party as noted below:



\_\_\_\_\_  
Ken Royse, Vice President  
Bartlett & West, Inc.



\_\_\_\_\_  
Tex G. Hall, Chairman  
Three Affiliated Tribes

5/14/2012

DATE

5-14-12

DATE





**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 Regular Meeting thereof duly called, noticed, convened, and held on the 22<sup>nd</sup> day of February, 2012; 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. [X] Not Voting.

Dated this 22<sup>nd</sup> day of February, 2012.

Secretary, V. Judy Brugh  
Tribal Business Council

ATTEST:

For Chairman, Tex G. Hall  
Tribal Business Council