



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

**A Resolution Entitled: “Marketing and Feasibility Study for Royalty in Kind”**

- WHEREAS,** The Mandan Hidatsa and Arikara Nation (“MHA Nation” or “Nation”) having accepted the Indian Reorganization Act of June 18, 1934 (“IRA”), and the authority under said Act and having adopted a Constitution and By-Laws pursuant to said Act; and
- WHEREAS,** The Constitution of the 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 Nation and of the enrolled members thereof; and
- WHEREAS,** Article III, Section 1 of the Constitution of the MHA Nation provides that the Tribal Business Council is the governing body of the Nation; and
- WHEREAS,** Article VI, Section 5(c) of the Constitution of the MHA Nation specifically authorizes and empowers the Tribal Business Council to administer funds within the exclusive control of the Nation and to make expenditures from available Tribal funds for public purposes for the Nation; and
- WHEREAS,** Thunder Butte Petroleum Services, Inc. (“Thunder Butte”) is constructing a crude oil rail transloading facility in Makoti, ND (the “Thunder Butte Facility”)
- WHEREAS,** Thunder Butte desires to receive certain services from Global Companies LLC (“Global”) relating to the supply, transportation, storage and delivery of Bakken crude oil, some of which may be the Nation’s in kind oil; and
- WHEREAS,** Global is experienced in both marketing and supplying Bakken crude oil from North Dakota and other areas and providing storage, rail and barge logistics necessary to transport crude oil to the East Coast and the West Coast; and
- WHEREAS,** The Tribe has the right to receive crude oil royalty production in kind in accordance with the Oil and Gas Leases; and
- WHEREAS,** Thunder Butte and the MHA Nation Energy Division desire to explore the economic and logistical viability of taking the Tribe’s royalty in kind and marketing such oil by means of the Thunder Butte Facility, and wishes to enter into a consulting agreement with Global (the “Agreement”) for Global to conduct a marketing and feasibility study on the Tribe’s royalty in kind; and



**WHEREAS,** Under such Agreement, Global will act as the Nation's agent in conducting the feasibility study and Global intends to maximize the Nation's returns on its mineral interests; and

**WHEREAS,** As an agent of the Tribe under the Agreement, Global will meet with oil producers on the Fort Berthold Indian Reservation to examine the feasibility of taking royalty in kind so that Global may develop a plan of recommended strategy to market the Nation's royalty-in-kind in a manner that will benefit the Nation; and

**WHEREAS,** The Agreement shall not to exceed Ten Thousand Dollars (\$10,000.00); and

**WHEREAS,** The Tribal Business Council has determined that it is in the best interest of the Nation to have a feasibility study conducted for the marketing of the Nation's royalty-in-kind.

**NOW THEREFORE BE IT RESOLVED,** that the Tribal Business Council of the Three Affiliated Tribes hereby authorizes and approves Thunder Butte and the MHA Energy Division to enter into a consulting agreement with Global to conduct a marketing and feasibility study on the Nation's royalty-in-kind program for purposes of marketing the oil on behalf of the Nation; and

**BE IT FURTHER RESOLVED,** that the Tribal Business Council authorizes and approves payment by the Nation to Global in an amount not to exceed Ten Thousand Dollars (\$10,000.00) for the Agreement; and

**BE IT FURTHER RESOLVED,** the Tribal Business Council of the Three Affiliated Tribes hereby provides a limited waiver of its Sovereign Immunity to the extent of enforcement of the provisions of the Agreement and expressly excludes all incidental, consequential and/or punitive damages including all legal costs of non-tribal parties; and

**BE IT FINALLY RESOLVED,** that the Tribal Business Council hereby reserves the right to review and approve any and all agreements to implement the intent and purposes of the Agreement with Global and to take such other actions as are necessary to carry out the terms and intent of this Resolution.

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## CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

This **CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT**, dated as of September \_\_\_\_, 2014 (this "Agreement"), is by and between Global Companies LLC, a Delaware limited liability company ("Global") and the Mandan, Hidatsa, and Arikara Nation (the "MHA Nation" or "Nation"), a Sovereign Indian Nation. Global and the MHA Nation are sometimes referred to herein collectively as the "Parties" and each individually as a "Party."

**WHEREAS**, Thunder Butte Petroleum Services, Inc. ("Thunder Butte") is constructing a crude oil rail transloading facility in Makoti, ND (the "Thunder Butte Facility"); and

**WHEREAS**, the Nation, working through Thunder Butte and the MHA Energy Division, has entered into a consulting agreement for Global to conduct a marketing and feasibility study on the Nation's crude oil royalty production in kind; and

**WHEREAS**, Under such Agreement, Global will act as the Nation's agent and will meet with various producers on the Fort Berthold Indian Reservation to examine the economics and feasibility of taking royalty in kind from each producer.

**NOW THEREFORE**, for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties do mutually agree as follows:

1. Each Party hereby agrees to treat confidentially all Confidential Material (as defined below) of the other Party disclosed to it, which obligation of confidentiality shall be a condition to the receipt of such Confidential Material. The Party making any such disclosure (including its affiliates, agents, advisors, directors, officers, employees, representatives, attorneys, accountants and financial advisors (collectively, "Representatives")) is hereinafter referred to as the "Discloser," and the Party receiving any such disclosure (including its Representatives) is hereinafter referred to as the "Recipient."
2. The term "Confidential Material" means any and all confidential information relating to the Discloser that is furnished by the Discloser to the Recipient after the date hereof, whether oral or written, and regardless of the manner in which it is furnished, including, without limitation, all trade secrets and proprietary and confidential information and know-how relating to products or services, processes, machines, designs, drawings, software, metadata, source code, object code, firmware, documentation, formulas, strategies, test data, marketing data, financial data, business plans and strategies, pricing and pricing strategies, employees, negotiations and contracts with other companies, disclosures and applications for permits, licenses, regulatory approvals, patent and trademarks and the status of their prosecution, manuals, procedures, research or development work, sources and contracts, customer lists, employee lists, compensation information, concepts, ideas and any other subject matter pertaining to the Discloser's business and/or the business of the Discloser's clients, customers, suppliers, vendors or creditors. The term "Confidential Material" will also include all analyses, compilations, studies or other documents prepared by the Discloser or the Recipient, containing or based on, in whole or in part, any information furnished by the Discloser. The term "Confidential Material" does not include information, which (i) is or becomes generally available to the public other than as a result of acts or omissions by the

Recipient in violation of this Agreement, (ii) was in the possession of the Recipient on a non-confidential basis prior to its disclosure to the Recipient by the Discloser, (iii) becomes available to the Recipient from a source other than the Discloser, provided, however, that such source is not known by the Recipient to be bound by a confidentiality obligation, directly or indirectly, to the Discloser, (iv) is independently developed by Recipient without use or reliance upon the Discloser's Confidential Material or (v) is published by Discloser without a restriction on its use and disclosure. The term "person" as used in this Agreement shall mean any corporation, company, partnership, other entity, group or individual.

3. The Recipient agrees that any and all Confidential Material will be kept confidential by it, and shall not, except as hereinafter provided, without the prior written consent of the Discloser, be disclosed by it. Each Party agrees that the Confidential Material of the other Party will be used by it and its Representatives for the sole purpose of considering or engaging in the potential Transaction. Moreover, each Party further agrees to transmit the Confidential Material of the other Party only to those of its Representatives who (i) need to know such information, and (ii) who are bound by an obligation of confidentiality to such Party sufficient to ensure compliance with this Agreement. Each Party shall be responsible for any breach of this Agreement by its Representatives.
4. In the event that the Recipient or any of its Representatives is requested or required by applicable law (including, without limitation, by deposition, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar process) to disclose any Confidential Material, the fact that Confidential Material has been made available to the Recipient, that discussions or negotiations between the Parties are taking or have taken place or any of the terms, conditions or any other facts with respect to the discussions or negotiations, the Recipient shall provide the Discloser with prompt written notice (unless prohibited by law) of any such request or requirement so that the Discloser may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. In the event that such a protective order or other remedy is not obtained, or that compliance with the terms of this Agreement is waived, the Recipient agrees that it will furnish only that portion of the Confidential Material and other information that is legally required, provided that the Recipient exercises its commercially reasonable efforts to preserve the confidentiality of the Confidential Material and other information, including, without limitation, by cooperating with the Discloser to obtain reliable assurances that confidential treatment will be accorded the Confidential Material and other information being disclosed. Recipient shall be entitled to reimbursement of its reasonable costs and expenses, including reasonable attorney's fees, when complying with this section.
5. All Confidential Material shall be and remain property of the Discloser. Nothing in this Agreement shall be construed as granting to the Recipient any rights in or to the Confidential Material, except the right of review and use in accordance with the terms of this Agreement. Recipient will promptly, upon (i) written request of the Discloser or (ii) a determination by either Party not to proceed with the Transaction, deliver to the Discloser or destroy the Confidential Material supplied by the Discloser and all copies thereof, except that (x) Recipient shall be permitted to maintain a copy of such Confidential Material as required for corporate recordkeeping purposes, and (y) Recipient and its Representatives shall not be required to return any Confidential Material that is automatically backed up on its/their respective computer systems in accordance with its/their respective regular ongoing records

retention processes. If requested, the Recipient agrees to provide the Discloser with a certificate confirming the Recipient's compliance with this paragraph.

6. Neither Party makes any representation or warranty as to the accuracy or completeness of the Confidential Material pursuant to this Agreement, and except as may be otherwise agreed by the Parties in writing, each Party agrees that it is not entitled to rely upon the accuracy or completeness of any Confidential Material. The Recipient agrees that the Discloser shall not have any liability under this Agreement to the Recipient resulting from the use of the Confidential Material by the Recipient.
7. Each Party will be responsible for all costs and expenses incurred by it in its review of the Confidential Material.
8. It is expressly understood and agreed that nothing herein shall be construed to limit or prevent in any manner (i) the operation by either Party and its affiliates of any current or prospective lines of business, even such lines of business engaged in or proposed to be engaged in by the other Party and its affiliates, or (ii) the investment or consideration for investment by either Party or their affiliates in any entity, even those entities engaged in the same or related businesses as those engaged in or proposed to be engaged in by the other Party or its affiliates, so long as such party and its affiliates do not disclose the Confidential Material except as permitted herein.
9. It is further understood and agreed that no failure or delay by a Party in exercising any of its rights, powers or privileges hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder. The Parties agree that a breach of the provisions of this Agreement may cause injury to Global and the MHA Nation, for which monetary damages (or another remedy at law) are inadequate in view of (i) the complexities and uncertainties in measuring the actual damages that would be sustained by reason of the failure of a Person to comply with such provisions and (ii) the uniqueness of the relationship between the Parties. Accordingly, the Parties agree that the provisions of this Agreement may be enforced by injunction and specific performance. In the event of any breach or attempted breach of the provisions of this Agreement, no Party shall be required to post any bond or other security in connection therewith. As used herein, specific performance shall mean enforcement of the obligation not to disclose Confidential Material as defined in paragraph 2 above, except as expressly authorized by this Agreement.
10. Any claim, dispute or other matter in question arising out of this Agreement shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either Party. The Parties agree to share the costs of a mutually agreed upon mediator and the mediation shall occur on the Fort Berthold Indian Reservation unless the Parties mutually agree otherwise.
11. For the purposes of this Agreement, the MHA Nation specifically provides a limited waiver waives its sovereign immunity for the sole purpose of enforcement of this Agreement to the extent of the specific equitable remedies of injunction or specific performance as discussed above. This limited waiver of the Nation's sovereign immunity shall not extend to any actions beyond those expressly identified in this agreement and no money damages of any

kind shall be assessed against the MHA Nation and/or its affiliates and Global and/or its affiliates.

12. In the event of litigation relating to this Agreement, if the MHA Nation Tribal Court determines in a final order that a Party has breached this Agreement, then such Party shall be liable and pay to the non-breaching Party the reasonable legal fees such non-breaching Party has incurred in connection with such litigation, including any appeal therefrom.
13. This Agreement and the obligations under this Agreement are for the benefit of the Parties and shall inure to the benefit of their successors and permitted assigns. Neither Party may assign this Agreement without the prior written consent of the other Party, except that either Party may, without the consent of the other, assign this Agreement to a controlled affiliate or subsidiary of that Party or to any person that acquires all or substantially all of that Party's assets (whether by merger, reorganization, acquisition, sale or otherwise).
14. This Agreement shall constitute the entire agreement of the Parties with respect to the subject matter hereof, and no modification of this Agreement or waiver of the terms and conditions hereof shall be binding upon a Party unless approved in writing by such Party.
15. This Agreement will be effective as of the date first written above and will continue to be effective for a period of two (2) years from that date.
16. This Agreement (i) shall be governed by the laws of the laws of the MHA Nation, without regard to principles of conflicts of laws, and (ii) may be executed in several counterparts, all of which together shall constitute one and the same agreement, and by facsimile signatures. Each of the Parties agrees that it shall bring any action seeking to enforce any provision of or any right arising out of this Agreement in the MHA Nation Tribal Court, or if they have or can acquire jurisdiction, a federal court of the District of North Dakota, and each Party hereby submits to personal jurisdiction before such courts and waives any and all objections to the jurisdiction and proper venue of such courts.
17. If one or more of the provisions of this Agreement are deemed void by law, then the remaining provisions shall remain in full force and effect.

*[Signature page follows.]*

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date first written above.

**Global Companies LLC**

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By:  
Its:

**Mandan, Hidatsa, and Arikara Nation**

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By:  
Its:





**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 20<sup>th</sup> day of October, 2014; 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 [**X**] voting. [ ] not voting.

Dated this 20<sup>th</sup> day of October, 2014.

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

**ATTEST:**  
  
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Tribal Chairman, Tex G. Hall  
Tribal Business Council  
Three Affiliated Tribes