



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

A Resolution Entitled: “Approval of Contract to Engage Nelson Tremain Partnership to Design Law Enforcement Center and Tribal Courts Facility”

- 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,** The Tribal Business Council has allocated \$12,500,000 of the Nation’s funds to build a 28,000 square foot facility to house the Tribal Courts, BIA Law Enforcement Center, and other building support functions (“Facility”), generally based on the Nation’s Justice Center Design Development Package, dated October 9, 2014; and
- WHEREAS,** The Facility will be generally located on Lots 3, 4, and 5, Block 1, Section 17, Township 152 North, Range 92 West, in Mountrail County, North Dakota, near the southwest corner of the intersection at Highway 23 and BIA Highway 6; and
- WHEREAS,** The Nation solicited bids from qualified firms, ultimately selecting Nelson Tremain Partnership (NTP) of 124 Southeast Main Street, Suite 245, Minneapolis, Minnesota, to design the Facility; and
- WHEREAS,** Upon selecting NTP to design the Facility, the Nation and NTP began negotiating the terms of NTP’s services contract, the terms of which are included in the contract attached hereto and incorporated herein by reference; and



WHEREAS, The contract establishes that NTP shall create the necessary construction documents, assist with contractor bidding, and provide construction administration services, for a total amount of \$599,000.00 plus reasonable reimbursable expenses; and

WHEREAS, the contract also includes the following limited waiver of sovereign immunity for the purpose of resolving contract-related disputes, first through non-binding mediation and then through litigation:

“The Parties acknowledge the Owner is a federally recognized Indian Tribe possessing sovereign immunity from suit and other legal proceedings. The Tribe, pursuant to a duly signed resolution adopted by the Tribal Business Council, agrees to grant a limited waiver of its sovereign immunity from suit for the sole purpose of enforcing the terms of this Agreement and consents to be sued should an action be commenced against it to determine the rights and obligations of the parties to this Agreement.

The waiver is limited to remedies only for liability arising from the willful breach of any term of this agreement by the Tribe and is further limited to damages only up to those amounts hereby contracted and agreed to. Any other trust or non-trust asset of Owner is explicitly excluded from this waiver. This waiver of immunity is further limited to suits commenced against the Tribe in any court of applicable and competent jurisdiction.”; and

WHEREAS, The Tribal Business Council has determined that it is in the best interest of the Nation to construct the Facility and to utilize NTP to complete the work described in the attached services contract.

NOW THEREFORE BE IT RESOLVED, that the Tribal Business Council of the Three Affiliated Tribes hereby authorizes and approves the services contract between the Nation and Nelson Tremain Partnership, attached hereto and incorporated herein by reference.

BE IT FURTHER RESOLVED, that the Tribal Business Council agrees to grant a limited waiver of its sovereign immunity from suit for the sole purpose of enforcing the terms of the contract, not to exceed the value of the contract and exclusive of any other trust or non-trust asset of the Nation, and only in those courts of applicable and competent jurisdiction.

BE IT FINALLY RESOLVED, that the Chairman, or in his absence, the Vice-Chair, is hereby authorized to take such further actions as are necessary to carry out the terms and intent of this resolution.

Additions and Deletions Report for **AIA® Document B101™ – 2007**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:21:21 on 03/12/2015.

PAGE 1

AGREEMENT made as of the 12th day of March in the year 2015

...

Three Affiliated Tribes of North Dakota
404 Frontage Road
New Town, ND 58763 C/o Mark Fox, Tribal Council Chairman

...

(Name, legal status, address and other information)

Nelson Tremain Partnership
125 Southeast Main Street
Suite 245
Minneapolis, MN 55414

...

Three Affiliated Tribes Law Enforcement Center and Courts Project
New Town, ND

...

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(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)§1.1.1 Project Description:

The project consists of approximately 28,000 square feet including: Tribal Courts, BIA Law Enforcement Center, and building support functions generally based on the TAT Justice Center Design Development Package dated October 9th, 2014.

§1.1.2 Project Site:

The project is to be built on land held in trust by the United States Federal government for the benefit of the Three Affiliated Tribes, a federally recognized Indian tribe on the Fort Berthold Indian Reservation and generally located on Lots 3, 4 and 5, Block 1, Section 17, Township 152N, Range 92W in Mountrail County, North Dakota near the south west corner of the intersection at ND State Highway 23 and BIA Highway 6.

§ 1.1.3 Financial Parameters:

The financial parameters are as follows: The Owner reports available funding for the total project is approximately \$12,500,000.00 (twelve million five hundred thousand dollars). At the time this agreement is written construction costs are estimated to be approximately \$11,000, 000.00 (eleven million dollars) excluding; professional fees, testing & inspections and TERO (if applicable).

§1.1.4 Proposed Procurement Method:

The proposed construction procurement or delivery method has not been determined at the time of this agreement. Should the Owner elect to proceed with the Construction Management At Risk OR Agency method, the A/E reserves the right to revise and renegotiate this agreement to provide compensation for professional design services related to cost control, cost estimating and multiple bid packages (if required).

§1.1.5 Consultants retained at the Architect's expense include:

Specifications Writer

Interior Designer

Structural Engineer

Mechanical, Electrical, Plumbing & Fire Protection Engineer

§1.1.6 Specialty Consultants excluded from the Architect's professional design service:

Civil Engineer

Surveyor Geotechnical Engineer

Communications Design/Engineer (E-911, Law Enforcement Communications)

Acoustic Engineer

Special Testing & Inspections Consultant

The Architect will assist the Owner in soliciting professional design services noted above. It is assumed the Owner will provide these design services as required for the project through the Owner's 3rd party consultants.

§1.1.7 Owner's Designated Representative:

Dennis Fox, Jr., Director of Special Projects

Three Affiliated Tribes of North Dakota

404 Frontage Road

New Town, ND 58763

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Estimated to be on or about May, 2015

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Estimated to be on or about April, 2016

See attached Exhibit A – Preliminary Project Schedule – subject to change as project progresses through design and construction

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Randall M. Lindemann, AIA, LEED AP
Nelson Tremain Partnership (NTP)
125 Southeast Main Street, Suite 245
Minneapolis, MN 55414

612-331-7178

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\$1,000,000 per occurrence / \$1,000,000 aggregate

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\$1,000,000 Combined Single Limit

...

\$500,000

...

\$1,000,000 per occurrence \$1,000,000 aggregate

...

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary architectural, interior design, structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

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§ 3.2.1 The Architect shall review ~~the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.~~ schematic design phase documents previously completed as provided by the Owner. No further schematic design phase services are included.

~~§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.~~

~~§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.~~

~~§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.~~

~~§ 3.2.5~~ Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

~~§ 3.2.5.1~~ The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

~~§ 3.2.5.2~~ The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

~~§ 3.2.6~~ The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

~~§ 3.2.7~~ The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

~~§ 3.3.1~~ Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels. The Architect shall review design development phase documents previously completed as provided by the Owner. No further design development phase services are included.

~~§ 3.3.2~~ The Architect shall update the estimate of the Cost of the Work.

~~§ 3.3.3~~ The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

...

~~§ 3.4.4~~ The Architect shall ~~update~~ review the estimate for the Cost of the Work ~~the Work prepared by the Owner's 3rd Party Consultant or Construction Manager and make recommendations to the Owner in accordance with § 6.2 and § 6.3.~~

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These services will be provided by the Construction Manager, but the Architect will promptly review either in person or by electronic means all bids at the time of bid opening and will coordinate with the Contractor and Owner in evaluating bids and making awards. The Architect shall incorporate all requirements of applicable law regarding preference in contracting.

~~§ 3.5.1 GENERAL~~

~~The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive~~

bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

~~§ 3.5.2 COMPETITIVE BIDDING~~

~~§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.~~

~~§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by~~

- ~~.1 — procuring the reproduction of Bidding Documents for distribution to prospective bidders;~~
- ~~.2 — distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;~~
- ~~.3 — organizing and conducting a pre-bid conference for prospective bidders;~~
- ~~.4 — preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and~~
- ~~.5 — organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.~~

~~§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.~~

~~§ 3.5.3 NEGOTIATED PROPOSALS~~

~~§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.~~

~~§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by~~

- ~~.1 — procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;~~
- ~~.2 — organizing and participating in selection interviews with prospective contractors; and~~
- ~~.3 — participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.~~

~~§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.~~

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~~§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.~~

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

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§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information from the Owner and its Agents about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

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§ 3.6.5.1 The Architect may authorize minor changes in the Work, and provide notification of all changes to the Owner, that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

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§ 4.1.1	Programming (B202™ 2009)		
§ 4.1.2	Multiple preliminary designs		
§ 4.1.3	Measured drawings		
§ 4.1.4	Existing facilities surveys		
§ 4.1.5	Site Evaluation and Planning (B203™ 2007)		
§ 4.1.6	Building Information Modeling (E202™ 2008)		
§ 4.1.7	Civil engineering	§ 4.1.1 Civil Engineering	Owner
§ 4.1.8	Landscape design	§ 4.1.2 Landscape Design	Owner
§ 4.1.9	§ 4.1.3 Architectural Interior Design (B252™ 2007)	§ 4.1.3 Architectural Interior Design	Architect
§ 4.1.10	Value Analysis (B204™ 2007)		
§ 4.1.11	§ 4.1.4 Detailed cost estimating		Construction Manager
§ 4.1.12	On-site Project Representation (B207™ 2008)		
§ 4.1.13	Conformed construction documents		
§ 4.1.14	§ 4.1.5 As-Designed Record drawings	§ 4.1.5 As-Designed Record drawings	Architect
§ 4.1.15	§ 4.1.6 As-Constructed Record drawings	§ 4.1.6 As-Constructed Record drawings	Contractor
§ 4.1.16	Post occupancy evaluation		
§ 4.1.17	Facility Support Services (B210™ 2007)		
§ 4.1.18	Tenant related services		
§ 4.1.19	Coordination of Owner's consultants		
§ 4.1.20	§ 4.1.7 Telecommunications/data design	§ 4.1.7 Telecommunications/data design	Architect
§ 4.1.21	Security Evaluation and Planning (B206™ 2007)		
§ 4.1.22	Commissioning (B211™ 2007)		

§ 4.1.23 Extensive environmentally responsible design		
§ 4.1.24 LEED® Certification (B214™ 2012)		
§ 4.1.25 Fast-track design services		
§ 4.1.26 Historic Preservation (B205™ 2007)		
§ 4.1.27 Furniture, Furnishings, and Equipment Design (B253™ 2007)		

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§ 4.1.3 Architectural Interior Design: In consultation with the Owner, Architect will select and specify interior finishes, colors and items of equipment permanently attached to the construction. Selection and specification of movable furnishings and equipment is not included in Basic Services.

§ 4.1.5 As-Designed Record drawings: provide 1 (one) CD in .PDF format including all design record documents as produced by the Architect and the Architect's retained consultants.

§ 4.1.7 Telecommunications/data design: limited to power and pathways for rough-ins only. E-911 system, communications system and equipment to be designed, furnished and installed by the Owner's 3rd party consultant under a separate contract.

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- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 ~~(—) visits to the site~~ Up to One (1) visit to the site per month by the Architect over the duration of the Project during construction through April 2016 completion date.
- .3 ~~(—) inspections~~ One (1) inspection for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 ~~(—) inspections~~ One (1) inspection for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within Twenty (20) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

...

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within ~~15~~ Thirty (30) days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

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§ 5.13 Any direct communications between the Owner or Owner's designated Representative and the Construction Manager that affect the performance or administration of the Work shall be made or confirmed in writing with copies to the Architect.

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall ~~include~~include; contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the ~~Work-Work, TERO~~ or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the ~~Architect, Owner's 3rd Party Consultant or Construction Manager,~~ represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 In ~~preparing~~reviewing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's review of the Contractor's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. The Owner is to provide detailed cost estimating through the Owner's 3rd Party Consultant or Construction Manager under a separate agreement. If the Owner requests detailed cost estimating ~~services, services from the Architect,~~ the Architect shall provide such services as an Additional Service under Article 4.

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§ 6.5 ~~If at any time the Architect's~~ The Owner's 3rd Party Consultant or Construction Manager shall bear primary responsibility for estimating the Cost of the Work. If at any time the estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

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§ 8.1.2 Waivers of Subrogation. To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

...

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. ~~If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.~~

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Litigation in ~~a~~any court of applicable and competent jurisdiction pursuant to Section 8.3 of this Agreement

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~~§ 8.3 ARBITRATION~~

~~§ 8.3.1~~ If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

~~§ 8.3.1.1~~ A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

~~§ 8.3.2~~ The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

~~§ 8.3.3~~ The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

~~§ 8.3.4 CONSOLIDATION OR JOINDER~~

~~§ 8.3.4.1~~ Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

~~§ 8.3.4.2~~ Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

~~§ 8.3.4.3~~ The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

~~§ 8.3 LIMITED WAIVER OF SOVEREIGN IMMUNITY~~

~~§ 8.3.1~~ The Parties acknowledge the Owner is a federally recognized Indian Tribe possessing sovereign immunity from suit and other legal proceedings. The Tribe, pursuant to a duly signed resolution adopted by the Tribal Business Council, agrees to grant a limited waiver of its immunity from suit for the sole purpose of enforcing the terms of this Agreement and consents to be sued should an action be commenced against it to determine the rights and obligations of the parties to this Agreement.

~~§ 8.3.2~~ The waiver is limited to remedies only for liability arising from the willful breach of any term of this agreement by the Tribe and is further limited to damages only up to those amounts hereby contracted and agreed to. Any other trust or non-trust asset of Owner is explicitly excluded from this waiver. This waiver of immunity is further limited to suits commenced against the Tribe in any court of applicable and competent jurisdiction.

~~§ 9.1~~ If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be

considered substantial nonperformance and cause for ~~termination or, at the Architect's option, cause for suspension of~~ performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending ~~services.~~ services in an effort to allow Owner to cure the nonperformance. In the event of a suspension of services, the Architect shall have no liability to the Owner and shall be indemnified by the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted. Such suspension of services by Architect may include holding documents for governing agency approvals, holding construction documents for bidding or permitting, or not appearing in requested meetings on behalf of the Owner.

§ 9.2 If the Owner suspends the ~~Project, Project~~ Project for reasons not related to Architect's nonperformance, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 ~~cumulative consecutive~~ days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

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§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all reasonable Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include reasonable expenses directly attributable to termination for which the Architect is not otherwise ~~compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.~~ compensated.

...

§ 9.9 If a contract for construction has not been awarded within 30 calendar days of the date of receipt of bids in which the budget for Cost of Work has not been exceeded by the lowest bona fide bid or negotiated proposal, subsequent services provided by the Architect until execution of the Contract for Construction shall be considered as Additional Services and the Architect shall be compensated on an hourly basis for these services until execution of a Contract for Construction. These additional services include, but are not limited to meetings with the Owner and/or prospective Contractors, assistance with rebidding or work, evaluation of bids or proposed changes in bidding documents, analysis of product substitutions, etc. Execution of a Contract for Construction constitutes authorization by the Owners to the Architect to proceed with services of the Construction phase.

...

§ 10.1 This Agreement shall be governed by the ~~law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern~~ Section 8.3,

laws of the Three Affiliated Tribes of the Fort Berthold Reservation and in the absence of such substantive contract law, by applicable federal law.

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(Insert amount of, or basis for, compensation.)

The Architect's compensation for the basic services included in this agreement shall be a fixed fee of \$599,000.00 plus reimbursable expenses. This is based on an initial construction budget estimate of \$6.57 million multiplied by 8% (\$525,458.00) plus the Design Development construction estimate increase of \$4.46 million multiplied by 7.625% (\$340,794.00) for a total fee of \$866,252.00 less

\$267,252.00. Payments shall be made in accordance with Exhibit B Payment Schedule.

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§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus one and one quarter percent (1.25 %), or as otherwise stated below:

...

§ 11.5 ~~Where compensation for Basic Services~~ When compensation is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows: Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

Schematic Design Phase	percent—(%)
Design-Development Phase	percent—(%)
Construction Documents Phase	percent—(%)
Bidding or Negotiation Phase	percent—(%)
Construction Phase	percent—(%)
<hr/>		
Total Basic Compensation	one hundred percent—(100 %)

§ 11.6 ~~When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.~~ The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. (If applicable, attach an exhibit of hourly billing rates or insert them below.)

See attached Exhibit C – Prevailing Hourly Rates

~~§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. (If applicable, attach an exhibit of hourly billing rates or insert them below.)~~

Employee or Category	Rate
-----------------------------	-------------

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§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent (10 %) of the expenses incurred.
§ 11.8.2.1 See attached Exhibit D – Prevailing Reimbursable Expenses.

...

~~§ 11.10.1~~ An initial payment of ~~(\$)~~ shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

~~§ 11.10.2~~ Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid ~~()~~ days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

~~—%~~

~~§ 11.10.1~~ See attached Exhibit B – Payment Schedule for payments to the Architect. Subject to provisions in Article 9, Architect may stop work for non-payment per schedule.

~~§ 11.10.2~~ Unless otherwise agreed, payments for services shall be made per the Payment Schedule. Payments are due and payable within 30 days of presentation of the Architect's invoice.

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Exhibit A – Project Schedule
Exhibit B – Payment Schedule
Exhibit C – Prevailing Hourly Rates 2015
Exhibit D – Prevailing Reimbursable Expenses

...

Mark Fox
Chairman of the Tribal Council
Three Affiliated Tribes of North Dakota

Gaius G Nelson
President
Nelson Tremain Partnership

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:
- .3 Other documents:
(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)

- Exhibit A – Project Schedule
- Exhibit B – Payment Schedule
- Exhibit C – Prevailing Hourly Rates 2015
- Exhibit D – Prevailing Reimbursable Expenses

This Agreement entered into as of the day and year first written above.

OWNER



(Signature)

Mark Fox
Chairman of the Tribal Council
Three Affiliated Tribes of North Dakota

(Printed name and title)

ARCHITECT



(Signature)

Gaius G Nelson
President
Nelson Tremain Partnership

(Printed name and title)

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AIA[®]

Document B101[™] – 2007

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the 12th day of March in the year 2015
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

Three Affiliated Tribes of North Dakota
404 Frontage Road
New Town, ND 58763 C/o Mark Fox, Tribal Council Chairman

and the Architect:
(Name, legal status, address and other information)

Nelson Tremain Partnership
125 Southeast Main Street
Suite 245
Minneapolis, MN 55414

for the following Project:
(Name, location and detailed description)

Three Affiliated Tribes Law Enforcement Center and Courts Project
New Town, ND

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Init.

User Notes:

TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 ARCHITECT'S RESPONSIBILITIES
- 3 SCOPE OF ARCHITECT'S BASIC SERVICES
- 4 ADDITIONAL SERVICES
- 5 OWNER'S RESPONSIBILITIES
- 6 COST OF THE WORK
- 7 COPYRIGHTS AND LICENSES
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- 9 TERMINATION OR SUSPENSION
- 10 MISCELLANEOUS PROVISIONS
- 11 COMPENSATION
- 12 SPECIAL TERMS AND CONDITIONS
- 13 SCOPE OF THE AGREEMENT

EXHIBIT A INITIAL INFORMATION

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

§1.1.1 Project Description:

The project consists of approximately 28,000 square feet including: Tribal Courts, BIA Law Enforcement Center, and building support functions generally based on the TAT Justice Center Design Development Package dated October 9th, 2014.

§1.1.2 Project Site:

The project is to be built on land held in trust by the United States Federal government for the benefit of the Three Affiliated Tribes, a federally recognized Indian tribe on the Fort Berthold Indian Reservation and generally located on Lots 3, 4 and 5, Block 1, Section 17, Township 152N, Range 92W in Mountrail County, North Dakota near the south west corner of the intersection at ND State Highway 23 and BIA Highway 6.

§ 1.1.3 Financial Parameters:

The financial parameters are as follows: The Owner reports available funding for the total project is approximately \$12,500,000.00 (twelve million five hundred thousand dollars). At the time this agreement is written construction costs are estimated to be approximately \$11,000, 000.00 (eleven million dollars) excluding; professional fees, testing & inspections and TERO (if applicable).

§1.1.4 Proposed Procurement Method:

The proposed construction procurement or delivery method has not been determined at the time of this agreement. Should the Owner elect to proceed with the Construction Management At Risk OR Agency method, the A/E reserves the right to revise and renegotiate this agreement to provide compensation for professional design services related to cost control, cost estimating and multiple bid packages (if required).

§1.1.5 Consultants retained at the Architect's expense include:

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User Notes:

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Specifications Writer
Interior Designer
Structural Engineer
Mechanical, Electrical, Plumbing & Fire Protection Engineer

§1.1.6 Specialty Consultants excluded from the Architect's professional design service:

Civil Engineer
Surveyor Geotechnical Engineer
Communications Design/Engineer (E-911, Law Enforcement Communications)
Acoustic Engineer
Special Testing & Inspections Consultant

The Architect will assist the Owner in soliciting professional design services noted above. It is assumed the Owner will provide these design services as required for the project through the Owner's 3rd party consultants.

§1.1.7 Owner's Designated Representative:

Dennis Fox, Jr., Director of Special Projects
Three Affiliated Tribes of North Dakota
404 Frontage Road
New Town, ND 58763

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

.1 Commencement of construction date:

Estimated to be on or about May, 2015

.2 Substantial Completion date:

Estimated to be on or about April, 2016

See attached Exhibit A – Preliminary Project Schedule – subject to change as project progresses through design and construction

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

Randall M. Lindemann, AIA, LEED AP
Nelson Tremain Partnership (NTP)

Init.

125 Southeast Main Street, Suite 245
Minneapolis, MN 55414

612-331-7178

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:
(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

.1 General Liability

\$1,000,000 per occurrence / \$1,000,000 aggregate

.2 Automobile Liability

\$1,000,000 Combined Single Limit

.3 Workers' Compensation

\$500,000

.4 Professional Liability

\$1,000,000 per occurrence \$1,000,000 aggregate

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary architectural, interior design, structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the

Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review schematic design phase documents previously completed as provided by the Owner. No further schematic design phase services are included.

(Paragraphs deleted)

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 The Architect shall review design development phase documents previously completed as provided by the Owner. No further design development phase services are included.

(Paragraphs deleted)

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall review the estimate for the Cost of the Work prepared by the Owner's 3rd Party Consultant or Construction Manager and make recommendations to the Owner in accordance with § 6.2 and § 6.3.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

These services will be provided by the Construction Manager, but the Architect will promptly review either in person or by electronic means all bids at the time of bid opening and will coordinate with the Contractor and Owner in evaluating bids and making awards. The Architect shall incorporate all requirements of applicable law regarding preference in contracting.

(Paragraphs deleted)

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2007, those modifications shall not affect the Architect’s services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor’s failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect’s negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect’s responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 EVALUATIONS OF THE WORK

(Paragraph deleted)

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect’s response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect’s decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

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§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information from the Owner and its Agents about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

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§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work, and provide notification of all changes to the Owner, that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner’s approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner’s review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect’s inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect’s responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Additional Services	Responsibility <i>(Architect, Owner or Not Provided)</i>	Location of Service Description <i>(Section 4.2 below or in an exhibit attached to this document and identified below)</i>
<i>(Rows deleted)</i>		
§ 4.1.1 Civil Engineering	Owner	
§ 4.1.2 Landscape Design	Owner	
§ 4.1.3 Architectural Interior Design	Architect	
<i>(Row deleted)</i>		
§ 4.1.4 Detailed cost estimating	Construction Manager	
<i>(Rows deleted)</i>		
§ 4.1.5 As-Designed Record drawings	Architect	
§ 4.1.6 As-Constructed Record drawings	Contractor	
<i>(Rows deleted)</i>		

- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of bidders or persons providing proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 Up to One (1) visit to the site per month by the Architect over the duration of the Project during construction through April 2016 completion date.
- .3 One (1) inspection for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 One (1) inspection for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within Twenty (20) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within Thirty (30) days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

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§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.13 Any direct communications between the Owner or Owner's designated Representative and the Construction Manager that affect the performance or administration of the Work shall be made or confirmed in writing with copies to the Architect.

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ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include; contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work, TERO or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Owner's 3rd Party Consultant or Construction Manager, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 In reviewing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's review of the Contractor's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. The Owner is to provide detailed cost estimating through the Owner's 3rd Party Consultant or Construction Manager under a separate agreement. If the Owner requests detailed cost estimating services from the Architect, the Architect shall provide such services as an Additional Service under Article 4.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 The Owner's 3rd Party Consultant or Construction Manager shall bear primary responsibility for estimating the Cost of the Work. If at any time the estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of

Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 Waivers of Subrogation. To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American

Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

- Arbitration pursuant to Section 8.3 of this Agreement
- Litigation in any court of applicable and competent jurisdiction pursuant to Section 8.3 of this Agreement
- Other (Specify)

(Paragraphs deleted)

§ 8.3 LIMITED WAIVER OF SOVEREIGN IMMUNITY

§8.3.1 The Parties acknowledge the Owner is a federally recognized Indian Tribe possessing sovereign immunity from suit and other legal proceedings. The Tribe, pursuant to a duly signed resolution adopted by the Tribal Business Council, agrees to grant an limited waiver of its immunity from suit for the sole purpose of enforcing the terms of this Agreement and consents to be sued should an action be commenced against it to determine the rights and obligations of the parties to this Agreement.

§8.3.2 The waiver is limited to remedies only for liability arising from the willful breach of any term of this agreement by the Tribe and is further limited to damages only up to those amounts hereby contracted and agreed to. Any other trust or non-trust asset of Owner is explicitly excluded from this waiver. This waiver of immunity is further limited to suits commenced against the Tribe in any court of applicable and competent jurisdiction.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services in an effort to allow Owner to cure the nonperformance. In the event of a suspension of services, the Architect shall have no liability to the Owner and shall be indemnified by the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted. Such suspension of services by Architect may include holding documents for governing agency approvals, holding construction documents for bidding or permitting, or not appearing in requested meetings on behalf of the Owner.

§ 9.2 If the Owner suspends the Project for reasons not related to Architect's nonperformance, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect

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shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 consecutive days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all reasonable Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include reasonable expenses directly attributable to termination for which the Architect is not otherwise compensated.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

§ 9.9 If a contract for construction has not been awarded within 30 calendar days of the date of receipt of bids in which the budget for Cost of Work has not been exceeded by the lowest bona fide bid or negotiated proposal, subsequent services provided by the Architect until execution of the Contract for Construction shall be considered as Additional Services and the Architect shall be compensated on an hourly basis for these services until execution of a Contract for Construction. These additional services include, but are not limited to meetings with the Owner and/or prospective Contractors, assistance with rebidding or work, evaluation of bids or proposed changes in bidding documents, analysis of product substitutions, etc. Execution of a Contract for Construction constitutes authorization by the Owners to the Architect to proceed with services of the Construction phase.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the laws of the Three Affiliated Tribes of the Fort Berthold Reservation and in the absence of such substantive contract law, by applicable federal law.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

The Architect's compensation for the basic services included in this agreement shall be a fixed fee of \$599,000.00 plus reimbursable expenses. This is based on an initial construction budget estimate of \$6.57 million multiplied by 8% (\$525,458.00) plus the Design Development construction estimate increase of \$4.46 million multiplied by 7.625% (\$340,794.00) for a total fee of \$866,252.00 less \$267,252.00. Payments shall be made in accordance with Exhibit B Payment Schedule.

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows: *(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)*

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows: *(Insert amount of, or basis for, compensation.)*

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus one and one quarter percent (1.25 %), or as otherwise stated below:

§ 11.5 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

(Table deleted)

§ 11.6 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

See attached Exhibit C – Prevailing Hourly Rates

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(Table deleted)

(Paragraphs deleted)

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent (10 %) of the expenses incurred.

§ 11.8.2.1 See attached Exhibit D – Prevailing Reimbursable Expenses.

§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

§ 11.10 PAYMENTS TO THE ARCHITECT

(Paragraphs deleted)

§ 11.10.1 See attached Exhibit B – Payment Schedule for payments to the Architect. Subject to provisions in Article 9, Architect may stop work for non-payment per schedule.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made per the Payment Schedule. Payments are due and payable within 30 days of presentation of the Architect's invoice.

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B101™–2007, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

- .3 Other documents:
(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)

- Exhibit A – Project Schedule
- Exhibit B – Payment Schedule
- Exhibit C – Prevailing Hourly Rates 2015
- Exhibit D – Prevailing Reimbursable Expenses

This Agreement entered into as of the day and year first written above.

OWNER



(Signature)

Mark Fox
Chairman of the Tribal Council
Three Affiliated Tribes of North Dakota

(Printed name and title)

ARCHITECT

(Signature)

Gaius G Nelson
President
Nelson Tremain Partnership

(Printed name and title)

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Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Gaius G. Nelson, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:21:21 on 03/12/2015 under Order No. 2024247574_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ – 2007, Standard Form of Agreement Between Owner and Architect, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

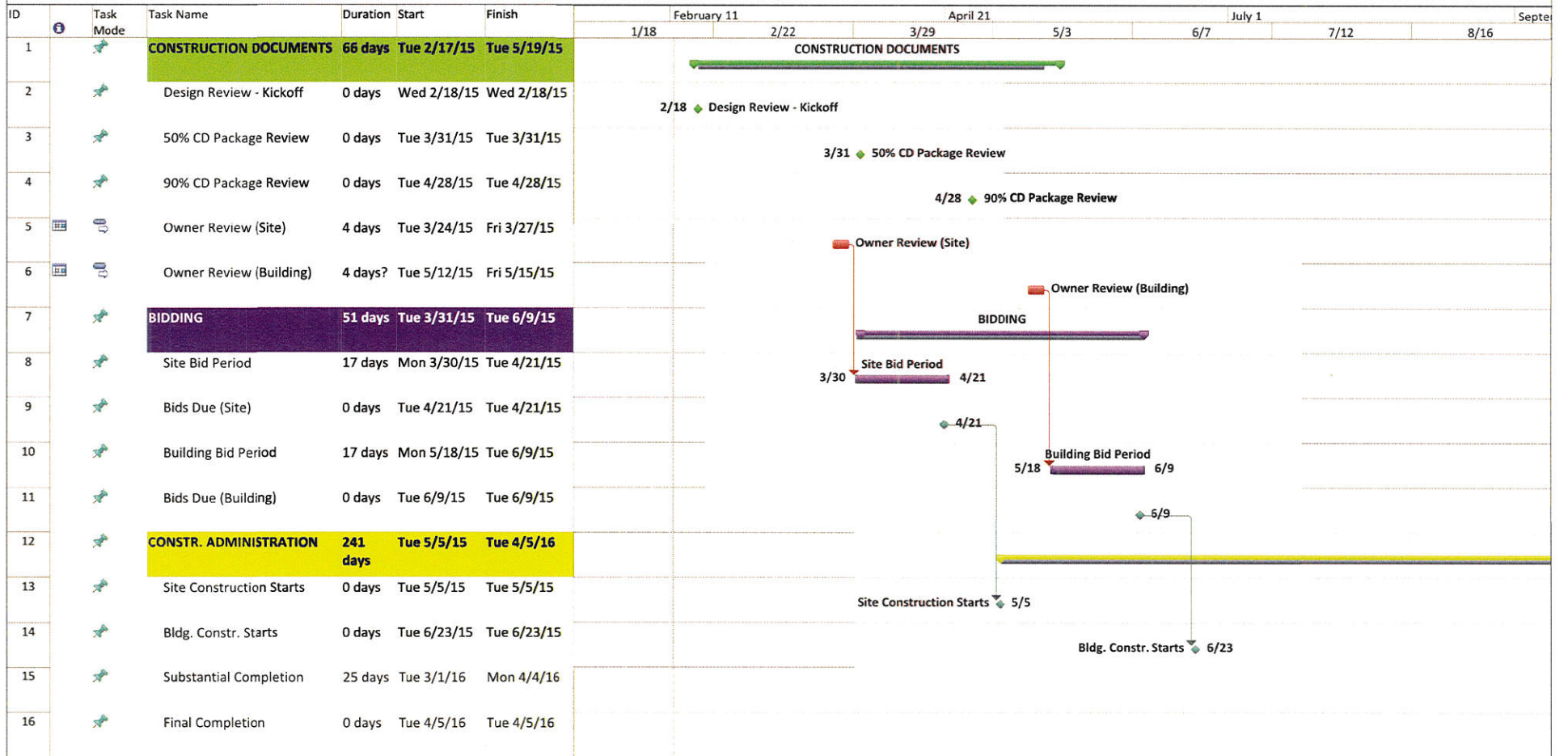
(Title)

(Dated)

Exhibit A - Project Schedule

THREE AFFILIATED TRIBES OF NORTH DAKOTA MHA-NATION LEC & COURTS PROJECT

Nelson-Treman Partnership
ARCHITECTURE AND DESIGN FOR ACHIEVING
125 Southeast Main Street, Suite 245 • Minneapolis, Minnesota 55414 • Tel: (612) 331-7175 • Fax: (612) 331-8255 • www.ntrp.com



Project: TAT Overall Project 02121 Date: Thu 2/12/15	Task		Project Summary		Inactive Milestone		Manual Summary Rollup		Deadline	
	Split		External Tasks		Inactive Summary		Manual Summary		Progress	
	Milestone		External Milestone		Manual Task		Start-only			
	Summary		Inactive Task		Duration-only		Finish-only			

THREE AFFILIATED TRIBES OF NORTH DAKOTA
MHA-NATION
LEC & COURTS PROJECT

Exhibit B - Payment Schedule

Exhibit B - Payment Schedule						
Phase	Invoice No.	Period	%	Amount	Payment Date	
	1		11.81%	\$70,755.00	Payment due upon contract execution	
CD/B	5	March-15	17.35%	\$103,929.00	April 15, 2015	
CD/B	6	April-15	17.35%	\$103,929.00	May 15, 2015	
CD/B	7	May-15	17.35%	\$103,929.00	June 15, 2015	
CA	8	June-15	3.29%	\$19,678.00	July 15, 2015	
CA	9	July-15	3.29%	\$19,678.00	August 15, 2015	
CA	10	August-15	3.29%	\$19,678.00	September 15, 2015	
CA	11	September-15	3.29%	\$19,678.00	October 15, 2015	
CA	12	October-15	3.29%	\$19,678.00	November 15, 2015	
CA	13	November-15	3.29%	\$19,678.00	December 15, 2015	
CA	14	December-15	3.29%	\$19,678.00	January 15, 2016	
CA	15	January-16	3.29%	\$19,678.00	February 15, 2016	
CA	16	February-16	3.29%	\$19,678.00	March 15, 2016	
CA	17	March-16	3.29%	\$19,678.00	April 15, 2016	
CA	18	April-16	3.29%	\$19,678.00	May 15, 2016	
			100.00%	\$599,000.00		
CD	Construction Documents					
B	Bidding					
CA	Construction Administration					

Exhibit C • Prevailing Hourly Rates 2015

<u>Category/Position</u>	<u>Hourly Rate</u>	<u>Description of Category</u>
Principal	\$175	Principals who lead client projects
Architect I	\$125	All registered or licensed professionals with 10 or more years of experience. All personnel in equivalent roles in related professional disciplines in which there is no registration, but who have 15 years of experience in their field including 10 years of experience in leadership roles in those related disciplines. Examples of these disciplines are: Construction Administration, Design, Technology or similar areas of expertise.
Architect II	\$95	New registrants and all registered professionals with 10 years or less since registration. Non-registered Architectural or Design personnel who have more than 15 years of experience in their professional discipline and are in direct professional leadership roles in their field. All personnel in equivalent roles in related professional disciplines in which there is no registration, but who have 15 years of experience and are in direct leadership roles in their field. Examples of these disciplines are: Construction Administration, Design, Technology or similar areas of expertise.
Professional Support	\$75	Non-registered Architectural or Design personnel who have 10 or less years of experience in their professional discipline. All personnel in related professional disciplines in which there is no registration, with 10 or less years of experience in their professional support field. Examples of these disciplines are: Drafters, CADD technicians, Designers and similar technicians without registration, with 10 or less years of experience in their professional support field.
Clerical	\$45	All Administrative support, clerical and word processing personnel with 10 years of experience.
Other		Engineering and other Design Consultants required by the Owner to complete the project will be billed at our direct cost with an additional mark-up of 25%.

Effective January 1, 2015
Subject to Periodic Adjustment

Exhibit D • Prevailing Reimbursable Expenses 2015

<u>Description</u>	<u>Rates</u>
Reproduction/Scanning	
8-1/2" x 11" B&W Bond _____	\$.10
8-1/2" x 11" Color _____	\$ 1.00
8-1/2" x 11" Scanning _____	\$.10
11" x 17" B&W Bond _____	\$.20
11" x 17" Color _____	\$ 2.00
11" x 17" Scanning _____	\$.20
HP Plotter B&W Bond Plots _____	\$ 1.00/sf
HP Plotter Color Bond Plots _____	\$ 4.50/sf
HP Plotter Color Non-Glossy 7 mil Paper Plots _____	\$ 6.00/sf
HP Plotter Color Glossy Paper Plots _____	\$10.00/sf
Foam Core Boards (depending on size)	\$4.00 – 14.00
Mileage (rate per mile)	Prevailing IRS Rate
Airfare	As billed to NTP
Auto Rental	As billed to NTP
Other Transportation	As billed to NTP
Parking and Tolls	As billed to NTP
Meals	As billed to NTP
Lodging	As billed to NTP
Postage/Delivery Charges	As billed to NTP
Telephone (Long Distance)	As billed to NTP
Materials and Supplies	As billed to NTP
Models and Renderings (Presentation)	As billed to NTP
Photographic/Film	As billed to NTP
Codes/Ordinances	As billed to NTP
Legal	As billed to NTP
Consultants	Per AIA Agreement

Project Reimbursable Expenses will be invoiced at cost plus 10%, except Consultants which will be billed as noted.

Effective January 1, 2015
Subject to Periodic Adjustment



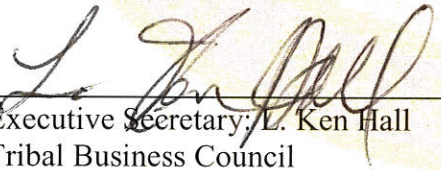
CERTIFICATION

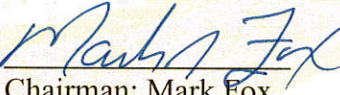
I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Indian Reservation hereby certify that the tribal Business Council is composed of seven (7) members of whom five (5) constitute a quorum, 7 were present at a Regular Meeting thereof duly called, noticed, convened and held on the 13th day of March, 2015, that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of 7 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 13th day of March, 2015.

ATTEST:


Executive Secretary: L. Ken Hall
Tribal Business Council
Three Affiliated Tribes


Chairman: Mark Fox
Tribal Business Council
Three Affiliated Tribes