



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

A Resolution Entitled: “Approval of Design-Build Contract for the Mandaree Pow Wow Facility with Panther Development Investments, LLC, of Boca Raton Florida; Authorization for West Segment Development Corporation to drawdown FY 2015 funds in the amount of 1,000,000.00 for payment of its obligations under the Design-Build Contract”

- WHEREAS,** This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act and having adopted a Constitution and By-Laws pursuant to said Act; and
- WHEREAS,** The Constitution of the Three Affiliated Tribes generally authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and
- WHEREAS,** Article III of the Constitution of the Three Affiliated Tribes provides that the Tribal Business Council is the governing body of the Tribes; and
- WHEREAS,** Article VI, Section 5(1) of the Constitution of the Three Affiliated Tribes provides that the Tribal Business Council has the power to adopt resolutions regulating the procedure of the Tribal Business Council and other Tribal agencies and Tribal officials of the Reservation; and
- WHEREAS,** The Tribal Business Council passed Resolution No. 97-213-DSB, establishing a charter of the West Segment Development Corporation, a non-profit corporation, as attached hereto; and
- WHEREAS,** Article III of the Corporate Charter states as follows: Section B) To engage in any lawful activity in furtherance of the aforementioned purpose and have all the powers and rights conferred by the Three Affiliated Tribes pursuant to the grant of the Charter to the Corporation; C) To generate revenue, after costs of the corporation, for the establishment of or operation of social programs within the six segments located on the Fort Berthold Reservation; and
- WHEREAS,** Article IV, Section C of the Corporate Charter states: To purchase, take, receive, lease, take by gift, devise or bequest or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated; and
- WHEREAS,** Article IV, Section D of the Corporate Charter states: To sell, convey, mortgage, pledge, lease, exchange, transfer, or otherwise dispose of all or any part of its property or assets; and



WHEREAS, The West Segment has been budgeted \$1,000,000.00 from the FY 2015 Tribal general fund for construction of the Mandaree Pow Wow Facility; and West Segment is requesting an immediate drawdown of \$500,000.00 of these funds for the initial mobilization payment, and authorization for payments thereafter on the balance of \$500,000.00 to be disbursed according to the terms of the Design-Build Contract,

THEREFORE BE IT RESOLVED, that the Tribal Business Council of the Three Affiliated Tribes acknowledges and recognizes the cultural and social benefit that a Pow Wow Facility provides for all tribal members at large and in this case the tribal members of the West Segment community, and the inherent benefit therefore.

BE IT FURTHER RESOLVED, that the Tribal Business Council of the Three Affiliated Tribes hereby approves the Design-Build Contract for the Mandaree Pow Wow Facility with Panther Development Investments, LLC, of Boca Raton, Florida, and authorizes execution thereof, and further authorizes West Segment Development Corporation Board of Directors to immediately drawdown \$500,000.00 of the allocated funds for mobilization payment and authorizes payments thereafter on the remaining \$500,000.00 in accordance with the terms of the Design-Build Contract.

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(Certification page to follow)*

**DESIGN-BUILD CONTRACT
(Mandaree Pow Wow Facility)**

1. PARTIES:

This Design-Build Contract (this "Contract") is entered into this 13 day of March, 2015 (the "Effective Date") by and between **WEST SEGMENT DEVELOPMENT CORPORATION**, whose address is 404 4TH Ave., NE Ridge Road, Mandaree, ND 58757, and **THREE AFFILIATED TRIBES OF THE FORT BERTHOLD INDIAN RESERVATION**, a body sovereign, whose address is 404 Frontage Road, New Town, N.D. 58763 (together, "Owner"), and **PANTHER DEVELOPMENT INVESTMENTS, LLC**, a Florida limited liability company, whose principal address is 6401 Congress Avenue, Suite 250, Boca Raton, FL 33487 (hereinafter "Contractor").

THE PARTIES AGREE AS FOLLOWS:

2. CONTRACT PURPOSE:

Owner owns the property depicted on Exhibit "A" hereto (the "Property"). The purpose of this Contract is to hire Contractor to manage and supervise the design and construction of a pow wow facility (the "Project"), to be located on the Property. In this Contract, Owner and Contractor wish to establish the terms and conditions under which the design and construction of the Project will be conducted.

3. CONTRACT WORK AND TERM:

Design Phase.

(a) Within five (5) days of execution of this Contract and payment of the Deposit (as defined herein), Contractor shall commence the design of the Project and preparation of design drawings consistent with the schematic design attached hereto as Exhibit "B" (the "Design Drawings"). Upon completion of the Design Drawings, Contractor shall deliver to Owner the Design Drawings for review and approval. Owner shall deliver written approval or comments on the Design Drawings to Contractor within ten (10) days of receipt of the Design Drawings. If Owner provides written comments to Contractor, then Contractor and Owner shall work through the comments and revise the Design Drawings until Owner has approved the Design Drawings (the "Approved Design Drawings").

(b) Within ten (10) days of Owner's written approval of the Design Drawings, Contractor shall use the Approved Design Drawings, to prepare construction drawings for the Project (the "Plans and Specifications").

Construction Phase.

(c) Upon completion of the Plans and Specifications and review and written approval of same by Owner (“Approved Plans and Specifications”), the parties shall execute an Amendment to this Contract, attaching both the Approved Plans and Specifications as Exhibit “C” to this Contract and the approved Construction Schedule as Exhibit “D” to this Contract (“Construction Schedule”). Within five (5) business days following the execution of the Amendment to Contract, the Contractor shall commence the construction of the Work (as hereinafter defined); provided, however, that prior to commencement of any construction work, the Contractor shall show proof of general liability insurance, TERO license and bonds furnished by subcontractors, whether they be prepayment, performance or payment bonds.

(d) Time is of the essence in performing the Work in accordance with the Construction Schedule. The Owner reserves the right to terminate this Contract and seek Liquidated Damages (as defined below) if the Contractor, due to its own fault or that of its subcontractors, does not substantially complete construction of the Work in accordance with the Construction Schedule; provided, however, that: (i) any delay beyond the Contractor's control shall extend the Contractor's time to perform its obligations hereunder in an amount equal to the time lost due to such delay; and (ii) before exercising any such right, Owner shall provide Contractor with written notice of its failure to perform and Contractor shall be given the opportunity to cure such default as provided in Section 8 hereof. Liquidated Damages shall be in such amount as is required for completion of construction of the Work hereunder (as reasonably determined by Owner's engineer, Bartlett & West), but will in no event be greater than 120% of the balance of payments remaining due to Contractor. Delays beyond the Contractor's control shall include, but not be limited to, acts or neglect by the Owner, or its agents or consultants, fires, floods, adverse weather conditions, material shortages and/or acts of God.

(e) Contractor and Contractor's consultants shall be deemed the authors and owners of all Design Drawings, Plans and Specifications and other work product produced and/or delivered hereunder, and shall retain all common law, statutory and other reserved rights, including copyrights. Contractor grants to Owner a non-exclusive and non-transferable license to use Contractor's Design Drawings, Plans and Specifications and other work product solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that Owner substantially performs its obligations, including prompt payment of all sums when due, under this Contract.

(f) The Construction Schedule may only be extended or changed as provided above in this Section 3 or by Change Order as set out in Section 11 of this Contract.

4. CONTRACT DOCUMENTS:

The Contract Documents consist of this Contract, all Exhibits attached hereto and the following documents, all of which are hereby incorporated into this Contract by this reference:

1. Owner's General Contract Provisions, if any, which are attached as an Exhibit to this Contract.
2. Approved Plans and Specifications to be attached hereto as Exhibit “C” by Amendment to Contract in accordance with Section 3(c) hereof.

3. The Construction Schedule to be attached hereto as Exhibit "D" by Amendment to Contract in accordance with Section 3(c) hereof.
4. The Payment Schedule attached hereto as Exhibit "E" and made a part hereof.
5. Any Change Orders approved pursuant to this Contract.

5. SERVICES TO BE PERFORMED:

Contractor shall furnish the design services for the Project described in Section 3 hereof, together with the supervision, labor, tools, and equipment, necessary to construct the improvements to the Project in accordance with the Approved Plans and Specifications (hereinafter collectively called the "Work") and shall prosecute the Work diligently and in a workmanlike manner. Contractor shall perform the Work in accordance with this Contract, the Approved Plans and Specifications, and the other Contract Documents attached as Exhibits hereto.

The Contractor shall notify the Owner when the construction portion of the Work is completed and shall participate with the Owner's Project Manager in conducting a final inspection.

The Contractor shall not file a mechanic's or materialman's lien or maintain any claim against the Owner's estate in the subject real property, or any improvements thereon, for or on account of any work done, labor performed or materials furnished under this Contract.

6. CONTRACT PRICE AND PAYMENTS:

In consideration of the Work to be performed under this Contract, the Owner shall pay the Contractor the total sum of One Million and 00/100 Dollars (\$1,000,000.00) (the "Contract Price"), which shall consist of an initial deposit of Five Hundred Thousand and 00/100 Dollars (\$500,000.00) (the "Deposit") and a remaining balance of Five Hundred Thousand and 00/100 Dollars (\$500,000.00) ("Remaining Balance"), which amounts shall be paid in accordance with the Payment Schedule attached hereto as Exhibit "E" ("Payment Schedule") for the Project (collectively, the "Payments"). The Owner shall hold back five percent (5%) of the Payments relating to the Remaining Balance as a contingency payment, which will be paid with the final progress payment upon substantial completion of the construction and final inspection and acceptance of the construction portion of the Work by the Owner. There will be no holdback on the Deposit.

The Contract Price does not include the cost of permits, fees, inspection costs and/or taxes required by any division of the Federal, State, local government, or other governing body, including, but not limited to, the Fort Berthold Indian Reservation, required to perform the Work (which will be paid for directly by the Owner). Owner agrees to waive any and all TERO taxes related to this Contract. Owner shall execute any and all necessary documents within five (5) days after presentment of same to the Owner, and fully cooperate with the Contractor, in order to obtain permits or approvals of the Work.

The Contract Price shall not be changed except by Change Order as set out in Section 11 of this Contract.

Payments required under this Section shall not be paid until: (i) the Contractor has submitted a complete Payment request setting forth the services performed by the Contractor and substantiating the Payment; and (ii) if required by Owner, the Work has been inspected and approved by Owner's engineers, Bartlett & West. The Contractor must make itself familiar with the Tribe's Finance Department's process and procedures to ensure that timely invoices are submitted so that timely payment may be made as provided in this Section.

In the event that either party terminates this Contract as provided in Section 8, the Contractor shall reimburse the Owner on a pro rata basis for any amounts advanced and not earned by the Contractor.

7. PROJECT MANAGER:

For the Owner: Delvin Reeves
For the Contractor: Alex Moreno

8. TERMINATION OF CONTRACT:

Termination by Owner:

The Owner may terminate this Contract for cause under any one of the following conditions:

- (a) Contractor persistently fails to perform the Work in accordance with the Contract Documents;
- (b) Contractor's failure to comply with applicable laws as required by Section 13 of this Contract;
- (c) Contractor's disregard of the authority of the Project Manager; and
- (d) Contractor's violation in any substantial way of any provision of this Contract or the Contract Documents.

If one or more of the conditions identified above occur, the Owner may, after giving Contractor (and surety) seven (7) days written notice of its intent to terminate the Contract:

- i. Exclude Contractor from the Project, and take possession of the Work and of all of Contractor's tools and appliances at the Project, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);
- ii. Incorporate into the Work any and all materials and equipment stored at the Project site or for which the Owner has paid Contractor, but which are stored elsewhere; and
- iii. Complete the Work as the Owner may deem expedient.

If the Owner proceeds as provided in this Section, Contractor shall not be entitled to receive any further compensation until the Work is completed. If the unpaid balance of the Contract Price exceeds

all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or mediation/arbitration or other dispute resolution costs) sustained by the Owner arising out of or relating to completing the Work, such excess will be paid to the Contractor. If such claims, costs, losses, and damages incurred by the Owner exceed such unpaid balance, Contractor shall (subject to Section 3(d) hereof) pay the difference to the Owner.

Notwithstanding the termination provisions provided above, the Contract will not be terminated if Contractor begins, within seven (7) days of receipt of notice of intent to terminate, to correct its breach and proceeds diligently to cure such breach within no more than thirty (30) days of receipt of such notice.

If the Contract is terminated by the Owner as provided for above, the termination will not affect any rights or remedies of the Owner against Contractor then existing or which may thereafter accrue. Any retention of payment of funds due Contractor by the Owner will not release Contractor from liability.

The Owner may also terminate this Contract without cause and without prejudice to any other right or remedy of the Owner by giving the Contractor seven (7) days prior written notification. In such case, Contractor shall be paid for (without duplication of any item):

- (a) Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination;
- (b) Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work;
- (c) All claims, costs, losses and damages incurred in settlement of terminated contracts with subcontractors, suppliers, consultants, architects and engineers; and
- (d) Reasonable expenses directly attributable to termination.

Termination by Contractor:

If, through no act or fault of Contractor:

- (a) The Work is suspended for more than fifteen (15) consecutive days by the Owner or under an order of a court or other public authority; or
- (b) The Owner fails for thirty (30) days to pay Contractor any sum due under the Contract Documents;

then, Contractor may, upon seven (7) days written notice of breach to the Owner and the Project Manager, and provided the Owner does not remedy such breach within that time, terminate the Contract and recover from the Owner payment under the same terms as provided for in this Section for termination without cause by the Owner.

In lieu of terminating the Contract and without prejudice to any other right or remedy, if the Owner has failed for thirty (30) days to pay Contractor any sum due under the Contract Documents, Contractor may, seven (7) days after written notice to the Owner and the Project Manager, stop the Work until payment is made by the Owner of all such amounts due to Contractor.

9. INSURANCE & INDEMNIFICATION:

The Contractor shall provide general liability insurance coverage in the amount of \$1,000,000.00 at all times during the construction portion of the Work of this Contract to protect the Owner in the event that the Contractor's negligent or willful acts or omissions cause damage to the property of the Owner, any customer or company affiliated with the Owner or any other individual. Proof of general liability insurance shall be provided to the Owner prior to the commencement of any construction Work under this Contract.

Contractor agrees to indemnify, defend, and hold harmless the Owner and its officials, agents and employees for any liability whatsoever (including legal fees and costs) incurred as a result of a breach of this Contract or any acts or omissions or negligence, whether willful or not, of the Contractor, the Contractor's employees, agents and subcontractors (if any) supplying work, materials, services, or supplies in connection with the performance and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of this Contract.

At its option, the Owner shall be responsible for and provide builders risk insurance on the Project.

10. BOND REQUIREMENTS:

All subcontractors shall provide prepayment, performance and/or payment bonds in amounts equal to their contract amounts and provide written proof to Owner's Engineer, Bartlett & West, of such bond prior to commencing their respective construction work.

11. CHANGE ORDERS:

Without invalidating this Contract, the Owner may order additions, deletions or revisions in the Plans and Specifications or scope of work by issuance of a written Change Order. Upon receipt of such Change Order, Contractor shall promptly proceed with the Work involved, which will be performed under the applicable conditions of the Contract Documents. The parties shall agree on the amount of the adjustment to the Contract Price or the Construction Schedule, if any, that may be allowed based on the Change Order.

12. CORRECTION PERIOD/WARRANTY:

The Contractor agrees to remedy all material defects appearing in the Work performed by Contractor or developing in the materials furnished or the workmanship performed during a one (1) year warranty period after the date of final acceptance of the construction portion of the Work by the Owner. The Contractor shall indemnify and save the Owner harmless from any costs encountered in remedying such defects.

13. COMPLIANCE WITH APPLICABLE LAWS:

The Contractor shall comply with all applicable Federal, State, and Tribal laws and regulations in performing this Contract. The Contractor and subcontractors shall apply for and obtain a TERO License and pay any applicable TERO taxes or fees, except for such TERO taxes as may be waived by TAT Business Council.

14. INDEPENDENT CONTRACTOR:

The Contractor assures the Owner that the Contractor is an independent contractor providing services for the Owner and that neither the Contractor nor any of the Contractor's employees, consultants, etc., are employees of the Owner under this Contract or any subsequent amendment or extension hereof. Contractor has no power or authority to act for, represent or bind the Owner or any entity affiliated with the Owner in any manner. Contractor and Contractor's employees are not entitled to any medical coverage, life insurance, or participation in any other benefits afforded to the Owner regular employees, or those of the Owner's affiliated entities. If the Owner or any of the Owner's affiliated entities are required to pay or withhold any taxes or make any other payment with respect to fees payable to Contractor, Contractor will reimburse the Owner or the affiliated entity in full for taxes paid, and permit the Owner to make deductions for taxes required to be withheld from any sum due Contractor.

The Contractor is solely responsible for assuring compliance with all legal requirements, including payment of all applicable taxes, premiums, deductions, withholdings, overtime and other amounts which may be legally required with respect to the employment of any persons providing services to the Contractor or any of its subcontractors or consultants under this Contract. The contractor agrees that the Contractor shall indemnify the Tribe for any and all claims, obligations, liabilities, costs, attorney fees, losses or suits accruing or resulting from: (i) the Contractor's failure to comply with this Contract; or (ii) from any ruling of any legal authority or claims by any subcontractor, consultant, employee or alleged employee of the Contractor, that the Contractor or a person the Contractor has held out to be his/her employee is an employee of the Tribe.

15. CONTRACTOR NOT TO ENGAGE IN CONFLICTING ACTIVITIES:

During the time of this Contract, Contractor will not enter into any activity, employment or business arrangement conflicting with Owner's interests or Contractor's status. The Owner shall have the option of terminating this Contract at any time if, in Owner's sole judgment, a conflict of interest exists or is imminent. Contractor will advise the Owner of Contractor's position with respect to any activity, employment, or business arrangement contemplated by Contractor that may be relevant to this Section. For this purpose, Contractor agrees to disclose any such plans to the Owner prior to implementation.

16. WARRANTY THAT CONTRACT DOES NOT CONTEMPLATE CORRUPT PRACTICES - DOMESTIC OR FOREIGN:

Contractor represents and warrants that: (a) all payments under this Contract constitute compensation for services performed; and (b) this Contract and all payments, and the use of the payments by

Contractor, do not and shall not constitute an offer, payment, or promise, or authorization of payments, and of any money or gift to an office or political party of, or candidate for political office in, any jurisdiction within or outside the United States. These payments may not be used to influence any act or decision of any official, party, or candidate to use his, her or its influence with a government to affect or influence any act or decision of such government to assist the Owner in obtaining, retaining, or directing business to Contractor or any person or other corporate entity. As used in this paragraph, the term "official" means any officer or employee of a government, or any person acting in an official capacity for or on behalf of any government; the term "government" includes department, agency, or instrumentality of a government.

17. DISPUTE RESOLUTION:

This Contract was executed and is to be carried out on the Fort Berthold Indian Reservation. Any dispute between the parties herein arising out of the terms, conditions, obligations, responsibilities, duties or any other matter is subject to the jurisdiction of the Courts of the Three Affiliated Tribes and the Contractor hereby agrees that the parties have entered into a contractual relationship and consents to the jurisdiction of the Tribal Court.

Nothing contained in this Section is intended to prevent the parties from mutually agreeing to mediate or arbitrate any dispute. Any mediation shall be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the effective date of this Contract.

18. GOVERNING LAW:

This Contract is subject to and shall be interpreted in accordance with the laws of the Three Affiliated Tribes.

19. ASSIGNMENT OF RIGHTS AND DELEGATION OF DUTIES:

Except with respect to Contractor's right to engage design professionals, engineers, subcontractors and consultants in connection with the performance of its obligations hereunder, the rights and duties under this Contract may not be assigned or delegated by either party without the prior written consent of the other.

20. SEVERABILITY:

It is understood and agreed by the parties hereto that if any term or provision of this Contract is held to be illegal, void or in conflict with any applicable Tribal, State or Federal law, the validity of the remaining terms and provisions shall not be affected, and the right and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

21. WAIVER:

Waiver of any default, breach or failure to perform under this Contract is not deemed to be a waiver of any subsequent default, breach or failure of performance. In addition, waiver of any default, breach or

failure to perform is not to be construed to be a modification of the terms of this Contract unless reduced to writing as an amendment to this Contract.

22. ENTIRE CONTRACT AND MODIFICATION:

This Contract and the Contract Documents contains the entire agreement between the parties. This Contract may not be modified except by later written amendment signed by both parties.

23. SOVEREIGN IMMUNITY:

Nothing in this Contract shall be construed, held or interpreted as a waiver of the sovereign immunity of the Three Affiliated Tribes of the Fort Berthold Indian Reservation, its officials, agents or assigns.

[Signature page to follow]



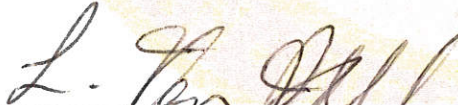
CERTIFICATION

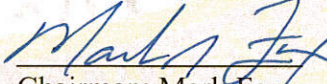
I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Indian Reservation hereby certify that the tribal Business Council is composed of seven (7) members of whom five (5) constitute a quorum, 7 were present at a Regular Meeting thereof duly 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