



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

**A Resolution entitled: “*Approving Construction of a Safe Haven/Transition Home for Four Bears Segment.*”**

**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, also known as the Mandan, Hidatsa, and Arikara Nation (“Tribes” or “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 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 (l) 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

**WHEREAS,** Article VI, Section 5(c) of the Three Affiliated Tribes Constitution specifically authorizes and empowers the Tribal Business Council to administer funds within the exclusive control of the Tribes and to make expenditures from available Tribal funds for public purposes for the Tribes; and

**WHEREAS,** The Tribal Business Council through Resolution 20-235-FWF, previously approved that a Safe Haven Home be constructed in the Four Bears Segment; and

**WHEREAS,** The Tribal Business Council has awarded a Contract to Right Way Advanced Roofing & Framing, LLC to construct a custom ranch style stick home, which will be the Safe Haven/Sober Living Home for the Four Bears Segment; and

**NOW, THEREFORE, BE IT RESOLVED,** that the Tribal Business Council of the Three Affiliated Tribes hereby approves, a construction contract with Right Way Advanced Roofing & Framing, LLC, for the construction of the Custom Safe Haven/Sober Living Home in Four Bears Segment; and

**BE IT FURTHER RESOLVED,** that the total cost of the Contract shall not exceed \$555,400.00 for construction of a livable space of 2,820 square feet Stick Built home in the Four Bears Segment, with five (5) bedrooms and three and one-half (3 ½) bathrooms with an attached one-car garage and driveway; and

**BE IT FINALLY RESOLVED,** that the Tribal Business Council hereby authorizes the Tribal



Chairman and Treasurer to execute the aforementioned legally reviewed construction contract with Right Way Advanced Roofing & Framing LLC Construction to construct a 2,820 sq. ft. Safe Haven/Sober Living Home in the Four Bears Segment.

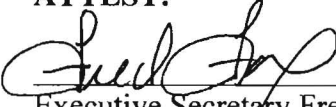
**CERTIFICATION**

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 12<sup>th</sup> day of October, 2022, 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 [ X ] Voting. [ ] Not Voting.

Dated this 12<sup>th</sup> day of October, 2022.

**ATTEST:**

  
\_\_\_\_\_  
Executive Secretary Fred Fox  
Tribal Business Council  
Three Affiliated Tribes

  
\_\_\_\_\_  
Tribal Chairman, Mark N. Fox  
Tribal Business Council  
Three Affiliated Tribes

**CONTRACTOR CONSTRUCTION AGREEMENT**  
**Between THE THREE AFFILIATED TRIBES**  
**and RIGHT WAY ADVANCED ROOFING AND FRAMING, LLC**

AGREEMENT MADE as of 10/12/2022, 2022, by and between **Three Affiliated Tribes of North Dakota, also known as the MHA Nation**, with offices located at 404 Frontage Road, New Town, ND 58763 (“Owner”), and **Right Way Advanced Roofing and Framing, LLC**, with offices at 929 East Avenue, New Town, ND and a mailing address of P.O. Box 1827, New Town, ND 58763 (“Contractor”).

In consideration of the covenants contained herein and other good and valuable consideration, the Parties enter this agreement (the “Contract”) upon the following terms:

**1. CONTRACT PURPOSE:**

Owner owns the property depicted as: Woman Goes Out Subdivision, Lot 4 (Four Bears Segment of the Fort Berthold Reservation). The purpose of this Contract is to hire Contractor to construct the following on said property:

A Custom Ranch Style Stick Home (to be used as a Safe Haven home). This home will be a 2,820 square foot livable space building. It will include the following: Insulated foundation with heated floors; Fully insulated exterior and interior walls; Heated flooring and LP smart siding; Five (5) bedrooms and (3 ½) Three and one-half baths; Metal Roof; Anderson Windows; Propane Furnace; Central Air conditioning; Solid wood kitchen cabinets; Granite countertops; Solid wood interior doors; Brick Patio and Walkways; Composite Decks; Cedar fence; All Appliances furnished; 30 feet culvert for driveway; 26 x 28 garage, 10 feet tall walls, fully insulated; 30 x 50 driveway. See Exhibit B (Floor plan). Contractor will complete all of the on-site work for this project including Water, Sewer, and Electrical.

This project is to be completed on or before **July 31, 2023**, allowing for any delays caused by the COVID-19 supply factory delays. By this Contract, the Parties wish to establish the terms and conditions under which the construction of the Project will be conducted.

**2. CONTRACT TERMS, LIQUIDATED DAMAGES:**

Design

The Parties acknowledge that they have agreed upon and approved the design drawings and plans and specifications contained in “Exhibit B” hereto.

Construction

(a) Within ten (10) days following the execution of this Contract and initial payment being made, Contractor shall commence construction of the Project; provided, however, that prior to commencement of construction, Contractor shall show proof of general liability insurance, TERO license, and bonds furnished as required herein.

(b) The Construction Schedule may only be extended or changed as provided above by Change Order as set out in Section 10 of this Contract. In the event of delays contemplated by hereunder, the Parties shall execute a Change Order which extends the Construction Schedule.

### Liquidated Damages

Contractor acknowledges and agrees that if the Work is not substantially complete by the Completion Date, as adjusted for extensions permitted by the Contract Documents, Owner will sustain damages and loss on account of such failure, including delay in financial costs related to Owner's project financing. The exact amount of such damages will be extremely difficult to ascertain. If the Contractor fails to achieve completion of the Work by the designated Completion Date (Contract Time), including any extensions permitted by the Contract Documents, Owner shall be entitled to retain or recover from Contractor the following sums, as liquidated damages and not as a penalty: An amount as is required for completion of construction of the Project (as reasonably determined by Owner's engineer) plus an additional twenty percent (20%) but will in no event be greater than one hundred and fifty percent (150 %) of the balance of payments.

### **3. SERVICES TO BE PERFORMED BY CONTRACTOR:**

Contractor shall furnish the design services, together with the supervision, labor, tools, and equipment, necessary to construct the Project in accordance with the Approved Plans and Specifications and other Contract Documents attached hereto (collectively called the "Work") and shall prosecute the Work diligently and in a workmanlike manner.

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

Contractor shall not file a mechanic's or materialman's lien or maintain any claim against 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.

### **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 reference:

1. Map/plot contained in "Exhibit A".
2. Approved Plans and Specifications as contained in "Exhibit B".
3. The Construction Schedule as contained in "Exhibit C".

4. Any Change Orders approved pursuant to this Contract.

**5. CONTRACT PRICE AND PAYMENTS:**

(a) In consideration of the Work to be performed under this Contract, Owner shall pay Contractor the total sum of Five Hundred Fifty Five Thousand and Four Hundred and 00/100 Dollars (\$555,400.00) (the "Contract Price"), which includes an initial mobilization fee and building material purchase cost of One Hundred Eighty Five Thousand and One Hundred Thirty Three and 00/100 Dollars (\$185,133.00) to be paid upon entering this Contract, and the remaining balance of (\$370,267.00) to be paid in accordance with subsection 5.(c) below.

(b) The Contract Price shall only be changed by Change Order pursuant to Section 10.

(c) The remaining balance shall not be paid until: (i) Contractor has submitted a completed Payment Request setting forth that the portions of the specified work below have been completed, and (ii), Owner has inspected and approved the Work, and (iii) Contractor has completed to the satisfaction of Owner any punch lists necessary to complete the Work.

- a. The second payment will be made out of the remaining balance, in the sum of one-hundred thousand dollars (\$100,000) upon completion of the pouring of the cement floor of the house.
- b. The third payment will be made out of the remaining balance, in the sum of one-hundred thousand dollars (\$100,000) upon completion of the framing of the roof of the house.
- c. The fourth payment will be made out of the remaining balance, in the sum of one-hundred thousand dollars (\$100,000) upon completion of the drywall and interior doors, windows, and installation of the kitchen appliances.
- d. The final payment will be made out of the remaining balance, in the sum of seventy thousand two hundred sixty-seven dollars (\$70,267) upon completion of the house.

(d) If either party terminates this Contract as provided in Section 7, Contractor shall reimburse Owner on a pro rata basis for any amounts advanced and not earned by Contractor.

**6. PROJECT MANAGERS:**

For the Owner: Marilyn Youngbird, Consultant with Safe Haven Homes  
Health Educator/Community Organizer  
303-345-3139  
[ownsthe day@aol.com](mailto:ownsthe day@aol.com)

For the Contractor: Dennis Fox, Jr., MHA Construction Management  
Contract Invoice Liaison: Kacey Murdock,

Inspector: Preston Meanus

## 7. TERMINATION OF CONTRACT:

### Termination by Owner:

(a) Owner may terminate this Contract for cause under any one of the following conditions: (i) Contractor persistently fails to perform the Work in accordance with the Contract; (ii) Contractor fails to comply with applicable laws as required by Section 12 hereof; (iii) Contractor disregards the authority of the Project Manager; or (iv) Contractor's substantial violation of any provision of this Contract.

(b) Except for the condition identified in 7(a)(i), if one or more of the conditions identified above occur, 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 as they could be used by Contractor (without liability to Contractor for trespass or conversions), and (ii) complete the Work as the Owner may deem expedient. For a termination under 7(a)(i), Owner shall notify Contractor in writing of such termination. Contractor shall have no right to cure and Owner may immediately take possession of the Work and of all Contractor's tools and appliances and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversions). Furthermore, Owner shall be able to complete the Work as Owner may deem expedient.

(c) If Owner proceeds as provided in this Section, Contractor shall not be entitled to receive any further compensation other than the amount equal to the percentage of Work completed upon termination. Payment to the Contractor contemplated by the previous sentence shall not be completed until construction is completed. Upon completion of construction, Owner may withhold such payment to cover liquidated damages. If the amount of liquidated damages is less than the amount due to the Contractor, then Owner shall pay the difference to Contractor. If the amount in liquidated damages is larger than the amount owed to Contractor, Contractor shall pay the difference to Owner. Payment of any amounts due shall be completed within 45 days of Owner notifying Contractor of completion of the Work.

(d) For termination causes identified by 7(a)(ii)-(iv), 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 thirty (30) days of receipt of such notice.

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

Termination by Contractor:

(a) If, through no act or fault of Contractor, (i) the Work is suspended for more than fifteen (15) consecutive days by Owner or under order of a court or other public authority, or (ii) Owner fails for forty-five (45) days to pay Contractor any sum due under the Contract, then Contractor may, upon thirty (30) days written notice of breach to Owner, and the Owner failing to remedy the breach within ten days, terminate the Contract and recover from Owner payment equal to the percentage of Work completed.

(b) In lieu of terminating the Contract and without prejudice to any other right or remedy, if Owner has failed for forty-five (45) days to pay Contractor any sum due under the Contract Documents, Contractor may, seven (7) days after written notice to Owner, stop the Work until such payment is made.

**8. INSURANCE AND INDEMNIFICATION:**

(a) Contractor shall provide general liability insurance coverage in the amount of one million dollars (\$1,000,000.00) at all times during the construction portion of the Work to protect Owner if Contractor's negligent or willful acts or omissions cause damage to the property, any person or entity affiliated with 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.

(b) Contractor shall provide automotive liability insurance coverage in the amount of five hundred thousand (\$500,000.00) at all times during the construction portion of the Work to protect Owner if Contractor's negligent or willful acts or omissions cause vehicular damage to the Property, any person or entity affiliated with Owner, or any other individual. Proof of such liability insurance shall be provided prior to commencement of Work under this Contract.

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

**9. WARRANTY/CORRECTION PERIOD:**

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 inspection and acceptance of the Work by Owner. Contractor shall indemnify and save Owner harmless from any costs encountered in remedying any such defects.

**10. CHANGE ORDERS:**

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

**11. NOTICE TO PARTIES:**

All notices, requests, demands or other communications required or permitted by the terms of this Contract will be in writing delivered to the Parties at the following addresses:

To Owner:  
Contact Point: Francine White-Baker  
404 Frontage Road, New Town, ND 58763  
701-421-1570

To Contractor:  
P.O. Box 1827, New Town, ND 58763

or such other address as a Party may notify the other of, and will be deemed properly delivered (a) immediately upon being served personally, (b) two days after being deposited in USPS if sent via registered mail, or (c) the following day after being deposited with an overnight courier.

**12. COMPLIANCE WITH APPLICABLE LAWS:**

Contractor shall comply with all Tribal laws and regulations and any applicable State and Federal laws and regulations in performing this Contract. Contractor and subcontractors shall apply for and obtain a TERO License and pay any applicable TERO taxes or fees.

**13. INDEPENDENT CONTRACTOR:**

(a) Contractor is an independent contractor providing services to Owner; neither Contractor nor any of Contractor's employees, subcontractors, agents, etc., are employees of Owner under this Contract. Contractor and Contractor's employees, etc. have no power or authority to act for, represent or bind Owner or any entity affiliated with Owner in any manner. Contractor and Contractor's employees, etc. are not entitled to any medical coverage, or participation in any other benefits afforded to Owner's regular employees, or those of Owner's affiliated entities.

(b) Contractor is solely responsible for assuring compliance with all legal requirements, including payment of all applicable taxes, premiums, deductions, withholding, overtime and other amounts which may be legally required with respect to the employment of any persons providing services to Contractor or any of its subcontractors or consultants under this Contract.



**14. CONTRACTOR NOT TO ENGAGE IN CONFLICTING ACTIVITIES:**

During the time of this Contract, Contractor will not enter any activity, employment or business arrangement conflicting with Owner's interests or Contractor's status. 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 Owner of Contractor's position with respect to any employment or business arrangement contemplated by Contractor that may be relevant to this Section.

**15. WARRANTY – CONTRACT DOES NOT CONTEMPLATE CORRUPT PRACTICES:**

Contractor represents and warrants that (i) all payments under this Contract constitute compensation for contractual services performed, and (ii) 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 MHA Nation. These payments may not be used to influence any act or decision of any official, party or candidate to use his, her or tis influence with a government to affect or influence any act or decision of such government to assist 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 any department, agency, or instrumentality of a government.

**16. DISPUTE RESOLUTION:**

This Contract was executed and is to be carried out within the Fort Berthold Indian Reservation. Any disputes between the Parties arising out of the terms, conditions, or any other matter is subject to jurisdiction of the Fort Berthold District Court, and Contractor agrees that the Parties have entered into a contractual relationship and consents to the jurisdiction of that Court.

Nothing contained in this Section is intended to prevent the Parties from mutually agreeing to mediate 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. The Parties must both agree in a separate signed writing to submit any dispute to AAA. Failure to obtain a separate written agreement for mediation shall be grounds for immediate dismissal of such mediation.

**17. GOVERNING LAW:**

This Contract is subject to and shall be interpreted in accordance with the codes and laws

of the MHA Nation.

**18. ASSIGNMENT OF RIGHTS AND DELEGATION OF DUTIES:**

The rights and duties under this Contract may not be assigned or delegated by either Party without the prior written consent of the other Party.

**19. SEVERABILITY:**

It is understood and agreed by the parties 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 rights and obligations of the parties shall be construed as if the Contract did not contain the term or provision held to be invalid.

**20. 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 accordingly.

**21. ENTIRE CONTRACT AND MODIFICATION:**

This Contract and the Contract Documents contain the entire agreement between the Parties and may not be amended or modified except by the subsequent written amendment signed by both Parties.

**22. SOVEREIGN IMMUNITY:**

Nothing in this Contract shall be construed, held or interpreted as a waiver of the Sovereign Immunity of the Owner, the Three Affiliated Tribes, or their officials, agents or assigns.

**IN WITNESS WHEREOF**, the Parties have executed this Contract on dates so stated.

OWNER:

**THREE AFFILIATED TRIBES/MHA NATION**

By Mark N. Fox  
Name: Mark N. Fox  
Title: Tribal Chairman


Date: 10/12/22

By   
Name: Mervin Packineau  
Title: Tribal Treasurer

Date: 10-12-22

CONTRACTOR:

**RIGHT WAY ADVANCED ROOFING AND FRAMING, LLC**

By   
Name: Rolando  
Title: Albano

Date: 8/25/22