

Resolution No. 218-TL

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

- WHEREAS,** This Nation having accepted the Indian Reorganization Act of June 18, 1934 and the authority under said Act; and
- WHEREAS,** The Constitution of the Three Affiliated Tribes 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 VI, Section 5 (d), of the Constitution of the Three Affiliated Tribes specifically authorizes and empowers the Tribal Business Council to negotiate with the Federal and State governments on behalf of the Three Affiliated Tribes; and
- WHEREAS,** Supplemental Agreement No. 1 to the Four Bears Recreation Lease, Contract No. DACW45-1-70-6012 authorizes the construction of a kidney dialysis facility; and
- WHEREAS,** The dialysis facility is needed for the health and welfare of tribal members and the siting the facility on the Four Bears Lease provides the necessary access to the Minni Tohe Health Clinic.
- NOW THEREFORE BE IT RESOLVED,** That the Tribal Business Council of the Three Affiliated Tribes hereby approves Supplemental Agreement No. 1 to Contract No. DACW45-1-70-6012 and authorizes the Tribal Chairman to sign the Supplemental Agreement on behalf of the Three Affiliated Tribes.
- BE IT FURTHER RESOLVED,** That the Tribal Business Council of the Three Affiliated Tribes, pursuant to Chapter 1, Section 1.2 and 3.6 (1) of the Code of Laws of the Three Affiliated Tribes of the Fort Berthold Indian Reservation, hereby expressly waives the Tribes sovereign immunity from suit relative to the lease and the supplemental agreement herein and consents to be

sued in it's corporate name upon any claim or obligation arising from or incident to the terms of the lease or supplemental agreement herein.

C E R T I F I C A T I O N

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 7 members of whom 5 constitutes a quorum, 6 were present at a Regular Meeting, thereof duly called, noticed, convened, and held on the 18th day of October, 1990; that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of 6 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 18th day of October, 1990.

[Signature]
Secretary, Tribal Business Council

ATTEST:
[Signature]
Chairman, Tribal Business Council

SUPPLEMENTAL AGREEMENT NO. 1
TO
DEPARTMENT OF THE ARMY
LEASE NO. DACW45-1-70-6012
GARRISON DAM/LAKE SAKAKAWEA PROJECT, NORTH DAKOTA

THIS SUPPLEMENTAL AGREEMENT NO. 1, made and entered into by and between the **SECRETARY OF THE ARMY**, hereinafter called the Government, as represented by the officer executing this agreement, and the **THREE AFFILIATED TRIBES** of the Fort Berthold Reservation, a Federal Recognized Indian Tribe organized and incorporated pursuant to Sections 16 and 17 of the Indian Reorganization Act of June 18, 1934, acting by and through the Tribal Business Council, New Town, North Dakota, hereinafter called the Lessee, **WITNESSETH:**

WHEREAS, by virtue of the authority conferred by Section 4 of the Flood Control Act of December 22, 1944, as amended (76 Stat. 1195; 16 USC 460d), Lease No. DACW45-1-70-6012 was entered into between the Government and the Lessee for public park and recreational purposes, covering 147.84 acres of land and water within the Garrison Dam/Lake Sakakawea Project for a period of fifty (50) years, effective September 1, 1969; and

WHEREAS, the Lessee has requested permission to construct a kidney dialysis treatment facility and parking lot, hereinafter referred to as said facilities, within the existing lease area; and

WHEREAS, said facilities would be located adjacent to and compliment an existing public health center for tribal residents which is located on land transferred from the Department of the Army to the Department of Health, Education and Welfare in 1968; and

WHEREAS, Section 4 of the Flood Control Act of December 22, 1944, as amended (16 USC 460d), provides in part that "The Secretary of the Army is also authorized to grant leases of lands, including structures and facilities thereon, at water resource development projects for such periods, and upon such terms and for such purposes as he may deem reasonable in the public interest..."; and

WHEREAS, said facilities are necessary for the health and welfare of tribal residents and are, therefore, deemed reasonable and in the public interest; and

WHEREAS, in order to permit said facilities, a modification of the existing lease is necessary to reflect a change from "Public Park and Recreation Purposes" to "Park and Recreation and Other Public Purposes"; and

WHEREAS, in consideration for the modification of the lease purposes, the following additional modifications are required:

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To Lease No. DACW45-1-70-6012
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Condition No. 11 is modified to reflect minimum required combined single limit liability coverage in the amount of \$1,000,000; Condition No. 16 is revised requiring the Lessee's compliance with the Age Discrimination Act of 1975 and the Rehabilitation Act of 1973; Condition No. 17 is modified to reflect a change of address for the Lessee as well as the District Engineer; and conditions are added which are intended to preserve cultural resources, protect the project from pollution, preclude participation by the Lessee in the National Flood Insurance Program, establish a waiver of the Lessee's sovereign immunity, and prescribe specifics relative to the approval and construction of the said facilities, as well as other facilities which may be contemplated in the future.

NOW THEREFORE, Lease DACW45-1-70-6012 is hereby amended as follows:

a. That the title of Lease DACW45-1-70-6012 and that portion of lines 9 and 10 of the granting clause which reference "for public park and recreational purposes" are herein deleted and replaced with "**FOR PARK AND RECREATION AND OTHER PUBLIC PURPOSES**".

b. That to better illustrate the area included in this lease, Exhibit "C" which is attached hereto, is hereinafter made a part of lease DACW45-1-70-6012.

c. That Condition No. 11 is deleted and replaced with the following new Condition No. 11:

11(a). At the commencement of this lease, the Lessee, unless self-insured, and its sublessees and concessionaires at the commencement of operating under the terms of this lease as third parties, shall obtain from a reputable insurance company or companies, contracts of liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices or a minimum Combined Single Limit of \$1,000,000, whichever is greater, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage or both suffered or alleged to have been suffered by any person or persons resulting from the operations of the Lessee under the terms of this lease. The Lessee shall require any insurance carrier or carriers to furnish to the District Engineer a copy of the policy or policies, or if acceptable to the District Engineer, certificates of insurance evidencing the purchase of such insurance. The minimum amount of liability insurance coverage is subject to revision by the District Engineer every three years or upon renewal or modification of the lease.

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(b). The insurance policy or policies shall be of comprehensive form of contract and shall specifically provide protection appropriate for the types of facilities, services and products involved and the District Engineer shall be given thirty (30) days notice of any cancellation or change in such insurance.

(c). In the event the Lessee is self-insured, the Lessee shall certify such self-insurance in writing in the minimum amount specified above to the District Engineer. The Lessee's insurance status shall not eliminate the requirement for its sublessees and concessionaires to have insurance from a reputable insurance carrier as set out above.

(d). The District Engineer may require closure of any or all of the premises during any period for which the Lessee and/or its sublessees and concessionaires do not have the required insurance coverage or the above required certificate of self-insurance, as appropriate.

d. That Condition No. 16 is deleted and replaced with the following new Condition No. 16:

16. The Lessee shall not discriminate against any person or persons or exclude from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap, national origin or place of residency. The Lessee, by acceptance of this lease, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964 as amended (42 USC, par. 2000d); the Age Discrimination Act of 1975 (42 USC, par. 6102); the Rehabilitation Act of 1973, as amended (29 USC, par. 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directive 5500.11, December 28, 1964. This assurance shall be binding on the Lessee, its agents, successors, transferees, sublessees and assignees.

e. That the first sentence of Condition No. 17 is deleted and the following is substituted in lieu thereof:

"Except as otherwise expressly stated herein, all notices to be given pursuant to this lease shall be addressed, if to the Lessee, to the Chairman, Three Affiliated Tribes of the Fort Berthold Reservation, P.O. Box 460, New Town, North Dakota 58763;

if to the Government, to the District Engineer, Omaha District Corps of Engineers, 215 North 17th Street, Omaha, Nebraska 68102-4978, or as may from time to time be otherwise directed by the parties hereto."

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f. That the following Condition Nos. 20, 21, 22, 23, 24 and 25 are herein and henceforth added to and made a part of Lease DACW45-1-70-6012:

20. That the Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural, or other cultural artifacts, relics, vestiges, remains, or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify the District Engineer, Omaha District and the site and the material shall be protected by the Lessee from further disturbance until a professional examination of them can be made or until clearance to proceed is authorized by the District Engineer.

21. That, within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its water. The Lessee shall comply promptly with any regulations, conditions, or instructions affecting the activity hereby authorized, if and when issued by the Environmental Protection Agency and/or a state, interstate, or local governmental water pollution control agency having jurisdiction to abate or prevent water pollution. Such regulations, conditions, or instructions, in effect, or prescribed by the Environmental Protection Agency, State, interstate, or local governmental agency are hereby made a condition of this lease.

22. The United States shall not be responsible for loss to any building or contents located on the premises, arising from or incident to the flooding of the premises by the Government and the Lessee expressly holds the Government harmless, under flood insurance issued under any Government program, from such loss.

23. Pursuant to Section 5(i) of the corporate charter and pursuant to Tribal Resolution, this lease shall constitute an irrevocable consent by The Three Affiliated Tribes of the Fort Berthold Reservation to be sued in its corporate name upon any claim or obligation arising from or incident to the terms of this lease, and pursuant to the above authorities the Lessee hereby waives any immunity from suit arising from or incident to the terms of this lease which it might otherwise have.

24. That construction of said facilities shall be in accordance with standards established by the U.S. Department of Health and Human Services. Placement of said facilities within the leased premises shall be as shown on the "Dialysis Treatment Unit" Preliminary Site Design, dated July 16, 1990. Any change in the location of said facilities from that shown in the Preliminary Site Design shall require the prior written approval of the District Engineer.

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25. Future proposals regarding development of the leased premises must demonstrate an overall public benefit and shall exhibit a relationship with either Tribal Administration or park and recreation purposes. Approval of subsequent non-park and recreation facilities will be contingent upon a written determination by the Secretary of the Army, or his authorized designee, that said facilities are considered to be in the public interest.

Except as amended above, all other terms and conditions of Lease DACW45-1-70-6012 shall remain in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 1990 by direction of the Assistant Secretary of the Army (IL&E).

BY _____

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 1990.

* THE THREE AFFILIATED TRIBES OF THE
FORT BERTHOLD RESERVATION

BY Edward Lone Wolf
TITLE Tribal Chairman

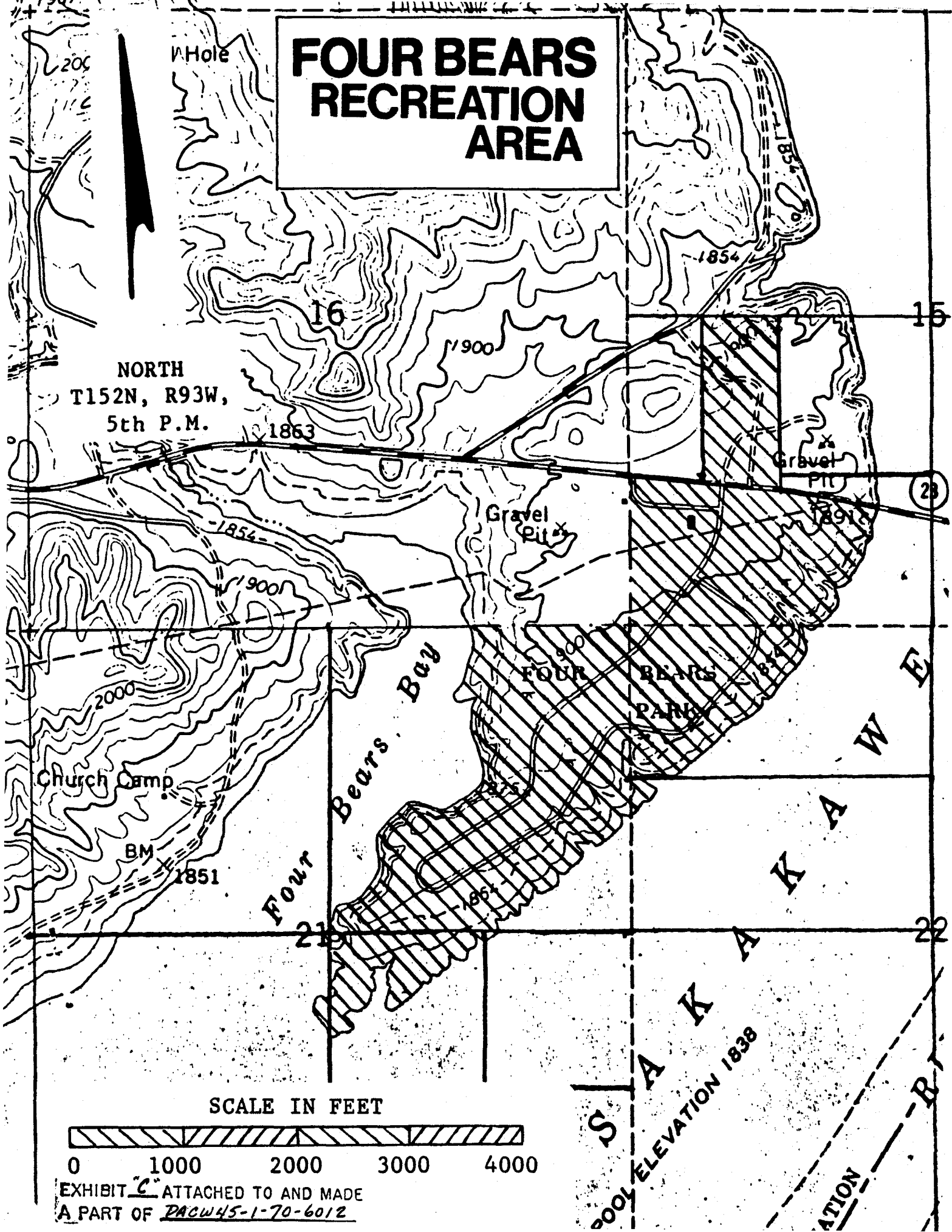
WITNESS:

*The Three Affiliated Tribes of the Fort Berthold Reservation, chartered as a corporation pursuant to Sections 16 and 17 of the Indian Reorganization Act of June 18, 1934, acting by and through the Tribal Business Council, New Town, North Dakota.

FOUR BEARS RECREATION AREA

W Hole

NORTH
T152N, R93W,
5th P.M.



SCALE IN FEET

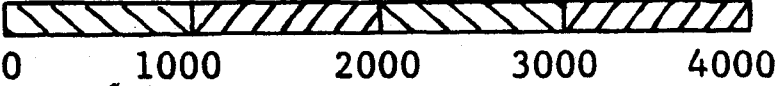


EXHIBIT "C" ATTACHED TO AND MADE
A PART OF PACW45-1-70-6012

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