



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

A Resolution Entitled, “Approval of the Agreement between North Segment and Scull Construction Services ND Inc., for the North Segment Community Center and Limited Waiver of Sovereign Immunity Contained Therein.”

- WHEREAS,** The Mandan Hidatsa and Arikara Nation, also known as the Three Affiliated Tribes (“MHA Nation” or “Tribes”), having accepted the Indian Reorganization Act of June 18, 1934, the authority under said Act, and having adopted a Constitution and By-laws (the Constitution) under said Act, and
- WHEREAS,** Pursuant to Article III, Section 1 of the Constitution, the Tribal Business Council is the governing body of the MHA Nation; and
- WHEREAS,** The Constitution 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 MHA Nation and of the enrolled members thereof; and
- WHEREAS,** Pursuant to Article VI, Section 5(1) of the Constitution, the Tribal Business Council has the power to adopt Resolutions regulating the procedures of the Tribal Business Council, its agencies, and officials; and
- WHEREAS,** Article VI, Section 5(c) of the Constitution 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,** Article VI, Section 5(c) of the Constitution establishes political subdivision segments including New Town/ North Segment; and
- WHEREAS,** The Three Affiliated Tribes wish to construct a North Segment Community Center for the benefit of the North Segment community; and
- WHEREAS,** North Segment seeks Tribal approval of the AIA-133 Agreement with the A-201 General Conditions and the attached exhibits between the North Segment and Scull Construction Services ND Inc. (or “Agreement”), in form as presented to the Tribal Business Council; and
- WHEREAS,** The North Segment and Scull Construction Services have negotiated the AIA-133 Agreement with the A-201 General Conditions where the cost of the project will be based on a Guaranteed Maximum Price Amendment, and shall be determined by



multiplying the estimated cost of the work by a rate of four-point two five percent (4.25%) for the contractor's fee; and

WHEREAS, In order to give effect to the Tribes' and North Segment's limited waiver provisions as stated in the Agreement and listed below, the approval of the Tribal Business Council is required:

- **§ 12.5 Limited Waiver of Sovereign Immunity.** The Tribe waives its sovereign immunity from suit solely for the limited purpose of enforcement of the terms of this Agreement by the Contractor in accordance with the provisions set forth herein. Nothing contained in this limited waiver shall be construed to confer any benefit, tangible, or intangible, on any person, assign, or entity, not an original party to this Agreement or as a waiver with respect to any such third person, beneficiary, or entity. This limited waiver only permits the Contractor to seek the total contract price or reasonable market value of the services rendered, whichever is less in any legal action; provided that no attorney's fees, court, or other costs incurred as part of the legal action, lost profit, loss of reputation, loss of goodwill, or any special, incidental, indirect, punitive, exemplary, or consequential damages of any nature may be recoverable under this limited waiver. Only lawsuits against the Tribe are permissible under this limited waiver of sovereign immunity, and the Tribe does not waive sovereign immunity otherwise enjoyed by its former, present, and future affiliates, tribal members, council members, board members, principals, agents, employees, and their respective successors and assigns, attorneys, directors, officers, partners, shareholders, and employees. For purposes of this limited waiver, the Tribe waives its sovereign immunity only as to the Fort Berthold District Court and the Fort Berthold Appellate Court. The Tribe does not hereby waive its sovereign immunity to any federal or state court or to any other tribal court. The Tribe does not waive its sovereign immunity for purposes of arbitration or mediation. The Contractor agrees that this Agreement shall be governed by and construed according to the laws of the Three Affiliated Tribes | Mandan, Hidatsa, and Arikara Nation, and any original, legal action shall be filed exclusively in the Fort Berthold District Court. The Fort Berthold District Court and the Fort Berthold Appellate Court shall have exclusive jurisdiction over any disputes filed pursuant to this Agreement and shall be the only venues for such controversy. This limited waiver of sovereign immunity shall only be effective for three (3) years following the execution of this Agreement.

NOW, THEREFORE, BE IT RESOLVED, that the Tribal Business Council approves the aforementioned AIA-133 Agreement with the A-201 General Conditions and the attached exhibits between the North Segment and Scull Construction Services ND Inc., in form as presented, for the construction of a North Segment Community Center; and

BE IT FURTHER RESOLVED, that the Tribal Business Council hereby approves the aforementioned limited waiver of sovereign immunity from suit solely for the



limited purpose of enforcement of the terms of the Agreement by the Contractor in accordance with the provisions set forth in the Agreement; and

BE IT FINALLY RESOLVED, that the North Segment Representative is hereby authorized to execute the Agreement and any other documents necessary to effectuate this Agreement, and further authorizes the payment of Scull Construction invoices for the work product in accordance with the terms of the Agreement.


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 8th day of February, 2023, 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 8th day of February, 2023.

ATTEST:



Tribal Secretary, Fred W. Fox
Tribal Business Council
Three Affiliated Tribes



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