

ROSEBUD SIOUX TRIBE
Resolution NO. 2020-296

- WHEREAS**, the Rosebud Sioux Tribe (the Tribe) is a federally recognized Indian Tribe organized pursuant to the Indian Reorganization Act of 1934 and all pertinent amendments thereof; and
- WHEREAS**, the Rosebud Sioux Tribe is governed by a Tribal Council made up of elected representatives who act in accordance with the powers granted to it by its Constitution and By-laws; and
- WHEREAS**, Article IV, Sec. (1) (c) of the Rosebud Sioux Tribe Constitution authorizes the Rosebud Sioux Tribal Council "to purchase and otherwise acquire lands" and Section 5 (b) and (d), as amended, of the Corporate Charter of the Rosebud Sioux Tribe authorizes the Tribe to purchase property of every description, real and personal and to borrow money for any purpose consistent with federal and tribal law; and
- WHEREAS**, pursuant to Section 19 ("Lands") of the By-Laws of Rosebud Sioux Tribe Tribal Land Enterprise (TLE), the Tribe is authorized to enter into an agreement with TLE to manage and operate, subject to approval of the Commissioner of Indian Affairs or his duly authorized representative, "all lands now in Tribal ownership, or which may come into Tribal ownership from any source"; and
- WHEREAS**, pursuant to Section 10, ("Purpose and Objectives") of the By-Laws of TLE, TLE is authorized to "provide a long-term land-buying program which would benefit members of the Tribe"; and
- WHEREAS**, the TLE Board of Directors at a special meeting held on October 1, 2020, considered a proposed Memorandum of Understanding (MOU) between the Rosebud Sioux Tribe, TLE, and NDN Holdings, LLC (NDN) which sets forth the parties' mutual understanding as to how NDN will transfer title to approximately 317.06 acres of real estate which NDN has successfully bid on at auction (the closing on NDN's auction purchase is currently scheduled for October 31, 2020), which is more particularly described as follows:
- Southeast Quarter (SE1/4) Section Seven (7) and Lots Three (3), Four (4) and the East Half of the Southwest Quarter (E1/2SW1/4) Section Seven (7), all in Township Ninety-seven (97) North, Range Seventy-five (75) West of the 5th P.M. Tripp County, South Dakota (this property was identified in the auction sale and is referred to in the MOU and this resolution as NDN Tract 7).
- WHEREAS**, the proposed MOU also sets forth the parties' mutual understanding of an "acquisition window" for the Tribe on 157.46 acres of additional real estate NDN successfully bid on at auction, at the purchase price to the Tribe of \$329,700.00 plus certain title and closing costs. The "acquisition window" provides that if NDN desires to sell this additional real estate, NDN will permit the Tribe to purchase this additional real estate prior to NDN considering any other offers from others. This "acquisition window" commences on the date that NDN notifies the Tribe in writing that they wish to sell the property and expires on December 31, 2030. This additional real estate subject to the "acquisition window" is more particularly described as follows:

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Lots (One) (1), Two (2) and the East Half of the Northwest Quarter (E1/2NW1/4) Section Eighteen (18) Township Ninety-seven (97) North, Range Seventy-five (75) West of the 5th P.M, Tripp County, South Dakota (this property was identified in the auction sale and is referred to in the MOU and in this resolution as NDN Tract 8).

WHEREAS, the Rosebud Sioux Tribal Land Enterprise Board of Directors reviewed the MOU and the possible acquisition of Tract 7 on October 1, 2020, under Resolution no. 2020-005 and recommends approval of this resolution subject to and contingent on NDN agreement to the following amendments to the proposed MOU:

1. The purchase price for Tract 7 shall be \$602, 300.00 plus the title insurance premium, recording fees, and real estate taxes incurred by NDN with respect to its acquisition of Tract 7.
2. The purchase price for Tract 8 (in the event NDN wishes to sell and the Tribe wishes to purchase pursuant to the acquisition window for Tract 8) shall be \$329,700.00 plus the title insurance premium, recording fees, and real estate taxes incurred by NDN with respect to its acquisition of Tract 8. The parties will draft and sign the legal document(s) necessary to formalize the "acquisition window" for the Tribe's possible future purchase of the NDN Tract 8.
3. The paragraph in the proposed MOU titled "Disputes" should be amended with the addition of the following at the end of the first sentence: "If the Parties are unable to work out or mediate any disputes, any remaining dispute or controversy concerning this MOU shall be heard and determined in the Rosebud Sioux Tribal Court system. This MOU shall be governed by, construed, and enforced in accordance with the laws of the Rosebud Sioux Tribe."
4. The purchase and closing of Tract 7 shall be accomplished through the use of TLE's and the Tribe's standard Offer and Agreement form, with such modifications necessary to implement the particulars of this purchase and as are agreed to and approved by TLE staff and legal counsel.

WHEREAS, both the Rosebud Sioux Tribal Council and the Rosebud Sioux Tribal Land Enterprise Board of Directors is desirous of approving and authorizing the MOU and the purchase of Tract 7, subject to and contingent on NDN agreement to amendments to the proposed MOU set forth above; and

WHEREAS, the Rosebud Sioux Tribe through TLE's Land Acquisition Program will, subject to and contingent on NDN agreement to amendments to the proposed MOU set forth above, purchase this fee land in the name of the Rosebud Sioux Tribe;

THEREFORE BE IT RESOLVED, that, subject to and contingent on NDN agreement to amendments to the proposed MOU set forth above, execution of the MOU with NDN is approved and authorized; and

BE IT FURTHER RESOLVED, that, subject to and contingent on NDN agreement to amendments to the proposed MOU set forth above, Tract 7 as is more particularly described above be acquired by Tribal Land Enterprise on behalf of the Rosebud Sioux Tribe for a purchase price not to exceed \$602,300.00 plus the title insurance premium, recording fees, and real estate taxes incurred by NDN with respect to its acquisition of Tract 7; and

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the title insurance premium, recording fees, and real estate taxes incurred by NDN with respect to its acquisition of Tract 7; and

BE IT FURTHER RESOLVED, that subject to and contingent on NDN agreement to amendments to the proposed MOU set forth above, the Rosebud Sioux Tribal Council authorizes the Tribal President or Tribal Vice-President and Tribal Secretary of the Rosebud Sioux Tribe to sign any and all documents required to execute the MOU and to finance and finalize the purchase of Tract 7.

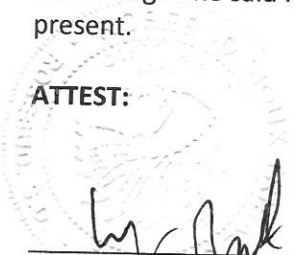
BE IT FURTHER RESOLVED, that the Rosebud Sioux Tribe, by this resolution authorizes TLE to manage and operate this subject property in accordance with Section 19 ("Lands") of the By-Laws of TLE; and


BE IT FURTHER RESOLVED, that the Rosebud Sioux Tribe will direct the Bureau of Indian Affairs to take the above described property in trust in the name of the United States of America in Trust for the Rosebud Sioux Tribe.

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


This is to certify that the above Resolution No. 2020-296 was duly passed by the Rosebud Sioux Tribal Council in session on December 10, 2020, by a vote of twelve (12) in favor, zero (0) opposed, and two (2) not voting. The said resolution was adopted pursuant to authority vested in the Council. A quorum was present.

ATTEST:





Wayne Boyd, Secretary
Rosebud Sioux Tribe



Rodney M. Bordeaux, President
Rosebud Sioux Tribe

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- WHEREAS**, the Rosebud Sioux Tribe is governed by a Tribal Council made up of elected representatives who act in accordance with the powers granted to it by its Constitution and By-laws; and
- WHEREAS**, Article IV, Sec. (1) (c) of the Rosebud Sioux Tribe Constitution authorizes the Rosebud Sioux Tribal Council "to purchase and otherwise acquire lands" and Section 5 (b) and (d), as amended, of the Corporate Charter of the Rosebud Sioux Tribe authorizes the Tribe to purchase property of every description, real and personal and to borrow money for any purpose consistent with federal and tribal law; and
- WHEREAS**, pursuant to Section 19 ("Lands") of the By-Laws of Rosebud Sioux Tribe Tribal Land Enterprise (TLE), the Tribe is authorized to enter into an agreement with TLE to manage and operate, subject to approval of the Commissioner of Indian Affairs or his duly authorized representative, "all lands now in Tribal ownership, or which may come into Tribal ownership from any source"; and
- WHEREAS**, pursuant to Section 10, ("Purpose and Objectives") of the By-Laws of TLE, TLE is authorized to "provide a long-term land-buying program which would benefit members of the Tribe"; and
- WHEREAS**, the TLE Board of Directors at a special meeting held on October 1, 2020, considered a proposed Memorandum of Understanding (MOU) between the Rosebud Sioux Tribe, TLE, and NDN Holdings, LLC (NDN) which sets forth the parties' mutual understanding as to how NDN will transfer title to approximately 317.06 acres of real estate which NDN has successfully bid on at auction (the closing on NDN's auction purchase is currently scheduled for October 31, 2020), which is more particularly described as follows:
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WHEREAS, both the Rosebud Sioux Tribal Council and the Rosebud Sioux Tribal Land Enterprise Board of Directors is desirous of approving and authorizing the MOU and the purchase of Tract 7, subject to and contingent on NDN agreement to amendments to the proposed MOU set forth above; and

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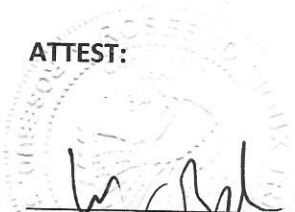
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CERTIFICATION


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ATTEST:





Wayne Boyd, Secretary
Rosebud Sioux Tribe



Rodney M. Bordeaux, President
Rosebud Sioux Tribe



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Rosebud Agency

Post Office Box 228

Mission, South Dakota 57555

IN REPLY REFER TO:
Office of the Superintendent

FEB 26 2021

Honorable Rodney Bordeaux
President, Rosebud Sioux Tribe
Post Office Box 430
Rosebud, South Dakota 57570

Attention: Louis Wayne Boyd, Rosebud Sioux Tribe Secretary

Dear President Bordeaux:

Our office is in receipt of the following Rosebud Sioux Tribal Resolutions: 2020-02, 2020-04, 2020-05, 2020-175, 2020-289, 2020-292, 2020-295, 2020-296, 2020-297, 2020-298, 2020-299, 2020-300, 2020-301, 2020-302, 2020-303, 2020-304, 2020-305 (Rescinded: 12/23/2020), 2020-306, 2020-307, 2020-308, 2020-309, 2020-311, 2020-312, 2020-313, 2020-314, 2020-315, 2020-316, 2020-317 and 2020-318.

All Tribal Resolutions have been reviewed by this office.

The Range Program has been provided with the following resolutions for further review and/or file retention: 2020-298 and 2020-299.

Real Estate Services has been provided with the following resolutions for further review and/or file retention: 2020-289, 2020-296, 2020-301, 2020-303, 2020-304 and 2020-314.

The Self-Determination Program has been provided with the following resolutions for further review and/or file retention: 2020-02, 2020-04, 2020-05, 2020-297, 2020-298, 2020-300, 2020-302, 2020-305, 2020-307, 2020-308, 2020-309, 2020-311, 2020-312, 2020-313, 2020-315, and 2020-316.

Sincerely,

Acting

Francine Fast Horse
Superintendent

cc: Range
Real Estate Services
Self-Determination

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WHEREAS, the Rosebud Sioux Tribe through TLE's Land Acquisition Program will, subject to and contingent on NDN agreement to amendments to the proposed MOU set forth above, purchase this fee land in the name of the Rosebud Sioux Tribe;

THEREFORE BE IT RESOLVED, that, subject to and contingent on NDN agreement to amendments to the proposed MOU set forth above, execution of the MOU with NDN is approved and authorized; and

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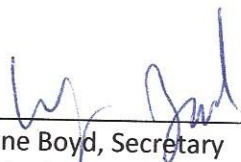
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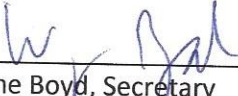
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Wayne Boyd, Secretary
Rosebud Sioux Tribe



Rodney M. Bordeaux, President
Rosebud Sioux Tribe

OFFER AND AGREEMENT TO PURCHASE

1. PARTIES AND PROPERTY. Rosebud Sioux Tribe Tribal Land Enterprise, a subordinate organization of the Rosebud Sioux Tribe, acting for, on behalf of, and with the authority of the Rosebud Sioux Tribe, a federally recognized Indian Tribe (Tribal Land Enterprise and the Rosebud Sioux Tribe are referred to collectively herein as "the Tribe"), P.O. Box 159, Rosebud, South Dakota 57570 hereby offers to purchase, and if this offer is accepted, hereby agrees to purchase from NDN Holdings, LLC, a South Dakota limited liability company, 317 Main Street, Suite 1, Rapid City, South Dakota 57701 (referred to herein as "Seller") the following described real estate ("the premises") located in Tripp County, South Dakota:

Southeast Quarter (SE1/4) Section Seven (7) and Lots Three (3), Four (4) and the East Half of the Southwest Quarter (E1/2SW1/4) Section Seven (7), all in Township Ninety-seven (97) North, Range Seventy-five (75) West of the 5th P.M. Tripp County, South Dakota, containing 317.06 acres more or less, and subject to valid existing easements, restrictions, and covenants now of record which do not interfere with or restrict the Tribe's planned use and development of the premises.

The conveyance includes and the premises is to be sold together with any and all surface and subsurface interests, minerals, mineral and royalty interests and rights of any kind and nature held by Seller, if any, including all oil, gas, coal, sand, and gravel on and in the premises, if any. Seller does not guarantee that Seller owns all such mineral rights and interests; however Seller agrees to convey to the Tribe any and all rights Seller holds.

The complete and accurate legal description and Seller's name(s) for use in the deed(s) will ultimately be determined by the title commitment to be obtained.

2. ESCROW/PURCHASE PRICE. (a). Unless agreed otherwise by the parties, this sale shall be closed through an escrow/closing agent under such terms and provisions and with the deposit in escrow of such documents as may be required to complete this Agreement. The escrow/closing agent shall be selected by the Tribe. The escrow/closing agent shall be the Tripp and Todd Title Company, Winner, South Dakota, unless agreed otherwise by the parties. The cost of the escrow/closing agent shall be paid by the Tribe.

(b). The total purchase price to be paid by the Tribe for the premises is Six Hundred Two Thousand Three Hundred Dollars (\$602,300.00). In addition to the purchase price paid for the premises, the Tribe shall reimburse to Seller, the title insurance premium, recording fees, and real estate taxes incurred by Seller associated with Seller's acquisition of the premises through Seller's successful bid at auction and under Seller's land auction purchase agreement. Seller's auction purchase is scheduled to close by October 31, 2020, and the title insurance premium, recording fees, and real estate taxes are not yet finalized or determined. However, these amounts will be agreed upon by the parties and provided to the escrow/closing agent prior to closing. If requested by the escrow/closing agent, these amounts will be paid outside of closing.

(c) The purchase price will be paid on the date of closing concurrently with delivery of the Seller's warranty deed covering the premises, bill of sale covering any personal property to be conveyed, and any other closing documents from Seller which are required to properly finalize the closing.

3. **INCLUSIONS.** The purchase price is to include any improvements, fixtures, equipment, hereditaments, tenements, and appurtenances located thereon which are owned by Seller, including any existing fences, gates, tanks, pipelines, hydrants, wells, shelterbelts and windmills. The Tribe may, at the Tribe's option and with the agreement of Seller, assume any federal government program or similar contracts and receive any federal government payments, including any advance payments already received by Seller. **Any additional items of personal property to be sold shall be separately identified and separately conveyed.**

4. **TRANSFER OF TITLE/LIABILITIES.** (a). Title shall be transferred by Seller by warranty deed to and in the name of the Rosebud Sioux Tribe.

(b). Transfer of the premises shall be made free and clear of all liabilities, liens, security interests, and encumbrances of every kind, subject to easements, restrictions, and covenants now of record which do not interfere with or restrict the Tribe's planned use and development of the property.

5. **CLOSING.** If this Offer is accepted by Seller, the Tribe and Seller agree to close said purchase as expeditiously as possible on such date the parties and the escrow/closing agent mutually agree, but only after satisfaction of the conditions precedent/contingencies set forth in this Agreement, including delivery of the title insurance commitment showing good and marketable title in Seller. If additional time is required to satisfy the conditions precedent/contingencies in this Agreement, the Tribe shall have the right to unilaterally extend the closing date for up to forty five (45) days. The closing shall be conducted at an hour and location mutually agreed upon by the parties. All closing documents should be delivered to and approved by the parties prior to the closing date.

6. **POSSESSION/ACCESS FOR INSPECTIONS.** The Tribe shall be entitled to and Seller shall deliver possession of the premises upon closing. Subsequent to the date of Seller accepting this offer and Seller's closing on Seller's real estate auction purchase agreement and prior to closing, the Tribe, or the Tribe's agents and employees shall be entitled to, and Seller shall provide, reasonable access to enter upon the property for the purpose of making surveys and inspections thereof and conducting such tests and observations as the Tribe may deem appropriate.

7. **CONDITIONS PRECEDENT/CONTINGENCIES.** This Agreement and the Tribe's obligations hereunder are contingent upon Seller conveying marketable title to the Tribe on the date of closing and upon satisfaction of each of the following conditions precedent/contingencies:

A. **TITLE.** (a). **EVIDENCE OF TITLE.** As soon as is practicable after Seller accepts this Offer, the Tribe shall obtain, at the Tribe's sole cost and expense, a current owner's title insurance commitment covering the premises in an amount of the purchase price. The cost of the title insurance premium shall include the title company's fee for updating the title commitment on the date of closing to cover the period of time between the effective date of the title commitment and the date of closing. The owner's title insurance shall be issued on an ALTA Owner's Policy Form which is acceptable to the Tribe with the deletion of such standard exceptions and addition of such endorsements as the Tribe, in its sole discretion, deems appropriate. The title commitment shall include a mineral interest search. The commitment and

subsequent policy shall be acquired from a title insurance company approved by the Tribe. The Tribe may also obtain copies of all instruments (or abstracts of instruments) listed in the schedule of exceptions in the title insurance commitment and a current Treasurer's certificate of taxes due covering the premises. The title insurance commitment, together with any copies of documents obtained by the Tribe pursuant to this paragraph A, constitute the "title documents."

(b). **TITLE REVIEW.** The Tribe shall have the right to inspect the title documents. Written notice by the Tribe of unmarketability of title or of any other unsatisfactory title condition shown by the title documents shall be signed by or on behalf of the Tribe and given to Seller no later than fourteen (14) days after the Tribe's receipt of the title commitment. If Seller does not receive the Tribe's notice by said date, the Tribe accepts the condition of title as disclosed by the title documents as satisfactory.

(c). **MATTERS NOT SHOWN BY THE PUBLIC RECORD.** Seller shall deliver to the Tribe, within five (5) days of the date Seller accepts this offer, true copies of all leases and surveys in Seller's possession pertaining to the premises and shall disclose to the Tribe all leases, easements, liens, or other title or boundary line discrepancy matters not shown by the public records of which Seller has actual knowledge. The Tribe shall have the right to inspect the premises to determine if any third party has any right in the premises not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy). Written notice of any unsatisfactory condition(s) disclosed by Seller or revealed by such inspection shall be signed by or on behalf of the Tribe and given to Seller no later than fourteen (14) days after the Tribe's receipt of such information. If Seller does not receive the Tribe's notice by said date, the Tribe accepts title subject to such rights, if any, of third parties of which the Tribe has actual knowledge.

(d). **RIGHT TO CURE.** If Seller receives notice of unmarketability of title or any other unsatisfactory title condition(s) as provided in this paragraph, Seller shall use reasonable effort to correct said unsatisfactory title condition(s) prior to the date of closing. The Tribe may, in its sole discretion, agree in writing to an extension of time for Seller to cure said objections, and the date of closing shall be postponed accordingly. (The original date of closing and any postponed date of closing are collectively referred to as the date of closing or closing date). If Seller fails to correct said unsatisfactory title condition(s) on or before the date of closing, the Tribe may at its option (i) terminate this agreement by written notice to Seller on or before the closing date, or (ii) the Tribe may waive such defects and proceed with the purchase.

B. EXISTING LEASES/AGREEMENTS. On or before the closing date, if required by the Tribe, Seller has obtained a written consent or estoppel agreement from any existing tenants, in a form acceptable to the Tribe, providing for consent to assignment of any lease to the Tribe upon terms acceptable to the Tribe. Any advance rental payments by any lessee will be prorated to the date of closing. Additionally, at the Tribe's sole discretion, on or before the closing date, the Tribe must be able to determine to its satisfaction through a review of any leases or agreements applicable to the premises that any such leases or agreements will not inhibit the Tribe from proceeding with its planned use and development of the premises.

C. GENERAL PHYSICAL INSPECTION. On or before the closing date, the Tribe must be able to determine to its satisfaction that the physical features of the premises will allow the Tribe to proceed with its planned use and development of the premises. Any expense incurred in this regard shall be borne by the Tribe.

D. ENVIRONMENTAL/HAZARDOUS SUBSTANCES INSPECTION. On or before the closing date, the Tribe must be able to determine to its satisfaction that: (a) the

premises is not in any way contaminated with any hazardous substance or any environmental contamination or condition; (b) the premises is not subject to any federal, state, tribal, or local "superfund" lien, proceedings, claim, liability or action, or the threat or likelihood thereof, for the cleanup, removal or remediation of any such hazardous substance from the premises or from any other real property owned or controlled by Seller or in which Seller has an interest, legal or equitable; (c) there is no asbestos on the premises; and (d) there is no underground storage tank on the premises. The terms "hazardous substance," "release," and "removal," as used herein shall have the same meaning and definition as set forth in any applicable environmental law or regulation, including paragraphs (14), (22), and (23), respectively, of Title 42 U.S.C. Sec. 9601; provided, however, that the terms "hazardous substance" as used herein also shall include "hazardous waste" as defined in paragraph (5) of 42 U.S.C. Sec. 6903 and "petroleum" as defined in paragraph (8) of 42 U.S.C. Sec. 6991. The term "superfund" as used herein means the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, Title 42 U.S.C. Sec. 9601 et seq., as amended, and any similar state statute or local and tribal ordinance applicable to the premises and all rules and regulations promulgated, administered and enforced by any governmental agency or authority pursuant thereto. The term "underground storage tank" as used herein shall have the same meaning and definitions as set forth in any applicable environmental law or regulation, including paragraph (1) of 42 U.S.C. Sec. 6991. Any expense incurred in this regard shall be borne by the Tribe.

E. NEPA COMPLIANCE. On or before the closing date, the Tribe must be able to determine to its satisfaction that the premises will pass any applicable federal NEPA environmental compliance reviews associated with the conveyance of the premises. See 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures (NEPA), 602 DM 2, Land Acquisitions: Hazardous Substances Determinations, and 25 CFR Sec. 151. Any expense incurred in this regard shall be borne by the Tribe.

F. SURVEY. On or before the closing date, the Tribe obtains-if the Tribe desires or if required by the title insurance company providing the title insurance under this Agreement or any lender or guarantor providing the Tribe with any financing- a survey to the requesting party's satisfaction of the premises, certified by a duly registered surveyor. The survey shall be certified, in a certification form acceptable to the requesting party's satisfaction. The survey shall show thereon the information required by the requesting party, including the correct boundaries, legal description, property dimensions and area of the premises itself, location of all fences, easements, rights of way and encroachments, if any, recorded or in place, and all buildings and improvements, with the dimensions thereof. Any expense incurred in this regard shall be borne by the Tribe.

G. CONDITION OF PREMISES. As of the closing date, the premises or any material part thereof, will not have been and will not be threatened to be materially adversely affected in any way as a result of an act of God or disaster, and the premises, including improvements, shall be delivered in the same condition as they now are, customary use and wear excepted.

H. REPRESENTATIONS, WARRANTIES, AND PERFORMANCE. As of the closing date, the representations and warranties of Seller contained in this Agreement will be true and Seller will have performed, observed, and complied with all of Seller's agreements prior to or on the date of closing in accordance with the terms of this Agreement.

I. CONVEYANCE OF MARKETABLE TITLE. Seller conveys marketable title to the premises to the Tribe on the date of closing by a good and sufficient warranty deed and warranty bill of sale covering any personal property to be conveyed.

J. ACCESS/RIGHT OF WAY. On or before the closing date, the Tribe has suitable legal access to the premises by way of a lawfully approved and dedicated easement or right of way to the premises.

K. UTILITIES AND WATER SUPPLY. On or before the closing date, the Tribe will have determined, and where applicable have received confirmation from the applicable governmental or other authority having jurisdiction and authority over the matter, that there are available to the premises necessary utility services, including electricity, sewer, and water supply, of sufficient capacity to enable the Tribe to proceed with its planned use and development of the premises.

L. SELLER'S REMOVAL OF DEBRIS AND JUNK. On or before the closing date, Seller has removed any existing debris, junk, trash, or other such material from the premises to the satisfaction of the Tribe.

M. PERMITS, LICENSES, AND APPROVALS. On or before the closing date the Tribe shall have obtained or will be able to obtain any required permit, license, or approval which is required to enable the Tribe to proceed with its planned use and development of the premises.

These conditions precedent/contingencies are for the benefit and are in the sole discretion of the Tribe and may be waived only by the Tribe in writing. In the event any of the above conditions precedent/contingencies is not fulfilled, unless waived by the Tribe in writing, the Tribe shall be entitled to terminate this Agreement. In the event of such termination, any earnest money or any other amounts paid by the Tribe on the purchase price shall be promptly refunded to the Tribe, and the parties shall have no further obligation or liabilities one to the other.

8. SELLER'S REPRESENTATIONS AND WARRANTIES. In addition to its representations and warranties elsewhere in this Agreement, Seller represents and warrants as of the date of Seller's acceptance of this Agreement and as of the date of closing that the following are true and correct:

A. MARKETABLE TITLE. That Seller will have good and marketable title to the premises and all of the assets, properties, rights and interests pertaining to the premises to be sold hereunder free and clear of all liens and encumbrances, including leases, except as provided herein, and there exists no restriction on the right of Seller to transfer and assign the premises and assets to be sold hereunder and convey good title thereto to the Tribe as herein contemplated except as set forth in this Agreement.

B. AUTHORITY. Seller is the sole and unconditional owner of the premises, is duly authorized and empowered to execute this Agreement, and neither the execution of this Agreement nor the consummation of the transaction provided for herein constitutes, or will result in, any breach of any of the terms, conditions, or provisions of, or constitute a default under, any partnership agreement, trust instrument, indenture, charter, bylaw, mortgage, loan agreement, lien, lease, license, judgment, decree, order, instrument, government program or other verbal or written agreement to which Seller is a party or is subject to or to which the premises is subject, except as provided herein. Seller shall, within five (5) days of signing this agreement, provide a true and correct copy of any corporate, partnership, limited liability company, trust, or other agreement of any type applicable to the premises.

C. DEFECTS. That to the best of Seller's knowledge, there is no condition existing with respect to the premises or any part thereof, which violates any law, rule, regulation, ordinance,

code, order, decree, government program, or ruling of any governmental authority or court. There is no pending or threatened litigation, proceeding, or investigation by any governmental authority or any other person known to Seller against or otherwise affecting the premises nor does Seller know of any ground for any such litigation, proceedings, or investigations. Seller has not received notice, written or otherwise, from any governmental authority requiring the correction of any condition with respect to the premises, or any part thereof. Seller has not received notice of, and has no other knowledge or information of, any pending or contemplated litigation or condemnation action with respect to the premises, or any part thereof.

D. HAZARDOUS WASTE. That to the best of Seller's knowledge (a) the premises is not contaminated with any hazardous substance or environmental condition; (b) the premises have never been used as a landfill or waste dump; (c) there has been no installation in, or production, disposal, use, release, or storage on, the premises of any hazardous waste or other toxic substances, including, without limitation, asbestos, or any other activity which could have toxic results; (d) there is no underground storage tank on the premises; (e) by acquiring the premises, the Tribe will not incur or be subjected to any "superfund" liability for the cleanup, removal or remediation of any hazardous substance from the premises or any liability, cost, or expense for the removal of any asbestos or underground storage tank from the premises; and (f) there is no proceeding or inquiry by any governmental authority or agency with respect thereto. The terms "hazardous substance," "release," and "removal," as used herein shall have the same meaning and definition as set forth in any applicable environmental law or regulation including paragraphs (14), (22), and (23), respectively, of Title 42 U.S.C. Sec. 9601; provided, however, that the terms "hazardous substance" as used herein also shall include "hazardous waste" as defined in paragraph (5) of 42 U.S.C. Sec. 6903 and "petroleum" as defined in paragraph (8) of 42 U.S.C. Sec. 6991. The term "superfund" as used herein means the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, Title 42 U.S.C. Sec. 9601 et seq., as amended, and any similar state statute or local and tribal ordinance applicable to the premises and all rules and regulations promulgated, administered and enforced by any governmental agency or authority pursuant thereto. The term "underground storage tank" as used herein shall have the same meaning and definitions as set forth in any applicable environmental law or regulation including paragraph (1) of 42 U.S.C. Sec. 6991.

E. EXISTING LEASES. Seller represents that, as soon as is practically possible after Seller signs this Agreement, Seller will disclose in writing any leases to which Seller is a party which encumber or affect the premises. Any advance rental payments by any lessee will be prorated to the date of closing. Seller represents and agrees that, unless authorized in writing by the Tribe, Seller will not make any leases prior to the conveyance of this property to the Tribe.

F. HOMESTEAD RIGHTS/CO-OWNERS. Seller represents and warrants that if the premises are occupied as a homestead or if there are other co-owners, Seller shall provide any necessary deed to the premises from any party identified by the title company providing the title commitment for the purpose of disclaiming, relinquishing, or conveying any and all homestead rights and interest that party may have on the premises.

G. LITIGATION. Seller is not a party to any litigation which will affect or cause any claim to arise in connection with any transactions provided for herein. To the best of Seller's knowledge, there are no pending or threatened condemnation proceedings, assessments, administrative action, or litigation of any kind affecting the premises.

H. VALID TRANSFER. The transfer of the premises to the Tribe does not and will not violate any applicable laws, including fraudulent transfer laws, and no claim or lien against the

Tribe or the premises will arise by reason of the same. All debts with respect to the premises, other than any liabilities which may be specifically assumed by the Tribe under this Agreement, will be paid by the Seller at closing.

I. SELLER'S INDEMNITY. Seller will indemnify, defend, and hold the Tribe harmless from and against any and all claims, demands, liabilities, damages, suits, actions, judgments, fines, penalties, loss, cost and expense (including without limitation attorney fees) arising or resulting from, or suffered, sustained or incurred by the Tribe as a result (direct or indirect) of the untruth or inaccuracy of any of the foregoing matters represented and warranted by Seller to the Tribe or the breach of any of the foregoing covenants and warranties of Seller.

J. CONFIRMATION AT CLOSING/VERIFICATION. All of the foregoing covenants, representations, and warranties shall be confirmed in writing by Seller and be true and correct at the time of closing and shall survive the closing. Seller shall make full and complete disclosure to the Tribe and the Tribe's agents of any information reasonably required to verify representations and warranties made by Seller in this Agreement. All such information shall be held in confidence.

9. SURVIVAL OF OBLIGATIONS. All representations, warranties, indemnities and covenants made in this Agreement and all unperformed obligations of Seller herein stated shall survive the termination of this Agreement prior to closing or, alternatively, the closing of this Agreement and the conveyance of title hereunder, as the case may be, and shall remain enforceable after either of such events. Seller shall remain bound by this Agreement until all of Seller's respective obligations hereunder have been completely performed.

10. REAL ESTATE TAXES. 2020 real estate taxes payable in 2021 for which Seller is responsible for with respect to its period of ownership of the premises by the Tribe. 2021 real estate taxes payable in 2022 will be paid by the Tribe.

11. NOTICES. All notices, requests, demands and other communications pursuant to this Agreement which are required to be in writing shall be deemed duly given if personally delivered, emailed, or mailed by registered or certified mail, with postage prepaid, return receipt requested, and addressed as follows (provided that notice given in any other manner shall nonetheless be effective when actually received):

To Seller: Michelle Fox, Managing Director
NDN Holdings, LLC
317 Main Street, Suite 1
Rapid City, SD 57701
michelle@ndncollective.org
406-788-4258

To the Tribe: TLE Executive Director
P.O. Box 159
Rosebud, SD 57570
cleve@rsttle.com
605-747-2371

12. **TIME OF ESSENCE.** Time is of the essence in the performance of this Agreement.

13. **MISCELLANEOUS.**

A. **PAYMENT OF TRANSFER AND RECORDING FEES.** As provided by SDCL 43-4-21, Seller shall be responsible for the payment of any real estate transfer fees imposed by law. The costs of recording the warranty deed to the Tribe will be paid by the Tribe.

B. **AGREEMENT NOT A CONVEYANCE.** It is understood and agreed that this agreement shall in no manner be construed to convey title to said property.

C. **RISK OF LOSS.** Any risk of loss to any buildings and improvements on the premises shall be borne by Seller until title has been conveyed to the Tribe. If the premises or any improvements or structures on the premises are damaged prior to closing and Seller does not elect to repair or replace the improvement or structure, the Tribe shall have the option to terminate this Agreement with refund of any earnest money or carry out this Agreement with an appropriate adjustment of the purchase price.

D. **UTILITY METERS.** Any utility meters will be read at or near closing and utility bills determined and paid by Seller at closing. Any deposits will be returned to Seller.

E. **NOTICE FOR RECORDING.** Concurrently with the signing this Offer and Agreement and if requested by the Tribe, Seller shall execute a notice or memorandum or short form of this Agreement for recording to evidence the Tribe's interest in the premises. In lieu of such memorandum, the Tribe may execute and record such notice, memorandum, or short form of this Agreement or this Agreement may be recorded to evidence such interest.

F. **ENTIRE AGREEMENT.** This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof, and supersedes completely all negotiations, discussions, and prior agreements, oral and written, between the parties with respect to the subject matter hereof. This Agreement may not be amended, modified, or changed, and no waiver of any provision hereof shall be effective, except by written instrument signed by the parties.

G. **INVALIDITY OF ANY CLAUSE.** If any clause or provision of this Agreement is illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, it is the intention of the parties that the remainder of this Agreement shall not be affected.

H. **ASSIGNMENT.** Seller shall not assign or transfer Seller's rights or obligations under this Offer and Agreement without the prior written consent of the Tribe, except Seller may assign this Offer and Agreement to a Qualified Intermediary in the event Seller notifies the Tribe of Seller's intent to perform an IRC Sec. 1031 tax deferred exchange. If required by any financial institution or the Bureau of Indian Affairs in order to clarify the Rosebud Sioux Tribe's status in this transaction, Tribal Land Enterprise shall have the right to assign all or any part of its interest in this Offer and Agreement to the Rosebud Sioux Tribe, prior to the closing without the consent of Seller.

I. **BINDING EFFECT.** This Agreement shall extend to and bind the heirs, personal representatives, successors, and assigns of Seller and the Tribe, subject to the provisions of paragraph 13(H) dealing with assignment.

J. **FAILURE OF CONDITION.** If a matter represented by Seller under this Agreement was true as of the date of this Agreement, but subsequently is rendered inaccurate because of the

occurrence of events or because of a cause other than Seller's intentional misconduct or intentional breach of this Agreement, then such inaccuracy shall not constitute a default by Seller under this Agreement, but will constitute a failure of condition to closing. Failure of such a condition to closing shall entitle the Tribe to terminate this Agreement at closing and receive a refund of any earnest money, whereupon both parties shall be released from further liability under this Agreement, except as expressly provided in this Agreement to survive. If the Tribe does not elect to so terminate, the Tribe shall timely proceed to closing and the failure of such condition to closing shall be deemed waived.

K. FILING FORM 1099S DESIGNATION AGREEMENT. Seller shall be responsible for filing form 1099-S for this transaction.

L. BROKER. Any agent/broker retained by Seller is acting as agent/broker of Seller with the duty to represent Seller, and will not be the Tribe's agent. Seller agrees to indemnify and hold the Tribe and the premises harmless from any and all claims by Seller's agent/broker to commissions and fees, and for all cost and expenses, including the Tribe's attorney fees, incurred in connection with such claims.

M. ATTORNEY/REPRESENTATION. Seller recognizes and acknowledges that Ronald D. Hutchinson represents and is legal counsel for the Tribe, not Seller. Seller has retained legal counsel to represent Seller in this matter.

N. IRC SEC. 1031 EXCHANGE. If Seller notifies the Tribe of Seller's intent to perform an IRC Sec. 1031 tax deferred exchange, the Tribe agrees to an assignment of this Offer and Agreement to Purchase to a Qualified Intermediary of Seller's choosing. Seller agrees to hold the Tribe harmless from any and all claims, liabilities, costs, or delays in time resulting from such an exchange. The Qualified Intermediary's fees shall be paid by Seller.

O. SPECIFIC ENFORCEMENT BY TRIBE/ATTORNEYS' FEES. If the Tribe is required to take legal action against Seller as a result of Seller's default, the Tribe shall be entitled to an action for specific performance of this Agreement. If the Tribe is the prevailing party in any such action Seller shall be liable to the Tribe for all costs of enforcement, including court costs and reasonable attorneys' fees incurred by the Tribe in connection with such action for specific performance.

P. GOVERNING LAW/FORUM FOR DISPUTES/SOVEREIGN IMMUNITY. This Offer and Agreement shall be governed by, construed, and enforced in accordance with the laws of the Rosebud Sioux Tribe, and any dispute or controversy concerning this Offer and Agreement shall be heard and determined in the Rosebud Sioux Tribal Court system. Nothing in this Offer and Agreement constitutes or shall be construed to constitute a waiver of the Tribe's sovereign immunity from suit, and the Tribe hereby expressly retains its sovereign immunity from suit. In the event of an inconsistency or conflict between the terms of this provision and any other provision in this Offer and Agreement, the terms of this provision shall control and prevail.

Q. TERMS PREVAIL OVER CONFLICTING TERMS IN MOU. The parties have entered into a Memorandum of Understanding (MOU) which sets forth their mutual general understanding on the transfer of the premises. In the event of an inconsistency or conflict between the terms of the MOU and this Offer and Agreement, the terms of this Offer and Agreement shall control and prevail.

14. ACCEPTANCE BY SELLER/COUNTERPARTS. If this Offer is accepted by Seller, this instrument shall become a contract between the Tribe and Seller. A copy of this

document may be executed by each party, separately, and when each party has executed a copy of this document, such copies taken together shall be deemed to be a full and complete contract between the parties.

Tribal Land Enterprise, for
the Rosebud Sioux Tribe

By: Chairman, TLE Board of Directors
P.O. Box 159
Rosebud, SD 57570-0159
(605)747-2371

STATE OF SOUTH DAKOTA)

COUNTY OF TODD)

On this ___ day of _____, 2020, before me, the undersigned officer, personally appeared _____, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same on behalf of and with the authority of the Tribal Land Enterprise Board of Directors and the Rosebud Sioux Tribal Council for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(SEAL)

Notary Public

My comm. expires: _____

Rosebud Sioux Tribe, By:

Rodney M. Bordeaux, President
Rosebud Sioux Tribe

Wayne Boyd, Secretary
Rosebud Sioux Tribe

STATE OF SOUTH DAKOTA)

COUNTY OF TODD)

On this ___ day of _____, 2020, before me, the undersigned officer, personally appeared Rodney M. Bordeaux, President of the Rosebud Sioux Tribe and Wayne Boyd, Secretary of the Rosebud Sioux Tribe, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument and the President and Secretary of

the Rosebud Sioux Tribe, respectively, and acknowledged that they executed the same on behalf of and with the authority of the Rosebud Sioux Tribe for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

SEAL

Notary Public
My commission expires: _____

SELLER'S ACCEPTANCE

NDN Holdings, LLC, hereby accepts the above Offer and Agreement this ____ day of _____, 2020, on the terms above stated and agrees to deliver and convey said property and perform all the terms and conditions set forth above.

NDN Holdings, LLC,
317 Main Street, Suite 1
Rapid City, SD 577701

By: _____
(name and title)

STATE OF SOUTH DAKOTA)
COUNTY OF _____)

On this ____ day of _____, 2020, before me, the undersigned officer, personally appeared _____, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same on behalf of and with the authority of NDN Holdings, LLC, a South Dakota limited liability company for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

(SEAL)

Notary Public
My comm. expires: _____

Document prepared by: Ronald D. Hutchinson
Attorney at Law
P.O. Box 968
Mission, SD 57555
605-730-3944

ROSEBUD SIOUX TRIBE
Resolution NO. 2020-296

- WHEREAS,** the Rosebud Sioux Tribe (the Tribe) is a federally recognized Indian Tribe organized pursuant to the Indian Reorganization Act of 1934 and all pertinent amendments thereof; and
- WHEREAS,** the Rosebud Sioux Tribe is governed by a Tribal Council made up of elected representatives who act in accordance with the powers granted to it by its Constitution and By-laws; and
- WHEREAS,** Article IV, Sec. (1) (c) of the Rosebud Sioux Tribe Constitution authorizes the Rosebud Sioux Tribal Council “to purchase and otherwise acquire lands” and Section 5 (b) and (d), as amended, of the Corporate Charter of the Rosebud Sioux Tribe authorizes the Tribe to purchase property of every description, real and personal and to borrow money for any purpose consistent with federal and tribal law; and
- WHEREAS,** pursuant to Section 19 (“Lands”) of the By-Laws of Rosebud Sioux Tribe Tribal Land Enterprise (TLE), the Tribe is authorized to enter into an agreement with TLE to manage and operate, subject to approval of the Commissioner of Indian Affairs or his duly authorized representative, “all lands now in Tribal ownership, or which may come into Tribal ownership from any source”; and
- WHEREAS,** pursuant to Section 10, (“Purpose and Objectives”) of the By-Laws of TLE, TLE is authorized to “provide a long-term land-buying program which would benefit members of the Tribe”; and
- WHEREAS,** the TLE Board of Directors at a special meeting held on October 1, 2020, considered a proposed Memorandum of Understanding (MOU) between the Rosebud Sioux Tribe, TLE, and NDN Holdings, LLC (NDN) which sets forth the parties’ mutual understanding as to how NDN will transfer title to approximately 317.06 acres of real estate which NDN has successfully bid on at auction (the closing on NDN’s auction purchase is currently scheduled for October 31, 2020), which is more particularly described as follows:
- Southeast Quarter (SE1/4) Section Seven (7) and Lots Three (3), Four (4) and the East Half of the Southwest Quarter (E1/2SW1/4) Section Seven (7), all in Township Ninety-seven (97) North, Range Seventy-five (75) West of the 5th P.M. Tripp County, South Dakota (this property was identified in the auction sale and is referred to in the MOU and this resolution as NDN Tract 7).
- WHEREAS,** the proposed MOU also sets forth the parties’ mutual understanding of an “acquisition window” for the Tribe on 157.46 acres of additional real estate NDN successfully bid on at auction, at the purchase price to the Tribe of \$329,700.00 plus certain title and closing costs. The “acquisition window” provides that if NDN desires to sell this additional real estate, NDN will permit the Tribe to purchase this additional real estate prior to NDN considering any other offers from others. This “acquisition window” commences on the date that NDN notifies the Tribe in writing that they wish to sell the property and expires on December 31, 2030. This additional real estate subject to the “acquisition window” is more particularly described as follows:

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Lots (One) (1), Two (2) and the East Half of the Northwest Quarter (E1/2NW1/4) Section Eighteen (18) Township Ninety-seven (97) North, Range Seventy-five (75) West of the 5th P.M, Tripp County, South Dakota (this property was identified in the auction sale and is referred to in the MOU and in this resolution as NDN Tract 8).

WHEREAS, the Rosebud Sioux Tribal Land Enterprise Board of Directors reviewed the MOU and the possible acquisition of Tract 7 on October 1, 2020, under Resolution no. 2020-005 and recommends approval of this resolution subject to and contingent on NDN agreement to the following amendments to the proposed MOU:

1. The purchase price for Tract 7 shall be \$602, 300.00 plus the title insurance premium, recording fees, and real estate taxes incurred by NDN with respect to its acquisition of Tract 7.
2. The purchase price for Tract 8 (in the event NDN wishes to sell and the Tribe wishes to purchase pursuant to the acquisition window for Tract 8) shall be \$329,700.00 plus the title insurance premium, recording fees, and real estate taxes incurred by NDN with respect to its acquisition of Tract 8. The parties will draft and sign the legal document(s) necessary to formalize the "acquisition window" for the Tribe's possible future purchase of the NDN Tract 8.
3. The paragraph in the proposed MOU titled "Disputes" should be amended with the addition of the following at the end of the first sentence: "If the Parties are unable to work out or mediate any disputes, any remaining dispute or controversy concerning this MOU shall be heard and determined in the Rosebud Sioux Tribal Court system. This MOU shall be governed by, construed, and enforced in accordance with the laws of the Rosebud Sioux Tribe."
4. The purchase and closing of Tract 7 shall be accomplished through the use of TLE's and the Tribe's standard Offer and Agreement form, with such modifications necessary to implement the particulars of this purchase and as are agreed to and approved by TLE staff and legal counsel.

WHEREAS, both the Rosebud Sioux Tribal Council and the Rosebud Sioux Tribal Land Enterprise Board of Directors is desirous of approving and authorizing the MOU and the purchase of Tract 7, subject to and contingent on NDN agreement to amendments to the proposed MOU set forth above; and

WHEREAS, the Rosebud Sioux Tribe through TLE's Land Acquisition Program will, subject to and contingent on NDN agreement to amendments to the proposed MOU set forth above, purchase this fee land in the name of the Rosebud Sioux Tribe;

THEREFORE BE IT RESOLVED, that, subject to and contingent on NDN agreement to amendments to the proposed MOU set forth above, execution of the MOU with NDN is approved and authorized; and

BE IT FURTHER RESOLVED, that, subject to and contingent on NDN agreement to amendments to the proposed MOU set forth above, Tract 7 as is more particularly described above be acquired by Tribal Land Enterprise on behalf of the Rosebud Sioux Tribe for a purchase price not to exceed \$602,300.00 plus the title insurance premium, recording fees, and real estate taxes incurred by NDN with respect to its acquisition of Tract 7; and

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BE IT FURTHER RESOLVED, that subject to and contingent on NDN agreement to amendments to the proposed MOU set forth above, the Rosebud Sioux Tribal Council authorizes the Tribal President or Tribal Vice-President and Tribal Secretary of the Rosebud Sioux Tribe to sign any and all documents required to execute the MOU and to finance and finalize the purchase of Tract 7.

BE IT FURTHER RESOLVED, that the Rosebud Sioux Tribe, by this resolution authorizes TLE to manage and operate this subject property in accordance with Section 19 ("Lands") of the By-Laws of TLE; and

BE IT FURTHER RESOLVED, that the Rosebud Sioux Tribe will direct the Bureau of Indian Affairs to take the above described property in trust in the name of the United States of America in Trust for the Rosebud Sioux Tribe.

CERTIFICATION

This is to certify that the above Resolution No.2020-296 was duly passed by the Rosebud Sioux Tribal Council in session on December 10, 2020, by a vote of twelve (12) in favor, zero (0) opposed and two (2) not voting. The said resolution was adopted pursuant to authority vested in the Council. A quorum was present.



Wayne Boyd, Secretary
Rosebud Sioux Tribe



Rodney M. Bordeaux, President
Rosebud Sioux Tribe