



# SQUAXIN ISLAND TRIBE

## RESOLUTION NO. 14- 03

of the

### SQUAXIN ISLAND TRIBAL COUNCIL

**WHEREAS**, the Squaxin Island Tribal Council is the Governing Body of the Squaxin Island Tribe, its members, its lands, its enterprises and its agencies by the authority of the Constitution and Bylaws of the Squaxin Island Tribe, as approved and adopted by the General Body and the Secretary of the Interior on July 8, 1965; and

**WHEREAS**, under the Constitution, Bylaws and inherent sovereignty of the Tribe, the Squaxin Island Tribal Council is charged with the duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources and rights of the Tribe; and

**WHEREAS**, the Tribe is a federally-recognized Indian Tribe possessing reserved powers, including the powers of self-government; and

**WHEREAS**, the Squaxin Island Tribal Council has been entrusted with the creation of ordinances and resolutions in order to fulfill their duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources of the Tribe; and

**WHEREAS**, in 2007 Petrosol International Inc. ("Petrosol") and Island Enterprises Inc. ("IEI") entered into a Contract for the Construction and Operation of a Rail Spur and Construction of a Propane Facility ("Contract"); and

**WHEREAS**, Petrosol undertook construction of a facility and rail spur adjacent to Skookum Creek Tobacco Company; and

**WHEREAS**, Petrosol subsequently sold its interest in the facility to Keyera Energy Inc., who in turn sold its interest to NGL Supply Terminal Company LLC ("NGL"); and

**WHEREAS**, continued use of the facility and spur under the Contract requires IEI approval of any assignment, and any assignment or contract must be approved by the Bureau of Indian Affairs in order to be enforceable and effective; and

**WHEREAS**, staff has advised that the terms of the old Contract are unlikely to receive BIA approval under current BIA regulations, and therefore an attempt to seek BIA approval for an assignment of the Contract is unlikely to succeed; and

**WHEREAS**, staff have instead negotiated the key terms of a new agreement with NGL contingent on approval by the Council and the Island Enterprises Board;

**NOW THEREFORE BE IT RESOLVED**, that the Squaxin Island Tribal Council hereby agrees to enter into the attached agreement (the "Agreement") with NGL, including such limited nonsubstantive modifications as are deemed necessary and proper by staff to secure BIA approval or to protect the interests of the Tribe; and

**NOW THEREFORE BE IT FINALLY RESOLVED**, that the Tribal Council hereby authorizes the Council Chairman and the Executive Director to do any and all accounts necessary to effect execution of the Agreement and secure BIA approval of the same.

#### CERTIFICATION

The Squaxin Island Tribal Council hereby certifies that the foregoing Resolution was adopted at the regular meeting of the Squaxin Island Tribal Council, held on this 23<sup>rd</sup> day of January, 2014, at which time a quorum was present and was passed by a vote of 4 for and 0 against, with 0 abstentions.

  
David Lopeman, Chairman

Attested by:

  
Pete Kruger, Secretary

  
Arnold Cooper, Vice Chairman

**RESOLUTION NO. 14-001**  
**Of**  
**ISLAND ENTERPRISES, INC.**

**WHEREAS**, Island Enterprises, Inc. ("IEI") has been duly chartered by the Squaxin Island Tribe and is, as of May 9, 2003, a Tribal government corporation wholly-owned by the Tribe; and

**WHEREAS**, under its Articles of Incorporation and Bylaws, the IEI Board of Directors is charged with the duty of control and management of the business activities of the corporation; and

**WHEREAS**, in 2007 Petrosol International Inc. ("Petrosol") and Island Enterprises Inc. ("IEI") entered into a Contract for the Construction and Operation of a Rail Spur and Construction of a Propane Facility ("Contract"); and

**WHEREAS**, Petrosol undertook construction of a facility and rail spur adjacent to Skookum Creek Tobacco Company; and

**WHEREAS**, Petrosol subsequently sold its interest in the facility to Keyera Energy Inc., who in turn sold its interest to NGL Supply Terminal Company LLC ("NGL"); and

**WHEREAS**, continued use of the facility and spur under the Contract requires IEI approval of any assignment, and any assignment or contract must be approved by the Bureau of Indian Affairs in order to be enforceable and effective; and

**WHEREAS**, staff has advised that the terms of the old Contract are unlikely to receive BIA approval under current BIA regulations, and therefore an attempt to seek BIA approval for an assignment of the Contract is unlikely to succeed; and

**WHEREAS**, staff have instead negotiated the key terms of a new agreement with NGL contingent on approval by the Tribal Council and the IEI Board;

**NOW THEREFORE BE IT RESOLVED**, that the IEI Board hereby agrees to enter into the attached agreement (the "Agreement") with NGL, including such limited nonsubstantive modifications as are deemed necessary and proper by staff to secure BIA approval or to protect the interests of IEI; and

**NOW THEREFORE BE IT FINALLY RESOLVED**, that the IEI Board hereby authorizes the CEO, or her designee, to do any and all accounts necessary to effect execution of the Agreement and secure BIA approval of the same.

**CERTIFICATION**

I, \_\_\_\_\_ of the Board of Directors, of Island Enterprises, Inc. do hereby certify that the above Resolution was duly adopted at a Regular Meeting of the Island Enterprises, Inc. Board of Directors on the \_\_\_\_ day of \_\_\_\_\_, 2014, a quorum being present with a vote of \_\_ For, \_\_ Against, \_\_ Abstaining and \_\_ Not Voting its adoption, the Chairman not voting.

ATTEST:

Tim Sheldon, Board Chairman  
Island Enterprises, Inc.



THIS LEASE ("**Lease**") is made and entered into by and between the SQUAXIN ISLAND TRIBE, a federally recognized Indian tribe, ("**Lessor**") and NGL Supply Terminal Company, LLC, a Delaware limited liability company ("**Lessee**"), and is dated the \_\_\_ day of \_\_\_\_\_, 2014.

WHEREAS, the Squaxin Island Tribe has established Island Enterprises, Inc., a wholly-owned economic development corporation under Tribal law to manage certain lands and businesses on behalf of the Tribe, including the lands described herein as the Leased Premises; and

WHEREAS Petrosol International Inc. and Island Enterprises, Inc., entered into a Contract for Construction and Operation of a Rail Spur and Construction of a Propane Facility (the "Project") dated September 17, 2007 (the "**Original Contract**"), a copy of which is attached as Exhibit B hereto;

AND WHEREAS Petrosol International Inc. assigned all of its interest in the Original Contract to Keyera Energy, Inc. as of September 11, 2009;

AND WHEREAS Keyera Energy, Inc. assigned all of its interest in the Original Contract to Lessee as of December 16, 2013;

AND WHEREAS the Squaxin Island Tribe wishes to lease the land necessary for the Project to Lessee;

AND WHEREAS the Lessor and Lessee wish to document the updated terms with respect to the lease of the Leased Premises;

- 1. DESCRIPTION OF THE PREMISES.** Lessor agrees to lease to Lessee that portion of Indian land more particularly described in Exhibit A, attached hereto and incorporated by reference (the "**Leased Premises**"). In addition, Lessee shall have non-exclusive ingress and egress rights over those paved areas necessary to access the Leased Premises as depicted in Exhibit A for the authorized uses under this Lease. The right of ingress and egress shall not include the right to park, store, or otherwise occupy any area outside of the Leased Premises.
- 2. PURPOSE OF THE LEASE.** The purpose of this Lease is: (a) for the Lessor, to facilitate economic development within the Squaxin Island Reservation, and (b) for the Lessee, to secure the location for the continued operation of the rail spur and propane and/or butane storage facility located on the Leased Premises (the "**Facility**").
- 3. AUTHORIZED USES UNDER THE LEASE.** Lessee may maintain and operate the Facility on the Leased Premises. In doing so, Lessee shall obtain and comply with any and all approvals, permits, licenses, and authorizations necessary to its activities hereunder as required by applicable law, and shall comply with all federal, tribal, state and local laws, regulations, rules, and ordinances. Lessee shall be responsible for obtaining, without expense to Lessor, all necessary real property rights and public authority and permission for the maintenance and operation of the Facility. Lessor shall strictly comply with all laws, statutes, regulations, ordinances, orders, covenants, restrictions, and decisions of any court of competent jurisdiction, including without limitation, those pertaining to environmental matters, and other Lessor requirements relating to the use of the Facility. Lessee shall be responsible for compelling its agents, invitees, and contractors to comply with requirements of this Section 3.
- 4. TERM.** The "**Effective Date**" of this Lease shall be date that is the later of: a) execution by the parties; or, b) approval of this Lease by the Bureau of Indian Affairs ("**BIA**"). The term of this Lease shall run from the Effective Date until September 30, 2027 (the "**Term**"). However, this Lease may be terminated by either party without prejudice to any other remedy that the non-defaulting party may have if the other party defaults in performance of any provision of this Lease. The non-defaulting party shall give the defaulting party ten days' notice of the non-defaulting party's intention to terminate this Lease, within which time the defaulting party may cure the default condition to the satisfaction of the non-defaulting party. In addition, at any time during the Term:



- a. Lessee may terminate this Lease upon at least two year's notice to the Lessor; provided, that Lessee shall pay an early termination fee of 25% of the rent that would otherwise be due for the remainder of the Term on or before the date of termination;
  - b. Lessor may terminate this Lease upon at least two year's notice to the Lessee; provided, that Lessor shall pay an early termination fee of \$500,000 if the remainder of the Term would be more than 60 months on the date of termination or an early termination fee of \$250,000 if the remainder of the Term would be 60 months or less on the date of termination.
5. **OWNERSHIP OF IMPROVEMENTS.** Lessee has constructed the Facility, and except as provided for herein, shall retain ownership of the permanent improvements (the "**Improvements**"). All responsibility for maintenance and operation of the Facility shall rest with Lessee. During the Term, the Improvements shall be owned by Lessee, and Lessee shall be entitled to all benefits of such ownership, including without limitation, depreciation and investment credits under applicable tax laws, but the rail spur shall become Lessor's property upon termination of this Lease without any payment required by Lessor; provided that Lessor may require Lessee, with written notice no less than 180 days prior to the expiration of this Lease, to remove and dispose of any or all of the rail spur at Lessee's expense. If the rail spur is not removed by the required time, Lessor may charge Lessee the cost of removal and proper disposal. Upon termination of this Lease, Lessee shall remove all Improvements except as provided herein and shall fully and completely repair any damage to the Leased Premised caused by Lessee's removal of the Improvements.
6. **LESSOR'S SECONDARY USE RIGHT.** Consistent with 25 C.F.R. §162.419 and §162.426, Lessor and its subsidiaries will have the "secondary use right of the railroad spur and related improvements for purposes of loading and unloading of products onto or off of rail vehicles owned, operated, managed or controlled by Lessor or its subsidiaries or by their customers, vendors, or invitees (the "**Tribal Rail Vehicles**"), and for the operations incidental thereto.
  - a. The "secondary use right" means the right of Lessor, its customers, vendors, and invitees to use the railroad spur and associated improvements for the purposes stated above only when such facilities are not otherwise being used by Lessee. Such use shall include ingress and egress over the leased premises to allow Lessor to reach the railroad spur and conduct loading, unloading and staging activities associated with such use; provided, however, that such use by Lessor shall not interfere with the Lessee's operations and Lessor shall not store any material or objects on the Leased Premises beyond the time necessary for the permitted secondary use.
  - b. The parties will coordinate the use of the railroad spur but, in any case, Lessee will have the preferential use of the railroad spur. Lessor will notify Lessee in writing of its intended use of the railroad spur between ten (10) and thirty (30) days prior to any Tribal Rail Vehicle's proposed arrival date. Lessor's use of the railroad spur shall be limited to periods of 24-hours in duration, which time will begin upon the scheduled arrival time of each Tribal Rail Vehicle.
  - c. The secondary use of the railroad spur by Lessor pursuant to the terms hereof shall not cause a reduction of the rent payable by Lessee to Lessor and Lessor will not be required to pay rent to Lessee for such use.
  - d. Lessor agrees to indemnify Lessee against any damages to the Leased Premises or Lessee's Improvements or equipment resulting from Lessor's secondary use, with the exception that Lessor shall not be required to indemnify Lessee for damage arising from Lessee's negligence or willful misconduct.
7. **TRIBAL MEMBER EMPLOYMENT.** If at any time an employment opportunity exists for work at or related to the Facility, Lessee shall first make the opportunity available to enrolled members of the Squaxin Island Tribe who possess the necessary qualifications. Lessee will work with the Tribe's Human Resource Department to advertise the position to enrolled tribal members in accordance with the Tribe's hiring policies and procedures. If no qualified tribal member is identified through the initial posting of the position in accordance with this Section 7, Lessee may proceed to recruit in accordance with its normal policies and procedures without regard to tribal enrollment.



8. **PAYMENT.** Rent shall be payable monthly to Lessor in advance on the tenth of each month in the amount of \$750.00 per month beginning on the Effective Date. Interest on late payments shall accrue at a rate of 12% per annum. Proof of payment will be provided consistent with 25 C.F.R. § 162.424 on request.
9. **DUE DILIGENCE REQUIREMENTS.** The due diligence requirements of 25 C.F.R. §162.417 are waived.
10. **INSURANCE REQUIREMENTS.** Lessee shall maintain commercial general liability insurance with a per occurrence limit of no less than \$5 million, and name Lessor as additional insured with respect to claims related to the Leased Premises. Such policy shall contain a provision that the insurance company or its designee must give the Lessor written notice (a) 30 days before the coverage is non-renewed by the insurance company, and (b) 10 business days after cancellation of coverage by the insurance company. In addition, if the insurance policy required by this section expires, exhausts its limits, is to be cancelled, Lessee shall immediately give Lessor prompt written notice upon Lessee's actual or constructive knowledge of such condition. Immediately upon execution of this Lease, and thereafter upon Lessor's reasonable request, Lessee shall provide proof of insurance in a form satisfactory to Lessor.
11. **BONDING REQUIREMENTS** No bond is required pursuant to 25 C.F.R. § 162.434(g).
12. **OBLIGATION TO UNITED STATES.** All obligations of the Lessee and its sureties to the Lessor under this lease are also enforceable by the United States, so long as the Leased Premises remain in trust or restricted status.
13. **UNLAWFUL CONDUCT.** Lessee shall neither commit nor permit any unlawful conduct, nuisances, illegal activity, negligent use or waste of the Leased Premises.
14. **GOVERNING LAW.** This Lease shall be governed by Squaxin Island Tribal Law, consistent with 25 C.F.R. § 162.014.
15. **CULTURAL RESOURCES.** If historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with this Lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the Lessee will contact BIA and the Lessor to determine how to proceed and appropriate disposition;
16. **BIA AND LESSOR RIGHT OF ENTRY.** The BIA and/or the Lessor may, at any reasonable time upon reasonable advance notice to Lessee, during the term of the Lease, enter and inspect the Leased Premises to ensure Lessee's compliance with the terms of this Lease.
17. **BIA REQUEST FOR RECORDS.** The BIA may in its discretion treat as a lease violation any failure by the Lessee to cooperate with a BIA request to make appropriate records, reports, or information available to the BIA for inspection and duplication.
18. **INDEMNIFY AND HOLD HARMLESS.** Lessee shall hold harmless and indemnify Lessor from and against all loss, liability, or damages resulting from the Lessee's use or occupation of the Leased Premises, with the exception that Lessee shall not be required to indemnify Lessor for liability or cost arising from Lessor's negligence or willful misconduct.
19. **HAZARDOUS MATERIALS.** In addition to those obligations set forth in Section 18, above, Lessee shall hold harmless and indemnify Lessor from and against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous material from the Leased Premises that occurs during the Term, regardless of fault, with the exception that Lessee shall not be required to indemnify Lessor for liability or cost arising from Lessor's negligence or willful misconduct. Lessee shall provide Lessor with reports no less than annually demonstrating compliance with applicable safety and environmental laws.
20. **VENUE, FORUM, AND SOVEREIGN IMMUNITY.** Lessee and Lessor agree that sole and exclusive jurisdiction over any dispute arising under or relating to this Lease shall be in the Squaxin Island Tribal

Court; PROVIDED, however, that nothing herein shall be deemed to waive the sovereign immunity of Lessor.

21. **ENTIRE AGREEMENT.** This Lease constitutes the entire agreement between the parties with respect to the Leased Premises and the Facility, and supersedes all previous communications, representations, warranties and agreements, either written or verbal, including the Original Agreement. Upon execution of this Lease by the parties, the Original Agreement shall be superseded and deemed fully substituted by the terms and conditions of this Lease.

22. **NOTICES AND PAYMENTS.** Any notices or payments required to be given pursuant to this Lease shall be in writing and delivered to the address indicated below:

For Lessor:

Island Enterprises, Inc.  
3591 SE Old Olympic Hwy  
Shelton, WA 98584  
Attention: Accounting

For Lessee:

NGL Supply Terminal Company, LLC  
6120 S Yale, Suite 805  
Tulsa, OK 74136  
Attention: COO – NGL Logistics

23. **ASSIGNMENT.** Lessor shall not unreasonably withhold its consent to an assignment of the Lease by Lessee, and Lessor shall be deemed to consent to the assignment of this Lease if Lessee provides written notice of the proposed assignment to Lessor and Lessor does not object in writing within 30 days. However, Lessee must seek BIA approval of any proposed assignment and must submit, at a minimum, the following materials to the BIA: (1) a copy of an executed amendment to this lease or other documentation of Lessor's actual consent to the assignment, (2) proof of mailing of the proposed assignment to Lessor, and (3) all other pertinent information as requested by the BIA or otherwise. Lessee shall comply with all legal requirements applicable to the approval of the assignment, including without limitation 25 CFR s.162.449 - 452.

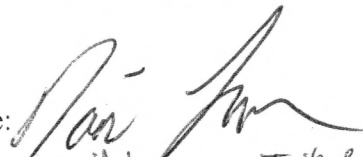
24. **AUTHORITY.** Each of the parties hereby represents and warrants that it has the power and authority to enter into this Lease and to perform all of its obligations hereunder.

**SQUAXIN ISLAND TRIBE**

**NGL SUPPLY TERMINAL COMPANY, LLC**

By:

Title:


  
David Lofeman, Tribal Chairman

By:

Title:

Acknowledged and agreed to this 23<sup>rd</sup> day of January, 2014 by:

**ISLAND ENTERPRISES, INC.**



By: Kelly S. Croman

Title: CEO

This Lease is approved this \_\_\_ day of \_\_\_\_\_, 2014 by:

**BUREAU OF INDIAN AFFAIRS**

By:

Title:

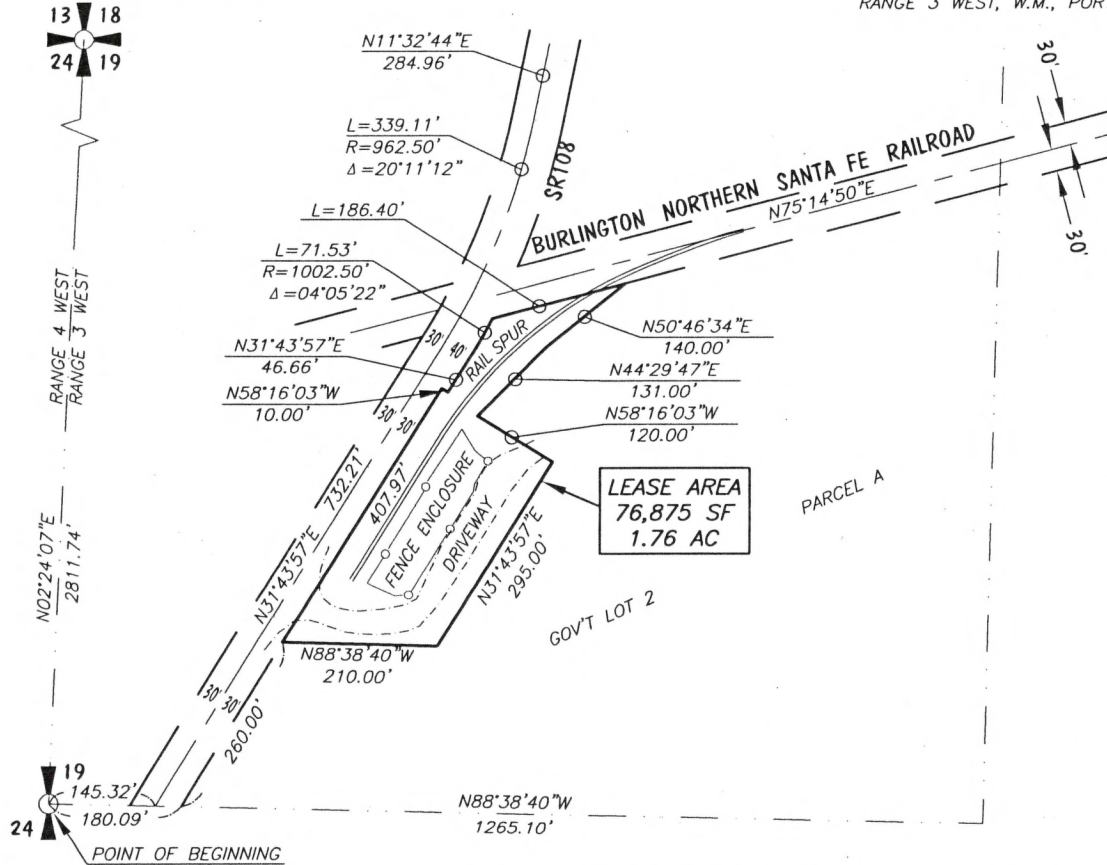




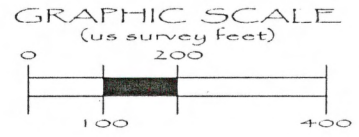
PACIFIC SURVEY & ENGINEERING INC  
 1812 CORNWALL AVE., BELLINGHAM, WA 98225 PHONE: 671-7387 FAX: 671-4685  
 EMAIL: pse@pse-survey.com www.psesurvey.com

LEASE EXHIBIT

SITUATE IN A PORTION OF GOVERNMENT LOT 2, TOWNSHIP 19 NORTH,  
 RANGE 3 WEST, W.M., PORTION OF PARCEL A, MASON COUNTY, WASHINGTON



LEASE AREA  
 76,875 SF  
 1.76 AC



PRELIMINARY

Form approved by IEI Board 8/29/07  
Form approved by Tribal Council 9/12/07  
Initial if Tribal Council review of content requirement met Yes  
Initial if competitive bid requirement met NA  
Initial if cost-review requirement met NA  
Initial if Finance Department/CFO review requirement met Yes IEI  
Initial if Legal Dept. review requirement met Yes  
Other review: NA

**CONTRACT  
FOR CONSTRUCTION AND OPERATION OF A RAIL SPUR  
AND  
CONSTRUCTION OF A PROPANE FACILITY**

This Contract is entered into on the Squaxin Island Reservation this 17 day of September, 2007, between Petrosol International Inc., a Washington corporation, with a principal place of business at N 300 Mullan Road Suite 201, Spokane, Washington 99206, hereafter referred to as the "Contractor", and Island Enterprises, Inc., a wholly-owned corporation of the Squaxin Island Tribe, a federally-recognized Tribe (hereafter "IEI"), located on the Squaxin Island Reservation at Shelton, Washington. This Contract consists of this written agreement and all attached "Contract Documents" described in Section 11 of this Contract.

**Whereas**, IEI and the Contractor wish to provide for the construction of a rail spur (the "Track") adjacent to the IEI cigarette manufacturing facility, which Track will be used and operated by the Contractor for propane facilities (the "Facility") and IEI for its economic development purposes;

**Whereas**, IEI and the Contractor wish to provide for the construction of the Facility, which Facility will be owned and operated by the Contractor;

**Whereas**, IEI and the Contractor wish to set forth the terms and conditions governing the construction, operation and maintenance of the Track and Facility, including a mutual apportionment of the costs thereof;

**Whereas**, the Track and Facility are desired by IEI as an integral part of its economic development infrastructure; and

**Now, therefore**, in consideration of the mutual covenants contained herein, the parties agree as follows:

**1. Description of Goods and/or Services**

- 1.1 **Purpose of Agreement.** The purpose of this Agreement is to provide for the work of design and construction of a Track which will be used and operated by Contractor and IEI; to provide for the work of design and construction of a Facility which will be owned and operated by Contractor and used by Contractor; to state the terms and conditions upon which said construction shall be undertaken and completed; and to provide for subsequent maintenance and operation of the Track. The work of construction to be performed is hereinafter referred to as the "Project" and is generally described in the attached "Exhibit A".
- 1.2 **Necessary Land.** All land necessary to the Project shall be made available by IEI at no cost to the Contractor; provided, however, it will be necessary for the Contractor to



enter into agreements with the trunk line provider, including, as may be required by the trunk line provider, but not limited to a rail industrial access agreement, a railroad track agreement and lease of land for construction for the use of the land owned by the trunk line and required for the construction of the Track and agreements with IEI for land access and/or construction for its propane facilities. It is further agreed the Contractor shall satisfy the requirements of the trunk line provider as a condition precedent to the implementation of this Agreement. It is further agreed that the access agreement (Exhibit B) with IEI shall be in a form agreed to by both parties, and that execution of such an agreement will take place prior to the start of construction.

- 1.3 **Access.** IEI shall identify the fixed point of access, both to and from the Track and Facilities, by means of clear and unmistakable signage which IEI agrees to erect only on IEI property. IEI agrees that the Contractor and its authorized personnel and suppliers shall not be required to pay any toll or charge, and that free and unimpeded access shall be available at all times without exception. Contractor shall have the right to review and approve IEI's designs for the road access.
- 1.4 **The Project.** The Contractor shall prepare provisional plans, specifications, and estimates (hereinafter "Provisional Plans") for each phase of the Project (the Track and Facility as separate phases) and shall deliver copies of said plans to IEI together with a statement setting forth the Contractor's cost of preparing the Provisional Plans. The parties shall review and jointly confer upon the Provisional Plans and shall make such written changes or modifications as may be mutually agreed between them. The said Provisional Plans, including those written changes or modifications mutually agreed upon, shall be deemed to be Final Plans 60 days after the date of delivery of the said Provisional Plans to IEI, unless both parties mutually agree in writing to an extension of time for further review.

Both parties shall, in writing, expressly approve or disapprove the Final Plans. If either party fails to approve or disapprove the final plans within 30 days from the date on which the Provisional Plans are deemed to be Final Plans, the Final Plans shall be deemed approved by such party.

In the event that either party disapproves the Final Plans, the parties may, but shall not be required to, continue to review and jointly confer upon such Final Plans until the same are approved by both parties; or, in the alternative, either party may, at its option, notify the other that this Agreement is terminated. In the event this Agreement is terminated pursuant to this section, neither party shall have any further rights or obligations hereunder.

The Contractor agrees to construct the Project in conformity with the approved Final Plans. No construction shall commence under this Agreement without approved Final Plans.

- 1.5 **Commencement and Substantial Completion.** Construction of the Project shall commence within 180 days after the Final Plans have been approved by both parties hereto, subject to delays occasioned by governmental or trunk line approvals. Construction shall be carried out consistent with AGC Contract No. 200 or other form of contract approved by IEI and Contractor. Construction shall be substantially completed within 180 days after the date on which it is scheduled to commence. The foregoing

construction schedule may be modified only by mutual written agreement signed by the authorized representatives of the parties.

- 1.6 **Periodic Reports.** During the course of construction, the Contractor shall provide IEI periodic written or verbal reports to IEI, as may reasonably be requested, regarding the status of the construction schedule, anticipated completion, and costs of the Project.

## 2. Cost of the Project

- 2.1 The Contractor shall be responsible for all costs of the Project.
- 2.2 Payment of this amount is subject to additions or deductions in accordance with the provisions of this Contract.

## 3. Method of Payment

During the Initial Term of this Agreement, Contractor shall pay no costs for the access or use of the Track, the Facility and/or the ground on which each is located. Thereafter, Contractor shall pay the fair market monthly rental value of (a) the use of the Track and (b) access to the Facility. If, for any reason, the Contractor does not complete, or does not properly complete, the Track and/or the Facility, or this Agreement is terminated pursuant to Section 10.1, Contractor shall pay the fair market monthly rental value of its use and/or access of the Track and/or Facilities.

## 4. Contract Term

This Contract shall be effective on September 5, 2007, and shall automatically terminate on September 30, 2027 unless renewed or extended in writing by both parties (hereafter, the "Initial Term").

## 5. Permits and Licenses.

The Contractor shall obtain and comply with any and all approvals, permits, licenses, and authorizations required by applicable law to enable it to fulfill its obligations hereunder and shall comply with all federal, tribal, state and local laws, regulations, rules and ordinances.

## 6. Track Operation and Maintenance.

- 6.1 **Maintenance and Operation Permits.** Contractor shall be responsible for obtaining, without expense to IEI, all necessary real property rights and public authority and permission, including applicable permits, for the maintenance and operation of the Track. Contractor shall strictly comply with all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction, including, without limitation, those pertaining to environmental matters (collectively, "Legal Requirements") and other IEI requirements relating to the use of the Track or Facilities. Prior to entering IEI's property, Contractor shall and shall cause its contractor(s) to comply with all IEI's applicable safety rules and regulations.
- 6.2 **Commencing Operation.** Operation of the Track will commence not later than 60 days after completion of the Project and acceptance by Contractor pursuant to the AGC 200 contract terms; provided, however, the said commencement may be expedited or deferred by mutual agreement in writing.



- 6.3 **Obligation to Maintain.** Contractor shall at all times, and at its sole risk and expense, maintain, or cause to be maintained, the Track in a safe and satisfactory condition and in compliance with all applicable Legal Requirements (defined below). Maintenance means, among other things, providing proper drainage along the relevant portion of the Track, keeping the Track free and clear of snow, ice, vegetation, structures, and other obstacles, maintaining grade crossing warning devices, passive warning signs, gates, fences, barriers, roadways, track drainage facilities, lighting and track and other signals.
- 6.4 **Unsafe Conditions.** Without relieving Contractor from any of its obligations under this Agreement, IEI may refuse to operate over the Track or use or enter the Facilities or whenever IEI, in its sole discretion, determines that the same is unsatisfactory for IEI's operation, entry or contact. If and when Contractor has remedied such condition to IEI's sole satisfaction, IEI shall resume operation over the Contractor Track or use of or entry into the Facilities. IEI's operation over the Track or use of or entry into any Facility with knowledge of an unsatisfactory condition is not a waiver of Contractor's obligations contained herein or of IEI's right to recover for or be indemnified and defended against such damages to property or injury to or death of persons that may result there from.
- 6.5 **Connection to Trunk Line.** Contractor shall, at its sole expense, pay all costs for changes, repairs or alterations to the Contractor Track that may be necessary to conform to any changes of grade or relocation of the trunk line at the point of connection with the Contractor Track, if such change of grade or relocation is required to comply with any Legal Requirement or is made for any other reason beyond IEI's reasonable control.
- 6.6 **Gates, Fencing, Loading Etc.** If Contractor installs any gates or fencing across the Track, or a track scale, unloading pit, loading or unloading device, adjustable loading dock, warehouse door, or any other structure, including its proposed propane facility (collectively, "Facilities") affecting the Track, Contractor shall be solely responsible for assuring the safe and satisfactory condition of the same and shall not allow any Facilities to be a source of danger to the safe operation of the Track. Contractor shall also be solely responsible for assuring the safe and satisfactory condition of all of Contractor's equipment touching, used in conjunction with or affecting the Track ("Equipment") and shall not allow any Equipment to be a source of danger to the safe operation of the Track. Before utilizing or unloading any equipment spotted onto the Track, Contractor shall inspect the same and all other Equipment and Facilities for the safety of persons working on or about these items to assure compliance with the foregoing. Contractor shall utilize all Facilities, Equipment and spotted equipment so as not to affect negatively safe and efficient operation over the Track.
- 6.7 **Removal or Relocation.** In the event the public authority having jurisdiction thereof orders the separation of the grade of the Track and any street, road, highway, other rail line or the like, Contractor hereby consents to the removal and/or relocation of the Track and shall reimburse IEI all expenses in connection with the removal and/or relocation of the Track.
- 6.8 **Additional facilities.** Contractor shall not place, permit to be placed, or allow to remain, any permanent or temporary material, structure, pole, container, storage

vessel, above-ground or underground tank, or other obstruction that would interfere with Contractor's and/or IEI's use of the Track or Facility.

#### **7. Revenue Sharing.**

Contractor shall have the right to sublease and grant privileges for the Track and/or Facilities as may be mutually agreed between IEI and the Contractor in writing, and the right to retain all revenues derived there from during the Initial Term.

#### **8. Risk of Loss or Damage.**

Contractor assumes and bears the entire risk of loss or damage to the Track from any and every cause whatsoever, excluding gross negligence on the part of IEI, its officers, employees, other contractors, agents, servants and invitees.

#### **9. Title to Real Property.**

All land made available by IEI shall be deemed to be the property of IEI and shall revert exclusively and solely to IEI upon the earlier of (a) substantial completion of construction or (b) the termination of this Agreement for any cause whatsoever; provided however that all land leased from the trunk line owner pursuant to the provisions of Section 1.2 hereof and all improvements made thereon are expressly excluded.

#### **10. Default and Termination**

10.1 This Contract may be terminated by either party without prejudice to any other remedy that the non-defaulting party may have if the other party defaults in performance of any provision of this Contract. The non-defaulting party shall give the defaulting party ten days' written notice of the non-defaulting party's intention to terminate this Contract, within which time the defaulting party may cure the default condition to the satisfaction of the non-defaulting party.

10.2 IEI may terminate this Contract for its convenience without cause. Should IEI elect to terminate under this subsection 10.2, IEI shall give the Contractor written notice of the termination, which shall be effective one year after mailing, first-class, postage prepaid, or as agreed, whichever comes first. If IEI so elects to terminate during the Initial Term, IEI shall reimburse the Contractor (i) for that portion of the cost of the Track that represents the ratio of (a) from the date of removal of the facility, the number of months remaining in the Initial Term to (b) 240 (20 years expressed in months) and (ii) \$150,000 and (iii) Contractor shall be entitled to remove its Facilities by the effective date of the termination.

#### **11. Contract Documents**

The Contract Documents on which the Contract is based are as follows: this Contract, together with such supplementary agreements and conditions as are attached to this Contract, and which are labeled as Exhibits to this Contract. The Contract Documents together form the Contract for the goods and/or services herein described. In the event of a conflict between this Contract and any document attached to it, the terms of this Contract govern.

#### **12. Contract Officer**



12.1 Robert Whitener, Jr. is the designated Contract Officer (CO) for the purpose of this Contract and shall provide general administration of the Contract as IEI's representative.

12.2 Dave Smith is Contractor's representative for this Contract, and shall be responsible for the performance of this Contract, and shall have signature authority for the Contractor for all matters related to this Contract.

### **13. Additional Responsibilities of Contractor**

Contractor's duties and rights in connection with the project herein are as follows:

13.1 Payment of Taxes, Procurement of Licenses and Permits: Contractor shall pay any applicable tribal, federal, state, and local taxes required by law in connection with its performance under this Contract and shall secure all necessary licenses and permits, paying the fees therefore.

13.2 Compliance with Laws and Regulations: Contractor shall comply with all applicable laws and ordinances, and rules, regulations, or orders of all public authorities relating to the performance of this Contract. If any of the Contract Documents are at variance therewith, he or she shall notify the Contract Officer promptly upon discovery of such variance. Contractor acknowledges that the Project is subject to review, inspection and approval by the Squaxin Island Tribe for, among other matters, construction practices, environmental and cultural resource matters.

13.3 Responsibility for Negligence of Employees and Subcontractors: Contractor assumes full responsibility for acts, negligence or omissions of all its employees under this Contract, for those of its subcontractors and their employees, and for those of all other persons doing work under contract with it.

13.4 Warranty of Fitness of Goods and/or Services: Contractor represents and warrants to IEI that goods and/or services provided under this Contract will be of good quality, free of defects, and in conformity with the Contract Documents. It is understood between the parties hereto that all goods and/or services that are not so in conformity are defective.

13.5 Indemnity and Hold Harmless Agreement: Contractor agrees to indemnify and hold harmless IEI, its parent and subsidiaries, and the officers, agents and employees of each, from and against all claims, actions, suits, proceedings, costs, judgments, damages, losses, and expenses related to or arising from the work of the Project. Such expenses include reasonable attorneys' fees if it is necessary for IEI to commence or defend an action arising out of or associated in any way with Contractor's performance of this Contract. Such claims include, but are not limited to, claims for bodily injury, illness or death, property damage (including loss of use, or other damage) which are caused in whole or in part by Contractor's negligent act or omission, or that of Contractor's subcontractor, or that of anyone employed by them or for whose acts Contractor or Contractor's subcontractor may be liable.

13.6 Cultural Resource Protection. Contractor shall meet and confer with the Cultural Resources Officer of the Squaxin Island Tribe during the Provisional Plan phase and comply with all applicable cultural resources laws.

13.7 Native American Preference. Contractor shall comply with the Squaxin Island Tribe's Native American preference laws and/or policies. Contractor specifically agrees to coordinate

preference hiring through IEI for labor positions and to first consider Squaxin Island tribal members for those labor positions.

#### **14. Jurisdiction and Venue; Applicable Law; Sovereign Immunity**

14.1 Contractor and IEI agree that the sole and exclusive jurisdiction over any disputes arising out of this Contract shall be in the Squaxin Island Tribal Court.

14.2 Any dispute shall be determined under the laws of the Squaxin Island Tribe.

14.3 Nothing herein shall be deemed to waive the sovereign immunity of IEI, the Squaxin Island Tribe, or the enterprises, agents, or employees of any of them.

#### **15. Independent Contractor**

It is understood that the Contractor is operating as an independent contractor, and as such shall comply with all applicable laws and regulations and shall pay all applicable taxes and other assessments and hold IEI harmless from the consequences of any act or omission of whatever kind or nature of Contractor or its employees or agents of whatever kind. Contractor shall not have any right as an employee of IEI, and no employee-employer relationship is established by this Contract. Further, the Contractor is responsible for reporting this income to the applicable federal and/or state agencies. The Contractor is responsible for all taxes associated with this income.

#### **16. Insurance**

Contractor shall provide and continuously maintain in effect during the term of this Contract general liability insurance, naming IEI as an additional insured, in the amount of no less than \$5,000,000 per occurrence. Contractor shall furnish IEI with a certificate of insurance prior to beginning any work under this Contract.

#### **17. Records**

Contractor will maintain adequate financial records, in accordance with generally accepted accounting practices, such that the Contractor can clearly and easily identify all claimed costs and expenses and the relatedness of the those costs and expenses to this Contract.

#### **18. Certification of Non-Segregated Facilities**

By signing this Contract, Contractor certifies that it does not maintain or provide for its employees any segregated facilities at any of Contractor's establishments, and that Contractor's employees are not permitted to perform their services at any location, under this Contract, where segregated facilities are maintained. Contractor agrees that failure to abide by this certification is a breach of this Contract.

#### **19. Non-Discrimination**

Title VI of the Civil Rights Act of 1964, (Public Law 88-352; 42 USC 200d-1) provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.



**20. Force Majeure.**

The obligations of the parties hereunder shall be subject to force majeure which shall include strikes, riots, floods, accidents, earth movement, acts of God, terrorist activities, and other causes or circumstances beyond the control of the parties, but only so long as, and to the extent that, such force majeure shall prevent performance of such obligations.

**21. Entire Agreement; Amendments**

This Contract contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral or written, between the parties hereto with respect to the subject matter hereof.

**22. Severability**

If any part of this Contract is held unenforceable, the rest of the Contract will continue in effect.

**23. No Partnership**

This Contract does not create a partnership relationship. Contractor does not have authority to enter into contracts on IEI's behalf.

**24. Assignment**

Contractor may not assign or subcontract any rights or obligations under this Contract without IEI's prior written approval.

**25. Tax Exemption**

IEI is exempt from state taxes for goods and services received in Indian Country as provided in WAC 458-20-192 including, but not limited to, state and local sales tax, certain excise taxes, and others. Contractor is eligible for an exemption from state taxes for goods and services provided to IEI in Indian Country, as provided in WAC 458-20-192 including, but not limited to, state and local sales tax, Business & Occupation tax, and others. Contractor shall comply with WAC 458-20-192 to perfect the exemption from state taxation.

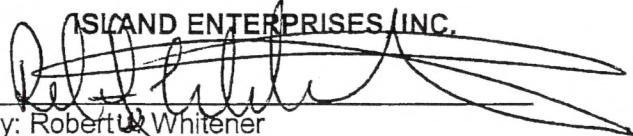
**26. Execution**

This Agreement shall be executed in duplicate originals, with each party retaining one fully executed duplicate original of the Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Contract at the Squaxin Island Reservation, Shelton, Washington, on the date herein indicated.

DATE: September \_\_, 2007

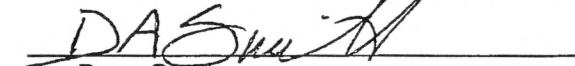
**ISLAND ENTERPRISES, INC.**



By: Robert Whitener  
Title: President  
Address: 3591 SE Old Olympic Hwy.  
Shelton, Washington 98584  
Telephone: 360.426.3442  
Facsimile: 360.427.0628

DATE: September 17, 2007

**PETROSOL INTERNATIONAL, INC.**



By: Dave Smith  
Title: President  
Address: N 300 Mullan St. Suite 201  
Spokane, Washington 99206  
Telephone: 509-924-9610  
Facsimile: 509-922-9982  
Taxpayer UBI: 600140791  
Taxpayer I.D.:

**EXHIBIT A**

**DESCRIPTION OF PROJECT**

[to be prepared by Petrosol for review and approval by IEI]

**EXHIBIT B**

**FORM OF ACCESS AGREEMENT**

[to be prepared by IEI for review and approval by Contractor]

