



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

A Resolution entitled, “*Approval of Collaboration Agreement between the MHA Nation and the Colorado School of Mines to Carry Out the Office of Indian Energy and Economic Development Program FY 2016 Energy and Minerals Development Program Grant.*”

WHEREAS, This Mandan Hidatsa and Arikara Nation (the "MHA Nation"), having accepted the Indian Reorganization Act of June 18, 1934 and the authority under said Act, and having adopted a Constitution and By-laws under said Act, is a Federally recognized Indian Tribe exercising inherent sovereignty and jurisdiction over the Fort Berthold Indian Reservation (“FBIR”); and

WHEREAS, Pursuant to Article VI, Section 5(1) of said Constitution, the Tribal Business Council has the power to adopt resolutions regulating the procedures of the Tribal Council, its Agencies and Officials; and

WHEREAS, Pursuant to Article VI, Section 5(d) of said Constitution, the Tribal Business Council has the power to negotiate with federal, state and local governments on behalf of the MHA Nation and to advise and consult with representatives of the United States Department of the Interior (“DOI”) on all activities that may affect the MHA Nation and the Fort Berthold Indian Reservation; and

WHEREAS, The Tribal Business Council has authority to engage in activities on behalf of and for the welfare and benefit of the MHA Nation and the enrolled members thereof; and

WHEREAS, the MHA Nation has duly elected Tribal Chairman, who is authorized to enter into a contract through the Bureau of Indian Affairs (“BIA”) on behalf of MHA Nation; and

WHEREAS, The MHA Nation, through its Planning & Grants Department in conjunction with the MHA Nation Energy Division, applied for the FY 2016 Solicitation of Proposal issued by the DOI Secretary and the Office of Indian Energy and Economic Development (“IEED”) Office open to Federally-recognized Indian tribes; and

WHEREAS, The BIA IEED Office awarded the MHA Nation a \$200,000 grant to develop a renewable energy feasibility study; and



Resolution No. 17-137-FWF

WHEREAS, The MHA Nation and the Colorado School Mines will work in collaboration to carry out the IEED grant, and in doing so, have negotiated a Collaboration Agreement; and

WHEREAS, On May 9, 2017, at a duly held meeting of the Natural Resources Committee (“NRC”), the MHA Nation Energy Division requested approval of the Collaboration Agreement between the MHA Nation and the Colorado School of Mines, attached as Exhibit A, and the NRC approved the request and forwarded it to the Tribal Business Council for final action.

NOW, THEREFORE BE IT RESOLVED, that the MHA Nation hereby approves the Collaboration Agreement between the MHA Nation and the Colorado School of Mines.

BE IT FINALLY RESOLVED, that the Tribal Chairman is hereby authorized to execute all necessary documents to carry out the intent and purpose of this Resolution.

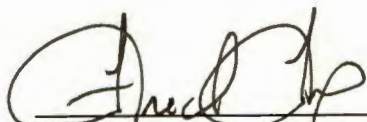
CERTIFICATION

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Indian Reservation hereby certify that the Tribal Business Council is composed of seven (7) members of whom five (5) constitute a quorum, 7 were present at a Special Meeting thereof duly called, noticed, convened and held on the 10th day of May____,2017, that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of 6 members, 0 members opposed, 0 members abstained, 1 members not voting, and that said Resolution has not been rescinded or amended in any way.


Chairman [X] Voting. [] Not Voting.

Dated this 10th day of May, 2017.

ATTEST:



Tribal Secretary, Fred W. Fox
Tribal Business Council



Tribal Chairman, Mark N. Fox
Tribal Business Council

**COLLABORATION AGREEMENT
BETWEEN THE MANDAN, HIDATSA AND ARIKARA NATION
AND THE COLORADO SCHOOL OF MINES
EFFECTIVE APRIL 4, 2017**

1. PARTIES:

This contract is between the MANDAN, HIDATSA AND ARIKARA NATION (the "MHA Nation", also known as, the "Three Affiliated Tribes"), with a mailing address of 404 Frontage Road, New Town, North Dakota, 58763 (hereinafter "Sponsor") (701) 627-4781, and The Board of the Trustees of the Colorado School of Mines, by and on behalf of the Colorado School of Mines, a public institution of higher education, located at 1500 Illinois Street, Golden, CO, 80401 (hereinafter "Collaborator"). Collaborator's Technical contact: Dr. Tabares-Velasco, 303-273-3980; Collaborator's Administrative contact: Office of Research Administration, 303-273-3411

THE PARTIES AGREE AS FOLLOWS:

2. COLLABORATION PURPOSE.

Collaborator shall work with the Sponsor on a research project entitled: "Renewable Energy Feasibility Study at Fort Berthold Indian Reservation," as further described in Attachment A.

3. TERM OF CONTRACT.

This contract begins April 4, 2017, and ends on April 3, 2018. The term may be modified or renewed upon express written consent of both parties. The Supervisor is responsible for ensuring timely renewals of the contract if applicable.

4. DESCRIPTION OF SERVICES TO BE PERFORMED BY COLLABORATOR.

Collaborator will use reasonable and best efforts to perform the research project described in Attachment A ("Research Project").

5. WHERE SERVICES ARE TO BE PERFORMED.

The Research Project will be conducted within the boundaries of the Fort Berthold Indian Reservation.

6. COMPENSATION AND PAYMENTS.

Collaborator shall be reimbursed for the Research Project up to a total amount not to exceed two hundred and eight dollars (\$208,000). Collaborator shall send monthly invoices for payment to Sponsor at the following address:

MHA Nation Energy Division
305 4th Ave, Suite 3100
New Town, North Dakota 58763

Sponsor shall pay each invoice within thirty (30) days of the date of the invoice. All payments to Collaborator under this contract shall be made by check or wire transfer in accordance with the payment instructions provided with each invoice. For purposes of identification, each wire or check payment must refer to the Research Project title, invoice number, and the name of the Collaborator's Technical Contact. If Sponsor does not pay each invoice within thirty (30) days of the date of the invoice, Collaborator shall have the right to stop all work on the Research Project otherwise required by this contract.

7. INTELLECTUAL PROPERTY.

7.1. Sponsor Intellectual Property. Title to any invention conceived of or first reduced to practice in performance of the Research Project solely by the Sponsor ("Sponsor Invention") shall remain with the Sponsor. Title to and the copyright in any copyrightable material first produced or composed in the performance of the Research Project solely by the Sponsor ("Sponsor Copyright") shall remain with the Sponsor. Neither Sponsor Inventions nor Sponsor Copyrights shall be subject to the terms and conditions of this contract.

7.2. Joint Intellectual Property. The Sponsor and Collaborator shall have joint title to (a) any invention conceived or first reduced to practice jointly by Collaborator and the Sponsor in the performance of the Research Project (each, a "Joint Invention"). The Sponsor shall be notified of any Joint Invention promptly after an invention disclosure is received by Collaborator's Technology Transfer Office. Collaborator shall have the first right to file a patent application on Joint Inventions in the names of both Sponsor and Collaborator. All expenses incurred in obtaining and maintaining any patent on such Joint Invention shall be allocated between Collaborator and Sponsor in a proportion equal to their respective contribution to the Joint Invention. Further, the Joint Invention patent responsibilities of the Collaborator and Sponsor will be established through a separate written agreement prior to the patent filing process.

7.2.1. Licensing Joint Inventions. Both Sponsor and Collaborator shall have the independent, unrestricted right to license to third parties any such Joint Inventions, without accounting to the other, except that Sponsor shall be entitled to request an exclusive license to Collaborator's interest in such Joint Invention under Article 7.3.1 below

7.2.2. Jointly Developed Copyrightable Materials. Copyrightable materials, including computer software, developed in the performance of the Research (a) jointly by Collaborator and the Sponsor shall be jointly owned by both Parties, who shall each have the independent, unrestricted right to use or dispose of such copyrightable materials and share of the copyrights therein as they deem appropriate, without any obligation of accounting to the other.

7.3. Collaborator Intellectual Property. Collaborator shall have sole title to any invention conceived or first reduced to practice solely by Collaborator in the performance of the Research Project (each a "Collaborator Invention"). Collaborator shall notify Sponsor of the disclosure of any Collaborator Inventions to Collaborator's Technology Transfer Office. Collaborator may file a patent application at its own discretion or shall do so at the request of the Sponsor and at the Sponsor's expense.

7.3.1. License to Mines Inventions. For each Collaborator Invention on which a patent application is filed by Collaborator, Collaborator hereby grants Sponsor a non-exclusive, non-sublicensable, non-transferable, royalty-free license for internal research purposes. To the extent it is legally able to do so, Collaborator further grants to Sponsor a first option to negotiate an exclusive, royalty-bearing license, with the right to sublicense, to Collaborator Inventions developed under this contract (“Option”). Once notified of a Collaborator Invention, Sponsor shall have thirty (30) days to elect the Option. If elected by Sponsor in writing within thirty (30) days, such Option shall extend for six (6) months after election or such other period by advance mutual written agreement between the parties, and shall be granted to Sponsor without fee other than the consideration of the research sponsored herein and the reimbursement to Collaborator for all patent expenses incurred for such Collaborator Invention prior to and during the option period and appertaining license negotiation period. If Sponsor notifies Collaborator in writing of its exercise of the option within the option period, then the parties shall negotiate in good faith a license agreement within sixty (60) days after notification. If Sponsor does not exercise this option, or notifies Collaborator that it will not exercise this option, or the parties fail to sign a license agreement within said sixty (60) day negotiation period, then Sponsor’s option to license Collaborator’s rights in the Collaborators Invention shall terminate.

7.3.2. Confidentiality of Invention Disclosures. The Sponsor shall treat all invention disclosures submitted by Collaborator as Confidential Information pursuant to Article 8.

7.3.3. Copyright Ownership and Licenses. Title to and the copyright in any copyrightable material, including computer software, first produced or composed in the performance of the Research Project solely by Collaborator shall remain with Collaborator (“Collaborator Copyrights”). Unless specified as a deliverable in Attachment A, Collaborator shall have no obligation to deliver any Collaborator Copyrights to Sponsor, and Sponsor shall have no license rights in any Collaborator Copyrights.

7.3.3.1. Mines Copyrights as Deliverables. If Mines Copyrights are listed as deliverables in Attachment A, Mines grants to Sponsor the following rights:

(i) For any Collaborator Copyrights other than computer software and its documentation and informational databases, Collaborator hereby grants Sponsor a royalty-free, non-transferable, non-sublicensable, non-exclusive right and license to use, reproduce, make derivative works, display, distribute, and perform all such copyrightable materials for any purpose.

(ii) For Collaborator Copyrights in computer software and its documentation and informational databases required to be delivered to Sponsor in accordance with Attachment A, Collaborator hereby grants Sponsor a royalty-free, non-transferable, non-sublicensable, non-exclusive right and license to use and reproduce such computer software, and its documentation and informational databases for Sponsor’s internal research purposes.

7.3.4. Reservation of Rights. No grant described in this Article 7 shall be construed to limit Collaborator’s right to utilize Collaborator Inventions and Copyrights and Collaborator’s interest in Joint Inventions and Copyrights for research and educational purposes.

8. CONFIDENTIALITY.

Confidential Information ("Confidential Information") shall mean all information provided by one party to the other party for the purposes of the Research Project and clearly marked as "Confidential" by the transmitting party at the time of disclosure. In order to be considered Confidential Information, information disclosed orally or in any other transitory medium must be identified to the Recipient as confidential orally at the time of disclosure and in writing within thirty (30) days after such disclosure. Notwithstanding any marking or designation to the contrary, the confidentiality obligations set forth herein will not apply to information that: (a) is known by the receiving party at the time of disclosure; (b) is or later becomes publicly disclosed through no fault of the receiving party; (c) is rightfully received by the receiving Party from a third party with no duty of confidentiality to the disclosing party; (d) is independently developed by the employees or agents of either Party without any use of Confidential Information provided by the other party; or (e) is required by law or regulation to be disclosed.

Each party shall use reasonable efforts to protect the Confidential Information of the other from disclosure to third parties for a period of three (3) years from the date of receipt of such information, and no such disclosure shall be made without the disclosing party's written permission. All written documents containing Confidential Information and other material in tangible form received by either party under this Contract shall remain the property of the disclosing Party, and such documents and materials, together with copies of excerpts thereof, shall promptly be returned to disclosing party upon request, except one copy may be retained for archival purposes. Sponsor acknowledges that Collaborator is subject to the Colorado Public Records Act (C.R.S. §§ 24-72-201 et seq.). All plans and reports marked "Confidential" shall be treated by Collaborator as confidential to the extent permitted under § 24-72-204.

9. PUBLICATION.

Notwithstanding anything to the contrary in this Contract or the Research Project, Sponsor acknowledges that the results of Collaborator's involvement in the Research Project must be publishable or otherwise available for public dissemination, and agrees that Collaborator has the right to present at international, national, or regional professional society meetings and other similar academic forums, and to publish in journals, theses, or dissertations, or otherwise of their own choosing, methods, information, and data resulting from or gained in pursuing the Research Project. In order to avoid improper disclosure of Sponsor proprietary information or loss of patent protection through public disclosure of said information, Collaborator shall furnish the Sponsor with draft copies of all proposed publications and presentations thirty (30) days prior to such publication or presentation. Sponsor will have thirty (30) days after receipt of said copies to comment on any such proposed public dissemination. Should Sponsor identify patentable subject matter requiring patent protection, Sponsor may request that Collaborator file a patent application, and delay publication for a period of time not to exceed an additional thirty (30) days if necessary to permit the preparation and filing of such patent application. Sponsor may also request that any information it can substantiate as being Confidential Information of Sponsor be deleted from the materials submitted, so as to protect the Confidential Information; provided that the Collaborator's Technical Contact has the final authority to determine the scope and content of any publication. If the Sponsor does not contact Mines within thirty (30) days with any exceptions to the

publications, Collaborator will assume approval and proceed with publication. The Sponsor shall not make any public disclosure of any research information until such time as the scholarly article containing such information is published or presented. Additional delays may be granted if both parties agree in writing.

10. INDEPENDENT CONTRACTOR AND TAXES.

- A. The Collaborator assures the Sponsor that the Collaborator is an independent contractor providing services for the Sponsor and that neither the Collaborator nor any of the Collaborator's employees, agents, sub-consultants, etc. are employees of the Sponsor under this Contract or any subsequent amendment or extension hereof. Neither party has any power or authority to act for, represent, or bind the other party or any entity affiliated with the other party in any manner. Collaborator and Collaborator's employees are not entitled to any medical coverage, life insurance, or participation in any other benefits afforded to the Sponsor's regular employees, or those of Sponsor affiliated entities.

- B. No amounts paid to Mines under this Agreement will be subject to any withholding by Sponsor. Mines states that as a state institution of higher education, it is exempt from United States federal income taxes under Section 115(1) of the Internal Revenue Code, and from State of Colorado taxes under C.R.S. § 29-2-105, and § 39-26-704.

The Collaborator is solely responsible for assuring compliance with all legal requirements, including payment of all applicable taxes, premiums, deductions, withholdings, overtime and other amounts which may be legally required with respect to the employment of Collaborator's employees under this Contract.

10. WARRANTY THAT CONTRACT DOES NOT CONTEMPLATE CORRUPT PRACTICES – DOMESTIC OR FOREIGN.

Collaborator represents and warrants that, (a) all payments under this Contract constitute compensation for services performed under the Research Project, and (b) this Contract and all payments, and the use of the payments by Collaborator, do not and shall not constitute an offer, payment, or promise, or authorization of payments, and of any money or gift to an office or political party of, or candidate for political office in, any jurisdiction within or outside the United States. These payments may not be used to influence any act or decision of any official, party, or candidate to use his, her or its influence with a government to affect or influence any act or decision of such government to assist the Sponsor in obtaining, retaining, or directing business to the Sponsor or any person or other corporate entity. As used in this paragraph, the term "official" means any officer or employee of a government, or any person acting in an official capacity for or on behalf of any government; the term "government" includes department, agency, or instrumentality of a government.

11. FUNDING AVAILABILITY.

The Collaborator agrees and understands that this Contract is dependent upon available funding. In the event such funding expires or is reduced, this Contract may be terminated or modified by the Sponsor at

its sole discretion. Modification of the Contract includes, but is not limited to, reduction of the rates or amounts of consideration of the alteration of the manner of the performance in order to reduce expenditures under the Contract.

12. TERMINATION OF CONTRACT.

When terminated for cause by either party, this Contract may be terminated immediately upon written notice. Written notice shall be delivered to the addresses set forth under Paragraph 1 above. This Contract may be terminated without cause upon 10 days written notice to the other party. Any notice deadline shall be measured from the date the notice is posted and mailed. In the event of termination pursuant to this Article 12, Sponsor shall reimburse Collaborator for all costs and non-cancelable obligations incurred by Collaborator prior to its receipt of notice of termination, and (b) Collaborator shall deliver to the Sponsor any deliverables (including any partially completed plans, drawings, data, documents, surveys, maps, reports, and models) developed up to the termination date, unless termination is for breach of this Contract by Sponsor.

13. GOVERNING LAW.

This Contract is subject to and shall be interpreted in accordance with the laws of the Three Affiliated Tribes; provided however, that any claims against Collaborator for injuries arising out of or related to this Contract shall be controlled by the Colorado Governmental Immunity Act, Colorado Revised Statutes §24-10-101, *et seq.*

14. ASSIGNMENT OF RIGHTS AND DELEGATION OF DUTIES.

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

15. ENTIRE CONTRACT AND MODIFICATION.

This Contract contains the entire Agreement between the parties. This Contract may not be modified except by later written Contract signed by both parties.

16. INSURANCE.

Collaborator agrees to maintain the proper licenses, authorities and insurance.

17. JURISDICTION & DISPUTE RESOLUTION.

This Contract was executed and is to be carried out on the Fort Berthold Indian Reservation. In the event of any dispute arising out of or relating to this Agreement, the affected party shall promptly provide notice to the other party, and the parties shall attempt in good faith to resolve the matter.

18. COMPLIANCE WITH APPLICABLE LAWS.

The Collaborator shall comply with all applicable Federal, State, and Tribal laws and regulations in

performing this Contract. Collaborator shall also comply with any Tribal policies, procedures and rules that Sponsor notifies Collaborator of prior to Collaborator commencing any work on the Fort Berthold Indian Reservation.

19. LIAISON & CONTRACT SUPERVISION.

Supervision for this contract will be provided by the Director of the MHA Nation Energy Division or his designate along with the concurrence from the Natural Resources Committee and the Tribal Business Council.

20. SEVERABILITY.

It is understood and agreed by the parties hereto that if any term or provision of this Contract is held to be illegal, void or in conflict with any applicable Tribal, State or Federal law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

21. WAIVER.

Waiver of any default, breach or failure to perform under this Contract is not deemed to be a waiver of any subsequent default, breach or failure of performance. In addition, waiver of any default, breach or failure to perform is not to be construed to be a modification of the terms of this Contract unless reduced to writing as an amendment to this Contract.

22. NO WAIVER OF IMMUNITY.

Nothing in this Agreement shall be held, interpreted and/construed as a waiver of the Sovereign Immunity of the Three Affiliated Tribes, its officers, officials, agents and/or assigns.

Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any of the immunities, rights, benefits, defenses or protections provided to the State of Colorado, Colorado School of Mines, its Board of Trustees, officers, employees, agents, and representatives under governmental or sovereign immunity laws from time to time applicable to the University, including, without limitation, the Colorado Governmental Immunity Act, Colorado Revised Statutes §24-10-101, *et seq.*, and the Eleventh Amendment to the United States Constitution.

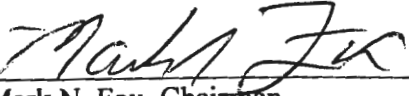
AGREED AND APPROVED:

COLLABORATOR – COLORADO SCHOOL OF MINES:

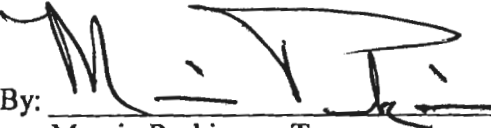
By _____
Johanna Eagan, Interim Director
Office of Research Administration

_____ Date

SPONSOR – MANDAN, HIDATSA AND ARIKARA NATION:

By: 
Mark N. Fox, Chairman

7-11-17
Date

By: 
Mervin Packineau, Treasurer

7-12-17
Date

Attachment A
Research Project

Objectives
<ol style="list-style-type: none">1. Developing an hourly community energy demand profile to better understand MHA Nation energy needs.2. Performing preliminary annual renewable energy analysis for up to two communities (including residential buildings, commercial buildings and oil industry)
Travel
Three day visit for PIs to visit MHA Nation and meet with MHA engineers and leaders during first month of the project.
Deliverable
Final report which describes the methodology, the information gathered and utilized in the NPV calculations, and conclusions
Analyze Technologies
<ol style="list-style-type: none">1. Photovoltaic (PV) panels with electric energy storage.- This technology uses panels that directly convert solar to electric energy combined with batteries to store excess energy.2. Wind turbines with electric storage.- Similar to PV (1), this technology uses wind as the primary source and is combined with batteries for storage.3. Geothermal energy.- The MHA Nation has a casino with a ground source heat pump (GSHP) to heat and cool the building. This study will look into other opportunities to use GSHP within the reservation.4. Economic analysis