



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

*A Resolution entitled, "Approval of a Memorandum of Understanding Between the Energy Division and the Tribal Historic Preservation Office for Coordination and Capacity Building in the Processing Right-of-Way for Oil and Gas Exploration and Production Activities."*

**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, and

**WHEREAS,** Pursuant to Article III, Section 1 of its Constitution and By-Laws, the Tribal Business Council is the governing body of the MHA Nation; 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,** The Tribal Business Council has authority to engage in activities on behalf of and for the welfare and benefit of the Tribes and of the enrolled members thereof; and

**WHEREAS,** The Tribal Business Council Article IX Sections 1 and 3 of the Constitution provides that the Tribal Business Council has the authority to manage and lease or otherwise deal with tribal lands and resources; and

**WHEREAS,** Since the inception of the "oil boom" on the Fort Berthold Indian Reservation ("FBIR"), MHA Energy has been the lead tribal department regulating oil and gas exploration and production activities on-site, at and on the well pad, in the oil field operations, and on right-of-way access roads, pursuant to applicable tribal law and regulations and in accordance with applicable federal law and regulations, including requirements and conditions set forth in the respective environmental assessment documents and the application to drill documents; and

**WHEREAS,** In addition to its regulatory responsibilities described above, MHA Energy is the lead tribal department that oversees the tribal approval process for rights-of-way applications for oil and gas exploration, development and production activities on the FBIR; and

**WHEREAS,** Traditional historic properties and cultural resources, on tribal lands are protected by the National Historic Preservation Act ("NHPA"), and other federal laws such as the Archeological Resources Protection Act ("ARPA"), the Native American Graves Protection and Repatriation Act ("NAGPRA"), and the American Indian Religious Freedom Act ("AIRFA"), as well as by relevant Tribal laws and policies; and



- WHEREAS,** In the process of authorizing oil and gas exploration and development on the FBIR, the protection of tribal cultural resources, or traditional historic properties, must be taken into account in accordance with provisions of the NHPA, the ARPA, the NAGPRA, and the AIRFA; and
- WHEREAS,** Pursuant to the NHPA Section 106 review process, also known as a cultural resource inventory, a federal agency must take into account the effect of any federal or federally assisted undertaking (i.e., oil and gas exploration and development) on cultural resources, a broad term encompassing sites, objects, or practices of archaeological historical, cultural, and religious significance; and
- WHEREAS,** The AHPA provides for the survey, recovery, and preservation of significant scientific, prehistoric, archaeological, or paleontological data when such data may be destroyed or irreparably lost due to a federal or federally funded project (i.e., oil and gas exploration and development), and special protections are afforded to human remains, funerary objects, and objects of cultural patrimony under the NAGPRA; and
- WHEREAS,** The AIRFA protects Tribal sacred sites and religious practices by requiring the evaluation of any federal undertaking or project for significance to American Indians, to be determined solely by an Indian tribe whether and when traditional cultural properties surveys are to be conducted, who is qualified and authorized to conduct such surveys, what kinds of properties are to be considered as traditional cultural properties, and what information about such properties are to be shared and with whom; and
- WHEREAS,** The MHA Nation established its Tribal Historic Preservation Office (“MHA THPO”) to fulfill all relevant requirements of the NHPA, the ARPA, the NAGPRA, and the AIRFA; and
- WHEREAS,** The primary services provided by MHA THPO are the identification and repatriation of human remains and artifacts culturally-affiliated with the MHA Nation, the identification, preservation and registration of the MHA Nation’s traditional cultural properties, and the traditional cultural properties surveys conducted in accordance with the NHPA Section 106 inventory review process; and
- WHEREAS,** The responsibilities and functions of MHA Energy and MHA THPO intersect during the tribal approval process for rights-of-way applications for oil and gas development and production and related activities; and
- WHEREAS,** The workload of MHA THPO has been extremely heavy which has created a challenge for THPO to meet its responsibilities with respect to the processing of oil and gas related rights-of-way; and



**Resolution No. 18-235-FWF**

***SEE ATTACHED – EXHIBIT A***



**WHEREAS,** The MHA Energy and MHA THPO desire to enter into this MOU for the purposes of coordinating activities and functions with respect to rights-of-way review and approvals regarding oil and gas related activities on the FBIR.

**WHEREAS,** On August 14, 2018 at a duly held meeting of the Natural Resources Committee ("NRC"), the Energy Division presented the MOU between the Energy Division and THOP for approval, and the NRC forwarded it to the Tribal Business Council for final action.

**NOW THEREFORE BE IT RESOLVED,** the Tribal Business Council hereby approves the Memorandum of Understanding between the MHA Nation Energy Division and the MHA Tribal Historic Preservation, attached as Exhibit A.

**BE IT FINALLY RESOLVED,** that the Chairman is hereby to take such further actions as are necessary to carry out the terms and intent of this Resolution.

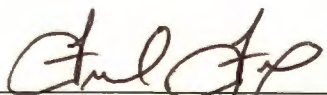
### CERTIFICATION


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 Regular Meeting thereof duly called, noticed, convened and held on the 21<sup>st</sup> day of \_September, 2018, that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of 5 members, 0 members opposed, 0 members abstained, 2 members not voting, and that said Resolution has not been rescinded or amended in any way.

Chairman [ X ] Voting. [ ] Not Voting.

Dated this 21<sup>st</sup> day of September, 2018.

**ATTEST:**

  
\_\_\_\_\_  
Tribal Secretary, Fred W. Fox  
Tribal Business Council

  
\_\_\_\_\_  
Tribal Chairman, Mark N. Fox  
Tribal Business Council

# MEMORANDUM OF UNDERSTANDING

## MHA Nation Energy Division and MHA Nation Tribal Historic Preservation Office

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) made and entered into this \_\_\_\_\_ day of August, 2019, by and between the MHA NATION ENERGY DIVISION, of the Mandan, Hidatsa and Arikara Nation, with its principal office located at 305 4<sup>th</sup> Avenue, Suite 3100, New Town, North Dakota, 57863, hereinafter referred to as “MHA Energy Division”, and the MHA NATION TRIBAL HISTORIC PRESERVATION OFFICE, of the Mandan, Hidatsa and Arikara Nation, with principal office located at MHA Complex, 1 Minne-Tohe Drive, New Town, ND, 58763, hereinafter referred to as the “MHA THPO”.

### WITNESSETH:

WHEREAS, the MHA Nation established the MHA Nation Energy Division (“MHA Energy”) whose mission is to: “manage[s] all Natural Resources through professional mentorship, responsible development, communication, and education; while committing to environmental awareness and cultural values that ensure sovereignty for generations to come”; and

WHEREAS, in accordance with its Vision Statement, MHA Energy “promote[s] accountability and responsibility to the members of the MHA Nation and environment through transparency and professional development while adhering to traditional values in order to protect and safeguard natural resources”; and

WHEREAS, since the inception of the “oil boom” on the Fort Berthold Indian Reservation (“FBIR”), MHA Energy has been the lead Tribal department regulating oil and gas exploration and production activities on-site, at and on the well pad, in the oil field operations, and on right-of-way access roads, pursuant to applicable Tribal law and regulations and in accordance with applicable federal law and regulations, including requirements and conditions set forth in the respective environmental assessment documents and the application to drill documents; and

WHEREAS, in addition to its regulatory responsibilities described above, MHA Energy is the lead Tribal department that oversees the Tribal approval process for rights-of-way applications for oil and gas exploration, development and production activities on the FBIR; and

WHEREAS, traditional historic properties and cultural resources, on tribal lands are protected by the National Historic Preservation Act (“NHPA”), and other federal laws such as the Archeological Resources Protection Act (“ARPA”), the Native American Graves Protection and Repatriation Act (“NAGPRA”), and the American Indian Religious Freedom Act (“AIRFA”), as well as by relevant tribal laws and policies; and

WHEREAS, in the process of authorizing oil and gas exploration and development on the FBIR, the protection of Tribal cultural resources, or traditional historic properties, must be taken into account in accordance with provisions of the NHPA, the ARPA, the NAGPRA, and the AIRFA; and

WHEREAS, pursuant to the NHPA Section 106 review process, also known as a cultural resource inventory, a federal agency must take into account the effect of any federal or federally assisted undertaking (i.e., oil and gas exploration and development) on cultural resources, a broad term encompassing sites, objects, or practices of archaeological historical, cultural, and religious significance; and

WHEREAS, the AHPA provides for the survey, recovery, and preservation of significant scientific, prehistoric, archaeological, or paleontological data when such data may be destroyed or irreparably lost due to a federal or federally funded project (i.e., oil and gas exploration and development), and special protections are afforded to human remains, funerary objects, and objects of cultural patrimony under the NAGPRA; and

WHEREAS, the AIRFA protects tribal sacred sites and religious practices by requiring the evaluation of any federal undertaking or project for significance to American Indians, to be determined solely by an Indian tribe whether and when traditional cultural properties surveys are to be conducted, who is qualified and authorized to conduct such surveys, what kinds of properties are to be considered as traditional cultural properties, and what information about such properties are to be shared and with whom: and

WHEREAS, the MHA Nation established its Tribal Historic Preservation Office (“MHA THPO”) to fulfill all relevant requirements of the NHPA, the ARPA, the NAGPRA, and the AIRFA; and

WHEREAS, the primary services provided by MHA THPO are the identification and repatriation of human remains and artifacts culturally-affiliated with the MHA Nation, the identification, preservation and registration of the MHA Nation’s traditional cultural properties, and the traditional cultural properties surveys conducted in accordance with the NHPA Section 106 inventory review process; and

WHEREAS, the responsibilities and functions of MHA Energy and MHA THPO intersect during the Tribal approval process for rights-of-way applications for oil and gas development and production and related activities; and

WHEREAS, the workload of MHA THPO has been extremely heavy which has created a challenge for THPO to meet its responsibilities with respect to the processing of oil and gas related rights-of-way; and

WHEREAS, MHA Energy and MHA THPO desire to enter into this MOU for the purposes of coordinating activities and functions with respect to rights-of-way review and approvals regarding oil and gas related activities on the FBIR.

NOW THEREFORE, it is hereby agreed as follows:

1. PURPOSE AND INTENT

The purpose of this MOU is to establish communications and information sharing protocols between MHA Energy and MHA THPO in order to promote the common goal of providing an efficient and effective processing of rights-of-way applications relating to oil and gas exploration and production activities on the FBIR. In furtherance of this objective, this MOU is intended to set forth

a process for MHA Energy to assist and enhance MHA THPO's capacity to fulfill its role and responsibilities in the oil and gas related right-of-way review and approval process.

Therefore, the primary focus and purpose of this MOU is the coordination of communications and strengthening of MHA THPO's capacity to effectively and efficiently review and process rights-of-way applications relating to oil and gas exploration and production activities on the FBIR. This MOU is intended to only apply to THPO's role in the processing of oil and gas related rights-of-way applications. This MOU is not intended to address any enforcement authority matters, nor is it to be construed as a delegation of THPO's authority. THPO's retains its decision-making authority. Furthermore, this MOU is not intended to apply to or implicate THPO's authority under the National Park Service Memorandum of Agreement.

## 2. AUTHORIZED ACTIVITIES

The activities outlined in this Section 2 generally describe the framework where cultural resources are considered or taken into account in the ROW process, and where MHA THPO's roles arise. MHA Energy does not have a direct role in this framework.

(a) Pre-construction Activities – The parties acknowledge that prior to any ground disturbance or other activities for any well pad or associated oil and gas facilities (e.g. roads, pipelines, etc.), several pre-construction activities, outlined below, must be completed. The purpose of these pre-construction activities is to determine the appropriate locations for development, avoid culturally sensitive areas, minimize adverse impacts that may result, and ensure proposed development is in compliance with applicable law and policy. For purposes of the MOU, below are required pre-construction activities:

- (1) Cultural Surveys and Monitoring – Prior to the on-site meeting, a cultural survey is needed to determine if any cultural resources (i.e., archaeological sites, traditional cultural properties (TCPs) or historical sites) are present at the proposed location and if they would be impacted by the proposed project. Surveys are performed. If cultural sites are inadvertently discovered, all work ceases and the BIA and THPO are immediately notified. The sites are to be evaluated for potential nomination to the National Register of Historic Places and would be avoided by a minimum 75-foot buffer with additional protective measures as specified by the BIA. After a survey is complete, a report would be prepared with findings and submitted to the BIA regional archaeologist for review and determination of effect. Once the review and determination of effect are complete, the BIA sends the letter and report to THPO requesting concurrence with findings. Additional mitigation measures may be requested by the BIA archaeologist or THPO to avoid or minimize impacts to cultural resources.
- (2) Staking - After an operator determines a specific well location and the surveys have been completed, a certified land surveyor visits the proposed location and stakes the proposed well pad location, ROW access route, and other relevant

elements of the proposed project. The surveyor creates a series of plats showing the project location and features. After the surveyor creates the plats, the operator submits a Notice of Staking (NOS), or appropriate application, to the BLM and BIA. The NOS serves as the formal notification that the operator intends to commence oil and gas exploration and development activities. The NOS includes the lease number, general location, estimated depth of the well, target geological formation, and anticipated bottom-hole location. Once the BLM and BIA receive this form, an onsite meeting would be scheduled.

- (3) Onsite Meeting - The purpose of the onsite meeting is to identify any potential issues, review survey results, review potential impacts, and identify remedies to those issues early in the process. Generally, those involved in the onsite meeting include representatives from the BIA, Tribal representatives, the operator, the land surveyor, and any contractors (e.g., biologist) associated with the required surveys or the process. The BLM may also be present. The BIA is generally officially responsible for conducting the onsite meeting, but other parties present are encouraged to provide input during the onsite. During the onsite, the operator's proposed project is discussed in detail and an onsite checklist includes the number of well(s) proposed, layout of the well pad, general information about the wells(s), and timing (season) of construction and operations. Using the information provided by the operator, key resources are discussed, and the potential impacts from the proposed project to those resources would be identified. Access road and pipeline ROWs are also discussed during the onsite to determine if they are adequate to meet the needs of the operator and are sited to maximize the use of existing ROWs and minimize potential impacts.

The onsite meeting is critical to the entire oil and gas development process, because it is at this point that measures are discussed and agreed upon by the BIA, BLM, and the operator to avoid, minimize or otherwise reduce the impacts to the environment from the proposed project. At the onsite, the final locations of the well pad, access road, and pipelines are agreed to by the parties present. The land surveyor would then prepare the final plats for the proposed project, which would show all of the changes agreed upon. An onsite meeting would be conducted for each project at which the field archaeologist that performed the cultural survey, or a designated representative, would be present. At the onsite meetings, cultural resource issues would be disclosed and impact avoidance, minimization, and mitigation measures developed.

(b) During Construction and Post Construction – THPO stands ready to review any matters that may arise during construction and post-construction, and will invoke its authority when cultural resources are discovered during construction.

3. THPO ROLE & RESPONSIBILITIES - Generally, there are two types of potential impacts to cultural resources from oil and gas development. The first is direct physical impacts to a building, structure, site, or object. Direct impacts to cultural resources may include destruction or damage to archaeological and historical resources as a result of surface and subsurface disturbance during construction operations. Direct impacts could also include erosion of cultural resource properties, siltation resulting in burying or degradation of cultural resource sites, and visual impacts to historic buildings, structures, or prehistoric rock art sites. The risk of direct impacts from specific



project proposals would be avoided or minimized through conducting file searches and cultural surveys, onsite meetings conducted early in the process after the NOS is submitted to the BIA and BLM, and implementation of mitigation measures and BIA Conditions of Approvals (CoAs). THPO has a key role to identify these impacts and to establish mitigation measures to minimize such impacts.

4. JOINT MONITORING SYSTEM – MHA Energy and MHA THPO agree to create a joint monitoring system in order to coordinate and facilitate the processing of rights-of-way relating to oil and gas exploration and production activities. The objective is to ensure that the Authorized Activities set forth above are conducted and completed in an efficient and timely manner. The MHA Energy and MHA THPO will establish a joint schedule on a per ROW basis, and will jointly track the status of progress of each ROW application to make sure all components of the MHA THPO’s review, surveying and concurrence responsibilities are fulfilled. In the event MHA THPO is unable to meet any component of these responsibilities, MHA THPO agrees to immediately notify MHA Energy. MHA Energy and MHA THPO agree to work cooperatively to address such needs. The goal of the [MOU] is to provide an avenue for cooperation between the Energy and THPO so that the Energy Division staff may assist THPO with field work to make the best use of Tribal resources in the ROW process. THPO retains its decision-making authority and there is no delegation of authority, rather the Energy Division staff would assist the THPO with information gathering, on-site review, etc.

#### 5. TRAINING

For purposes of carrying out this MOU, MHA Energy and MHA THPO agree to structure informational and training sessions that will provide MHA Energy staff the tools and capacity to assist THPO with regard to completing pertinent Authorized Activities, set forth herein.

#### 6. ACCESS TO SENSITIVE INFORMATION; CONFIDENTIAL INFORMATION

MHA Energy and MHA THPO and their respective employees agree that any information or documents designated by either entity shall be considered and kept as private and privileged records, and will not be divulged to any person, firm, corporation, or other entity except on the written direct authorization of the respective entity. Both parties agree to promptly provide any information or documentation requested by the Tribal Business Council. With respect to access to THPO files, database and other sensitive information relative to processing rights-of-way applications, the parties agree to work on protocols that will allow MHA Energy staff controlled access to such information, solely for the purpose of processing such applications. MHA Energy agrees to execute a confidentiality and/or non-disclosure agreement governing access to such sensitive or confidential information.

#### 7. COORDINATION AND PLANNING PROCESS

Within thirty (30) days of approval and execution of this MOU, MHA Energy and MHA THPO agree to have a coordination meeting to establish a set of communication protocols between the entities regarding the roles and activities set forth in this MOU.

8. TERM; MONTHLY REVIEW & MEASUREMENT

This MOU shall be effective on the date of approval by the MHA Nation Tribal Business Council for an initial term of one year from September 1, 2018 through August 31, 2019, and the parties will coordinate on extending or amending the MOU. The execution of this MOU also serves as an extension of the term of the MOU, and this extension shall run from September 1, 2019 to August 31, 2020. In addition, the parties agree to meet on a monthly basis to review and evaluate accomplishments, measurement of performance and areas and aspects which require improvement and change.

IN WITNESS WHEREOF, MHA Energy and MHA THPO have approved this MOU and caused it to be subscribed by their designated representatives, with Concurrences by the Chairman of the MHA Tribal Business Council, the Chairman of the MHA Natural Resources Committee, and the Director of the MHA Natural Resources Department on the dates as stated below.

**[Signatures on following page]**

**MHA ENERGY DIVISION:**

By: Carson Hood Date: 8/15/19  
Carson Hood, Jr., Acting Administrator

**MHA THPO:**

By: Pete Coffey Date: 8/28/19  
Pete Coffey, Acting Director

**CONCURRENCE:**

Mark N. Fox Date: 8/30/19  
Mark N. Fox, Chairman  
Tribal Business Council

Randy Phelan Date: 8-19-19  
Randy Phelan, Chairman  
Natural Resources Committee

Roger White Owl Jr. Date: 8-19-19  
Roger White Owl Jr., CEO

**TRIBAL HISTORIC PRESERVATION**

*Mandan Hidatsa Arikara*

Pete Coffey, Acting Director.

404 Frontage Road,

New Town, North Dakota 58763

Ph/701-862-2474 fax/701-862-2490

[pcoffey@mhanation.com](mailto:pcoffey@mhanation.com)



I, Pete Coffey concur with the MOU between MHA Energy and THPO.

A handwritten signature in blue ink, appearing to read 'Pete Coffey', written over a horizontal line.

Date: August 29, 2019

Pete Coffey  
Compliance/acting tribal historic preservation Officer  
Tribal historic preservation Office,  
Three affiliated Tribes  
404 frontage road,  
New Town, ND. 58763  
701.862.2474  
701.421.8710

## Stella Berquist

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**From:** Chairman Fox  
**Sent:** Tuesday, August 13, 2019 11:22 AM  
**To:** Stella Berquist  
**Subject:** Fwd: MOU between THPO and Energy  
**Attachments:** Energy - THPO MOU - 21SEPT2018 TBC.docx; ATT00001.htm

Please print for my review

Sent from my iPhone

Begin forwarded message:

**From:** Tyra Wilkinson <[twilkinson@mhanation.com](mailto:twilkinson@mhanation.com)>  
**Date:** August 9, 2019 at 6:04:55 AM MST  
**To:** Stella Berquist <[sberquist@mhanation.com](mailto:sberquist@mhanation.com)>  
**Cc:** Chairman Fox <[chairmanfox@mhanation.com](mailto:chairmanfox@mhanation.com)>, Harriette LePage <[hlepage@mhanation.com](mailto:hlepage@mhanation.com)>, Paul Grady <[paulgrady@mhanation.com](mailto:paulgrady@mhanation.com)>  
**Subject: MOU between THPO and Energy**

Stella:

I was asked to review the attached MOU between THPO and Energy Department referenced in Resolution 18-235-FWF and it is legally okay for submission to the Chairman for signature. I think the Energy Department needs it as soon as possible. I have asked Paul and Harriette to route it for signatures. Thank you. - Tyra