



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

**A Resolution Entitled, “*Approval of 2024 Alcohol Tax Collection Agreement Between the MHA Nation and State of North Dakota*”**

**WHEREAS,** The Mandan Hidatsa and Arikara Nation (MHA Nation), also known as the Three Affiliated Tribes, having accepted the Indian Reorganization Act of June 18, 1934, the authority under said Act, and having adopted a Constitution and By-laws (the Constitution) under said Act, and

**WHEREAS,** Pursuant to Article III, Section 1 of the Constitution, the Tribal Business Council is the governing body of the MHA Nation; and

**WHEREAS,** The Constitution authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the MHA Nation and of the enrolled members thereof; and

**WHEREAS,** Article VI, Section 5(d) empowers the Tribal Business Council to negotiate with the Federal, State, and local governments on behalf of the MHA Nation; and

**WHEREAS,** The MHA Nation negotiated an alcohol tax collection agreement (Agreement) with the state of North Dakota (State) to establish a uniform and efficient method of collecting tribal and state alcoholic beverage wholesale and gross receipts taxes; and

**WHEREAS,** Under this alcohol tax collection agreement, wholesale taxes and gross receipt taxes from taxable alcohol sales occurring on the Fort Berthold Reservation shall be collected by the State and disbursed through an allocation of 80% to the MHA Nation and 20% to the State; and

**WHEREAS,** The MHA Nation and the State agree to work cooperatively to support enforcement of the tax collection requirements under the Agreement; and

**WHEREAS,** This Agreement will help regulate alcoholic beverage delivery, distribution, and sale, while supporting tribal sovereignty and economic development on the Fort Berthold Reservation.

**NOW THEREFORE BE IT RESOLVED,** The Tribal Business Council hereby approves and authorizes the Tribal Chairman to sign the attached 2024 Alcohol Tax Collection Agreement Between the MHA Nation and State of North Dakota.



**BE IT FINALLY RESOLVED**, The Chairman of the Tribal Business Council is authorized to execute such documents and take such further actions as are necessary to carry out the terms and intent of this resolution.

**CERTIFICATION**

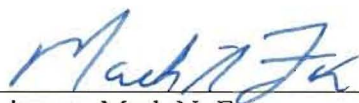
I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Indian Reservation hereby certify that the Tribal Business Council is composed of seven (7) members of whom five (5) constitute a quorum, 6 were present at a Regular Meeting thereof duly called, noticed, convened and held on the 10<sup>th</sup> day of January, 2024, that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of 5 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 [ ] Voting. [ X ] Not Voting.

Dated this 10<sup>th</sup> day of January, 2024.

**ATTEST:**

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

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

**AGREEMENT BETWEEN  
THE MHA NATION and  
THE STATE OF NORTH DAKOTA**

This is a Tax Collection, Administration, Enforcement, and Allocation Agreement (“Agreement”) between the State of North Dakota, by and through its Governor (“State”) and the Mandan Hidatsa and Arikara (MHA) Nation. The State, and the MHA Nation, through its Tribal Business Council (“Tribal Council”), the duly established governing body of the MHA Nation (collectively, “parties”), hereby agree to the following:

**1. Recitals**

WHEREAS, the MHA Nation is a federally recognized Indian Tribe, possessed of the full inherent sovereign powers of a government;

WHEREAS, the State of North Dakota is a state within the United States of America, possessed of full powers of state government;

WHEREAS, Federal Indian law and policy recognize the right and the importance of self-determination for Indian Tribes, the authority of Tribes to tax certain activities, and the need for economic development in Indian country;

WHEREAS, the MHA Nation and State will benefit from an efficient and uniform method of collecting, administering, and enforcing collection of Tribal and State Alcoholic Beverages Wholesale Taxes, and Alcoholic Beverages Gross Receipts Taxes imposed on all purchases by Tribal members and non-Tribal members who are subject to these taxes on transactions occurring within the exterior boundaries of the Fort Berthold Reservation;

WHEREAS, the MHA Nation and State, recognizing the impact that alcoholic beverages have on all citizens of this State, will benefit from an efficient and uniform method of regulating the delivery, distribution and sale of alcoholic beverages within the exterior boundaries of the Fort Berthold Reservation;

WHEREAS, the MHA Nation and State will also benefit by the exercise of the attributes of tribal sovereignty and from the improved well-being of members of the MHA Nation that will result from economic development by the MHA Nation and its members;

WHEREAS, both the MHA Nation and State desire a positive working relationship in matters of mutual interest and seek to resolve disputes and disagreements by conducting discussions on a government-to-government basis; and

WHEREAS, on the part of the State, this Agreement is authorized by North Dakota Century Code (“N.D.C.C.”) Chapter 57-39.10, and on the part of the MHA Nation, by Tribal Resolution No. XX-YY, dated Day, Month, Year, signed by Tribal Chairman Mark Fox and attested to by the Tribal Secretary.

NOW THEREFORE, the MHA Nation, by and through its Tribal Council, and the State, by and through its Governor, do hereby enter into this Agreement for the mutual benefit of the MHA Nation and the State.

**2. Purposes and Intent**

A. The purposes of this Agreement are to:

1. Provide a cooperative mechanism for the MHA Nation and the State to enforce their respective tax jurisdictions;
2. Enforce their respective tax laws;
3. Mitigate the effects of the imposition of both Tribal and State taxes and fees on certain wholesale and gross receipts sales of alcoholic beverages; and
4. Derive revenue from this Agreement for the public purposes of the MHA Nation and State.

B. It is the intent of the MHA Nation and State that their respective taxes under this Agreement be recognized, but collected and administered in a manner that avoids double taxation and provides certainty to taxpayers through a fair and workable agreement between the MHA Nation and the State.

**3. Sovereign Immunity**

A. Nothing contained in this Agreement is or may be construed to be a waiver, diminution, or expansion of the sovereign immunity of the MHA Nation, the Tribal Council, officials, or entities. The MHA Nation expressly retain its sovereign immunity.

B. Nothing contained in this Agreement is or may be construed to be a waiver, diminution, or expansion of the sovereign immunity of the State. The State expressly retains its sovereign immunity.

**4. Acknowledgements of Authority**

The parties acknowledge the following inherent authority, while not forfeiting any legal rights to apply their respective taxes by entering into this Agreement, except as specifically set forth in this Agreement:

**A. Tribal Authority**

1. The MHA Nation has jurisdiction to tax certain transactions that occur within the exterior boundaries of the Fort Berthold Reservation.
2. The Tribal Council, under Section 5 of Article VI of the Constitutional and

Bylaws of the MHA Nation, has authority to enter into tax collection compacts or agreements with the State.

**B. State Authority**

1. The State, subject to inherent limitations under law, has jurisdiction to tax certain transactions involving non-members living within exterior boundaries of the Fort Berthold Reservation.
2. The State, under N.D.C.C. Chapter 57-39.10, may enter into this Agreement with the Tribal Council.

**5. Definitions**

In this Agreement:

1. "Alcohol" means neutral spirits distilled at or above one hundred ninety degrees proof, whether or not such product is subsequently reduced, for nonindustrial use.

2. "Alcoholic beverages" means any liquid suitable for drinking by human beings, which contains one-half of one percent or more of alcohol by volume. This includes beverages whether mixed or unmixed at the time of sale or thereafter and whether sold for consumption on the premises or through off-sale outlets for consumption off the premises.

3. "Beer" means any malt beverage containing one-half of one percent or more of alcohol by volume.

4. "Beer wholesaler" or "wholesaler" means any licensee of the State importing or causing to be imported into the State or purchasing or causing to be purchased within the State, or the exterior boundaries of the Fort Berthold Reservation, any beer for sale or resale to retailers or wholesalers licensed pursuant to N.D.C.C. Chapter 5-02 or 5-03, without regard to whether the business of the person is conducted under the terms of an agreement with a licensed brewer.

5. "Bottle or can" means any container, regardless of the material from which made, having a capacity less than a bulk container for use for the sale of malt beverages at retail.

6. "Direct shipper" means a person that is licensed by the State Tax Commissioner and ships or causes to be shipped alcoholic beverages directly into the State, including onto the Fort Berthold Reservation, to a consumer for the consumer's personal use and not for resale.

7. "Distilled spirits" means any alcoholic beverage that is not beer, wine, sparkling wine, or alcohol.

8. "Gross receipts", in addition to the meaning provided in chapter 57-39.2, includes the full retail purchase price, including any taxes imposed on such merchandise or its use or on the retail or other sale of the merchandise, excluding taxes imposed under this chapter.

9. "In bulk" means in containers having a capacity not less than one-sixth barrel for use for the sale of malt beverages at retail.

10. "License" means a State or Tribal retail alcoholic beverage license issued by the appropriate local governing body.

11. "Licensed alcohol carrier" means a person licensed by the State Tax Commissioner to transport or deliver alcoholic beverages to a consumer without first having the alcoholic beverage delivered through a wholesaler licensed in the State.

12. "Licensed dealer" means a dealer licensed by the State.

13. "Licensed distributor" means a distributor licensed by the State.
14. "Licensed logistics shipper" means a person that provides fulfillment house services, including warehousing, packaging, distribution, order processing, or shipment of alcoholic beverages on behalf of a licensed direct shipper and by way of a licensed alcohol carrier.
15. "Licensed premises" means the premises on which beer, liquor, or alcoholic beverages are normally sold or dispensed and must be delineated by diagram or blueprint which must be included with the license application or the license renewal application.
16. "Licensed retailers" means State or Tribal licensed retailers.
17. "Liquor" means any alcoholic beverage except beer.
18. "Local governing body" means the governing entity of the State or Tribal Council.
19. "Microbrew pub" means a brewer that brews ten thousand or fewer barrels of beer per year and sells beer produced or manufactured on the premises for consumption on or off the premises or serves beer produced or manufactured on the premises for purposes of sampling the beer.
20. "Organization" means a domestic or foreign corporation, general partnership, limited partnership, or limited liability company.
21. "Person" means any individual, firm, fiduciary, partnership, corporation, limited liability company, trust, or association however formed.
22. "Sale" or "sell" applies to gifts, exchanges, and barter.
23. "Organization" means a domestic or foreign corporation, general partnership, limited partnership, or limited liability company.
24. "Sparkling wine" means wine made effervescent with carbon dioxide.
25. "Supplier" means an alcoholic beverage manufacturer, importer, marketer, or wholesaler selling alcoholic beverages to a wholesaler licensed in this state for purposes of resale.
26. "Tribal licensee" means a person issued a local license by the governing body of a federally recognized Indian tribe in this state for the retail sale of alcoholic beverages within the exterior tribal reservation boundaries.
27. "Twenty-one years of age" means it is after eight a.m. on the date twenty-one years after a person's date of birth.
28. "Wine" means the alcoholic beverage obtained by fermentation of agricultural products containing natural or added sugar or such beverage fortified with brandy and containing not more than twenty-four percent alcohol by volume.

## **6. Taxes Included in This Agreement**

### **A. Alcoholic Beverages Wholesale Taxes**

1. **Purpose.** The parties agree that for purposes of this Agreement, the State, by and through its Office of State Tax Commissioner ("State Tax Commissioner"), will collect one Alcoholic Beverages Wholesale Tax in the amount provided for under State law, as may be amended subsequently by the State legislative assembly, for alcoholic beverages sold by licensed wholesalers, domestic wineries, domestic distilleries, microbrew pubs, brewer taproom licensees, and direct shippers, for delivery to licensed retailers or sale directly to consumers located within the exterior boundaries of the Fort Berthold Reservation.

2. **Applicable Law.** The provisions of N.D.C.C. Chapters 5-01, 5-02, and 5-03, and Title 81 of the North Dakota Administrative Code ("N.D.A.C."), including all applicable

definitions in those chapters and the title, govern the collection, administration, and enforcement by the State Tax Commissioner of the taxes and persons subject to this Agreement.

3. Tribal Tax. The MHA Nation shall enact taxes equal to the State's Alcoholic Beverages Wholesale Taxes on all sales of alcoholic beverages sold by wholesalers, domestic wineries, domestic distilleries, microbrew pubs, brewer taproom licensees, and direct shippers subject to the MHA Nation's jurisdiction, for delivery within the exterior boundaries of the Fort Berthold Reservation.

4. Tribal Retailer List. The MHA Nation shall, no fewer than sixty (60) days prior to the effective date of this Agreement, provide a list to the State of all Tribal-owned or Tribal member-owned retailers who sell alcoholic beverages or purchase alcoholic beverages from any licensed wholesalers operating within the exterior boundaries of the Fort Berthold Reservation. The list shall include the retail business's legal name, the address, and the business identification. The MHA Nation shall notify the State of any licensed alcoholic beverages retailer that begins or ceases conducting business within the boundaries of the reservation, and provide the State the business's legal name, address, and business identification number.

5. Remittance of Tax. The State and MHA Nation agree that all Alcoholic Beverages Wholesale Taxes covered by this Agreement will be remitted to the State for distribution according to this Agreement.

6. Revenue Allocation. The Alcoholic Beverages Wholesale Tax revenue collected from taxable transactions and activities within the exterior boundaries of the Fort Berthold Reservation, pursuant to this Agreement must be allocated eighty percent to the MHA Nation and twenty percent to the State.

7. Implementation and Administration

a. Administration. The MHA Nation and State agree that during the term of this Agreement, the State, by and through its State Tax Commissioner retains authority to collect, administer, and enforce the Alcoholic Beverages Wholesale Taxes subject to this Agreement, including the authority to audit, assess, refund, credit, or determine the exempt or nonexempt status of any transaction, for taxes collected within the exterior boundaries of the Fort Berthold Reservation in the manner provided by the applicable state laws.

b. Suspension. The MHA Nation agrees to suspend imposition of Three Affiliated Tribal Business Council Resolution No. 16-152-LKH, as published in the Federal Register on February 28, 2017, 1 82 FR 12116, and as may be amended as it relates to, or is inconsistent with the provisions of N.D.C.C. Chapters 5-01, 5-02, 5-03, and 5-04 relating to nonmember owned wholesalers, domestic wineries, domestic distilleries, microbrew pubs, brewer taproom licensees, and direct shippers, and to the extent the Tribal regulations conflict with the purposes of this Agreement.

c. Tribal Wholesalers. This Agreement contemplates that the MHA Nation or a Tribal member may, at some future date, begin conducting business within the exterior boundaries of the Fort Berthold Reservation, as an alcoholic beverages

manufacturer or wholesaler. In the event that the MHA Nation decides to manufacture alcoholic beverages or act as its own wholesaler in regard to sales to retailers or directly to consumers located within the exterior boundaries of the Fort Berthold Reservation, the MHA Nation will first enter into a memorandum of agreement with the State regarding this activity and the allocation of any alcoholic beverages wholesale tax revenue collected by the MHA Nation. Neither the State nor the MHA Nation shall unreasonably refuse entry into such a memorandum of agreement. The memorandum of agreement shall reference any applicable requirements of this Agreement. If the MHA Nation, by itself or through its branches, agencies, or economic instrumentalities, manufactures and wholesales solely to Tribal retailers, that wholesale activity does not require a memorandum of agreement under this subsection.

d. Other Tribal Alcoholic Beverages Manufacturers or Retailers. This Agreement contemplates that the MHA Nation or a Tribal member may, at some future date, begin conducting business within the exterior boundaries of the Fort Berthold Reservation as a domestic winery, domestic distillery, microbrew pub, brewer taproom, or direct shipper. In that event, the parties agree that the State will collect the Tribal Tax provided for in Paragraph A(3) and the taxes collected will be distributed to the MHA Nation as provided in Paragraph A(6).

e. Inventory Purchases. The MHA Nation and State agree to require licensed retailers of alcoholic beverages on the Fort Berthold Reservation to purchase their inventory from distributors and wholesalers licensed by the State, who will collect all applicable taxes as if the sale occurred off the Fort Berthold Reservation to a nonmember owned retailer. Any provision in any North Dakota tax law that allows Tribal members to make purchases exempt from any State Alcoholic Beverages Wholesale Tax subject to this Agreement, which exemption exists solely as a result of their tribal membership, may not be exercised while this Agreement remains in force.

## **B. Alcoholic Beverages Gross Receipts Tax**

1. Purpose. The parties agree that the State, by and through its Office of State Tax Commissioner, will collect one Alcoholic Beverages Gross Receipts Tax in the amount provided for under State law, as may be amended subsequently by the State legislative assembly, for all alcoholic beverages sold at retail occurring exclusively within the exterior boundaries of the Fort Berthold Reservation. Alcoholic beverages gross receipts taxes imposed under N.D.C.C. Chapters 11-09.1 and 40-05.1 are not subject to this Agreement.

2. Applicable Law. The provisions of N.D.C.C. Chapters 57-39.2 and 57-39.6, and Title 81, N.D.A.C., including all applicable definitions in those chapters and the title, govern the licensing, collection, administration, and enforcement by the State Tax Commissioner of the taxes imposed and collected on and persons subject to this Agreement.

3. Tribal Tax. The MHA Nation shall enact taxes equal to the State's Alcoholic Beverages Gross Receipts Tax, N.D.C.C. Chapter 57-39.6, on all retail sales of alcoholic beverages sold by licensed retailers operating within the exterior boundaries of the Fort Berthold Reservation.



4. Licensing. The MHA Nation agrees that all retailers selling alcoholic beverages at retail within the exterior boundaries of the Fort Berthold Reservation must possess a valid license from the State. In addition, for the sole purpose of reporting and collecting the tax collected on retail sales of alcoholic beverages gross receipts tax, Tribal retailers must obtain a North Dakota sales and use tax permit.

5. Tribal Retailer List. The MHA Nation shall, no fewer than sixty (60) days prior to the effective date of this Agreement, provide a list to the State of all Tribal-owned or Tribal member-owned retailers who sell alcoholic beverages or purchase alcoholic beverages from any licensed wholesalers operating within the exterior boundaries of the Fort Berthold Reservation. The list shall include the retail business's legal name, the address, and the business identification. The MHA Nation shall notify the State of any licensed alcoholic beverages retailer that begins or ceases conducting business within the boundaries of the reservation, and provide the State the business's legal name, address, and business identification number.

6. Remittance of Tax. The State and MHA Nation agree that the Alcoholic Beverages Gross Receipts Tax covered by this Agreement will be remitted to the State for distribution according to this Agreement.

7. Revenue Allocation. The Alcoholic Beverages Gross Receipts Tax revenue collected from taxable transactions and activities within the exterior boundaries of the Fort Berthold Reservation, pursuant to this Agreement must be allocated eighty percent to the MHA Nation and twenty percent to the State.

8. Implementation and Administration.

a. Administration. The MHA Nation and State agree that during the term of this Agreement, the State, by and through its State Tax Commissioner retains authority to collect, administer, and enforce the Alcoholic Beverages Gross Receipts Taxes subject to this Agreement, including the authority to audit, assess, refund, credit, or determine the exempt or nonexempt status of any transaction, for taxes collected within the exterior boundaries of the Fort Berthold Reservation in the manner provided by the applicable State laws.

b. Suspension. The MHA Nation agree to suspend imposition of Three Affiliated Tribal Business Council Resolution No. 16-152-LKH, as published in the Federal Register on February 28, 2017, 1 82 FR 12116, and as may be amended to the extent it is inconsistent with the provisions of N.D.C.C. Chapters 57-39.6 relating to nonmember owned alcoholic beverage retailers, and to the extent the Tribal regulations conflict with the purposes of this Agreement.

c. Exchange of Confidential Information. The MHA Nation and State agree that the MHA Nation may receive, from the State Tax Commissioner, a list of retailers located within the exterior boundaries of the Fort Berthold Reservation and the amount of tax collected from each retailer during a reporting period.

d. Confidentiality. Except as provided in this Paragraph or otherwise

provided by law, the State Tax Commissioner will maintain the confidentiality of Alcoholic Beverages Gross Receipts Tax information relating to and gathered under the terms of this Agreement to the same extent as the information is protected and confidential when gathered by the State in the administration of State tax laws under N.D.C.C. Section 57-39.2-23. The MHA Nation agrees to protect the confidentiality of tax information received from the State Tax Commissioner.

e. Safeguarding Processes and Procedures. The State and the MHA Nation will safeguard the Alcoholic Beverages Gross Receipts Tax information exchanged under Paragraph B(8) of this Agreement by:

1. Restricting access to tax information to authorized employees and officials performing their official duties in connection with the uses of the information authorized in this Agreement;
2. Viewing and storing tax information only in an area that is physically safe from access by unauthorized persons at all times;
3. Using tax information in a manner that protects the confidentiality of the tax information and, in such a way, that unauthorized persons cannot retrieve any such tax information by means of computer, remote terminal, or other means;
4. Advising all personnel who will have access to the tax information of the confidential nature of the information, the safeguards required to protect the information, and the confidentiality requirements contained in N.D.C.C. Chapter 57-39.2;
5. Using the tax information in the manner prescribed by law which maintains proper safeguards to prevent unauthorized release or use of such data; and
6. Performing regular self-reviews to monitor the use and security of information received from the State.

## **7. Administration of the Agreement**

A. Neither the MHA Nation nor the State will seek additional entitlement or seek to deny entitlement on any federal ground, including federal preemption, whether statutorily provided for or otherwise with respect to the taxes that are the subject of this Agreement.

B. Both the MHA Nation and the State will defend this Agreement from attack by third parties.

C. The MHA Nation and the State agree that a taxpayer subject to the taxes contained in this Agreement may not be required to pay both the MHA Nation's Taxes and the State's Taxes, but shall pay only one tax to the State in the amount provided for under North Dakota law for each tax type subject to this Agreement on all taxable events that occur on or off the Fort Berthold Reservation and are subject to collection administration, and enforcement under this Agreement. The parties further agree that any new entity that transacts business within the exterior boundaries of the Fort Berthold Reservation subject to this Agreement, or causes an alcoholic beverage product subject to this Agreement to be introduced onto the Fort Berthold Reservation for wholesale or retail distribution or sale, is subject to the terms and

conditions of this Agreement.

D. The State and the MHA Nation will cooperate to collect only one tax per tax type and will share or refund the revenue as specified in this Agreement.

E. Any entity, whether chartered under State law or Tribal law, and operating within the exterior boundaries of the Fort Berthold Reservation, is subject to one tax in the amount provided for under State law.

F. Any provision in any State tax law that allows enrolled members living on the reservation to make purchases exempt from any State Alcoholic Beverages Wholesale Taxes, or Alcoholic Beverages Gross Receipts Taxes subject to this Agreement may not be exercised while this Agreement remains in force.

G. The State retains authority to collect, administer, and enforce the collection requirements in State law and Administrative Rules of the taxes subject to this Agreement, including the authority to audit, assess, refund, credit, or determine the exempt or nonexempt status of any transaction, for taxes collected within the exterior boundaries of the Fort Berthold Reservation in the manner provided by applicable state law or laws and administrative rules. In order to carry out the purpose and intent of this Agreement that only one tax per tax type be collected, the MHA Nation hereby delegates to the State, as the MHA Nation's agent, the MHA Nation's authority to collect, administer, and enforce the Tribal Taxes contained in this Agreement.

H. The Federal District Court for the Western Division of North Dakota is the venue for any controversy or claim between the MHA Nation and the State, arising out of or relating to this Agreement.

I. The MHA Nation and State agree that the MHA Nation will not impose any direct or indirect Tribal tax or fee on retailers, transactions, or activities that are subject to this Agreement. This provision does not apply to Tribal business and alcohol license fees or Tribal Employment Rights Office fees.

J. All taxes covered by this Agreement will be remitted to the State for distribution according to this Agreement.

K. Civil Enforcement.

1. Request. Upon request of the State, the MHA Nation will assist the State in its administration and enforcement efforts related to the taxes subject to this Agreement.

2. Notice. The MHA Nation and State agree to notify each other of known or potential violations of State statutes, State Administrative Rules, or Tribal Ordinance provisions pertaining to the taxes under this Agreement.

3. Scope. Those administration and enforcement efforts may include assessment of tax, audit, collection of tax, litigation, inspections for contraband or violation of statutes, and enforcement of reporting, registration, or licensure provisions. The request may

relate to Tribally-owned entities, Tribal member-owned entities, or any other person for events occurring off of or within the exterior boundaries of the Fort Berthold Reservation and pertaining to a duty or requirement under this Agreement.

L. Criminal Enforcement.

1. Referral to MHA Nation. If any act pertaining to the taxes or duties associated with those taxes under this Agreement would be deemed a criminal act under Tribal, State, or federal law, and if the person so acting is Indian, the State may refer the matter to the MHA Nation's Prosecutor's office for action.

2. Referral to State or Federal Government. If any act pertaining to the taxes or duties associated with those taxes under this Agreement would be deemed a criminal act under State or federal law, and if the person so acting is non-Indian, the MHA Nation shall refer the non-Indian to State and/or federal authorities for criminal investigation and possible prosecution under applicable State and/or federal criminal law.

3. Notice. The MHA Nation and State agree to notify each other of known or potential violations of State statutes, State Administrative Rules, or Tribal Ordinance provisions pertaining to the taxes under this Agreement.

M. The State will give written notice to the MHA Nation of any enacted changes to State Alcoholic Beverages Wholesale or Alcoholic Beverages Gross Receipts Taxes and in the notice will specify which changes would, in the view of the State, result in the affected Tribal Tax ceasing to be substantially similar to the corresponding State Tax if the Tribal Tax is not amended.

N. The MHA Nation will notify the State in writing of any enacted changes to its Alcoholic Beverages Wholesale Tax or Alcoholic Beverages Gross Receipts Tax. If requested to do so by the MHA Nation, the State will review any proposed change to the Tribal Taxes in advance and advise the MHA Nation whether the change, if enacted, would, in the view of the State, result in the Tribal Taxes ceasing to be substantially similar to the corresponding State Taxes.

O. This Agreement contemplates that the MHA Nation may, at some future date, act as its own wholesaler. In the event that the MHA Nation decides to act as its own wholesaler in regard to sales to Tribal member retailers, or sales directly to consumers located within the exterior boundaries of the Fort Berthold Reservation, the MHA Nation will first enter into a memorandum of agreement with the State regarding this activity. The State shall not unreasonably refuse entry into such a memorandum of agreement. The memorandum of agreement shall reference any applicable requirements of this Agreement. If the MHA Nation, by itself or through its branches, agencies, or economic instrumentalities, manufactures and wholesales to Tribal retailers, that wholesale activity does not require a memorandum of agreement under this subsection.

P. This Agreement shall become effective the first day of a calendar quarter that is at least ninety days after it is signed by both parties.

## **8. Term and Termination**

A. The parties agree that this Agreement shall continue in force and effect unless formally cancelled by either party.

B. Termination may occur as follows:

1. The State Tax Commissioner, after consulting with the Governor, may terminate this Agreement with or without cause and without liability, except as to any amounts collected and due to either party, upon thirty (30) days written notice to the MHA Nation.

2. The MHA Nation, by and through its Tribal Council, may terminate this Agreement with or without cause and without liability, except as to any amounts collected and due to either party, upon thirty (30) days written notice to the Governor. A Notice of Intent to Terminate on behalf of the MHA Nation must be executed by the Tribal Council.

3. Before the Agreement is terminated under this provision, the parties will meet and make a good-faith effort to resolve the differences leading to a Notice of Termination.

4. Except for tax collections and distributions that survive the termination of this Agreement, within thirty (30) days of receipt of a Notice of Termination issued by the Governor or the Tribal Council, the State Tax Commissioner, on behalf of the State, shall notify each known taxpayer affected by the termination by first class mail that it will no longer collect the taxes covered by this Agreement, and the taxpayer should no longer remit to it the affected taxes.

## **9. Maintenance of Records**

A. The MHA Nation agrees to maintain accurate records setting forth information in sufficient detail to allow for verification that Tribally-owned entities are collecting and remitting the correct amount of tax due under this Agreement. The MHA Nation agrees to furnish these records to the State Tax Commissioner, on behalf of the State, upon request.

B. Upon reasonable request of the State, the State may conduct a limited examination or audit of the records of the MHA Nation and Tribally-owned entities for the sole purpose of verifying compliance with the requirements of this Agreement. Such examination or audit shall be strictly limited to those enterprise activities of the MHA Nation or Tribally-owned entities which engage in sales subject to the taxes collected pursuant to this Agreement and may include examination of summary reports, exemption certificates, ledgers, cash register tapes and similar records. Nothing in this section authorizes any examination or audit of the records of any part of the MHA Nation or Tribally-owned entity which does not engage in sales subject to the taxes collected pursuant to this Agreement, and nothing in this section authorizes any examination or audit of any records that goes beyond what is needed to verify compliance with the requirement of this Agreement.

C. If the State receives a request for information pertaining to this Agreement that it

is required to furnish under the State's Open Records laws (N.D.C.C. Section 44-04-17.1, et seq.), the State Tax Commissioner, on behalf of the State, shall inform the MHA Nation of the request and identify the information released.

**10. Amendment and Waiver**

This Agreement may not be modified or amended, nor may compliance with any provision of it be waived except by an instrument or instruments in writing signed by the party against whom enforcement of any modification, amendment, or waiver is sought. Any amendment must comply with the terms of N.D.C.C. Chapter 57-39.10.

**11. Jurisdiction over Agreement**

Venue for any dispute arising from the terms of this Agreement not resolved by the parties or through arbitration shall be the Federal District Court for the Western Division of North Dakota. Should any part of this Agreement be rendered or declared invalid by the Federal District Court for the Western Division of North Dakota, or a subsequent federal appellate court, the invalidation of any part or portion of this Agreement will not invalidate the remaining portions, which remain in full force and effect.

**12. Notice and Payment**

A. Notice and Payment shall be as follows:

1. Notice required to be sent to the MHA Nation under this Agreement must be sent to:

Tribal Chairperson  
MHA Nation  
404 Frontage Road  
New Town, North Dakota 58763-9402

Tribal Tax Department  
MHA Nation  
404 Frontage Road  
New Town, North Dakota 58763-9402

2. Payment required to be sent to the MHA Nation under this Agreement must be sent by state warrant or electronic funds transfer (ACH) to:

MHA Nation  
Tax Department  
404 Frontage Road  
New Town, North Dakota 58763-9402

3. Notice required to be sent to the State under this Agreement must be sent to the State Tax Commissioner, on behalf of the State, to:

North Dakota Office of State Tax Commissioner  
Director, Tax Administration Division  
600 East Boulevard Avenue  
Bismarck, North Dakota 58505-0599

4. Payment to the State under this Agreement must be sent to the State Tax Commissioner, on behalf of the State, to:

North Dakota Office of State Tax Commissioner  
Compliance Supervisor, Sales, Oil, and Special Taxes  
600 East Boulevard Avenue  
Bismarck, North Dakota 58505-0599

Either party may change its notice or payment address by giving written notice of the change to the other party.

IN WITNESS WHEREOF, the MHA Nation and State of North Dakota have caused this Agreement to be executed and delivered by their respective officers, duly authorized.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mark Fox, Chairman  
MHA Nation

\_\_\_\_\_  
Date

\_\_\_\_\_  
Brian Kroshus, Tax Commissioner  
State of North Dakota

\_\_\_\_\_  
Date

\_\_\_\_\_  
Doug Burgum, Governor  
State of North Dakota