



Resolution No. 14-089-VJB

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

An Amended Resolution Entitled: "Approval of the Revised MHA Nation Pipeline Right-of-Way Terms and Conditions, and the Section D. on Pipeline Right-of-Way Fees"

WHEREAS, This 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 pursuant to said Act; and

WHEREAS, The Constitution of the Three Affiliated Tribe generally authorized and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and

WHEREAS, Article III of the Constitution of the Three Affiliated Tribes provides that the Tribal Business Council is the governing body of the Tribes; and

WHEREAS, Article VI, Section 5 (I) of the Constitution of the Three Affiliated Tribes provides that the Tribal Business Council has the power to adopt resolutions regulating the procedure of the Tribal Business Council and other Tribal agencies; and

WHEREAS, Article VI, Section 5 (J) of the Constitution of the Three Affiliated Tribes provides that the Tribal Business Council has the power to protect and preserve the property, wildlife and natural resources of the Tribes; and

WHEREAS, There are numerous oil wells operating on the Fort Berthold Indian Reservation ("FBIR") as a result of the exploration and production of crude oil and other minerals within the Bakken Formation; and

WHEREAS, The Tribal Business Council has the responsibility and authority to regulate the conduct of oil and gas exploration and production on the FBIR including the regulation of the use of rights of way within the FBIR; and

WHEREAS, On April 10, 2014 the Tribal Business Council passed Resolution No. 14-071-VJB, entitled "*Approval of the MHA Nation Application for Right of Way and Use of Rights-of-Way, the MHA Nation Pipeline Right-of-Way Terms and Conditions, and the Section D. on Pipeline Right-of-Way Fees*", which incorporates the terms as to how the oil and gas industry will develop pipeline infrastructure within the MHA Nation; and

WHEREAS, On May 15, 2014, per request from Industry representatives, the Natural Resources Committee reviewed and approved certain changes to the MHA Nation Pipeline Right-of-Way Terms and Conditions; and

WHEREAS, The attached MHA Nation Pipeline Right-of-Way Terms and Conditions reflects the changes to the April 10, 2014 MHA Nation Pipeline Right-of-Way Terms and Conditions approved by the Tribal Business Council, which were approved by the Natural Resources Committee and agreed to by the MHA Nation Natural Resources Department and the MHA Nation Energy Division; and

WHEREAS, That the M.H.A. Nation may reconsider the annual fee subject to the possible implementation of a Tribal Possessory Interest Tax and/or applicable Tribal/State Tax Agreement; and

BE IT FURTHER RESOLVED, that the Tribal Business Council has considered and now expressly approves the Section D. Fee Structure set forth in the Attached "Revised MHA Nation Pipeline Right-of-Way Terms and Conditions" which is based on a charge of an upfront one-time payment of \$6,000.00 per acre and an annual payment of \$2,000.00 per acre of MHA Nation Tribal land tracts for the twenty (20) year term; and

BE IT FURTHER RESOLVED, that the Tribal Business Council has considered and now expressly approves the use of the attached Revised MHA Nation Pipeline Right-of-Way Terms and Conditions; and

BE IT FINALLY RESOLVED, this Resolution supersedes any prior actions of the Tribal Business Council on this subject, and shall be part of the laws of the Nation and the Tribal Energy Office shall be responsible for carrying out the mandates of this Resolution.

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CERTIFICATION

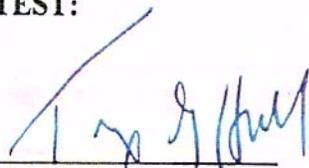
I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Indian Reservation hereby certify that the Tribal Business Council is composed of seven (7) members of whom five (5) constitute a quorum, 5 were present at a Regular Meeting thereof duly called, noticed, convened and held on the 28th day of May, 2014, that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of 5 members, 0 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.

Chairman Voting. Not Voting.

Dated this 28th day of May, 2014.

ATTEST:


Secretary, V. Judy Brugh
Tribal Business Council
Three Affiliated Tribes


Chairman, Tex G. Hall
Tribal Business Council
Three Affiliated Tribes

Approved by the Tribal Business Council

05/28/2014

**REVISED MHA NATION
PIPELINE RIGHT-OF-WAY TERMS AND CONDITIONS**

The Mandan, Hidatsa and Arikara Nation (“MHA Nation”) of the Fort Berthold Indian Reservation (“Reservation”) hereby consents to the grant by the Secretary of the Interior (“Secretary”) acting through the Bureau of Indian Affairs (“BIA”), United States Department of the Interior, of a Right-of-Way, as defined in Section A.1., of this Agreement, pursuant to and in accordance with the General Right of Way Act, 25 U.S.C. §§ 323-328 and 25 CFR Part 169, which requires prior written consent of the MHA Nation, in consideration of agreement of the following terms and conditions (also referred to herein as “Agreement”):

A. Right-of-Way Parameters.

1. The Right-of-Way under this Agreement shall be defined and limited as shown in the attached Application, as may be approved or modified by MHA Nation. (The Application will include a legal description and map).
2. Unless otherwise agreed to by the MHA Nation and the Applicant per Section X, Waiver provision, herein, the extent of the Rights-of-Way shall not exceed:
 - a. Thirty (30) feet in width during the Term set forth in Section C, below, except during periods of construction, maintenance or repair, with a minimum initial overburden depth of four (4) feet (unless safety requirements or regulation requires less overburden), with no more than four (4) lines installed within a maximum of thirty (30) feet.
 - b. In the case of above-ground facilities (e.g., meters, LACT units, valves, compressor stations, dehydration facilities, pig launchers and receivers, and pump stations), the allowable surface acreage as approved by the MHA Nation for such above-ground facilities.
 - c. A surface strip of land of one-hundred (100) feet in width for construction and maintenance or repair of the pipeline.
3. Upon completion of the construction of any and all facilities under this Agreement, Applicant will provide the MHA Nation with as-built drawings certified by a qualified engineer.
4. The Right-of-Way shall be subject to the set back limitations and the variance approval process prescribed by MHA Tribal Council Resolutions.

B. Permitted Uses and Restrictions.

1. The Right-of-Way may only be used for the inspection, survey, development, installation, expansion, construction, replacement, operation, maintenance, repair, removal and demolition of the facilities described in the Application as approved or

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modified by MHA Nation, as of the Effective Date (the foregoing "Permitted Uses"). The Effective Date shall be the date of BIA's execution of the grant of the Right-of-Way following the Parties execution of this Agreement.

2. The Right-of-Way shall not be used in any manner: (a) which will cause a cancellation, voiding or nonrenewable of Applicant's insurance policy covering any part thereof or any of its coverage's for benefit of the MHA Nation; (b) for any unlawful purposes; or (c) for any purpose that is not a Permitted Use.
3. Without prior notification and written approval by the MHA Nation Energy Division or the designated MHA agency as an appendix to this Agreement, the Right-of-Way may not be used for: (a) above ground storage (except as designated in an approved Application); (b) the exploration, development or production of hydrocarbons or other minerals; (c) the gathering and/or transportation of gas, natural gas or liquids from outside of the MHA Reservation to and across the Reservation (except as designated in an approved Application); (d) developing or building temporary or permanent housing and commercial facilities not expressly approved under this Agreement; (e) any utility-type services offered to third parties beyond the needs of the Applicant to carry out the Permitted Uses set forth under the terms of this Agreement and attached Application, such as water, electric, fiber optics; (f) construction and operation of cell towers. These activities and uses will be subject to separate approval by and agreement with the MHA Nation.
4. Applicant and its contractors shall conduct all construction and operational activities, and shall build all pipelines and appurtenances in a workmanlike and safe manner, in accordance with all relevant industry standards, and all applicable legal and regulatory requirements.
5. Applicant will restore all damage to lands and vegetation caused by construction, operation or removal of any pipeline or appurtenance back to the original state or better with consideration of the native vegetation prior to disturbance as identified in the MHA Nation Energy Division Oil and Gas Code and regulations. Upon abandonment of the Right-of-Way, Applicants agrees to abide by all prescribed applicable procedures set forth in 25 CFR 169.25(e).
6. Applicant will cooperate with the MHA Nation and other ROW holders to permit reasonable crossings and co-location of facilities; at a minimum of twenty-four (24) vertical inches for crossings and ten (10) feet of horizontal separation for co-location not at crossing, and upon request, will attempt to enter crossing and right-of-way access agreements upon reasonable terms and conditions.
7. Applicant will take all reasonable and necessary actions and precautions for safety purposes including prevention and suppression of fires, whether caused by its operations or nearby occurrences.
8. Applicant and its contractors shall only employ persons and firms of good reputation possessing suitable skills, licenses, certificates and personnel to complete assigned

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work, and which are adequately capitalized and appropriately insured and bonded, and which are insured, bonded, approved, licensed and in compliance with all applicable requirements of the Tribal Rights Employment Office (TERO) and shall conduct themselves at all times in accordance with applicable laws and regulations.

9. Unless otherwise stated in this Agreement or provided in an approved Application, Applicant agrees to consider cooperating with potential third-party shippers to provide service on the facilities constructed on the Rights-of-Way upon commercially reasonable terms and conditions, to be negotiated between the parties. Access and service shall not be contrary to applicable laws, regulations and/or rule.

C. Term.

1. The Term commences on the Effective Date, and will end at midnight on the date twenty (20) years after the Effective Date (the "Primary Term"), provided however, the Term as to any portion of the ROW will end if Applicant removes or permanently ceases operation of oil and gas gathering system operations thereupon. In the event Applicant suspends operation on any portion of the ROW, Applicant is deemed to have ceased operations for purposes hereof if no commercial quantities of oil or gas are transported for a period of forty-eight (48) contiguous months, unless such termination is waived in writing by the MHA Nation Energy Division.
2. Subject to the terms and conditions set forth herein, and all applicable laws and regulations, the MHA Nation hereby gives such consent to the granting of the Rights-of-Way described herein, for a period not to exceed the expiration of the Term. The MHA Nation will submit the ROW Agreement to the BIA for approval and will make commercially reasonable efforts to obtain such approval.
3. Upon expiration of the twenty (20) year term Primary Term, the Applicant shall have a right to renew rights granted hereunder for the same purpose and placement for a like term of years upon payment of consideration no less than fair market value, and the MHA Nation and the Applicant, including its heirs, successors and/or assigns, shall negotiate in good faith for a new ROW under these terms and conditions.

D. Charges.

1. Application Charge. A one-time Application Charge of two hundred dollars (\$200.00) is due with the submission of the MHA right-of-way agreement for each tract for (a) new Gathering Facilities and renewals and (b) extensions of rights-of-way for existing Gathering Facilities.
2. ROW Fees.
 - a. Applicant agrees to pay a one-time, upfront ROW Fee equal to \$6,000.00 per acre, which shall be paid to the MHA Nation within ten (10) business days from the Effective Date of this Agreement. In addition to the one-time upfront ROW Fee, Applicant shall also pay an annual rental fee of \$2,000.00 per acre, the first

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payment of which shall be due on the first anniversary of the Effective Date of this Agreement and then every year thereafter during the remaining term of this Agreement. For the purpose of these ROW Fees, acres shall be based on a thirty (30) foot or other negotiated width set forth in A.2.a. of this Agreement.

- b. A Gathering System is a permanent pipeline system, including compression or pumping facilities, utilized to collect oil, gas or water produced by petroleum wells located on FBIR and transport such products outside the boundaries of FBIR or to storage, transfer, processing or disposal facilities located within the boundaries of FBIR. Gathering Facilities are any component of a Gathering System.
 - c. If a Gathering System transports product originating from a location outside the boundaries of FBIR, then the MHA Nation and the operator of the Gathering System shall negotiate an additional charge to be paid by the operator of the Gathering System.
3. Charges for Transmission Pipelines are to be negotiated between the MHA Nation and the Transmission Pipeline operator. A Transmission Pipeline is a permanent pipeline utilized to transport any material or product across land located within FBIR from a location outside the boundaries of FBIR, whether the pipeline exits FBIR or terminates within FBIR.
4. Based on a fifteen (15) foot width, charges for Temporary Water Pipelines are equal to five thousand dollars (\$5,000.00) per acre for a twelve (12) month period or prorated for a portion of a year.
- a. Temporary Water Pipelines are above-ground pipelines designed to transport fresh, non-potable water to construction sites and well pad locations.
 - b. If a Temporary Water Pipeline is utilized to transport water with any additional chemicals, the charges are to be negotiated between the MHA Nation and the Temporary Water Pipeline operator.
5. Remittance Process. Fees for this Right-of-Way due to the MHA Nation shall be payable in U.S. Dollars by wire transfer to such account as the MHA Nation may publish or direct in writing. Consideration as herein agreed to by the parties will be made in immediately available funds and payment is absolute and unconditional under all circumstances. ROW fees will be payable within 60 days of notice of approval.
- E. Taxes. The MHA Nation is a sovereign Indian tribe with authority to manage its natural resources, lands, water and territory. The power to tax is a sovereign authority of territory management and necessary for provision of governmental services which make economic activity possible. The MHA Nation fully reserves its right to further regulate and tax economic activity, generally, within its territory to defray the cost of self-government.

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F. Services. The MHA Nation shall have no obligation to provide any utilities or other services to the Applicant or to the Rights-of-Way during the Term. Notwithstanding the foregoing, if the current provider of any electrical power, water, or other utility service utilized in the operation of the Applicant's facilities permanently ceases to provide such utility service for such facilities, the MHA Nation agrees to promptly respond and use commercially reasonable efforts to facilitate efforts to obtain substitute utility service. Subject to the MHA Nation's laws and without restricting the MHA Nation's right to impose fees on utilities (including for the utilities' right-of-way), the MHA Nation agrees to expedite the consideration of necessary easements, licenses and other consents and approvals as may be reasonably necessary to deliver substitute utility service to the Applicant's facilities.

G. Action on Permits. The Application and the grant of the ROW is in addition to and does not substitute for the Applicant's requirement to apply for and obtain any permit, consent, approval, certificate or license required under applicable law, including laws and regulations of the MHA Nation, for conducting any activity on the Reservation, including Permitted Uses, and for Applicant's and its contractors' or agents' employees to perform any activities on the Reservation. The MHA Nation and its agents and employees shall work expeditiously to avoid unreasonable delay to any decision on whether or not to issue (or condition, if issued) any permits required for Permitted Uses. To the extent reasonably practicable, upon written request a decision on any Application for a permit filed pursuant to this Agreement shall be made within forty-five (45) days of filing with the designated MHA agency. If the Application is complete and the designated MHA Nation agency decides to grant the permit, it shall also be issued within such forty-five (45) day period. The forty-five (45) day period for issuance shall not begin until a completed Application has been filed.

H. Default. The following occurrences ("Events of Default") shall constitute a default of the terms and conditions set forth herein:

1. Failure to pay when due the fees set forth herein, and such failure shall continue uncorrected for a period of thirty (30) Business Days after written notice from the MHA Nation.
2. Failure to use the Right of Way for a consecutive two (2) year period for the purpose for which it was granted, as provided for in 25 C.F.R. § 169.20(b).
3. Use of the Right of Way for any purpose that is not a Permitted Use.
4. Extension or construction of pipelines and related facilities outside of the permitted Right of Way, provided such extension or construction is not otherwise authorized.
5. Failure to perform any other material obligation or comply with any material provision of the terms and conditions set forth herein, including material violation of any applicable laws of regulations.
6. Any representation or warranty of Applicant given herein is or becomes materially untrue, inaccurate or misleadingly incomplete.

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7. Notification by Applicant within five (5) business days of an application for or agreement to the appointment of a receiver or trustee in liquidation of it or its properties.
8. Notification by Applicant within five (5) business days of a filing for bankruptcy or a petition seeking reorganization or an arrangement with creditors under any bankruptcy law.
9. In the event of any Event of Default, the MHA Nation shall have the right to terminate this Agreement and withdraw its consent to the Right-of-Way and seek termination through the BIA, provided, however, that in the case of an Event of Default under Sections H.2-8, the MHA Nation may only exercise such withdrawal right if the Event of Default is not cured within thirty (30) days following written notice, and provided further, that, with the exception of an Event of Default per Section H.1 and 2, if Applicant has commenced and is diligently proceeding with a commercially reasonable steps to cure an Event of Default under Sections H.3-8 but such Event of Default cannot be cured within thirty (30) days, the time for cure shall be extended to a reasonable time not to exceed ninety (90) days from the date of notice.

I. Insurance.

1. Applicant shall maintain commercial general liability insurance covering claims arising out of its operations, use and occupancy of the Right-of-Way and the facilities covered by this Agreement and other improvements located on the Right-of-Way and the MHA Nation's Permitted Use of the Rights-of-Way. Such insurance will include products/completed operations, sudden and accidental pollution, and explosion, collapse, and underground coverage, and shall include appropriate coverage for operations within 50 feet of any railroad property on the Reservation. Coverage shall be maintained on an occurrence or claims basis covering Rights-of-Way and operations, products and completed operations, contractual liability, personal injury liability, bodily injury liability and property damage liability, at a combined single limit of not less than \$2,000,000 per occurrence or claim and \$5,000,000 in the aggregate, or such other amount as shall be specified by the MHA Nation Energy Division.
2. All insurance required hereby shall be issued by underwriters with an A.M. Best rating of "A-" and eligible to do business in the State of North Dakota and on the Reservation. Applicant shall be allowed to self-insure any part of all of the insurance requirements upon a showing of such insurance to the MHA Nation Energy Division. Any required insurance shall be performable on the Reservation, and shall name the MHA Nation as an additional insured, with waiver of subrogation.

J. Indemnification.

1. Applicant agrees to indemnify, defend and hold harmless the MHA Nation, its Departments and Divisions, its respective Council members, directors, trustees,

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agents, officers, employees, members, successors and assigns and Reservation landowners and Reservation landowners ("Indemnified Parties") from and against all losses, costs, injuries, damages, liabilities, suits, claims, judgments and liens that may occur or be asserted to the extent arising out of Applicant's or its officers, directors, employees, contractors or agents ("Indemnifying Parties") (a) use or possession of the Right-of-Way by Applicant or any of the Indemnifying Parties, (b) the conduct by Applicant or any of its indemnifying Parties of its business in relation to its facilities covered by this Agreement (defined herein as those facilities permitted and covered by this Agreement), (c) the development, construction, existence, occupancy, use, operation, management, maintenance, repair, expansion, or removal and demolition of the facilities covered by this Agreement, including without limitation (i) disposal, transportation, shipping or arrangement for disposal of hazardous substances at or from the Applicant's facilities; (ii) response actions in relation to any hazardous substance first present after the Effective Date in any environmental medium (including without limitation air, water, soil, sediments, subsurface strata or groundwater) originating from the Applicant's facilities; (iii) the exacerbation of pre-existing conditions relating to Applicant's facilities; (iv) any violation of environmental laws in relation to the Applicant's facilities; (v) personal exposure to or personal injury from any polluting or hazardous substances; (vi) the disposal of spoils, including the investigation, containment and remediation of any environmental conditions arising from the spoils or their disposal relating to Applicant's facilities; and (vii) any other condition, occurrence or circumstance that would not have arisen but for the Applicant's facilities; provided, however, that this indemnity shall not apply in the event and to the extent any of the foregoing are caused by or attributable to events prior to the Effective Date of this Agreement or the negligence or willful misconduct of any third party that is not an Indemnifying Party or is not an affiliate of or associated with the Applicant.

2. The indemnity obligations created hereunder shall include, without limitation, whether foreseeable or unforeseeable, any and all costs incurred in connection with any site investigation, and any and all costs for repair, cleanup, detoxification or decontamination, or other remedial action with respect to the Right-of-Way or the facilities covered by this Agreement. The rights and obligations of the Parties shall survive the expiration or earlier termination of this Agreement or the ROW in whole or any part.

K. Loss or Damage to Property. All trade fixtures, equipment, inventory and all other personal property belonging to Applicant, located on or about the Right-of-Way, shall be at the sole risk of Applicant, and the MHA Nation shall not be liable for the theft or misappropriation, nor for any damage or injury to any property caused by fire, explosion, wind, water, rain, snow, frost, ice, steam, gas, electricity, any acts of God, heat or cold, dampness, sewers or sewage odors, noise, leaks from any part of the facilities covered by this Agreement, or by the bursting or leaking of pipes, plumbing, electrical wiring and equipment and fixtures of all kinds, or by any act or neglect of any person other than a MHA Nation Indemnified Party.

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L. Assignment, Change of Control and Subletting. Applicant shall not without the prior written consent of the MHA Nation Energy Division or the designated MHA agency, which consent shall not to be unreasonably withheld: (a) assign, transfer, sell or encumber this Right-of-Way or any estate or interest therein, (b) sublet any portion of the Right-of-Way, (c) permit the use of the Right-of-Way by any party or, (d) grant any license, concession, or other right of occupancy of any portion of the Right-of-Way (each such event a "Transfer"). Applicant shall immediately provide written notice of any proposed Transfer. Any Transfer without the prior written consent of the MHA Nation that is not otherwise permitted herein under shall be void. Any assignment and/or contractual use between producers and gathering companies are subject to prior written approval by the MHA Nation Energy Division or the designated MHA agency, which consent shall not to be unreasonably withheld. Complete copies of all assignments, partial assignments, or any other similar agreement or arrangements shall be furnished to the BIA Superintendent and the MHA Nation Energy Division or the designated MHA agency.

M. Meters. In cooperation with the MHA Nation Energy Division, Applicant is willing to provide reasonable aggregate system volume information at key points within the exterior boundaries of the FBIR (for example, where pipelines exit Reservation boundaries) on a monthly, quarterly or annual basis.

N. Legal and Environmental Compliance. During the term of the Right-of-Way, Applicant agrees to comply with all MHA Nation Laws, regulations and rules as well as applicable federal, state, county and local laws and regulations, including environmental, health and safety laws applicable to its activities and the activities of its employees, agents, contractors, and subcontractor on the Rights of Way. The MHA Nation Energy Division agrees to publish all new applicable laws, rules, and regulations within sixty (60) days of effective date. Applicant will not be declared in default of any new law, rule or regulation without this notice and Applicant will be given sixty (60) days to cure.

O. Pipeline Safety Standards. In addition to applicable MHA Nation standards, Applicant will to the extent applicable comply with federal laws and regulations including orders of the Pipeline and Hazardous Materials Safety Administration of the U.S. Department of Transportation, and applicable state laws and regulations. Applicant also agrees to make available and submit quarterly inspection reports to the MHA Nation designated agency.

P. Confidentiality. The MHA Nation agrees to hold all information and documentation provided and submitted under this Agreement confidential and shall not disclose such information to any non-governmental third party entity, without notice and approval of Applicant, unless disclosures is ordered by a court of competent jurisdiction.

Q. Representations and Warranties. Applicant represents and warrants as follows:

1. Applicant shall use its best efforts to ensure that all statements in the Application are true, correct and complete to the best of Applicant's knowledge.
2. Applicant is duly organized, existing and in good standing in the jurisdiction of its formation indicated above, has all necessary power and authority to enter into and perform these terms and conditions, and has executed and delivered the Application

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by its duly authorized signatory and representative, and the executed Application, and these Terms and Conditions, constitute the valid, lawful and binding obligation of Applicant, enforceable in accordance with their terms.

3. Applicant is not in breach of the Terms and Conditions on the date of execution and delivery of the Application.
4. Applicant is lawfully possessed of its assets and properties, and is adequately capitalized for and capable of performing its obligations under these Terms and Conditions.

R. MHA Jurisdiction; Sovereign Immunity.

1. Sovereign Immunity. Nothing herein shall be deemed or construed to be a general waiver of the Sovereign Immunity of the MHA Nation for any purpose. The MHA Nation does not waive its sovereign immunity from suits which fall outside the limited waiver of sovereign immunity in Section S. The MHA Nation expressly reserves its jurisdiction (i.e. right, subject to the terms and conditions of this Agreement, to exercise dominion and control) over this Agreement, and nothing in this Agreement shall constitute or be construed to constitute a relinquishment of jurisdiction.
2. Consensual Relationship. The parties recognize and acknowledge the existence of a consensual relationship with respect to the interests, facilities, and activities authorized by this Agreement.
3. No personal liability. No requirement, stipulation, obligation or agreement of the MHA Nation contained herein shall be deemed to be a requirement, stipulation or obligation of any present or future elected or appointed official, officer, agent, or employee of MHA Nation in his individual capacity and neither the members of the MHA Tribal Council, nor any official, officer, employee or agent of the MHA Nation, shall be liable personally with respect to the obligations of the MHA Nation under this Agreement.

S. Dispute Resolution.

1. Limited Waiver of Sovereign Immunity. The Parties acknowledge that the MHA Nation is a federally-recognized Indian tribe possessing sovereign immunity from suit and other legal proceedings. Nothing in this Limited Waiver of Sovereign Immunity shall be deemed to be a waiver of MHA Nation's sovereign immunity from suit, except to the extent that the MHA Nation hereby provides a limited waiver of its sovereign immunity and consents to be sued should an action be commenced to determine and/or enforce the obligation of the Parties under this Agreement exclusively in the Tribal Court of the MHA Nation; provided further that the MHA Nation's consent to suit is only as to good faith proceedings as described and permitted in Section 2, below, and to tribal court action initiated consistent with this Limited Waiver of Sovereign Immunity and this Agreement. In conjunction

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with any injunctive relief sought, the MHA Nation expressly submits to and consents to the jurisdiction of the Tribal Court of the MHA Nation. In any judicial proceeding before the Tribal Court, the Parties agree to seek to have any Claim heard within sixty (60) days of the claim first being brought by either party following service of process (the "Convening Date") and to urge the Tribal Court to render a decision on the merits of the claim within sixty (60) days after the Convening Date (the "Decision Date") unless the Parties to this Agreement mutually agree to extend either the Convening Date and/or the Decision Date.

2. Prior to filing an action arising from this Agreement in Tribal Court, the Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement, including any controversy or claim relating to its existence, validity or termination, through good faith discussions. However, if any controversy or claim cannot be resolved through such discussions within thirty (30) days of a Party's written formal notice of dispute, or if a Party fails or refuses to attend or participate in such discussions, such controversy or claim (hereinafter, a "Dispute") shall be resolved in accordance with the procedures set forth herein.
3. Judicial Proceedings. All disputes arising from this Agreement shall be adjudicated in the courts of the MHA Nation. Applicant expressly agrees and submits to the jurisdiction of the MHA Nation Tribal Court to hear and decide all disputes arising under this Agreement.
4. Any amounts owed that are not paid when due shall bear interest from and including the date due until and excluding the date paid at the lesser of (i) the *Wall Street Journal* Prime Rate plus six percent (6%) per annum (the "Default Rate"), or (ii) the maximum rate permitted by applicable law. Adjustments in the Default Rate shall occur the next business day after a corresponding change in the Prime Rate and the fluctuation in the Default Rate shall occur regardless of whether notice is given. The "**Prime Rate**" shall mean a floating rate of interest equal to the prime rate for banks in the United States, as published from time to time in the *Wall Street Journal* or its successor publication. If the *Wall Street Journal* publishes more than one value of the prime rate for banks in the United States, the Prime Rate shall be the published value that most closely relates to the prime rate at large money center banks in New York City, New York. If the *Wall Street Journal* or its successor publication ceases to publish a value for the prime rate for banks in the United States, the Prime Rate shall mean a comparable published rate selected by the Parties.
5. Attorney Fees & Costs. In any Judicial Proceeding, the prevailing party shall be entitled to recover its court costs, and reasonable attorney fees.
6. Limitation on Damages. Except for recovery of indemnification amounts pursuant to Section J, in the event a third party claimant recovers damages, notwithstanding anything to the contrary herein, neither Party shall have any liability under this Agreement to the other Party for consequential, exemplary, incidental, indirect, punitive, special or speculative damages or lost profit, whether or not caused by or

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attributable to the negligence or willful misconduct of either Party or its agents, employees or contractors.

T. Applicable Law. This Agreement shall be governed by and construed in accordance with applicable federal laws, the laws of the MHA Nation as they may be in effect from time-to-time, or, to the extent no law of the MHA Nation applies, then under the substantive applicable laws of the State of North Dakota and federal laws, excluding any choice of law rule that may direct the application of the laws of any other jurisdiction.

U. Scope. The Terms and Conditions set forth in this Agreement are intended to and shall only apply to:

1. Tribal lands held in trust by the United States for the benefit of the MHA Nation and do not apply to allotted lands held in trust for individual tribal members and Indians.
2. An Application for a Right-of-Way located on tribal lands, not allotted lands, which has not been duly approved and executed by the BIA.

V. Amendment. The Parties agree that no term, provision or condition of this Agreement shall be held to be altered, amended, changed or waived in any respect except by written amendment.

W. Severability. If any part or provision of this Agreement or the Application thereof shall be adjudged invalid, the validity of any other parts or provisions hereof shall not be affected thereby.

X. Waiver. Upon request of Applicant and a demonstration of good cause in support of such request, the MHA Nation Energy Division has the authority to waive or modify any provision in this Agreement.

Y. Terms and Conditions Prevail. If there is any inconsistency or conflict between the Terms and Conditions and the Application, the Terms and Conditions will prevail.

Z. Miscellaneous.

1. Audit. The MHA Nation or its designated representative may, during reasonable business hours and upon reasonable prior notice, inspect and audit the relevant records of the Applicant pertaining to the verification and accuracy of payments to the MHA Nation under this Agreement, at the location at which Applicant keeps such records or such other location as may be designated. As a condition to making any such records available, the Applicant may request the execution of an appropriate confidentiality agreement and may request reasonable conditions and restrictions on review of such records. Applicant agrees to preserve all of its records relevant to this Agreement for three (3) years after such records are first obtained or compiled.
2. No Third Party Beneficiary. Except as expressly provided in this Agreement, nothing herein is intended or shall be construed to impose any obligation upon any third

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person not a party to this Agreement, or to confer upon or give any such third person any rights or remedies under this Agreement.

3. No Joint Venture, Partnership or Agency. Nothing contained herein shall be construed as creating any joint venture, partnership, or agency, or as making any party the fiduciary of any other.

AA. Notices. Any written notices provided under this Agreement, shall be sent to the following:

For the MHA Nation:

Office of the Chairman
MHA Nation
Fort Berthold Reservation
404 Frontage Road
New Town, ND 58763

Director, MHA Nation Energy Division
MHA Nation
Fort Berthold Reservation
227 West Main – Box 1407
New Town, ND 58763

Director, Natural Resources Department
MHA Nation
Fort Berthold Reservation
404 Frontage Road
New Town, ND 58763

Chairman, Natural Resources Committee
MHA Nation
Fort Berthold Reservation
404 Frontage Road
New Town, ND 58763

For the Applicant:

For the Bureau of Indian Affairs:

Superintendent
Fort Berthold Agency
Bureau of Indian Affairs
202 Main Street
New Town, ND 58763

Approved by the Tribal Business Council

05/28/2014

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective on the Execution Date.

For the MHA NATION

By: _____

Name: _____

Title: _____

For the Applicant

By: _____

Name: _____

Title: _____