



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

*A Resolution entitled, "Consent to Approval of a Right-of-Way across Tribal land for the XTO FBIR Smith South URD Line Project Submitted by McKenzie Electric Cooperative Inc."*

- WHEREAS,** This Nation having accepted the Indian Reorganization Act of June 18, 1934, 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 the Constitution and By-Laws of the Three Affiliated Tribes, also known as the Mandaree, Hidatsa, and Arikara Nation ("Tribes" or "MHA Nation"), the Tribal Business Council is the governing body of the Tribes; 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,** Article IX, Sections 1 and 3 of the Constitution provide that the Tribal Business Council has the authority to manage and lease or otherwise deal with Tribal lands and resources; and
- WHEREAS,** Leases and Rights-of-Way ("ROWS") across Tribal Trust land require the consent of the Tribal Business Council pursuant to federal and Tribal Law; and
- WHEREAS,** Applications for Rights-of-Way ("ROWS") on Tribal Land are subject to the requirements of Tribal law, including Resolution No. 13-109-VJB (Establishing Standardized Minimum Rates for Oil and Gas Lease Bonus, Royalties and Road and Pipeline Easements), Resolution No. 14-071-VJB (MHA Nation Application for Rights-of-Way and Use of Right-of-Way), Resolution No. 14-089-VJB (MHA Nation Pipeline Right-of-Way Terms and Conditions), and Resolution No. 15-045-LKH (Establishing a Procedure for the Approval of Leases, Rights-of-Way, Setback Variances and Permissions to Survey on Tribal Land), Resolution No. 17-117-FWF (Approval of Fee Structure), and Resolution No. 18-212-FWF (Amending Fee Structure); and
- WHEREAS,** The MHA Nation and McKenzie Electric Cooperative, Inc. ("McKenzie Electric") executed a "Public Utility Right-of-Way Consent Terms and Conditions" agreement effective January 1, 2016, governing McKenzie Electric's construction, operation, maintenance, modification, rebuilding, or removal of electrical and



distribution lines and associated facilities on the Fort Berthold Indian Reservation, and said agreement contains specified compensation terms; and

**WHEREAS,** On February 11, 2020, McKenzie Electric submitted a ROW application and consent request for the XTO FBIR Smith South URD Line Project, for a proposed underground power line, across Tribal Tract No. T636A (100% Tribal interest), located in Section 27 of Township 149 North, Range 92 West; Tribal Tract No. T1560 (100% Tribal interest) located in Section 27 of Township 149 North, Range 92 West; Allotment No. 643A (48.78747796% Tribal interest) located in Section 21 of Township 149 North, Range 92 West; and Allotment No. 857A (78.125% Tribal interest), located in Section 22 of Township 149 North, Range 92 West, all in Dunn County, North Dakota as more particularly described in Appendix A.1.; and

**WHEREAS,** The ROW for this application consists of 8,965.09 feet in length, encompassing 6.17 permanent acres and 14.458 temporary acres for a total disturbed 20.628 acres; and

**WHEREAS,** In accordance with the Public Utility Right-of-Way Consent Terms and Conditions agreement between the MHA Nation and McKenzie Electric, the projected compensation to the MHA Nation proportionate to its interest in the encumbered lands for this ROW application is \$7,857.98; and

**WHEREAS,** The ROW application and consent request, submitted by McKenzie Electric for the XTO FBIR Smith South URD Line Project, described above, has been reviewed and recommended for approval by the MHA Natural Resources Department and the MHA Nation Energy Division in accordance with the MHA Nation's approved procedure for authorizing ROWs on Tribal Land; and

**WHEREAS,** On February 26, 2020, at a duly held meeting of the Energy Committee ("EC"), the MHA Nation Energy Division recommended for approval of McKenzie Electric's ROW application and consent request for the XTO FBIR Smith South URD Line Project, more fully described herein, and in the attached Appendix A.1., and the EC approved McKenzie Electric Cooperative Inc.'s application and forwarded it to the Tribal Business Council for final action.

**NOW THEREFORE BE IT RESOLVED,** Subject to McKenzie Electric Cooperative Inc.'s agreement to the execution of the MHA Right-of-Way Application and Terms and Conditions, as listed therein, and payment of ROW fees, the Tribal Business Council hereby approves the following ROW application, attached as Appendix A.1, and ROW consent, as follows:





- McKenzie Electric Cooperative Inc. – The XTO FBIR Smith South URD Line Project, for a proposed underground power line, across Tribal Tract No. T636A (100% Tribal interest), located in Section 27 of Township 149 North, Range 92 West; Tribal Tract No. T1560 (100% Tribal interest) located in Section 27 of Township 149 North, Range 92 West; Allotment No. 643A (48.78747796% Tribal interest) located in Section 21 of Township 149 North, Range 92 West; and Allotment No. 857A (78.125% Tribal interest), located in Section 22 of Township 149 North, Range 92 West, all in Dunn County, North Dakota.

**BE IT FURTHER RESOLVED**, In accordance with the MHA Nation Standard Terms and Conditions for Right-of-Ways, the ROW for the XTO FBIR Smith South URD Line Project will be subject to a thirty (30) year term, from the date of the BIA's execution of the grant of the ROW for said project.

**BE IT FURTHER RESOLVED**, The Tribal Business Council consents to the estimated compensation for this ROW application and consent request in the amount of \$7,857.98 proportionate to its interest in the encumbered lands for this ROW application, which is calculated pursuant to the Public Utility Right-Of-Way Consent Terms and Conditions executed by the MHA Nation and McKenzie Electric.

**BE IT FURTHER RESOLVED**, In accordance with governing MHA Nation law and policy as well as applicable federal ROW regulations, all ROW grantees must obtain the prior written approval from the MHA Nation before assigning any ROW that contains any Tribal interest, and therefore, the Tribal Business Council does not pre-consent to an assignment of the ROW for the XTO FBIR Smith South URD Line Project submitted by McKenzie Electric.

**BE IT FURTHER RESOLVED**, The Tribal Business Council does not consent to waive any bond, insurance, or alternative form of security.

**BE IT FURTHER RESOLVED**, The Public Utility Right-of-Way Consent Terms and Conditions, executed by McKenzie Electric and the MHA Nation, constitutes a written agreement as part of the MHA Nation's consent to the grant of the ROW, and therefore, as provided in 25 CFR §169.107(a), the Tribal Business Council requests Bureau of Indian Affairs to incorporate these terms and conditions into the ROW grant for the XTO FBIR Smith South URD Line Project.

**BE IT FURTHER RESOLVED**, The Tribal Business Council retains the authority, as well as the delegation of authority to the MHA Nation Energy Division and other Tribal departments, to issue fines and set conditions to address and resolve ROW trespass, abandonment, non-use, and other violations, including violations of applicable MHA Nation Standard ROW Terms and Conditions, and further requests the



Bureau of Indian Affairs to defer to these remedies, in accordance with the intent and notice provisions in 25 CFR §169.403(a).

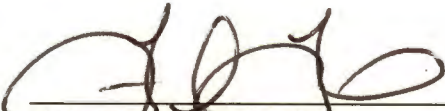
**BE IT FINALLY RESOLVED**, That the Chairman is hereby authorized to execute such documents and take such further actions as are necessary to carry out the terms and intent of this Resolution.

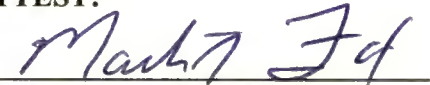
**CERTIFICATION**

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 Special Meeting thereof duly called, noticed, convened and held on the 8<sup>th</sup> day of April, 2020, that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of 6 members, 0 members opposed, 0 members abstained, 1 members not voting, and that said Resolution has not been rescinded or amended in any way.

Chairman  Voting.  Not Voting.

Dated this 8<sup>th</sup> day of April, 2020.

  
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Tribal Secretary, Fred Fox  
Tribal Business Council  
Three Affiliated Tribes

**ATTEST:**  
  
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Tribal Chairman, Mark N. Fox  
Tribal Business Council  
Three Affiliated Tribes



**APPENDIX A.1**

< Attach: (1) Application Form, (2) Approval Form signed by Department Head and Chairman of NRC per Resolution 15-045-LKH, (3) signed ROW terms and Conditions per Resolution No. 14-089-VJB, (4) map, and (5) other necessary information >