

**Osage Minerals Council
Ms. Miya McKim
Secretary**

MEMORANDUM OF UNDERSTANDING

**BETWEEN THE OFFICE OF THE PRINCIPAL CHIEF OF THE OSAGE NATION
AND THE OSAGE MINERALS COUNCIL REGARDING THE MANAGEMENT OF
THE OSAGE MINERALS ESTATE**

I. Common Goals

The Office of the Principal Chief (Principal Chief) and the Osage Minerals Council (OMC) share the goal of protecting the mineral royalties of the Osage Nation and ensuring the preservation of the Osage Mineral Estate (Mineral Estate). Further, the Principal Chief and the OMC share a common goal of protecting shareholders' rights to income derived from the Mineral Estate. The Principal Chief and the OMC wish to engage in a cooperative effort, utilizing their respective positions, resources, powers, and authority to advance this common goal. The Principal Chief will support the OMC in carrying out its duties of administering and developing the Osage Mineral Estate in accordance with the Osage Allotment Act of June 28, 1906, as amended. The OMC agrees to support the Principal Chief as he undertakes the duties, responsibilities, and obligations of the Office of the Principal Chief to uphold the laws and the Constitution of the Osage Nation.

The Principal Chief and the OMC are hereafter referred to collectively as the "Parties."

II. Purpose of this Memorandum

This Memorandum of Understanding (Memorandum) sets forth the understandings and intentions of Principal Chief and the OMC with regard to their shared goals and provides a framework for cooperation.

III. Recitals

The Parties cite the relevant provisions of the Constitution of the Osage Nation, acknowledging and understanding the constitutional and legal principles related to their respective governmental roles, duties, and responsibilities, and concur as to the following:

A. The Constitution of the Osage Nation, ratified March 11, 2006, addressed the issue of the Osage Mineral Estate by defining the estate, providing certain authority and responsibilities for the Legislative and Executive Branch, and establishing an independent minerals management agency to operate within the Executive Branch.

The Mineral Estate is defined in Article XV, Section 2, as follows: "**The oil, gas, coal, and/or other minerals** within the boundaries of the Osage Reservation are hereby reserved to the Osage Nation pursuant to the Act of June 5, 1906, (34 Stat. 539), as amended, and is hereby designated the **Osage Mineral Estate**." (Emphasis added).

B. The Parties recognize that governance of the Mineral Estate is placed under the government of the Osage Nation according to the Constitution as follows:

Article XV, Section 4. Management of the Osage Mineral Estate:

The Mineral Estate of the Osage Reservation is reserved to the Osage Nation. The government of the Osage Nation shall have the perpetual obligation to ensure the preservation of the Osage Mineral Estate. The government shall further ensure that the rights of members of the Osage Nation to income derived from that Mineral Estate are protected.

C. The Parties recognize that the Constitution defines the specific role and responsibilities of the OMC, accordingly:

- i. The third paragraph of Article XV, Section 4 states, "The Osage Minerals Council is ... established for the sole purpose of continuing its previous duties to administer and develop the Osage Mineral Estate... **with no legislative authority for the Osage Nation government.**" (Emphasis added).
- ii. The sixth and last paragraph of Article XV, Section 4 further distinguishes and limits the role of the OMC in governance to one of management of the Minerals Estate, stating, "The Osage Minerals Council shall **exercise the administrative authority delegated** under this Constitution, the laws of the Osage Nation, and as permitted by federal law." (Emphasis added).
- iii. The authority by which the OMC is to carry out its "duties to administer and develop the mineral estate is described in the fifth paragraph of Section 4: "The Osage Minerals Council shall have **the power to consider and approve leases and to propose other forms of development** of the Osage Mineral Estate." (Emphasis added).

D. The Parties recognize that the "power to consider and approve leases and to propose other forms of development" includes the use, development, and conservation of the Mineral Estate. As a result of these duties, the OMC has fiduciary responsibilities in the management of the Mineral Estate.

E. The Parties recognize that the Legislative and Executive Branches of the Osage Nation government also have responsibilities with respect to the utilization, development and conservation of the Osage Mineral Estate. In addition, the Parties acknowledge the Principal Chief's responsibility to monitor the activities of the OMC. The Osage Constitution provides:

- i. Article XV, Section 1. General Authority: The legislature of the Osage Nation shall provide for the **utilization, development and conservation of all natural resources** within the territory of the Nation for the maximum benefit of the Osage People. [Emphasis added.]
- ii. Article XV, Section 4. Natural Resources and Minerals: The Osage Minerals Council shall have the power to consider and approve leases and to propose other forms of development of the Osage Mineral Estate. Mineral leases approved and executed by the Council shall be deemed approved by the Osage Nation **unless, within five (5) working days, written objection is received from the Office of the Principal Chief** that the executed lease or other development activity violates Osage law or regulation. [Emphasis added.]

F. The Parties recognize that the OMC is an independent agency within the Executive Branch of the Osage Nation government. The OMC can exercise independence of judgment and action subject to the guidance of the Legislative Branch and monitoring from the Office of the Principal Chief pursuant to the Osage Nation Constitution. The language of the Osage Nation Constitution provides an additional backdrop against which that independence can be measured. Article XV, Section 4, paragraph 3 provides in relevant part:

As an independent agency within the Osage Nation, the Osage Minerals Council may promulgate its own rules and regulations as long as such rules and regulations are **not inconsistent with the laws neither of the Osage Nation nor with the rules and regulations established by the United States Congress in the 1906 Allotment Act.** [Emphasis added.]

IV. Nature of the Cooperation

The Principal Chief and the OMC have worked together to identify opportunities for cooperation. The following specific issues have been deemed important to advancing the interests of the Osage Nation with respect to its Mineral Estate. The Parties' cooperation will focus on the following:

A. Principal Chief's Archaeologist

The Parties agree that the Principal Chief possesses the power and authority to review leases approved and executed by the OMC and is under a duty to object to, and thereby nullify, leases and/or other OMC development activity that violate applicable laws and regulations. Const. Art. VII § 1. In order to assist the Principal Chief in this role, the OMC understands the Chief is vested with the supreme executive power and shall see that the laws of the Osage Nation are faithfully executed, administered, and enforced. Const. Art. XV § 4. Therefore, the Principal Chief reserves the right to retain the necessary staff to ensure that leases and other development

activity for the Mineral Estate complies with applicable laws. The OMC understands that the Principal Chief's archaeologist provides a necessary service with respect to his duties related to the Nation's Mineral Estate.

The Parties agree that the Principal Chief will strive to submit written objections to any executed leases or other development activity within five days of receiving written notice if he believes such activities violate applicable laws. The OMC agrees to keep the Principal Chief's archaeologist (and all other staff appointed to assist the Principal Chief in carrying out his Article XV, Mineral Estate duties) apprised of lease approval and mineral production processes to obviate delay-causing objections.

B. Costs for OMC Office Space

The OMC understands that all departments, programs, agencies and officials of the Nation contribute to the costs of housing the Osage Nation Government and expenses of office upkeep. The Parties agree that, in lieu of establishing an Indirect Cost expense for the OMC, the OMC will continue to make monthly rental payments to the Nation for the cost and expense of its office space.

C. Signature authority for OMC Financial Accounts; Authority over OMC expenditures

The Parties understand that the Constitution of the Osage Nation (Constitution) provides that the Mineral Estate of the Osage Reservation is reserved to the Osage Nation. Parties also understand that the Constitution requires that the Treasurer accept, receipt for, keep and safeguard all tribal funds as directed by the Congress. Const. Art. VII § 13. The Parties recognize that Congress has vested signature authority for checks, drafts or other written instruments of payment drawn on any account of the Osage Nation exclusively in the Nation's Treasurer, with the exception of financial instruments in excess of \$150,000.00, which shall also be signed by the Principal Chief. Parties further understand and agree that the accounts previously managed by the OMC prior to the adoption of the Constitution, commonly referred to as the S-510, C-395, and C-510 accounts, belong to the Osage Nation, and signature authority over such accounts, by law, resides with the Nation's Treasurer.

The Principal Chief respects the authority of the OMC as it has been preserved by the Constitution. The Principal Chief endeavors to protect the OMC's ability to carry out its constitutional duty to administer and develop the Mineral Estate and wishes not to interject the Office of the Principal Chief in the financial decisions of the OMC. The Parties agree that oversight of expenditures of tribal funds properly resides within the Department of the Treasury; that the Treasurer shall ensure all Departments, Boards, Agencies, Commissions and other programs expend tribal funds in accordance with congressionally approved budgets; and, that the Treasurer is obligated to expend appropriated funds upon receipt of duly authorized and legal requests for such funds. In recognition of the vital service the OMC provides, and in respecting the duties and obligations the OMC has to the Nation, the Principal Chief commits to a policy of non-interference with respect to internal financial decisions of the OMC which are necessary to

conduct its administrative and constitutional duties. In the spirit of unity, the OMC commits itself to abide by its congressionally approved budget, subject to the constitutionally-appropriate and lawful oversight of the Department of the Treasury.

D. Active Management of the Nation's Kansas Fee Property

Both Parties recognize and understand that Article XV, Section 2, of the Constitution defines the Mineral Estate as "[t]he oil, gas, coal, and/or other minerals within the boundaries of the Osage Reservation." While the Nation's Kansas property remains in fee, the management of the lands does not appear to be within the purview of OMC authority, and OMC management may be legally inappropriate and/or unconstitutional. The Parties agree to send a joint notice to the Kansas property's lessee that will provide instructions on how to properly remit payments issued under the terms of the lease. The Parties agree to take immediate steps to determine the intent of the party testator who devised the Kansas property to Osage annuitants and, if appropriate, commence the necessary processes to convert the Kansas fee property to the Mineral Estate. While the Nation's Kansas lands remain in fee, it will be up to the Executive Branch to determine the appropriate use for the income derived from the lease, subject to Congress' approval and appropriation.

E. Government-to-Government Relations with the United States; OMC's communications with the U.S. Department of the Interior

Parties recognize that prior to the adoption of the Constitution, the OMC served as the governing body of the Osage Nation, handling all governmental responsibilities, and engaging in all government-to-government relations with the United States, its departments, and agencies. Since the adoption of the Constitution in 2006, the OMC has become an independent agency within the Osage Nation Government. Const. Art. XV § 4. Parties acknowledge and understand that the supreme executive power of the Osage Nation is vested in the Principal Chief, and the Principal Chief is the sole representative of the Tribe authorized to engage in government-to-government relations with the United States Government.

The Principal Chief recognizes that the OMC must necessarily interact with federal agencies in matters concerning its minerals management responsibilities. The Principal Chief also recognizes that the OMC possesses administrative authority over the Mineral Estate as well as the power, under the Constitution, to consider and approve leases and to propose other forms of development of the Mineral Estate. Both Parties acknowledge that the OMC's administrative authority over the Mineral Estate is subject to the general authority of Congress. Const. Art. XV § 1. OMC understands that it shall exercise its administrative authority delegated under the Constitution, in accordance with the laws of the Osage Nation, and as permitted by federal law. Further, the Parties understand that the Principal Chief possesses the power and authority to review leases approved and executed by the OMC and is under a duty to object to, and thereby nullify, leases and/or other OMC development activity that violate applicable laws and regulations. See Const. Art. XV § 4.

In light of the foregoing, the Principal Chief agrees to write a letter to the U.S. Department of the Interior (DOI) advising it of the OMC's minerals management responsibilities,

its authority to approve and execute leases on behalf of the Nation's Mineral Estate, and its authority to communicate directly with the DOI. The Principal Chief will authorize direct communications with DOI to the extent that communications not originating with or from the Principal Chief must relate exclusively to matters within the scope of OMC's constitutional duties. The OMC understands that the Principal Chief is not designating the OMC as the Nation's representative for government-to-government engagements and must necessarily direct the DOI to inform the Office of the Principal Chief of all direct communications between the OMC and the DOI. The OMC understands and appreciates that the Principal Chief must stay apprised of OMC leasing and development activity in order to carry out his own Article XV constitutional duties and, therefore, agrees to copy the Principal Chief on all written correspondence with federal or state agencies. The OMC further agrees to include the Principal Chief in any consultations with such agencies.

F. Trust Claims Litigation

Since the Mineral Estate is reserved to the Osage Nation, the Principal Chief and/or a duly authorized Attorney General of the Nation are the only officials legally authorized to litigate claims on the Nation's behalf. The Parties agree, however, that the OMC should have a role in trust claim matters which accords with the OMC's constitutional and statutory duties. The Parties also agree and understand that the Osage Congress must be involved in trust settlement decisions, in accordance with its constitutional duties.

Members of the Trust Team have been designated and are relied upon as advisors and final decision makers for the Nation's trust claims litigation, pursuant to the July 21, 2006 Memorandum of Agreement (2006 MOA). The Parties appreciate that members of the Trust Team, including the Principal Chief, the Speaker of the Legislature, and three OMC members, each have a constitutional duty to protect and preserve the Mineral Estate. The Parties agree that OMC Trust Team members will be relied upon as advisors in all matters where the OMC's constitutional obligations are relevant. Parties acknowledge that amending the 2006 MOA to include only OMC members as voting members of the Trust Team would inhibit the Executive and Legislative Branches from carrying out their respective constitutional obligations. Further, the Parties understand that the July 21, 2006 Memorandum of Agreement cannot be amended without the approval of Congress. The Principal Chief commits to carrying out the terms of the 2006 MOA under which the OMC possesses 3/5 voting power with respect to decisions on final trust claims settlements.

V. Filing

After being executed by the Parties, this Memorandum shall be filed with the administrative office of each Party. The Parties shall make this Memorandum known to their respective personnel so that all may be apprised thereof.

VI. Effective Date; Duration; Termination; Amendment

Upon execution by both Parties, this Agreement shall be effective immediately. This Memorandum is expected to continue in full force and effect until validly terminated. Either the

Principal Chief or the OMC may terminate this Memorandum at any time upon written notice to the other party.

The Parties look forward to continuing an open and productive dialog on these issues that will facilitate a more efficient and effective management of the Osage Minerals Estate and related business developments; therefore, the Parties may amend this Memorandum at any time as they deem necessary, appropriate, and in the interest of the Nation.

Signed January __, 2011:

OFFICE OF THE PRINCIPAL CHIEF

OSAGE MINERALS COUNCIL

John Red Eagle
Principal Chief
Osage Nation

Dudley Whitehorn
Chairman
Osage Minerals Council

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