

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

- WHEREAS,** This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act; and
- WHEREAS,** The Constitution of the Three Affiliated Tribes generally 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 Tribes and of the enrolled members thereof; and
- WHEREAS,** The Tribal Business Council has chartered an independent, Tribally owned business entitled Fort Berthold Development Corporation (FBDC), 100 per cent owned by the Tribe, whose primary business is building construction and modification; and
- WHEREAS,** From time to time, projects arise which require the posting of a performance bond by FBDC, which guarantees that the project will be completed as per the specifications of the project; and
- WHEREAS,** One such project for which bids are now being accepted is a 48 unit apartment complex in the Four Bears Segment is being let for bids by the Fort Berthold Housing Authority (FBHA), funded in part by Tribe, the Rural Development (RD) mission of the U.S. Department of Agriculture (USDA) and the U.S. Housing and Urban Development Department under the Native American Housing and Self-Determination Act (NAHASDA), which Project will cost approximately \$3,000,000 (three million); and
- WHEREAS,** Bids for the Project described above are due on June 20, 2000, which was a two week extension of the original bid date, in part due to additional specifications and contracts being provided on the project at the last minute by the USDA; and
- WHEREAS,** On this project, FBDC has worked out an arrangement with Twin Buttes Custom Homes, Inc., (TBCH) a Tribally owned and chartered corporation, whereby both companies will be able to work together to bid on the project, and if awarded the bid, to complete the project as general contractors or as general contractor and subcontractor, with FBDC completing site work, utilities, concrete work and other items, including a concrete foundation and first floor of the project and TBCH completing the remainder of the building; and
- WHEREAS,** If FBDC is awarded the project by FBHA, based on its bid, or based on a bid made in conjunction with TBCH, approximately 30 jobs for Tribal members will be generated; and

WHEREAS, One of the requirements of Rural Development for all bidders on the project is that a performance bond be posted, guaranteeing successful completion of the project; and

WHEREAS, At the present time, FBDC does not have the experience or collateral to be able to qualify for a performance bond as required by the USDA in its bid specifications or as may be required in similar projects in the future; and

WHEREAS, The Tribe, as owner of FBDC has sufficient resources to be able to guarantee that any performance bond required on this project or on future projects will be repaid, in the unlikely event such repayment is necessary; and

WHEREAS, The nature of the guarantee on the performance bond may be a letter of credit issued in favor of the bonding company that issues the bond or some other form of guarantee to be determined by the bonding company, or may require a specific pledge of Tribal assets, which form and amount must be determined for each specific project, and which has not yet been determined for the 48 unit apartment Project, but which will not exceed the total cost of any project; and

WHEREAS, The underlying guarantee by the Tribe will require a limited waiver of sovereign immunity, limited to the amount of the bond and to remedies contained in the guarantee; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that for the benefit of the Fort Berthold Development Corporation the Tribal Business Council of the Three Affiliated Tribes hereby agrees to provide a Tribal guarantee of any performance bond needed to be issued to FBDC in a total amount not to exceed the total bid price of any particular Project for which FBDC might be eligible to bid, with said guarantee to be in the form of a letter of credit or such other instruments as may be required by the company that will issue the performance bond, which company has not yet been finally determined; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that for the benefit of the Fort Berthold Development Corporation, the Tribal Business Council of the Three Affiliated Tribes hereby agrees to a limited waiver of sovereign immunity to allow enforcement of its guarantee of such performance bond necessary for FBDC to bid on any particular Project, with said limited waiver of sovereign immunity to be limited to the amount of the performance bond and the remedies contained within the guarantee offered by the Tribe, and hereby further find that such limited waiver of sovereign immunity is in the best interests of the Tribe and its members; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Tribal Business Council hereby authorizes its Chairman or Treasurer to execute and deliver such documents as may be necessary to perfect such Tribal guarantee of any performance bond as may be required by the company issuing the performance bond on those projects on which FBDC intends to bid; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Tribal Business Council hereby directs its legal department to assist FBDC to obtain any performance bond as may be necessary on any particular project and to assist in the development of the form of the Tribal guarantee as may be required by the company issuing the performance bond and to review such form to ensure that the interests of the Tribe are being protected in the issuance of such guarantee.

CERTIFICATION

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 7 members of whom 5 constitute a quorum, 6 were present at a Regular Meeting thereof duly called, noticed, convened, and held on the 8th day of June, 2000; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 6 members, 0 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.

Dated this 8th day of June, 2000.

Dayton Spotted Bull
Secretary, Tribal Business Council

ATTEST:

[Signature]
Chairman, Tribal Business Council