

Amending

RESOLUTION No. 01-267

**RESOLUTION OF THE GOVERNING BODY OF
THE THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION
EXPRESSING OFFICIAL INTENT TO REIMBURSE CERTAIN PROJECT COSTS BY
PROCEEDS FROM TAX-EXEMPT DEBT**

- 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 (the "Tribe") 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 Tribe and of the enrolled members thereof; and
- WHEREAS,** Article VI, Section 5(c) of the Constitution of the Tribe specifically authorizes and empowers the Tribal Business Council of the Tribe to administer the funds within the exclusive control of the Tribe and to make expenditures from available Tribal funds for public purposes of the Tribe; and
- WHEREAS,** Section 7871 of the federal Internal Revenue Code of 1986, as amended (the "Code"), adopted as part of the federal Indian Tribal Governmental Tax Status Act of 1982 (Title II of Pub. L. No. 97-473), permits an Indian tribal government to be treated as a state of the United States for certain purposes, and
- WHEREAS,** Among other things, under Section 7871(a)(4) of the Code an Indian tribal government is treated as a state for the purposes of Section 103 of the Code, that, under certain conditions, allows states to incur debt that bears interest generally excluded from gross income for federal income tax purposes ("Tax-Exempt Debt"); and
- WHEREAS,** Under Section 7701(a)(40)(A) of the Code, the term "Indian tribal government" means the governing body of any tribe, band, community, village, or group of Indians, or (if applicable) Alaska Natives, which is determined by the Secretary of the Treasury, after consultation with the Secretary of the Interior, to exercise governmental functions; and
- WHEREAS,** Revenue Procedure 2001-15 of the United States Department of the Treasury evidences a determination by the Secretary of the Treasury that the Tribe exercises governmental functions, and thus constitutes an Indian tribal government for purposes of Section 7871 of the Code; and
- WHEREAS,** Section 7871(c) of the Code restricts an Indian tribal government's rights to issue Tax-Exempt Debt to those financings in which substantially all of the proceeds of the debt are used in the exercise of an essential governmental function of the Indian tribal government, and Section 7871(e) of the Code excludes from the

meaning of "essential governmental function" any function which is not customarily performed by state and local governments with general taxing powers; and

WHEREAS, Section 7871(d) of the Code limits the right of Indian tribal governments to issue Tax-Exempt Debt to finance private activities as described in Section 141 of the Code ("Private Activity Debt"); and

WHEREAS, ~~Treasury Regulation §1.150-2 (the "Reimbursement Regulation")~~ regulates the use of proceeds from a Tax-Exempt Debt to reimburse an issuer for expenditures, incurred and paid prior to issuance of the Tax-Exempt Debt, among other things, generally permitting a reimbursement of capital costs paid no earlier than 60 days prior to the date the issuer adopts an "official intent" for such expenditures in accordance with the requirements of the Treasury Regulation (exclusive of certain "preliminary expenditures" for such items as architectural, engineering, surveying, soil testing, reimbursement bond issuance, and similar costs that are incurred prior to commencement of acquisition, construction, or rehabilitation of the Project, other than land acquisition, site preparation, and similar costs incident to commencement of construction); and

WHEREAS, The Tribe desires to exercise certain essential governmental functions within the meaning of Section 7871(e) of the Code through the construction of certain governmental facilities, infrastructure or other public improvements more fully set forth on Exhibit A attached hereto and incorporated herein (the "Project"), all for the welfare and benefit of the Tribe and its members; and

WHEREAS, The Tribe desires to express its official intent within the meaning of the Reimbursement Regulation to permit the Tribe to receive reimbursement for Project expenditures made prior to the issuance of Tax-Exempt Debt for the Project; and


WHEREAS, The Tribal Business Council of the Tribe is the governing body of the Tribe;

NOW, THEREFORE, BE IT RESOLVED, that:

1. On this date the Tribe reasonably expects to undertake and complete each of the Projects and that the Tribe will issue a Tax-Exempt Debt to reimburse the Tribe for original expenditures relating to the Project.

2. On this date the Tribe reasonably expects that the total amount of Tax-Exempt Debt expected to be issued for the Project will be at least \$ 5.5 million (the "Expected Debt").

3. ~~The Reservation Tribal Council~~ determines that:



(a) The Project is an exercise of the essential governmental functions of the Tribe, which exercise is customarily performed by state and local governments with general taxing powers.

(b) The Expected Debt will not include any Private Activity Debt;

(c) The Tribe has not in the past declared "official intents" within the meaning of the Reimbursement Regulation as a matter of course or in amounts substantially in excess of the amounts expected to be necessary for the related project or projects; and

(d) The Tribe has not engaged in a pattern of failure to reimburse actual original expenditures covered by official intents (other than in extraordinary circumstances).

4. This Resolution shall become effective as of the date and time of its passage and approval by the Tribal Business Council.

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, _____ were present at a _____ Meeting thereof duly called, noticed, convened, and held on the _____ day of _____, 2001; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of _____ members, _____ members opposed, _____ members abstained, _____ not voting, and that said Resolution has not been rescinded or amended in any way.

Dated this _____ day of October, 2001.

Marcus Wells, Jr.
Secretary, Tribal Business Council

ATTEST:

Tex G. Hall
Chairman, Tribal Business Council