



Resolution # 04-030R.P.

**RESOLUTION OF THE TRIBAL BUSINESS COUNCIL OF  
THE THREE AFFILIATED TRIBES OF THE  
FORT BERTHOLD RESERVATION**

**A Resolution entitled, "Approval and Authorization for A Loan, Withdrawal of Trust Fund Moneys For Reserve Fund Therefore and Assignment of Trust Fund Interest as Security."**

**WHEREAS,** This Nation has 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,** In accordance with Public Law 102-575, entitled "Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act," as amended (the "Act"), interest from the Recovery Fund therein defined ("Trust Interest") is permitted to be paid to the Tribe for educational, social welfare, economic development and other programs, subject to the approval of the Secretary; and

**WHEREAS,** The Tribal Business Council has determined that it would be in the best interests of the Tribe to borrow for purposes permitted to be funded from Trust Interest under the Act to finance (i) Tribal working capital or capital projects, and (ii) pay costs associated with such financing (the "Financing"), examples of which are illustrated on **EXHIBIT B** hereto; and

**WHEREAS,** In connection with prior financings of the Tribe secured by Trust Interest, a *certain Collection and Reserve Account Agreement dated June 27, 2003* (as amended from time to time, the "Reserve Agreement"), was executed by the Tribe and First National Bank and Trust Co. of Williston (the "Lenders' Agent"), pursuant to which each financing covered by the Reserve Agreement is secured by a reserve account (a "Reserve Account"), with the anticipation that any amounts withdrawn from the Reserve Account for monthly debt service would be restored by a deposit of Trust Income assigned by the Tribe;

**WHEREAS,** Marshall Investments Corporation ("Marshall") has submitted a proposal to arrange the Financing (the "Financing Proposal") for a loan (the "Loan") with the following general terms.

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- (i) the amount of the Loan would (A) be in a total amount of approximately \$5,600,000; (B) bear interest at an approximate rate of 6%, (C) require principal to be repaid in approximately 84 monthly payments of principal and interest based upon a 180 month amortization schedule, resulting in a balloon of approximately \$3,600,000; and (D) be evidenced by a separate promissory note of the Tribe payable to Marshall as the "Lender;
  - (ii) the payment obligation of the Tribe under the Loan would be secured by the full faith and credit of the Tribe (but with no recourse as against revenues of the Four Bears Casino & Lodge required to pay certain existing debt secured by such revenues and other related "Protected Assets");
  - (iii) Trust Interest would be assigned and obligated to restore any amounts withdrawn from the foregoing Reserve Account pursuant to a written agreement between the Tribe, Marshall and the Lenders' Agent; provided that in no event shall Trust Income withdrawn in any year ever exceed the scheduled annual principal and interest payments due on the Loan in such year;
  - (iv) upon the closing of the Loan, prior to being spent, all proceeds of the Loan are expected to be advanced into an escrow account to be held by Marshall, any affiliate of Marshall or a third party financial institution or trustee; and
  - (v) an amount of Trust Interest equal to twice the scheduled monthly debt service due on the Loan will be requested to be withdrawn (the "Withdrawal") pursuant to Form 1034 or such other documentation required by the OTFM (the "Withdrawal Documents") for the purpose of funding a Reserve Account to secure the Loan;

**NOW, THEREFORE, BE IT RESOLVED,** by the Tribal Business Council of the Three Affiliated Tribes as follows:

**Section 1.     Approval and Authorizations**

- 1.1     The Tribal Business Council hereby determines that the foregoing proposed actions are in the public interest and promote the welfare of the Tribe.
  - 1.2     The Tribal Business Council hereby approves the Financing Proposal, including the Withdrawal, and the Tribe's execution, delivery and performance of all loan agreements, notes, assignments of Trust Income and any related documents reasonably necessary to effect the Financing Proposal (the "Loan Documents") and the Withdrawal Documents, in such forms as are approved by an Authorized Representative (defined below) and legal counsel for the Tribe, which approvals shall be deemed to have been conclusively given upon the execution of the Loan Document and Withdrawal Documents by an Authorized
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Representative. The Tribal Business Council also authorizes withdrawal of the Debt Service Reserve Deposit from the Trust Income Account for credit to the Debt Service Reserve Fund.

- 1.3 The Chairman, Secretary, or Treasurer of the Tribe, or any other person who under the laws of the Tribe is permitted to act on behalf of the Tribe, (each, an "Authorized Representative") are hereby authorized and directed to execute the Loan Documents, and to execute such other documents and take such actions as are required or desirable to effect the purposes of this Resolution.

Section 2. Limited Waiver of Sovereign Immunity; Jurisdiction and Arbitration. Provisions in the Loan Documents relating to the following matters are hereby expressly authorized, approved and adopted as the law of the Tribe with respect to the Loans; so long such provisions substantially comply with the terms set forth in EXHIBIT A attached hereto:

- 2.1 The choice of governing laws, the limited waivers of sovereign immunity, the consents to jurisdiction and waivers of the doctrines of abstention and exhaustion of tribal remedies; and
- 2.2 The obligation to resolve disputes related to the Loans by binding arbitration.

Section 3. Miscellaneous Matters.

- 3.1 Any resolutions or other actions of the Tribal Business Council or of the Tribal Executive Committee, including any prior resolutions regarding the Loans that are in conflict with or inconsistent with the terms of this Resolution are hereby to such extent repealed and annulled. This Resolution shall supersede any prior or currently existing resolutions or other actions of the Tribal Business Council or Tribal Executive Committee that are contrary to the actions authorized or contemplated herein or in a Loan Document.
- 3.2 If any provision of this Resolution or the application of any provision of this Resolution is held to be invalid, the remainder of the Resolution shall not be affected.

#### 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 Executive Committee of the Tribal Business Council is composed of 4 members of whom \_\_\_\_\_ constitute a quorum, \_\_\_\_\_ were present at a Regular Meeting thereof duly called, noticed, convened, and held on the 11 day of March, 2004; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 6 members, 0 members opposed, 0 members abstained, 0 not voting, and that said Resolution has not been rescinded or amended in any way.

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EXHIBIT A  
CERTAIN LEGAL PROVISIONS

**0.1. Governing Law and Construction.** The Loan Documents shall be governed by, and construed in accordance with the laws of the Tribe, provided that in the absence of applicable Tribal law, the substantive laws of the State of North Dakota and applicable federal law shall govern. Whenever possible, each provision of the Loan Documents and any other statement, instrument or transaction contemplated hereby or thereby or relating hereto or thereto shall be interpreted in such manner as to be effective and valid under such applicable law, but, if any provision of the Loan Documents or any other statement, instrument or transaction contemplated hereby or thereby or relating hereto or thereto shall be held to be prohibited or invalid under such applicable law, such provision shall be ineffective only of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of the Loan Documents or any other statement, instrument or transaction contemplated hereby or thereby or relating hereto or thereto. The parties shall endeavor in good-faith negotiations to replace any invalid, illegal or unenforceable provisions with a valid provision the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provision. The provisions of this Section are irrevocable and may not be rescinded, revoked or amended without the prior written consent of the Lender. The Tribe acknowledges the Lender has relied upon them in entering into the Loan Documents.

**0.2. Limited Waiver of Sovereign Immunity.** Nothing in this Loan Agreement shall be deemed to be a waiver of the Tribe's sovereign immunity from suit, except to the extent that the Tribe hereby provides a limited waiver of its sovereign immunity and consents to be sued should an action be commenced to determine and enforce the obligations of the parties under any Loan Document; and provided further that the Tribe's consent to suit is only as to arbitration and to court action initiated consistent with the Loan Documents, provided that no recourse for the enforcement of remedies for a breach of the Loan Agreement shall be available as against Protected Assets. The Tribe expressly submits to and consents to the court jurisdictions as described in Section 8.27, including as provided in such Section the jurisdiction of the Tribal Court of The Three Affiliated the Tribes of the Fort Berthold Reservation in the first instance and, after seeking relief in such Tribal Court, to the United States District Court for the District of North Dakota, in connection with any injunctive relief sought prior to arbitration, or to give effect to any relief ordered or award obtained in any arbitration proceeding.

**0.3. Arbitration.** Any dispute, claim or controversy arising out of or relating to this Loan Agreement or any Loan Document, or the breach thereof, or the making of this Loan Agreement or any Loan Document, including claims of fraud in the inducement (hereinafter referred to as the "Financing Disputes"), shall be settled by arbitration under the rules of commercial arbitration of the American Arbitration Association (the "AAA") and Title 9 of the U.S. Code, as modified by this Section.

Any party may, by written notice to the other parties after such a controversy has arisen hereunder, appoint one arbitrator. The other parties to the controversy shall, by written notice, within twenty (20) days after the receipt of such notice by the first party, appoint a second arbitrator, and in default of such appointment the first arbitrator appointed shall be the sole arbitrator. When two (2) arbitrators have been appointed as hereinabove provided, they shall, if possible, agree on a third arbitrator who shall be appointed by written notice signed by both of them within thirty (30) days thereafter with a copy mailed to each party hereto within ten (10) days after such appointment; provided that if the two arbitrators cannot agree upon a third, they shall apply to the AAA for such appointment.

No arbitrator shall be related to or affiliated with, or shall have represented in a legal capacity any party hereto. The arbitrators shall apply the governing law specified in Section 8.25, and shall follow such rules of discovery and evidence as the United States District Court for the State of North Dakota would apply. Within sixty (60) days of commencement of the arbitration actions, and after receiving evidence and hearing witnesses, if any, the arbitrators shall render their award, accompanied by findings of fact and a statement of reasons for the decision. The arbitrators shall have the authority to award in connection with a Financing Dispute any remedy or relief that a court or competent jurisdiction could order or grant, including, without limitation, equitable remedies, specific performance of any obligation created under this Loan Agreement, the issuance of an injunction. The award of the majority of the arbitrators shall be conclusive and binding upon the parties. Any award rendered therein may be entered in and/or enforced in Tribal Court, or if such court shall not have jurisdiction or shall otherwise fail to timely act in the United States District Court of the State of North Dakota (or any federal appellate court), or if such Court shall not have jurisdiction or shall otherwise fail to timely act, in any other court of competent jurisdiction. Any review of the arbitration decision and award shall be limited to enforcement of the decision and award and the findings of the arbitrator(s) shall not be re-litigated. The parties further acknowledge and agree that any party may apply to the Tribal Court of the Tribe in the first instance and, after seeking relief from such Tribal Court, to the United States District Court for the State of North Dakota, and seek injunctive relief so as to maintain the status quo until such time as the arbitration award is rendered or the controversy is otherwise resolved. Each of the parties hereby agrees that this arbitration provision is valid and enforceable and therefore waives any defense or assertion to the contrary.

**EXHIBIT B (EXAMPLES OF FINANCED COSTS)**

Contract Support-Dialysis	\$		New Dialysis machines						
	81,000								
Support for Twin Buttes Clinic			Clinic operated in the Twin Buttes Segment						
	73,000								
Support for White Shield Clinic			Clinic operated in the White Shield Segment						
	62,000								
Support for Health Systems			Billing operations for third party billing for medical reimbursements						
	45,000								
Support for KMHA Radio & MHA Times			Radio station and newspaper owned by Tribe.						
	320,000								
Tribal Roads Program			Construction of home access roads not covered by federal program.						
	439,423								
Tribal Buffalo Program			Buffalo raising program operated by Tribe						
	135,290								
Fire Protection			Paid to surrounding Counties for fire protection.						
	25,000								
Ambulance Service			Paid to surrounding Counties for Ambulance Service						
	120,000								
MHA Daycare			Daycare operated in Four Bears segment.						
	127,581								
Twin Buttes Day Care			Daycare operated in Twin Buttes segment.						
	80,988								
Mandaree Day Care			Daycare operated in Mandaree segment.						
	69,468								
Four Bears Day Care			Daycare operated in Four Bears segment.						
	50,000								
Tribal Elder Segment Meal Programs			Tribal meal program operated in each segment for Elders.						
	258,632								
Tribal Housing Program Support			Program to provide housing for members.						
	522,324								
Four Bears C Store			Construction of a C store in the Four Bears Segment.						
	150,000								
Support for Elder Program			Provides medical and other services to Elders						
	600,000								
Support for MHA Enterprise			Holding company responsible for Tribal enterprises.						
	500,000								
Support for Figure Four Ranch			Ranch operated by Tribe.						
	100,000								
Tribal Water Program			Water delivery program operated by Tribe.						
	196,000								
Segment Community Support			Support for segment organizations.						
	225,000								
Legal Department			Support for operation of Tribal legal department						
	300,000								
ANA Program Support			Matching requirement for Cultural Center Development and Construction						
	550,000								
Business Loan Program Support			Matching requirement for USDA Business Loan program.						
	250,000								
Boys and Girls Club Support			Support for Fort Berthold Boys and Girls Club program.						
	219,294								
Loan Fees									
	100,000								
Total									
	\$5,600,000								



# MANDAN, HIDATSA, & ARIKARA NATION

Three Affiliated Tribes • Fort Berthold Indian Reservation

404 Frontage Road • New Town, North Dakota 58763-9404

TRIBAL BUSINESS COUNCIL

(701) 627-4781

Fax (701) 627-3805

## Fax Cover Sheet

Date APRIL 5, 2007

To Randy Phelan

FAX: 406-638-1888

City & State \_\_\_\_\_

Fax No. 701-627-4884

Tel. No 701-421-1203

No. Pages (including cover sheet) 8

From Jean

### Three Affiliated Tribes

Comments: Please Tax back

Signature Pg.  
Thanks

Representative. The Tribal Business Council also authorizes withdrawal of the Debt Service Reserve Deposit from the Trust Income Account for credit to the Debt Service Reserve Fund.

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#### CERTIFICATION

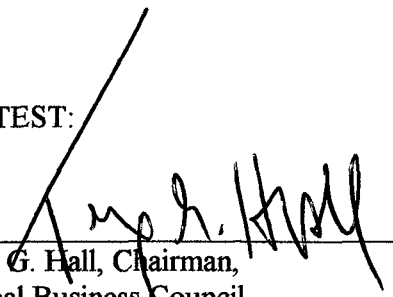
I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 7 members of whom 5 constitute a quorum, 6 were present at a Regular Meeting thereof duly called, noticed, convened, and held on the 11 day of March, 2004; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 6 members, 0 members opposed, 0 members abstained, 0 not voting, and that said Resolution has not been rescinded or amended in any way.



Dated this 11 day of March     , 2004.

Randy Phelan Executive Secretary  
Tribal Business Council  
MHA NATION

ATTEST:

  
Tex G. Hall, Chairman,  
Tribal Business Council  
MHA NATION



# CROW TRIBE EXECUTIVE BRANCH

Bacheeitch Avenue  
P.O. Box 159  
Crow Agency, Montana 59022  
Phone: (406) 638-3715, Fax: (406) 638-3773

Carl E. Venne, Chairman  
Vincent Goes Ahead, Jr., Vice-Chairman  
Larry Little Owl, Secretary  
Hubert B. Two Leggins, Vice-Secretary

## Fax Cover Sheet

No. of pgs. 2 including cover sheet

Date: 4.5.04 Time: 3:25

To: Randy Phelan  
(Name of Individual)

Company: MHA Nelson Bus. Council  
(Office, Company)

Telephone No.: \_\_\_\_\_ Fax No.: 701-627-4884

From: Larry Little Owl  
(Name of Individual)

Company: Crow Tribe Executive Branch  
(Cabinet, Program)

Telephone No.: 406-638-3715 Fax No.: 406-638-3773

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

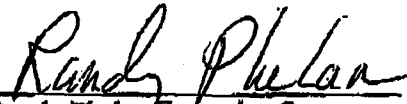
Submitted by: \_\_\_\_\_

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RESOLUTION NO. 04-030 RP  
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Dated this 11 day of March     , 2004.

  
Randy Phelan Executive Secretary  
Tribal Business Council  
MHA NATION

ATTEST:

  
Tex G. Hall, Chairman,  
Tribal Business Council  
MHA NATION