



Resolution # 04072 RP

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

*A Resolution entitled, "Tribal Guarantee of consolidation loan to Fort Berthold Community College."*

**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,** The Fort Berthold Community College is chartered and sponsored by the Tribe as a postsecondary educational institution that primarily assists Tribal members obtain postsecondary educational opportunities in a reservation setting and is a vital part of the educational efforts of the Tribe; and

**WHEREAS,** In previous years, the Tribe has assisted FBCC by guaranteeing a loan for the expansion of FBCC, has contributed equity from the earnings on the Economic Recovery Fund established by the Three Affiliated Tribes Equitable Compensation Act, (Title XXXV, P.L. 102-575) (also known as JTAC funds), and has pledged the assets of Judgment Funds obtained pursuant to the Tribe's Judgment against the United States under the Indian Claims Act (also known as Docket Funds) towards the repayment of certain loans obtained by FBCC; and

**WHEREAS,** FBCC desires to consolidate certain of its indebtedness, repay certain operating costs and have additional funds to pay for the costs of a Development Officer whose primary goal will be to raise additional capital for the College, and in order to obtain such a loan, FBCC will need to obtain a Tribal guarantee for the loan that will include an irrevocable commitment of a portion of the distribution of the earnings from the Economic Recovery Fund of the Equitable Compensation Act received by the Tribe each year in the amount of \$200,000 per year and a commitment by the Tribe that the loan will be repaid regardless of whether the College continues to operate, a commitment made previously by the Tribe to the College as a part of its overall spending plan for JTAC funds; and a continuation of the payment to the College of \$50,000 per year from the Docket

Funds, also a previous commitment of the Tribe to the College, with the understanding that any excess in the amounts paid by the Tribe to the College as stated above may be used for meeting operational expenses of the College; and

**WHEREAS,** The College has determined that the approximately terms of the loan with the local bank of Lakeside State Bank, or another equivalent lending institution, will be as follows: The principal amount of the loan will be up to \$1,500,000, including loan closing costs and necessary funds of \$1,392.035, and repayment will be expected over a 10 year period at a competitive fixed interest rate, with monthly payments due on a \$1,500,000 loan which is estimated to be approximately \$17,805.00 which translates into an annual payment of approximately \$213,660.00; and

**WHEREAS,** The Tribe has determined, after careful review with appropriate officials of FBCC and legal counsel for the Tribe, that the FBCC loan and the Tribal loan guarantee are in the best interests of the Tribe and its members and will serve to stabilize the financial condition of FBCC, allowing it to continue to provide quality postsecondary educational opportunities for Tribal members well into the future, with the understanding that the loan will be used as specified in Exhibit B hereto; and

**WHEREAS,** The terms of the loan will require a limited waiver of sovereign immunity by the Tribe in favor of Lakeside State Bank or whichever bank is chosen to provide the loan, in substantially the form as previously provided to Lakeside State Bank under the previous loan guaranteed by the Tribe, which form is attached hereto as Attachment A, subject to review by the legal counsel for the Tribe, with said limited waiver of sovereign immunity being limited to the remedies specified in the loan documents and in an amount not to exceed the amount of the loan outstanding at such time as such waiver would be necessary to apply in order for the bank to collect the loan; and

**WHEREAS,** The Tribe has determined that the waiver of sovereign immunity in the form as attached hereto, subject to review by legal counsel for the Tribe, is in the best interests of the Tribe; and

**WHEREAS,** One of the purposes of the loan to be obtained is to replenish the College's endowment fund that was recently used for College operating needs; and

**WHEREAS,** The Tribe seeks to ensure that the principal in the College's endowment fund will never again be used for operational purposes at the College, and therefore wants to amend the Charter issued to the College so as to make clear that the endowment fund for the College will be established in such a way that the principal of the endowment fund, as may be increased from time to time by the College or by the Tribe, will be permanent and unavailable for any use by the College, other than for investment as permitted by the Tribally Controlled Community College and Universities Act, with earnings from the endowment fund being available for College use.

**NOW, THEREFORE, BE IT RESOLVED** that the Three Affiliated Tribes, acting through its duly elected and authorized Tribal Business Council, hereby approves a guarantee to be issued in favor of the lending institution chosen by Fort Berthold Community College (FBCC) of a loan of up to \$1,500,000 for the benefit of FBCC, using the following funds for the guarantee of repayment: 1) \$200,000 each year to be taken from the distribution of earnings from the Economic Recovery Fund created by the Three Affiliated Tribes Equitable Compensation Act, (Title XXXV, P.L. 102-575) and to be dedicated irrevocably for the purpose of repayment of the loan; and 2) the interest earned on the docket funds up \$50,000 each year as previously dedicated to FBCC, again dedicated irrevocably by the Tribe for the purpose of repayment of the loan and for use by FBCC; and

**NOW, THEREFORE, BE IT FURTHER RESOLVED** that the Three Affiliated Tribes, acting through its duly elected and authorized Tribal Business Council, hereby approves the limited waiver of sovereign immunity in substantially the form as attached hereto, subject to review by legal counsel for the Tribe; and

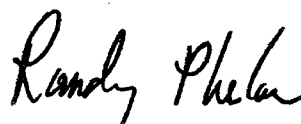
**NOW, THEREFORE, BE IT STILL FURTHER RESOLVED** that the Tribal Business Council hereby directs that the Charter previously issued for FBCC be revised as specified above to reflect the permanency of the College's endowment fund, and that all appropriate procedural safeguards be put in place by the College and, if necessary, the Tribe, to prevent the principal of the endowment fund from ever again being used for operational purposes of the College, with such revisions being done consistent with this resolution with the assistance of legal counsel for the Tribe; and

**NOW, THEREFORE, BE IT FINALLY RESOLVED** that the Tribal Business Council hereby authorizes the Chairman, Vice-Chairman, Secretary or Treasurer, or such other person who is authorized pursuant to the Tribal Constitution and By-laws to act on their behalf, to execute any and all documents necessary for the completion of the loan to FBCC by the Tribe, to submit, if necessary, any part or all of the loan agreement documents to the Department of Interior for approval; and that such authorization shall extend to any revisions needed in the Charter issued to FBCC and any other document needed to be revised in accordance with this resolution; and that the FBCC provide comprehensive and thorough quarterly financial reports to 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 Executive Committee of the Tribal Business Council is composed of 7 members of whom 5 constitute a quorum, 7 were present at a Regular Meeting thereof duly called, noticed, convened, and held on the 8 day of April, 2004; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 5 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 8 day of April     , 2004.



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Randy Phelan Executive Secretary  
Tribal Business Council  
MHA NATION

ATTEST.



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Tex G. Hall, Chairman,  
Tribal Business Council  
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