



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

A Resolution Entitled: *“Amendment of the Three Affiliated Tribes’ Resolution No. 05-106-NH, dated July 15, 2005, which was entitled ‘Rejection of the Government’s April 18, 2005 Counteroffer and Approval of Material Terms for the Settlement of Three Affiliated Tribes v. Norton, et al, Civil Action No. 1:02-CV-00253(RCL)(U.S. District Court for the District of Columbia).”*

- WHEREAS,** This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act and having adopted a Constitution and By-laws pursuant to said Act; and
- WHEREAS,** Article III of the Constitution of the Three Affiliated Tribes provides that the Tribal Business Council is the governing body of the Tribes; and
- WHEREAS,** The Constitution of the Three Affiliated Tribes 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,** Article VI, Section 5 (c) of the Constitution of the Three Affiliated Tribes provides the Tribal Business Council has the power to negotiate the federal government on behalf of the Tribes and consult with representatives of the Interior Department on all activities that may effect the Fort Berthold Reservation; and
- WHEREAS,** For more than 115 years, the Bureau of Indian Affairs of the Department of Interior, as trustee, has managed lands held in trust for the benefit of the Three Affiliated Tribes, the Mandan, Hidatsa and Arikara Nation; and
- WHEREAS,** Following Congressional reports regarding mismanagement of trust assets held by the Department of Interior on behalf of Tribes, Congress passed the American Indian Trust Funds Management Reform Act of 1994, in an attempt to determine the extent of mismanagement and to determine the best course of action to ensure that the corpus of the trust held on behalf of Tribes and their members, and managed by the Department of Interior, would not be mismanaged in the future; and
- WHEREAS,** The 1994 trust reform legislation also required that, to the extent possible, an accounting of or reconciliation of trust funds managed on behalf of Tribes by the Department of Interior be performed by a reputable accounting firm, and this effort was completed by early 1996; and



WHEREAS, The firm doing the accounting, Arthur Andersen, determined that a full accounting was not possible, but instead provided some documentation for what was called a "reconciliation" of accounts, and as a result of the so-called "reconciliation" done by Arthur Andersen, the Secretary of Interior offered a settlement regarding the trust accounts to a number of Tribal governments, including the Three Affiliated Tribes, and this settlement offer was rejected by the Three Affiliated Tribes; and

WHEREAS, In early 2002, the Three Affiliated Tribes engaged the services of the law firm of Conlon, Frantz, Phelan and Pires, LLP to file a case in Federal court against the Department of Interior alleging that the Department of Interior had mismanaged the funds and resources of the Three Affiliated Tribes held in trust by the Department of Interior, with the understanding that if successful, the firm would be paid 10% of those funds recovered from the Department of Interior, in addition to certain litigation costs agreed upon by the parties; and

WHEREAS, On or about February 10, 2002, as authorized by Resolution No. 02-12-MWJ, passed by the Tribal Business Council on January 11, 2002, a lawsuit was filed on behalf of the Three Affiliated Tribes against the United States in U.S. District Court for the District of Columbia, Civil No. 1:02-cv-00253 (RCL), alleging, among other things, that the United States had mismanaged the resources of the Three Affiliated Tribes at least from the date of 1947 to the date of filing of the Complaint, and asking for an appropriate accounting of the funds and resources managed on behalf of the Three Affiliated Tribes by the Department of Interior; and

WHEREAS, Pursuant to a "settlement order" that allows the parties time to work out a settlement under the local rules of the U.S. District Court for the District of Columbia, the parties have been actively pursuing settlement of the Federal lawsuit over approximately the past 24 months; and

WHEREAS, On or about September 5, 2003, the government offered to settle the lawsuit for \$7,500,000 and, in response thereto, counsel for the Three Affiliated Tribes, after appropriate consultation, requested that the government increase its offer; and

WHEREAS, By letter dated January 8, 2004, government counsel presented a revised offer to counsel for the Three Affiliated Tribes to settle the lawsuit for \$10,000,000, provided, however, that \$2,500,000 of the \$10,000,000 would be dedicated solely and exclusively to addressing the issue of fractionation of land ownership interests on the Fort Berthold Reservation; and

WHEREAS, By Resolution No. 04-12-NH, dated November 10, 2004, the Three Affiliated provided, however, that \$2,500,000 thereof did not have to be dedicated solely



and exclusively to addressing the issue of fractionation of land ownership interests and, provided further, that certain issues, such as the Garrison Dam takings, were reserved and/or excepted from the settlement; and

WHEREAS, By letter dated April 18, 2005, the government treated Tribal Resolution No. 04-12-NH as a rejection of the government's offer of January 8, 2004, provided, however, that the government, in lieu thereof, offered to settle the lawsuit for \$8,500,000 without any fractionation condition, to be paid into a trust fund for the benefit of the Three Affiliated Tribes for all any and all claims the Three Affiliated Tribes may have against the Department for mismanagement of trust funds or other trust resources from the date of the establishment of the trust to the date of settlement, *excluding* any and all claims the Three Affiliated Tribes, or any of its members, have or may have against the United States that have arisen or may arise as a result of the construction of the Garrison Dam along the Missouri River and other reservations of rights and/or exclusions or exceptions as the parties have agreed and/or may agree in the future to include in a settlement of the lawsuit; and

WHEREAS, On July 15, 2005, the Tribal Business Council rescinded Tribal Resolution No. 04-12-NH and passed Resolution No. 05-106-NH, in part rejecting the government's offer to settle the lawsuit for \$8,500,000.00 and offering instead that the lawsuit be settled for "[a] monetary amount of up to Fifteen Million Dollars (\$15,000,000.00) with no restriction on the use of the funds except as set forth in 3.a. below"; and

WHEREAS, It appears that the phrase "*up to Fifteen Million Dollars (\$15,000,000.00)*" in Resolution No. 05-106-NH may be unclear or inconsistent with the position previously adopted by the Tribal Business Council in Resolution No. 04-12-NH (November 10, 2004), and with the view generally expressed at the July 15, 2005 Tribal Business Council meeting, namely, that a settlement for \$10,000,000.00 without the fractionation condition generally would be acceptable, subject to certain non-monetary conditions stated herein; and

WHEREAS, After full discussion with counsel for the Three Affiliated Tribes in this matter and after consideration of such factors as the history of the settlement negotiations; the language contained in Resolution No. 05-106-NH (July 15, 2005) and the language contained in Resolution No. 04-12-NH (November 10, 2004), the latter of which provided that \$10,000,000.00 would be an acceptable monetary settlement; how clarification of the monetary language contained in Resolution No. 05-106-NH may materially advance settlement negotiations; and, further, after considering the relative strengths and weaknesses of the legal position of the Tribe in this matter, the Tribal Business Council finds that amending the language in numbered Section 2 of Resolution No. 05-106-NH, to



clarify what the Three Affiliated Tribes would regard as an acceptable monetary settlement subject to the other conditions stated in Resolution No. 05-106-NH, is in the best interests of the Tribe and its members and requests that the Government consider the Tribe's settlement offer as provided below.

NOW THEREFORE BE IT RESOLVED, that the Tribal Business Council of the Three Affiliated Tribes does hereby authorize and approve a Settlement Agreement regarding Civil Action No. 1:02-cv-00253-RCL, as filed in the U.S. District Court for the District of Columbia, wherein the Three Affiliated Tribes is the named Plaintiff and the United States, acting through the Department of Interior and other agencies, is the defendant, provided that the Settlement Agreement contains the terms as stated below between the Three Affiliated Tribes and the United States:

1. The Three Affiliated Tribes (the Plaintiff in Case No.1 :02-cv-00253, filed in U.S. District Court for the District of Columbia) agrees to a complete release of all claims set forth in the Plaintiff's Complaint pertaining to the accounting, up to and including the date of settlement, including claims for an accounting from the period of 1947 to the date of the settlement, excluding any and all claims the Three Affiliated Tribes may have against the United States that have arisen or may arise as a result of damages to the Tribe, or to any of its members, as a result of the construction by the United States of the Garrison Dam along the Missouri River; any and all claims individual tribal members of the Three Affiliated Tribes have or may have against the Department of Interior and other governmental agencies in connection with individual Indian trust accounts, whether pursuant to the *Cobell* litigation or otherwise; any and all claims the Three Affiliated Tribes, or any of its members, have or may have with respect to the ownership of, and/or entitlement to, coal, oil and gas and/or other mineral interests, whether within the portion of the Fort Berthold Indian Reservation lying east and north of the Missouri River (sometimes referred to as the "Northeast Quadrant"), under the Missouri River or elsewhere; any legislative enactments, including appropriations of any nature or form (e.g., supplemental appropriations), for any purpose; and/or any territorial or boundary claims.

2. A monetary amount of Ten Million Dollars (\$10,000,000) with no restriction on the use of the funds except as set forth in 3.a. below.

3. The Three Affiliated Tribes confirms and understands that approximately Ninety Percent of the agreed upon settlement amount shall be deposited into a trust fund to be maintained at a federally insured financial institution or institutions as selected by the Three Affiliated Tribes, subject to the following conditions for the trust:

a. Proceeds from investment of the trust fund or distributions from the corpus of the trust may be used for any or all of the following purposes by the Tribe: (a) education; (b) supplemental income payments to Tribal elders (the class of Tribal elders shall be defined



by the Tribe); (c) business or economic development; (d) youth; and (e) other programs for the benefit of the Tribe and its members.

b. No more than 10% of the corpus of the trust may be made available to the Tribe in any one calendar year, but the Tribe may utilize the corpus or income of the trust as collateral for any loan obtained by the Tribe, provided that the proceeds of the loan are to be used for the purposes specified above.

c. Authorizations for disbursement from the trust or proceeds of the trust may be made by resolution of the Tribal Business Council on a semi-annual or annual basis and shall only be subject to the approval of the trust institution administering the trust.

4. Funds for this settlement shall come from the "Judgment Fund" of the United States as established pursuant to Title 31, Section 1304 of the United States Code, and shall not, in any event, come from appropriations made by Congress for the expenses of the United States Department of Interior; and

5. The Three Affiliated Tribes understand that the settlement of the lawsuit described above may be subject to approval by the Attorney General of the U.S. Department of Justice and the Secretaries or heads of other Federal agencies, and if not approved by all requisite Federal agencies within ninety (90) days of the submission of the settlement document as agreed to by the Three Affiliated Tribes, this settlement agreement shall be void; and.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Tribal Business Council of the Three Affiliated Tribes does hereby authorize its Chairman, and, if necessary, its Secretary, to execute the Settlement Agreement referenced in the preceding paragraph; and

NOW, THEREFORE, BE IT FINALLY RESOLVED, that Resolution No. 05-106-NH is hereby rescinded.

CERTIFICATION

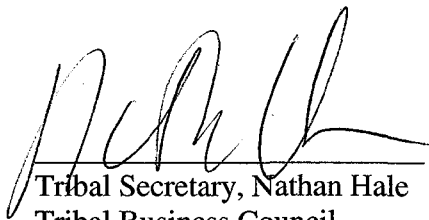
I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Forth Berthold Reservation, hereby certify that the Tribal Business Council is composed of 7 members of whom 5 constitute a quorum, 5 were present at a Regular Meeting thereof duly called, noticed, convened, and held on the 24 day of December 2005; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 5 members, 0 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.

Chairman [] voting. [] not voting.

Dated this 2nd day of December 2005.

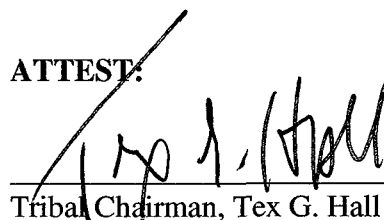


Resolution No. 05-175-NH

A handwritten signature in black ink, appearing to read 'Nathan Hale', is written over a horizontal line.

Tribal Secretary, Nathan Hale
Tribal Business Council
Three Affiliated Tribes

ATTEST:

A handwritten signature in black ink, appearing to read 'Tex G. Hall', is written over a horizontal line.

Tribal Chairman, Tex G. Hall
Tribal Business Council
Three Affiliated Tribes