



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

*A Resolution entitled, "Settlement of Lawsuit against the U.S. Indian Health Service"*

- WHEREAS,** The Three Affiliated Tribes (the "Tribe") of the Fort Berthold Reservation (The "Reservation") have accepted the Indian Reorganization Act of June 18, 1934 (the "Act"), and the authority under Section 16 of the Act; and
- WHEREAS,** The Tribe's Constitution (the "Constitution") authorizes and empowers the Tribe's Tribal Business Council (the "Tribal Business Council") to engage in activity on behalf of and in the interest of the welfare and benefit of the Tribe and of the enrolled members thereof; and
- WHEREAS,** Pursuant to Article III, Section 1 of the Constitution, the Tribal Business Council is the governing body of the Tribe; and
- WHEREAS,** On March 31, 2008, the Indian Health Service ("IHS") issued a letter declining in part the Tribe's proposal under the Indian Self-Determination and Education Assistance Act to contract for all of the programs, functions, services and activities of the Fort Berthold Service Unit, including specifically (1) the Tribe's proposal for funding of contract support costs ("CSC"), and (2) the Tribe's proposal to serve non-Indians "as may be authorized by Section 813 of the [Indian Health Care Improvement Act]" (the "Partial Declination"); and
- WHEREAS,** The Tribal Business Council engaged Hobbs, Straus, Dean & Walker, LLP ("Hobbs Straus") to file a suit challenging the Partial Declination in United States District Court for the District of Columbia, which suit is captioned *Three Affiliated Tribes of the Fort Berthold Reservation v. United States*, No. 08-1601 (JDB); and
- WHEREAS,** On July 27, 2009, the Court denied Defendants' motion to dismiss the case, and the case is now in a discovery phase; and
- WHEREAS,** The litigation applies only to fiscal year ("FY") 2008, and the Tribe has an outstanding claim for CSC funding for FY2009, and an unasserted claim for FY2010; and



**WHEREAS,** On November 20, 2009, counsel for the Defendants called Hobbs Straus and made a settlement offer, the terms of which are as follows:

- (1) IHS will make a one-time payment of \$1,081,288 to the Tribe in FY 2010, to cover the Tribe's claims for CSC for FY 2008 and FY 2009;
- (2) IHS will add \$453,553 to the Tribe's base funding for CSC, beginning in FY2010. (In other words, in FY2010, the Tribe will receive both the one-time payment and the \$453,553, but only the \$453,553 will be a permanent increase to the Tribe's base funding.);
- (3) The Tribe will be eligible for any increase in CSC in FY2010 on the same basis as other tribes, in addition to the \$453,553 to be added to the basis. (This refers to the Congressional increase in the appropriation for CSC for FY2010 of over \$100 million, which is to be applied to existing CSC shortfalls.);
- (4) IHS wants to settle the IHCIA Section 813 issue as well. They did not make a new proposal, but reiterated that IHS would accept language allowing services to non-IHS beneficiaries to be provided under the contract at the Mandaree, Twin Buttes, and White Shield health Stations; and

**WHEREAS,** IHS's offer is subject to the qualification that it must be approved by a Department of Justice official with authority; and

**WHEREAS,** The Tribe now finds it in its best interest to settle the litigation with the Indian Health Service.

**NOW THEREFORE BE IT RESOLVED** that the Tribal Business Council hereby approves settling the litigation on the following basis:

- (1) IHS will make a one-time payment of \$1,181,288 to the Tribe in FY 2010, to cover the Tribe's claims for CSC for FY 2008 and FY 2009 -- an increase of \$100,000 over the IHS's settlement offer.
- (2) IHS will add \$503,553 to the Tribe's base funding for CSC, beginning in FY2010 -- an increase of \$50,000 over the IHS's proposal.





- (3) The Tribe will be eligible for any increase in CSC in FY2010 on the same basis as other tribes, in addition to the \$453,553 to be added to the basis. In determining the Tribe's eligibility for such funding, the IHS will base the Tribe's CSC need on the Tribe's FY2009 CSC proposal.
- (4) The Tribe will accept language allowing services to non-IHS beneficiaries to be provided under the contract at the Mandaree, Twin Buttes, and White Shield health stations.
- (5) This counterproposal must be accepted by the Defendants by no later than December 2, 2009, and the one-time payment of \$1,181,288 must be made by no later than December 9, 2009.
- (6) The settlement extinguishes any claim that the Tribe has against IHS for CSC funding relating to the new or extended PFSAs that the Tribe first assumed in FY2008, for the years FY2008, FY2009, and FY2010. This settlement does not extinguish any other claims between the parties.

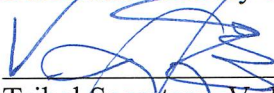
**NOW THEREFORE BE IT FURTHER RESOLVED** that Hobbs Straus is authorized and directed to extend the Tribe's settlement counterproposal to Defendants, and to execute such documents as are required to finalize and implement such settlement.

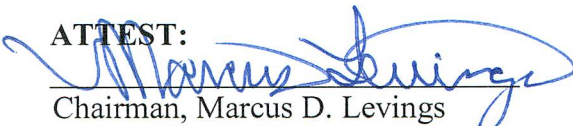
**CERTIFICATION**

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Indian Reservation, hereby certify that the Tribal Business Council is composed of seven (7) members of whom five (5) constitute a quorum, 5 were present at a Special Meeting thereof duly called, noticed, convened and held on the 25th day of November, 2009, that the forgoing 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 25th day of November, 2009.

  
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 Tribal Secretary, V. Judy Brugh  
 Tribal Business Council  
 Three Affiliated Tribes

**ATTEST:**  
  
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 Chairman, Marcus D. Levings  
 Tribal Business Council  
 Three Affiliated Tribe