



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

***A Resolution Entitled: “Approval to Retain Nelson-Tremain Partnership, LLP as  
Architect for the MHA Diabetes Education Center Construction Project  
and a Limited Waiver of Sovereign Immunity”***

**WHEREAS,** The Mandan, Hidatsa, and Arikara Nation | Three Affiliated Tribes (“Nation” or “Tribes”) having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act and having adopted a Constitution and bylaws 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 Three Affiliated Tribes Constitution authorizes and empowers the Three Affiliated Tribes’ Tribal Business Council to engage in activity 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(1) of the Three Affiliated Tribes Constitution provides that the Tribal Business Council has the power to adopt resolutions regulating the procedure of the Tribal Business Council; and

**WHEREAS,** Article VI, Section 5(c) of the Three Affiliated Tribes Constitution specifically authorizes and empowers the Tribal Business Council to administer funds within the exclusive control of the Tribes and to make expenditures from available Tribal funds for public purposes for the Tribes; and

**WHEREAS,** The Tribes seeks a community-based facility to provide wellness, fitness and health education services for enrolled members of the Three Affiliated Tribes with diabetes; and

**WHEREAS,** The Tribes seek to construct, manage, and operate said community-based facility as the MHA Diabetes Education Center in partnership with Elbowoods Medical Center; and

**WHEREAS,** The Tribes have approved of the MHA Diabetes Education Center construction project; and



**WHEREAS,** The Tribes have negotiated the terms of an Architect Agreement with Nelson-Tremain Partnership, LLP—AIA Document B133-2019, Standard Form of Agreement between Owner and Architect, Construction Manager as Constructor Edition (“Agreement”) (attached hereto and fully incorporated herein)—to provide professional services for the construction of a 26,000 square foot, two-story building on the Elbowoods Medical Center site owned by the Three Affiliated Tribes located north of New Town, ND near ND state Highway 23B Truck Reliever Bypass, wholly within the exterior boundaries of the Fort Berthold Reservation; and

**WHEREAS,** The total project cost, including professional design fees, testing, inspections and TERO fees (if applicable), is estimated to be approximately Eleven Million Nine Hundred Ninety Thousand Dollars and Zero Cents (\$11,990,000.00), with an estimated construction cost of the total project costs being estimated at Nine Million Four Hundred Thousand Dollars and Zero Cents (\$9,400,000.00); and

**WHEREAS,** Part of the Agreement, the Architects seek to include a limited waiver of sovereign immunity.

**NOW, THEREFORE, BE IT RESOLVED,** that the Tribal Business Council of the Three Affiliated Tribes hereby authorizes and approves the Agreement with Nelson-Tremain Partnership, LLP to provide the architectural services for MHA Diabetes Education Center construction project.

**BE IT FURTHER RESOLVED,** the Tribal Business Council hereby authorizes Councilwoman Monica Mayer, M.D. to execute and finalize the Agreement with the Architect as outlined herein.

**BE IT FURTHER RESOLVED,** the Tribal Business Council hereby authorizes the Agreement to include a limited waiver of sovereign immunity, and it hereby approves the following language to be included in Section 8.3 of the Agreement:

**§ 8.3.1** The Parties acknowledge the Owner is a federally recognized Indian Tribe possessing sovereign immunity from suit and other legal proceedings. The Tribe, pursuant to a duly signed resolution adopted by the Tribal Business Council, agrees to grant a limited waiver of its immunity from suit for the sole purpose of enforcing the terms of this Agreement and consents to be sued under the limitations expressed in



Section 8.3.2. below should an action be commenced against it to determine the rights and obligations of the parties to this Agreement.

**§ 8.3.2** The Waiver is limited to remedies only for liability arising from intentional contract breach of any terms of this Agreement by the Three Affiliated Tribes' and is limited to damages only up to those amounts hereby contracted and agreed to. Any other trust or non-trust asset of Owner is explicitly excluded from this waiver. This waiver of sovereign immunity further limits recoverable damage only to actual damages and shall not include or apply to any indirect, consequential, reliance, exemplary or punitive damages (including, any damages on account of lost profits or opportunities or business interruption or diminution in value) suffered or incurred. Owner hereby submits itself to the exclusive jurisdiction of the Three Affiliated Tribes' Fort Berthold Tribal District Court and in the proper Tribal Appellate Courts, should an action be commenced for matters arising under the four-corners of this Agreement pursuant to this limited waiver of sovereign immunity. This limited waiver of sovereign immunity shall terminate one year after the occurrence of the triggering event or events giving rise to such legal action. Should a legal action be commenced under this Agreement, any such legal action shall only be brought against the Three Affiliated Tribes and/or its agents in their official, not individual, capacity. Under no circumstances shall this limited waiver of sovereign immunity be construed as a waiver of the requirement of exhaustion of tribal remedies.

**BE IT FINALLY RESOLVED**, that the Tribal Business Council hereby authorizes Councilwoman Monica Mayer, M.D. to take such action as is necessary to carry out the terms and intent of this Resolution.

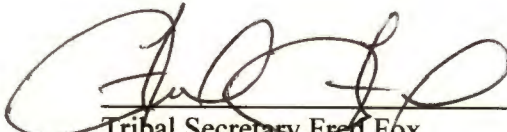


**CERTIFICATION**

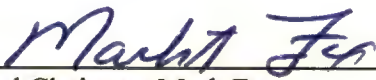
I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Indian Reservation hereby certify that the Tribal Business Council is composed of seven (7) members of whom five (5) constitute a quorum, 7 were present at a Regular Meeting thereof duly called, noticed, convened and held on the 13<sup>th</sup> day of February 2020, that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of 6 members, 0 members opposed, 0 members abstained, 1 members not voting, and that said Resolution has not been rescinded or amended in any way.

Chairman [ ] Voting. [ X ] Not Voting.

Dated this 13<sup>th</sup> day of February, 2020

  
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Tribal Secretary Fred Fox  
Tribal Business Council  
Three Affiliated Tribes

**ATTEST:**

  
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Tribal Chairman Mark Fox  
Tribal Business Council  
Three Affiliated Tribes