



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

A Resolution Entitled: “A Limited Waiver of Sovereign Immunity For Equitable Actions to Enforce the Constitution, Laws and Policies of the Three Affiliated Tribes.”

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, The Constitution of the Three Affiliated Tribes 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 Tribes and of the enrolled members thereof; 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, Article VI, Section 1 of the Constitution of the Three Affiliated Tribes provides “any power exercised through that Council shall be subject to a popular referendum as provided by this Constitution”; and

WHEREAS, The Tribe is a sovereign Indian nation possessing inherent powers of self-government, including sovereign immunity from suit except to the extent expressly and unequivocally waived by the Tribe or abrogated by Congress;

WHEREAS, The Tribal Business Council is the governing body of the Tribe and is obligated to govern in accordance with the Tribe’s Constitution, duly enacted tribal laws, resolutions, ordinances, policies, and other governing documents;

WHEREAS, The rights of tribal members and tribal-member-owned businesses to seek enforcement of the Tribe’s Constitution, laws, and policies are essential to accountable, lawful, and transparent tribal government;

WHEREAS, The Tribal Business Council finds that a limited waiver of sovereign immunity for prospective equitable relief will strengthen the rule of law, protect the rights of tribal members, and provide a peaceful and orderly process for resolving disputes concerning the legality of tribal government action;



WHEREAS, The Tribal Business Council does not intend to waive sovereign immunity for money damages, retrospective monetary relief, punitive damages, consequential damages, interest, or any other form of monetary recovery, except to the limited extent expressly authorized by a separate written enactment, including a duly adopted resolution authorizing reimbursement of reasonable attorney's fees and costs to a successful plaintiff in an equitable action to enforce the Tribe's Constitution, laws, or policies, or a duly adopted resolution authorizing reimbursement of reasonable documented fees and costs to a Tribal member, group, or other eligible petitioner who successfully brings a petition for a referendum vote or Secretarial Election;

NOW THEREFORE BE IT RESOLVED, that the Tribal Business Council hereby adopts the following limited waiver of sovereign immunity:

LIMITED WAIVER OF SOVEREIGN IMMUNITY FOR EQUITABLE ACTIONS TO ENFORCE THE CONSTITUTION, LAWS, AND POLICIES OF THE TRIBE

SECTION 1. LIMITED WAIVER OF SOVEREIGN IMMUNITY.

The sovereign immunity of the Tribe, the Tribal Business Council, and the members, officers, employees, agents, departments, and instrumentalities of the Tribe acting in their official capacities is hereby expressly and unequivocally waived solely for suits brought by eligible plaintiffs seeking prospective declaratory, injunctive, mandamus, prohibition, or other equitable relief to enforce the Tribe's Constitution, tribal laws, ordinances, resolutions, duly adopted policies, and other binding governing documents of the Tribe.

This waiver is limited to claims alleging that the Tribal Business Council, or any official, officer, employee, agent, department, or instrumentality acting under authority of the Tribal Business Council, has acted, is acting, or is threatening to act contrary to the Tribe's Constitution, tribal laws, ordinances, resolutions, duly adopted policies, or other binding governing documents.

SECTION 2. ELIGIBLE PLAINTIFFS.

This limited waiver may be invoked only by:

- A. enrolled members of the Tribe;
- B. groups of enrolled members of the Tribe;
- C. tribal-member-owned businesses, provided that one or more enrolled members of the Tribe own a majority interest in the business; and



D. entities or associations organized by tribal members for the purpose of protecting rights arising under the Tribe's Constitution, laws, policies, or governing documents.

SECTION 3. PERMITTED RELIEF.

The relief available under this waiver is limited to equitable relief, including:

- A. declaratory judgments determining the rights, duties, or legal obligations of the parties under the Tribe's Constitution, laws, policies, resolutions, ordinances, or governing documents;
- B. temporary restraining orders;
- C. preliminary and permanent injunctions;
- D. writs of mandamus compelling the performance of a clear legal duty;
- E. writs of prohibition preventing action in excess of lawful authority;
- F. orders requiring compliance with mandatory procedures required by tribal law;
- G. orders invalidating, setting aside, suspending, or prohibiting enforcement of official action taken in violation of tribal law;
- H. orders requiring production, inspection, or disclosure of public records, financial records, resolutions, minutes, or other documents required to be made available under tribal law; and
- I. such other non-monetary equitable relief as the court determines is necessary to enforce the Tribe's Constitution, laws, policies, or governing documents.

SECTION 4. NO MONEY DAMAGES OR MONETARY RELIEF.

This waiver does not authorize, and shall not be construed to authorize, any claim or award for monetary relief, except to the limited extent expressly authorized by a separate written enactment that specifically provides for reimbursement of reasonable attorney's fees and costs to a successful plaintiff in an equitable action to enforce the Tribe's Constitution, laws, or policies, or reimbursement of reasonable documented fees and costs to a Tribal member, group, or other eligible petitioner who successfully brings a petition for a referendum vote or Secretarial Election. Subject to those limited exceptions, this waiver does not authorize any claim or award for:

- A. compensatory damages;
- B. consequential damages;
- C. punitive or exemplary damages;



D. lost profits;

E. restitution, disgorgement, repayment, or refund, except reimbursement expressly authorized by separate written enactment;

F. back pay, front pay, benefits, or employment-related monetary relief;

G. attorney's fees, except reimbursement of reasonable attorney's fees expressly authorized by separate written enactment;

H. court costs, except reimbursement of reasonable court costs or petition-related costs expressly authorized by separate written enactment;

I. expert fees;

J. pre-judgment or post-judgment interest; or

K. any other monetary award, monetary judgment, or retrospective monetary relief of any kind.

No court shall have jurisdiction under this waiver to enter a money judgment against the Tribe, the Tribal Business Council, tribal funds, tribal trust assets, tribal enterprises, tribal officials, tribal employees, or any tribal department, agency, instrumentality, or entity, except that the Tribal Court may enforce a separate written enactment that expressly authorizes reimbursement of reasonable attorney's fees and costs to a successful plaintiff in an equitable action, or reimbursement of reasonable documented fees and costs to a Tribal member, group, or other eligible petitioner who successfully brings a petition for a referendum vote or Secretarial Election. Any such reimbursement shall be treated as a limited statutory reimbursement authorized by separate enactment and not as money damages, retrospective monetary relief, or a general waiver of sovereign immunity.

SECTION 5. OFFICIAL-CAPACITY CLAIMS ONLY.

Claims under this waiver may be brought against the Tribal Business Council and against tribal officials, officers, employees, agents, departments, or instrumentalities only in their official capacities and only for the purpose of obtaining lawful equitable relief.

Nothing in this waiver authorizes personal-capacity claims, personal liability, monetary liability, or execution against the personal assets of any tribal official, officer, employee, agent, or representative.

SECTION 6. LIMITATION TO ENFORCEMENT OF TRIBAL LAW.

This waiver applies only to claims seeking enforcement of:



- A. the Tribe's Constitution and Bylaws;
- B. duly enacted tribal laws, codes, and ordinances;
- C. duly adopted resolutions of the Tribal Business Council;
- D. duly adopted tribal policies that are binding on the Tribal Business Council or tribal government;
- E. governing documents of tribal departments, boards, commissions, authorities, or wholly owned tribal entities, where enforcement is necessary to determine whether the Tribal Business Council or tribal officials acted lawfully; and
- F. rights and duties arising under the Indian Civil Rights Act to the extent enforceable in Tribal Court under tribal law.

This waiver does not apply to claims arising solely under state law, federal law, contract law, tort law, employment law, commercial law, or any other external law unless such claim is necessary to enforce a binding provision of tribal law and the relief sought remains strictly equitable and non-monetary.

SECTION 7. EXCLUSIVE FORUM.

The Tribe's Tribal Court shall have exclusive jurisdiction over all actions brought under this waiver, including all claims for temporary, preliminary, permanent, declaratory, injunctive, mandamus, prohibition, or other equitable relief.

No action under this waiver may be brought in federal court, state court, administrative tribunal, arbitration, or any non-tribal forum unless the Tribal Business Council expressly authorizes that forum by separate written waiver identifying the specific claim, party, forum, and scope of relief.

SECTION 8. STANDARD OF REVIEW.

In any action brought under this waiver, the Tribal Court may determine whether the challenged conduct is contrary to the Tribe's Constitution, laws, ordinances, resolutions, policies, or governing documents.

The Tribal Court may not substitute its policy judgment for that of the Tribal Business Council on matters lawfully committed to the Council's discretion. However, the Court may determine whether the Council or tribal officials exceeded their authority, failed to perform a mandatory duty, violated required procedures, acted without legal authority, or acted contrary to binding tribal law.

SECTION 9. PROTECTION OF TRIBAL FUNDS AND ASSETS.



No order entered under this waiver shall attach, garnish, seize, encumber, freeze, execute upon, or otherwise interfere with tribal funds, trust assets, property, accounts, investments, revenues, or business assets, except to the limited extent necessary to prohibit an unlawful expenditure, transfer, withdrawal, or use of tribal assets that is alleged to violate the Tribe's Constitution, laws, resolutions, policies, or governing documents.

Any such order shall be narrowly tailored to preserve the status quo and enforce tribal law without authorizing money damages or retrospective monetary recovery, except that nothing in this section prohibits reimbursement of reasonable attorney's fees and costs or reasonable petition-related fees and costs when such reimbursement is expressly authorized by a separate written enactment.

SECTION 10. NO WAIVER FOR TRIBAL ENTERPRISE COMMERCIAL CLAIMS.

This waiver does not authorize commercial claims against tribal enterprises, corporations, authorities, arms of the Tribe, or tribally owned businesses unless the claim is brought by an eligible plaintiff and seeks only equitable enforcement of the Tribe's Constitution, tribal laws, policies, resolutions, ordinances, or governing documents.

Nothing in this waiver authorizes breach-of-contract damages, business tort claims, lender claims, vendor claims, employee wage claims, procurement damages, or any monetary claim against a tribal enterprise or tribal business.

SECTION 11. AVAILABLE DEFENSES PRESERVED.

Except for the limited waiver of sovereign immunity expressly provided herein, the Tribe, the Tribal Business Council, and tribal officials retain all defenses available under tribal law, including lack of standing, lack of ripeness, mootness, failure to exhaust, statute of limitations, political question where applicable, failure to state a claim, lack of subject-matter jurisdiction, lack of personal jurisdiction, and all other defenses.

SECTION 12. SEVERABILITY.

If any provision of this waiver is held invalid, unconstitutional, or unenforceable, the remaining provisions shall remain in full force and effect. The Tribal Business Council declares that it would have adopted each section, subsection, sentence, clause, and phrase independently, even if any other portion were declared invalid.

SECTION 13. EFFECTIVE DATE.

This limited waiver shall take effect immediately upon adoption and shall apply to claims filed after its effective date. It shall also apply to pending actions only if the Tribal Court determines that applying the waiver would not impair vested rights or expand the relief available beyond prospective equitable relief, except to the extent a separate written enactment expressly authorizes reimbursement of reasonable attorney's fees and costs to a successful plaintiff, or



reimbursement of reasonable documented fees and costs to a Tribal member, group, or other eligible petitioner who successfully brings a petition for a referendum vote or Secretarial Election.

SECTION 14. RESERVATION OF SOVEREIGN IMMUNITY.

All sovereign immunity of the Tribe, the Tribal Business Council, tribal officials, tribal employees, tribal entities, tribal departments, tribal enterprises, and tribal instrumentalities is expressly reserved except to the precise extent waived in this enactment.

This waiver shall not be enlarged by construction, implication, equity, custom, past practice, or course of dealing. Nothing in this reservation of immunity shall be construed to repeal, limit, or conflict with any separate written enactment that expressly authorizes reimbursement of reasonable attorney's fees and costs to a successful plaintiff in an equitable action to enforce the Tribe's Constitution, laws, or policies, or reimbursement of reasonable documented fees and costs to a Tribal member, group, or other eligible petitioner who successfully brings a petition for a referendum vote or Secretarial Election.

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, ____ were present at a Regular Meeting thereof duly called, noticed, convened and held on the ____ day of _____, 2026, that the foregoing Resolution was duly ☐ adopted ☐ rejected at such meeting by the affirmative vote of ____ members, ____ members opposed, ____ members abstained, ____ members not voting, and that said Resolution has not been rescinded or amended in any way.

Chairman ☐ Voting. ☐ Not Voting.

Dated this ____ day of _____, 2026.

ATTEST:

Executive Secretary Fred Fox
Tribal Business Council
Three Affiliated Tribes

Tribal Chairman, Mark N. Fox
Tribal Business Council
Three Affiliated Tribes