

CHAPTER 4-17 PUBLIC FACILITIES FINANCING

4-17-1 **Title; Purpose of Chapter; Severability**

(a) This Chapter shall be known and may be cited as the Colville Confederated Tribes Public Facilities Financing Authority Chapter or as the Authority Act.

(b) Purpose: The purpose of this Chapter is to establish the Authority as an independent Tribal agency and instrumentality under Tribal law and clothed with Tribal immunities as a mechanism which may be utilized by the Tribe with the express written approval of the Business Council to finance needed and essential governmental and other projects deemed necessary to promote, preserve and protect the health, security and general welfare of the Tribe. In order to carry out such purpose, this Chapter further creates and provides for the establishment of a Board of Directors (the "Board") to govern the affairs of and to exercise the various powers conferred upon the Authority and to provide authority for and to empower the Authority to undertake, for and on behalf of and as a duly Constituted authority, agency and instrumentality of the Tribe, the financing of the acquisition, construction, equipping and improvement of public, essential governmental purpose facilities and improvements and other facilities and improvements for the Tribe, subject in all cases to final approval of each of said activities reserved by the Business Council as expressly provided for and directed by this Chapter.

(c) Severability: The provisions of this Chapter shall be severable in accordance with the following:

(1) Should an appropriate judicial body of competent jurisdiction declare or adjudge any provision of this Chapter to be invalid, such declaration or judgment shall not affect any other provisions of this Chapter not specifically included in said declaration or judgment, it being the expressed intent hereof that the several provisions of this Chapter shall be and remain severable.

(2) Should an appropriate judicial body of competent jurisdiction declare or adjudge invalid any application of any provision of this Chapter to a particular property, building, structure or facility, such declaration or judgment shall likewise not affect other property, buildings, structures or facilities.

4-17-2 **Creation of Authority**

Pursuant to the Tribe's sovereign powers and constitutional authority to create subordinate organizations under Article V, Section A of the Tribe's Constitution and By-laws and in order to promote, preserve, protect and sustain the health, security and general welfare of the Confederated Tribes and to provide for certain benefits to be conferred upon the Confederated Tribes, the Business Council hereby authorizes and directs the creation and establishment of, and there is hereby ordered created and established, a subordinate authority, agency and instrumentality of the Tribe for the purposes of:

(a) Providing for the acquisition, construction, equipping, improvement, operation and/or maintenance of essential governmental purpose and other facilities and improvements both within and outside the boundaries of the Tribe's reservation; and

(b) Providing for the financing of such essential governmental purpose and other facilities and improvements through the issuance of bonds, notes, bond anticipation notes, revenue or tax anticipation notes, lease revenue bonds, lease certificates of participation or other evidences of indebtedness of the Authority, or through various other means of raising and providing capital for the various undertakings of the Authority and the Tribe, and where the Business Council shall have provided written authorization approval (unless any such approval is expressly waived by the Business Council) for each and every activity, financing, project and service undertaken by the Authority pursuant to the foregoing paragraphs (a) and (b).

(c) The agency, authority and instrumentality so created and established is hereby designated and shall

have the corporate name “Colville Confederated Tribes Public Facilities Financing Authority” (the “Authority” as hereinabove defined) and shall at all times constitute a body corporate and an agency and instrumentality of the Tribe. The Authority, the Board, its agents and employees and its facilities, property, income and revenues shall be protected by the Tribe's sovereign immunity except to the extent that a limited waiver thereof may be expressly authorized as provided for in this Chapter and as expressly approved by the Business Council through adoption of written resolutions describing and identifying the scope of each such waiver.

4-17-3 Board of Directors; Provisions Relating to Authority Governance

(a) Board of Directors: There is hereby created a Board of Directors (the “Board”) of the Authority which shall be empowered to act as the governing body of the Authority for the purpose of directing and governing the affairs and activities of the Authority and exercising the powers conferred upon the Authority by this Chapter. The Business Council shall appoint the members of the Board.

(b) Appointment; Composition of Board: The Board shall be composed of five (5) members who shall be appointed and confirmed by the Business Council. Each member of the Board shall be an enrolled member of the Tribe in good standing. Three members of the Board shall be appointed from the members serving on the Business Council. The Executive Director of the Tribe and President and Chief Executive Officer of CTEC shall each also be appointed as the remaining two members of the Board.

(c) Terms of Office of Board Members: The initial term of the Board members, appointed from the membership of the Business Council shall be concurrent and coterminous with that Board member's term on the Business Council. The initial Board members so appointed from the Business Council shall be appointed in such manner so that the term of office of such Board members expire on different dates and such staggering of the terms of office of the Business Council members appointed to the Board shall be maintained for Business Council members subsequently appointed to the Board. In any event, each such member shall hold office for a term of not to exceed two (2) years or until their successors have been appointed, confirmed and qualified; provided, however, that their terms of office on the Board shall not extend beyond their respective terms of office as members of the Business Council. Any person appointed to the Board may be re-appointed for successive terms on the Board provided that each person so re-appointed shall continue to meet the qualifications and requirements for members of the Board. The Executive Director and the President and Chief Executive Officer of CTEC shall be appointed to serve maximum three (3) year terms on the Board and shall be reappointed to successive terms on the Board during the period each holds the office of Executive Director and Chief Executive Officer, respectively.

(d) Officers: There shall be elected from among members of the Board a Chairperson, Vice-Chairperson, Secretary and Treasurer. Within ten (10) days after the appointment of the initial members of the Board, there shall be an organizational meeting of the Board at which the members of the Board shall elect the Chairperson, Vice Chairperson, Secretary and Treasurer. Annually thereafter at the first meeting of the Board in each year, the Board shall elect the officers of the Authority from among its members.

(e) Records of Meetings: The Secretary shall keep or cause to be kept a complete and accurate record of all meetings, copies of which shall be furnished to the Board and to the Business Council.

(f) Quorum and Voting: At any special or regular meeting of the Board, three (3) members of the Board shall constitute a quorum. Any action taken by the Board must be approved by a simple majority of those present at a meeting and constituting a quorum for any such action to pass.

(g) Vacancies: If any member of the Board shall die, resign or no longer be qualified to be a member of the Board under the terms of this Chapter, or if a member is removed pursuant to applicable removal procedures established by the Board, as provided in the following section (h) below, the Business Council shall declare the office vacant and appoint a successor (meeting the qualifications and requirements

established by this Chapter for that Board vacancy) to fill such vacancy within thirty (30) days to serve the unexpired portion of the term of the member who is no longer qualified to serve on the Board.

(h) Removal Procedure: A member of the Board may be removed from office by a majority vote of the members of the Board or by a majority vote of the Business Council if the Board or the Business Council, as appropriate, shall determine that such member is guilty of improper conduct or gross neglect of duty; provided that such member shall first be given full opportunity to reply to any and all accusations at a properly convened hearing thereon, and provided further, that the accused is given a written statement of the grounds for such removal against him at least ten (10) days before the date set for such hearing. Each decision to remove a Board member under and pursuant to the provisions of this section shall be final and shall not be subject to review or appeal to any court or forum.

(i) Meetings: The Board shall hold meetings when the business of the Board so requires, but in any event the Board shall meet regularly in regular session at least twice each year at meetings convened during the months of January and July of each year. Special meetings may be called by the Chairperson of the Board, or upon request in writing of two members of the Board or upon the written request and direction of the Business Council. If the Chairperson fails to call a special meeting within ten (10) days after receipt of a written request for a special meeting from any two members, any two members of the Board may call and convene such special meeting by written notice to all members of the Board stating the date, time and place for such meeting of the Board. If the Chairperson fails to call a special meeting within ten (10) days after receipt of a written request for a special meeting from the Business Council, then the Business Council may call and direct that a special meeting of the Board be convened by written notice to the members of the Board stating the date, time and place for such meeting of the Board.

(j) Execution of Documents: The Chairperson, Vice Chairperson, Secretary and Treasurer of the Board may execute such documents, instruments or other papers as the Board shall authorize for execution on behalf of the Board. All such authorizations shall be reflected in the records of meetings of the Board kept by the Secretary.

(k) Board Voting: Each member of the Board, including the Chairperson, shall be entitled to one vote on each matter properly coming before the Board.

(l) Responsibilities: The Board shall be responsible for providing for management and overall supervision of and for the Authority, for the exercise of its powers and for the financing of the projects undertaken by the Authority. It shall be authorized to enter into and execute contracts and other agreements and do all things necessary to carry out the powers vested in the Authority by this Chapter and to exercise the responsibilities of the Authority hereunder or specifically delegated to the Board and the Authority under this Chapter, but subject at all times to the written approval of the Business Council and to the express provisions of this Chapter relating thereto.

(m) Indemnification: The Authority shall indemnify and save the members of the Board, and its officers, directors and employees, harmless against any loss, expense and liability which it may incur arising out of or in the exercise and performance of its powers and duties herein, including the costs and expenses of defending against any claim of liability, but excluding any and all losses, expenses and liabilities which are due to the willful misconduct default of the members of the Board, its officers, directors or employees.

(n) Reports to Business Council: The Board shall provide written reports summarizing its operations and activities to the Business Council quarterly and at such other times as requested in writing by the Business Council. The Chairperson and Secretary of the Board shall be available for consultations with and verbal reports to the Business Council as shall be requested from time to time by the Business Council.

4-17-4

Authority's Power

The Authority shall be authorized to exercise the powers enumerated in and conferred upon the Authority by the provisions of this Chapter, including the powers set forth in this section; provided, however, that the

undertaking of any action by the Authority and the exercise by the Authority of any power conferred upon the Authority by this section or by any other provision of this Chapter shall not be undertaken or exercised without the express prior authorization and approval of the Business Council to be evidenced and set forth in each instance in a properly adopted and effective resolution of the Business Council.

(a) Intergovernmental Agreements: The Authority shall have the power to make agreements with the Tribe, the Business Council, state and local governments and administrative entities and corporations, partnerships, individuals and business entities of every kind and nature in order to carry out the powers and purposes and intent of this Chapter.

(b) Right of Entry: The Authority shall have the power to enter upon land in connection with the financing of any project by the Authority or the Board under this Chapter without liability therefor.

(c) Construction Activities: The Authority shall have the power to undertake the financing, acquisition and construction of any facilities, improvements or projects as shall approved by the Authority and the Business Council, including the acquisition of easements and rights-of-way and the laying out of utilities for public use in and through such easements and rights-of way within and without the boundaries of the reservation if required for the financing of a project by the Authority.

(d) Acquisition of Property: The Authority shall have the power to finance, refinance, acquire or confer, own (but only if required for financing a project as described in section 4-17-5(g) of this Chapter), lease, encumber, assign, or alienate any property of every kind and nature (including the right of entry upon property owned by the Tribe or Authority) in connection with the financing of any project by the Authority or the Board hereunder.

(e) Financing Powers:

(1) The Authority shall have the power, in its own name or in the name of the Tribe, to issue bonds, notes, bond anticipation notes, revenue or tax anticipation notes, lease revenue bonds, lease certificates of participation, limited tax bonds, project financing revenue bonds or other types and evidences of indebtedness for and on behalf of the Tribe, to finance, refinance, acquire, construct, equip, improve, operate and/or maintain governmental purpose facilities and other facilities and to acquire and lease property or interests therein and required in connection therewith.

(2) The Authority may pledge to the repayment of any such borrowing or indebtedness any or all of the revenues of the Authority or of any project or facilities financed by the Authority. The Authority shall not have any power to pledge or encumber any other revenues, income, property or assets of the Tribe, or any other agency, organization or instrumentality (other than the Authority) of the Tribe to repayment of such borrowing unless the Business Council shall determine and approve by resolution that it is in the best interest of the Tribe to pledge to the payment of any such borrowing certain specific revenues, income or assets of the Tribe, or of another agency, organization or instrumentality of the Tribe, as expressly authorized and approved by the Business Council. No borrowing undertaken by the Authority shall be payable from, nor constitute a charge or lien upon, any funds other than the revenues specifically pledged to the payment thereof, nor shall the Tribe be liable thereon other than to the extent specifically provided in this paragraph, in express resolutions of the Business Council related to any such borrowing and in the financing documents required for any borrowing, and such limitation shall be expressly stated in such financing documents.

(3) Upon prior approval by the Business Council, to be evidenced by resolutions passed by the Business Council, the Authority may also enter into such other arrangements for raising capital, for any project, facilities or improvements undertaken by the Authority as the Board shall deem necessary or in the best interest of the Authority in carrying out the financing of any such project, facilities or improvements.

(f) Sovereign Immunity Provisions: In connection with any borrowing which is empowered by this Chapter, the Authority and the Board may (but solely with express written authorization and approval from the Business Council, to be evidenced by resolution adopted by the Business Council) undertake and deliver a limited waiver of sovereign immunity as required for enforcement of the financing documents entered into by the Authority, including its consent to suit therein, should such consent be required to undertake, complete and enforce the terms of such borrowing, and may consent to the jurisdiction of any court which has lawful jurisdiction of any such action; provided that the Authority and the Board are without power to waive the sovereign immunity of the Tribe, to consent to the jurisdiction of any court over the Tribe, or to the levy of any judgment, lien or attachment upon any property, asset or income of the Authority, the Tribe or any other organization or instrumentality of the Tribe (other than the Authority) except with respect to the Authority's financing documents and those revenues and property specifically authorized to be pledged to the repayment of and as security for any borrowings undertaken through such financing documents, as provided in section 4-17-4(e) of this Chapter. The Authority may only deliver a limited waiver of sovereign immunity in the express form approved by the Business Council and under no circumstances shall the Authority be authorized or empowered to execute or deliver a general waiver of sovereign immunity.

(g) Rates, Interest Charges and Fees: The Authority shall have the power and authority to establish rates, charges and fees and tariffs for any financing or project undertaken by the Authority or for services provided by any property, facilities, improvements or equipment financed by the Authority pursuant to the powers conferred upon it by this Chapter.

(h) Governmental and Other Facilities: The Authority shall have the power to loan to the Tribe or any organization or instrumentality of the Tribe the proceeds of bonds, notes or other obligations issued pursuant to section 4-17-4(e) and to purchase, acquire, finance, and/or to provide for the lease financing, installment purchase and other arrangements with the Tribe (or any of its organizations, agencies or instrumentalities), of such facilities, projects, improvements and equipment as shall constitute and be used by or on behalf of the Tribe as governmental purpose facilities and/or for other facilities and purposes and as shall have been approved by the Business Council.

4-17-5 Financial Accounting and Audits

The Business Council hereby authorizes and directs that accounting services shall be provided to the Authority by the Tribe for a fee. One or more special funds and accounts shall be established for the Authority. Each fund and account specified for the Authority shall be kept separate and distinct from and shall not be commingled with any other funds and accounts of the Tribe. Such financial records of the Authority as may be relevant and not privileged shall be open to any entity that provides, lends or grants money to the Authority or to the Tribe for the benefit of the Authority, provided that the entity has just cause to inspect such records, that no less than five (5) business days' notice is given for such examination and that such examination shall be conducted during normal business hours of the Authority and the Tribe. Said records shall also be open for review and examination by members of the Tribe under such conditions as shall be established and approved by the Business Council and the Board. The financial records of the Authority shall at all times be available to the Business Council for its review and examination upon request of the Business Council.

(a) Records and Accounts: Accounting records of the Authority shall be kept and maintained by the Treasurer. The records and accounts shall also be maintained as part of the accounting records of the Tribe and the Business Council at the designated administrative offices of the Tribe.

(b) Audits and Reports: The accounts of the Authority shall be audited annually at the close of each fiscal year, at the expense of the Authority. Annual and periodic reports shall be submitted by the Board to the Business Council upon completion.

(c) Insurance: Insurance shall be maintained on all property in which the Authority has an insurable interest and shall be in the amounts and be of the type of coverage specified by the Authority and the Business Council.

(d) Fiscal Year: The fiscal year of the Authority shall be the same as the fiscal year of the Tribe.

(e) Leasing or Management of Lands: The Authority may negotiate leases with individual owners of lands for leasing privileges under mutually agreeable terms and if necessary in connection with any project undertaken by the Authority. Final action and authority to execute leases on behalf of the Authority must be approved by both the Board and the Business Council by resolution duly passed and adopted by each such governing body, respectively, before becoming effective.

(f) Entry to Authority Property: The Business Council and the administration of the Tribe shall be permitted to enter upon all projects and properties of the Authority for the purpose of inspection, observation, measurement, sampling and testing in accordance with the provisions of this resolution and in accordance with the laws of the Tribe and upon reasonable notice thereof to the Authority. No notice shall be required in case of an emergency.

(g) Title to Property: All property acquired with respect to any project, facilities or improvements undertaken and financed by the Authority pursuant to the powers conferred upon it by this Chapter, and all plans, specifications, diagrams, papers, books and records prepared and completed in connection therewith, and all buildings, machinery, fixtures, improvements and equipment pertaining thereto, shall be the property of the Tribe unless the terms of any financing undertaken by the Authority and approved by resolution of the Business Council require and direct that ownership of any of such items and/or property be vested in the Authority until such financing is repaid and discharged. Ownership of all property conveyed to and vested in the Authority shall be granted, conveyed and transferred to the Authority using the following language for such conveyance and vesting of ownership in the Authority:

(1) The Colville Confederated Tribes Public Facilities Financing Authority, for and on behalf of and as an agency and instrumentality of The Confederated Tribes of the Colville Reservation. Title to any facilities or project held by the Authority for the purpose of any financing undertaken by the Authority shall immediately be conveyed and vested in the Tribe upon payment and discharge of such financing.

4-17-6 Amendments; Effective Date

This Chapter may be amended by resolution or Chapter adopted and approved by the Business Council.

4-17-7 Duration of Authority; Termination

The Authority shall continue in existence and have perpetual duration unless earlier terminated by resolution or Chapter duly passed and adopted by the Business Council; provided that this Chapter shall continue to be in effect at all times and shall remain in full force and effect and shall not terminate, and the existence of the Authority shall continue in effect during the entire period and for the entire term that, any bonds, notes, certificates, loans, obligations or other indebtedness of the Authority shall remain outstanding and unpaid or while any indebtedness of any party owed to the Authority shall remain outstanding and unpaid, or while the Authority shall continue to own any interest in any property, whether real or personal.

4-17-8 Disposition of Assets

Upon termination and dissolution of the Authority and after payment of all expenses, liabilities, bonds, notes, certificates, indebtedness and all other outstanding obligations of the Authority, the ownership of and to all property then owned by the Authority shall be conveyed to, become vested in and shall be and constitute the sole property of the Tribe. Upon termination of the Authority, any surplus money then on hand with the Authority and not required for the payment and discharge of its obligations shall be immediately deemed to be the property of and shall be transferred to and deposited to such accounts of the Tribe as the Business Council shall direct.

4-17-9 Obligations of the Authority

None of the debts, liabilities or obligations of the Authority shall be the debts, liabilities or obligations of the Tribe unless specifically assumed as such in a particular instance or case by resolution or other authorizing legislation of the Business Council of the Tribe providing for express approval thereof.

4-17-10 Effective Date

This Chapter shall be in full force and effect immediately upon its passage and approval by the Business Council.

(Chapter 4-17 Adopted 2/5/98, Resolution 1998-49)
(Certified 2/24/2000)