

PONCA TRIBE OF NEBRASKA  
TRIBAL COUNCIL  
AGENDA

MAY 2, 2023

4:00 PM

LOCAL OFFICE SITES/LIFESIZE

- I. CALL TO ORDER
  - a. Roll Call
- II. APPROVAL OF AGENDA
- III. CONSENT CALENDAR
  - a. April 25, 2023 Minutes
  - b. CFO - Financial Reports as of March 2023
  - c. Approval of Applicants for Enrollment – RESOLUTION
  - d. Ratifications
- IV. LAW & ORDER CODE REVISION – PUBLIC COMMENT PERIOD
  - a. Title 6 Judicial Remedies
- V. DAVID THREM, INTERIM CEO – OSNI PONCA/CHIEF INFORMATION OFFICER
  - a. Osni Ponca Quarterly Report October through December 2022
  - b. CIO Quarterly Report January through March 2023
- VI. PATRICK JENNINGS, CEO – TRIBAL AFFAIRS
  - a. Additional Media Outreach Tools
  - b. Tribal Affairs Change Order #034 Hausmann Construction
  - c. Sioux City Update
  - d. CEO Tribal Affairs Quarterly Report
- VII. MAKALA LARAVIE, INTERIM HUMAN RESOURCE DIRECTOR
  - a. Social Services Administrative Assistant Job Description Revised (Position 290)
- VIII. GREG GUNDERSON, CHIEF FINANCIAL OFFICER
  - a. Quarterly Report – January through March 2023
- IX. JANELLE ALI-DINAR, CEO – PONCA HEALTH SERVICES
  - a. CEO-PHS Quarterly Report January through March 2023
- X. COURNEY CHAVEZ, DEPUTY DIRECTOR OF TRIBAL AFFAIRS
  - a. Carter Lake Fee Land Contract & Limited Notice to Proceed with Woodstone
- XI. OTHER BUSINESS
- XII. ADJOURN

**AGENDA ITEM REQUEST**  
(for employees only)

DATE SUBMITTED: 04/17/2023

All agenda item requests must be approved by the Tribal Business Manager and forwarded to the Niobrara Office, Attn: Jan Colwell **five (5) working days before the meeting.**

Meeting of:  Tribal Council  
 Executive Committee

Meeting Date: 05/02/2023

Subject: Financial Reports as of March 2023

ACTION REQUEST: (Please describe request in the form of a motion)

No Action Required

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Will there be support materials for this agenda item?  Yes  No  
(If there are support materials, one copy must be attached)

Submitted By: 

APPROVED   
Executive Management

**\*\*\*\* NOTICE: All Tribal Members \*\*\*\*****LAW AND ORDER CODE REVISION  
Discussion on May 2, 2023 beginning at 4:00 p.m.  
During Tribal Council Meeting****\*\*\*\* NOTICE: All Tribal Members\*\*\*\***

The Ponca Tribal Council will be reviewing proposed additions to the Law and Order Code. The revisions are being considered because the Tribal Council wants to create laws that will govern arbitrations that are put into contracts that the Tribe enters into.

**There are changes being proposed are adding Chapter 12 to Title Six. The revisions being considered include but are not limited to the following:**

- Chapter 12 is a new Chapter that will be added to Title Six.

A complete copy of the proposed amendments is available at the tribal offices, or on the Ponca Website, [www.poncatribene.org](http://www.poncatribene.org) or one may be obtained by contacting Jan Colwell, Tribal Council Secretary at 402-857-3391.

**There will be a discussion by Tribal Council that is open for public comment on May 2, 2023 at 4:00 p.m. or as soon thereafter as it may be heard.**

**Written comments will be accepted until April 21, 2023.** The written comments may be emailed to [janc@poncatribene.org](mailto:janc@poncatribene.org) or mailed to

Jan Colwell,  
P.O. Box 288  
Niobrara, NE 68760

PONCA TRIBE OF NEBRASKA  
TITLE VI  
JUDICIAL REMEDIES

CHAPTER 1  
GENERAL PROVISIONS

CHAPTER 2  
GARNISHMENT AND EXECUTION

CHAPTER 3  
INJUNCTIONS

CHAPTER 4  
PROTECTION ORDERS

CHAPTER 5  
DECLARATORY RELIEF

CHAPTER 6  
WRIT OF MANDAMUS

CHAPTER 7  
WRIT OF PROHIBITION

CHAPTER 8  
CERTIFICATIONS OF QUESTIONS OF LAW

CHAPTER 9  
CHALLENGE TO TRIBAL LAW

CHAPTER 10  
CIVIL FINE ENFORCEMENT

CHAPTER 11  
CLAIMS INVOLVING INSURANCE

CHAPTER 12



## DISPUTE RESOLUTION AGREEMENTS

**Section 6-12-1. Definitions.** Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Adhesion contract" means any contract or any provision therein or amendment thereto, including a dispute resolution agreement contained in a contract or standing alone, drafted with non-negotiable terms and conditions or otherwise whereby any party must adhere to the original terms without negotiation, renegotiation, or amendment.

2. "Arbitration" means a process in which parties submit a dispute between or among them to an arbitrator for the purpose of the arbitrator deciding the same.

3. "Arbitration agreement" means any written agreement to settle a dispute by arbitration or otherwise submit such dispute to an arbitrator, whether set out as a standalone agreement or contained in a contract.

4. "Arbitrator" means a neutral individual, other than a judge of a court of a jurisdiction serving in such capacity, who serves impartially to decide a dispute between or amongst parties and invested with power to decide the same, whether such arbitrator is chosen by the parties, a court, or dispute resolution provider organization, and includes a panel of arbitrators.

5. "Award" means:

a. A written agreement resolving a dispute reached in negotiation or mediation and signed by all parties to the negotiation or mediation to be bound thereby; and

b. A written decision and award rendered and made by an arbitrator in an arbitration.

6. "Consumer" means an individual who seeks, uses, or acquires, by purchase or lease, any goods or services for personal, family, or household purposes.

7. "Contract" means a contract, agreement, or other instrument and includes a contract that has been extended or renewed by an oral or implied agreement.

8. "Dispute" means a claim, dispute, or controversy and includes any question arising between parties to a contract whether the question is one of law or fact or both.

9. "Dispute resolution" means negotiation, mediation, or arbitration.

10. "Dispute resolution agreement" means a negotiation agreement, mediation agreement, or arbitration agreement, but does include an agreement to submit a dispute to a court or other tribunal of a governmental jurisdiction.

11. "Dispute resolution provider organization" means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers mediation, arbitration, or other dispute resolution proceedings or is involved in the appointment of arbitrators, mediators, or other dispute resolution neutrals.

12. "Drafting party" means the person that included a dispute resolution agreement in a contract and includes any third party relying upon or otherwise subject to the dispute resolution agreement.

13. "Mediation" means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.

14. "Mediation agreement" means any written agreement to settle a dispute by mediation or otherwise submit such dispute to a mediator, whether set out as a standalone agreement or contained in a contract.

15. "Mediator" means a neutral individual who serves impartially and assists parties to reach a mutually acceptable resolution of their dispute, whether such mediator is chosen by the parties, a court, or dispute resolution provider organization and includes a panel of mediators.

16. "Negotiation agreement" means any written agreement to settle a dispute by negotiation between the parties themselves without a mediator, arbitrator, or other neutral third party, whether set out as a standalone agreement or contained in a contract.

**Section 6-12-2. Applicability.**

1. Notwithstanding any provision of a dispute resolution agreement, contract, or law of another jurisdiction to the contrary, this Chapter applies to:

- a. Any dispute resolution agreement:
  - i. Which is made in the territory of the Tribe;
  - ii. To which the Tribe is a party;
  - iii. To which any member of the Tribe residing or domiciled in the territory of the Tribe is a party; or
  - iv. Which provides that it is subject to, governed by, or will be enforced in accordance with or pursuant to the laws of the Tribe generally or this Chapter in particular; and
- b. Any dispute resolution:
  - i. Which is held in the territory of the Tribe;
  - ii. To which the Tribe is a party; or
  - iii. Which provides that it is subject to, governed by, or will be conducted in accordance with or pursuant to the laws of the Tribe generally or this Chapter in particular.

2. Notwithstanding any provision of a dispute resolution agreement, contract, or law of another jurisdiction to the contrary, a person shall be deemed to have consented to be bound by the terms of this Chapter and the exercise of jurisdiction of the Court over them in an action arising under or subject to this Chapter if such person:

- a. Resides in the territory of the Tribe;
- b. Transacts, conducts, or performs any business or activity, either in person or by an agent or representative, within the territory of the Tribe or with the Tribe, with respect to any matter arising from such business or activity;

c. Owns, uses, leases, or possesses any property within the territory of the Tribe, with respect to any matter arising from such ownership, use, lease, or possession;

d. Is a licensee or permittee of the Tribe, with respect to any matter arising from such person's activities as a licensee or permittee of the Tribe;

e. Enters into a contract, agreement, or other consensual relationship with the Tribe, with respect to any matter arising from such contract, agreement, or other consensual relationship;

f. Enters into a contract, agreement, or other consensual relationship with a member of the Tribe residing or domiciled in the territory of the Tribe, with respect to any matter arising from such contract, agreement, or other consensual relationship; or

g. Acts under Tribal authority.

3. Notwithstanding any provision of a dispute resolution agreement, contract, or law of another jurisdiction to the contrary, any dispute resolution agreement which is made in the territory of the Tribe, to which the Tribe is a party, or to which any member of the Tribe residing or domiciled in the territory of the Tribe is a party shall be deemed made, entered into, and performed in the territory of the Tribe.

**Section 6-12-3. Invalidity of Contract Provisions.**

1. The provisions of this Chapter shall supersede any contrary provision of any dispute resolution agreement or any contract and no provision of a dispute resolution agreement or a contract which purports to exempt or avoid the provisions of this Chapter shall be valid, including a provision providing for:

a. A particular law to govern or be utilized with respect to the dispute resolution agreement or the contract;

b. A particular law to be utilized for the construction or interpretation of the dispute resolution agreement or the contract;

c. The holding of or location of a dispute resolution proceeding in a particular jurisdiction or outside the territory of the Tribe; or

d. The resolution of disputes or enforcement of an award in a particular court or jurisdiction.

2. No term, clause, or provision of any dispute resolution agreement or any contract shall prevent or hinder the Court's authority and jurisdiction under this Chapter.

3. Any term, clause, or provision of a dispute resolution agreement or a contract which conflicts with or purports to alter any of the provisions of this Chapter shall render the dispute resolution agreement void and unenforceable in its entirety and severed from any contract containing such dispute resolution agreement. No such term, clause, or provision may be reduced and/or narrowed in scope or the like to be made enforceable, unless expressly authorized in this Chapter.

#### **Section 6-12-4. No Waiver of Immunity.**

1. Nothing in this Chapter limits, waives, or abrogates, and shall not be deemed or construed to limit, waive, or abrogate, the sovereign immunity of the Tribe or any of its agencies, departments, enterprises, agents, officers, officials, or employees.

2. Notwithstanding anything to the contrary in this Chapter or any law of any jurisdiction, no dispute resolution agreement shall limit, waive, or abrogate, or be deemed or construed to limit, waive, or abrogate, the sovereignty or sovereign immunity of the Tribe or any of its agencies, departments, enterprises, agents, officers, officials, or employees.

3. Any waiver of the sovereign immunity of the Tribe with respect to any dispute resolution agreement, including the enforcement of the same, must comply with all of the following to be valid and enforceable:

a. The waiver must be explicitly expressed in the language of the dispute resolution agreement or the contract subject to or containing such agreement with language specifically referring to a waiver of sovereign immunity;

b. The waiver must expressly state what dispute resolution actions are subject to the waiver, including compelling dispute resolution and enforcement of any award;

c. The Tribal Council or, in the case of an enterprise or instrumentality of the Tribe, the board of directors of the enterprise or instrumentality to the extent authorized, must adopt a resolution for the specific purpose of approving and granting the waiver;

d. The resolution must identify the specific contract subject to or containing such dispute resolution agreement and expressly affirm and agree to the waiver by explicit language referring to such;

e. The resolution must be approved by the affirmative vote of a majority of the full Tribal Council or, in the case of an enterprise or instrumentality of the Tribe authorized to agree to waive the immunity of the enterprise or instrumentality, the full board of directors of the enterprise or instrumentality, excluding any vacant positions; and

f. The waiver must comply with all other requirements under applicable law.

**Section 6-12-5. Subject Matter Jurisdiction.** Subject to any limitations on the Court's general subject matter jurisdiction in the laws of the Tribe, the Court shall have original subject matter jurisdiction over all matters arising under this Chapter.

**Section 6-12-6. Personal Jurisdiction.** In addition to any other personal jurisdiction the Court may exercise pursuant to the laws of the Tribe, the Court shall have jurisdiction over any person:

1. Who has or is deemed to have consented to the application of this Chapter;

2. Who is deemed to have consented to be bound by the terms of this Chapter and the exercise of jurisdiction of the Court over him or her as provided in this Chapter;

3. Who is a party to a dispute resolution agreement entered into:

a. Within the territory of the Tribe;

b. With a person residing or domiciled in the territory of the Tribe; or

c. With the Tribe; and

4. Who seeks to enforce a dispute resolution agreement under this Chapter, against the Tribe, or against any member of the Tribe residing or domiciled in the territory of the Tribe.

**Section 6-12-7. Right to Representation.**

1. A party to a dispute resolution has the right to be represented by legal counsel at any proceeding in dispute resolution.

2. Any provision of a dispute resolution agreement which purports to waive the right or ability of a party to be represented by legal counsel in dispute resolution or in any matter related to a dispute resolution or dispute resolution agreement prior to the dispute arising shall be void and unenforceable.

3. A waiver of the right to be represented by legal counsel at any proceeding in a dispute resolution or in any matter related thereto or to a dispute resolution agreement may be revoked at any time prior to the conclusion of the dispute resolution or expiration or termination of the dispute resolution agreement.

**Section 6-12-8. General Validity of Dispute Resolution Agreements.** A dispute resolution agreement is valid, enforceable, and irrevocable except:

1. Upon such grounds as exist for the revocation of any contract; or

2. As otherwise provided in this Chapter or expressly in the laws of the Tribe.

**Section 6-12-9. Validity of Certain Dispute Resolution Agreements.** Notwithstanding the terms of any dispute resolution agreement, the terms of any contract subject to or containing a dispute resolution agreement, any rule of a dispute resolution provider organization, or any other provision of any law of any jurisdiction:

1. An oral dispute resolution agreement shall not be enforceable;

2. An arbitration agreement which is not in writing shall be void and unenforceable;

3. At the election of any person who did not sign, an arbitration agreement not signed by all parties to be bound thereby shall be void and unenforceable;

4. There shall be no implied consent to arbitrate and any claim or assertion of implied consent shall be unenforceable;

5. A dispute resolution agreement made with respect to any dispute or matter which is a regulatory or other law enforcement action shall not be valid or enforceable, provided that nothing in this Chapter shall limit or prevent a regulatory or law enforcement agency or authority from negotiating the settlement of any dispute;

6. A dispute resolution agreement with respect to a dispute or review of a dispute where applicable law provides another exclusive or specific remedy or procedure for the dispute shall not be valid or enforceable;

7. At the election of the person alleging conduct constituting a sexual harassment or assault dispute, a dispute resolution agreement made prior to the dispute arising shall not be valid or enforceable with respect to the sexual assault or harassment dispute; and

8. In the case of a dispute resolution agreement which is an adhesion contract or contained in an adhesion contract:



a. The dispute resolution agreement shall be revocable at law by the party who is not the drafting party; or

b. If the dispute resolution agreement cannot be revoked, notwithstanding anything to the contrary in its terms, it shall be construed:

i. As an agreement to submit disputes to dispute resolution at the option, request, or future agreement or consent of the party who is not the drafting party and not compulsory, mandatory, or exclusive on the part of the party who is not the drafting party; and

ii. Strictly against the drafting party and solely in favor of the other party with all doubts and ambiguities resolved in favor of the party who is not the drafting party.

9. Any provision of a dispute resolution agreement which is an adhesion contract or contained in an adhesion contract which purports to waive the right or ability of a party who is not the drafting party to bring, join, or participate in any joint, class, or collective action or to a jury trial shall be void and unenforceable.

10. The drafting party of a dispute resolution agreement subject to this Chapter which is an adhesion contract or contained in an adhesion contract shall be required to pay all costs and fees of the dispute resolution, including the compensation of the mediator or arbitrator.

11. A consumer who is a party to a dispute resolution agreement subject to this Chapter shall not be required to pay any costs or fees of a dispute resolution, the compensation of the mediator or arbitrator, or any costs or fees of any kind of another party.

12. Before a dispute arises that is subject to a dispute resolution agreement, a party to the agreement may not waive any provision of this Section.

**Section 6-12-10. Requirements of Dispute Resolution Agreement with Tribe.** Notwithstanding the terms of any dispute resolution agreement, the terms of any contract subject to or containing a

dispute resolution agreement, any rule of a dispute resolution provider organization, or any other provision of any law of any jurisdiction:

1. An arbitration agreement shall not be valid or enforceable against the Tribe unless it complies with all of the following:

a. The Tribe is a full party to the arbitration agreement;

b. The arbitration agreement shall explicitly state the specific disputes or classes of disputes subject to arbitration or be strictly limited to matters directly related to the contract subject to or containing the arbitration agreement;

c. The arbitration agreement shall explicitly limit the amount that can be awarded in arbitration to a specific dollar amount not to exceed the dollar amount of the contract subject to or containing the arbitration agreement or to other specific, limited non-monetary relief;

d. The arbitration agreement shall not permit any third parties or others not full parties to the arbitration agreement or contract subject to or containing such agreement to bring disputes in arbitration against the Tribe;

e. The Tribal Council or, in the case of an enterprise or instrumentality of the Tribe, the board of directors of the enterprise or instrumentality to the extent authorized, must adopt a resolution for the specific purpose of approving and granting the arbitration agreement;

f. The resolution must identify the specific contract subject to or containing such arbitration agreement and expressly affirm and agree to the arbitration agreement by explicit language referring to such; and

g. The resolution must be approved by the affirmative vote of a majority of the full Tribal Council or, in the case of an enterprise or instrumentality of the Tribe authorized to agree to arbitration, a majority of the

full board of directors of the enterprise or instrumentality, excluding any vacant positions;

2. A dispute resolution agreement to which the Tribe is a party or which is sought to be enforced against the Tribe shall be narrowly construed and strictly limited to its terms, including with respect to the issues and disputes subject to dispute resolution, the extent to which dispute resolution is permitted or required, and the courts which may hear any matter related to the dispute resolution agreement;

3. Any reference to courts generally or courts of competent jurisdiction in a dispute resolution agreement to which the Tribe is a party or contract subject to or containing a dispute resolution agreement shall mean the Court and not include any court which could not exercise jurisdiction over the Tribe or the matter in the absence of the dispute resolution agreement or the contract subject to or containing the dispute resolution agreement;

4. No dispute resolution agreement to which the Tribe is a party or which is sought to be enforced against the Tribe shall be construed to extend to:

a. Any dispute or matter which is a regulatory or other law enforcement action or matter, including the imposition of a civil fine under this Code; or

b. Any dispute or review of a dispute where applicable law provides another exclusive or specific remedy or procedure for the dispute;

5. No arbitration agreement to which the Tribe is a party or which is sought to be enforced against the Tribe shall permit any claim or recovery for indirect, incidental, special, exemplary, punitive, consequential, or other non-direct damages, including loss of profit, loss of business, and loss of goodwill through arbitration;

6. If an arbitration agreement to which the Tribe is a party or which is sought to be enforced against the Tribe or a contract subject to or containing an arbitration agreement limits the amount of recovery the Tribe may seek or obtain against the other party, such limit shall also apply to the amount of recovery the other party may seek or obtain against the Tribe and any claim for amounts over such limit against the

Tribe shall not be subject to arbitration or actionable or enforceable against the Tribe in any manner;

7. No dispute resolution agreement to which the Tribe is a party or which is sought to be enforced against the Tribe shall permit any dispute to be brought against the Tribe in dispute resolution by third parties or others not full parties to the dispute resolution agreement;

8. No person may join or interplead the Tribe or otherwise force it to participate in any dispute resolution between other parties without the express written agreement of the Tribe;

9. No third party may join, intervene, or otherwise become a party to dispute resolution against or involving the Tribe without the express written agreement of the Tribe, even if the Tribe is already a party to the dispute resolution;

10. The authority to enter into an arbitration agreement shall not and can not be delegated by the Tribal Council or, in the case of an enterprise or instrumentality of the Tribe, the board of directors of the enterprise or instrumentality, to any department, agency, commission, board, subdivision, official, officer, agent, or employee;

11. No department, agency, commission, board, subdivision, official, officer, agent, or employee of the Tribe or any enterprise or instrumentality of the Tribe has the authority to enter into any arbitration agreement on behalf of the Tribe, enterprise, or instrumentality;

12. No term, provision, or language in a dispute resolution agreement asserting, declaring, or agreeing that the dispute resolution agreement or any provision therein is irrevocable, valid, or enforceable shall supersede the provisions of this Chapter;

13. A dispute resolution agreement made in violation of this Section shall be illegal, made without legal capacity or authority, and void, provided that if a dispute resolution agreement made in violation of this Section cannot be deemed void or unenforceable for any reason:

a. Notwithstanding anything to the contrary in its terms, the dispute resolution agreement shall be revocable at law by the Tribe; or

b. If the dispute resolution agreement cannot be revoked, notwithstanding anything to the contrary in its terms, it shall be construed in accordance with the following:

i. The dispute resolution agreement shall be deemed an agreement to submit disputes to dispute resolution at the option, request, or future agreement or consent of the Tribe and not compulsory, mandatory, or exclusive on the part of the Tribe;

ii. The dispute resolution agreement and all doubts and ambiguities therein shall be strictly construed against the other party and solely in favor of and to the benefit of the Tribe and against submission to or compelling of dispute resolution;

iii. Any waiver of sovereign immunity with respect to the dispute resolution agreement, including compelling dispute resolution and confirmation or other enforcement of any award, shall be void and unenforceable and severed from the dispute resolution agreement or contract subject to or containing such agreement, or construed as revocable at law by the Tribe; and

iv. The dispute resolution agreement may only be enforced in the Court and any provision in the dispute resolution agreement purporting to permit enforcement in, or be a consent to jurisdiction to, any court shall be unenforceable and severed or construed as revocable by the Tribe or, if not revocable, solely an agreement to permit enforcement in and/or consent to jurisdiction to the Court.

14. Any provision of a dispute resolution agreement to which the Tribe is a party or a contract with the Tribe subject to or containing a dispute resolution agreement which purports to waive the right or ability of the Tribe to bring, join, or participate in any joint, class, or collective action or to a jury trial shall be void and unenforceable.

**Section 6-12-11. Law Applicable.**

1. The parties to a dispute resolution agreement or a contract subject to or containing a dispute resolution agreement may agree upon all or any of the following:

a. The jurisdiction whose substantive law will be utilized for the construction and interpretation of the dispute resolution agreement, contract subject to or containing such agreement, or any dispute; and

b. The jurisdiction whose substantive law will be utilized for the enforcement of the dispute resolution agreement, contract subject to or containing such agreement, any dispute, or any award.

2. A choice of substantive law in a dispute resolution agreement or a contract subject to or containing a dispute resolution agreement is valid and enforceable, provided:

a. If the dispute resolution agreement is an adhesion contract or contained in an adhesion contract or is with a consumer, the jurisdiction agreed upon is that where the party who is not the drafting party or consumer is located, resides, or is domiciled;

b. At least one of the parties to the dispute resolution agreement, contract, or dispute is closely connected to the jurisdiction agreed upon, except that if the Tribe is a party, only the jurisdiction of the Tribe shall be deemed closely connected under this provision;

c. The dispute resolution agreement or the contract is made, entered into, to be performed, or actually performed in the jurisdiction agreed upon;

d. The dispute arose in the jurisdiction agreed upon; or

e. The subject matter of the dispute resolution agreement, contract, or dispute is otherwise closely connected to the jurisdiction agreed upon.

3. A choice of law in a dispute resolution agreement subject to this Chapter or a contract subject to or containing a

dispute resolution agreement which is otherwise valid and enforceable is subject to the following:

a. If such law is not the laws of the Tribe exclusive of choice of law principles, language such as "governed by," "subject to," or similar import shall mean solely for construction and interpretation of the dispute resolution agreement or the contract and shall not include enforcement, jurisdiction, or authority;

b. If such law is not the laws of the Tribe exclusive of choice of law principles, such law will be limited to the use of the substantive law of the jurisdiction specified solely as a reference for the purpose of construction and interpretation and shall not in any manner constitute or be construed as:

i. A consent or agreement to the jurisdiction, authority, or applicability of such law to any party;

ii. Authorization for the enforcement of any such law against any party or the exercise of any regulatory authority over any party;

iii. An agreement to enforcement of the dispute resolution agreement, including compelling dispute resolution and enforcement of any award, pursuant to such law or in the jurisdiction whose law is specified, unless expressly and unequivocally stated otherwise; or

iv. An agreement to submit any dispute or other matter to the courts or other tribunals of the jurisdiction whose law is specified;

c. Any such law which conflicts with this Chapter shall not be applied or used and the provisions of this Chapter shall govern, apply, and be used;

d. If the use or application of any principle, portion, or provision of such law would result in a party being in violation of or acting contrary to the laws of the Tribe otherwise applicable to the party, such principle, portion, or provision of such law shall not be applied or used; and

e. Any other limitations or requirements in the laws of the Tribe regarding choice of law in a contract.

4. If a choice of law in a dispute resolution agreement or a contract subject to or containing a dispute resolution agreement is not valid and enforceable, the dispute resolution agreement or the contract shall be deemed to not specify any law to be utilized for its construction and interpretation or enforcement.

5. If a dispute resolution agreement or a contract subject to or containing a dispute resolution agreement does not specify the law to be utilized for the construction and interpretation of the dispute resolution agreement, the dispute resolution agreement shall be construed and interpreted in accordance with the following:

a. If the contract specifies the substantive law governing it or its interpretation and construction, such specified law shall be utilized for the construction and interpretation of the dispute resolution agreement, subject to the limitations in this Section or elsewhere in the laws of the Tribe;

b. If the contract does not specify any substantive law governing it or its interpretation and construction, the dispute resolution agreement shall be governed by and interpreted and construed exclusively in accordance with the laws of the Tribe, including this Chapter and exclusive of any choice of law principles, regardless of:

i. The location where the dispute resolution is or may be held; or

ii. Any designation of a court or tribunal for disputes or the enforcement of the dispute resolution agreement or the contract.

6. If a dispute resolution agreement or a contract subject to or containing a dispute resolution agreement does not specify the law governing or to be utilized for enforcement of the dispute resolution agreement, including compelling dispute resolution and confirming or enforcing any award, this Chapter shall exclusively govern enforcement of the dispute resolution agreement, including compelling dispute resolution and confirming and enforcing any award, regardless of:



a. Whether the dispute resolution agreement or the contract specifies the law governing or to be utilized for the dispute resolution agreement or the contract, including the law governing or to be utilized for either of their interpretation or construction;

b. The location where the dispute resolution is or may be held; or

c. Any designation of a court or tribunal for disputes or the enforcement of the dispute resolution agreement, contract, or an award.

7. In any proceeding where a dispute resolution agreement or a contract subject to or containing a dispute resolution agreement is subject to interpretation and construction or enforcement in accordance with the law of another jurisdiction as provided in this Section, the Court shall apply the substantive law of the other jurisdiction in accordance with this Section, but the proceedings will otherwise be governed by the rules of procedure for the Court.

#### **Section 6-12-12. Choice of Tribunal.**

1. The parties to a dispute resolution agreement or a contract subject to or containing a dispute resolution agreement may agree upon the jurisdiction, court, or other tribunal which will hear any dispute or enforcement action relating to the dispute resolution agreement.

2. If a dispute resolution agreement or a contract subject to or containing a dispute resolution agreement does not specify the jurisdiction, court, or other tribunal which will hear any dispute or enforcement action relating to the dispute resolution agreement, the Court shall have exclusive jurisdiction to hear any dispute or any enforcement action, including compelling dispute resolution and confirming or enforcing any award, regardless of:

a. Whether the dispute resolution agreement or the contract specifies the law governing or to be utilized for the dispute resolution agreement or the contract, including the law governing or to be utilized for either of their interpretation or construction or for enforcement; or

b. The location where the dispute resolution is or may be held.

**Section 6-12-13. Breach of Dispute Resolution Agreement.**

1. If a party is in material breach of a dispute resolution agreement or otherwise in default of the dispute resolution, the party waives the party's right to compel dispute resolution under the dispute resolution agreement.

2. If a dispute resolution agreement requires, either expressly or through application of any law of any jurisdiction or any rule of the dispute resolution provider organization, a particular party to pay certain fees and costs before the dispute resolution can proceed, if the fees or costs to initiate dispute resolution are not paid within thirty (30) days after the due date, the party is in material breach of the dispute resolution agreement and in default of the dispute resolution.

3. If a party materially breaches the dispute resolution agreement or is in default under the dispute resolution, the other party may do any of the following:

a. Properly refuse to negotiate, mediate, or arbitrate the dispute, or withdraw the dispute from an existing dispute resolution, and proceed in a court of appropriate jurisdiction with the statute of limitations governing any dispute brought in dispute resolution tolled as of the date of the first filing of the dispute in dispute resolution; or

b. Compel dispute resolution with the breaching or defaulting party required to pay all reasonable attorney's fees and costs related to the dispute resolution and compelling thereof.

**Section 6-12-14. Appointment of Mediator or Arbitrator.**

1. If a dispute resolution agreement provides a method of appointing a mediator or arbitrator, that method shall be followed.

2. If a dispute resolution agreement does not provide a method for appointing a mediator or arbitrator, the parties to the dispute resolution agreement who are to participate in the

dispute resolution may agree on a method of appointing a mediator or arbitrator and that method shall be followed.

3. In the absence of an agreed method for appointing a mediator or arbitrator, if the agreed method fails or for any reason cannot be followed, or if a mediator or arbitrator appointed fails to act and a successor has not been appointed, any party to the dispute resolution agreement who is to participate in the dispute resolution may file a complaint for appointment of a mediator or arbitrator and the Court shall appoint a mediator or arbitrator as provided in this Section.

4. When the Court will appoint a mediator or arbitrator under this Chapter, the Court shall nominate five (5) persons from lists of persons supplied jointly by the parties to the dispute resolution or obtained from a governmental department, agency, or branch or from a disinterested dispute resolution provider organization. The parties who will participate in the dispute resolution may within five (5) days of receipt of notice of the nominees from the Court jointly select the mediator or arbitrator whether or not the mediator or arbitrator is among the nominees. If the parties fail to select a mediator or arbitrator within the five (5) day period, the Court shall appoint the mediator or arbitrator from the nominees.

5. A party shall have the right to disqualify one court-appointed mediator or arbitrator without cause in any single mediation or arbitration, and may petition the Court to disqualify a subsequent appointee only upon a showing of cause.

#### **Section 6-12-15. Conduct of Mediators and Arbitrators.**

1. A person serving as a mediator or arbitrator pursuant to a dispute resolution agreement shall conform their conduct to such rules or code of conduct adopted by or designated by the Law and Justice Committee of the Tribe. In the absence of such rules or code of conduct, a person serving as a mediator or arbitrator pursuant to a dispute resolution agreement shall conform their conduct to the same rules or code of conduct governing judges of the Court.

2. In any dispute resolution pursuant to a dispute resolution agreement subject to this Chapter, within ten (10) calendar days of service of notice of a proposed nomination or appointment, a proposed mediator or arbitrator shall disclose, by written declaration under penalty of perjury, all matters

that could cause a person aware of the facts to reasonably entertain a doubt that the proposed mediator or arbitrator would be able to be impartial, including all of the following:

a. The existence of any ground specified in the laws of the Tribe for disqualification of a judge;

b. Any financial or personal interest in the outcome of the dispute resolution;

c. Whether or not the proposed mediator or arbitrator has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in, or, within the last two (2) years, has participated in, discussions regarding such prospective employment or service with a party to the proceeding;

d. The names of the parties to all prior or pending cases in which the proposed mediator or arbitrator served or is serving as a mediator or arbitrator for any party to the dispute resolution or for legal counsel for a party and the results of each case mediated or arbitrated to conclusion, including the date of the award, identification of the prevailing party, the names of the parties' attorneys and the amount of monetary damages awarded, if any; and

e. Any existing or past relationship the proposed mediator or arbitrator or his or her immediate family has or has had with any party to the dispute resolution agreement or dispute resolution, their legal counsel or representatives, or any witness.

3. A mediator or arbitrator has a continuing obligation to disclose the information required in this Section and any facts which a reasonable person would consider likely to affect the impartiality of the arbitrator to all parties to the dispute resolution agreement and dispute resolution that the mediator or arbitrator learns after accepting appointment.

4. An appointed mediator or arbitrator who does not disclose information required by this Section, any other known, direct, and material interest in the outcome of the dispute resolution, or a known, existing, and substantial relationship

with a party is presumed to act with evident partiality and bias.

5. A proposed mediator or arbitrator shall be disqualified if he or she fails to comply with the disclosure requirements of this Section and any party entitled to receive the disclosure serves a notice of disqualification within fifteen (15) calendar days after the proposed mediator or arbitrator fails to comply.

6. A proposed mediator or arbitrator shall be disqualified on the basis of the disclosure statement required under this Section after any party entitled to receive the disclosure serves a notice of disqualification within fifteen (15) calendar days after service of the disclosure statement.

7. If any ground specified for disqualification of a judge under the laws of the Tribe exists, a mediator or arbitrator shall disqualify himself or herself upon the demand of any party made before the conclusion of the dispute resolution.

8. Before a dispute arises that is subject to a dispute resolution agreement, a party to the agreement may not waive any provision of this Section.

#### **Section 6-12-16. Negotiation and Mediation Privilege.**

1. Except as otherwise provided in this Section, a statement, whether oral, in writing, verbal, or nonverbal, made during a negotiation or mediation or for purposes of negotiation or mediation is confidential, privileged, and not subject to discovery or admissible in evidence in any proceeding unless waived.

2. The privilege under this Section may be claimed, and a statement prevented from disclosure, as follows:

a. A party to the negotiation or mediation may refuse to disclose, and may prevent any other person from disclosing, a privileged statement of anyone;

b. A mediator may refuse to disclose a privileged statement by anyone and may prevent any other person from disclosing a privileged statement of the mediator;

c. Another participant in the negotiation or mediation may refuse to disclose, and may prevent any other person from disclosing, a privileged statement of the participant.

3. A privilege under this Section may be waived in writing or orally during a proceeding if it is expressly waived by all parties to the negotiation or mediation and:

a. In the case of the privilege of a mediator, expressly waived by the mediator; and

b. In the case of the privilege of a participant in the negotiation or mediation who is not a party, expressly waived by the participant.

4. The privilege in this Section does not apply to a statement that is:

a. In a written agreement signed by all parties to the agreement, including a dispute resolution agreement;

b. In a written award signed by all the parties to be bound thereby;

c. Made during a session of a negotiation or mediation which is open, or is required by law to be open, to the public;

d. A threat or statement of a plan to inflict bodily injury or commit a crime of violence;

e. Intentionally used to plan, commit, attempt to commit, or conceal a crime, criminal activity, or violation of law punishable by civil fine;

f. Offered or used in a court proceeding related to or involving the negotiation or mediation, provided that the court takes all necessary actions to protect the privileged statement from disclosure to third parties not entitled to the statement;

g. Sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator, negotiation or mediation party, other participant in the negotiation or mediation, or

representative of a party based on conduct occurring during a negotiation or mediation;

h. Sought or offered to prove or disprove a claim or complaint of validity or invalidity of a mediation award based on the partiality, bias, corruption, or misconduct of the mediator; or

i. Sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation.

5. If a statement is not privileged under this Section, only the portion of the communication necessary for the application of the exception from nondisclosure may be admitted.

6. The privilege provided in this Section does not relieve a person from any duty imposed pursuant to applicable law requiring reporting of abuse, neglect, abandonment, or exploitation.

7. Before a dispute arises that is subject to a dispute resolution agreement, a party to the agreement may not waive any provision of this Section.

#### **Section 6-12-17. Authority of Arbitrator.**

1. Except as otherwise provided in this Chapter, an arbitrator shall have only the power and authority granted by the parties in the arbitration agreement.

2. Notwithstanding the terms of any dispute resolution agreement, the terms of any contract subject to or containing a dispute resolution agreement, any rule of a dispute resolution provider organization, or any other provision of any law of any jurisdiction, an arbitrator may certify a question of law to the Court as provided in this Title the same as any court of another jurisdiction, including questions regarding the applicability, interpretation, and construction of this Chapter.

3. Subject to any limitations in this Chapter or the arbitration agreement, an arbitrator may issue such orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the dispute, to the same extent and under the same conditions as if the dispute were the subject of a civil action,

provided that a party to an arbitration proceeding may move the Court for a provisional remedy if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.

4. Notwithstanding the terms of any dispute resolution agreement, the terms of any contract subject to or containing a dispute resolution agreement, any rule of a dispute resolution provider organization, or any other provision of any law of any jurisdiction, no arbitrator has the power or authority to:

a. Declare any law of the Tribe unconstitutional or unenforceable;

b. Determine whether an arbitration agreement is subject to this Chapter;

c. Determine the validity or enforceability of an arbitration agreement subject to this Chapter; or

d. Hear, determine, make or issue an award upon, or in any manner conduct an arbitration related to any dispute not subject to arbitration or other dispute resolution under this Chapter or the terms of the arbitration agreement.

#### **Section 6-12-18. Conduct of Arbitration.**

1. Unless the arbitration agreement provides otherwise or the parties to the arbitration otherwise provide by separate written agreement:

a. An arbitration shall be by a single neutral arbitrator;

b. If there is more than one arbitrator:

i. The powers and duties of the arbitrators may be exercised by a majority of the arbitrators; or

ii. By unanimous agreement of the arbitrators, the powers and duties of the arbitrators may be delegated to one of them, provided the power to make or correct the arbitration award may not be so delegated;



c. An arbitrator may permit such discovery as the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration and other affected persons and the desirability of making the proceeding fair, expeditious, and cost effective;

d. If an arbitrator permits discovery as provided in this subsection, the arbitrator may order a party to the arbitration to comply with the arbitrator's discovery-related orders and take action against a noncomplying party to the extent the Court could under the Tribal Rules of Civil Procedure;

e. The arbitrator shall appoint a time and place for the hearing on the merits and cause notice thereof to be served in the same manner as service of a summons under the Tribal Rules of Civil Procedure on the parties to the arbitration not less than sixty (60) days before the hearing, provided that appearance at an arbitration hearing waives any right to notice;

f. Each party shall within fifteen (15) days of receipt of notice of a hearing on the merits have the right to demand in writing that the other party provide a list of witnesses it intends to call, designating which witnesses will be called as expert witnesses, and a list of documents it intends to introduce at the hearing, with a copy of such demand and all such lists served on the arbitrator and all listed documents made available for inspection and copying at reasonable times prior to the hearing;

g. An arbitrator may conduct an arbitration in such manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding;

h. An arbitrator may hold conferences with the parties to the arbitration before the hearing;

i. The arbitrator may adjourn a hearing from time to time as necessary;

j. On request of a party to the arbitration for good cause, or upon the arbitrator's own determination, the arbitrator may postpone the hearing to a time not later

than the date fixed for making the arbitration award or to a later date if the parties to the arbitration consent;

k. The arbitrator shall preside at the hearing, rule on the admission and exclusion of evidence and on questions of hearing procedure, and exercise all powers relating to the conduct of the hearing;

l. Rules of evidence and rules of judicial procedure need not be observed;

m. On request of any party to the arbitration, the testimony of witnesses shall be given under oath;

n. Upon request of a party to or a witness in an arbitration, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be summoned for or is unable to attend a hearing, provided the arbitrator shall determine the conditions under which the deposition is taken;

o. An arbitrator may decide a request for summary disposition of a dispute or particular issue:

i. If all interested parties agree; or

ii. Upon request of one party to the arbitration if that party gives notice to all other parties to the arbitration and the other parties have a reasonable opportunity to respond; and

p. If an arbitrator intends to base an arbitration award upon information not obtained at the hearing, the arbitrator shall disclose the information to all parties to the arbitration and give the parties an opportunity to respond to it and present evidence on the information.

2. The parties to an arbitration are entitled to be heard, present evidence, and cross-examine witnesses appearing at the hearing.

3. An arbitrator may not determine the dispute or issue an award based solely on the default of a party. However, if a court has ordered a person to arbitrate a dispute, the arbitrator may hear and determine the dispute upon the evidence

produced notwithstanding the failure of a party ordered to arbitrate, who has been duly notified, to appear.

4. An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent the Court could if the controversy were the subject of a civil action in the Court. A party may petition the Court to confirm such protective order and enter the same as an order of the Court. If an arbitrator fails or refuses to enter a protective order, a party may seek such protective order from the Court.

5. An arbitrator may issue a summons in writing for the attendance of a witness and for the production of records and other evidence at any hearing or discovery proceeding authorized by the arbitration and may administer oaths. A summons from an arbitrator shall:

a. Be issued in the name of and signed by the arbitrator;

b. Be directed to the person required to attend and testify or provide documentary or physical evidence;

c. Describe with particularity any documentary or physical evidence to be provided; and

d. Be served in the same manner as subpoenas issued by the Court.

6. If a person summoned as provided in this Section refuses to appear or testify or to provide the evidence set forth in the summons, the arbitrator may request the Court to issue a subpoena requiring attendance and testimony of such person or the production of evidence, as the case may be. Upon a showing of sufficient relevancy and admissibility and subject to applicable laws related to privilege and confidentiality, the Court shall issue such subpoena which shall be served and have the same effect as a subpoena issued for a proceeding pending before the Court.

7. A party to an arbitration has the right to have a certified reporter transcribe any deposition, proceeding, or hearing. The transcript shall be the official record of the deposition, proceeding, or hearing. In the case of an

arbitration agreement which is an adhesion contract or contained in an adhesion contract or with a consumer, notwithstanding any provision of the arbitration agreement or contract to the contrary, the drafting party shall incur the expense and pay for the certified reporter and transcript. In all other cases, if the arbitration agreement does not provide for a certified reporter, the party requesting the transcript shall incur the expense of the certified reporter. If an arbitrator refuses to allow a party to have a certified reporter transcribe any deposition, proceeding, or hearing pursuant to this subsection, the party may petition the Court for an order to compel the arbitrator to grant the party's request.

8. An arbitration award shall include a determination of all the questions submitted to the arbitrator the decision of which is necessary in order to determine the dispute.

9. The arbitrator shall serve a signed copy of the arbitration award on each party to the arbitration personally or by registered or certified mail or as provided in the agreement.

10. The arbitrator shall make an arbitration award within the time fixed therefor by the arbitration agreement or other agreement of the parties or, if not so fixed, within such time as the Court orders on petition of a party to the arbitration. The parties to the arbitration may extend the time either before or after the expiration thereof. A party to the arbitration waives the objection that an arbitration award was not made within the time required unless the party gives the arbitrator written notice of the party's objection prior to the service of a signed copy of the arbitration award on the party. The making of an arbitration award after such objection does not render the arbitration award timely.

11. If an arbitrator ceases or is unable to act during the arbitration, a replacement arbitrator must be appointed in accordance with this Chapter to continue the arbitration and resolve the dispute.

12. Notwithstanding any dispute resolution agreement, any contract, any rule of a dispute resolution provider organization, or any other provision of any law of any jurisdiction, no costs, expenses, or fees of another party may be awarded against Tribe and any provision of an arbitration agreement, contract, or arbitration award providing otherwise shall be void and unenforceable.

13. Except where this Section expressly permits an arbitration agreement to provide otherwise, before a dispute arises that is subject to an arbitration agreement, a party to the agreement may not waive any provision of this Section. Notwithstanding the foregoing, any rule of a dispute resolution provider organization, or any other provision of any law of any jurisdiction, a party to an arbitration agreement may not agree to waive or unreasonably restrict any right under this Section to notice of the initiation of an arbitration, conference, or hearing.

#### **Section 6-12-19. Requirements of Award.**

1. An award in negotiation shall be in writing and signed by all parties to the negotiation who agree to the award or are to be bound thereby.

2. An award in mediation shall be in writing and signed by the mediator and all parties to the mediation who agree to the award or are to be bound thereby. If there is more than one mediator, the award must be signed by all mediators.

3. An award in arbitration shall be in writing and signed by the arbitrator. If there is more than one arbitrator, the award must be signed by all arbitrators concurring therein, which must be a majority of the arbitrators or such higher number required by the arbitration agreement or other written agreement of the parties.

4. Unless and until confirmed or vacated as provided in this Chapter, an award has the same force and effect as a contract in writing between the parties to the dispute resolution or signing the award.

5. The provisions of this Section may not be waived.

#### **Section 6-12-20. Stay of Proceedings.**

1. If any cause of action or proceeding is brought in the Court upon any issue referable to dispute resolution under a dispute resolution agreement, upon being satisfied that the issue involved in such cause of action or proceeding is required to be referred to dispute resolution under such agreement and the provisions of this Chapter, the Court shall, on motion of one of the parties, stay the action or proceeding until such

dispute resolution has been had in accordance with the terms of the dispute resolution agreement and the provisions of this Chapter, provided that the applicant for the stay is not in breach of the dispute resolution agreement or in default of such dispute resolution.

2. If a court in another jurisdiction has ordered dispute resolution of an issue which is an issue in an action or proceeding pending before the Court, the Court shall, upon motion of a party to such action or proceeding, stay the action or proceeding until the dispute resolution is had in accordance with the order to submit to dispute resolution or until such earlier time as the Court specifies, provided the order of the other court is otherwise enforceable by the Court pursuant to the laws of the Tribe and does not violate the provisions of this Chapter.

3. If an issue which is subject to dispute resolution under a dispute resolution agreement is severable from the remainder of the cause of action or proceeding, a stay issued under this Section may be with respect to that issue only.

#### **Section 6-12-21. Compelling Dispute Resolution.**

1. A party to a dispute resolution agreement who seeks dispute resolution as specified in the dispute resolution agreement may seek an order compelling another party to the dispute resolution agreement to submit a dispute between them to dispute resolution as designated in the dispute resolution agreement by filing a complaint with the Court in the manner provided in the Rules of Civil Procedure.

2. In addition to any other information required by the laws of the Tribe, a complaint under this Section shall contain the following information:

a. A description of the dispute between the parties alleged to be subject to the dispute resolution agreement;

b. A valid copy of the alleged dispute resolution agreement which requires the parties to submit the dispute to the form of dispute resolution requested, attached as an exhibit;

c. If the dispute resolution agreement is an arbitration agreement with the Tribe, the resolution of the

Tribal Council or, in the case of an enterprise or instrumentality of the Tribe authorized to agree to arbitration, the board of directors of the enterprise or instrumentality, approving and granting the arbitration agreement in accordance with this Chapter;

d. Information demonstrating that the plaintiff has demanded or requested dispute resolution in accordance with the dispute resolution agreement;

e. Information demonstrating that the defendant has refused to participate in dispute resolution with respect to the dispute in accordance with the dispute resolution agreement; and

f. A request that the Court order the defendant to participate in dispute resolution with respect to the dispute in accordance with the dispute resolution agreement.

3. Upon the filing of a complaint under this Section, a summons shall be issued to and served upon each defendant in accordance with the general rules governing the issuance of summons by the Court and service of complaints.

4. Each defendant may file and serve a responsive pleading within the time period provided in the rules of procedure for the Court for answering or responding to a complaint, provided that failure to file a responsive pleading shall not constitute an admission of any allegation contained in the complaint and the plaintiff shall be required to prove all matters alleged in the complaint to obtain an order to compel dispute resolution even in the event of a default on the part of any defendant.

5. The Court shall hear a complaint filed under this Section as it hears other civil matters.

6. The Court shall dismiss the proceeding under this Section as to any person named as a defendant if the Court determines that such person was not bound by or a party to the dispute resolution agreement.

7. Except as otherwise provided in this Section, the Court shall issue an order that the plaintiff and defendant participate in dispute resolution as provided in the dispute

resolution agreement with respect to the dispute set forth in the complaint if the Court determines that:

a. A valid and enforceable dispute resolution agreement exists between the parties;

b. The dispute resolution agreement requires or mandates the parties to submit a dispute between them to the particular dispute resolution requested and is not optional or discretionary on the part of the defendant; and

c. The dispute set forth in the complaint is a dispute subject to dispute resolution under the dispute resolution agreement, including the particular form of dispute resolution requested; and

d. The plaintiff is otherwise entitled to compel the defendant to submit the dispute to the dispute resolution requested.

8. The Court shall not enter an order to submit to dispute resolution if the Court determines that:

a. The right to compel dispute resolution has been waived by the plaintiff;

b. The dispute resolution agreement, by its terms or as a matter of law, only provides for the defendant to submit a dispute to dispute resolution at the discretion, option, request, or consent of the defendant and the defendant has not exercised such discretion or option, made such request, or given such consent;

c. The dispute resolution agreement, by its terms or as a matter of law, otherwise does not mandate or require dispute resolution of the dispute;

d. The dispute is not subject to dispute resolution by the terms of the dispute resolution agreement or pursuant to this Chapter or other applicable law;

e. The terms of the dispute resolution agreement do not provide for the particular form of dispute resolution requested, provided the Court may order the proper form of dispute resolution if otherwise authorized under this Section;



f. The dispute resolution agreement is void, invalid, or otherwise unenforceable against the defendant; or

g. Grounds exist for rescission of the dispute resolution agreement and the defendant has not waived or declined to exercise such rescission; or

h. The plaintiff is otherwise not entitled to compel the defendant to submit the dispute to the dispute resolution requested

9. If the dispute resolution agreement is an arbitration agreement and the Court determines that a party to the arbitration agreement is also a party to a pending action or proceeding with a third party, arising out of the same transaction or series of related transactions, and there is a possibility of conflicting rulings on a common issue of law or fact, including a pending action or proceeding initiated by the party refusing to arbitrate after the complaint was filed, but prior to a final hearing on the complaint, the Court shall not enter an order to arbitrate, but may:

a. Refuse to enforce the arbitration agreement and order intervention or joinder of all parties in a single action or proceeding;

b. Order intervention or joinder as to all or only certain issues;

c. Order arbitration among the parties who have agreed to arbitration and stay the pending action or proceeding pending the outcome of the arbitration proceeding; or

d. Stay arbitration pending the outcome of the action or proceeding.

10. If the Court determines that a valid and enforceable dispute resolution agreement between the parties exists and governs the dispute, an order to submit that dispute to dispute resolution may not be refused on the ground that the plaintiff's contentions lack substantive merit.

11. If the Court determines that there are other issues between the plaintiff and defendant, or involving either of them, which are not subject to dispute resolution as provided in the dispute resolution agreement and which are the subject of a pending action or proceeding between the plaintiff and defendant and that a determination of such issues may make the dispute resolution unnecessary, the Court may delay its order to submit to dispute resolution until the determination of such other issues or such earlier time as the Court specifies.

12. An order issued in a proceeding under this Section is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

#### **Section 6-12-22. Consolidating Arbitrations.**

1. A party to an arbitration agreement may petition the Court to consolidate separate arbitration proceedings, and the Court may order consolidation of separate arbitration proceedings when separate arbitration agreements or proceedings exist between the same parties and either:

a. The disputes arise from the same transaction or occurrence or series of related transactions or occurrences; or

b. There is one or more common issues of law or fact creating the possibility of conflicting rulings by more than one arbitrator.

2. If all of the applicable arbitration agreements name the same arbitrator or dispute resolution provider organization, the Court shall order the consolidated arbitration to be heard before the arbitrator or dispute resolution provider organization agreed to by the parties. If the applicable arbitration agreements name separate arbitrators or dispute resolution provider organizations, the Court shall, in the absence of an agreed method of selection by all parties to the consolidated arbitration, appoint an arbitrator for the consolidated arbitration in accordance with this Chapter.

3. In the event that the arbitration agreements governing consolidated arbitrations contain inconsistent provisions, the Court shall resolve such conflicts and determine the rights and duties of the various parties to achieve substantial justice

under all the circumstances, subject to the provisions of this Chapter.

4. The Court may exercise its discretion under this Section to deny consolidation of separate arbitration proceedings or to consolidate separate arbitration proceedings only as to certain issues, leaving other issues to be resolved in separate proceedings.

#### **Section 6-12-23. Confirmation of Award.**

1. Any party to dispute resolution in which an award has been made may seek an order confirming the award by filing a complaint with the Court in the manner provided in the Rules of Civil Procedure.

2. A complaint to confirm an award shall name as defendants all parties to the dispute resolution. The complaint may also name as defendants any other persons bound by the award.

3. In addition to any other information required by the laws of the Tribe, a complaint under this Section shall contain the following information:

a. A valid copy of the dispute resolution agreement attached as an exhibit;

b. If the dispute resolution agreement is an arbitration agreement with the Tribe, the resolution of the Tribal Council or, in the case of an enterprise or instrumentality of the Tribe authorized to agree to arbitration, the board of directors of the enterprise or instrumentality, approving and granting the arbitration agreement in accordance with this Chapter;

c. If the award is from mediation or arbitration:

i. The names of all mediators or arbitrators, as the case may be, who made the award; and

ii. Information on the selection or appointment of the mediator or arbitration;

d. Each extension of time, if any, agreed to or granted to make the award;

e. A valid copy of the award, signed as required by this Chapter, attached as an exhibit;

f. If the award is an arbitration award:

i. Any written opinion of the arbitrator, attached as an exhibit; and

ii. Evidence that the award was served on each party to the dispute resolution as required by this Chapter; and

g. A request that the Court confirm the award and issue a judgement thereon.

4. Upon the filing of a complaint under this Section, a summons shall be issued to and served upon each defendant in accordance with the general rules governing the issuance of summons by the Court and service of complaints.

5. Each defendant may file and serve a responsive pleading within the time period provided in the rules of procedure for the Court for answering or responding to a complaint, provided that failure to file a responsive pleading shall not constitute an admission of any allegation contained in the complaint and the plaintiff shall be required to prove all matters alleged in the complaint to obtain an order confirming an award even in the event of a default on the part of any defendant. A responsive pleading may include a request for the Court to vacate, modify, or correct the award in accordance with this Chapter.

6. The Court shall hear a complaint filed under this Section as it hears other civil matters.

7. The Court shall dismiss the proceeding under this Section as to any person named as a defendant if the Court determines that such person was not bound by the award and was not a party to the dispute resolution.

8. Except for vacating, modifying, or correcting an award as provided in this Chapter, an award shall not be subject to review by or appeal to the Court unless the dispute resolution agreement expressly provides otherwise, but shall be confirmed as rendered by the parties, mediator, or arbitrator.

9. The Court shall confirm an award under this Section as made, whether rendered in the territory of the Tribe or another jurisdiction, and enter a judgment accordingly, unless:

a. The award was made with respect to a dispute or including an issue which is not permitted to be resolved by dispute resolution pursuant to this Chapter or other applicable law;

b. The award does not meet the requirements of this Chapter, including signing requirements;

c. The award is required to be vacated, modified, or corrected in accordance with this Chapter and is so vacated, modified, or corrected; or

d. The proceedings are dismissed.

10. A judgment entered on an award under this Section has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action of the Court and may be enforced like any other judgment of the Court.

11. An order or judgment issued in a proceeding under this Section is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

#### **Section 6-12-24. Vacating and Modifying Arbitration Award.**

1. An arbitrator, upon written application of a party to the arbitration, may modify or correct an arbitration award upon any of the grounds set forth in this Section, because the arbitrator has not made a final and definite award upon a dispute submitted by the parties to the arbitration, or to clarify the award. Such an application must be submitted not later than thirty (30) days after service of a signed copy of the arbitration award on the applicant. Upon or before making such application, the applicant shall deliver or mail a copy of the application to all of the other parties to the arbitration. Any party to the arbitration may make written objection to such application not later than ten (10) days after the application is delivered or mailed to the objector. The arbitrator shall either deny the application or correct the arbitration award in writing and signed by the arbitrator or, if there is more than

one, all arbitrators concurring therein. The arbitrator shall serve a signed copy of such denial or correction on each party to the arbitration personally or by registered or certified mail or as provided in the arbitration agreement. If no decision on the application is served within thirty (30) days of filing, the application for correction shall be deemed denied on the last day thereof. An application to correct an arbitration award and the decision of an arbitrator thereon shall not effect a party's right to seek vacation, modification, or correction by the Court as provided in this Section.

2. Any party to an arbitration in which an arbitration award has been made may seek an order vacating, modifying, or correcting the arbitration award by filing a complaint with the Court in the manner provided in the Rules of Civil Procedure.

3. A complaint to vacate, modify, or correct an arbitration award shall name as defendants all parties to the arbitration. The complaint may also name as defendants any other persons bound by the arbitration award.

4. In addition to any other information required by the laws of the Tribe, a complaint under this Section shall contain the following information:

a. A valid copy of the arbitration agreement attached as an exhibit;

b. If the arbitration agreement is with the Tribe, the resolution of the Tribal Council or, in the case of an enterprise or instrumentality of the Tribe authorized to agree to arbitration, the board of directors of the enterprise or instrumentality, approving and granting the arbitration agreement in accordance with this Chapter;

c. The names of all arbitrators who made the arbitration award;

d. Information on the selection or appointment of the arbitrator;

e. A valid copy of the arbitration award and written opinion of the arbitrator, if any, attached as an exhibit;

f. The basis for vacating, modifying, or correcting the arbitration award, as the case may be;

g. Unless the plaintiff requests the arbitration award be vacated, the manner in which the plaintiff seeks the arbitration award be modified or corrected, as appropriate; and

h. A request that the Court vacate, modify, or correct the arbitration award, as the case may be.

5. Upon the filing of a complaint under this Section, a summons shall be issued to and served upon each defendant in accordance with the general rules governing the issuance of summons by the Court and service of complaints.

6. Each defendant may file and serve a responsive pleading within the time period provided in the rules of procedure for the Court for answering or responding to a complaint, provided that failure to file a responsive pleading shall not constitute an admission of any allegation contained in the complaint and the plaintiff shall be required to prove all matters alleged in the complaint to obtain an order vacating, modifying, or correcting an arbitration award even in the event of a default on the part of any defendant. A responsive pleading may include a request for the Court to confirm the arbitration award in accordance with this Chapter.

7. The Court shall hear a complaint filed under this Section as it hears other civil matters.

8. The Court shall dismiss the proceeding under this Section as to any person named as a defendant if the Court determines that such person was not bound by the arbitration award and was not a party to the arbitration.

9. The Court shall vacate an arbitration award if the Court determines any of the following:

a. The arbitration award was procured by corruption, fraud, or other undue means;

b. There was:

i. Evident partiality or bias by an arbitrator;

ii. Corruption by an arbitrator; or

iii. Misconduct by an arbitrator prejudicing the rights of a party;

c. The arbitration award does not meet the requirements of this Chapter, including being made or signed by the required number of arbitrators;

d. The arbitrator exceeded the arbitrator's powers or authority and the arbitration award cannot be corrected without affecting the merits of the decision upon the dispute submitted;

e. The rights of the party were substantially prejudiced by the refusal of the arbitrator to postpone the hearing upon sufficient cause being shown therefor;

f. The rights of the party were substantially prejudiced by the refusal of the arbitrator to hear evidence material to the dispute;

g. The arbitration was conducted without proper notice of the initiation of an arbitration or the hearing so as to substantially prejudice the rights of the party;

h. The rights of the party were substantially prejudiced by other conduct of the arbitrator;

i. An arbitrator making the arbitration award either:

i. Failed to disclose a ground for disqualification of which the arbitrator was then aware; or

ii. Was subject to disqualification but failed upon receipt of timely demand to disqualify himself or herself;

j. There was no arbitration agreement, unless the defendant participated in the arbitration without raising an objection within a reasonable time of knowing there was no valid arbitration agreement; or

k. The arbitration agreement was void, invalid, or unenforceable, unless the basis for the agreement being void, invalid, or unenforceable was waivable and the



defendant participated in the arbitration without raising an objection within a reasonable time of knowing it was voidable, invalid, or unenforceable.

10. If the Court vacates an arbitration award, the arbitration award shall be void, unenforceable, and not subject to confirmation or enforcement in any jurisdiction, provided that the Court may order a rehearing before a new arbitrator if not contrary to the arbitration agreement.

11. Unless it vacates the arbitration award pursuant to this Section, the Court shall modify or correct an arbitration award and confirm it as modified or corrected if the Court determines that:

a. There was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the arbitration award;

b. The arbitrator made an award on a dispute or issue not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the dispute or issue submitted;

c. The arbitrator exceeded the arbitrator's power or authority but the arbitration award may be corrected without affecting the merits of the decision upon the dispute submitted;

d. The arbitration award is imperfect in a matter of form, not affecting the merits of the dispute; or

e. Modification or correction is necessary so as to make the arbitration award comply with this Chapter or other applicable law or to affect the intent of the arbitration award and promote justice between the parties.

12. An order or judgment issued in a proceeding under this Section is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

#### **Section 6-12-25. Vacating and Modifying Mediation Award.**

1. A mediator, upon written application of all parties bound by the award or provision to be corrected, may correct a mediation award upon any of the grounds set forth in this

Section or to clarify the award not later than thirty (30) days after the award is signed by all parties to the mediation. Upon or before making such application, the applicant shall deliver or mail a copy of the application to all of the other parties to the mediation not joining in the application. Any party to the mediation not joining in the application may make written objection to such application not later than ten (10) days after the application is delivered or mailed to the objector. The mediator shall either deny the application or correct the award in writing and signed by the mediator. The mediator shall serve a signed copy of such denial or correction on each party to the mediation personally or by registered or certified mail or as provided in the mediation agreement. If no decision on the application is served within thirty (30) days of filing, the application for correction shall be deemed denied on the last day thereof. An application to correct a mediation award and the decision of the mediator thereon shall not effect a party's right to seek vacation, modification, or correction by the Court as provided in this Section.

2. Any party to a mediation in which a mediation award has been made may seek an order vacating, modifying, or correcting the mediation award by filing a complaint with the Court in the manner provided in the Rules of Civil Procedure.

3. A complaint to vacate, modify, or correct a mediation award shall name as defendants all parties to the mediation. The complaint may also name as defendants any other persons bound by the mediation award.

4. In addition to any other information required by the laws of the Tribe, a complaint under this Section shall contain the following information:

a. A valid copy of the mediation agreement attached as an exhibit;

b. The name of the mediator who made the mediation award;

c. Information on the selection or appointment of the mediator;

d. A valid copy of the mediation award, attached as an exhibit;

e. The basis for vacating, modifying, or correcting the mediation award, as the case may be;

f. Unless the plaintiff requests the mediation award be vacated, the manner in which the plaintiff seeks the mediation award be modified or corrected, as appropriate; and

g. A request that the Court vacate, modify, or correct the mediation award, as the case may be.

5. Upon the filing of a complaint under this Section, a summons shall be issued to and served upon each defendant in accordance with the general rules governing the issuance of summons by the Court and service of complaints.

6. Each defendant may file and serve a responsive pleading within the time period provided in the rules of procedure for the Court for answering or responding to a complaint, provided that failure to file a responsive pleading shall not constitute an admission of any allegation contained in the complaint and the plaintiff shall be required to prove all matters alleged in the complaint to obtain an order vacating, modifying, or correcting a mediation award even in the event of a default on the part of any defendant. A responsive pleading may include a request for the Court to confirm the mediation award in accordance with this Chapter.

7. The Court shall hear a complaint filed under this Section as it hears other civil matters.

8. The Court shall dismiss the proceeding under this Section as to any person named as a defendant if the Court determines that such person was not bound by the mediation award and was not a party to the mediation.

9. The Court shall vacate a mediation award if the Court determines any of the following:

a. The mediation award was procured by corruption, fraud, or other undue means;

b. The mediation award does not meet the requirements of this Chapter, including being signed by the mediator and all parties to be bound thereby; or

c. The party did not freely assent to the award as a result of:

i. Evident partiality, bias, or corruption in the mediator;

ii. Misconduct of the mediator substantially prejudicing the rights of the party;

iii. The mediator failing to disclose a ground for disqualification of which the mediator was then aware; or

iv. The mediator being subject to disqualification and failing upon receipt of timely demand to disqualify himself or herself.

10. If the Court vacates a mediation award, the mediation award shall be void, unenforceable, and not subject to confirmation in any jurisdiction, provided that the Court may order a new mediation before a new mediator if not contrary to the mediation agreement.

11. Unless it vacates the mediation award pursuant to this Section, the Court shall modify or correct a mediation award and confirm it as modified or corrected if the Court determines that:

a. There was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the mediation award;

b. The mediation award is imperfect in a matter of form, not affecting the substance of the award as agreed between the parties; or

c. Modification or correction is necessary so as to:

i. Make the mediation award comply with this Chapter or other applicable law;

ii. Affect the actual agreement of the parties resulting from the mediation; or

iii. Affect the intent of the mediation award and promote justice between the parties.

12. An order or judgment issued in a proceeding under this Section is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

**Section 6-12-26. Limitations of Actions.**

1. Notwithstanding the terms of any dispute resolution agreement, the terms of any contract, any rule of a dispute resolution provider organization, or any law of any jurisdiction to the contrary, unless the dispute resolution agreement, contract, rule, law, or this Chapter provides a shorter time, dispute resolution or an action to compel dispute resolution or otherwise enforce a dispute resolution agreement must be commenced within six (6) months of the date the dispute accrues.

2. In the event the period of limitations under this Section for commencing dispute resolution or an action to compel dispute resolution or otherwise enforce a dispute resolution agreement has expired or run, the dispute may be brought as a cause of action in a court otherwise having jurisdiction within the period of limitations applicable to the dispute as though the dispute resolution agreement did not exist or had been lawfully revoked.

3. Notwithstanding the terms of any dispute resolution agreement, the terms of any contract, any rule of a dispute resolution provider organization, or any law of any jurisdiction to the contrary, unless the dispute resolution agreement, contract, rule, or law provides a shorter time, an action to confirm, vacate, modify, or correct an award must be commenced within one (1) year after the award is made or, in the case of an arbitration award, served on the party seeking confirmation, vacation, modification, or correction, provided that the limitations period in this paragraph shall not bar or otherwise prevent a party from seeking vacation, modification, or correction of an award as a defense or response to an action seeking confirmation or other enforcement of the award or judgment confirming the award.

**AGENDA ITEM REQUEST**  
(for employees only)

DATE SUBMITTED: 04/ 07/ 23

All Agenda Item Requests must be approved and submitted with all supporting documents to Jan Colwell, Executive Assistant to Tribal Council by 10 AM the Wednesday prior to the Tuesday Council Meeting.

Tribal Council Meeting Date: 04 / 18/ 23

Regular Session   x   Executive Session           

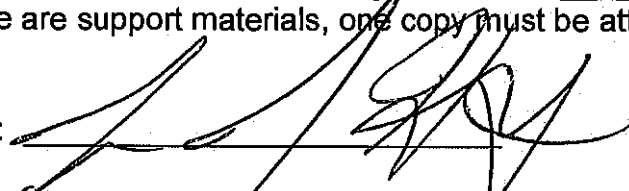
Subject: Additional Media Outreach Tools


ACTION REQUEST: (Please describe request in the form of a motion)

Motion to add TikTok to the official Social Media platforms utilized by the Tribe, and incorporate LinkTree and Flickr into the tools used for media Outreach.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Will there be support materials for this agenda item?   X   Yes        No  
(If there are support materials, one copy must be attached)

Submitted By: 

APPROVED   
Executive Management

Who will be present at the TC Mtg. in regards to this Agenda Item?  
Program Outreach Coordinator Jessica Hitchcock

**AGENDA ITEM REQUEST**  
(for employees only)

DATE SUBMITTED: 4 /20/2023

**All Agenda Item Requests must be approved and submitted with all supporting documents to Jan Colwell, Executive Assistant to Tribal Council by 10 AM the Wednesday prior to the Tuesday Council Meeting.**

Tribal Council Meeting Date: 4/25/2023

Regular Session  Executive Session

Subject: Change Order # 034 Roof Drain Wrap and Column Wrap

ACTION REQUEST: (Please describe request in the form of a motion)

   This action was discussed and vetted by the parties. For safety reasons, it was    decided    that    these    adjustments    need    to    be made. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Will there be support materials for this agenda item?  Yes  No

(If there are support materials, one copy must be attached)

Submitted By: Patrick Jennings

APPROVED  \_\_\_\_\_  
Executive Management

Who will be present at the TC Mtg. in regards to this Agenda Item?

Revised 1/24/23

**AGENDA ITEM REQUEST**  
(for employees only)

DATE SUBMITTED: 04/26/23

All Agenda Item Requests must be approved and submitted with all supporting documents to Jan Colwell, Executive Assistant to Tribal Council by 10 AM the Wednesday prior to the Tuesday Council Meeting.

Tribal Council Meeting Date: 05/02/23

Regular Session  Executive Session

Subject: Position 290 Social Services Administrative Assistant revisions

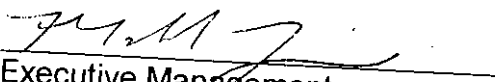
ACTION REQUEST: (Please describe request in the form of a motion)

**Motion #1:** Social Services is requesting the following revisions for position Social Services Administrative Assistant; Title change, Location, Classification status, and duties.

Will there be support materials for this agenda item?  Yes  No

JD #290, Org Charts, Market Review, PTN Salary Grade, Compensation Review Form

Submitted By: Makala Laravie, Interim Human Resources Director

APPROVED   
Executive Management

Who will be present at the TC Mtg. in regards to this Agenda Item?

- Penny Lingle, DDTA
- Courtney Chavez, DDTA
- Stephanie Pospisil, Social Services Director
- Makala Laravie, Interim Human Resources Director



**AGENDA ITEM REQUEST**  
(for employees only)

DATE SUBMITTED: 04/26/2023

**All Agenda Item Requests must be approved and submitted with all supporting documents to Jan Colwell, Executive Assistant to Tribal Council by 10 AM the Wednesday prior to the Tuesday Council Meeting.**

Tribal Council Meeting Date: 05/02/2023

Regular Session  Executive Session

Subject: Carter Lake – Fee Land Contract

ACTION REQUEST: (Please describe request in the form of a motion)

Motion to approve and Contract and Limited Notice to Proceed with Woodstone for demolition/construction on Tribal fee lands in Carter Lake (Wingate). Final Documents takes in changes that received consensus at Tribal Council meeting on 04/18/2023. Contract has been reviewed and approved by Brad Jolly who has reviewed the contract for legality. These documents are companion documents to the Trust Land contracts for Prairie Flower Casino.

Will there be support materials for this agenda item?  Yes  No  
(If there are support materials, one copy must be attached)

Submitted By: Courtney Chavez

APPROVED Courtney Chavez  
Executive Management

Who will be present at the TC Mtg. in regards to this Agenda Item? PJ Jennings, Bill Yunker, Courtney Chavez

Revised 1/24/23