

THREE AFFILATED TRIBES
ARBITRATION ORDINANCE

Summary: This Arbitration Ordinance was required as a condition of the loan made with the Shakopee Mdewakanton Sioux Community. It has a limited application to only that transaction and is intended to codify the arbitration provisions that are and have been required by all lenders to loans made by the Three Affiliated Tribes.

First Read: March 22, 2010 (TBC)

Second Read: May 20, 2010 (TBC)

Public Comment Period _____ to _____ (30 days)

Final Read: _____

Approved as Amended: _____ (Reso. XX-XXX)

ARBITRATION ORDINANCE

Section 1. Short Title and Purpose

- (a) Short title. This Ordinance shall be entitled “The Three Affiliated Tribes Arbitration Ordinance of 2010.”
- (b) Purpose. It is the purpose of this Ordinance to authorize the arbitration of disputes in contractual agreements and to provide for the enforcement of agreements to arbitrate, and the enforcement of resulting arbitration awards, by the dispute resolution body of the Three Affiliated Tribes (the “Tribe”), whether a tribal court, the Three Affiliated Tribes Tribal Council, or other body or forum (“Tribal Court”).

Section 2. Scope of Ordinance and Repeal of Inconsistent Provisions

- (a) Scope. This Ordinance applies initially only to the loan made by to the Tribe by the Shakopee Mdewakanton Sioux Community in the amount of \$30,000,000 pursuant to the Loan Agreement dated January 29, 2010, and thereafter only to such other written contracts or other instruments, or any agreement in any contract or instrument, validly entered into by the Tribe, or by any authorized subdivision, instrumentality, component, or agency of the Tribe, or by any other person in a transaction that is subject to the jurisdiction of the Tribe, in which (1) the parties thereto agree to settle by arbitration any controversy arising out of such contract or instrument, and (2) the Tribal Council designates, by resolution validly approved, that this Ordinance shall apply.
- (b) Inconsistent provisions. Any prior legislation or other laws of the Tribe (“tribal laws”) that are inconsistent with the purpose and procedures established by this Ordinance are hereby repealed to the extent of any such inconsistency. Any prior tribal laws whose principal purpose was to authorize the arbitration of disputes in contractual arrangements or to provide for the enforcement of agreements to arbitrate, are hereby repealed.
- (c) This Ordinance may be amended at any time in accordance with the law of the Tribe; provided, however, that no such amendment shall be applicable to any contract or other instrument within the scope of Section 2(a) hereof, and this Ordinance shall apply in its un-amended form to such contract or other instrument, until the same terminates in accordance with its terms.

Section 3. Enforceability of Agreements to Arbitrate

Any agreement by the Tribe or by any authorized subdivision, instrumentality, component, or agency of the Tribe, validly entered into pursuant to all applicable law and in accordance with Section 2(a) here (an “Authorized Agreement”), shall be valid and enforceable.

Section 4. Law to be Applied

- (a) In any Authorized Agreement, the parties may agree upon the jurisdiction whose substantive law shall govern the interpretation and enforcement of the contract, instrument or controversy. Such choice of law shall be valid and enforceable, and not

subject to revocation by one party without the consent of the other party or parties thereto.

- (b) In any proceeding in the Tribal Court relating to a contract or other instrument within the scope of Section 2(a) hereof, whenever the contract or other instrument in which an Authorized Agreement appears sets forth a choice of law provision, the Tribal Court shall apply the procedural rules of the Tribal Court and the substantive law of the jurisdiction selected in such choice-of-law provision; *provided* that no procedural rule of the Tribal Court shall bar, unreasonably delay or impair any action, proceeding or remedy where such action, proceeding or remedy would not be barred, unreasonably delayed or impaired by the procedural rules of the courts of the jurisdiction whose substantive law applies.
- (c) In any proceeding in the Tribal Court relating to a contract or other instrument within the scope of Section 2(a) hereof, whenever the contract or other instrument does not set forth a choice of law provision, the Tribal Court shall apply the substantive law of the Tribe, including any applicable choice-of-law principles.

Section 5. Stay of Proceedings in Tribal Court and Order to Proceed with Arbitration

- (a) If any action for legal or equitable relief or other proceeding is brought in the Tribal Court by any party to any contract or instrument within the scope of Section 2(a) hereof, the Tribal Court shall not review the merits of the underlying action or proceeding, but shall stay the Tribal Court action or proceeding until an arbitration has been had in compliance with the agreement.
- (b) A party to any contract or other instrument within the scope of Section 2(a) hereof claiming the neglect or refusal of another party thereto to proceed with an arbitration thereunder, may make application to the Tribal Court for an order directing the parties to proceed with arbitration in compliance with their Authorized Agreement. In such event, the Tribal Court shall order the parties to arbitration in accordance with the provisions of the Authorized Agreement and the question of whether an obligation to arbitrate the dispute at issue exists shall be decided by the arbitrator(s).

Section 6. Advice of the Court on Tribal, State or Federal Law

At any time during an arbitration authorized hereunder, upon request of all the parties to the arbitration, the arbitrator(s) may make application to the Tribal Court for advice on any question of Tribal law arising in the course of the arbitration so long as such parties agree in writing that the advice of the Tribal Court shall be final as to the question presented and that it shall bind the arbitrator(s) in rendering any award. The arbitrator(s) may make application to any state or federal court of competent jurisdiction for advice on any question of state or federal law arising in the course of the arbitration so long as such parties agree in writing that the advice of such state or federal court shall be final as to the question presented and that it shall bind the arbitrator(s) in rendering any award.

Section 7. Notice to the Parties

An arbitration award shall be in writing and signed by the arbitrator(s). The arbitrator(s) shall provide written notice of the award to each party as required by applicable law or rule or, if not otherwise so specified, by certified or registered mail, return receipt requested.

Section 8. Application for Order Confirming Award; Record to be Filed with Clerk of Court; Effect and Enforcement of Judgment

- (a) At any time within one year after an arbitration award has been rendered in accordance with this Ordinance and the parties to the award are notified, any party to the arbitration may make application to the Tribal Court for an order confirming the award.
- (b) Any party applying to the Tribal Court for an order confirming an arbitration award shall, at the time the award is filed with the clerk of the Tribal Court for entry of judgment thereon, file true and correct copies of the following papers with the clerk: (1) the agreement to arbitrate; (2) the Tribal Council resolution approving application of this Ordinance; (3) written identification of the arbitrator(s) and any material documenting the selection or appointment of the arbitrator(s); (4) any written agreement requiring the reference of any question as provided in Section 6 hereof; (5) each written extension of the time, if any, within which to make the award; (6) the award; and (7) evidence that all parties to the arbitration have received notice of the filing or the intent to file an application to the Tribal Court for confirmation of the arbitration award.
- (c) An arbitration award shall not be subject to review or modification by the Tribal Court, but shall be confirmed strictly as provided by the arbitrator; *provided* that the Tribal Court may nevertheless decline to enforce any arbitration award if it finds that any of the following occurred:
 - (1) the award was procured by corruption, fraud, or undue means;
 - (2) there was evident partiality or corruption in the arbitrator(s);
 - (3) the arbitrator(s) were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy, or were guilty of any other misbehavior by which the rights of any party have been prejudiced; or
 - (4) the arbitrator(s) exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

Where an arbitration award is so vacated, the Tribal Court may, in its discretion, direct a rehearing by the arbitrator(s).

- (d) In any of the following cases where the Tribal Court is authorized to make an order regarding arbitration, the Tribal Court may make an order modifying or correcting the arbitration award upon the application of any party to the arbitration:
 - (1) where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award;
 - (2) where the arbitrator(s) have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted; or

- (3) where the arbitration award is imperfect in matter of form not affecting the merits of the controversy.

The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

- (e) The judgment confirming an award shall be docketed as if it were rendered in a civil action in Tribal Court. The judgment so entered shall have the same force and effect in all respects as, and be subject to all the provisions of law relating to, a judgment in a civil action, and it may be enforced as if it has been rendered in a civil action in the Tribal Court. When the award requires the performance of any other act than the payment of money, the Tribal Court may direct the enforcement thereon in the manner provided by law.

Section 9. Arbitration Award Not Appealable

No further appeal may be taken from an order issued by the Tribal Court pursuant to this Ordinance enforcing an agreement to arbitrate or an award issued by an arbitrator.

Section 10. Jurisdiction of the Tribal Court

To the extent allowed by federal law, the jurisdiction of the Tribal Court over any action to enforce an agreement to arbitrate, to compel arbitration pursuant to such an agreement to arbitrate, and to enforce an award made by an arbitrator pursuant to such agreement to arbitrate, contained in any contract, agreement, or other instrument described in Section 2(a) of this Ordinance, shall be concurrent with the jurisdiction of any state or federal court over such contract, agreement, or other instrument. Any consent to the jurisdiction of a state or federal court contained in an Authorized Agreement, and any waiver of the obligation of the parties to exhaust Tribal Court remedies shall be valid and enforceable in accordance with its terms when approved in writing by the Tribal Council.

Section 11. Police Powers and Judgment Enforcement Remedies

The Tribe's police powers shall be available to secure and support any arbitration award rendered in accordance with this Ordinance, and all police or other law enforcement officials of the Tribe shall carry out any orders that may be entered by the Tribal Court pursuant to this Ordinance.

Section 12. Severability

If any section or part of this Ordinance, or the application of any section or part, to any party shall be held invalid for any reason whatsoever by a court of competent jurisdiction or by federal legislative action, the remainder of the relevant section or part of this Ordinance shall not be affected and shall remain in full force and effect.

Section 13. No Waiver of Sovereign Immunity

Nothing in this Ordinance is or shall be interpreted to constitute a waiver of the sovereign immunity of the Tribe or any of its officers, employees, or agents acting within the scope of their authority.