

SISSETON-WAHPETON OYATE
OF THE LAKE TRAVERSE RESERVATION

CHAPTER 80

ECONOMIC DEVELOPMENT AUTHORITY

TITLE 1
GENERAL PROVISIONS

Sisseton-Wahpeton Oyate
Ordinance Work Group
New Code ☐ Amended Code ☒ Repealed Code ☐
Tribal Council Resolution No. 12-07-22
Ordinance Work Group Adoption Date 12/07/22
Tribal Council Approval Date 12/07/22

80-01-01 Title.

This Ordinance shall be known and cited as the “Sisseton-Wahpeton Oyate Economic Development Authority Ordinance.”

80-01-02 Constitutional Authority.

This Ordinance is adopted under the authority of Article VII, §§ (b),(c), (d), (g), (i), of the Revised Constitution and By-Laws of the Sisseton Wahpeton Oyate of the Lake Traverse Reservation.

80-01-03 Purpose.

The purpose of this Ordinance is to fulfill the government’s obligation and public purpose to further the economic development, general welfare, and prosperity of the Tribe and its members.

- (a) As a sovereign Indian tribe, the Sisseton-Wahpeton Oyate has always advanced and protected its economic development for the benefit of its members and will continue to do so in light of customary and contemporary conditions.
- (b) Because the Sisseton-Wahpeton Oyate’s economic development is a governmental function, the Tribal Council has determined to create the Economic Development Authority.
- (c) The Economic Development Authority is a Tribal entity to generate government revenues and public funds, develop the Tribal economy, and provide new jobs and increase career and employment opportunities to Tribal members.
- (d) The Tribal Council will provide and involvement to the Economic Development Authority and its subsidiaries.
- (e) To segregate the Economic Development Authority’s assets and liabilities from the Tribal government’s assets and liabilities.
- (f) Additional expertise and experience is required from the Economic Development Authority’s Board members and officer to successfully advance and protect the Sisseton-Wahpeton Oyate’s economic development.

80-01-04 Findings.

The Sisseton-Wahpeton Oyate makes the following findings:

- (a) The Sisseton-Wahpeton Oyate's historical relationship with the federal and state governments has drastically reduced the Tribe's land and tax base, harmed its economy, and compromised its ability to generate government revenues needed to fund its government and provide for the general health and welfare of its members;
- (b) The Sisseton-Wahpeton Oyate must pursue a broad range of economic development activities in order to secure government revenues to operate the Tribal government;
- (c) The Sisseton-Wahpeton Oyate's pursuit of a broad range of economic development activities requires a corresponding broad range of expertise, education, and experience, which will be carried out by the Economic Development Authority, including its subsidiaries, on behalf of the Sisseton-Wahpeton Oyate;
- (d) The Sisseton-Wahpeton Oyate's economic development activities, including its assets, debts, and liabilities, must remain separate from the Tribe's treasury in order to protect and preserve the government's assets, funds, and other revenue sources necessary for the financial stability and viability of the tribal government.
- (e) The Economic Development Authority's assets, debts, and liabilities shall remain separate in order to ensure that the Sisseton-Wahpeton Oyate's other governmental needs, such as health, education, environment, roads and government infrastructure, are not jeopardized by the activities of the Economic Development Authority;
- (f) The Sisseton-Wahpeton Oyate, through its Tribal Council, will provide limited oversight to the Economic Development Authority, but only as provided in this Ordinance.

80-01-05 Applicability.

The provisions of this Ordinance shall apply to the Economic Development Authority, its subsidiaries, and other non-gaming entities owned by the Sisseton-Wahpeton Oyate or operated by the Economic Development Authority, such as Tribal corporations organized under Tribal law.

80-01-06 The Sisseton-Wahpeton Oyate Economic Development Authority.

There is hereby created a governmental agency, instrumentality, and entity of the Sisseton-Wahpeton Oyate, which shall be known as the Sisseton-Wahpeton Oyate Economic Development Authority, with the responsibility of effecting the public purposes of this Ordinance.

- (a) The Economic Development Authority's purpose and duty shall be to conduct economic development activities on behalf of the Sisseton-Wahpeton Oyate and to carry out the essential government functions provided in this Ordinance.

- (b) The Economic Development Authority shall provide management oversight for all of the Tribe's economic development activities, including Tribal corporations owned by the Sisseton-Wahpeton Oyate and organized under Tribal law and excluding gaming.

80-01-07 Reservation of Rights.

The Tribe reserves the right at any time to alter, amend, repeal, or otherwise change the structure, organization, programs, or activities of the Economic Development Authority, including the right to terminate the Economic Development Authority, provided the Tribal Council enactment passes by a 2/3 supermajority vote of the full Tribal Council.

TITLE 2 BOARD OF DIRECTORS APPOINTMENT, TERM, QUALIFICATIONS, REMOVAL, VACANCIES, AND COMPENSATION

80-02-01 Managing the Economic Development Authority.

The business and activities of the Economic Development authority shall be managed by the Board of Directors. A Board of Directors is hereby created and vested with all the powers necessary to carry out the purposes of the Economic Development Authority and shall have control and management of the economic development activities. The Board of Directors shall in all cases act as a Board.

80-02-02 The Power to Adopt Bylaws.

The Board of Directors may adopt bylaws for the conduct of their meetings and the management of the Economic Development Authority provided the bylaws are consistent with the Tribal Constitution, Tribal law, and this Ordinance.

80-02-03 Selection, Number, and Term.

The Board of Directors shall include voting members. The Tribal Council shall appoint three (3) voting members to the Board of Directors. In no instance, shall there be more than five (5) voting Board members. A quorum shall be established if a majority of the Board of Directors are present at the meeting.

- (a) The initial Board of Directors shall consist of those persons selected by the Tribal Council and set forth in a Tribal Council Resolution.
- (b) The Board Chairman appointed by the Tribal Council shall serve a term of four (4) years.
- (c) The remaining Board members shall serve staggered terms for no more than three (3) years.

Each Board Member shall hold office until his successor shall have been appointed and qualified.

80-02-04 Board of Director Qualifications.

Voting Board of Director positions shall be filled by Tribal members through an advertised application process. Each candidate for a Board of Director position shall pass a background investigation. Each member of the Board of Director shall have the following education, expertise, and experience:

- (a) Education equivalent to an Bachelor's degree and at least five years of relevant work experience;
- (b) Expertise in business, science, agriculture, finance, accounting, government contracting or procurement, or human resources;
- (c) Experience in working with or for tribal business entities, business related ventures;
- (d) No federal felony convictions;
- (e) No violent Tribal or State felony convictions;
- (f) No non-violent Tribal or State felony convictions within the past ten (10) years;
- (g) No convictions involving tax evasion, tax fraud, fraud, mismanagement of funds, financial crimes, embezzlement, or crimes of moral turpitude as determined by the Tribal Council;
- (h) Shall not have held an executive level position in any entity that has been placed on the barred list by the federal government contracting authorities;
- (i) Shall not have been previously removed from the Board of Directors for cause; and
- (j) Shall not have filed for bankruptcy, either personally or when owning or managing a business, company, or firm.

80-02-05 Resignation.

A Director may resign from office at any time and the resignation shall be made in writing to the Board of Directors and the Tribal Council.

80-02-06 Removal by the Tribal Council.

The Tribal Council may initiate the removal of a Board Director and a Director may be removed with cause by the Tribal Council in accordance with § 80-02-07.

80-02-07 Removal by the Board of Directors.

A Director may be removed for cause by a majority vote of the Board of Directors after a hearing and upon approval of the Tribal Council. When considering removing a Director for cause, the Board of Directors shall provide written notice of the conduct supporting removal at least seven (7) calendar days prior to the hearing being held to vote on removal. The Director subject to the

removal action may refute the written charges at the hearing. The Board of Directors may suspend the accused Director pending the removal hearing. Removal for cause shall include:

- (a) Three (3) unexcused absences from a Board of Directors meeting in a twelve (12) month period;
- (b) Conviction of a felony;
- (c) Conviction of a misdemeanor which, in the determination of the Board of Directors, adversely affects the Economic Development Authority or the Director's ability to perform his or her duties;
- (d) Adjudication as incompetent by a Court of competent jurisdiction;
- (e) Misappropriation of Economic Development Authority funds or other acts of dishonesty with respect to the Economic Development Authority;
- (f) Gross negligence, fraud, deceit or intentional misconduct which had a material adverse effect on DNDC;
- (g) Violation of conflict of interest policies;
- (h) Violation of this Ordinance or the Bylaws;
- (i) Breach of fiduciary duties to the Economic Development Authority; or
- (j) Failure to live drug free.

Following a majority vote by the Board of Directors for removal, the Board of Directors shall submit its decision, by resolution, to the Tribal Council for final approval. If the Tribal Council does not act within thirty (30) calendar days of receiving the Board's resolution, then the decision of the Board of Directors is final and the director shall be removed.

A Board member removed by the Board of Directors for cause shall not serve again on the Board of Directors.

80-02-08 Vacancies.

Any vacancy occurring for any reason in the number of Board Members shall be appointed by the Tribal Council within ten (10) calendar days. Any vacancy on the Board shall be appointed by the Tribal Council. A Board Member appointed to fill a vacancy shall be appointed for the unexpired term of his predecessor in office. The newly appointed Board Member shall hold office until the expiration of such term and until his successor shall be appointed and shall qualify.

80-02-09 Compensation and Expenses.

The compensation for voting members of the Board shall be fixed by the Tribal Council. All Board Members shall be entitled to reimbursement for reasonable and necessary expenses

incurred in course of performing Board duties in accordance with policy. All requests for reimbursement shall be documented and preapproved by the Board.

TITLE 3 BOARD OF DIRECTORS PURPOSE AND POWER

80-03-01 Purpose.

The Economic Development Authority's general purpose is to engage in economic development activities for the benefit of the Tribe and its members. The Economic Development Authority shall serve the following specific purposes:

- (a) To develop the Tribal economy;
- (b) Create employment for tribal members;
- (c) Generate revenues for the Tribal government in order to provide services to Tribal members;
- (d) To promote the growth, continuity, and stability of the Economic Development Authority;
- (e) To distribute all capital surplus, whether in cash or property, to the tribal government to be deposited in the general fund of the Sisseton Wahpeton Oyate, provided that the Authority's earnings and income may be retained as reserves for development, operation, and maintenance costs and expenses in the reasonable discretion of the Board of Directors;
- (f) To develop a strategic plan for economic development on the Lake Traverse Reservation, which includes a set of metrics by which to gauge and assess whether the goals have been achieved;
- (g) To increase the economic well-being of the tribal membership in accordance with economic development policies and plans adopted by the Tribal Council;
- (h) To promote public health, education, charity, and other services as may contribute to the social advancement of the members of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation; and
- (i) To engage in any lawful act or activity to further these purposes.

80-03-02 Powers.

The Economic Development Authority, acting through its Board of Directors, shall have unlimited power to engage in and do any lawful business for which it is organized, including but not limited to the following powers:

- (a) To sue in its name in Tribal Court or, if jurisdiction exists in a state or federal court. This power to sue shall not be deemed to waive or limit the immunity from suit enjoyed by the Economic Development Authority. The power to be sued is governed and limited by Title 8;
- (b) May adopt and utilize a seal and the use or non-use of the seal does not affect the validity, recordability, or enforceability of any document or act;
- (c) May take by gift, bequest, purchase, lease, or otherwise acquire, own, or hold all or any part of its real or personal property, or any interest therein, wherever situated;
- (d) May sell, convey, mortgage, create a security interest in, lease, exchange, transfer, improve, use or otherwise dispose of real or personal property, or any interest therein, wherever situated, provided that the real property is not held in trust;
- (e) To carry on its business either within or outside the Lake Traverse Indian Reservation;
- (f) Upon prior approval by the Tribal Council acting as Shareholder, the Board may guarantee, purchase, hold, assign, mortgage, or pledge any bonds, securities or other evidences of indebtedness created by any other corporation or organization that is in existence under the laws of the United States, any state, Indian tribe, nation, government or country, and to exercise all the rights, privileges and powers of ownership;
- (g) May make contracts, incur liabilities, borrow money, and secure any of its obligations by mortgage of, or a creation of a security interest, in all, or any of its property, franchises, and income;
- (h) Apply for, obtain, register, purchase, lease or acquire, own, hold, use, operate and introduce, and to sell, assign or dispose of any trademark, trade name, patent, invention, improvements and processes used in connection with or secured under letters patent, and to use, exercise, develop, grant and give licenses in respect thereto;
- (i) Apply for, purchase or acquire by assignment, transfer or otherwise, and to exercise, carry out and enjoy any license, power, authority, franchise, concession, right or privilege which any government or authority or any corporation or other public body may be empowered to enact, make, or grant;
- (j) Lend money for its corporate purposes, including administering loans related to any federal, tribal or state program, and to invest and reinvest its funds and take and hold real and personal property as security for the payment of funds so loaned or invested;
- (k) May conduct its business, carry on its operations, have offices, and exercise the powers granted by these Articles;
- (l) Hire the Chief Executive Officer for the Economic Development Authority;
- (m) Hire officers, agents, and employees, define their duties, and fix their compensation;

- (n) May make, amend, alter, and repeal By-Laws, which are consistent with this Ordinance;
- (o) May make and receive donations for the public welfare or charitable, scientific, educational, or governmental purposes;
- (p) May establish employee benefits plans;
- (q) May require the Board treasurer and financial officers to be bonded, in an amount to be determined by the Board;
- (r) Participate in any manner whatsoever, as a promoter, partner, member, associate, trustee, or manager of any partnership, joint venture, trust, or other enterprise; and
- (s) Have and exercise all powers necessary to effect its purposes.

80-03-03 Oath.

Each Board member before entering her or his duties shall take and subscribe an oath to perform the duties of the office faithfully, impartially, and justly to the best of her or his ability.

80-03-04 Limitation of Power.

The Economic Development Authority shall not possess any authority to bind or act for the Tribal government, except as expressly provided in this Ordinance or Tribal law.

80-03-05 Conflict of Interest.

A conflict of interest means the existence of a relationship between a Director and a private party or private interest that may cause the Director to disregard her or his official duties or may cause the Director to be improperly influenced. No member, officer, employee, or agent of the Economic Development Authority shall be interested, either directly or indirectly, in any project, contract, sale, purchase, lease, or transfer of property to which the Economic Development Authority is a party. A conflict of interest transaction is prohibited and voidable. A Director must disclose a conflict of interest or a potential conflict of interest to the Board of Directors in writing as soon as the conflict or potential conflict arises.

TITLE 4 ACTIONS REQUIRING TRIBAL COUNCIL APPROVAL

80-04-01 Actions Requiring Tribal Council Approval.

The Economic Development Authority shall not take any of the actions described below without the prior approval of the Tribal Council, which is evidenced by a formal vote at a regular or special meeting of the Tribal Council:

- (a) The proposed sale, exchange or other disposition (other than the mortgage, pledge or other grant as security interest) of all or substantially all of the assets of the Economic Development Authority, or those of its subsidiaries;
- (b) The proposed merger of the Economic Development Authority, or any of its subsidiaries, with another entity;
- (c) The proposed voluntary dissolution of the Economic Development Authority's subsidiaries;
- (d) The proposed guarantee of a subsidiaries' debt by the Economic Development Authority or another subsidiary;
- (e) The proposed liability for a subsidiaries' loans or credit by the Economic Development Authority or another subsidiary;
- (f) The appointment of the Board of Directors;
- (g) The periodic approval of a proposed long-term plan;
- (h) The proposed annual operating plan;
- (i) Proposed expenditures in excess of the level approved in the annual operating plan, subject to a permitted variance of 10%;
- (j) Proposed purchases that exceed \$50,000, which includes breaking a single transaction into separate smaller transactions to avoid compliance;
- (k) Proposed sale of an asset with a value in excess of \$50,000, which includes breaking a single transaction into separate smaller transactions to avoid compliance;
- (l) The proposed investment plan; or
- (m) The proposed transfer or conversion of assets from one subsidiary or entity to another.

Any request for Tribal Council approval must be made in writing and accompanied with a report, study, and plan that justifies the request.

TITLE 5 OFFICERS

80-05-01 Chief Executive Officer and Other Officers.

The Economic Development Authority's day-to-day activities shall be carried out by a Chief Executive Officer. The Board of Directors, with the concurrence of the Tribal Council, may hire a Chief Executive Officer and other Vice-Presidents. Each officer shall hold office until the successor is appointed, unless the officer is removed. All vacancies shall be filled promptly by the Board of Directors, subject to the concurrence of the Tribal Council.

80-05-02 Chief Executive Officer Duties.

The Chief Executive Officer shall be the principal officer for the Economic Development Authority. The Chief Executive Officer shall supervise and control all the day-to-day activities of the Economic Development Authority, subject to the superior authority of the Board of Directors and Tribal Council. The Chief Executive Officer shall perform the following duties:

- (a) Present all monthly and annual reports required of the Economic Development Authority, including its activities and financial condition;
- (b) Sign and execute all contracts in the name of the Economic Development Authority when delegated such authority or when approved by the Board of Directors;
- (c) Cause all books, accounts, records, reports, financial statements, to be retained, filed, and safeguarded;
- (d) All other duties as prescribed by the Board of Directors.

80-05-03 Vice-Presidents And Other Officers.

The Board of Directors, with the concurrence of the Tribal Council, may hire Vice-Presidents determined to be necessary for the efficient and profitable operation of the Economic Development Authority. Such officers shall perform those duties incidental to their office as determined by the Board of Directors or as assigned by the Board of Directors or Chief Executive Officer. Vice-Presidents and other officers shall be subject to and take direction from the Board of Directors and the Chief Executive Officer.

80-05-04 Duties of Officers.

The duties, powers, and limitations on powers of the Economic Development Authority's officers are those specified in this Ordinance and shall include any additional duties and powers as may be set by written resolution of the Board of Directors, subject to the restrictions on the Board of Directors powers. All officers shall discharge their duties:

- (a) In good faith;
- (b) With the care a prudent person in a like position would exercise under similar circumstances;
- (c) In a manner they reasonably believe to be in the best interests of the Economic Development Authority and the Tribe; and
- (d) In compliance with this Ordinance and all other Tribal laws.

Officers are entitled to rely on information, opinions, reports, financial statements, or other financial data if prepared or presented by: (1) legal counsel, certified public accountants, or other professionals as to matters reasonably believed to be within that person's professional or expert

competence; (2) one or more officers as to matters reasonably believed to be within that person's competence; or (3) the Board of Directors.

TITLE 6 OPERATIONAL REQUIREMENTS

80-06-01 Principal Place of Business.

The Economic Development Authority shall maintain its headquarters on the Lake Traverse Reservation in Agency Village, South Dakota.

80-06-02 Mailing Address.

The mailing address is: SWOHQ, 45630 BIA Hwy 711, Agency Village, SD 57262.

80-06-03 Fiscal Year.

The Economic Development Authority shall have the same fiscal year as the Sisseton-Wahpeton Oyate's fiscal year.

80-06-04 Annual Independent Financial Audit.

The Economic Development Authority shall maintain accurate and complete accounts of its financial affairs, which shall clearly show all assets, liabilities, credits, debts, pledges, and assignments. As a government entity the Economic Development Authority shall be subject to an annual, outside, independent financial audit.

80-06-05 Monthly Report.

The Economic Development Authority's Chief Executive Officer shall provide a monthly report to the Board of Directors and to the Tribal Council. The report shall include the financial statements of the Economic Development Authority and its subsidiaries and a narrative of their actions and accomplishments in regard to the Annual Operating Plan and the stated objectives and goals of the Economic Development Authority and its subsidiaries.

80-06-06 Annual Operating Plan.

Not less than thirty (30) calendar days prior to the beginning of each fiscal year, the Economic Development Authority shall prepare an annual operating plan for such fiscal year and present it to the Tribal Council at a regular or special meeting for review and approval.

80-06-07 Annual Report.

The Economic Development Authority shall prepare and deliver to the Tribal Council and the General Council, an annual report and an audited financial statement, including a balance sheet and a statement of income and expenses, including comparative figures from the preceding fiscal year. These reports shall be provided to the Tribal Council within ninety (90) calendar days

following the end of each fiscal year. These reports shall be provided to the General Council at the same time as the Vice-Chairman's report.

80-06-08 Contracts.

Only the Chief Executive Officer is authorized to execute authorized contracts on behalf of the Economic Development Authority. Managers may execute authorized contracts on behalf of subsidiaries, provided that prior notice is provided to the Chief Executive Officer.

80-06-09 Meeting with Subsidiaries.

The Economic Development Authority's Chief Executive Officer shall establish a regular weekly meeting with the managers for each of the subsidiaries wholly owned or operated by the Tribe or the Economic Development Authority.

80-06-010 Inspection of Records and Audits.

The Tribal Council, or its designee, may inspect the books, records, accounts, receipts, disbursements, contracts, and computers of the Economic Development Authority or subsidiary. The Tribal Council reserves the right to perform audits of the Economic Development Authority or subsidiary to ensure compliance with applicable law.

80-06-011 Consultation and Coordination with Reservation Planning Commission.

The Reservation Planning Commission possesses a specific role in economic development, which pertains to planning, feasibility studies, and making the appropriate recommendations to Tribal Council. New economic development initiatives, proposals, or opportunities will require the Economic Development Authority to communicate and consult with the Reservation Planning Commission on a regular basis. Whenever possible, the Economic Development Authority and the Reservation Planning Commission shall collaborate and cooperate on all new economic development planning, initiatives, and feasibility studies. Both the Economic Development Authority and the Reservation Planning Commission, through their respective Chief Executive Officer and Director, respectively, shall work together and will ensure that efforts will not overlap or be duplicative by routinely consulting and coordinating efforts.

**TITLE 7
SHARES**

80-07-01 Ownership.

The Economic Development Authority is wholly owned by the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation. No Tribal member or Tribal official shall have any personal ownership interest in the Economic Development Authority or any of its subsidiaries, whether by virtue of such person's status as a member of the Tribe or otherwise.

80-07-02 No Liability of the Tribe as the Sole Owner.

Neither the Tribe, nor any member of the Tribal Council, shall be under any obligation to the creditors of the Economic Development Authority or any subsidiary. The Tribe shall not be deemed to have waived any of the Tribe's sovereign immunity, privileges, or other immunities by virtue of its ownership or operation of the Economic Development Authority or subsidiary.

**TITLE 8
SOVEREIGN IMMUNITY AND OTHER PRIVILEGES AND IMMUNITIES**

80-08-01 The Economic Development Authority's Sovereign Immunity.

As an exercise of its inherent sovereign authority, the Sisseton-Wahpeton Oyate expressly confers its sovereign immunity on the Economic Development Authority. As an arm and instrumentality of the Sisseton-Wahpeton Oyate, the Economic Development Authority shall be immune from suit to the same extent as the Sisseton-Wahpeton Oyate would have such sovereign immunity had it engaged in the activities undertaken by the Economic Development Authority. The officers, agents, and employees while acting on behalf of the Economic Development Authority are not subject to personal liability and shall be immune from suit. Nothing in this Ordinance shall be construed to be a waiver of sovereign immunity.

80-08-02 Limitations on the Economic Development Authority's Power to Waive its Sovereign Immunity.

To protect the Tribe's investment in the Economic Development Authority and to ensure the continuing vitality of the Sisseton-Wahpeton Oyate, the Economic Development Authority is subject to the following limitations on its power to waive its sovereign immunity:

- (a) The Economic Development Authority shall not possess the power to waive the sovereign immunity of the Tribe itself, nor any of the Tribe's other entities;
- (b) The Economic Development Authority shall not possess the power to authorize a blanket waiver of its own sovereign immunity;
- (c) The Economic Development Authority shall not have the power to assert sovereign immunity against the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation in any matter.

80-08-03 The Economic Development Authority's Sole Method of Waiving its Sovereign Immunity.

The Economic Development Authority is hereby delegated the authority to authorize a limited waiver of its own sovereign immunity, provided such waiver complies with the following terms and conditions:

- (a) the limited waiver may be accomplished solely by a written resolution of its Board of Directors;

- (b) the limited waiver must be express and explicit;
- (c) the limited waiver shall not exceed the value of the contract or the value of an insurance policy in the case of a tort claim;
- (d) the limited waiver shall specifically identify the party for whose benefit the limited waiver is granted;
- (e) the limited waiver shall identify the property or assets that are subject to the limited waiver;
- (f) the limited waiver may only be enforceable in the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation Tribal Court, however, such a limited waiver may be enforceable in another court of competent jurisdiction should the Board determine that agreeing to an outside tribunal is necessary to secure a substantial benefit or advantage to the Economic Development Authority; and
- (g) the limited waiver shall not authorize arbitration.

Any purported or attempted waiver that does not comply with the requirements of this section shall be null, void, and of no legal effect. Should the Economic Development Authority seek to waive its immunity in terms that do not comply with this section, then its sole recourse is to propose such a limited waiver to the Tribal Council.

80-08-04 Other Privileges and Immunities.

The Economic Development Authority shall enjoy special powers, privileges, and immunities as an entity of the Tribe. Sisseton-Wahpeton Oyate also expressly confers all of the rights, privileges, and immunities enjoyed by the Tribe to the Economic Development Authority, its officers, agents, and employees, including, but not limited to, immunity from federal, state, and local taxes, regulation, and jurisdiction. The Economic Development Authority, its officers, agents, and employees shall enjoy these power, privileges, and immunities to the same extent as if the Tribe were directly engaging in the economic development activities undertaken by the Economic Development Authority.

TITLE 9 RELATIONSHIP WITH SUBSIDIARIES

80-09-01 Purpose.

The purpose of treating the Economic Development Authority as separate from any subsidiary of the Economic Development Authority is to maximize the applicable tax benefits and minimize liability.

80-09-02 Applicable Law.

The Economic Development Authority and any subsidiary of the Economic Development Authority, including, but not limited to, Tribally owned and operated corporations, shall be bound by all laws of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation.

80-09-03 Separate Legal Entities.

The Economic Development Authority and any subsidiary:

- (a) shall be and remain separate legal entities;
- (b) shall maintain separate recordkeeping, accounting, audits, tax filings, income statements, and balance sheets;
- (c) shall maintain separate liabilities, such as loans, credit, and other debt;
- (d) shall maintain separate assets;
- (e) shall hold separate Board meetings, even if the Board of Directors consists of the same officials;
- (f) shall not commingle assets;

Any departure from these requirements must be approved by the Tribal Council.

TITLE 10 REVENUE DISTRIBUTION

80-10-01 Economic Development Authority Assets and Revenue.

The Economic Development Authority's assets must be maintained in accounts separate from the Tribe's assets. The Economic Development Authority's net income and assets shall be determined in accordance with generally accepted accounting principles. Generally, net income shall be gross revenue minus expenses. The net income or earnings, including all assets, shall not inure to the benefit of any person other than the Sisseton-Wahpeton Oyate.

80-10-02 Revenue Distribution.

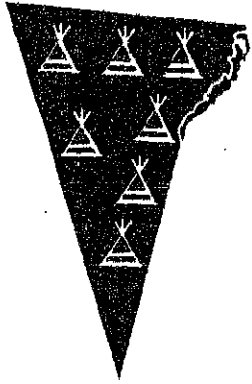
The Economic Development Authority shall maintain a goal of distributing no more than 10% of its annual net revenues to the Sisseton-Wahpeton Oyate on annual basis. Upon the request of the Tribal Council, the Economic Development Authority may transfer its surplus net revenues, not to exceed 10%, to the Sisseton-Wahpeton Oyate on the condition that the proposed transfer is consistent with the Economic Development Authority's financial condition and in compliance with its capital and operating budgets. No distribution shall occur when the Economic Development Authority's annual net revenues are \$500,000.00 or less during a given fiscal year. The Board of Directors, with the concurrence of the Tribal Council, shall determine the amount to transfer to the Sisseton-Wahpeton Oyate. The Economic Development Authority shall

reinvest any and all net revenues, not so transferred to the Tribe, in the Economic Development Authority's economic development activities or that of its subsidiaries, growth opportunities, or facilities, provided, if such net revenues cannot be reinvested, then such revenues may be held in interest bearing bank accounts.

TITLE 11 EXISTENCE

80-11-01 Perpetual Existence until Dissolved by the Tribal Council.

The Economic Development Authority shall enjoy a perpetual existence until it is dissolved by the Tribal Council. Upon dissolution, the Tribal Council may utilize the Economic Development Authority's assets for any public and governmental purpose.



Sisseton - Wahpeton Oyate

LAKE TRAVERSE RESERVATION

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TRIBAL COUNCIL RESOLUTION NO. SWO-23-018

Amendments to SWO Chapter 80 – Economic Development Authority

WHEREAS, The Sisseton-Wahpeton Oyate is organized under a Constitution and By-laws adopted by the members of the Tribe on August 1-2, 1966, and approved by the Commissioner of Indian Affairs on August 25, 1966, and last amended effective November 15, 2006; and

WHEREAS, The Constitution ARTICLE III, Section 1, states that, the Sisseton-Wahpeton Oyate shall be governed by a Council, and ARTICLE VII, Section 1, states that, the Council shall have the following powers: (a) to represent the Tribe in all negotiations with Federal, State and local governments; (b) to acquire, own, use, manage, lease and otherwise encumber and to dispose of Tribal property, both real and personal, wherever situated; (c) to engage in any business that will further the economic development of the Tribe and its Members, and to use Tribal funds or other resources for such purposes; (d) to make rules governing the relationship of the members of the Tribe, to Tribal property, and to one another as members of the Tribe; (e) to hire employees and agents, including legal counsel, directly or as independent contractors, and to compensate them for their services; (f) to deposit Tribal funds to the credit of the Tribe, without limitations of the amount in any account; (g) to take any action by ordinance, resolution, or otherwise which are reasonably necessary through committees, boards, agents or otherwise, to carry into effect the for-going purposes; (h) to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Sisseton-Wahpeton Oyate; (i) adopt resolutions regulating the procedures of the Tribal Council, its officials and committees in the conduct of Tribal Affairs; and

WHEREAS, On November 30, 2016, the Tribal Council of the Sisseton-Wahpeton Oyate, pursuant to its inherent and Constitutional authority and for the purpose of furthering the economic development, general welfare, and prosperity of the Tribe and its members, adopted the Sisseton-Wahpeton Oyate Economic Development Authority Ordinance, Ch. 80 of the Sisseton-Wahpeton Oyate Code of Laws; and

WHEREAS, The Sisseton-Wahpeton Oyate Code of Laws, Chapter 21, Article 4, established the Ordinance Work Group, which may, in coordination with the Legal Department, initiate, draft, review, and propose new laws or amendments to the current laws to the Tribal Council and which is responsible for reviewing and recommending changes to any proposed legislation upon the request of Tribal Council; and

WHEREAS, The Sisseton-Wahpeton Oyate identified the need to amend Chapter 80, including to provide reasonable separation between the economic development authority and Tribal Council, while maintaining oversight in accordance with good business and governmental practice, and to create additional continuity and stability on the Economic Development Authority's Board of Directors; and

WHEREAS, As directed by Tribal Council and in coordination with the Ordinance Work Group, Greg Paulson, legal counsel to the Tribe, prepared and recommended to Tribal Council proposed amendments to Chapter 80; and

WHEREAS, The Sisseton-Wahpeton Oyate wishes to memorialize, in resolution form, the Tribal Council's revisions to Chapter 80 in accordance with the amendments passed on December 7, 2022, as such amendments are reflected in Exhibit A to this resolution.

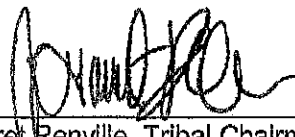
NOW, THEREFORE BE IT RESOLVED, That the Tribal Council of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation hereby approves the proposed amendments to Chapter 80 of the Tribal Code enacted via Motion No. 68 on December 7, 2022, as presented to Tribal Council by legal counsel and as reflected in Exhibit A to this resolution

FURTHER, BE IT RESOLVED, That the Tribal Council of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation hereby ratifies, adopts, and enacts the amendments to Chapter 80 passed by Tribal Council Motion No. 68 on December 7, 2022, as reflected in Exhibit A to this resolution.

FINALLY, BE IT RESOLVED, That the Tribal Council of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation hereby directs the Ordinance Work Group to finalize Chapter 80 in accordance with this resolution and applicable procedure.

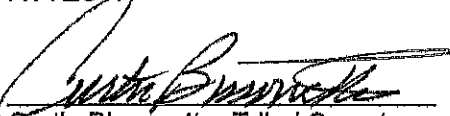
CERTIFICATION

We, the Undersigned duly elected Tribal Chairman and Tribal Secretary of the Sisseton-Wahpeton Oyate Tribal Council, do hereby certify that the above resolution was duly adopted by the Sisseton-Wahpeton Oyate Tribal Council, which is composed of 10 members (representing a total of 15 Tribal Council weighted votes and two Executive Committee votes for a total of 17 votes) of whom 10 constituting a quorum, were present at a Tribal Council meeting, duly noticed, called, convened and held at the TiWakan Tio Tipi, Agency Village, South Dakota, March 7, 2023, by a vote of 17 for, 0 opposed, 0 abstained, 0 absent from vote, 1 not voting, and that said Resolution has not been rescinded or amended in any way.



J. Garret Renville, Tribal Chairman
Sisseton-Wahpeton Oyate

ATTEST:



Curtis Bissonette, Tribal Secretary
Sisseton-Wahpeton Oyate



MOTION NO. 64: made by Curtis Bissonette, second by Dionne Crawford, question by Edmund Johnson Jr., to make the Wellness Center Project a priority for the next Tribal Council.

WEIGHTED VOTE ON MOTION NO. 64: 12 For: Dallas Owen (3); A. Lydia Amos (2); Dionne Crawford (2); Curtis Bissonette (2); Louis Johnson (1); Tribal Vice-Chairman (1); Tribal Secretary (1). 0 Opposed. 0 Abstained. 0 Absent From Vote. 1 Not Voting: Tribal Chairman.

MOTION PASSED.

MOTION NO. 65: made by Edmund Johnson Jr., second by Dionne Crawford, question by Dallas Owen, to declare an Economic Emergency and get the Medical Cannabis Project finalized and implemented.

WEIGHTED VOTE ON MOTION NO. 65: 12 For: Dallas Owen (3); A. Lydia Amos (2); Dionne Crawford (2); Curtis Bissonette (2); Louis Johnson (1); Tribal Vice-Chairman (1); Tribal Secretary (1). 0 Opposed. 0 Abstained. 0 Absent From Vote. 1 Not Voting: Tribal Chairman.

MOTION PASSED.

MOTION NO. 66: made by Dionne Crawford, second by Myrna Thompson, question by Curtis Bissonette, to go into Executive Session, at 11:47am.

WEIGHTED VOTE ON MOTION NO. 66: 12 For: Dallas Owen (3); A. Lydia Amos (2); Dionne Crawford (2); Curtis Bissonette (2); Louis Johnson (1); Tribal Vice-Chairman (1); Tribal Secretary (1). 0 Opposed. 0 Abstained. 0 Absent From Vote. 1 Not Voting: Tribal Chairman.

MOTION PASSED.

MOTION NO. 67: made by Dallas Owen, second by Curtis Bissonette, question by Louis Johnson, to come out of Executive Session, at 12:04pm.

WEIGHTED VOTE ON MOTION NO. 67: 12 For: Dallas Owen (3); A. Lydia Amos (2); Dionne Crawford (2); Curtis Bissonette (2); Louis Johnson (1); Tribal Vice-Chairman (1); Tribal Secretary (1). 0 Opposed. 0 Abstained. 0 Absent From Vote. 1 Not Voting: Tribal Chairman.

MOTION PASSED.

MOTION NO. 68: made by Dionne Crawford, second by Dallas Owen, question by A. Lydia Amos, to approve the revisions to Chapter 80 – Economic Development Authority, as presented telephonically by Legal Counsel Greg Paulson.

WEIGHTED VOTE ON MOTION NO. 68: 12 For: Dallas Owen (3); A. Lydia Amos (2); Dionne Crawford (2); Curtis Bissonette (2); Louis Johnson (1); Tribal Vice-Chairman (1); Tribal Secretary (1). 0 Opposed. 0 Abstained. 0 Absent From Vote. 1 Not Voting: Tribal Chairman.

MOTION PASSED.

Note: Tribal Chairman J. Garret Renville returned to chair the meeting.

MOTION NO. 40: made by Brandon Gypsy Wanna, second by Joan White, question by Brandon Adams, in resolution form, to amend SWO Chapter 21 – Judicial Code to revert to the previous code and Judicial Committee structure that was in place prior to Motion No. 79, of 8/4/21.

WEIGHTED VOTE ON MOTION NO. 40: 12 For: Dallas Owen (3); Brandon Adams (2); Brandon Gypsy Wanna (3); Joan White (2); Janell Cook (2). 5 Opposed: A. Lydia Amos (2); Kenneth Johnson (1); Tribal Vice-Chairwoman (1); Tribal Secretary (1). 0 Abstained. 0 Absent From Vote. 1 Not Voting: Tribal Chairman.

MOTION PASSED.

Resolution No. SWO-23-

MOTION NO. 41: made by Dallas Owen, second by Joan White, question by Brandon Adams, in resolution form, to approve the changes to SWO Chapter 80 – Economic Development Authority, as presented by Tribal Attorney Megan LaFromboise.

WEIGHTED VOTE ON MOTION NO. 41: 17 For: Dallas Owen (3); Brandon Adams (2); Brandon Gypsy Wanna (3); Joan White (2); Janell Cook (2); A. Lydia Amos (2); Kenneth Johnson (1); Tribal Vice-Chairwoman (1); Tribal Secretary (1). 0 Opposed. 0 Abstained. 0 Absent From Vote. 1 Not Voting: Tribal Chairman.

MOTION PASSED.

Resolution No. SWO-23-

MOTION NO. 42: made by Alexandria Fancher, second by Joan White, question by Janell Cook, in resolution form, to approve the changes to SWO Chapter 81 – Medical Cannabis, as presented by Tribal Attorney Megan LaFromboise.

WEIGHTED VOTE ON MOTION NO. 42: 17 For: Dallas Owen (3); Brandon Adams (2); Brandon Gypsy Wanna (3); Joan White (2); Janell Cook (2); A. Lydia Amos (2); Kenneth Johnson (1); Tribal Vice-Chairwoman (1); Tribal Secretary (1). 0 Opposed. 0 Abstained. 0 Absent From Vote. 1 Not Voting: Tribal Chairman.

MOTION PASSED.

Resolution No. SWO-23-

MOTION NO. 43: made by Alexandria Fancher, second by Dallas Owen, question by Brandon Adams, to go into Executive Session, at 2:30 pm.

WEIGHTED VOTE ON MOTION NO. 43: 17 For: Dallas Owen (3); Brandon Adams (2); Brandon Gypsy Wanna (3); Joan White (2); Janell Cook (2); A. Lydia Amos (2); Kenneth Johnson (1); Tribal Vice-Chairwoman (1); Tribal Secretary (1). 0 Opposed. 0 Abstained. 0 Absent From Vote. 1 Not Voting: Tribal Chairman.

MOTION PASSED.

MOTION NO. 44: made by Curtis Bissonette, second by Alexandria Fancher, question by Brandon Adams, to come out of Executive Session at 3:42 pm.

EXHIBIT A
to
TRIBAL COUNCIL RESOLUTION NO. SWO-23-018
SISSETON-WAHPETON OYATE
OF THE LAKE TRAVERSE RESERVATION

CHAPTER 80
ECONOMIC DEVELOPMENT AUTHORITY

(Approved redlined edits)

(17 pages, including this cover page)

**SISSETON-WAHPETON OYATE
OF THE LAKE TRAVERSE RESERVATION**

CHAPTER 80

ECONOMIC DEVELOPMENT AUTHORITY

**TITLE 1
GENERAL PROVISIONS**

80-01-01 Title.

This Ordinance shall be known and cited as the "Sisseton-Wahpeton Oyate Economic Development Authority Ordinance."

80-01-02 Constitutional Authority.

This Ordinance is adopted under the authority of Article VII, §§ (b), (c), (d), (g), (i), of the Revised Constitution and By-Laws of the Sisseton Wahpeton Oyate of the Lake Traverse Reservation.

80-01-03 Purpose.

The purpose of this Ordinance is to fulfill the government's obligation and public purpose to further the economic development, general welfare, and prosperity of the Tribe and its members.

- (a) As a sovereign Indian tribe, the Sisseton-Wahpeton Oyate has always advanced and protected its economic development for the benefit of its members and will continue to do so in light of customary and contemporary conditions.
- (b) Because the Sisseton-Wahpeton Oyate's economic development is a governmental function, the Tribal Council has determined to create the Economic Development Authority.
- (c) The Economic Development Authority is a Tribal entity to generate government revenues and public funds, develop the Tribal economy, and provide new jobs and increase career and employment opportunities to Tribal members.
- (d) The Tribal Council will provide limited oversight and involvement to the Economic Development Authority and its subsidiaries.
- (e) To segregate the Economic Development Authority's assets and liabilities from the Tribal government's assets and liabilities.
- (f) Additional expertise and experience is required from the Economic Development Authority's Board members and officer to successfully advance and protect the Sisseton-Wahpeton Oyate's economic development.

80-01-04 Findings.

The Sisseton-Wahpeton Oyate makes the following findings:

- (a) The Sisseton-Wahpeton Oyate's historical relationship with the federal and state governments has drastically reduced the Tribe's land and tax base, harmed its economy, and compromised its ability to generate government revenues needed to fund its government and provide for the general health and welfare of its members;
- (b) The Sisseton-Wahpeton Oyate must pursue a broad range of economic development activities in order to secure government revenues to operate the Tribal government;
- (c) The Sisseton-Wahpeton Oyate's pursuit of a broad range of economic development activities requires a corresponding broad range of expertise, education, and experience, which will be carried out by the Economic Development Authority, including its subsidiaries, on behalf of the Sisseton-Wahpeton Oyate;
- (d) The Sisseton-Wahpeton Oyate's economic development activities, including its assets, debts, and liabilities, must remain separate from the Tribe's treasury in order to protect and preserve the government's assets, funds, and other revenue sources necessary for the financial stability and viability of the tribal government.
- (e) The Economic Development Authority's assets, debts, and liabilities shall remain separate in order to ensure that the Sisseton-Wahpeton Oyate's other governmental needs, such as health, education, environment, roads and government infrastructure, are not jeopardized by the activities of the Economic Development Authority;
- (f) The Sisseton-Wahpeton Oyate, through its Tribal Council, will provide limited oversight to the Economic Development Authority, but only as provided in this Ordinance.

80-01-05 Applicability.

The provisions of this Ordinance shall apply to the Economic Development Authority, its subsidiaries, and other non-gaming entities owned by the Sisseton-Wahpeton Oyate or operated by the Economic Development Authority, such as Tribal corporations organized under Tribal law.

80-01-06 The Sisseton-Wahpeton Oyate Economic Development Authority.

There is hereby created a governmental agency, instrumentality, and entity of the Sisseton-Wahpeton Oyate, which shall be known as the Sisseton-Wahpeton Oyate Economic Development Authority, with the responsibility of effecting the public purposes of this Ordinance.

- (a) The Economic Development Authority's purpose and duty shall be to conduct economic development activities on behalf of the Sisseton-Wahpeton Oyate and to carry out the essential government functions provided in this Ordinance.

- (b) The Economic Development Authority shall provide management oversight for all of the Tribe's economic development activities, including Tribal corporations owned by the Sisseton-Wahpeton Oyate and organized under Tribal law and excluding gaming.

80-01-07 Reservation of Rights.

The Tribe reserves the right at any time to alter, amend, repeal, or otherwise change the structure, organization, programs, or activities of the Economic Development Authority, including the right to terminate the Economic Development Authority, provided the Tribal Council enactment passes by a 2/3 supermajority vote of the full Tribal Council.

TITLE 2
BOARD OF DIRECTORS APPOINTMENT, TERM, QUALIFICATIONS,
REMOVAL, VACANCIES, AND COMPENSATION

80-02-01 Managing the Economic Development Authority.

The business and activities of the Economic Development authority shall be managed by the Board of Directors. A Board of Directors is hereby created and vested with all the powers necessary to carry out the purposes of the Economic Development Authority and shall have control and management of the economic development activities. The Board of Directors shall in all cases act as a Board.

80-02-02 The Power to Adopt Bylaws.

The Board of Directors may adopt bylaws for the conduct of their meetings and the management of the Economic Development Authority provided the bylaws are consistent with the Tribal Constitution, Tribal law, and this Ordinance.

80-02-03 Selection, Number, and Term.

The Board of Directors shall include ~~both voting and non-voting~~ members. The Tribal Council shall appoint three (3) voting members to the Board of Directors. ~~The number may be changed from time to time by the affirmative vote of the Tribal Council, but in~~ no instance, shall there be more than five (5) voting Board members. ~~The non-voting members shall be chosen from the Tribal Council and shall be full members of the Board of Directors for all purposes, including the number needed for a quorum, except that they cannot vote.~~ A quorum shall be established if a majority of the Board of Directors are present at the meeting.

- (a) The initial Board of Directors shall consist of those persons selected by the Tribal Council and set forth in a Tribal Council Resolution.
- (b) ~~The two Tribal Council members appointed to the Board shall be non-voting members and shall remain Board members for a period of four years or commensurate with their respective term on the Tribal Council, unless they cease to be members of the Tribal Council, in which case their term shall expire when their term as a Council member expires, or the Tribal Council determines to replace a member prior to expiration of the Council member's elected term.~~

- (eb) The Board Chairman appointed by the Tribal Council shall serve a term of four (4) years.
- (ec) The remaining ~~voting and non-voting~~ Board members shall serve staggered terms for no more than three (3) years.

Each Board Member shall hold office until his successor shall have been appointed and qualified.

80-02-04 Board of Director Qualifications.

Voting Board of Director positions shall be filled by Tribal members through an advertised application process. Each candidate for a Board of Director position shall pass~~submit to~~ a background investigation. Each member of the Board of Director shall have the following education, expertise, and experience:

- (a) Education equivalent to ~~an~~ Bachelor/Associate's degree ~~or and~~ at least five years of relevant work experience;
- (b) Expertise in business, science, agriculture, finance, accounting, government contracting or procurement, or human resources;
- (c) Experience in working with or for tribal business entities, business related ventures;
- ~~(d) Be at least twenty-one (21) years of age, who must meet the requirements for holding elected office;~~
- ~~(e)~~(d) No federal felony convictions;
- ~~(f)~~(e) No violent Tribal or State felony convictions;
- ~~(g)~~(f) No non-violent Tribal or State felony convictions within the past ten (10) years;
- ~~(h)~~(g) No convictions involving tax evasion, tax fraud, fraud, mismanagement of funds, financial crimes, embezzlement, or crimes of moral turpitude as determined by the Tribal Council;
- ~~(i)~~(h) Shall not have held an executive level position in any entity that has been placed on the barred list by the federal government contracting authorities;
- ~~(j)~~(i) Shall not have been previously removed from the Board of Directors for cause ~~within the past five (5) years~~; and
- ~~(k)~~(j) Shall not have filed for bankruptcy, either personally or when owning or managing a business, company, or firm.

80-02-05 Resignation.

A Director may resign from office at any time and the resignation shall be made in writing to the Board of Directors and the Tribal Council.

80-02-06 Removal by the Tribal Council.

~~A~~The Tribal Council may initiate the removal of a Board Director and a Director may be removed with ~~or without~~ cause by the Tribal Council in accordance with § 80-02-07.

80-02-07 Removal by the Board of Directors.

A Director may be removed for cause by a majority vote of the Board of Directors after a hearing and upon approval of the Tribal Council. When considering removing a Director for cause, the Board of Directors shall provide written notice of the conduct supporting removal at least seven (7) calendar days prior to the hearing being held to vote on removal. The Director subject to the removal action may refute the written charges at the hearing. The Board of Directors may suspend the accused Director pending the removal hearing. Removal for cause shall include:

- (a) Three (3) unexcused absences from a Board of Directors meeting in a twelve (12) month period;
- (b) Conviction of a felony;
- (c) Conviction of a misdemeanor ~~which~~that, in the determination of the Board of Directors, adversely affects the Economic Development Authority or the Director's ability to perform his or her duties;
- (d) Adjudication as incompetent by a Court of competent jurisdiction;
- (e) Misappropriation of Economic Development Authority funds or other acts of dishonesty with respect to the Economic Development Authority;
- (f) Gross negligence, fraud, deceit or intentional misconduct which had a material adverse effect on ~~For-Profit Entity~~DNDC;
- (g) Violation of conflict of interest policies;
- (h) Violation of this Ordinance or the Bylaws;
- (i) Breach of fiduciary duties to ~~For-Profit Entity~~the Economic Development Authority; or
- (j) Failure to live drug free.

Following a majority vote by the Board of Directors for removal, the Board of Directors shall submit its decision, by resolution, to the Tribal Council for final approval. If the Tribal Council does not act within thirty (30) calendar days of receiving the Board's resolution, then the decision of the Board of Directors is final and the director shall be removed.

A Board member removed by the Board of Directors for cause ~~yet who remains eligible and qualified,~~ shall not serve again ~~serve~~ on the Board of Directors ~~for a period of no less than five (5) years from the date of removal.~~

80-02-08 Vacancies.

Any vacancy occurring for any reason in the number of Board Members, ~~not including those who are members of the Tribal Council,~~ shall be appointed by the Tribal Council within ten (10) calendar days. Any vacancy on the Board ~~who are to members of the Tribal Council~~ shall be appointed by the Tribal Council.

A Board Member appointed to fill a vacancy shall be appointed for the unexpired term of his predecessor in office. The newly appointed Board Member shall hold office until the expiration of such term and until his successor shall be appointed and shall qualify.

80-02-09 Compensation and Expenses.

The compensation for voting members of the Board shall be fixed by the Tribal Council. ~~Tribal Council members serving on the Board shall not be entitled to compensation.~~

All Board Members, ~~including Tribal Council members serving on the Board,~~ shall be entitled to reimbursement for reasonable and necessary expenses incurred in course of performing Board duties in accordance with policy. All requests for reimbursement shall be documented and preapproved by the Board.

TITLE 3 BOARD OF DIRECTORS PURPOSE AND POWER

80-03-01 Purpose.

The Economic Development Authority's general purpose is to engage in economic development activities for the benefit of the Tribe and its members. The Economic Development Authority shall serve the following specific purposes:

- (a) To develop the Tribal economy;
- (b) Create employment for tribal members;
- (c) Generate revenues for the Tribal government in order to provide services to Tribal members;
- (d) To promote the growth, continuity, and stability of the Economic Development Authority;
- (e) To distribute all capital surplus, whether in cash or property, to the tribal government to be deposited in the general fund of the Sisseton Wahpeton Oyate, provided that the Authority's earnings and income may be retained as reserves for development, operation, and maintenance costs and expenses in the reasonable discretion of the Board of Directors;
- (f) To develop a strategic plan for economic development on the Lake Traverse Reservation, which includes a set of metrics by which to gauge and assess whether the goals have been achieved;

- (g) To increase the economic well-being of the tribal membership in accordance with economic development policies and plans adopted by the Tribal Council;
- (h) To promote public health, education, charity, and other services as may contribute to the social advancement of the members of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation; and
- (i) To engage in any lawful act or activity to further these purposes.

80-03-02 Powers.

The Economic Development Authority, acting through its Board of Directors, shall have unlimited power to engage in and do any lawful business for which it is organized, including but not limited to the following powers:

- (a) To sue in its name in Tribal Court or, if jurisdiction exists in a state or federal court. This power to sue shall not be deemed to waive or limit the immunity from suit enjoyed by the Economic Development Authority. The power to be sued is governed and limited by Title 8;
- (b) ~~Shall~~ May adopt and utilize a seal and the use or non-use of the seal does not affect the validity, recordability, or enforceability of any document or act;
- (c) ~~Shall~~ May take by gift, bequest, purchase, lease, or otherwise acquire, own, or hold all or any part of its real or personal property, or any interest therein, wherever situated;
- (d) ~~Shall~~ May sell, convey, mortgage, create a security interest in, lease, exchange, transfer, improve, use or otherwise dispose of real or personal property, or any interest therein, wherever situated, provided that the real property is not held in trust;
- (e) To carry on its business either within or outside the Lake Traverse Indian Reservation;
- (f) Upon prior approval by the Tribal Council acting as Shareholder, the Board may guarantee, purchase, hold, assign, mortgage, or pledge any bonds, securities or other evidences of indebtedness created by any other corporation or organization that is in existence under the laws of the United States, any state, Indian tribe, nation, government or country, and to exercise all the rights, privileges and powers of ownership;
- (g) ~~Shall~~ May make contracts, incur liabilities, borrow money, and secure any of its obligations by mortgage of, or a creation of a security interest, in all, or any of its property, franchises, and income;
- (h) Apply for, obtain, register, purchase, lease or acquire, own, hold, use, operate and introduce, and to sell, assign or dispose of any trademark, trade name, patent, invention, improvements and processes used in connection with or secured under letters patent, and to use, exercise, develop, grant and give licenses in respect thereto;

- (i) Apply for, purchase or acquire by assignment, transfer or otherwise, and to exercise, carry out and enjoy any license, power, authority, franchise, concession, right or privilege which any government or authority or any corporation or other public body may be empowered to enact, make, or grant;
- (j) Lend money for its corporate purposes, including administering loans related to any federal, tribal or state program, and to invest and reinvest its funds and take and hold real and personal property as security for the payment of funds so loaned or invested;
- (k) ~~Shall~~ May conduct its business, carry on its operations, have offices, and exercise the powers granted by these Articles;
- (l) Hire the Chief Executive Officer for the Economic Development Authority;
- (m) Hire officers, agents, and employees, define their duties, and fix their compensation;
- (n) ~~Shall~~ May make, amend, alter, and repeal By-Laws, which are consistent with this Ordinance;
- (o) ~~Shall~~ May make and receive donations for the public welfare or charitable, scientific, educational, or governmental purposes;
- (p) ~~Shall~~ May establish employee benefits plans;
- (q) ~~Shall~~ May require the Board treasurer and financial officers to be bonded, in an amount to be determined by the Board;
- (r) Participate in any manner whatsoever, as a promoter, partner, member, associate, trustee, or manager of any partnership, joint venture, trust, or other enterprise; and
- (s) Have and exercise all powers necessary to effect its purposes.

~~Motion #6 to approve changes to Section 80-03-02, by Long Hollow Rep., second by Big Coulee Rep., question by Lake Traverse Rep., one not voting, five in favor, Motion carried.~~

80-03-03 Oath.

Each Board member before entering her or his duties shall take and subscribe an oath to perform the duties of the office faithfully, impartially, and justly to the best of her or his ability.

80-03-04 Limitation of Power.

The Economic Development Authority shall not possess any authority to bind or act for the Tribal government, except as expressly provided in this Ordinance or Tribal law.

80-03-05 Conflict of Interest.

A conflict of interest means the existence of a relationship between a Director and a private party or private interest that may cause the Director to disregard her or his official duties or may cause

the Director to be improperly influenced. No member, officer, employee, or agent of the Economic Development Authority shall be interested, either directly or indirectly, in any project, contract, sale, purchase, lease, or transfer of property to which the Economic Development Authority is a party. A conflict of interest transaction is prohibited and voidable. A Director must disclose a conflict of interest or a potential conflict of interest to the Board of Directors in writing as soon as the conflict or potential conflict arises.

TITLE 4

ACTIONS REQUIRING TRIBAL COUNCIL APPROVAL

80-04-01 Actions Requiring Tribal Council Approval.

The Economic Development Authority shall not take any of the actions described below without the prior approval of the Tribal Council, which is evidenced by a formal vote at a regular or special meter of the Tribal Council:

- (a) The proposed sale, exchange or other disposition (other than the mortgage, pledge or other grant as security interest) of all or substantially all of the assets of the Economic Development Authority, or those of its subsidiaries;
- (b) The proposed merger of the Economic Development Authority, or any of its subsidiaries, with another entity;
- (c) The proposed voluntary dissolution of the Economic Development Authority's subsidiaries;
- (d) The proposed guarantee of a subsidiaries' debt by the Economic Development Authority or another subsidiary;
- (e) The proposed liability for a subsidiaries' loans or credit by the Economic Development Authority or another subsidiary;
- (f) The appointment of the Board of Directors;
- (g) The periodic approval of a proposed long-term plan;
- (h) The proposed annual operating plan;
- (i) Proposed expenditures in excess of the level approved in the annual operating plan, subject to a permitted variance of 10%;
- (j) Proposed purchases that exceed \$50,000, which includes breaking a single transaction into separate smaller transactions to avoid compliance;
- (k) Proposed sale of an asset with a value in excess of \$50,000, which includes breaking a single transaction into separate smaller transactions to avoid compliance;
- (l) The proposed investment plan; or

- (m) The proposed transfer or conversion of assets from one subsidiary or entity to another.

Any request for Tribal Council approval must be made in writing and accompanied with a report, study, and plan that justifies the request.

TITLE 5 OFFICERS

80-05-01 Chief Executive Officer and Other Officers.

The Economic Development Authority's day--to--day activities shall be carried out by a Chief Executive Officer. The Board of Directors, with the concurrence of the Tribal Council, may hire a Chief Executive Officer and other Vice-Presidents. Each officer shall hold office until the successor is appointed, unless the officer is removed. All vacancies shall be filled promptly by the Board of Directors, subject to the concurrence of the Tribal Council.

80-05-02 Chief Executive Officer Duties.

The Chief Executive Officer shall be the principal officer for the Economic Development Authority. The Chief Executive Officer shall supervise and control all the day--to--day activities of the Economic Development Authority, subject to the superior authority of the Board of Directors and Tribal Council. The Chief Executive Officer shall perform the following duties:

- (a) Present all monthly and annual reports required of the Economic Development Authority, including its activities and financial condition;
- (b) Sign and execute all contracts in the name of the Economic Development Authority when delegated such authority or when approved by the Board of Directors;
- (c) Cause all books, accounts, records, reports, financial statements, to be retained, filed, and safeguarded;
- (d) All other duties as prescribed by the Board of Directors.

80-05-03 Vice-Presidents and Other Officers.

The Board of Directors, with the concurrence of the Tribal Council, may hire Vice-Presidents determined to be necessary for the efficient and profitable operation of the Economic Development Authority. Such officers shall perform those duties incidental to their office as determined by the Board of Directors or as assigned by the Board of Directors or Chief Executive Officer. Vice-Presidents and other officers shall be subject to and take direction from the Board of Directors and the Chief Executive Officer.

80-05-04 Duties of Officers.

The duties, powers, and limitations on powers of the Economic Development Authority's officers are those specified in this Ordinance and shall include any additional duties and powers as may be

set by written resolution of the Board of Directors, subject to the restrictions on the Board of Directors powers. All officers shall discharge their duties:

- (a) In good faith;
- (b) With the care a prudent person in a like position would exercise under similar circumstances;
- (c) In a manner they reasonably believe to be in the best interests of the Economic Development Authority and the Tribe; and
- (d) In compliance with this Ordinance and all other Tribal laws.

Officers are entitled to rely on information, opinions, reports, financial statements, or other financial data if prepared or presented by: (1) legal counsel, certified public accountants, or other professionals as to matters reasonably believed to be within that person's professional or expert competence; (2) one or more officers as to matters reasonably believed to be within that person's competence; or (3) the Board of Directors.

TITLE 6 OPERATIONAL REQUIREMENTS

80-06-01 Principal Place of Business.

The Economic Development Authority shall maintain its headquarters on the Lake Traverse Reservation in Agency Village, South Dakota.

80-06-02 Mailing Address.

The mailing address is: SWOHQ, 45630 BIA Hwy 711, Agency Village, SD 57262.

80-06-03 Fiscal Year.

The Economic Development Authority shall have the same fiscal year as the Sisseton-Wahpeton Oyate's fiscal year.

80-06-04 Annual Independent Financial Audit

The Economic Development Authority shall maintain accurate and complete accounts of its financial affairs, which shall clearly show all assets, liabilities, credits, debts, pledges, and assignments. As a government entity the Economic Development Authority shall be subject to an annual, outside, independent financial audit.

80-06-0405 Monthly Report.

The Economic Development Authority's Chief Executive Officer shall provide a monthly report to the Board of Directors and to the Tribal Council. The report shall include the financial statements of the Economic Development Authority and its subsidiaries and a narrative of their

actions and accomplishments in regard to the Annual Operating Plan and the stated objectives and goals of the Economic Development Authority and its subsidiaries.

80-06-~~05~~06 Annual Operating Plan.

Not less than thirty (30) calendar days prior to the beginning of each fiscal year, the Economic Development Authority shall prepare an annual operating plan for such fiscal year and present it to the Tribal Council at a regular or special meeting for review and approval.

80-06-~~06~~07 Annual Report.

The Economic Development Authority shall prepare and deliver to the Tribal Council and the General Council, an annual report and an audited financial statement, including a balance sheet and a statement of income and expenses, including comparative figures from the preceding fiscal year. These reports shall be provided to the Tribal Council within ninety (90) calendar days following the end of each fiscal year. These reports shall be provided to the General Council at the same time as the Vice-Chairman's report.

80-06-~~07~~08 Contracts.

Only the Chief Executive Officer is authorized to execute authorized contracts on behalf of the Economic Development Authority. Managers may execute authorized contracts on behalf of subsidiaries, provided that prior notice is provided to the Chief Executive Officer.

80-06-~~08~~09 Meeting with Subsidiaries.

The Economic Development Authority's Chief Executive Officer shall establish a regular weekly meeting with the managers for each of the subsidiaries wholly owned or operated by the Tribe or the Economic Development Authority.

80-06-~~09~~10 Inspection of Records and Audits.

The Tribal Council, or its designee, may inspect the books, records, accounts, receipts, disbursements, contracts, and computers of the Economic Development Authority or subsidiary. The Tribal Council reserves the right to perform audits of the Economic Development Authority or subsidiary to ensure compliance with applicable law.

80-06-~~01~~011 Consultation and Coordination with Reservation Planning Commission.

The Reservation Planning Commission possesses a specific role in economic development, which pertains to planning, feasibility studies, and making the appropriate recommendations to Tribal Council. New economic development initiatives, proposals, or opportunities will require the Economic Development Authority to communicate and consult with the Reservation Planning Commission on a regular basis. Whenever possible, the Economic Development Authority and the Reservation Planning Commission shall collaborate and cooperate on all new economic development planning, initiatives, and feasibility studies. Both the Economic Development Authority and the Reservation Planning Commission, through their respective Chief Executive

Officer and Director, respectively, shall work together and will ensure that efforts will not overlap or be duplicative by routinely consulting and coordinating efforts.

TITLE 7 SHARES

80-07-01 Ownership.

The Economic Development Authority is wholly-owned by the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation. No Tribal member or Tribal official shall have any personal ownership interest in the Economic Development Authority or any of its subsidiaries, whether by virtue of such person's status as a member of the Tribe or otherwise.

80-07-02 No Liability of the Tribe as the Sole Owner.

Neither the Tribe, nor any member of the Tribal Council, shall be under any obligation to the creditors of the Economic Development Authority or any subsidiary. The Tribe shall not be deemed to have waived any of the Tribe's sovereign immunity, privileges, or other immunities by virtue of its ownership or operation of the Economic Development Authority or subsidiary.

TITLE 8 SOVEREIGN IMMUNITY AND OTHER PRIVILEGES AND IMMUNITIES

80-08-01 The Economic Development Authority's Sovereign Immunity.

As an exercise of its inherent sovereign authority, the Sisseton-Wahpeton Oyate expressly confers its sovereign immunity on the Economic Development Authority. As an arm and instrumentality of the Sisseton-Wahpeton Oyate, the Economic Development Authority shall be immune from suit to the same extent as the Sisseton-Wahpeton Oyate would have such sovereign immunity had it engaged in the activities undertaken by the Economic Development Authority. The officers, agents, and employees while acting on behalf of the Economic Development Authority are not subject to personal liability and shall be immune from suit. Nothing in this Ordinance shall be construed to be a waiver of sovereign immunity.

80-08-02 Limitations on the Economic Development Authority's Power to Waive its Sovereign Immunity.

To protect the Tribe's investment in the Economic Development Authority and to ensure the continuing vitality of the Sisseton-Wahpeton Oyate, the Economic Development Authority is subject to the following limitations on its power to waive its sovereign immunity:

- (a) The Economic Development Authority shall not possess the power to waive the sovereign immunity of the Tribe itself, nor any of the Tribe's other entities;
- (b) The Economic Development Authority shall not possess the power to authorize a blanket waiver of its own sovereign immunity;

- (c) The Economic Development Authority shall not have the power to assert sovereign immunity against the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation in any matter.

80-08-03 The Economic Development Authority's Sole Method of Waiving its Sovereign Immunity.

The Economic Development Authority is hereby delegated the authority to authorize a limited waiver of its own sovereign immunity, provided such waiver complies with the following terms and conditions:

- (a) the limited waiver may be accomplished solely by a written resolution of its Board of Directors;
- (b) the limited waiver must be express and explicit;
- (c) the limited waiver shall not exceed the value of the contract or the value of an insurance policy in the case of a tort claim;
- (d) the limited waiver shall specifically identify the party for whose benefit the limited waiver is granted;
- (e) the limited waiver shall identify the property or assets that are subject to the limited waiver;
- (f) the limited waiver may only be enforceable in the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation Tribal Court, however, such a limited waiver may be enforceable in another court of competent jurisdiction should the Board determine that agreeing to an outside tribunal is necessary to secure a substantial benefit or advantage to the Economic Development Authority; and
- (g) the limited waiver shall not authorize arbitration.

Any purported or attempted waiver that does not comply with the requirements of this section shall be null, void, and of no legal effect. Should the Economic Development Authority seek to waive its immunity in terms that do not comply with this section, then its sole recourse is to propose such a limited waiver to the Tribal Council.

80-08-04 Other Privileges and Immunities.

The Economic Development Authority shall enjoy special powers, privileges, and immunities as an entity of the Tribe. Sisseton-Wahpeton Oyate also expressly confers all of the rights, privileges, and immunities enjoyed by the Tribe to the Economic Development Authority, its officers, agents, and employees, including, but not limited to, immunity from federal, state, and local taxes, regulation, and jurisdiction. The Economic Development Authority, its officers, agents, and employees shall enjoy these power, privileges, and immunities to the same extent as if the Tribe were directly engaging in the economic development activities undertaken by the Economic Development Authority.

TITLE 9 RELATIONSHIP WITH SUBSIDIARIES

80-09-01 Purpose.

The purpose of treating the Economic Development Authority as separate from any subsidiary of the Economic Development Authority is to maximize the applicable tax benefits and minimize liability.

80-09-02 Applicable Law.

The Economic Development Authority and any subsidiary of the Economic Development Authority, including, but not limited to, Tribally owned and operated corporations, shall be bound by all laws of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation.

80-09-03 Separate Legal Entities.

The Economic Development Authority and any subsidiary:

- (a) shall be and remain separate legal entities;
- (b) shall maintain separate recordkeeping, accounting, audits, tax filings, income statements, and balance sheets;
- (c) shall maintain separate liabilities, such as loans, credit, and other debt;
- (d) shall maintain separate assets;
- (e) shall hold separate Board meetings, even if the Board of Directors consists of the same officials;
- (f) shall not commingle assets;

Any departure from these requirements must be approved by the Tribal Council.

TITLE 10 REVENUE DISTRIBUTION

80-10-01 Economic Development Authority Assets and Revenue.

The Economic Development Authority's assets must be maintained in accounts separate from the Tribe's assets. The Economic Development Authority's net income and assets shall be determined in accordance with generally accepted accounting principles. Generally, net income shall be gross revenue minus expenses. The net income or earnings, including all assets, shall not inure to the benefit of any person other than the Sisseton-Wahpeton Oyate.

80-10-02 Revenue Distribution.

The Economic Development Authority shall maintain a goal of distributing no more than 10% of its annual net revenues to the Sisseton-Wahpeton Oyate on annual basis. Upon the request of the Tribal Council, the Economic Development Authority may transfer its surplus net revenues, not to exceed 10%, to the Sisseton-Wahpeton Oyate on the condition that the proposed transfer is consistent with the Economic Development Authority's financial condition and in compliance with its capital and operating budgets. No distribution shall occur when the Economic Development Authority's annual net revenues are \$500,000.00 or less during a given fiscal year. The Board of Directors, with the concurrence of the Tribal Council, shall determine the amount to transfer to the Sisseton-Wahpeton Oyate. The Economic Development Authority shall reinvest any and all net revenues, not so transferred to the Tribe, in the Economic Development Authority's economic development activities or that of its subsidiaries, growth opportunities, or facilities, provided, if such net revenues cannot be reinvested, then such revenues may be held in interest bearing bank accounts.

TITLE 11 EXISTENCE

80-11-01 Perpetual Existence until Dissolved by the Tribal Council.

The Economic Development Authority shall enjoy a perpetual existence until it is dissolved by the Tribal Council. Upon dissolution, the Tribal Council may utilize the Economic Development Authority's assets for any public and governmental purpose.