

**POKAGON BAND OF POTAWATOMI INDIANS
POKAGON DEVELOPMENT AUTHORITY CODE**

CHAPTER 1 4

Section 1.01 Short Title..... 4

Section 1.02 Authority. 4

Section 1.03 Findings. 4

Section 1.04 Purpose. 4

Section 1.05 Construction. 5

Section 1.06 Severability. 5

Section 1.07 Definitions..... 5

CHAPTER 2 6

Section 2.01 Establishment. 6

Section 2.02 Location. 7

Section 2.03 Prohibition..... 7

Section 2.04 Real Estate. 7

CHAPTER 3 7

Section 3.01 Establishment. 7

Section 3.02 Term. 8

Section 3.03 Eligibility. 8

Section 3.04 Additional Eligibility Requirements. 8

Section 3.05 Board Officers. 9

Section 3.06 Board Chairperson..... 9

Section 3.07 Board Treasurer..... 9

Section 3.08 Board Secretary..... 10

Section 3.09 Resignation. 10

Section 3.10	Removal.	11
Section 3.11	Vacancy.	11
Section 3.12	Meetings.	11
Section 3.13	Expenses and Compensation.	11
Section 3.14	Indemnification.	12
Section 3.15	Code of Ethics.	12
CHAPTER 4		12
Section 4.01	Privileges and Immunities.	12
Section 4.02	Rights.	13
Section 4.03	Powers.	13
Section 4.04	Limitation on Authority.	15
Section 4.05	Assets.	16
CHAPTER 5		16
Section 5.01	Executive Director.	16
Section 5.02	Qualifications.	16
Section 5.03	Selection.	16
Section 5.04	Powers and Duties.	17
CHAPTER 6		17
Section 6.01	Authority.	18
Section 6.02	Limitations.	18
CHAPTER 7		19
Section 7.01	Monthly Reports.	19
Section 7.02	Annual Report.	20
Section 7.03	Financial Reports.	20

Section 7.04	Annual Plan	20
CHAPTER 8		21
Section 8.01	Fiscal Year	21
Section 8.02	Accounting System	21
Section 8.03	Year-End Audit	21
Section 8.04	Inspection of Books and Records	21
CHAPTER 9		21
Section 9.01	Authority	21
Section 9.02	Citizens	22
Section 9.03	Policy	22

CHAPTER 1

General

Section 1.01 Short Title.

This Code shall be known as the "Pokagon Development Authority Code."

Section 1.02 Authority.

The Tribal Council enacts this Code pursuant to the legislative powers of the Tribal Council as enumerated in Article IX, subsections 2(a) and (k) of the Constitution; and the duties of the Tribal Council stated in Article IX, subsections 1(a), (c), and (d) of the Constitution.

Section 1.03 Findings.

The Tribal Council finds as follows:

(a) The Band is a sovereign, federally recognized Indian tribe, as reaffirmed by the Pokagon Restoration Act and is organized under the Constitution.

(b) In accordance with the Pokagon Restoration Act, and pursuant to Article IX of the Constitution, the Tribal Council is the governing body of the Band.

(c) The Tribal Council is vested with those sovereign powers of the Band that are not inconsistent with any provisions of the Constitution, including the enumerated powers set forth in Article IX, Section 2, of the Constitution, which includes to "regulate all business activities within the jurisdiction of the Band" and "charter subordinate organizations and to delegate to such organizations, or to any subordinate boards or officials of the organizations, the power to manage the economic affairs, enterprises, and property" of the Band.

(d) The Band desires to increase and diversify its economic development beyond that engaged in by Mno-Bmadsen and outside of the Gaming Business, to fund government programs, provide livelihoods to Citizens, and improve the quality of life for Citizens.

Section 1.04 Purpose.

The purpose of this Code includes to establish the Development Authority as a government instrumentality of the Band and to define the rights, powers and obligations of the Development Authority and the Board.

Section 1.05 Construction.

(a) This Code, to the extent reasonable, shall be read and interpreted in a manner consistent with the Constitution, but in the event of any inconsistency, the Constitution shall control.

(b) To the extent this Code conflicts with any provision of Pokagon Band law, the provisions of this Code shall govern.

Section 1.06 Severability.

If any provision of this Code, or its application to any person or circumstance, is held to be invalid by a court of competent jurisdiction, such judgment shall not affect, impair, or invalidate the remainder of this Code, which shall continue in full force and effect.

Section 1.07 Definitions.

As used in this Code:

(a) “Approved Instrument” means any contract, note, bond, or other obligation or instrument approved by the Development Authority, through the Board, which waives its sovereign immunity under Chapter 6 of this Code.

(b) “Band” means the Pokagon Band of Potawatomi Indians, a sovereign federally recognized Indian tribe.

(c) “Board” means the Board of Directors of the Development Authority.

(d) “Citizen” means a duly enrolled member of the Band.

(e) “Code” means this Pokagon Development Authority Code.

(f) “Constitution” means the Band’s Constitution, as amended.

(g) “Development Authority” means the Pokagon Development Authority created by this Code.

(h) “Director” means a duly appointed member of the Board.

(i) “Gaming Business” means as defined in the Band’s Pokagon Gaming Authority Ordinance, as amended.

(j) “Include”, “Includes” or Including” shall be deemed to be followed by the words “without limitation”.

(k) “Mno-Bmadsen” means the unincorporated instrumentality of the Band established pursuant to the Mno-Bmadsen Charter, as amended.

(l) “Non-Citizen” means any person who is not a Citizen.

(m) “Pokagon Restoration Act” means P.L. 103-323, enacted September 21, 1994.

(n) “Reservation” means, pursuant to the Pokagon Restoration Act or other applicable federal law: (i) all lands, the title to which is held in trust by the United States for the benefit of the Band; and (ii) all lands proclaimed by the Secretary of the Interior to be part of the Band’s reservation. The term Reservation includes any rights-of-way running through the Reservation.

(o) “Tribal Council” means the governing body of the Band.

(p) “Wholly-Owned Entity” means any entity wholly-owned by the Development Authority.

CHAPTER 2

Development Authority

Section 2.01 Establishment.

(a) The Tribal Council hereby establishes the Development Authority under this Code as an unincorporated governmental instrumentality of the Band. The Development Authority shall be governed and managed by the Board, subject in all instances to the provisions of this Code.

(b) The Development Authority and its assets and activities shall have the same privileges and immunities of the Band, including sovereign immunity from unconsented suit, and from federal, state, and local government taxation. The Development Authority is not an entity separate from the Band for the purpose of any federal, state, or local tax.

(c) The Band shall always retain the sole proprietary interest in the Development Authority, but this limitation shall not prevent the Development Authority from owning a business interest with one or more other persons or entities.

(d) Any exercise by the Development Authority of any powers or authority in accordance with this Code shall constitute the exercise of a governmental function of the Band.

(e) All rights, powers, or privileges not expressly allocated or assigned, or both, under this Code to the Development Authority shall be reserved to, and held by, the Tribal Council.

Section 2.02 Location.

To the fullest extent practicable, the principal place of business and offices of the Development Authority shall always be located on the Reservation, but the Development Authority may conduct its business activities anywhere.

Section 2.03 Prohibition.

The Development Authority shall not engage in Gaming Business.

Section 2.04 Real Estate.

In accordance with Article IV, subsections 1.a and 3.b.i of the Constitution, all real estate owned or leased by the Development Authority, or any Wholly-Owned Entity, shall be designated commercial lands, and the enactment of this Code shall empower the Development Authority and any Wholly-Owned Entity, as applicable, to sell, lease, mortgage, or otherwise transfer or encumber, any real estate owned by the Development Authority, or any Wholly-Owned Entity, as applicable, without prior approval of Tribal Council, but pursuant to Article IV, Subsection 3(c) of the Constitution, other than for a public utility service, no real estate that is owned by the Development Authority or any Wholly-Owned Entity shall be encumbered in favor of any non-Citizen of the Band, or for any other purpose, for a period in excess of twenty-five (25) years without prior approval of a two-thirds (2/3) majority in a referendum in which at least one-sixth (1/6) of the Citizens eighteen (18) years of age and older cast their ballots.

CHAPTER 3

Board

Section 3.01 Establishment.

(a) There is established a Board, the purpose of which is to manage and carry out the duties and powers of the Development Authority, as set forth in this Code.

(b) The Board is delegated the power to manage and control the business, property, and affairs of the Development Authority.

(c) The Board shall oversee the performance of the Executive Director of the Development Authority, which shall include supervision and discipline.

(d) The Board shall consist of seven (7) Directors, appointed by and serving at the pleasure of the Tribal Council. At minimum of two (2) such Directors shall be members of the Tribal Council, but no more than four (4) Directors shall be members of the Tribal Council. There shall be no alternate Directors.

(e) No Director shall be liable to any creditor of the Development Authority by reason of his or her status as a Director, or by reason of acts done in the course of his or her official duties as a Director.

Section 3.02 Term.

(a) The term of service of each Director is three (3) years but, the term of any Tribal Council member appointed to the Board shall be coterminous with his or her term of office on the Tribal Council. The Tribal Council may choose to stagger the terms of the Directors so that the terms of approximately one-third of the seats on the Board expire annually and may appoint Directors to terms of one (1) or two (2) years to accomplish this result.

(b) Directors may be re-appointed to successive terms.

(c) In the absence of Tribal Council action to the contrary, a Director may continue to serve after the expiration of his or her term, until the Tribal Council appoints a successor.

Section 3.03 Eligibility.

In order to be eligible for appointment to, and to serve on, the Board, a person shall:

(a) possess expertise, knowledge, skill, and professional and personal experience which will contribute to the fulfillment of the duties of the Board; and

(b) Not have been convicted within the last ten (10) years of a crime subject to imprisonment for a term of one (1) year or longer, excepting those crimes determined by the Tribal Council to relate to the furtherance of the Band's tribal sovereignty rights.

(c) The requirements for appointment to, and service on, the Board at Subsection 3.03(a) shall not apply to any Tribal Council member.

Section 3.04 Additional Eligibility Requirements.

(a) In addition to the eligibility requirements in Section 3.03, in order for any Non-Citizen to be eligible for appointment to, and to serve on, the Board, such Non-Citizen shall have either:

(1) a minimum of ten (10) years' experience in private sector management, business administration, accounting, or law; or

(2) (A) a minimum of five (5) years' experience in private sector management, business administration, accounting, or law, and (B) a bachelor's degree from an accredited college or university.

(b) A person, whether a Citizen or Non-Citizen, who otherwise meets the eligibility requirements for service on the Board, may be appointed to the Board; provided, however, that no more than two Non-Citizens may serve on the Board simultaneously.

Section 3.05 Board Officers.

(a) The Board officers shall be limited to the Chairperson, Treasurer, and Secretary. The Board shall select, from among the Directors, all Board officers, but only a Citizen, who is a Director, may serve as the Chairperson. All Board officers serve at the pleasure of the Tribal Council and may be removed by the Tribal Council without cause or notice.

(b) The term of each Board officer shall be coterminous with such Director's term of appointment to the Board.

(c) No Director may hold more than one Board officer position.

Section 3.06 Board Chairperson.

The Board Chairperson shall have responsibility for the general and active management of the business of the Development Authority and shall see that all orders and resolutions of the Board are carried into effect. The Board Chairperson shall report to the Board. The Board Chairperson shall preside over all Board meetings and shall be responsible for developing the Board meeting agenda and delivering the monthly and annual reports to the Tribal Council. The Board Chairperson shall have such other powers and duties as are prescribed by this Code, or as may be prescribed by the Board, subject to applicable law. The Board Chairperson shall be a voting member of the Board.

Section 3.07 Board Treasurer.

The Board Treasurer shall be the financial officer of the Development Authority and shall have the custody of the Development Authority funds and securities, and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Development Authority and shall provide for the deposit all monies and other valuable effects in the name and to the credit of the Development Authority in such depositories as may be designated by the Board. The Board

Treasurer shall disburse the funds of the Development Authority as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to the Board, at its regular meetings, or when the Board so requires, an account of all his or her transactions as Board Treasurer and of the financial condition of the Development Authority. The Board Treasurer shall perform the duties of the Board Chairperson, in the absence of the Board Chairperson. The Board Treasurer shall have such other powers and duties as are prescribed by law or by the Board of Directors, subject to applicable law.

Section 3.08 Board Secretary.

The Board Secretary shall record all proceedings of the Board, including preparing and maintaining Board meeting minutes and votes. The Board Secretary shall maintain and protect the Board meeting records. Except as provided in Chapter 6.02 of this Code, the Board Secretary may receive service of process in any judicial action, suit or proceeding on behalf of the Development Authority. The Board Secretary shall have authority to affix a seal of the Development Authority, if one is adopted by the Board, to any instrument requiring it and when so affixed, it may be attested by the Board Secretary's signature. The Board of Directors may give general authority to any other officer to affix the seal of the Authority and to attest the same. The Secretary shall have such other powers and duties as are prescribed by the Board of Directors, subject to applicable law.

Section 3.09 Resignation.

(a) A Director may resign from the Board by submitting a signed and dated letter of resignation to the Board Chairperson or Board Secretary. The resignation shall be effective as of the date tendered unless provided otherwise in the resignation letter. The Board shall forward a copy of the resignation letter to the Tribal Council Chairperson. A Director may rescind any letter of resignation before it becomes effective by submitting a signed and dated rescission of resignation letter to the Board Chairperson and Board Secretary.

(b) Any Director who no longer meets the eligibility requirements of section 3.03 or 3.04 of this Code as applicable, and, any Director who is a Tribal Council member whose service on Tribal Council ends prior to the expiration of his or her term of office on the Tribal Council, shall automatically be deemed to have resigned from the Board without further action of the Board or the Tribal Council. Such resignation shall be effective as of the date the Director no longer met the applicable eligibility requirements of section 3.03 or 3.04 or no longer serves on Tribal Council, as applicable, but the validity of any Board action taken while a Director failed to maintain such eligibility requirements shall not be affected. The Board shall promptly provide the Tribal Council with written notice of any resignation pursuant to this Subsection 3.09(b) for any Director who is not a Tribal Council member.

Section 3.10 Removal.

Notwithstanding any other provision of Band law, all Directors shall serve at the pleasure of the Tribal Council and may be removed by the Tribal Council with or without cause or notice.

Section 3.11 Vacancy.

(a) The office of any Director who is removed, resigns, or dies shall automatically be deemed vacant.

(b) Any vacancy in the Board shall be filled by the Tribal Council. Any Director appointed to fill a vacancy shall be appointed for the unexpired term of his or her predecessor.

Section 3.12 Meetings.

(a) A majority of the Directors presently in office shall constitute a quorum of the Board and may act for the Development Authority through resolutions or motions.

(b) Regular meetings of the Board shall be held monthly.

(c) Special meetings of the Board shall be held by decision of the Board Chairperson and may be held at the request of any Director submitted to the Board Chairperson. If the Board Chairperson neglects or declines to call a meeting upon request of any Director, any two Directors may call a special meeting of the Board.

(d) To the fullest extent practicable, meetings of the Board shall occur within the Reservation, but such meetings may be held at any location within or outside of the Reservation.

(e) Directors may participate in meetings by teleconference, videoconference, or other form of communication by which all participants can speak and hear each other.

(f) The Board shall keep complete and accurate records of all Board meetings and actions taken and the same shall be available for inspection by members of the Tribal Council or its designees.

Section 3.13 Expenses and Compensation.

(a) Directors shall be entitled to reimbursement for actual and reasonable expenses incurred in the discharge of their duties, but such reimbursement shall be in accordance with the expense reimbursement policies and procedures followed by the Tribal Council.

(b) Directors shall not be compensated for service on the Board other than for reimbursable expenses under Subsection 3.13(a) above, unless pursuant to a plan of compensation approved by the Tribal Council prior to its implementation. If such plan approved by Tribal Council provides for compensation based upon Board meeting attendance, no Director shall receive compensation for a Board meeting, unless he or she attended, whether physically or via telephone, video conference, or other electronic means, at least one-half (1/2) of the meeting, as determined by the Board Chairperson, based upon the length of the meeting.

Section 3.14 Indemnification.

(a) The Development Authority shall indemnify any present or past employee of the Development Authority or Director against reasonable expenses actually and necessarily incurred by that person in connection with the defense of any action, suit, or proceeding in which that person is made a party by reason of being or having been such employee or Director, except in relation to matters as to which that person shall be adjudged in such action, suit or proceeding to be liable for gross negligence or intentional misconduct in the performance of duty; or except in relation to matters in which such employee acted beyond the scope of their employment, duties or authority, as applicable.

(b) The Development Authority shall also reimburse any such employee or Director the reasonable costs of settlements of any such action, suit or proceeding if it shall be found by a majority of the Board (other than the Director(s), if any, of the Board involved in the matter in controversy), that it is in the best interest of the Development Authority and the Band that such settlement be made and that such employee or Director was not guilty of gross negligence or intentional misconduct and did not act beyond the scope of their employment, duties or authority.

(c) The rights of indemnification and reimbursement set forth in this Section 3.14 shall be in addition to any other rights that such employee or Director may otherwise be entitled to receive.

Section 3.15 Code of Ethics.

The Directors, Board officers, and employees of the Development Authority shall be subject to the Band's Code of Ethics, as amended from time to time.

CHAPTER 4 Power and Authority

Section 4.01 Privileges and Immunities.

(a) The Development Authority shall be entitled to all privileges and immunities of the Band, including the sovereign immunity of the Band, to the same extent as the Band itself, together with all other rights and privileges arising from the Band's sovereign status.

(b) Except as provided in Chapter 6 of this Code, no waiver of sovereign immunity by the Band or any other person or entity, shall ever permit or allow, or be construed or interpreted so as to permit or allow, any enforcement or recourse as against the Development Authority, except that a waiver of sovereign immunity meeting each of the requirements set forth in Chapter 6 of this Code will permit recourse against explicitly identified assets of the Development Authority.

(c) Any liability or obligation of the Development Authority of any nature whatsoever, whether arising under contract, law, or otherwise, shall be enforceable only against the Development Authority, including its assets but only to the extent the Development Authority waives its sovereign immunity in accordance with the requirements set forth in Chapter 6 of this Code to permit recourse against the same, and shall not be enforceable against any other assets of the Band, except as may be authorized by a duly adopted resolution of the Tribal Council in accordance with Band law.

(d) The liabilities and obligations of the Band, as distinct from the liabilities and obligations of the Development Authority, shall not be enforceable against the Development Authority or its assets.

(e) No assets, liabilities, rights, obligations, receipts, or expenditures of the Development Authority shall be considered those of the Band, and no assets, liabilities, rights, obligations, receipts, or expenditures of the Band shall be considered those of the Development Authority.

Section 4.02 Rights.

It is the intent of this Code to authorize the Development Authority, subject to approval of the Tribal Council where required as set forth herein, to do any and all things necessary or desirable in connection with the financing, development, construction, ownership, lease, operation, management, maintenance, and promotion of the Development Authority in the interest of furthering the governmental interests of the Band.

Section 4.03 Powers.

Subject to applicable law, the Development Authority shall have the power in its own name to:

(a) Receive, collect, and own all revenues and pay all expenses and expenditures arising from or relating to its business activity;

(b) Purchase, take, receive, lease, obtain by gift or bequest, or otherwise acquire, own, hold, improve, or use real or personal property, or any interest therein, wherever situated;

(c) Sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of or encumber all or any part of the Development Authority's property and assets;

(d) Purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, corporations, associations, partnerships or other entities, or individuals, or direct or indirect obligations of the United States or of any other government, tribe, state, territory, governmental district or municipality, or of any instrumentality thereof;

(e) Make and enter into contracts and incur liabilities, indebtedness and other obligations, including the issuance of guarantees, and the borrowing of money at such rates of interest as the Development Authority may determine, and to issue its notes, bonds, debt securities and other obligations, and secure any of such obligations by mortgage or pledge of all or any of its property, franchises, revenues, and income;

(f) Employ contractors, consultants, agents, managers, advisers, and accountants;

(g) Lend money, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;

(h) Conduct its affairs, carry on its operations, hold property, and have offices and exercise the powers granted by this Code;

(i) Develop, design, construct, equip and finance, refinance, improve or expand facilities for the conduct of its business;

(j) Hire, supervise and terminate employees, consultants and agents of the Development Authority, and define their duties and fix their compensation, but all Development employees shall be governed by the personnel policies of the Band unless and until the Board and Tribal Council approves separate personnel policies for the Development Authority and any amendments to such separate personnel policies must also be approved by the Tribal Council and the Board;

(k) Establish and maintain policies and procedures for the day-to-day operation of the Development Authority;

(l) Form and own subsidiaries, which subsidiaries shall enjoy the same privileges and immunities of the Authority to the extent permitted by law;

(m) Open and maintain such deposit and securities accounts with banks, securities intermediaries and other financial institutions, and to deposit therein any or all revenues of the Development Authority, which accounts shall be separate from other accounts of the Band, and no assets in the accounts of the Development Authority shall be commingled with the other assets of the Band; and

(n) To the extent not inconsistent with the foregoing or anything to the contrary in this Code, to have and exercise all powers necessary, appropriate, or convenient to further any or all of the purposes for which the Development Authority is organized.

Section 4.04 Limitation on Authority.

(a) Any other provision of this Code notwithstanding, if any specific instance of economic development or business venture is estimated to involve or require a pledge, investment, contribution, or expenditure of any nature (direct, indirect, in-kind, etc.) by or on behalf of the Development Authority, or any entity owned in whole or in part by the Development Authority, that exceeds eight million dollars (\$8,000,000) in the first year, the Development Authority shall have no authority to engage in such instance of economic development or business venture, unless specifically authorized by resolution of the Tribal Council. Prior to the Board seeking any such resolution of the Tribal Council, the Board shall prepare and present to the Tribal Council a report that at a minimum Includes:

(1) A business plan that Includes a description of the proposed economic development or business venture, the services and/or products offered, a market analysis, the business venture organization and management, marketing and sales strategies, and financial projections for the business venture;

(2) The amount of funding, if any, the Development Authority will be providing and the amount of funding, if any requested from the Band;

(3) The Development Authority's estimated return on its investment and if any funding is requested from the Band, the estimated return on the Band's investment; and

(4) Such other information as may be requested by the Tribal Council.

(b) The Development Authority shall also have no authority to:

- (1) Exercise any regulatory or legislative power, or
- (2) To engage in community development or deliver services to Citizens.

Section 4.05 Assets.

(a) The Development Authority's assets shall consist of the earnings and proceeds of the Development Authority and whatever other assets it develops, generates, or acquires by other means as provided in this Code or by formal transfer, sale, lease, or other conveyance from the Band by the Tribal Council.

(b) Subsection 4.05(a) notwithstanding, for purposes of clarification and the avoidance of doubt, upon transfer of funds or property from the accounts of the Development Authority to the general funds or other accounts of the Band in compliance with all contractual restrictions applicable to the Development Authority or its subsidiaries, such funds shall cease to be assets of the Development Authority without the requirement of further act or deed by the Development Authority or the Band.

CHAPTER 5
Executive Director

Section 5.01 Executive Director.

The Development Authority shall be organized under the Executive Director, who shall be under the supervision and authority of the Board. The Executive Director shall be responsible for the day-to-day operations of the Development Authority and shall perform such other duties as the Board deems necessary, subject to applicable law.

Section 5.02 Qualifications.

At a minimum, the Executive Director shall possess the following qualifications:

- (a) At least five (5) years of prior direct economic development experience;
- (b) At least five (5) years of prior business management experience; and
- (c) A bachelor's degree from an accredited college or university in economic development, business administration, public administration, marketing or a closely related field, with a master's degree in such areas preferred.

Section 5.03 Selection.

(a) The Tribal Council shall select the Executive Director. For the initial and any subsequent Executive Director, the Board shall nominate to the Tribal Council, a candidate to serve as Executive Director.

(b) If there is a vacancy in the Executive Director position, the Board may assign the duties of the Executive Director to a Development Authority employee on interim basis until the vacancy is filled.

(c) The Tribal Council shall approve any job description, including all amendments thereto, for the Executive Director.

(d) Executive Director compensation, Including any incentive or bonus plan, or any changes thereto, must be approved by the Tribal Council before implementation by the Board.

Section 5.04 Powers and Duties.

The Executive Director shall have the power and the duty, subject to Board supervision, to carry out on behalf the Development Authority, the requirements of the Development Authority under this Code, Including:

(a) The Executive Director shall provide administrative support to the Board, Including managing and supervising all Development Authority staff, consultants, and contractors, records management, and the development and oversight of the Development Authority budget.

(b) The Executive Director shall be responsible for human resource and personnel matters, Including the recruitment, hiring, supervision, and discipline of Development Authority staff, whose positions shall be established by written position descriptions, which shall be subject to the approval of the Board and the Tribal Council and all applicable hiring and employment laws of the Band. All employee suspensions without pay and terminations by or with the approval of the Executive Director may be appealed to a neutral fact finder selected by the Board, subject to such standards and procedures as the Board may establish.

(c) The Executive Director may negotiate and enter into contracts for the acquisition of goods and services required by the Development Authority and may otherwise expend Development Authority funds as needed for the operation of the Development Authority, subject to such requirements as the Board may establish, but the Executive Director may enter into contracts not exceeding \$50,000 without advance approval by the Board if such contract is within the Development Authority budget.

CHAPTER 6

Sovereign Immunity

Section 6.01 Authority.

By the adoption of this Code, the Tribal Council authorizes the Development Authority, by action of the Board and subject to the limitations contained in this Code, to:

(a) Sue and be sued in the Development Authority's name, or to submit to arbitration or alternative dispute resolution any controversy arising under, or upon, any contract, claim, obligation, or any other matter arising out of its activities under this Code; and

(b) Agree to waive its immunity from suit or other legal process and waive any or all rights it may have to resolve disputes in a court or other forum of the Band, or in any other court of competent jurisdiction, and in connection therewith to waive any right of exhaustion of tribal remedies, but, except to the extent of enforcement or remedies against assets of the Development Authority, the Band shall not be liable for the debts or obligations of the Development Authority, and the Development Authority shall have no power to pledge or encumber the assets of the Band other than assets of the Development Authority.

Section 6.02 Limitations.

(a) Every Approved Instrument shall include an express limitation of recourse on such Approved Instrument to the assets of the Development Authority and to no other assets of the Band. For each Approved Instrument, the Band irrevocably waives any and all defenses otherwise available to the Development Authority based upon its sovereign immunity from suit with respect to any action against the Development Authority in any forum seeking to enforce the obligations of the Development Authority under the Approved Instrument, and to the extent stated in the Approved Instrument, waives any right of exhaustion of tribal court remedies. With respect to suits, actions or other proceedings within the scope of this express limited waiver of immunity, the Development Authority is further empowered to sue and be sued in the name of the Development Authority, and the Band hereby further agrees to accept service of process upon the Development Authority with respect to such action by delivery to the Board Chairperson or Board Secretary, but the power to sue and be sued shall extend only to actions on an Approved Instrument as set forth in this Subsection and shall not constitute a waiver of the sovereign immunity of the Band, including the Development Authority, for any other purpose or action whatsoever. This action does not constitute a delegation to the Development Authority of the power to make any waiver of the immunity of the Band, except with respect to assets of the Development Authority and only in accordance with this Chapter 6. Notwithstanding anything herein to the contrary, the grant of power herein to sue and to be sued shall not in and of itself constitute a waiver of immunity whatsoever.

(b) In addition to the requirements of Subsection 6.02(a) above, any waiver of immunity by the Development Authority shall:

(1) Be duly approved by the Board by the affirmative vote of at least five (5) Directors;

(2) Be in writing only;

(3) Expressly state that any recourse and enforcement shall be limited to the explicitly designated assets, of the Development Authority; and

(4) Be limited in scope to the express matters to which it is given, and as to the remedies and other conditions set forth therein.

(c) The Development Authority, by action of the Board and subject to the limitations contained in this Code, shall have the authority to consent, with respect to any suit against the Development Authority, to:

(1) The exercise of jurisdiction by the state courts of any state, the federal courts sitting in any state, the tribal courts of the Band or any other Indian tribe, or the courts of any United States territory or foreign jurisdiction; and

(2) Arbitration or alternative dispute resolution.

(d) Subsections 6.02(a) – (c) notwithstanding, the Board may not waive the immunity of the Development Authority unless at the time of such Board action, there are at least two (2) Directors appointed to the Board who are members of the Tribal Council and are present at the meeting when such Board action occurs.

CHAPTER 7

Reports

Section 7.01 Monthly Reports.

Each month, the Board shall submit to the Tribal Council a report showing, with respect to the prior month:

(a) A summary of the Development Authority's activities;

(b) The financial condition of the Development Authority;

(c) A summary of any waiver of the Development Authority's sovereign immunity approved by the Board;

(d) Any significant problems, accomplishments, and events;

(e) Plans and financial projections for the next month; and

(f) Such other information as the Board or the Tribal Council deems pertinent.

Section 7.02 Annual Report.

Not less than ninety (90) days after the close of each fiscal year, the Board shall submit to the Tribal Council, an audited annual report showing, with respect to the prior year:

(a) A summary of the Development Authority's activities;

(b) The complete financial condition of the Development Authority, which shall include a balance sheet and an audited financial statement and a detailed report outlining the operations of the Development Authority and all subsidiaries; and

(c) Any significant problems, accomplishments, and events, including progress on the annual plan;

(d) Plans for the next year;

(e) Financial projections for the next year; and

(f) Such other information as the Board or the Tribal Council deems pertinent.

Section 7.03 Financial Reports.

The Development Authority shall maintain such books and records with respect to its operations and assets as are customary or required by any applicable law. The Development Authority shall cause the preparation of financial statements based its annual audit in accordance with generally accepted accounting principles. The Board shall cause to be prepared such other reports at such times and relating to such matters with respect to the Development Authority as the Tribal Council may from time to time request.

Section 7.04 Annual Plan.

The Board shall cause to be prepared an annual plan of operation for the Development Authority and any subsidiaries, which shall include projected operating budget(s), projected capital budget(s), production/sales targets, projected staffing requirements, expense/revenue projections, acquisitions, and Development Authority strategies.

CHAPTER 8

Accounting

Section 8.01 Fiscal Year.

The fiscal year of the Development Authority shall be the same as the Band's fiscal year.

Section 8.02 Accounting System.

The Board shall use an accounting system that is:

- (a) In conformity with generally accepted accounting principles applicable to the Development Authority; and
- (b) Consistent with any covenants related to the Development Authority; and
- (c) Necessary and advisable, in the reasonable discretion of the Board, in order to manage the assets of the Development Authority, but such accounting system shall ensure the availability of information as may be necessary to comply with applicable laws, including regulatory requirements.

Section 8.03 Year-End Audit.

The Board shall cause an annual Independent audit to be performed on the accounts and records of the Development Authority at the close of each fiscal year and as otherwise required by law.

Section 8.04 Inspection of Books and Records.

The books, records and property of the Development Authority shall be available for inspection at all reasonable times by the Tribal Council and representatives authorized by the Tribal Council.

CHAPTER 9

Dividends

Section 9.01 Authority.

The Board shall have the power to set and issue regular dividends solely to the Band (and no other person or entity), which shall be based on a sustainable percent of net assets and profits of the Development Authority, but no dividends will be issued if, after giving effect thereto, either:

(a) The Development Authority would not have adequate capital reserves to achieve the goals and objectives of the Development Authority and to pay its debts as they become due in the usual course of business; or

(b) The Development Authority's total assets would be less than its total liabilities.

Section 9.02 Citizens.

In accordance with Article IX, Subsection 2(c) of the Constitution, any distribution of net profits from the Development Authority to the Citizens may only be authorized by legislation approved by the Tribal Council and a referendum vote conducted in accordance with Article XIV, Section 3 of the Constitution.

Section 9.03 Policy.

The Board shall adopt a dividend policy consistent with this Chapter 9.

LEGISLATIVE HISTORY

Pokagon Development Authority Code, enacted December 10, 2019 by Res. No. 19-12-10-04.