



# KIOWA TRIBE

P.O. Box 369 · Carnegie, Oklahoma · 73015  
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OFFICE OF THE LEGISLATURE

## KIOWA TRIBE RESOLUTION NO. KL-CY-2018-005

### KIOWA CASINO OPERATIONS AUTHORITY REPORTING AND CHARTER MODIFICATION ACT OF 2018

At a duly called Session of the Legislature of the Kiowa Tribe held this 13<sup>th</sup> day of January, 2017, the following Resolution and Law were adopted.

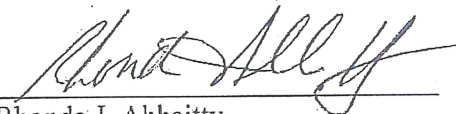
**WHEREAS;** the Legislature is vested with the authority to pass laws and resolutions pursuant to Article VI, Section 6(a) of the Constitution of the Kiowa Tribe; and,

**WHEREAS;** the Legislature has determined that it is in the best interests of the Tribe, Chairman, and Legislature to receive regular and up-to-date reports on the operation of the Tribe's gaming enterprises, a key source of revenue for the Tribe.

**NOW THEREFORE IT BE IT RESOLVED;** that the Legislature hereby enacts the attached law entitled, "Kiowa Casino Operations Authority Reporting and Charter Modification Act of 2018".

### CERTIFICATION

The foregoing resolution KL-CY-2018-005 was duly voted upon by the Legislature on January 13, 2018, at a Session with a vote of ( 7 ) in favor and ( 0 ) opposed, ( 0 ) abstaining, and ( 0 ) absent, pursuant to the authority vested in the Legislature by the Constitution of the Kiowa Tribe.

  
Rhonda J. Ahhaitty  
Secretary of the Legislature

Posted December 12, 2017 for the January 13, 2018 Session IX



**LEGISLATURE - RESOLUTION NO. KL-CY-2018-005:**

**SPONSOR:** Renee M. Plata, Speaker of the Legislature

**CO-SPONSOR(S):** Rhonda J. Ahhaitty, Secretary of the Legislature; Ronald Poolaw, Sr., Legislator; Anita Onco-Johnson, Legislator; Dave Geimausaddle. Legislator; Modina Waters, Legislator; Ben Wolf, Legislator.

<b>LEGISLATORS</b>	<b>YES</b>	<b>NO</b>	<b>ABSTAIN</b>	<b>ABSENT</b>
Rhona J. Ahhaitty	X			
Renee M. Plata	X			
Ronald C. Poolaw, Sr.	X			
Dave Geimausaddle	X			
Anita Onco Johnson	X			
Ben Wolf	X			
Modina Waters	X			

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**DELIVERY OF THE RESOLUTION AND LAW TO THE CHAIRMAN**

Resolution No. KL-CY-2018-005, was presented to the Chairman of the Kiowa Tribe on the 18<sup>th</sup> day of January, 2017, pursuant to the Article VI, Section 8(a)(iv) of the Constitution of the Kiowa Tribe, and will become effective after signature by the Chairman or veto override by the Legislature, and as otherwise required by the Constitution.

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Matthew M. Komalty  
Chairman of the Kiowa Tribe

**CHAIRMAN'S ACTION:**

APPROVED

VETO - RETURNED TO LEGISLATURE WITH EXPLANATION:

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On this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
Matthew M. Komalty  
Chairman of the Kiowa Tribe

Presented by the Chairman to the Legislature on the \_\_\_\_ day of \_\_\_\_\_, 2018.

**LEGISLATURE'S ACTION:**

**Override of Chairman's veto:**

YES

NO

LEGISLATORS	YES	NO	ABSTAIN	ABSENT
Rhona J. Ahhaitty				
Renee M. Plata				
Ronald C. Poolaw, Sr.				
Dave Geimausaddle				
Anita Onco Johnson				
Ben Wolf				
Modina Waters				

## CERTIFICATION

The foregoing resolution KL-CY-2018- was duly voted upon by the Legislature on \_\_\_\_\_, 2018, at a meeting with a vote of \_\_\_\_\_ in favor and \_\_\_\_\_ opposed, and \_\_\_\_\_ abstaining pursuant to the authority vested in the Legislature by the Constitution of the Kiowa Tribe.

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Rhonda J. Ahhaitty  
Secretary of the Legislature

### **Section 1.1 Short Title**

This enactment shall be known as the “Kiowa Casino Operations Authority Reporting and Charter Modification Act of 2017” (“Act”).

### **Section 1.2 Purpose**

The purpose of this Act is to direct the Kiowa Casino Operations Authority (“KCOA”) to provide the Tribe, Chairman, and Legislature with regular and up-to-date reports on the operation of the Tribe’s gaming enterprises, and to modify the Charter bring the KCOA into compliance with the new Constitution of the Kiowa Tribe (“Tribe”).

### **Section 1.3 Findings**

(a). Since 2004, the KCOA, managed by a Board of Trustees, has operated the Tribe’s casinos.

(b). In May 2017, the voters of the Tribe adopted a new Constitution (“Constitution”). The Constitution separates the functions of government into branches including an Executive branch (Chairman and Departments), a Legislative branch (Legislature, formerly the Business Committee), and a Judicial branch (new Court system). The Constitution provides for Boards to be created by law and to be located in the Executive branch of government, with Board members selected by nomination by the Chairman and confirmation by the Legislature. The Constitution requires all Boards to follow the laws of the Tribe. *See*, Const., Art. VI, Sec. 6(i).

(c). The Tribe’s former Business Committee created the KCOA by enacting a Charter for the KCOA by Resolution, with the Business Committee retaining certain powers including approving amendments the Charter.

(d). The Legislature has determined the need to obtain regular, up-to-date reports from the KCOA, and to modify the Charter to bring the KCOA into compliance with the new Constitution.

### **Section 1.4 Reports from the KCOA**

(a). The KCOA and its Board of Trustees shall be considered a Board as defined in Article VI, Section (6)(i) of the Constitution.

(b). The KCOA and its Board of Trustees shall provide the Chairman and Legislature with a monthly and year to date financial statements prepared in accordance with Generally Accepted Accounting Principles (“GAAP”) to include a balance sheet, profit/loss statements, and any supplemental information necessary to provide the reader with a good understanding of the financial results, and shall do so by the twentieth day of each month for the preceding month. The KCOA shall also provide the Chairman and Legislature with a written report on October 1<sup>st</sup> and April 1<sup>st</sup> of each year detailing to the status of the Tribe’s casino operations and financial condition.

**Section 1.5 Appropriations**

The Legislature hereby authorizes the appropriation of funds in an Annual Budget or Budget Modification for the operation of the KCOA and Casinos.

**Section 1.6 Modifications to the KCOA Charter**

The Legislature hereby approves the modifications to the KCOA Charter attached hereto.

SIXTH AMENDED AND RESTATED  
CHARTER  
OF THE  
KIOWA CASINO OPERATIONS AUTHORITY

**Article 1.     Formation.**

Section 1.1     On August 25, 2004, the Kiowa Tribal Gaming Commission (the "Commission"), formed the Kiowa Casino Operations Authority (the "Authority") as an instrumentality and commercial enterprise of the Kiowa Tribe, a federally recognized Indian tribe (the "Tribe"), and adopted the initial Charter of the Authority, pursuant to Article V, Section 2 of the Constitution and Bylaws of the Tribe (the "1970 Constitution"). An Amended and Restated Charter of the Authority was adopted on February 15, 2005 and a Second Amended and Restated Charter was adopted on April 26, 2005. A Third Amended and Restated Charter was adopted on November 21, 2006. A Fourth Amended and Restated Charter was adopted on October 2, 2009. A Fifth Amended and Restated Charter was adopted by the Kiowa Business Committee pursuant to Resolution No. CY-2011-44 adopted April, 20th, 2011.

**Article 2.     Offices.**

Section 2.1     The principal office of the Authority shall be located at the Kiowa Tribal Complex in Carnegie, Oklahoma, or at such other location within the State of Oklahoma, including, without limitation, at non-Tribal Lands as may be determined by the Board of Trustees.

**Article 3.     Business.**

Section 3.1     The business of the Authority shall be to take any and all actions in furtherance of developing, constructing, furnishing, equipping, owning, leasing, operating, managing, maintaining, promoting and financing all gaming, resort and hospitality businesses of the Tribe, and engaging in any other lawful activity in furtherance thereof (the "Business").

**Article 4.     Relation to Tribe: Sovereign Immunity.**

Section 4.1     The Authority shall constitute an unincorporated business enterprise of the Tribe. The Authority shall be wholly-owned by the Tribe.

Section 4.2     For purposes of taxation, civil jurisdiction and regulatory jurisdiction, the Authority shall be deemed a subordinate arm and governmental instrumentality of the Tribe; however, authority is granted to enter into contracts permitting recourse and enforcement as set out below, against the assets and revenues of the Authority.

Section 4.3     The Authority shall have no power to exercise any regulatory or legislative power; the Tribe reserves from the Authority all regulatory, legislative and other

governmental power, including, but not limited to the power to grant, issue, revoke, suspend or deny licenses, conduct background investigations, and enact legislation regulating gaming on lands within the jurisdiction of the Tribe ("Tribal Lands").

Section 4.4 The Authority shall be exempt from all federal or state income taxes or other impositions to the same extent as the Tribe, and for purposes of all federal, state or local taxes shall not be deemed to be a taxable entity separate from the Tribe.

Section 4.5 Except as expressly authorized by the Legislature of the Tribe ("Legislature") by law and permitted by applicable law, all real property, and any interest therein, used in the Business shall belong to the Tribe.

**Article 5. Ability to sue and be sued.**

Section 5.1 The Authority, by resolution duly adopted by the Board, shall have the authority to (a) consent to sue and to be sued in its name, but the Tribe shall not be liable for the debts and obligations of the Authority, and the Authority shall not have the power to pledge or encumber the assets of the Tribe other than the personal property of the Authority. This provision does not constitute a waiver of any immunity of the Tribe or a delegation to the Authority to make such a waiver.

Section 5.2 The Authority shall be subject to the jurisdiction of the Courts of the Tribe.

Section 5.3 Except as expressly provided in this section, the Tribe by adoption of this Charter and the establishment of the Board is not waiving its sovereign immunity in any respect or consenting to the jurisdiction of any court outside the Tribe. The provisions of this Charter shall be strictly construed with a view toward protecting tribal assets from the reach of creditors and others.

**Article 6. Enforcement of Claims: Separation of Liabilities. Assets. Etc.**

Section 6.1 All liabilities of the Authority arising out of, or incurred in connection with, its operations have been and shall continue to be the sole and exclusive obligation of the Authority, and shall be enforceable only as against the Authority, its assets, revenues or activities. No liabilities or obligations of the Tribe, other than the Authority, shall be enforceable as against the assets, revenues or activities of the Authority.

Section 6.2 All assets used in the development and operation of the Business, together with all income and earnings therefrom and all assets acquired therewith, shall be owned by the Tribe.

**Article 7. Judgment Proof Property.**

Section 7.1 Except as applicable either as (a) provided in the Kiowa Indian Tribe of Oklahoma Amended and Restated Gaming Ordinance (as may be amended, modified or



replaced, the “Ordinance”) or (b) expressly consented to by the Authority, all property including funds acquired or held by the Authority pursuant to this Charter shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against the Authority be a charge or lien upon such property. However, the provisions of this section shall not apply to or limit the right of lenders or obligees to pursue any remedies for the enforcement of any pledge or lien given by the Authority on its assets, fees or revenues.

**Article 8. Operation of the Authority.** The Authority shall conduct and manage its Business pursuant to the policies and procedures adopted by the Board subject to the terms of this Charter, the Tribe’s Constitution approved May 5, 2017 (“2017 Constitution”) and other law of the Tribe.

**Article 9. Objectives of Board.**

Section 9.1 The objectives of the Board are to exercise control over the management and conduct of the Business, to provide a fair return to the Tribe on its investments.

**Article 10. Enumerated Powers.** Subject to the limitations set forth in this Charter, the Ordinance and all other applicable tribal laws, the Board shall have complete control over the management and conduct of all Business operations and affairs of the Authority, except those actions which require the approval of the Legislature by law. The Board shall have the power;

Section 10.1 subject to the Ordinance, and applicable tribal laws, to cause the authority to engage in gaming operations on Tribal Lands which are placed under the control of the Authority by the Tribe for the conduct of gaming operations;

Section 10.2 to cause the Authority to engage in hotel, restaurant, alcoholic beverage service, performance entertainment, retail sales and other business activities to the extent determined by the Board to be ancillary to the business of gaming conducted by the Authority, and conducted on Tribal Lands under the control of the Authority, all as determined by the Board to be in the best interest of the Authority and the Tribe;

Section 10.3 to adopt, amend or repeal policies and procedures of the Authority, including personnel policies and the terms and conditions of employment relating to the Business;

Section 10.4 to prescribe the duties of, and fix the compensation for, officers, employees and other agents of the Authority, and indemnify members, officers, employees and agents;

Section 10.5 to enter into, make, perform and carry out, cancel and rescind contracts, agreements and understandings for any lawful purpose pertaining to the Business or incidental to the purposes for which the Authority was established with any Federal, state, Tribal or local governmental agency or authority or with any person, partnership, limited partnership,

corporation, limited liability company, Indian tribe, Tribal Party, or other entity;

Section 10.6 to lease property from the Tribe for such periods as are authorized by law, and to hold, mortgage, manage or sublease the same, subject to approval by the Legislature by law;

Section 10.7 to give guarantees in incur liabilities;

Section 10.8 to mortgage or pledge assets and receipts of the Authority as security for debts;

Section 10.9 to purchase, receive, take by grant, devise, bequest or otherwise, lease or otherwise acquire, own, hold, improve, employ, use, and otherwise enjoy all powers necessary or appropriate to deal in and with, property, or an interest in property, wherever situated for use in the Business;

Section 10.10 to sell, convey, lease, exchange, transfer or otherwise dispose of, or mortgage or pledge, or create a security interest in any property or an interest in property of the Authority, wherever situated;

Section 10.11 to employ or approve the employment by the Authority of contractors, consultants, attorneys and accountants;

Section 10.12 to undertake and carry out studies and analyses of existing operations and potential new resort enterprises;

Section 10.13 to purchase or authorize the purchase of insurance from any stock or mutual company for any property or against any risk or hazards;

Section 10.14 to establish and maintain such bank accounts and other depository relationships as may be necessary or convenient;

Section 10.15 to declare and pay to the Tribe, as sole owner of the Authority, when requested by Legislature by law, dividends consisting solely of Distributable Cash.

Section 10.16 to establish, fund, and maintain Reserves for payment of debts, liabilities and obligations, and working capital;

Section 10.17 to take such other actions and do such other things that are authorized by this Charter, the Ordinance or Tribal law;

**Article 11. Reserves, Net Revenues and Tribal Distributions.**

Section 11.1 "GAAP" shall mean generally accepted accounting principles in the United States as applied on a consistent basis.

Section 11.2 "Net Revenues" shall mean gross revenues of an Indian gaming activity less amounts paid out as, or paid for, prizes and total operating expenses, excluding management fees.

Section 11.3 All Net Revenues shall be used consistent with the Kiowa Indian Tribe of Oklahoma Amended and Restated Gaming Ordinance, the Tribal Gaming Compact between the Kiowa Tribe of Oklahoma and the State of Oklahoma, and the Indian Gaming Regulatory Act.

1. To fund Tribal government operations or programs.
2. To provide for the general welfare of the tribe and its members.
3. To promote Tribal economic development.
4. To donate to charitable organizations.
5. To help fund operations of local government agencies.

Section 11.4 "Reserves" shall mean amounts set aside by the Authority in accordance with GAAP for payment of debts, liabilities and obligations, and working capital, either as (i) required by the terms of any contract binding on the Authority, or (ii) authorized by the Legislature by law.

Section 11.5 "Distributable Cash" shall mean Net Revenues less Reserves.

**Article 12. Enumerated Limitations.**

Section 12.1 Notwithstanding any other provision in this Charter, the Authority shall not take any of the following actions without authorization from the Legislature by law:

- (a) Waive or purport to waive the Sovereign immunity of the tribe.
- (b) pledge as security for any debt or other obligation any revenues or assets of the Tribe.
- (c) bind or create any obligation or liability of the Tribe.
- (d) effect any liquidation, dissolution or winding up of the Authority; or
- (e) affect any sale, lease, assignment, transfer or other conveyance of the assets of the Authority except in the ordinary course of business.

(f) commence gaming operations at any gaming facility, or commit to commence such operations, or commence construction of such gaming facility, other than as authorized by the Legislature by law.

(g) enter into, make, perform and carry out, cancel or rescind any Management Contract.

**Article 13. Board of Trustees.**

Section 13.1 Powers. Subject to the provisions of this Charter, the 2017 Constitution and other laws of the Tribe, the business and affairs of the Authority shall be managed and all business enterprise powers shall be exercised by or under the direction of the Board of Trustees (the "Board").

Section 13.2 Duties. The duties and obligations of the Board and each individual trustee are only as expressly set forth in this Charter, the 2017 Constitution, and other laws of the Tribe.

Section 13.3 Board of Trustees: Number and Term of Office.

(a) The Board shall consist of five (5) members, hereby designated "Trustees", who shall serve four year staggered terms of office as established by the Chairman beginning with all Trustees nominated by the Chairman and confirmed by the Legislature after January 1, 2018. The terms shall be staggered so that every two years, either two or three Trustees' terms, as the case may be, shall expire.

Following the expiration of the initial term, successive terms of each trustee shall be for a term running through the fourth anniversary of the date of the initial term or any subsequent term expires.

(b) Each member of the Board shall serve until the earlier of his resignation, recall or the expiration of his term (and, in the last instance, thereafter until his successor is duly nominated, confirmed, and installed into office). A Trustee shall not serve more than two (2) consecutive terms.

(c) The Chairman and Legislature shall timely nominate and confirm, respectively, one (1) successor trustee to fill the trustee position upon the expiration of the incumbent's term of office with persons who meet the qualifications set forth in section 13.4.

Section 13.4 Qualification of Trustees. All trustees of the Authority shall be natural persons of at least thirty (30) years of age who (1) have earned a four (4) year degree from an accredited United States college or university, or (2) have at least two (2) years of college education and five (5) years of management or supervisory experience in gaming or resort related businesses. A majority of the Trustees shall be enrolled members of the Tribe. All of the Trustees shall be Native Americans who are enrolled members of a federally recognized tribe and hold a trustee's license or other license issuable by the Commission pursuant to the Ordinance; (b) has been convicted of a felony or any crime of moral turpitude by federal, state or tribal

authorities; (c) holds any elected office of the Tribe; (d) is otherwise an employee of the Tribe, or (e) has been recalled or removed for cause from elected or appointed office of the Tribe, the Authority or the Commission.

Section 13.5 All Trustees shall be qualified and nominated by the Chairman of the Tribe (the "Chairman of the Tribe"), subject to confirmation by the Legislature, and subsequent installation into office; provided, that in order to maintain enough Trustees for a quorum to conduct business, the Chairman shall not remove more than two Trustees at a time, and a replacement Trustee shall be nominated and confirmed prior to any action by the Chairman to remove another Trustee.

Section 13.6 The Chairman of the Board. The Board shall choose a Chairman of the Board of Trustees (the "Chairman of the Board") from among its members. The Chairman of the Board shall, if present, preside at all meetings of the Board and exercise and perform such other powers and duties as may be from time to time assigned to him by the Board.

Section 13.7 Resignations. Any trustee of the Authority may resign at any time by giving written notice to the Chairman of the Tribe and Legislature and shall be effective the date the written notice of resignation is received of by the Chairman of the Tribe and Legislature.

Section 13.8 Vacancies. The Chairman of the Tribe and Legislature shall fill any vacancy occurring in the Board with persons who meet the qualifications set forth in Section 13.04. The trustee so appointed shall continue in office until expiration of the term that the trustee was appointed to fill and until such trustee's successor is elected and qualified. The existence of a vacancy on the Board shall not affect the ability of the Board to conduct business or take actions.

Section 13.9 Removal.

Each trustee shall be subject to removal for good cause as determined by the Chairman; provided, that the Chairman shall not be authorized to remove more than two trustees at a time, and a replacement shall be nominated, confirmed, and installed into office before any action to remove another trustee is taken in order to ensure that the Board will continue to operate with a quorum of at least three trustees at all times.

Section 13.10 Place of Meeting.

The Board may hold its meetings at such place or places as the Board may from time to time appoint, or as may be designated in the notice calling the meeting.

Section 13.11 Regular Meetings. Regular meetings of the Board shall be limited to twelve (12) monthly meetings. The Legislature shall be notified of each meeting 24-hours prior to the meeting date. Members of the Legislature and its designated representatives shall be at all times privileged to attend all regular and special meetings of the Board and to be heard at such meeting in respect of all business that the Legislature or its designated representatives shall desire to bring to the attention of the Board.

Section 13.12 Special Meetings. Special meetings shall be limited to twelve (12) meetings per year. Additional special meetings may be called in circumstances constituting an emergency as determined by the Board. Special meetings may be called by the Chairman of the Board or two or more of the trustees. Notice of each such meeting shall be given to the Legislature 24 hours in advance of each meeting. Every such notice shall state the time and place of the meeting and the purpose of, or the business to be transacted at, such meeting. Each member of the Legislature and its designated representatives shall be privileged to attend all special meetings of the Board and there to be heard to bring before the Board any business that the Legislature or its designated representatives deem to be appropriate.

Section 13.13 Quorum, Manner of Acting, and Adjournment.

(a) A majority of the trustees then serving shall constitute a quorum for the transaction of business, but in any event a quorum cannot consist of less than (3) trustees.

(b) Except as otherwise specified in this Charter, the acts of a majority of the trustees present at a meeting at which a quorum is present shall be the acts of the Board. The trustees shall act only as the Board and the individual trustees shall have no power.

Section 13.14 Committees.

(a) The Board by resolution adopted by a full majority of the Board, may designate one or more trustees as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee.

(b) No committee of the Board shall have the authority of the Board. Section 13.11 and 13.12 shall be applicable to all committees of the Board.

Section 13.15 Compensation. The trustees shall be entitled to receive a fixed stipend as compensation per meeting as set in an approved Annual Budget or Budget Modification. The per meeting stipends shall be for regular and special meetings of the Board. The trustees shall also be entitled to receive reimbursement for any reasonable expenses incurred in connection with the performance of the trustees' duties.

Section 13.16 Minutes and Resolutions. The Authority shall keep minutes and resolutions of all proceedings of the Board and committees thereof. Copies of all minutes and resolutions shall be submitted promptly to the Chairman of the Tribe and Legislature for their review.

Section 13.17 Limits on Liability. No member of the Board shall be liable to any creditor of the Authority.

Section 13.18 Personal Interest. During the time a trustee serves on the Board and (3) Three years thereafter, no member of the Board, or any officer or employee of the Authority, or any other public official who exercises any responsibilities or functions with respect to the

Authority (collectively, "Insiders") shall voluntarily acquire any interest, direct or indirect, in any business doing, or seeking to do, business in any manner with the Authority. If any Insider involuntarily acquires any such interest, or voluntarily or involuntarily, acquired any such interest prior to becoming an Insider, such Insider shall immediately disclose his or her interest in writing to the Board, the Chairman of the Tribe, and the Legislature, such disclosure shall be entered in the minutes of the Board, and such Insider shall immediately dispose of such interest. In the interim, such Insider shall not participate in any action by the Board or the Authority relating to, concerning or affecting the business or business opportunity in which he or she has any such interest.

**Article 14. Bond.**

Section 14.1 Prior to opening any Gaming Operation, the Board, on behalf of and in the name of the Authority, shall obtain or provide for the obtaining of adequate fidelity bond coverage of its trustees, officers, agents or employees handling cash or authorized to sign checks or verify vouchers.

**Article 15. Notice-Waivers.**

Section 15.1 Notices. Whenever written notice to any person is required by this Charter, it may be given to such person either personally or by sending a copy thereof by commercial overnight delivery service or through the mail to his address appearing on the books of the Authority, or supplied by him to the Authority for the purpose of notice. If the notice is sent by mail it shall be deemed to have been given to the person entitled thereto when deposited in the United States mail.

Section 15.2 Waiver of Notice.

(a) Whenever any notice is required to be given to any trustee or other person by this Charter, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

(b) Attendance of a person at any meeting shall constitute a waiver of notice of such meeting, except when a person attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

**Article 16. Officers.**

Section 16.1 Number, Qualifications and Designation. The initial officers of the Authority shall consist of a Chief Operating Officer, a Chief Financial Officer, a Secretary and such additional officers as may be elected or appointed in accordance with Section 16.1 as may be necessary to enable the Authority to sign instruments and conduct its Business, each of whom shall hold office for such period, have such authority, and perform such duties as are provided in this Charter, or as the Board from time to time may determine. No Trustee shall

serve as an officer of the Authority.

Section 16.2 Election and Term of Office. The officers of the Authority shall be appointed by the Board, and each such officer shall serve at the discretion of the Board.

Section 16.3 Resignations. Any officer or agent may resign at any time by giving written notice to the Chairman of the Board, or to the Chief Operating Officer or Secretary. Any such resignation shall take effect at the date of the receipt of such notice.

Section 16.4 Removal. Any officer or agent of the Authority may be removed by the Board at any time (with or without cause). Such removal shall not prejudice the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not itself create contract rights.

Section 16.5 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or any other cause may be filled through appointment by the Board.

Section 16.6 General Powers. All officers and agents of the Authority, as between themselves and the Authority, shall have such authority and perform such duties in the management of the Authority as may be provided in this Charter or as may be determined by resolution of the Board.

Section 16.7 Chief Operating Officer. The Chief Operating Officer shall be the general manager of the Authority and shall, subject to the control of the Board, have general supervision, direction and control of the day-to-day operations of the Authority, subject to the oversight and authority of the board.

Section 16.8 Chief Financial Officer. The Chief Financial Officer shall report on a day to day basis to, and shall be subject to the control and general supervision of, the Chief Operating Officer or such other officer designated by the Board, subject in all cases to the ultimate supervision of the Board. The Chief Financial Officer shall have general supervision, direction and control of the financial affairs of the Authority and shall have such other powers and duties as may be prescribed by this Charter. In the absence of a named Treasurer, the Chief Financial Officer shall also have the powers and duties of the Treasurer as hereinafter set forth and shall be authorized and empowered to sign as Treasurer in any case where such officer's signature is required.

Section 16.9 The Secretary. The Secretary shall, to the extent possible, (a) attend all meetings of the Board (b) record all the votes of the trustees and the minutes of the meetings of the Board and committees thereof in a book or books to be kept for that purpose, (c) see that notices are given and records and reports are properly kept and filed by the Authority as required by law, (d) be the custodian of the seal of the Authority, and, in general, (e) perform all duties incident to the office of Secretary, and such other duties as from time to time may be assigned by the Board.



Section 16.10 The Treasurer. The Treasurer shall (a) have or provide for the custody of the funds or other property of the Authority and keep a separate book account of the same, (b) collect and receive or provide for the collection and receipts of monies earned by or in any manner due to or received by the Authority, (c) deposit all funds in his or her custody as Treasurer in such banks or other places of deposit as the Board from time to time may designate, (d) whenever so required by the Board, render an accounting showing his or her transactions as Treasurer and the financial condition of the Authority, and, in general, (e) discharge such other duties as from time to time may be assigned by the Board or the Chief Operating Officer.

Section 16.11 Salaries. The salaries of the officers elected by the Board shall be fixed from time to time by the Board or by such officer or committee as may be designated by resolution of the Board.

#### **Article 17. Records, Audits and Reports.**

Section 17.1 The Authority shall maintain such books and records with respect to its operations and assets as are customary or required by any provision of the Ordinance or regulation of the National Indian Gaming Commission (the "NIGC") (including, but not limited to, the Minimum Internal Control Standards) or by any other applicable legal requirement. The Authority shall cause annual audits of the Business in compliance with generally accepted auditing procedures and the preparation of financial statements based thereon in accordance with Generally Accepted Accounting Principles, consistently applied, the Indian Gaming Regulatory Act, the regulations of the NIGC, the Ordinance, and directives of the Legislature by law.

Section 17.2 There shall be kept at the principal office of the Authority an original or duplicate record of the proceedings of the trustees, and the original or a copy of the Charter, including all amendments to date.

Section 17.3 The Legislature, upon written demand to the Authority, shall have the right to examine, in person, or by agent or attorney, at any reasonable time or times, for any proper purpose the Authority's relevant books and records of accounts, minutes and to make copies of or extracts therefrom.

Section 17.4 The Authority shall prepare and submit to the Legislature within thirty (30) days after the close of each month a monthly report which includes:

- (a) an unaudited balance sheet, income statement and cash flow statement for the quarter then ended;
- (b) a computation of Net Revenues;
- (c) a computation of Reserves;

(d) a computation of Distributable Cash;

(e) a summary of the month's activities, including any significant problems and accomplishments;

(f) and such other information requested by the Board or Legislature.

Section 17.5 The Authority shall prepare and submit to the Legislature within one hundred twenty (120) days after the close of each fiscal year an annual report including:

(a) an audited balance sheet, income statement, and cash flow statement for the fiscal year then ended;

(b) a computation of Net Revenue;

(c) a computation of Reserves;

(d) a computation of Distributable Cash;

(e) a summary of fiscal year's activities, including any significant problems and accomplishments;

(f) plans for the upcoming fiscal year; and

(g) such other information as the Board or Legislature by law deems pertinent.

**Article 18. Dissolution or Liquidation.**

**Section 18.1**

(a) In the event of the dissolution or final liquidation of the Authority, (i) none of the property of the Authority nor any proceeds thereof shall be distributed to or divided among any of the directors or officers of the Authority or inure to the benefit of any individual, and (ii) the Tribe shall be successor to the Authority for all purposes, including pursuant to any contracts entered into by the Authority. All contracts and security grants provided by the authority in any such contracts are not binding on the Tribe unless affirmed or ratified by the Legislature.

(b) After all liabilities and obligations of the Authority have been paid, satisfied and discharged, or adequate provision made therefor, all remaining property and assets of the Authority shall be distributed to the Tribe or to one or more organizations designated pursuant to a plan of distribution approved by the Legislature by law in accordance with all Tribal policies and procedures.

**Article 19. Miscellaneous.**

Section 19.1 Fiscal Year. The fiscal year of the Authority shall end on December 31 or on such other date as may be prescribed by the Legislature by law.

Section 19.2 Checks. All checks, notes, bills of exchange or other orders in writing for the payment of money shall be signed by such person or persons as the Board from time to time may designate; provided however that in no event shall fewer than two (2) signatures of officers of the Authority or other persons by resolution of the Board authorized to sign such instruments, be required for any one or related series of checks, notes, bills of exchange or other orders for the payment of money of the Authority in excess of one thousand dollars (\$1,000.00).

Section 19.3 Contracts. The Board may authorize any officer or officers, agent or agents to enter into any contract or to execute or deliver any instrument on behalf of the Authority, but in any event when such contracts and instruments require the authorization of the Legislature by law, such contracts shall be valid and enforceable against the Authority only if the Legislature's prior written authorization thereof by resolution is first obtained.

Section 19.4 Deposits. All funds of the Authority shall be deposited from time to time to the credit of the Authority in such banks, trust companies, or other depositories as the Board may approve or designate, and all such funds shall be withdrawn only upon checks signed by such officers or employees as the Board from time to time shall determine, but at all time subject to the restrictions upon signing authority set out in Section 19.2 and Section 19.3 of this Charter.

Section 19.5 Interpretation. To the extent reasonable, this Charter shall be read and interpreted in a manner that is consistent with the 2017 Constitution and with the Ordinance, but in the event of any inconsistency, the provisions of the 2017 Constitution shall control.

Section 19.6 Effectiveness. This Charter was originally effective on September 1, 2004, and the amendment and restatement hereof shall be deemed effective as of date the resolution adopting this sixth amended Charter is approved by the Legislature by law. This Sixth Amended Charter shall supersede and replace all other KCOA Charters previously enacted by the Tribe.

Section 19.7 Amendment. This Charter may only be amended by approval of the Legislature by law.

### **Section 1.1 Short Title**

This enactment shall be known as the "NEPOTISM PREVENTION ACT OF 2018" ("Act").

### **Section 1.2 Purpose**

The purpose of this Act is to prohibit a Director or employee of the Tribe from hiring a Close Relative, or to directly manage or supervise a Close Relative, in order to ensure the integrity of the personnel and management systems, and to otherwise avoid any appearance of impropriety.

### **Section 1.3 Findings**

The Legislature finds that:

- (a) The Tribe currently employs hundreds of people in its governmental and business operations;
- (b) The Constitution of the Tribe requires the Tribe to provide "equal protection, application, and opportunity under the law", including the Tribe's employment laws;
- (c) The Legislature has received complaints about Directors and others hiring and/or supervising Close Relatives thereby creating the appearance of impropriety;
- (d) The Legislature does not intend to prohibit the hiring of Close Relatives of existing employees; however, the Legislature intends to create a system that provides for the fair and unbiased evaluation of candidates for employment opportunities in the Tribe.

### **Section 1.4 Definitions**

- (a) "Close Relative" shall mean a family relative in the first degree, which shall be limited to a mother/father, brother/sister, son/daughter, husband/wife, aunt/uncle to a nephew/niece, and first cousins.
- (b) "Hiring Authority" shall mean any person or persons with the authority to make a hiring decision.

### **Section 1.5 Hiring**

- (a). Upon review of the candidates applying for a job with the Tribe, the Hiring Authority shall not make any decision to hire a Close Relative, and the person or persons serving as the Hiring Authority shall recuse from the decision, notwithstanding any law or policy to the contrary.

- (b). For all new hires after the effective date of this Act, the Hiring Authority shall not include any Close Relative of any candidate for employment.

**Section 1.6 Supervision and Management of an Existing Employee who is a Close Relative**

- (a) No Executive Branch official or employee of the Tribe shall directly manage or supervise a Close Relative.
- (b) Upon the effective date of this Act, any employee who is serving as a manager or supervisor of a Close Relative shall notify the Chairman in writing, and the Chairman shall take steps to reorganize the line of authority between the manager or supervisor and the employee to eliminate any direct management or supervision of a Close Relative, notwithstanding any law or policy to the contrary.