

RESOLUTION NO. 136-23
OF THE GOVERNING BODY OF THE
YAVAPAI-APACHE NATION

**A Resolution Authorizing the Yavapai-Apache Nation Tribal Housing
Department to enter into a Contract with Perlman Architects of Arizona, to
Provide Architectural and Engineering Services for Design of the Community
Building for the Yavapai-Apache Homes VIII LIHTC Project**

WHEREAS: The Yavapai-Apache Tribal Council (“Council”) is authorized to represent the Yavapai-Apache Nation (“Nation”) and act on all matters that concern the health and welfare of the Nation, and to make decisions not inconsistent with or contrary to the Constitution of the Yavapai-Apache Nation (“Constitution”) as provided by Article V(a) of the Constitution; and

WHEREAS: The Council is authorized to “manage all tribal economic affairs and enterprises” and to “appropriate and regulate the use of tribal funds” as provided by Article V (i) and (k), respectively, of the Constitution; and

WHEREAS: The Council is responsible for providing quality housing for the Nation’s members; and

WHEREAS: The Council has previously authorized Yavapai-Apache Nation Tribal Housing (“YANTH”) to proceed with development of a new housing project known as the Yavapai-Apache Homes VIII LIHTC Project (the “Project”) located within the Nation’s Tunlii community; and

WHEREAS: The Council, on recommendation of the YANTH Executive Director, desires to authorize YANTH to retain the services of Perlman Architects of Arizona (“Perlman”), to provide Architectural and Engineering Services for design of the Community Building that will be an integral part of the Project, and to do so in accordance with the terms and conditions of the Agreement Between YANTH and Architect for Architectural and Engineering Services – Yavapai-Apache Nation Community Building VIII LIHTC Project (the “Agreement”), a copy of which is attached to this Resolution as **Exhibit A**, together with the contract documents referenced in the Agreement; and

NOW THEREFORE BE IT RESOLVED that the Yavapai-Apache Nation Tribal Council, in Council assembled, at which a quorum is present, hereby authorizes the Yavapai-Apache Nation Tribal Housing Department to enter into a contract with Perlman Architects of Arizona, in accordance with the terms and conditions set out in the form of Agreement attached to this Resolution as **Exhibit A**, together with the Contract Documents referenced in the Agreement, with compensation paid to Perlman under the Agreement **Not To Exceed Seventy-Three Thousand and 00/100 Dollars (\$73,000.00)** without further Council approval as set forth in an amendment to the Agreement.

BE IT FURTHER RESOLVED that the Nation's funds shall be used to fund compensation paid to Perlman under the Agreement and shall be appropriated from funds received under the Yavapai-Apache Homes VIII LIHTC Project fund award.

BE IT FURTHER RESOLVED that the YANTH Executive Director is authorized to execute the above referenced Agreement on behalf of YANTH.

BE IT FINALLY RESOLVED that the Chairwoman, and Vice Chairman, or either of them, are authorized to take such further action as deemed necessary to carry out the intent and purposes of this Resolution.

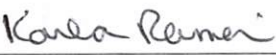
CERTIFICATION

I hereby certify that the foregoing resolution was adopted by an affirmative vote of the Tribal Council, with a quorum in attendance, presented for approval on August 24 2023, by a vote of 7 7 in favor, 0 opposed and 0 abstaining, pursuant to the authority contained under the Constitution of the Yavapai-Apache Nation as cited above.



Tanya Lewis, Chairwoman

ATTEST:



Karla Reimer, Council Secretary

Approved as to Form:



Office of the Attorney General

EXHIBIT A

Contract – Perlman Architects of Arizona
Architectural and Engineering Design Services – Community Building
Yavapai-Apache Homes VIII LIHTC Project

August 24, 2023

**Agreement between YANTH and Architect for Architectural and
Engineering Services- Yavapai-Apache Nation Community Building
VIII LIHTC Project**

This Agreement for Architectural and Engineering Services (the “Agreement”) made as of the 1st day of August 2023 (the “Effective Date”), is

Between YANTH:

Yavapai-Apache Nation Tribal Housing
1500 E Cherry Creek Rd
Camp Verde, AZ 86322
(Referred to in this Agreement as “YANTH”)

And the Architect:

Perlman Architects of Arizona
2929 N Central Ave, Suite 1600
Phoenix, AZ 85012

(Referred to in this Agreement as “Architect”)

General Description For the following Project: The Architect will provide complete design services, including engineering services as specified in this Agreement, for the Community Building (the “Building”) at the Nation’s Tunlii Community (“the “Project”), Architectural services shall include the design and construction documents for various Vertical Elements for the Project.

The project program shall consist of the following elements: (1) A Community Building having a minimum of 4,088 S.F., (2) general building dimensions of 45’ wide and 90’ deep. (3) including a 45’x 20’ covered patio and covered entry with trellis, and (4) a Concept plan provided for the LIHTC submittal, all as included in the Project to be built by the Nation as part of the Nation’s Tunlii Community located within the Yavapai-Apache Nation Middle Verde Reservation at Camp Verde, Arizona and known as “**Yavapai-Apache Homes VIII LIHTC Project**”, collectively the “Work” or “Project.”

ARTICLE I

A. BASIC PROJECT INFORMATION AND ARCHITECT’S BASIC SERVICES

1. Project Objective. The Project’s objective is: As specified in this Agreement, including the attached **Appendix A**, Architect will provide Architectural services for the proposed Yavapai-Apache Nation Tribal Housing (“YANTH”) **Yavapai-Apache Community Building VIII LIHTC Project** development, to be located at the Tunlii Community on the Yavapai-Apache Nation Middle Verde Reservation at Camp Verde, Arizona (“Project”). The Project will be constructed entirely within the Nation’s Reservation.

2. **Overview of Basic Services.** Basic Services under this Agreement shall consist of Architectural Limited Interior Design Services, Structural Engineering, Mechanical Engineering, Electrical Engineering, and Plumbing Engineering as required by the Local Authority Having Jurisdiction, as well as coordination with YANTH's Civil Engineer and Landscape Architect. YANTH shall provide Civil site & Landscape backgrounds for use in creating an Architectural site plan.
 - a) Basic Services includes the Building only and does not include, signage design, pool design, fence/accent walls, ramada, and/or other accessory buildings, overall site planning Civil Engineering, Landscape Architecture, Procurement submittal fees and/or any other services/tasks that are not specifically outlined in this Project Description and Basic Services.
 - b) YANTH shall provide Architect/design Team with a geotechnical report for the proposed site/project, site plan & landscape backgrounds and any other applicable drawings and/or design information required.

B. ARCHITECT'S BASIC SERVICES – DESIGN DEVELOPMENT AND CONSTRUCTION DOCUMENTS

1. **Schematic Design:** YANTH acknowledges that Architect has previously provided a Schematic Design for the Project.
2. **Design Development (DD) Phase:** Scope of work shall include the refinement of Floor Plans, exterior elevations, roof plan, reflected ceiling plan and development of building sections in AutoCAD format: as well as, Structural Engineering, Mechanical/Plumbing Engineering, Electrical Engineering, Fire Protection Engineering Design Development Drawings, Basic services includes coordination with Consultants and two (2) meetings with YANTH, to review and refine the design Development drawings/documents prior to start of Construction Document phase.
3. **Construction Documents (CD) Phase:** Scope of work shall include the Architectural and associated Engineering Consultants, including Structural Engineering, Mechanical/Plumbing Engineering, Electrical Engineering, fire Protection Engineering and Book Specifications as required by YANTH. Basic services include coordination with consultants, two (2) meetings with YANTH and Yavapai-Apache Nation Permit Review process.
4. **Additional Services:** Architect shall provide Additional Services only as mutually agreed between Architect and YANTH in a written Amendment to this Agreement.

C. GENERAL MATTERS

1. YANTH's Development Program is: YANTH will determine how to proceed with further development and construction of the Project following completion of Architect work under this Agreement.
2. The Project's financial parameters are as follows.
 - (a) The Amount of YANTH's overall budget for the Project agreed upon as Architect's compensation for the work under this Agreement, is:
Seventy-Three Thousand 00/100 Dollars (\$73,000.00).
2. The Project time parameters are: The architectural work for the Project, as specified under this Agreement shall be completed within **a total of Forty-Five (45) days from the effective date of this Agreement.**
3. The procurement or delivery method for construction of the Project will be determined by YANTH in consultation with the Architect.
4. Other Project parameters are: None

D. PROJECT TEAM

1. YANTH's Designated Representative is:
Sharie Benson
Executive Director - Yavapai-Apache Nation Tribal Housing
1500 E. Cherry Creek Rd.
P.O. Box 3310
Camp Verde, AZ 86322
2. The persons or entities, in addition to YANTH's Designated Representative, who are required to review the Architect's submittals to YANTH, are: Dave Schreiner – YANTH Project Manager
3. YANTH's other consultants, contractors, and principal contacts for the Project are: (a) Travois, Inc. – Tax Credit Consultant, and (b) Herbert Trujillo – YAN Utility Department Director.
4. Architect's Project Manager and Designated Representative is:
Nathanael Maki - Director
Perlman Architects of AZ Inc.
2929 N Central Ave, Ste. 1600
Phoenix, AZ 85012
480-951-5900
5. Other important initial information is: None
6. The information contained in this Article 1 may be reasonably relied upon by YANTH and Architect in determining Architect's compensation. Both parties,

however, recognize that such information may change depending on YANTH's wishes and, in that event, YANTH and the Architect shall negotiate appropriate adjustments in schedule, compensation and Changes in Services, all of which shall be set out in a written amendment to this Agreement.

ARTICLE II

A. RESPONSIBILITIES OF THE PARTIES

1. YANTH and Architect shall cooperate with each other to fulfill their respective obligations under this Agreement. Both parties shall endeavor to maintain good working relationships among all members of the Project Team.

B. YANTH'S RESPONSIBILITIES

1. Unless otherwise provided under this Agreement, YANTH shall provide full information in a timely manner regarding requirements for and limitations on the Project. YANTH shall be responsible for providing, and Architect may rely on, the accuracy and completeness of all requirements, instructions, reports, data, and other information provided by YANTH to Architect under this Agreement. Architect may use all such information in performing the work under this Agreement.

2. YANTH shall periodically update the budget for the Project, including that portion allocated for the Cost of the Work under this Agreement, as necessary to reflect agreed-upon changes to Architect's Scope of Services and compensation hereunder. YANTH shall not significantly increase or decrease the overall budget, the portion of the budget allocated for the Cost of the Work, or contingencies included in the overall budget or a portion of the budget, without the written agreement of Architect to a corresponding change in the Project scope.

3. YANTH's Designated Representative, identified in Article I.D.1 above, is responsible for interacting with Architect and advising YANTH with respect to the Project. YANTH, acting through its Designated Representative, in consultation with YANTH's Consultant (if any), shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

4. YANTH shall provide for the services of consultants (if any), other than the engineering services designated in Article I, Section B 2 and 3 above, or may authorize Architect to furnish them as a Change in Services when such services are reasonably required by the scope of the Project.

5. Unless otherwise provided in this Agreement, YANTH shall furnish such tests, inspections and reports as may be required by law or under the Project's Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and test for hazardous materials.

6. YANTH shall furnish all of its own legal, insurance and accounting services, including auditing services that may be reasonably necessary at any time for the Project to meet YANTH's needs and interests.

7. YANTH shall provide prompt written notice to Architect if YANTH becomes aware of any fault or defect in the Project, including any errors, omissions, or inconsistencies in Architect's Instruments of Service (plans, drawings and specifications produced by Architect for the Project under this Agreement).

C. ARCHITECT'S RESPONSIBILITIES

1. The Design services performed by the Architect, Architect's employees and Architect's associates/consultants shall be as enumerated in Article I of this Agreement. In providing services under this Agreement, Architect shall endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances in the State of Arizona. Architect hereby certifies that it is licensed to practice Architecture in the state of Arizona in accordance with the laws of the State of Arizona.

2. Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project under the schedule of work agreed upon with YANTH as follows; the Work under this Agreement shall be completed within a total of **Forty-Five (45) Calendar days from the date of issuance of the Notice to Proceed**. Architect shall submit for YANTH's approval a schedule for the performance of the Architect's services, the scope of which shall be consistent with the scope of services as established in Article I above and which may be adjusted as to time and scope, if necessary, as the Project proceeds. This schedule shall include allowances for periods of time required for YANTH's review, for the performance of work by YANTH's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule and approved by YANTH shall not, except for reasonable cause, be exceeded by Architect or YANTH. As provided hereinbelow, Architect's Work during the Construction Phase shall be coterminous with construction of the improvements designed under this Agreement.

3. Architect's Designated Representative identified in Article I, Section D 4 shall be authorized to act on Architect's behalf with respect to the Project.

4. Architect shall strictly maintain the confidentiality of information specifically designated as confidential by YANTH, unless withholding such information would violate the law or a valid order of a court having jurisdiction to order release of the information. Architect shall require its associates and consultants to agree to maintain the confidentiality of information specifically designated as confidential by YANTH.

5. Except with YANTH's knowledge and consent, Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise Architect's professional judgment with respect to this Project or otherwise result in a conflict of interest.

6. The Architect shall review and apply all laws, codes, and regulations applicable to the Architect's services. The Architect shall respond in the design of the Project to requirements imposed by the governmental authorities having jurisdiction over the Project (the Yavapai-Apache Nation). YANTH and Architect acknowledge that the governing authority for the Project is the Yavapai-Apache Nation, subject to the applicability of any federal law and regulations made applicable to the Project under policies of the United States Indian Health Service (IHS).

7. As provided under Article II B 1 above, Architect is entitled to rely on the accuracy and completeness of the services and information furnished by YANTH. Architect shall provide prompt written notice to YANTH if Architect becomes aware of any errors, omissions or inconsistencies in such services and information provided by YANTH or of any errors, omissions or inconsistencies in the work provided by Architect.

ARTICLE III

A. AGREEMENT DOCUMENTS, SCOPE OF SERVICES AND TIME FOR COMPLETION OF WORK

1. Documents Comprising the Agreement. This Agreement represents the entire and integrated agreement between YANTH and the Architect and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by a further written instrument signed by both YANTH and Architect. This Agreement was prepared with reference to and is comprised of the following documents which are incorporated into and made a part of this Agreement by this reference as fully as if set forth verbatim herein except as otherwise modified by this Agreement:

- a) Architect's Response to YANTH's RFP dated June 12, 2023, submitted as Architect's proposed "Owner and Architect Agreement, and attached to this Agreement as **Appendix A**.

2. Scope of Services. The Scope of Services ("services" or "work") for the performance and delivery of the work by the Architect under this Agreement is set out in Article I above, supplemented by **Appendix A – Architects Proposal of June 12, 2023**. In the event of a conflict between the Terms of this Agreement and **Appendix A**, the Terms of this Agreement shall control the resolution of said conflict and shall supersede any such conflict and inconsistencies found in **Appendix A**.

ARTICLE IV

A. COMPENSATION AND PAYMENTS TO THE ARCHITECT

1. The total Compensation to be paid by YANTH to Architect for Architect's satisfactory performance and completion of the Architect's services under this Agreement shall be as follows: **Seventy-Three Thousand 00/100 Dollars (\$73,000.00)** inclusive of all fees and reimbursable expenses ("Compensation"). See Appendix B, Architect's Proposal, "COMPENSATION," for a detailed description of the components of Architect's Compensation.

2. The Compensation to be paid under this Agreement is a lump sum fixed fee for all services provided by Architect. Unless authorized in writing by YANTH the total compensation for Architectural services paid by YANTH to Architect shall not exceed **Seventy-Three Thousand 00/100 Dollars (\$73,000.00)**. Any change in Architect's services and the compensation to be paid for said services, if any, shall be determined exclusively by negotiation between the YANTH and Architect and set out in a written amendment to this Agreement. No work constituting changed services shall commence until a letter of authorization is issued by the YANTH's Representative.

3. Payments. All payments of compensation made by YANTH to Architect on account of the Design Services rendered under this Agreement are inclusive of all Fees and Reimbursable Expenses incurred by Architect in the performance of the work under this Agreement. Payments to the Architect shall be made by YANTH as follows:

(a) YANTH will make progress payments to the Architect for work satisfactorily completed and based on the ratio of completed work to the overall work of the Project.

(b) Architect shall submit a monthly Request for Payment on such form as may be provided by YANTH and accompanied by Architect's Invoice. The Request for Payment shall specify: (i) the work completed during the 30-day period covered by the Request, (ii) the percentage of the overall work completed as specified in the Request, and (iii) the cumulative percentage of work completed as of the date of the Request.

(c) YANTH has thirty (30) days from receipt of the Request for Payment to process payment of all undisputed amounts. If YANTH determines that any representations on Architect's Request for Payment are in any respect inaccurate, YANTH may withhold that portion of the requested payment attributable to the inaccuracy until the inaccuracy and its cause have been corrected by Architect to the satisfaction of YANTH. YANTH may withhold such amounts from the requested payment as are determined by YANTH to be in dispute between the Architect and its consultants/sub-contractors.

(d) In addition to the monthly Request for Payment, Architect shall submit a brief progress report summarizing Project activities for the payment period.

(e) Records of Architect's costs relevant to Architect's compensation under this Agreement shall be kept in accordance with generally accepted accounting practices. As deemed appropriate by YANTH in order to verify Architect's charges to the Project, YANTH may request, and Architect shall provide (at reasonable copy cost) copies of Architect's time sheets.

(f) Architect shall indemnify and hold harmless YANTH and YANTH's agents from all claims arising out of the claims of Architect's consultants and sub-contractors for payment of amounts owing from Architect for work performed under this Agreement.

ARTICLE V

A. GENERAL TERMS AND CONDITIONS

1. Changes in Architect's Services. Changes in the Services of the Architect under this Agreement, including services required of the Architect's consultants, may be accomplished after execution of this Agreement, without invalidating the Agreement, if mutually agreed to in writing between YANTH and Architect, if required by circumstances beyond the Architect's control, or if the Architect's services are affected as described in Article II C 7. In the absence of mutual agreement in writing, Architect shall notify YANTH of the need for a Change in Services and obtain YANTH's written consent to proceed with the change prior to providing such changed services. Architect shall have no obligation to provide Changed Services unless Architect and YANTH agree in writing to the Scope of said Changed Services and amend this Agreement accordingly.

2. Architect's Standards of Performance.

(a) The standard of care for all professional Architectural and related services provided by Architect under this Agreement shall be the level of skill and care ordinarily used by members of the architectural profession practicing under similar circumstances at the same time and in the same locality.

(b) YANTH is not responsible for discovering deficiencies in the technical aspects of Architect's work under this Agreement. Architect shall correct any such deficiencies without additional compensation from YANTH, except to the extent that such corrective action is directly attributable to deficiencies in information provided to Architect by YANTH.

(c) Architect may employ such consultants as Architect deems necessary to assist in accomplishing the work of this Agreement, subject to the reasonable, substantive, and timely objections of YANTH as to selection.

(d) Subject to the standard of care set out above under VA2(a), Architect and its consultants may use and rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

(e) Architect shall work with YANTH and YANTH's attorney in developing the Contract Documents required under this Agreement for construction of the Project.

(f) Architect shall not be responsible to supervise, direct, or have control over the construction contractor's work, nor shall Architect have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by the contractor, for security or safety at the Project site, for safety precautions and programs incident to the work of contractor, nor for any failure of contractor to comply with the laws and regulations applicable to contractor's performance of its work.

3. Architect's Opinion of Probable Construction Cost. Architect shall provide YANTH with an opinion of probable construction cost for construction of the Project. Architect's opinion shall be based on the basis of Architect's experience and qualifications and represent Architect's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, because of the variability of the cost of labor, materials, equipment, or services furnished by others, and in the methods employed by contractors in determining prices, and because of changing market conditions, Architect cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from Opinions of Probable construction Cost prepared by Architect. YANTH may elect to employ an independent cost estimator.

ARTICLE VI

MISCELLANEOUS PROVISIONS

A. DISPUTE RESOLUTION AND GOVERNING LAW

1. This agreement shall be construed in accordance with, and any dispute or controversy arising from any breach of this Agreement will be governed by the laws of the Yavapai-Apache Nation. The Architect hereby expressly agrees and consents to the jurisdiction and venue of the Tribal Court of the Yavapai-Apache Nation for the resolution of any disputes arising under this Agreement.

2. Except as expressly provided hereinafter, nothing in this Agreement shall be construed as a waiver of sovereign immunity of the Yavapai-Apache Nation or any entity, officer, or employee of the Yavapai-Apache Nation.

3. All disputes arising under this Agreement shall be subject to the following provisions:

(a) Discussions. In the event of disputes arising under this Agreement and prior to initiating arbitration, the party raising the dispute shall first advise the other party of the details of the dispute, in writing, with sufficient detail and back-up information to permit the other party to evaluate the dispute. Within ten (10) days after written notification of a dispute, representatives of YANTH and Architect shall meet and endeavor in good faith to reach a resolution of the dispute. All disputes that are not so resolved within five (5) business days of the commencement of such good faith efforts may be submitted to arbitration as provided in this Article VI, A 3.

(b) Binding Arbitration. At any time, with or without exhausting all remedies available under the laws of the Yavapai-Apache Nation, either party may elect to submit any disputes or controversies arising under this Agreement to an arbitration proceeding under the Commercial Arbitration Rules of the American Arbitration Association (AAA), before a complex litigation panel, of neutral arbitrators chosen by mutual agreement of the parties or (failing that) by AAA in accordance with such rules. Both parties shall be obligated to proceed by said arbitration as the exclusive means of resolving disputes hereunder. Any such arbitration shall proceed in a mutually agreed location in Yavapai County, Arizona, and the parties agree to be bound by the award of the arbitrator, which may be filed in the Yavapai-Apache Tribal Court for confirmation and enforcement in accordance with the **Yavapai-Apache Nation Arbitration Code (Ordinance 19)** in the form attached hereto as **Appendix B – Yavapai-Apache Nation Arbitration Code**. Consistent with the limited waiver of sovereign immunity given by YANTH and set out expressly below, the parties agree to the exclusive jurisdiction of the Yavapai-Apache Tribal Court for confirmation and enforcement of any such award by arbitration. Notwithstanding anything in this Agreement to the contrary, the prevailing party shall be entitled to reimbursement for its attorney's fees and all costs associated with the arbitration and its enforcement. In any arbitration proceeding conducted under the provisions of this Section, both parties shall have the right to conduct discovery, to call witnesses and to cross-examine the opposing party's witnesses, either through legal counsel, expert witnesses or both.

(c) Limited Waiver of Sovereign Immunity. In order to provide for dispute resolution and the enforceability of this Agreement, YANTH agrees to a limited waiver of its sovereign immunity from un-consented lawsuits as follows: (1) YANTH agrees that all unresolved disputes arising under this agreement shall be submitted to arbitration as provided above under Article VI, A 3 (b) hereinabove and that such arbitration shall be the exclusive means of dispute resolution under this Agreement; (2) YANTH agrees that the Yavapai-Apache Nation Tribal Court shall have subject matter jurisdiction over the resolution of disputes arising under this Agreement for the limited purposes of confirming and enforcing any arbitration award arising under this Agreement, in accordance with the

Yavapai-Apache Nation Arbitration Code (Ordinance 19); (3) The waiver of sovereign immunity provided by YANTH hereunder shall not be construed to empower the arbitrator(s) to enter an award, or the Yavapai-Apache Nation Tribal Court to enforce any award, that reaches or encumbers the assets or property of the Yavapai-Apache Nation other than those assets of YANTH specifically liable for the satisfaction of any such arbitration award - specifically the Nation's funds set aside for the funding of the work of this Agreement and further limited to the amount of this contract as specified under Article IV, A 2 hereinabove, or as said amount may be subsequently amended by further Agreement of the YANTH and Architect; (4) it is acknowledged and agreed between YANTH and Architect that the limited waiver of sovereign immunity provided by Article VI, A 3 of this Agreement shall extend only to YANTH and Architect and shall apply only to an action by Architect to arbitrate and enforce an arbitration award in favor of Architect for any claim for breach of this Agreement, and that this limited waiver shall therefore not extend to or be effective as to any claim or action by any party other than Architect (including without limitation any purported third party beneficiary of this Agreement), and (5) YANTH's liability for any recovery by Architect against YANTH by arbitration and enforcement as provided for hereunder shall be limited to any actual earned and unpaid contractual obligations (compensatory damages) arising under this Agreement, but not to exceed the amount specified under Article IV, A 2 hereinabove, as said amount may be subsequently amended by further written Agreement between YANTH and Architect hereunder, and/or specific performance, and any such liability on the part of YANTH shall not in any case include general, consequential, incidental, special, punitive or any other damages, all of which are hereby expressly declared to be outside of the scope of the waiver of sovereign immunity provided for under this Agreement.

(d) Applicable Law. The invalidity or unenforceability of any provision of this Agreement shall not affect or impair any other provision. If any provision of this Agreement is capable of two constructions, one of which would render the provision invalid and the other of which would make the provision valid, then the provision shall have the meaning that renders it valid. The laws of the Yavapai-Apache Nation and applicable United States federal law shall govern the validity and performance of this Agreement as to all matters, without regard to any conflict of laws principles.

B. TERMINATION OR SUSPENSION

1. If YANTH fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services; prior to suspension of services, the Architect shall give seven days (7)

written notice of said suspension to YANTH. Before resuming services, the Architect shall be paid all sums due for services satisfactorily performed prior to suspension and any reasonable expenses incurred as a result of the interruption and resumption of the Architect's services. The Architect's schedule for the completion of the remaining services shall be adjusted to accommodate the period of suspension.

2. If the Project is suspended by YANTH for more than thirty (30) consecutive days, the Architect shall be compensated for services satisfactorily performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for reasonable expenses incurred as a result of the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

3. If the Project is suspended or the Architect's services are suspended for more than ninety (90) consecutive days, the Architect may terminate the Agreement by giving YANTH not less than seven days written notice.

4. This Agreement may be terminated by either party upon not less than Fourteen (14) days written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

5. This Agreement may be terminated by YANTH upon not less than Fourteen (14) days written notice to the Architect for the YANTH's convenience and without cause.

6. In the event of termination not the fault of Architect, Architect shall be compensated for services satisfactorily performed prior to termination.

C. INSURANCE.

1. Throughout the entire period of performance by Architect, Architect shall maintain the following minimum insurance:

(a) Commercial General Liability – Architect shall maintain a policy of commercial general liability insurance with Policy limits not less than \$1,000,000 for each occurrence and \$2,000,000 aggregate for death, bodily injury, and damage to property. YANTH is to be included under such policy as an additional insured to the extent of liability assumed by Architect, with coverage to be primary and not contributory with any such coverage maintained by YANTH. The policy shall contain a severability of interest's provision in favor of the additional insureds.

(b) Automobile Liability – Architect shall maintain automobile liability insurance covering all owned, rented, and non-owned vehicles operated by Architect with policy limits of not less than \$1,000,000 combined single limit.

(c) Worker's Compensation – Architect shall provide statutorily required Worker's Compensation insurance. Architect shall maintain coverage for employers' liability with a policy limit of not less than \$1,000,000.

(d) Professional Liability – Architect shall maintain professional errors and omissions liability insurance covering liability of Architect arising out of negligent acts, errors, or omissions in the rendering of the professional services to be provided under the Agreement in the amount of \$1,000,000 per claim and in the aggregate. Coverage shall be maintained for a period of two years following completion of the Project.

(e) General Requirements – All deductibles and premiums associated with the above coverages of professional liability insurance shall be the responsibility of Architect. The use of umbrella or excess liability insurance to achieve the above required liability limits is permitted, provided that such umbrella or excess insurance results in the same type and amounts of coverage as required under the required individual policies identified above.

(f) Certificates of Insurance – Architect shall provide to YANTH, Architect's certificates of insurance evidencing compliance with the insurance requirements. All insurance as required by this Section shall be issued by insurance carriers licensed to do business in the State of Arizona and all such carriers shall be rated with an A.M. Best rating of no less than A-VII.

(g) Architect shall ensure that all Consultants and sub-contractors engaged by Architect carry and maintain sufficient insurance coverage herein that is appropriate to the project in the reasonable discretion of the Architect.

D. INDEMNIFICATION.

1. Indemnification by Architect. Architect, its Consultants, subcontractors and their respective officers, directors, shareholder partners, principals, employees, and successors shall indemnify and hold YANTH and its officers, employees and successors, harmless from and against all, claims, costs, damages, losses, and judgments, (collectively "claims") (including but not limited to all reasonable fees and expenses of Architect, attorneys and other professionals, and all court, arbitration or other dispute resolution costs) arising out of or relating to the Project, provided that any such claims are attributable to or arise from (i) Architect's negligent acts, errors or omissions in the performance of Architect's services under this Agreement, or (ii) for patent, copyright or trademark infringement attributable to Architect's services under this Agreement, or (iii) bodily injury, sickness, disease, or death to any person or to injury to or destruction of tangible property, including the loss of use thereof, but only to the extent caused by any negligent act or omission of Architect, or Architect's officers, directors, partners, employees, consultants or subcontractors. YANTH

agrees that, to the fullest extent permitted by law, no shareholder, officer, director, partner, principal, or employees of Architect shall have personal liability under this Indemnification provision, under any provision of the Agreement or for any matter in connection with the professional services provided in connection with the Project.

2. Indemnification by YANTH. YANTH and its respective officers, principals, employees, and successors shall indemnify and hold Architect and its officers, employees and successors, harmless from and against all, claims, costs, damages, losses, and judgments, (collectively “claims”) (including but not limited to all reasonable fees and expenses of Architect, attorneys and other professionals, and all court, arbitration or other dispute resolution costs) arising out of or relating to the Project, provided that any such claims are attributable to or arise out of bodily injury, sickness, disease, or death to any person or to injury to or destruction of tangible property, including the loss of use thereof, but only to the extent caused by any negligent act or omission of YANTH, or YANTH’s officers, principals, employees, and successors. Architect agrees that, to the fullest extent permitted by law, no officer, principal, employee, or successor of YANTH shall have personal liability under this Indemnification provision, under any provision of the Agreement or for any matter in connection with YANTH’s responsibilities in connection with the Project.

YANTH shall provide written notice to Architect of any known inconsistencies in the Architect’s services under the Agreement within a reasonable time after discovery. However, YANTH has no obligation to investigate Architect’s services for inconsistencies. The provisions of this Indemnification provision shall survive expiration or termination of the Agreement for a period of two years, or such longer statutory period as may be allowed under the laws of the state of Arizona for tort and/or contract claims.

E. NOTICE

1. All notices required of Architect hereunder shall be provided to YANTH in writing and either personally delivered to YANTH or deposited in the United States Mail postage prepaid and addressed to YANTH’s Representative at the address set forth herein. Failure to provide written notice shall relieve YANTH of any liability or obligation intended to be created by the notice.

F. OWNERSHIP AND DELIVERY OF DOCUMENTS

1. All newsletters, studies, reports, materials, designs, drawings, documents, and other materials and data devised, conceived, made, developed, obtained, or created whether in tangible or electronic format, in whole or in part, by the Architect, in the course of its work hereunder are works undertaken on behalf of YANTH and shall at all times be the property of YANTH; and Architect hereby assigns and transfers to the YANTH all of its rights, titles, and interests therein. Immediately upon the expiration or earlier termination of this Agreement, Architect shall deliver to YANTH all papers, documents, and any other tangible information regardless of form or medium, containing or constituting such work

product or that relate to, or were made available in connection with Architect's work hereunder including, without limitation, all materials containing Trade Secrets (information in any format, verbal or written provided by the Yavapai-Apache Nation to the Architect).

G. CONFIDENTIALITY

1. Except as permitted or directed by YANTH, Architect, its associates, agents, consultants or employees shall not, either during the term of this Agreement or at any time thereafter, divulge, furnish or make accessible to anyone or use in any way (other than in the ordinary course of the performance of this Agreement) any Trade Secret which Architect has acquired or become acquainted with or will acquire or become acquainted with prior to the expiration and/or termination of Architect's rights and obligations hereunder. Without limiting the generality of the foregoing, Architect shall use its best efforts to prevent the unauthorized disclosure and/or use of such Trade Secrets. Architect acknowledges that the Trade Secrets constitute a unique and valuable asset acquired at great time and expense, and that any disclosure or use of any Trade Secret other than in furtherance of this Agreement will be wrongful and would cause irreparable harm to YANTH. The foregoing obligations of confidentiality, however, shall not apply to any knowledge or information which is now published, or which subsequently becomes generally publicly known, other than as a direct or indirect result of the breach of this covenant. In the event of a breach or actions that suggest an inadequate remedy at law, both preliminary and permanent equitable injunctive relief is hereby deemed necessary and shall be available to protect the rights of the Yavapai Apache Nation.

H. SUCCESSORS, ASSIGNS AND BENEFICIARIES

1. YANTH and Architect, respectively, hereby bind themselves, their partners, successors, executors, administrators assigns and legal representatives to the other party to this Agreement in respect to all covenants, agreements, and obligations of this Agreement.

2. Neither YANTH nor Architect may assign or transfer ("assignment") this Agreement (including but without limitation, moneys due or to become due under this Agreement) without the written consent of the other, unless otherwise mandated or restricted by law. Unless specifically agreed to in any such approved assignment or transfer, no such assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

3. Unless otherwise provided herein, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by YANTH to any consultant or subcontractor of Architect or to create, impose, or give rise to any duty owed by YANTH or Architect to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties, responsibilities and obligations undertaken under this Agreement are

undertaken for the sole and exclusive benefit of YANTH and Architect and not for the benefit of any other party.

This Agreement entered into as of the day and year first written above.


YANTH

ARCHITECT
Perlman Architects Consultants

(Signature)
Sharie Benson, Executive Director

(Signature)
Nathanael Maki, LEED AP

Approved as to Form:



Attorney General – Yavapai-Apache Nation

NOTICE TO PROCEED

TO:

Perlman Architects of Arizona
2929 N Central Ave, Ste. 1600
Phoenix, AZ 85012

Date:

Project: Yavapai-Apache Community
Building VIII LIHTC Project, Camp Verde,
AZ 86322

You are hereby notified to commence WORK for completion of the above reference Project in accordance with the Agreement date _____ and you are to complete the WORK within _____ calendar days thereafter. The date of completion of all WORK is therefore _____.

Yavapai-Apache Nation
Tribal Housing

By: _____

Title: _____

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE to PROCEED
Is hereby acknowledged by:

(Architect)

this the _____ day,
of _____, 2023,

By: _____

Title: _____

Appendix A

Contract – Perlman Architects of Arizona

Yavapai-Apache Homes VIII LIHTC Project

Architectural and Engineering Design Services – Community Building

Perlman's Response to YANTH's RFP, dated June 12, 2023



OWNER AND ARCHITECT AGREEMENT

AGREEMENT made as of the 12st day of June 2023

Project No. 323001.1

BETWEEN the OWNER:

Yavapai-Apache Nation
1500 E Cherry Creek Rd
Camp Verde, AZ 86322
Attn: David Schreiner

and the ARCHITECT:

Perlman Architects of Arizona, Inc.
2929 N Central Ave, Suite 1600
Phoenix, AZ 85012

PROJECT

For the following Project:

Name: Yavapai-Apache Nation Community Building

Location: Pinal County, AZ

Description: Architectural services shall include the design and construction documents for various Vertical Elements for the Yavapai-Apache Nation. The project program shall consist of the following elements:

- Community Building: 4,088 S.f.
- 45" wide and 90' deep
- 45'x20 covered patio and covered entry with trellis.
- Concept plan provided for the LIHTC submittal

Basic Services shall consist of Architectural, limited Interior Design Services, Structural Engineering, Mechanical Engineering, Electrical Engineering, and Plumbing Engineering as required by the Local Authority Having Jurisdiction, as well as coordination with Owner's Civil Engineer and Landscape Architect. Owner shall provide Civil site & Landscape backgrounds for use in creating architectural site plan.

- Basic Services does not include, signage design, pool design, fence/accnt walls, ramada and/or other accessory buildings, overall site planning Civil Engineering, Landscape Architecture, Procurement submittal fees and/or any other services/tasks that are not specifically outlined in this Project Description and Basic Services
- Owner shall provide Architect/Design Team with a geotechnical report for the proposed site/project, site plan & landscape backgrounds and any other applicable drawings and/or design information required.

It is agreed by the Owner and Architect that the Owner will enter into a license agreement with the Architect for exclusive use of these plans at multiple locations for a standard re-use/Additional Liability fee as defined in this contract, but that the Architect retains common copyright to the plans. It is also understood that the Owner will notify the Architect at each occurrence when the plans will be used and the location where the plans will be used. It is further understood that the Owner will hold the Architect harmless for any changes made by the Owner to the documents without prior knowledge or consent of the Architect.

SERVICES

Basic Services shall consist of the following:

Schematic Design (SD) Phase (Previously Provided):

Design Development (DD) Phase: Scope of work shall include the refinement of Floor Plans, exterior elevations; roof plan, reflected ceiling plan and development of building sections in AutoCAD format; as well as. Structural Engineering, Mechanical/Plumbing Engineering, Electrical Engineering, Fire Protection Engineering Design Development Drawings. Basic services includes coordination with Consultants and two (2) meetings with Owner, to review and refine the Design Development drawings/documents prior to start of Construction Document phase.

Construction Documents (CD) Phase: Scope of work shall include the Architectural and associated Engineering Consultants, including Structural Engineering, Mechanical/Plumbing Engineering, Electrical Engineering, Fire Protection Engineering and Book Specifications as required by the Town of Queen Creek. Basic services includes coordination with Consultants, two (2) meeting with Owner and Town of Queen Creek Building Permit Review process.

Additional Services shall include the following UPON the Owner's Request:

Bidding and Negotiation (BN) Phase: Begins when CD's are complete and includes clarifications for bidders, meetings, telcons, Contractor Reviews, etc.

Construction Administration (CA) Phase: Begins when Permits are pulled and includes Site Visitation, meetings, and telecons. Certification of Payment Requests, Change Orders/Clarifications and Shop Drawing Review.

Post Construction (PC) Phase: Begins after C of O and includes As-Built drawings, warranty follow-up, meetings, telecons, etc.

Expedited Plan Review: Expedited Town Review Process (other than the referenced Review Process)

Additional Engineering/Consultants: All Engineering/Consultants not previously included under Basic Services, and consultants, including but not limited to (Including HCP accessibility plan), Geotechnical Engineering, Civil Engineering, Landscape Architecture, Pool Design, Environmental Studies, Furniture/Fixtures/Equipment Selection, Interior Design, Signage Design or Specialized Design consultants other than those outlined here in.

Revisions: All Owner revisions to plans that have been previously approved; all "Design Revisions", "As-built" and "Value Engineering revisions. Revisions caused by Owner contracted consultant information, Contractor Change Orders, modifications due to soil conditions different from original site soil design parameters and Building and Planning Department Revisions other than corrections.

Temporary Facilities: Design or layout of temporary facilities or trailers.

Architectural Renderings or Models: Brochure or presentation Perspective renderings or scaled models.

Geotechnical Report: Typical geotechnical report required for project design including the following information: sample borings, soils analysis/recommendations, pavement and building foundation analysis/recommendations, percolation tests and general soil condition findings.

Civil Survey: Full Civil Survey including: Site Legal Description, property boundaries, topography, existing utilities, easements and restrictions, major site features, etc.

Special Structural Inspection: Special Structural Inspection if required per the Uniform Building Code and the Town of Queen Creek Building Department.

Environmental Studies: Environmental studies required for the purchase of the property or any other reason.

Town/Development Zoning Changes, Use Permits, Variances, Etc.: Services required to obtain zoning changes, use permits, variances, etc. if found to be required.

Town Council Meetings, Meetings with Public Citizens, HOA Meetings/Reviews, Etc.: Services required to submit and obtain approvals for Town or Outside Agencies.

Reimbursable Expenses shall include the cost of all normal reimbursable expenses including travel, lodging, all plotting and reproduction of Drawings (In-house and Outside Services), photocopying, color reproductions/reductions, etc.

COMPENSATION

For Basic Architectural & Engineering Services the Owner shall compensate the Architect as follows:

Architectural Services:	
Design Development:	\$22,150.00
Construction Documents:	\$33,162.00
Structural Engineering:	\$7,488.00
<u>Electrical/Mechanical/Plumbing Engineering:</u>	<u>\$10,200.00</u>
Total Basic Services:	\$73,000.00

For Additional Services, the Basis of Compensation shall be time and materials, or lump sum as agreed upon at time of request for additional services per the attached Exhibit "A"- Perlman Architects Standard Hourly Rate Schedule.

For Additional Services of Consultants, a multiple of one and one tenth (1:10) times the amounts billed to the Architect for such services if based on time & materials.

Design/Construction Document Re-use & Additional Liability Fee: The Design/construction document re-use & Additional Liability fee for any other site other than the referenced/contracted site shall be 50% of the original fee plus T & M for any modifications, code updates, Design Review Process and associated reimbursable expenses

Termination Expenses apply only if the Architect is authorized to proceed with the proposed project. When not the fault of the Architect, the Owner shall pay all Fees for Basic and Additional Services due to date and all Reimbursable Expenses.

For Reimbursable Expenses a multiple of one and one tenth (1:10) times the expenses incurred by the Architect.

Miscellaneous Provisions: The liability of Perlman Architects, Inc. and the liability of its employees are limited to fifty thousand dollars (\$50,000) or this Contract Amount, whichever is less. Architect will bill monthly for Services completed to date and payments are due and payable thirty (30) days from the date of Architect's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate of one percent (1%) per month. The total Fee for Basic Services is due and payable when the drawings are complete, regardless of whether the Owner applies for a building permit, obtains financing, or completes the project. Drawings and specifications (in any reproducible format including disks) remain the property of the design professional. Copies of the drawings and specifications retained by the client may be utilized only for his use and for occupying the project for which they were specifically prepared for, and not for the construction of any other project.

Mediation - In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, the Client and the Architect agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation unless the parties mutually agree otherwise. The Client and the Architect further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, sub consultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

OWNER:

ARCHITECT: (Perlman Architects of AZ, Inc.)

(Signature)

(Date)

(Signature)

6/12/23

(Date)

(Printed name and title)

Nathanael Maki - Director

(Printed name and title)

Appendix B

To
Contract – Perlman Architects of Arizona

Yavapai-Apache Homes VIII LIHTC Project

Architectural and Engineering Design Services – Community Building

Yavapai-Apache Nation Arbitration Code (Ordinance 19)

ORDINANCE NO. 19
YAVAPAI-APACHE NATION
ARBITRATION CODE

Section 1. Scope of Code.

This Code applies to any written contract, agreement or other instrument entered into by the Yavapai-Apache Nation (the "Tribe"), or any other person in a transaction that is subject to the jurisdiction of the Tribe, in which the parties thereto agree to settle by arbitration any claim, dispute or controversy arising out of such contract, agreement or other instrument. Any prior legislation or other Tribal laws which are inconsistent with the purpose and procedures established by this Code are hereby repealed to the extent of any such inconsistency.

Section 2. Agreements to Arbitrate are Enforceable.

An agreement in any written contract, agreement or other instrument, or in a separate writing executed by the parties to any written contract, agreement or other instrument, to settle by arbitration any claim, dispute or controversy thereafter arising out of such contract, agreement or other instrument, or any other transaction contemplated thereunder, including the failure or refusal to perform the whole or any part thereof, or a written agreement between two or more persons to submit to arbitration any claim, dispute or controversy existing between them at the time of the agreement, shall be valid, irrevocable and enforceable.

Section 3. Law to be Applied.

a. In any contract, agreement or instrument described in Section 1 of this Code, the parties may agree upon the jurisdiction whose substantive law shall govern the interpretation and enforcement of the contract, agreement, instrument or claim, dispute or controversy. Such choice of law shall be valid and enforceable, and not subject to revocation by one party without the consent of the other party or parties thereto, provided that the subject matter of the contract, agreement, instrument or claim, dispute or controversy, or at least one of the parties thereto, shall have some contact with the jurisdiction so selected.

b. In any proceeding under this Code, whenever the contract, agreement or other instrument sets forth a choice of law provision, the Yavapai-Apache Tribal Court shall apply the procedural rules of the Tribal Court and the substantive law of the jurisdiction selected in such choice of law provision; provided that no procedural rule of the Tribal Court shall bar, delay or impair any action, proceeding or remedy where such action, proceeding or remedy

would not be barred, delayed or impaired by the procedural rules of the courts of the jurisdiction whose substantive law applies.

c. In any proceeding under this Code, whenever the contract, agreement or other instrument does not set forth a choice of law provision, the Tribal Court shall first apply the substantive law of the Tribe, including any applicable choice of law principles, and then the substantive law of the State of Arizona, including any applicable choice of law principles, provided that such law does not conflict with this Code or other applicable tribal law.

Section 4. Stay of Proceedings and Order to Proceed with Arbitration.

a. If any action for legal or equitable relief or other proceeding is brought by any party to any contract, agreement or instrument described in Section 1 of this Code, the Tribal Court Judge who is presiding over the pending action or proceeding shall not review the merits of the pending action or proceeding, but shall stay the action or proceeding until an arbitration has been had in compliance with the agreement.

b. A party to any contract, agreement or instrument described in Section 1 of this Code claiming the neglect or refusal of another party thereto to proceed with an arbitration thereunder may make application to the Tribal Court for an order directing the parties to proceed with the arbitration in compliance with their agreement. In such event, the Tribal Court shall order the parties to arbitration in accordance with the provisions of the contract, agreement or instrument and the question of whether an obligation to arbitrate the dispute at issue exists shall be decided by the arbitrator(s).

Section 5. Advice of the Court.

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

Section 6. Time Within Which Award Shall be Rendered.

a. If the time within which an award is rendered has not been fixed in the arbitration agreement, the arbitrator(s) shall render the award within thirty days from the date the arbitration has been completed. The parties may expressly agree to extend the time in which the award may be made by an extension or ratification thereof in writing.

b. An arbitration award shall be in writing and signed by the arbitrator(s). The arbitrator(s) shall provide written notice of the award to each party by certified or registered mail, return receipt requested.

Section 7. Application for Order Confirming Award; Record to be Filed with Clerk of Court; Effect and Enforcement of Judgment.

a. At any time within one year after an arbitration award has been rendered and the parties thereto notified thereof, any party to the arbitration may make application to the Tribal Court for an order confirming the award.

b. Any party applying for an order confirming an arbitration award shall, at the time the order is filed with the Clerk of the Tribal Court for entry of judgment thereon, file the following papers with the Clerk: (1) the agreement to arbitrate; (2) the selection or appointment, if any, of the arbitrator(s); (3) any written agreement requiring the reference of any question as provided in Section 5; (4) each written extension of the time, if any, within which to make the award; (5) the award; (6) each notice and other paper used upon an application to confirm; and (7) a copy of each order of the Tribal Court upon such an application.

c. An arbitration award shall not be subject to review or modification by the Tribal Court, but shall be confirmed strictly as provided by the arbitrator(s); provided, however, that the Tribal Court shall decline to enforce any arbitration award if it finds (i) the award was procured by corruption, fraud or other undue means, (ii) there was evident partiality of an arbitrator appointed as a neutral, (iii) the arbitrator(s) exceeded their powers, or (iv) the arbitrators refused to hear evidence material to the controversy or otherwise conducted the hearing so as to substantially prejudice the rights of one party. The judgment confirming an award shall be docketed as if it were rendered in a civil action. The judgment so entered shall have the same force and effect in all respects as, and be subject to all the provisions of law relating to, a judgment in a civil action, and it may be enforced as if it has been rendered in a civil action in the Tribal Court. When the award requires the performance of any other act than the payment of money, the Tribal Court may direct the enforcement thereon in the manner provided by law.

Section 8. Arbitration Award Not Appealable.

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

Section 9. Jurisdiction of the Tribal Court in Actions to which the Tribe is a Party.

a. The Tribal Court shall have jurisdiction over any action to enforce an agreement to arbitrate, to compel arbitration pursuant to such an agreement to arbitrate and to enforce an award made by an arbitrator pursuant to such agreement to arbitrate, contained in any contract, agreement or other instrument described in Section 1 of this Code to which the Tribe is a party; provided that in any such actions brought against the Tribe, the Tribal Council (the "Council") shall have explicitly waived the defense of tribal sovereign immunity in the contract, agreement or other instrument; and provided further that such contract, agreement, or other instrument does not expressly prohibit the Tribal Court from exercising jurisdiction thereunder.

b. To the extent allowed by federal law, the jurisdiction of the Tribal Court under this Code shall be concurrent with the jurisdiction of any state or federal court to the jurisdiction of which the Council shall have explicitly consented in such contract, agreement or other instrument. Any consent to the jurisdiction of a state or federal court contained in a contract, agreement or other instrument described in Section 1 of this Code to which the Tribe is a party shall be valid and enforceable in accordance with its terms.

Section 10. Severability.

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

Section 11. No Waiver of Sovereign Immunity.

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