RESOLUTION NO. ____________

A RESOLUTION ENACTING THE QUAPA W NATION
TRIBAL EMPLOYMENT RIGHTS ACT

WHEREAS, the Quapaw Nation is a federally recognized Indian tribe (the "Nation") and is governed by the Resolution Authorizing the Quapaw Tribal Business Committee to Speak and Act in Behalf of the Quapaw Tribe of Indians-known as the "Governing Resolution" adopted by the Quapaw Indian Council on August 19, 1956, and approved by the Commissioner of Indian Affairs on September 20, 1957;

WHEREAS, the Quapaw Nation asserts Tribal governmental jurisdiction to the fullest extent recognized by law over the lands within the original Quapaw Reservation, as established as a homeland for the Quapaw Nation by the Treaty of May 13, 1833;

WHEREAS, the Governing Resolution delegates authority to the Quapaw Nation Business Committee to speak and act on the behalf of the Quapaw Nation;

WHEREAS, the Quapaw Nation Business Committee is thus empowered and obligated to transact Tribal business, including enacting resolutions, laws and policies for the best interest of the Quapaw Nation;

WHEREAS, the Quapaw Nation Business Committee find it is in the best interest of the Quapaw Nation to enact the proposed Quapaw Nation Tribal Employment Rights Act; and,

WHEREAS, Indians have unique and special employment, subcontract and contract rights, including Congressional recognition of the power of Indian tribes to impose preferential requirements on the grounds that the exemption is consistent with the federal government’s policy of encouraging Indian employment and with the special legal position of Indians; and,

WHEREAS, the Quapaw Tribal Business Committee recognizes that it is important to establish an employment rights program and office in order to use the aforementioned laws and powers to increase employment of Indian workers and businesses and to eradicate discrimination against Indians.

NOW, THEREFORE BE IT RESOLVED THAT, by the Business Committee of the Nation that the proposed Quapaw Nation Tribal Employment Rights Act is hereby enacted as follows:
QUAPAW NATION TRIBAL EMPLOYMENT RIGHTS ACT

Section 1. Title.

This law shall be entitled the “Quapaw Nation Tribal Employment Rights Act.”

Section 2. Purpose.

The purpose of the Quapaw Nation Tribal Employment Rights Act is to ensure fair employment and training opportunities throughout the Quapaw Nation.

Section 3. Definitions.

Terms contained in the Quapaw Nation Tribal Employment Rights Act shall be defined as follows:

(a) “Commerce” shall include all trade, traffic, distribution, communication, and transportation, provision of services, manufacturing, production, agricultural production, building, maintenance, construction, banking, mining and energy production.

(b) “Commission” as used in this Act shall mean the Quapaw Nation Tribal Employment Rights Commission.

(c) “Director” as used in this Act means the Director of the Quapaw Nation Tribal Employment Rights Office. The Director shall be a Quapaw Nation tribal member but may not be a member of the Business Committee.

(d) “EEOC” shall mean the Equal Employment Opportunity Commission of the United States.

(e) “Employee” shall mean any person provided compensation to complete a task at the direction of an employer. “Employee” shall also include any applicant for employment and any former employee whose employment has ceased as a consequence of or in connection with a current labor dispute or because of an unfair labor practice.

(f) “Employer” shall mean the Quapaw Nation and its subsidiary entities, and any person or other entity operating within the jurisdiction of the Nation that employs, for compensation, two or more employees.

(g) “Tribal Employment Rights Office” shall mean the Quapaw Nation Tribal Employment Rights Office as established in the Quapaw Nation Tribal Employment Rights Act.

(h) “Entity” means any person, partnership, corporation, joint venture, government, governmental enterprise, or any other natural or artificial person or organization.
The term “entity” is intended to be as broad and encompassing as possible to ensure applicability of the Quapaw Nation Tribal Employment Rights Act herein to all employment and contract activities within the Nation’s jurisdiction and the term shall be so interpreted by the Commission and the Courts. This term shall include entities of the Quapaw Nation.

(i) “Government Commercial Enterprise” means any activity by the Quapaw Nation or of the state government that is not a traditional government function as defined by the Internal Revenue Service.

(j) “Immediate family” means brother, sister, son, daughter, mother, father, husband, wife, stepbrother, stepsister, stepson, stepdaughter, half-brother, half-sister, or brother, sister, son, daughter, mother or father by adoption.

(k) “Indian” means any enrolled citizen of a federally recognized Indian tribe.

(l) “Indian owned firm or entity” means any commercial, industrial or other business which is owned by an Indian or other Indian owned firm or entity, provided that such Indian ownership constitutes not less than fifty-one percent (51%) of the enterprise.

(m) “Resident Indian” shall mean any enrolled citizen of a federally-recognized tribe who resides within the territorial jurisdiction of the Quapaw Nation not less than sixty (60) days preceding the initial date any contract for work on land within the territorial jurisdiction of the Nation is let or the initial date any employment offers are made by an employer permanently located on lands within the territorial jurisdiction of the Quapaw Nation.

(n) “Nation” means the Quapaw Nation.

(a) “Personnel Action” relating to employment decisions means:

1. an appointment;
2. a promotion;
3. a hiring;
4. a firing/removal;
5. a suspension;
6. a reduction in pay;
7. a detail, transfer, or reassignment;
(8) a reinstatement;
(9) a restoration;
(10) a reemployment;
(11) a performance evaluation;
(12) a decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this subparagraph;
(13) a decision to order psychiatric testing or examination;
(14) the implementation or enforcement of any nondisclosure policy, form, or agreement; and
(15) any other significant change in duties, responsibilities, or working conditions.

(o) “Quapaw Nation Court” means the lower court of the Quapaw Nation as defined in the Resolution Restructuring the Quapaw Nation Court as amended from time to time.

(p) “Quapaw Tribal Business Committee” means the governing body of the Quapaw Nation. The Business Committee was established in 1956 by the Governing Resolution. The Business Committee is comprised of seven (7) members, each serving a two-year staggered term. The positions are elected/re-elected by a vote of registered tribal voters.

(q) “Quapaw Tribal Marshals” means the law enforcement officers, including the Chief of Quapaw Tribal Marshals, which make up the Quapaw Tribal Marshals Service.

(r) “Quapaw Tribal Marshal’s Service” means the primary law enforcement agency for the Quapaw Nation.

(s) “Non-resident Indian” means any Indian who is not a resident Indian as defined by Section 3(m) herein.

(t) “Territorial jurisdiction” shall mean all land held in trust or subject to restrictions by the United States for the Quapaw Nation, or land within the treaty boundaries of the Quapaw Nation, and all land held by Quapaw Nation or its entities, and any other land within the jurisdiction of Quapaw Nation which land comes within the definition of “Indian Country” as defined in 18 U.S.C. § 1151.
“Secretary-Treasurer” means the Secretary-Treasurer of the Quapaw Tribal Business Committee who has the responsibility for the prompt and efficient handling of all correspondence pertaining to the business of the Council. The Secretary-Treasurer shall be responsible for preparing timely notices for all meetings and the dissemination of each notice.

“Union” or “labor union” means any organization of any kind or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

Section 4. Tribal Employment Rights Office Established.

The Quapaw Nation Tribal Employment Rights Office is hereby established, and full supervisory authority over implementation of the Quapaw Nation Tribal Employment Rights Act shall vest in said office. The Tribal Employment Rights Office shall be administered by a Director in conjunction with any department or committee that the Business Committee deems necessary to ensure the proper functioning of the Quapaw Nation Tribal Employment Rights Act.

Section 5. Rejection of Outside Regulation/Enforcement.

The Quapaw Nation Tribal Employment Rights Act hereby explicitly rejects any regulation and/or enforcement from the EEOC, any other federal agency, or by any state agency. Furthermore, the Quapaw Nation Tribal Employment Rights Act does not adopt or incorporate federal or state law relating to the regulation of employment within the Quapaw Nation Reservation.

Section 6. Authority of Director.

The Director of the Tribal Employment Rights Office shall have the authority to do all of the following functions and actions;

(a) Hire staff;

(b) Expend funds appropriated by the Quapaw Tribal Business Committee;

(c) Obtain and expend funding from federal, state or other sources to carry out the purpose of the office subject to approval of the Quapaw Tribal Business Committee;

(d) Administer the policies, powers and duties prescribed in the Quapaw Nation Tribal Employment Rights Act;

(e) Require employers to submit reports;
Establish programs subject to the Quapaw Tribal Business Committee’s approval, in conjunction with tribal offices to provide counseling and support to Indian workers in order to assist them in retaining employment. Employers shall be required to participate in and to cooperate with such support and counseling programs;

Enforce the provisions of the Quapaw Nation Tribal Employment Rights Act and enforce regulations adopted pursuant to Section 10 herein by issuance of cease-and-desist orders, imposition of fines and posting notices; and

Take other actions as are necessary for the fair and vigorous implementation of the Quapaw Nation Tribal Employment Rights Act.

Section 7. Quapaw Nation Tribal Employment Rights Commission.

(a) The Quapaw Nation Tribal Employment Rights Commission is hereby established.

(b) The Commission shall consist of a five (5) member administrative review board who shall be appointed by the Quapaw Nation Business Committee in accordance with Section 5 of the Governing Resolution. Each Commissioner shall serve a four (4) year term. By supermajority vote (at least 75%), the Quapaw Nation Business Committee may remove a Commissioner prior to expiration of his/her term.

(c) Qualifications for Commissioners. The Commissioners must:

(1) be an enrolled member of the Quapaw Nation;

(2) demonstrate satisfactory knowledge of applicable employment laws;

(3) be of 18 years of age or older;

(4) not have previously been convicted of a felony or other crime associated with untruthfulness, deceit, or falsification; and,

(5) not be the Director of the Tribal Employment Rights Office.

(d) Duties of the Commissioners. The Commission shall have the following powers and duties:

(1) Appointment, retention, and termination of the Director;

(2) Develop and promulgate all regulations authorized to be implemented pursuant to the provisions of Section 10 herein;

(3) Provide oversight of the Quapaw Nation Tribal Employment Rights Office;
(4) Hold hearings for the purpose of subpoenaing witnesses and documents and the taking of evidence;

(5) Review and issue rulings and orders pertaining to appeals of decisions by the Quapaw Nation Tribal Employment Rights Office by aggrieved parties;

(6) Enter into agreements with unions to ensure union compliance with this Act; and

(7) Petition the Quapaw Nation Court for orders as necessary and appropriate to enforce the decisions of the Commission or Director and any sanctions imposed by them.

(e) **Quorum.** Three (3) members the Commission present shall constitute a quorum to transact business. When a vacancy occurs in the Commission, the remaining members may exercise all the powers of the Commission until the vacancy is filled.

(f) **Conflict of Interest.**

(1) No member of the Commission shall participate in any action or decision by the Commission directly involving himself/herself; a member of his/her immediate family; any person, business, or other entity of which he/she is a member or of which a Commissioner’s immediate family member is an employee or in which he/she or a member of his/her immediate family has a substantial ownership interest or with which he/she or a member of his/her immediate family has a substantial relationship.

(2) Nothing in this section shall preclude a Commissioner from participating in any action or decision by the Commission which generally affects a class of persons, regardless of whether the Commissioner or a member of his/her immediate family is a member of the affected class or affects the Quapaw Nation, a Tribal Enterprise, a person or entity in a contractual relationship with the Nation or a Tribal Enterprise, regardless of whether the Commissioner is a citizen of the Nation.

(3) A Commissioner may voluntarily recuse himself/herself and decline to participate in any action or decision by the Commission when the Commissioner, in his/her discretion believes he/she could not act fairly or without bias.

(g) **Mileage and Per Diem.** Members of the Commission shall be entitled to receive, upon presentation of proper vouchers, such stipends as are in effect for members of other Commissions of the Quapaw Nation.
(h) **Prohibition from Employment.** Any person found to have violated this Act on three (3) occasions by the Commission shall be barred from employment with the Quapaw Nation and any of its subsidiary entities and businesses.

(i) **Expense Authority.** The Commission shall have the authority to make necessary and reasonable purchases to effectuate the purpose and obligations of this Act. Necessary and reasonable purchases shall include, but are not limited to, retention of legal counsel. The Quapaw Nation Business Committee shall authorize payment for all necessary and reasonable purchases made by the Commission pursuant to this provision.

**Section 8. Regulations; Promulgation.**

(a) **Generally.** The Commission, assisted by the Tribal Employment Rights Office, shall promulgate any rules and regulations necessary for implementation of the Quapaw Nation Tribal Employment Rights Act, and consistent with the provisions of said Act and other applicable laws of the Nation provided that said rules and regulations are approved by the Quapaw Nation Tribal Employment Rights Commission. The Commission shall ensure that all rules, regulations, and guidelines issued provide notice to the public and further that all rules, regulations and guidelines accord affected parties’ rights to due process of law. Except in cases where the Commission has determined that an emergency situation exists, the Commission shall follow the following minimal procedures in issuing all rules, regulations and guidelines:

(b) **Notice of Proposed Regulations.** All proposed rules, regulations, and guidelines shall be sent to the Quapaw Tribal Business Committee and shall be posted in at least two public places within the territorial jurisdiction of the Quapaw Nation. All proposed rules, regulations, and guidelines shall be maintained in the Quapaw Administration Building and the Quapaw Courthouse and made available for public inspection for not less than thirty (30) days from the date notice was mailed to the Quapaw Nation Business Committee.

(c) **Comment Period.** The Quapaw Nation Tribal Employment Rights Office shall accept comment from any interested parties during the thirty (30) day notice period required in Section 8(b) herein.

(d) **Finalization.** The Quapaw Nation Tribal Employment Rights Commission shall prepare and approve final rules, regulations and guidelines following the comment period, after reviewing any comments made. The preamble to such final rules, regulations and guidelines shall state the major issues raised by the comments, if any.

**Section 9. Indian Preference in Employment.**
(a) All entities awarding contracts for supplies, services, labor and materials in an amount of $5,000.00 or more, where the majority of the work on the contract or subcontract will occur within the territorial jurisdiction of the Nation, shall give preference in contracting and sub-contracting to qualified entities that are certified by the Commission as fifty-one percent (51%) or more Indian-owned and controlled, with a first preference to qualified entities that are fifty-one percent (51%) or more owned and controlled by local Indians. The requirements of Sections 10 and 15 herein shall apply to the award of contracts awarded directly by the Nation, by the federal or state government or their subdivisions, and shall apply to any contracts awarded by any commercial enterprises of the Nation even if said contract(s) must be submitted to the Quapaw Tribal Business Committee for approval, or Tribal programs or divisions other than commercial enterprises for approval. Tribal programs or divisions other than commercial enterprises shall be required to comply with these requirements and shall be required when submitting a contract to the Quapaw Tribal Business Committee for approval, to indicate, as part of the submission to the Quapaw Tribal Business Committee, the steps taken to award the contract to a local Indian contractor. The requirements of Sections 10 and 15 herein shall apply to all subcontractors awarded by a tribal, federal or state direct contractor or grantee, whether or not the prime contract was subject to these requirements. All covered entities shall comply with the rules, regulations, guidelines and orders of the Commission which set forth the specific obligation of such entities in regard to Indian preference in contracting and subcontracting. The Commission shall establish a system for certifying entities as Indian preference and local Indian preference eligible.

(b) The Quapaw Nation, in hiring employees, shall give first preference in hiring to qualified Quapaw Nation Tribal Members. Second preference shall be given to qualified Indians.

Section 10. Indian Preference; Hiring Regulations; Employee Wages.

The Commission shall promulgate regulations which impose numerical hiring goals and timetables that specify the minimum number of Indians an employer must hire, by craft or skill level or which establishes percentage hiring goals by craft or skill level for specified employment fields. The Commission shall promulgate regulations which ensure employee wages are at the market rate for the employers’ industries. The Commission shall also promulgate regulations designed to prevent discrimination by employers and entities as mentioned in Section 15 herein. These rules and regulations shall be approved by the Business Committee, then ratified by the Quapaw Indian Council before becoming effective.

Section 11. Training.

Employers shall establish or participate in such training programs as the Commission deems necessary to increase the pool of Indians eligible for employment within or outside the territorial jurisdiction of the Nation.
Section 12. Hiring Hall.

The Quapaw Nation Tribal Employment Rights Office is authorized to establish, in conjunction with any department or committee that the Business Committee deems necessary, a hiring hall or skills bank, and impose a requirement that no covered employer may hire a non-Indian until the Tribal Employment Rights Office and department or committee has certified that no qualified Indian is available to fill the vacancy, with a first preference in referral to local Indians.

Section 13. Job Qualifications.

No employer shall use job qualifications criteria or other personnel requirements that serve as barriers to Indian employment as a reason for non-compliance with Indian preference, unless the employer can demonstrate that such criteria or requirements are required by business necessity.


Employers shall make a reasonable accommodation to the religious beliefs of Indian workers in accordance with guidelines to be developed by the Quapaw Nation Tribal Employment Rights Office and approved by the Commission.

Section 15. Discrimination Prohibited.

Discrimination in hiring, firing, compensation, assignment, classification, transfer, promotion, layoff, recall, job advertisements, recruitment, testing, benefits, retirement or other terms of employment are prohibited. Employers and entities shall take all reasonable steps to prevent discrimination of all kinds, including but not limited to religious, gender, race, political beliefs, national origin, sex, age, and disability. Indian preference is not discrimination.

Section 16. Compliance by Unions.

Every union with a collective bargaining agreement with an employer must file a written agreement stating that the union will comply with the laws of the Quapaw Nation and with the rules, regulations and orders of the Commission. Until such agreement is filed with the Quapaw Nation Tribal Employment Rights Office and the Commission, the employer may not commence work within the territorial jurisdiction of the Quapaw Nation. The Commission will provide a model union agreement for use by all unions who have a collective bargaining agreement with any employer. Every union agreement with an employer or filed with the Commission must provide:

(a) Indian Preference. The union will give preference to Indians in job referrals regardless of which union referral list they are on.

(b) Cooperation with the Commission. The union will cooperate with the Commission in all respects and assist in the compliance with, and enforcement of, the Quapaw Nation Tribal Employment Rights Act and related regulations and agreements.
Registration. The union will establish a mechanism allowing Indians to register for job referral lists by telephone or mail.

Training Program. The union will establish a job training program for Indians.

Temporary Work Permits. The union will grant temporary work permits to Indians who do not wish to join the union.

Recognition of Unions. Nothing herein or any activity by the Commission authorized hereby shall constitute official tribal recognition of any union or tribal endorsement of any union activities within the Quapaw Nation.

Section 17. Employment Rights Fee.

(a) An Employment Rights Fee is necessary to raise revenue for the operation of the Quapaw Nation Tribal Employment Rights Office, and is hereby authorized to be imposed by the Tribal Employment Rights Office as follows:

(b) Every covered employer or entity with a construction contract in the sum of $1,000 or more shall pay a fee of 2% of the total amount of the contract. Such fee shall be paid by the employer or entity prior to commencing work in the Nation's territorial jurisdiction. However, where good cause is shown, the Director may authorize a construction contractor to pay said fee in installments.

(c) The fee shall be collected by the Quapaw Nation Tribal Employment Rights Office Director. The Quapaw Nation Tribal Employment Rights Office Director shall provide for an efficient and orderly fee collection process.

Section 18. Reporting and On-Site Inspections.

Employers shall submit reports, and other information requested by the Commission. The Commission and its representatives shall have the right to make on-site inspections during regular working hours in order to monitor any employer's compliance with the Quapaw Nation Tribal Employment Rights Act and rules, regulations and orders of the Commission. The Commission shall have the right to inspect and copy all relevant records of any employer, or any signatory union or subcontractor and shall have a right to speak to workers and conduct investigations on job sites.

Section 19. Complaints.

(a) Parties Entitled to File Complaint.

(1) Director. If the Director has cause to believe that an employer, contractor, subcontractor, or union has failed to comply with the Quapaw Nation Tribal Employment Rights Act or any rules, regulations or orders of the Commission, it may file a complaint and notify such party of the alleged violations.
(2) **Employees.** If any employee believes that an employer has failed to comply with the Quapaw Nation Tribal Employment Rights Act or rules, regulations or orders of the Commission, or believes he/she has been discriminated against by an employer because he/she is an Indian or because of any other discrimination prohibited by Sections 10 and 15 herein, he/she may file a complaint with the Director specifying the alleged violation. If any employer fires, lays off, or penalizes in any manner any Indian employee without just cause and proper notification to the Quapaw Nation Tribal Employment Rights Office, then that employer shall be subject to the penalties provided in Section 22(f) herein.

(3) **Employer or Union Complaint Procedure.** If an employer or union believes that any provision of the Quapaw Nation Tribal Employment Rights Act or any rules, regulation or order of the Commission is illegal or erroneous, it may file a complaint with the Commission specifying the alleged illegality or error.

(b) **Contents of Complaint.** The complaint shall be in writing and shall provide such information on the form provided and approved by the Commission so that the Director can carry out an investigation.

**Section 20. Investigations.**

(a) **Investigation Deadline.** The Director shall within thirty (30) days of the date on which a complaint is filed; complete an investigation of the complaint unless the Director requests and is granted an extension by the Commission and said extension shall be for no more than thirty (30) days.

(b) **Investigatory Authority of Director.** The Director or his delegate may enter, during business hours, the place of business or employment of any employer for the purpose of such investigations, and may require the covered employer or entity to submit such reports as he deems necessary to monitor compliance with the requirements of the Quapaw Nation Tribal Employment Rights Act Sections 10 and 15 herein and any rule or order hereunder. When requesting any reports or other information from a covered employer, the Director shall request that the covered employer identify all material which contains trade secrets or privileged or confidential commercial, financial, or employment information. Any material so identified shall be kept confidential by the Director unless on the request of the Director or other interested party, the Commission determines that the material does not contain confidential information, the release of which would cause unnecessary or excessive business or financial injury or would invade individual privacy. If upon investigation, the Director has reason to believe a violation has occurred, he/she shall proceed pursuant to the provisions of Section 22 herein.

**Section 21. Investigatory Powers of Director and Commission.**
Power to Require Testimony and Production of Records. For the purpose of investigations or hearings, which in the opinion of the Director or the Commission, are necessary and proper for the enforcement of this Act herein, a Commissioner, the Director, or any field compliance officer designated by the Director may administer oaths or affirmations, subpoena witnesses, take evidence, and require, by citation, the production of books, papers, contracts, agreements or other documents, records or information which the Director or the Commission deems relevant or material to the inquiry.

Confidentiality of Records. Any Tribal, state or federal tax records, trade secrets, or privileged or confidential commercial, financial, or employment information subpoenaed pursuant to this Section or used in a compliance hearing or subsequent appeal to the Quapaw Nation Court, shall be confidential records of the Commission or the said Court, shall not be opened to public inspection, and shall be used only by the Director, the Commission, parties to a compliance hearing or subsequent appeal to the Quapaw Nation Court, and the Quapaw Nation Court.


(a) Notification of Violation. When after conducting an investigation, initiated by a complaint pursuant to Section 19 herein, the Director has reason to believe a violation of this Act or regulations issued pursuant to this Act has occurred, the Director shall notify the covered employer or entity in writing, specifying the alleged violations. The Director may withhold the name(s) of the complaining party if he has reason to believe such party shall be subject to retaliation. The Director shall seek to achieve an informal settlement of the alleged violation. If he is unable to do so, he shall issue a formal notice of non-compliance, which shall also advise the covered employer or entity of his right to request a hearing.

(b) Formal Notice of Non-Compliance. The formal notice shall set out the nature of the alleged violation and the steps that must be taken to come into compliance. It shall provide the employer or entity with a reasonable time to comply, which in no event shall be less than five (5) business days from the date of receipt of such notice, unless the Director has reason to believe irreparable harm will occur during that period, in which case the Director may require that compliance occur within fewer than five (5) business days.

(c) Request for Hearing. If the party fails or refuses to comply, the party may request a hearing before the Commission which shall be held no sooner than five (5) business days and no later than thirty (30) days after the date for compliance set forth in the Director's notification to the party charged of a violation, unless an expedited hearing is deemed necessary by the Commission to avoid irreparable harm. If a party fails or refuses to comply and does not request a hearing, the Commission may proceed pursuant to Section 22(f).
(d) **Bond During Pendency of Proceedings.** If the party requests a hearing pursuant to Section 22(c) herein, and the Director has good cause to believe that there is a danger that the party requesting the hearing will remove itself or its property from the jurisdiction of the Nation prior to the hearing, he may, in his discretion, require the party to post a bond with the Commission in an amount sufficient to cover possible monetary damages that may be assessed against the party at the hearing. If the party fails or refuses to post said bond, the Commission may proceed pursuant to Section 22(f). The Director may also petition the Quapaw Nation Court for such interim and injunctive relief as is appropriate to protect the rights of the Commission and other parties during the pendency of the compliance and hearing proceedings.

(e) **Conduct of Hearings.** Any hearing held pursuant to Section 22 herein shall be conducted by the Commission. Hearings shall be governed by the following rules and procedures:

1. All parties may present testimony of witnesses and other evidence and be represented by counsel at their expense.
2. The Commission may have the advice and assistance at the hearing of counsel provided by the Nation.
3. The Chairman of the Commission or the Vice-chairman shall preside, and the Commission shall proceed to ascertain the facts in a reasonable and orderly fashion.
4. The Commission may consider any evidence which it deems relevant to the hearing and conduct of the hearing shall be governed by the rules of practice and procedure which may be adopted by the Commission and made available to the public through the formal process for promulgating rules as specified in Section 8.
5. The Commission shall not be bound by technical rules of evidence in the conduct of hearings, and no informality in any proceeding, as in the manner of taking testimony, shall invalidate any order, decision, rule or regulation made, approved or confirmed by the Commission.
6. The hearing may be adjourned, postponed and continued at the discretion of the Commission.
7. At the final close of the hearings, the Commission may take immediate action or take the matter under advisement.
8. In any hearing before the Commission where the issue is compliance by an employer with any of the requirements and provisions of the Quapaw Nation Tribal Employment Rights Act, the burden of proof to show said compliance shall be on the employer, rather than on the employee or other complainant.
9. The Quapaw Nation Tribal Employment Rights Office shall notify all parties within thirty (30) days after the last hearing of its decision in the matter by issuing a decision in writing and keeping those decisions filed in the Quapaw Nation Tribal Employment Rights Office and the Secretary-Treasurer’s Office.
(10) No stenographic record of the proceedings and testimony shall be required except upon arrangement by and at the cost of the party charged.

(f) Remedies Upon Commission Determination of Violation. If, after the hearing, the Commission determines that the alleged violation occurred and that the party charged has no adequate defense in law or fact, or if no hearing is requested, the Commission may:

(1) Deny such party the right to commence business within the territorial jurisdiction of the Quapaw Nation;
(2) Suspend such party's operation within the territorial jurisdiction of the Quapaw Nation;
(3) Terminate such party's operation within the territorial jurisdiction of the Quapaw Nation;
(4) Deny the right of such party to conduct any further business within the territorial jurisdiction of the Quapaw Nation;
(5) Impose a civil fine on such party in an amount not to exceed $50.00 dollars for violation, provided that each day during which a violation exists shall constitute a separate violation;
(6) Order such party to make payment of back pay to any aggrieved employee;
(7) Order such party to dismiss any employees hired in violation of the Nation's Employment Rights requirements;
(8) Require employment promotion and training of employees injured by the violation;
(9) Order the party to take such other action as is necessary to ensure compliance with this Act and the laws of the Quapaw Nation or to remedy any harm caused by a violation of said chapter.

(g) Commission Decision; Protection. The Commission's decision shall be in writing and shall be served on the charged party by registered mail or in person no later than thirty (30) days after the close of the hearing provided in Section 22(e). Where the party's failure to comply immediately with the Commission's orders may cause irreparable harm, the Commission may petition the Quapaw Nation Court, and the Court shall grant such injunctive relief as necessary to preserve the rights of the beneficiaries of this Act herein, pending the party's appeal or expiration of the time for appeal.

Section 23. Appeals.

(a) Manner of Taking Appeal. An appeal to the Quapaw Nation Court may be taken from any final order of the Commission by any party adversely affected thereby. Said appeal must be filed with the Quapaw Nation Court no later than twenty (20) days after the date of the entry of the Order. The appeal shall be taken by serving written notice of appeal with the Quapaw Nation Court, with a copy to the Director. The notice of appeal shall set forth the Order from which appeal is taken; specify
the grounds upon which reversal or modification of the Order is sought; and be signed by the appellant. The filing of the appeal may be subject to the filing fees as imposed by the Quapaw Nation Court.

(b) **Stay of Commission Order Pending Appeal; Bond.** The Order of the Commission shall be stayed pending the determination of the Quapaw Nation Court, provided that such stay may be conditioned upon the posting of a bond if the Director petitions for a bond and the Court, for good cause shown, orders the appealing party to post a bond sufficient to cover monetary damages that the Commission assessed against the party or to assure the party's compliance with other sanctions or remedial actions imposed by the Commission's order if that order is upheld by the Quapaw Nation Court.

(c) **Standard of Review.** The Quapaw Nation Court shall uphold the decision of the Commission unless it is demonstrated that the decision of the Commission is arbitrary, capricious or in excess of the authority of the Commission.

(d) **Reversal on Appeal.** If the order of the Commission is reversed or modified, the Quapaw Nation Court shall by its mandate specifically direct the Commission as to further action in the matter, including making and entering any order or orders in connection therewith and the limitations, or conditions to be contained therein.

(e) **Enforcement of Commission Order.** If the Commission's order is upheld on appeal, or if no appeal is sought within twenty (20) days from the date of the party's receipt of the Commission's order, the Commission shall petition the Quapaw Nation Court and the Court shall grant such orders as are necessary and appropriate to enforce the orders of the Commission and the sanctions imposed by it.

**Section 24. Confiscation and Sale.**

If twenty-one (21) days after a decision by the Commission pursuant to Section 22(g), no appeal has been filed, or thirty (30) days after a decision by the Quapaw Nation Court on an appeal from a decision by the Commission pursuant to Section 22 a party has failed to pay monetary damages imposed on it or otherwise comply with an order of the Commission or the Court, the Commission may petition the Quapaw Nation Court to order the Chief of Quapaw Tribal Marshals to confiscate, and hold for sale, such property of the party as is necessary to ensure payment of said monetary damages or to otherwise achieve compliance. Said petition shall be accompanied by a list of property belonging to the party which the Commission has reason to believe is within the jurisdiction of the Nation, the value of which approximates the amount of monetary damages at issue. If the Quapaw Nation Court finds the petition to be valid, it shall order the Chief of Quapaw Tribal Marshals to confiscate and hold said property or as much as is available. The Chief of Quapaw Tribal Marshals shall deliver in person or by certified mail a notice to the party informing it of the confiscation and of its right to redeem said property by coming into compliance with the order outstanding against it. If thirty (30) days after confiscation, the party has not come into compliance, the Quapaw Nation Court shall order the Chief of Quapaw Tribal Marshals to sell said property and use the proceeds to pay any outstanding monetary damages imposed by the
Commission and all costs incurred by the Court and Chief of Quapaw Tribal Marshals in the confiscation and sale. Any proceeds remaining shall be returned to the party.

**Section 25. Orders to Tribal Marshals.**

The Chief of Quapaw Tribal Marshals and his/her designee are hereby expressly authorized and directed to enforce such cease-and-desist or related orders as may from time to time be properly issued by the Commission and the Director. Such orders do not require a judicial decree or order to render them enforceable. No law enforcement officer shall be civilly liable for enforcing such orders so long as the order is signed by the Director and the Commission. The Quapaw Tribal Marshals shall not enforce a removal order of the Director unless it is accompanied by a judicial decree by the Quapaw Nation Court.

**Section 26. Publication of Law.**

(a) The Commission shall notify all covered employers of the Quapaw Nation Tribal Employment Rights Act of their obligation to comply. All bid announcements issued by any tribal, federal, state or other private or public entity shall contain a statement that the successful bidder will be obligated to comply with the Quapaw Nation Tribal Employment Rights Act and all rules, regulations and orders of the Commission.

(b) All tribal agencies responsible for issuing business permits for activities within the territorial jurisdiction of the Quapaw Nation or otherwise engaged in activities involving contact with prospective employers within the Quapaw Nation shall be responsible for advising such prospective employers of their obligations under the Quapaw Nation Tribal Employment Rights Act.

(c) The Quapaw Nation Tribal Employment Rights Office shall send a copy of the Quapaw Nation Tribal Employment Rights Act to every employer doing business within the territorial jurisdiction of the Quapaw Nation.

**Section 27. Consultation with Quapaw Nation.**

As of the effective date of the Quapaw Nation Tribal Employment Rights Act, no new employer may do business with the Quapaw Nation until it has consulted with the Quapaw Nation Tribal Employment Rights Office in order to meet its obligations under this law.

**Section 28. Applicability.**

The Quapaw Nation Tribal Employment Rights Act shall be binding on all covered employers, including the Quapaw Nation, whether or not they have previously operated on the lands within the territorial jurisdiction of the Quapaw Nation and whether or not they are doing so at the time of the implementation of the Quapaw Nation Tribal Employment Rights Act.

**Section 29. Severability.**
If any portion of the Quapaw Nation Tribal Employment Rights Act shall be ruled invalid by a court of competent jurisdiction, that portion shall cease to be operative, but the remainder of the Act shall continue in full force and effect.

Section 30. Effective Date.

The Quapaw Nation Tribal Employment Rights Act shall become effective from the date of its approval by the Quapaw Indian Council.

Section 31. Tribal Wage Compliance.

The Quapaw Tribal Employment Rights Commission shall be responsible for ensuring that employers performing work within the territorial jurisdiction of the Quapaw Nation maintain employee wages at the market rate for the industry.

Section 32. Sovereign Immunity.

Nothing in this Code shall affect the right of the Quapaw Nation to assert immunity from suit by virtue of its status as a sovereign entity.

Section 33. Whistleblower Protection.

(a) Pursuant to this Act, every employee has the continuing responsibility to disclose in promptly writing to the Nation any activity, transaction, interest or association which might be a conflict of interest or in conflict with this Act. Failure to disclose such information may serve as a justification for termination from employment.

(b) Any employee who has knowledge of or a good faith reasonable belief that a violation of this Act has occurred shall file a Complaint pursuant to Section 19(b) of this Act.

(c) No employee shall be subject to any reprisal or adverse personnel action by reason of reporting the wrongful conduct of another employee or employer. Any employee that files a Complaint subject to Section 19(b) that is substantiated by the Director pursuant to Section 22(a) may not be retaliated against or otherwise terminated until a final determination by the Commission is made.

(d) It is a violation of this Act to take any adverse personnel action against any employee that reports wrongful conduct covered by this Act in good faith.

Section 34. Wrongful Employer Conduct.

(b) In addition to the violations provided elsewhere in this Act, no employer shall take an adverse personnel action against an employee:
For refusing to violate applicable law;

For cooperating with any legal criminal investigation;

For disclosure of employer information, unless such information is proprietary information, trade secret, or otherwise confidential and protected by agreement or applicable law;

For the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation of the Quapaw Nation;

For providing information, testimony, and documents to, as well as otherwise lawfully assisting the Director and/or Commission;

For the political activity of the employee (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;

By deceiving or willfully obstructing any person with respect to such person’s right to compete for employment;

By influencing any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;

By granting any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;

Section 33.

(a) For employees of the Quapaw Nation specifically, the Commission shall take all necessary steps to ensure the enumerated rights provided in Section 33 are enforced.

(b) The Commission shall investigate any complaints that a Quapaw Nation employer:

(1) Acted against the best interest of the Quapaw Nation;

(2) Violated Quapaw Nation laws as well as applicable federal or state laws;

(3) Misappropriated Nation funds;

(4) Entered into an agreement without valid authority;
Discriminated against the employee due to inalienable characteristics (sex, race, national origin, mental capacity, age, etc.); or,

Otherwise wrongfully terminated or took averse personal action against an employee.

The Commission may consult any material created by the Nation to determine the scope of employment, duties, and obligations of any employees or employers; provided that, the Commission shall also consider:

Generally. No employee should have, acquire or engage in any interest or association which would, or might appear to, influence or interfere with the independent exercise of his or her judgment in the best interest of the Nation. No employee should personally profit from, or otherwise take advantage of, opportunities or business information which is obtained by reason of such employee's position with the Nation. Employees should refrain from those transactions or activities conducted in their capacity as an employee which, while not involving personal profit or gain of the employee involved, are nonetheless detrimental to the best interests of the Nation or would tend to damage the reputation of the Nation; or,

Suppliers and Contractors. It is the policy of the Nation to obtain all equipment, materials, supplies and services from reputable suppliers and contractors at a fair and reasonable cost. Employees are expected to exercise all necessary safeguards and controls for carrying out this policy including, but not limited to, competitive bidding, economic analysis, specification valuation, approval of vendors and alternative vendor sourcing. Employees must not have any material financial interest in or engage in any material business venture or transaction with any business or concern which is a supplier or contractor of the Nation. Employees shall not be involved in the process of contract evaluation, negotiation or award or the approval of invoices or payments to contractors or suppliers of the Nation where a spouse or other person living in the employee's household, or an immediate relative of the employee is employed by such contractor or supplier.

Customers of the Nation. Employees must not have any material financial interest in or engage in any material business venture or transaction with, any business or concern which is a customer of the Nation.

Business in Competition. Employees must not have any material financial interest in or engage in any material business venture or transaction with any business or concern which competes with the Nation.

Appropriation of Business Opportunity. The appropriation or the diversion to others of any opportunity for profit in connection with a transaction in
which it is known, or could reasonably be anticipated, that the Nation is, or would be, interested is prohibited. Such opportunities include, but are not limited to, the acquisition of real or personal property or the design or development of new products or new ideas.

(5) **Gifts and Entertainment.** Employees shall not accept from actual or potential suppliers, contractors, competitors or customers, gifts, favors, services or entertainment of other than a token or nominal value. The solicitation by employees of gifts, favors, services, or entertainment is prohibited.

(6) **Trips.** Employees shall not accept trips from actual or potential suppliers, contractors, competitors, or customers without the prior written approval of the particular tribal officer or Supervisor to whom the employee reports. Solicitation by employees of such trips is prohibited.

(7) **Political Contributions.** "Political contributions" as used herein shall include direct expenditures or contributions, in funds, services, or assets to candidates for nomination or election to public office or to political parties, as well as indirect assistance or support (except as may be incidental to the administration of an employee campaign fund or political action committee) including, but not limited to, the donation by the Nation of an employee's time; the furnishing of goods, space, services, or equipment; the purchasing of tickets or subscriptions to political fund raising events; or other indirect contributions or payments made on behalf of the Nation in any form or through employees, consultants, agents, suppliers or any other party. No Nation funds or assets shall be used, directly or indirectly, for Federal (U.S. Government position) political contributions. Political contributions may be made by the Nation in any state of the United States in any other jurisdiction where permitted by law, only in accordance with the following policies and procedures: • No political contribution shall be made by an employee, consultant, agent, or any other representative on behalf of the Nation, in cash or by any other means whereby the amount of origin of the contribution cannot be readily established by reference to the Nation's books and records. Employees, consultants, agents or other representatives of the Nation may contribute personally of their own funds or time to the candidate, organization or party of their choice. No employee, consultant, agent or other representative of the Nation shall represent that his or her personal contribution is that of the Nation.

(8) **Outside Business Activities.** Each employee is expected to devote his or her full time and ability to the Nation's interest during regular business hours of employment and whatever additional time may be properly required. It is not the intention of this policy to discourage participation by individuals in civic, political, charitable or similar activities.
Safeguarding Confidential or "Inside" Information. It shall be the responsibility of all officers, employees and other persons having access to confidential or "inside" information or special knowledge acquired in the course of business of the Nation not to disclose such information to others or use such information for personal gain. Persons who have acquired knowledge or information about the Nation or its business must not: use such information as an opportunity for personal gain, or disclose such information to persons outside the Nation, or discuss such information with persons inside the Nation who do not have a need to know such information.

Falsification of Tribal Records. No employee shall directly or indirectly falsify, or cause to be falsified, any book, record, account or document made or to be made by the Nation. Moreover, no employee shall make, or cause to be made, any false or misleading statement in connection with any examination or audit of the Nation's books and records. The creation and maintenance of any cash fund or other asset for disposition by representatives of the Nation is prohibited without accounting for such funds and assets, and the disposition thereof, on the books and records of the Nation. No employee shall maintain corporate funds or assets in safe deposit boxes, in bank accounts not identified as the Nation's or in locations other than regular corporate accounts (with the exception of a bona fide petty cash fund).

Payments to Others. No employees shall make any payment (with either corporate or personal funds, whether or not reimbursed), or confer any benefit upon, any government official or agent or employee of a Nation for the purpose of improperly influencing any action by such official, agent or employee. Such prohibited payments or benefits would include, but are not limited to the following: the payment of money directly to the official, agent or employee or through intermediaries (including lawyers, agents or brokers); or payments of any statement, invoice or bill by the Nation for goods, materials or services where the price paid exceeds the true price thereof, and the excess is used at the direction of, or pursuant to a prior understanding with, the Nation or a representative there offer a payment to a governmental official or agent or employee of a Nation; or payments or commissions made to a sales agent with an understanding that part of the payments or commissions would be used to make payments to a government official or agent or employee of a Nation; or use of facilities owned by the Nation or those owned by representatives of the Nation by a government official or agent or employee of a Nation. Reasonable expenses for the entertainment of customers are not prohibited provided: the amount of the expense and nature of the entertainment is fully described in the expense report by which any reimbursement from the Nation is sought, and the entertainment is within the Nation's accepted business standards and ethics.
CERTIFICATION

The undersigned does hereby certify that ________ () members of the Business Committee were present at the Business Committee on ___ day of ___ 2023, constituting a quorum. It is further certified that the foregoing resolution of the Quapaw Nation (O-Gah-Pah) was publicly presented to the Business Committee and duly adopted through an electronic/telephonic vote of the members of the Business Committee with an affirmative vote of ______, and a negative vote of ______ ( ), and _____ ( ) abstaining.

__________________________________  __________________________________
Callie Bowden, Vice-Chair    Wena Supernaw, Secretary-Treasurer
Quapaw Nation Business Committee   Quapaw Nation Business Committee