

**ROSEBUD SIOUX TRIBE
Ordinance 2022-03**

**CHAPTER SIX
INDIAN CHILD WELFARE ACT AND CHILD CUSTODY PROCEEDINGS**

3-6-1 Purpose and Policy of Law

The purpose of this Chapter is to codify and implement Rosebud Sioux Tribal authority and responsibility under the Indian Child Welfare Act, 25 U.S.C. 1901 *et. seq* (1978) (ICWA) and establish procedural safeguards and standards to protect the best interests of Tribal children, to promote the stability, integrity and security of Rosebud Sioux Tribal families and to protect essential Rosebud Sioux Tribal interests. The provisions of this Chapter shall be interpreted to comply with other Chapters of the Rosebud Sioux Tribe Juvenile Code.

[History: Ordinance 04-07]

3-6-2 Definitions

- A. The term used in this Chapter shall have the same meaning as the terms defined in Section 1903 of the Indian Child Welfare Act (ICWA) and the definitions set forth in the Rosebud Sioux Tribe Juvenile Code, Chapter 1, General Provisions at 3-1-2.

In addition, as used in this Chapter, the following definitions shall apply:

- (1) "Children's Court Judge" shall mean any Judge of the Rosebud Sioux Tribal Court who is authorized to act as a Judge of the Children's Court.
- (2) "Tribal child" shall mean a child who is a member of, or eligible for enrollment in, the Rosebud Sioux Tribe.

[History: Ordinance 04-07]

3-6-3 Administration

- A. Management: The implementation and administration of the policies and laws of this Chapter and of the ICWA is delegated to the office of the Rosebud Sioux Tribal ICWA Specialist, with supervision from the Children's Court Judge.
- B. Service of Notice: Indian Child Welfare Act Notices shall be received by the Office of the ICWA Specialist. The Tribe shall designate the ICWA Specialist as the official recipient of ICWA notices and send this designation to the Bureau of Indian Affairs for publication in the Code of Federal Regulations. The ICWA Specialist shall be responsible for responding to all ICWA notices.
- C. ICWA Specialist: Duties and Responsibilities: The ICWA Specialist shall work with the Children's Court Judge, Tribal attorneys, and the Tribal child welfare system to facilitate and exercise Rosebud Sioux Tribe authority and responsibility

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under the Federal Indian Child Welfare Act. The following are the minimum duties and responsibilities required of the ICWA Specialist:

- (1) Monitor child custody proceedings to ensure ICWA compliance: Monitor and act to ensure state compliance with the minimum federal requirements of the Federal ICWA, and act to enforce ICWA provisions pursuant to 25 U.S.C. § 1914 if warranted.
- (2) Give legal directions to the Tribe's attorneys: Consult with and give directions to the attorney representing the Tribe in ICWA cases, on such matters as whether to file a motion to transfer, or to invalidate a proceeding, or to seek an appeal of a state court order.
- (3) Intermediary: Act as an intermediary between State, Federal and Tribal courts on behalf of tribal children and families; collaborate and cooperate with the State, Bureau of Indian Affairs, other child placement agencies, county attorneys and all other parties to Indian child custody proceedings.
- (4) Maintain a resource database: Maintain a database of tribally qualified expert witnesses, guardians-ad litem, foster homes qualified as either or both, tribally-licensed and/or state licensed, other tribally approved foster homes, and other resources necessary to participate in federal and state programs.
- (5) Maintain a computerized client information system: The Specialist shall be responsible for maintaining a computerized client data system, including data entry of current information concerning the legal status, service outcome, and location of Rosebud Sioux Tribal children who are now or were implicated in State child custody proceedings.
- (6) Maintain electronic files: Maintain detailed documentation in electronic files for placement plans and identify culturally appropriate permanency outcomes for Tribal children in conformance with the Rosebud Sioux Tribe Juvenile Code, this Chapter, and other laws, rules and regulations affecting Rosebud Sioux Tribal children.
- (7) Access to Tribal records: The ICWA Specialist shall have access to a current database of children who are wards of the Rosebud Sioux Tribal Court, whether domiciled on the reservation or living off the reservation, access to the enrollment office for verifying the enrollment status of a child for which notice to the Tribe was received, and access to records which would verify the domicile status of the child.
- (8) Prepare and maintain legal forms: The ICWA Specialist shall prepare and maintain all computerized legal forms necessary to facilitate Rosebud Sioux Tribal authority and responsibility pursuant to the Indian Child

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Welfare Act. In any child custody proceeding, the ICWA Specialist shall prepare the Motion to Intervene, Request to Produce and Examine, Motion for Extension of Time, Motion to Transfer Jurisdiction and Dismiss the Case, and Petition or Order of Acceptance of Jurisdiction.

- (9) Investigation and Recommendations: Conduct investigations and provide recommendations prior to making motions for transfer of jurisdiction to Tribal Court.
- (10) Present Cases for Review by the Children’s Court Judge: Present recommendations concerning questions of transfer to the Children’s Court Judge, and will perform the duties set forth in Section 3-4-5 (b) of this chapter.
- (11) Reporting: Provide non-confidential reports, as requested, to the Children’s Court Judge, Rosebud Sioux Tribal Council and other tribal communities designated by the Council, concerning Tribal children and families involved in State child custody proceedings.
- (12) Conflict of Interest: If there is a conflict of interest in carrying out the ICWA Specialist’s duties set forth in this Chapter regarding a specific case, the ICWA Specialist shall report said conflict to the Children’s Court Judge and the Judge shall appoint another qualified person from the Tribe’s child welfare system to manage the case.

D. Confidentiality of Files and Records

The files and records of children and families shall be kept confidential pursuant to 42 CFR Part 2 (June 9, 1987). Unless authorized by law or court order, no information may be released from the files or records to anyone unless written authorization for the release of information is obtained from the party that may be affected by this action or his or her representative. The Specialist may release information to an authorized representative of the Tribe, or to a state or tribal provider serving the child and family, or the legal representatives of any of the parties, if such release is not in violation of tribal or federal law. If the Tribe’s ICWA program received federal funds through a Self-Determination (Public Law 93-648) Contract, the provisions of the federal Privacy Act shall apply.

E. Judicial and Legal Duties Responsibilities

The Rosebud Sioux Tribe Children’s Court Judge:

- (1) Shall provide guidance to the Rosebud Sioux Tribe’s Indian Child Welfare Act Specialist and the Tribe’s ICWA Program in order to effectuate the provisions of the Act and to protect the interests of the Rosebud Sioux Tribe.

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- (2) Shall be responsible for the implementation and monitoring of rules related to this Chapter, and the Rosebud Sioux Tribe ICWA Policy and Procedure Manual.
- (3) Upon receipt of a petition for acceptance of jurisdiction from an individual who may or may not be a party to the case shall refer the petition for a pre-petition investigation to the ICWA Program.
- (4) The Children's Court Judge shall review the recommendations of the ICWA Specialist as to whether or not the Tribe should move to transfer jurisdiction of a case to the Tribal Court. The Judge's review of the ICWA Specialist's recommendation will be done in an informal meeting, at which time the Judge can hear written or verbal statements from extended family members and interested parties on the question of transfer. After hearing the recommendation of the ICWA Specialist and any other interested party, the Children's Court Judge will have final decision-making authority as to whether the Tribe will move to transfer jurisdiction of a case to the Tribal Court, and will direct the ICWA Specialist to proceed according to that decision. The decision by the Children's Court Judge will not be subject to modification or appeal by any tribal officer or Tribal Council or Court.

The attorney representing the Rosebud Sioux Tribe in an ICWA case;

- (5) Shall represent the Tribe in state court proceedings, and shall take appropriate legal actions to exercise and enforce the rights of the Rosebud Sioux Tribe in child custody proceedings.
- (6) Shall counsel, communicate with, and take legal directions from the ICWA Specialist.
- (7) Shall appear on behalf of and represent the Tribe in Tribal, state and federal court proceedings concerning ICWA.
- (8) Shall take necessary actions to appeal an order of a state or federal court, if directed to do so by the ICWA Specialist.

[History: Ordinance 04-07]

3- -4 Jurisdiction

- A. Exclusive and Concurrent Jurisdiction: The Rosebud Sioux Tribal Court shall have exclusive jurisdiction over any child custody proceeding in State court involving an Indian child who resides and is domiciled on the reservation, if the child is a ward of tribal court, the Court shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child. (25 U.S.C. § 1911(a)).

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The Tribal Court shall have concurrent jurisdiction with the state court of any child custody proceeding involving an Indian child who does not reside or who is not domiciled on the reservation.

- B. Rosebud Sioux Tribe Jurisdiction after Transfer: The Rosebud Sioux Tribe shall have jurisdiction over any child custody proceeding involving an Indian child upon acceptance by the Tribal Court of transfer of such proceeding from a state court.
- C. Full-Faith and Credit: The Rosebud Sioux Tribal Court shall give full faith and credit to the public acts, records and judicial proceedings and lawful orders of other federally recognized tribes when such acts, proceedings, records or orders are applicable to the Indian Child Welfare Act. Technical variations in practice that do not affect the fundamental fairness of the proceedings nor violate the federal ICWA shall not be reason to fail to give full faith and credit. (25 U.S.C. § 1911(c)). Unless there is good cause not to do so, as established by findings of facts in the record, the Tribal Court shall give full faith and credit to any state court records, findings and orders previously taken in the case.

[History: Ordinance 04-07]

3- -5 Intervention in Child Custody Proceedings in State Court

- A. Procedure: The procedure for intervening in State Indian Child Welfare proceedings shall be as follows:
 - (1) The Rosebud Sioux Tribe's ICWA Specialist may take necessary action to have the Tribe intervene as a party in a state court child custody proceeding, if in the informed opinion of the specialist, intervention is appropriate under the facts and the law. A decision to intervene does not need to be approved by the Children's Court Judge.
 - (2) It shall be the policy of the Rosebud Sioux Tribe to intervene as a party in all state court child custody proceedings involving an Indian child who is an enrolled member or who is eligible for membership in the Tribe, except in extraordinary circumstances.

[History: Ordinance 04-07]

3- -6 Motion for Transfer of Jurisdiction Under 25 U.S.C. § 1911(b) by Party Other than the Rosebud Sioux Tribe

- A. Filing of Motion; Acceptance: If the parent(s), guardian, or custodian of a Rosebud Sioux Tribe child, through their legal counsel, petitions a state court in a child custody proceeding to transfer jurisdiction of the proceeding to the Tribal Court, such transfer shall not be effective until accepted by the Tribal Court.

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- B. Petition Referred to the ICWA Specialist; Tribe has Automatic Standing: Upon receipt of a motion for acceptance of jurisdiction from an individual, the Tribal Court shall refer the petition for investigation to the ICWA Specialist. The ICWA Specialist shall have thirty (30) days from the date of referral by the Tribal Court in which to conduct the investigation and to make written recommendations of the matter to the Children's Court Judge.

[History: Ordinance 04-07]

3- -7 Procedure for Transfer Under 25 U.S.C. § 1911(b)

- A. Authority to Request Transfer: The Rosebud Sioux Tribe's Children's Court Judge shall have sole authority to determine whether or not the Tribe will request transfer of jurisdiction to the Tribal Court in a particular case. The ICWA Specialist or the Specialist's designee shall act as an agent for the Tribe. If the Children's Court Judge decides not to seek transfer, the Judge may reconsider his or her decision at any time if new information is obtained, or changed circumstances merit a motion to transfer.
- B. Pre-Petition Investigation by ICWA Specialist and Recommendation: Within ninety (90) days of receipt of Notice that a Rosebud Sioux Tribal child is the subject of a child custody proceeding in state court, the ICWA Specialist shall conduct an investigation of the case, and shall make a written recommendation to the Children's Court Judge concerning whether the Tribe should move to transfer jurisdiction to the Tribal Court. The recommendation shall consider, among other factors, the following:
- (1) the age of the child;
 - (2) any special needs of the child;
 - (3) the location and circumstances of the family;
 - (4) whether the state has made active efforts to reunite the family;
 - (5) the availability of Tribal services that can address the child's and the family's needs;
 - (6) the availability of a suitable Tribal home for placement of the child;
 - (7) whether financial assistance for the care of the child will be available if transfer of jurisdiction occurs;
 - (8) the child's ties with the Reservation and/or extended family;
 - (9) whether the child is eligible for enrollment or is enrolled in the Rosebud Sioux Tribe;

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- (10) whether the child has recently moved from the Reservation;
 - (11) whether the child has been abandoned;
 - (12) whether the parents requested that the child be returned and raised on the Reservation;
 - (13) whether the child desires to return to the reservation;
 - (14) whether the child's on-reservation family is stable and strong;
 - (15) the reservation has resources available to meet the needs of the child.
- D. **Informal Meeting on Indian Child Welfare Specialist's Recommendation:** The Court shall schedule an informal meeting on the Indian Child Welfare Specialist's recommendations at the earliest available time following submission of the Indian Child Welfare Specialist's recommendations. Prior notice and an opportunity to be heard shall be provided to all named parties in the State Court case. If the Indian Child Welfare Specialist is recommending the Tribal Court accept jurisdiction over the case he/she shall file a Petition to Accept Jurisdiction along with his/her written recommendations.
- E. **Reasons for Declining Transfer:** The Tribal Court may decline to accept transfer of jurisdiction over a state child custody proceeding if the Tribal Court finds that good cause exists to decline to accept jurisdiction. The declination must be based on evidence that the transfer would not be in the best interest of the Rosebud Sioux tribe, or the child pursuant to the Rosebud Sioux Tribe Juvenile Code, Chapter 1, 3-1-4, H.(3)(b.). Among the factors that would constitute good cause not to transfer are the following factors:
- (1) child is of mixed marriage where primary family ties and/or identity are with the non-member;
 - (2) child is old enough to reason and does not want to return to the reservation;
 - (3) child has no ties with the reservation;
 - (4) child has problems for which there are no adequate on-reservation programs or resources;
 - (5) when either parent contests the transfer;
 - (6) child is not eligible for enrollment or not enrolled;

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- F. Procedure upon Acceptance of Transfer: If the Children's Court Judge approves a transfer of a child custody proceeding, the Tribal Court shall issue an order indicating that it will accept jurisdiction of the state proceedings. The ICWA Specialist shall prepare a motion to transfer the case, under 25 U.S.C. § 1911 (b), for signature of the Children's Court Judge and shall file a motion to transfer with the state court. The motion shall state that the Tribal Court has issued an order indicating that it will accept the transfer of jurisdiction.

- G. If the state court then grants the Tribe's motion to transfer: The Tribal Court shall immediately file an order accepting transfer of jurisdiction and direct the state court to transfer its filed to the Tribal Court. The Court shall schedule a hearing in the case. At such hearing, the court will make rulings concerning temporary placement and custody of the child, case progression, and matters relevant to the protection and well-being of the child.

- H. The applicable portions of the Rosebud Sioux Tribe Juvenile Code shall govern any child custody proceedings that are transferred to the Tribal Court. After transfer, the case shall proceed as a Minor in Need of Care case, in accordance with all the procedures and standards that govern such cases that are set forth in the Juvenile Code.

[History: Ordinance 04-07]

3- -8 Procedures and Standards in Minor in Need of Care Case Placement Preferences; Active Efforts; Standard of Proof; Expert Testimony

In all Minor in Need of Care cases that originate in the Tribal Court and all such cases that are transferred to the Tribal Court under ICWA, the following procedural safeguards and standards shall be followed, and the court shall make appropriate findings of fact, conclusions of law and orders in accordance with the provisions of this section.

- A. Placement of Tribal Children
 - (1) Adoptive placement; preferences

In any adoptive placement of an Indian child under Tribal law, a preference shall be given, in the absence of good cause to the contrary, to a placement with:

 - (a) a member of the child's extended family;
 - (b) other members of the Indian child's tribe;
 - (c) other Indian families.
 - (2) Foster care or pre-adoptive placements; criteria; preferences

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Any child accepted for foster care or pre-adoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or pre-adoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with:

- (I) a member of the Indian child's extended family;
 - (II) a foster home licensed, approved, or specified by the Indian child's Tribe;
 - (III) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
 - (IV) an institution for children approved by an Indian Tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.
- (3) Where appropriate, the preference of the Indian child or parent shall be considered and the Court or agency shall give weight to such desire in applying the preferences.
- (4) A record of each such placement of a Tribal child shall be maintained by the agency having responsibility for placing the child, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon request of any named party in the Minor in Need of Care proceeding.

**B. REMEDIAL SERVICES AND REHABILITATIVE PROGRAMS;
PREVENTIVE MEASURES**

Any party seeking to effect a foster care placement of, or termination of parental rights to, a tribal child in the Tribal Court shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

**C. FOSTER CARE PLACEMENT ORDER; EVIDENCE; DETERMINATION OF
DAMAGE TO CHILD**

No foster care placement may be ordered in a Minor in Need of Care proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

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D. PARENTAL RIGHTS TERMINATION ORDERS; EVIDENCE;
DETERMINATION OF DAMAGE TO CHILD

No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian guardian is likely to result in serious emotional or physical damage to the child.

[History: Ordinance 04-07]

3- -9 Preservation of Tribal Rights of a Rosebud Sioux Child

The termination of parental rights as to a Rosebud Sioux Tribe child shall not adversely affect the child's rights and privileges as an Indian, nor as a member of the Rosebud Sioux Tribe, nor shall it affect the child's enrollment status with the Tribe or his eligibility for enrollment.

[History: Ordinance 04-07]

3- -10 Voluntary Termination

PARENTAL RIGHTS; VOLUNTARY TERMINATION

(a) CONSENT; RECORD; CERTIFICATION MATTERS; INVALID CONSENTS

Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights in the Tribal Court, such consent shall not be valid unless executed in writing and recorded before a judge of the Rosebud Sioux Tribal Court and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(b) FOSTER CARE PLACEMENT; WITHDRAWAL OF CONSENT

Any parent or Indian custodian may withdraw consent to a foster care placement under Tribal law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

(c) VOLUNTARY TERMINATION OF PARENTAL RIGHTS OR ADOPTIVE
PLACEMENT; WITHDRAWAL OF CONSENT; RETURN OF CUSTODY

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In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a formal decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

(d) **COLLATERAL ATTACK; VACATION OF DECREE AND RETURN OF CUSTODY; LIMITATIONS**

After the entry of a final decree of adoption of an Indian child in the Tribal Court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection.

[History: Ordinance 04-07]

ROSEBUD SIOUX TRIBE
Resolution No. 2022-152

- WHEREAS,** The Rosebud Sioux Tribe is a federally recognized Indian Tribe organized pursuant to the Indian Reorganization Act of 1934 and all pertinent amendments thereof; and
- WHEREAS,** The Rosebud Sioux Tribe is governed by a Tribal Council made up of elected representatives who act in accordance with the powers granted to it by its Constitution and By-laws; and
- WHEREAS,** The Rosebud Sioux Tribal Council is authorized to promulgate and enforce ordinances for the maintenance of law and order, and to safeguard the peace and morals, and general welfare of the Tribe, pursuant to the Rosebud Sioux Tribe Constitution and By-Laws Article IV Sections 1 (k), (m), and (q); and
- WHEREAS,** The Rosebud Sioux Tribe Constitution and By-laws Article IV, Section 1 (q) provides the Rosebud Sioux Tribal Council is authorized to provide for the protection of all minors, mentally incompetent and any others who need protection or assistance for reason of health, age or other extenuating circumstances; and
- WHEREAS,** This Rosebud Sioux Tribe is authorized, pursuant to the Constitution and By-laws of the Rosebud Sioux Tribe, Article IV, Powers of the Rosebud Sioux Tribal Council, Section 1, Subsection (k), to promulgate and enforce ordinances providing for the maintenance of law and order and the administration of justice by establishing a reservation court and defining its duties and powers; and
- WHEREAS,** The Rosebud Sioux Tribal Council has enacted Ordinance No. 80-02, creating the Rosebud Sioux Tribe's Governmental Affairs Committee, to operate with participation from tribal members and communities to develop and coordinate all aspects of governmental relations of the Rosebud Sioux Tribe; and
- WHEREAS,** RST Ordinance No. 80-02, Section 7, authorizes the RST Governmental Affairs Committee to review and recommend legislation to the RST Tribal Council accompanied by a narrative with from whoever is submitting the legislation; and
- WHEREAS,** the Rosebud Sioux Tribal Council recently approved Resolution 2022-27, which supported Ordinance 2022-01, having two readings and amended the Rosebud Sioux Tribe Law and Order Code Title Three, Chapters 4 and 5 as well as revoking and rescinding Title 5, Chapter 8, Section 3, the crime of Failure to Send Children to School; and
- WHEREAS,** due to a numbering error, this action inadvertently replaced the existing Rosebud Sioux Tribe Law and Order Code Title Three, Chapter 4 also known as Indian Child Welfare Act and Child Custody Proceedings; and
- WHEREAS,** The RST Attorney General's Office recommends the Rosebud Sioux Tribal Council to amend the RST Tribal Law and Order Code, by adding Chapter 6, Indian Child Welfare Act and Child Custody Proceedings, attached as Exhibit #1; and

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Resolution No. 2022-152**

THEREFORE BE IT RESOLVED, that the Rosebud Sioux Tribal Council adopts and approves the recommendation of the RST Attorney General's Office and amends the Rosebud Sioux Tribe Law and Order Code by adding Chapter 6, Indian Child Welfare Act and Child Custody Proceedings

BE IT ALSO RESOLVED, that the effective date of the amendments to the Rosebud Sioux Tribe Law and Order Code Title Three, Chapter 6, Rosebud Sioux Tribe Law and Order Code, shall be final upon approval by the Rosebud Sioux Tribal Council.

CERTIFICATION

This is to certify that the above Resolution No. 2022-152 and Ordinance 2022-03 was duly passed by the Rosebud Sioux Tribal Council for a First Reading on July 6, 2022, by a vote of sixteen (16) in favor, zero (0) opposed and zero (0) not voting. A second reading was held on August 10, 2022, by a vote of seventeen (17) in favor, zero (0) opposed and one (1) not voting. The said resolution was adopted pursuant to authority vested in the Council. A quorum was present.

ATTEST:



Nicole Marshall Secretary
Rosebud Sioux Tribe



Scott Herman, President
Rosebud Sioux Tribe