

CIVIL DIVERSION AGREEMENT BETWEEN THE STATE OF ALASKA AND [INDIAN TRIBE]

This Civil Diversion Agreement (“Agreement”) is entered into this ____ day of ____, 20__, between the State of Alaska (“State”) and _____ (“Tribe”), a federally recognized tribe located in [_____] (collectively referred to as the “Parties”).

1. Statement of Purpose

WHEREAS, the State and the Tribe recognize that:

- In Alaska, 229 federally recognized tribes exist as sovereign governments.
- Remoteness, lack of connection to a road system, and extreme weather conditions often prevent or delay travel by law enforcement personnel into some communities, resulting in challenging law enforcement conditions.
- Tribal governments can provide local, culturally relevant remedies and are not impeded by location or harsh weather conditions.
- In addition, the use of local culturally relevant remedies may assist in lowering crime, alcohol abuse, drug abuse, domestic violence, and rates of suicide, while fostering educational achievement and economic development.
- Increasing tribal involvement in judicial services and law enforcement will encourage community involvement, create greater local accountability with respect to public safety, and promote a stronger link between the Tribe, the State, and all Alaskans.

In recognition of the above statements, the State and the Tribe enter this Agreement to cooperate on issues of mutual concern, and to improve the delivery of justice in Alaska.

GENERAL PROVISIONS

2. Definitions

- a. “Civil Diversion Agreement” or “Agreement” means the agreement entered into by the Tribe and the State of Alaska, including Exhibits A-D;
- b. “Law enforcement officer” means Alaska State Troopers, Village Public Safety Officers (VPSOs), Village Police Officers (VPOs), Tribal Police

Officers (TPOs), and/or cooperating municipal or borough law enforcement officers.

3. Eligibility

The Tribe represents and warrants that it meets the following eligibility criteria:

- a. The Tribe has passed a resolution or other official action from its governing body authorizing the Tribe to enter this Agreement (attached as Exhibit A).
- b. The Tribe has for the preceding three fiscal years no uncorrected significant and material audit exceptions regarding any federal or state contract or grant. However, the Tribe is not required to have had an audit to be eligible for this Agreement.
- c. The Tribe has sufficient governance capacity to conduct the program contemplated by this Agreement in a conscientious and effective fashion.
- d. The Tribe has written and oral rules setting out the structure and procedures of the tribal court and any tribal law enforcement to be utilized in connection with this Agreement.
- e. If the Tribe has a liability insurance policy that may cover its activities under this Agreement (attached as Exhibit B), the liability insurance policy shall include the State of Alaska as an additional insured. The Tribe shall ensure that a copy of its insurance policy is provided to the State annually, by February 1. If the Tribe does not have a liability insurance policy, the Tribe is not required to obtain liability insurance as a prerequisite to this Agreement.

4. Offenses Eligible for Civil Diversion

By this Agreement, the State and the Tribe agree that, in lieu of state criminal prosecution, the Tribe will offer civil tribal remedies for the following offenses and crimes (as listed in Exhibit C):

- a. Certain Class B misdemeanors under Title 11 of the Alaska Statutes (including those involving domestic violence as defined by AS 18.66.990).
- b. Minor consuming or in possession offenses, including non-misdemeanor violations and misdemeanors (AS 04.16.050; AS 28.35.280).

- c. Local option alcohol possession offenses in communities that have voted to ban the possession of alcohol, making it a violation of state law to possess alcohol in that community (AS 04.11.501).
- d. Assault in the fourth degree (AS 11.41.230) (including those involving domestic violence as defined by AS 18.66.990) and reckless endangerment (AS 11.41.250) (including those involving domestic violence as defined by AS 18.66.990) if
 - i. the offender has
 - no assault conviction in the past ten years;
 - no prior felony convictions for crimes against a person; and
 - had no prior referrals to a tribal court for any assault in the fourth degree; or
 - ii. the District Attorney—in consultation with the Tribe—has determined that the offender should be referred to tribal court in the interests of justice.
- e. A matter will not be referred to tribal court if the offender commits an accompanying crime, in addition to those enumerated in this Section 4, and the accompanying crime is not covered by this Agreement.
- f. The Tribe has authority to decline any case referred to its tribal court.

5. Tribal Civil Proceedings and Remedies as Alternatives to State Prosecution

- a. Within the community associated with the Tribe, except as limited in Section 6 below for crimes involving domestic violence, law enforcement officers shall or Assistant District Attorneys may offer eligible offenders (whether members or nonmembers of the Tribe) the option to have the Tribe impose tribal remedies in tribal civil proceedings in lieu of state prosecution.

- b. The offender's consent to the tribal remedies
 - i. must be voluntary and in writing;
 - ii. must include a statement agreeing to comply with tribally imposed remedies or face the possibility of prosecution in state court;
 - iii. must include an acknowledgment that the tribal civil remedies will be given without a trial and the tribal proceedings and remedies imposed are at the Tribe's sole and absolute discretion;
 - iv. must include an acknowledgment that the offender will not be entitled to a public defender in tribal court; and
 - v. must include a separately signed waiver and release of liability for all tribal and state conduct related to this Agreement and the remedies imposed. The offender shall agree to hold the Tribe and State harmless in the civil diversion proceedings.
- c. If an offender consents to the tribal civil diversion process, the law enforcement officer shall still thoroughly investigate the offense or crime, and retain all evidence in accordance with normal operating procedures. If the Tribe later requests referral of the case back to the State, the case will be processed through normal state procedures and be screened for potential prosecution.
- d. Tribal remedies may incorporate, but are not limited to, culturally derived procedures, such as restorative justice hearings and circle sentencing. The Tribe may coordinate with another participating tribal court on setting tribal proceedings and remedies.
- e. Tribal remedies may also include:
 - i. tribal court fines of \$1,500 total or less (not stackable for multiple offenses or crimes);
 - ii. forfeiture of the offender's property valued at \$1,500 or less; and
 - iii. restitution for the victim up to the amount necessary to make the victim whole for physical damage or property loss from the offense or crime.

- f. Temporarily depriving an offender of the use of a possession is not considered forfeiture.
- g. The Tribe shall direct the use of any fine collected by the tribal court from an offender, including for the sole benefit of the Tribe.
- h. The Tribe shall direct the use of any property forfeited by an offender in the tribal court, including for the sole benefit of the Tribe.
- i. If, during the course of tribal court proceedings, the tribal court becomes aware of potential criminal conduct involving crimes not covered by this Agreement, the Tribe shall notify the law enforcement officer who referred the matter to the Tribe.
- j. The State is not responsible for enforcement of tribal court remedies.
- k. The Tribe agrees to monitor the participant in the civil diversion program.
- l. The Tribe shall not incarcerate an offender pursuant to this Agreement.
- m. By consenting to tribal proceedings, the offender does not waive any state, federal, or tribal constitutional rights.

6. Domestic Violence Crimes

For all crimes in Section 4 involving domestic violence as defined by AS 18.66.990, and even if the offender consents to submitting to the tribal process for implementation of tribal civil remedies, law enforcement officers shall comply with AS 18.65, including:

- a. The law enforcement officers shall comply with the mandatory arrest provisions of AS 18.65.530 unless (1) the officer has received authorization to forego arrest from a prosecuting attorney in the jurisdiction in which the crime occurred, or (2) the crime was committed over 12 hours prior to the law enforcement officer's involvement. If a mandatory arrest has occurred, an eligible offender shall be offered at the state court arraignment the option to go through tribal court civil diversion proceedings in lieu of state prosecution.

- b. Under AS 18.65.515(a), if necessary to protect the victim and/or the victim's family members, and to prevent any further violence, law enforcement officers shall transport the victim and victim's family members to a safe location; assist the victim in removing belongings from a residence; and assist the victim and victim's family members in obtaining medical treatment.
- c. Under AS 18.65.515(b), if necessary to protect the victim and/or family members, the law enforcement officer may seize deadly weapons that are in plain view or, if the crime involved a deadly weapon, seize all deadly weapons owned, used, possessed, or controlled by the offender. The owner of the weapons may retrieve them 24 hours after a determination is made that they are not needed as evidence in a state criminal case.
- d. Under AS 18.65.515 and AS 18.65.520, law enforcement officers shall notify victims orally and in writing of the right to seek a protective order.
- e. Under AS 18.65.515 and AS 18.65.520, law enforcement officers shall notify victims orally and in writing of the resources available in the community and region for victims of domestic violence including, without limitation, contact information for the Office of Victims' Rights and the Violent Crimes Compensation Board.
- f. The State and law enforcement officers shall take into consideration the desires of the victim in deciding whether to offer civil tribal remedies in lieu of state criminal prosecution for crimes involving domestic violence.

7. Victims' Rights

To the extent practicable, the Tribe shall provide any victim of an offense or crime covered by this Agreement with the following rights:

- a. to be notified of, to be present during, and to participate in tribal proceedings; and
- b. to be protected from harm and threats of harm, such as through issuance of a tribal domestic violence protection order where appropriate.

8. Information Collection and Notice to the State

- a. The responding law enforcement officer shall immediately notify the Tribe and District Attorney's Office of the referral, the offender's name, and the charge that would have otherwise been made, and send the police report. The Tribe will notify the referring law enforcement agency if it has accepted or denied the referral no later than three business days after receipt.
- b. The Tribe agrees that it will fill out a case form for every offender appearing before the tribal court pursuant to this Agreement. The case form will include the offender's name, the circumstances of the offense or crime, and the remedies ordered by the tribal court. If the offender subsequently commits another eligible offense or crime that is referred to the Tribe, the Tribe shall fill out a new case form. The Tribe may create its own case form or use the template form, attached as Exhibit D.
- c. The Tribe shall attach to the case form the offender's signed written consent voluntarily agreeing to participate in the tribal civil proceedings as outlined in Section 5(b)(i) – (iv) and signed written waiver and release of liability as outlined in Section 5(b)(v).
- d. The Tribe will update the case form within 120 days after the tribal remedies have been imposed to indicate whether the offender completed the assigned remedies. If the offender does not complete the assigned remedies, the Tribe shall promptly notify the law enforcement agency that referred the offender to the tribal court, and provide that law enforcement agency with any information in its possession that would assist the State in potential prosecution of the offender.

The Tribe agrees to provide the case forms on a quarterly basis to the State Attorney General's Office contact identified in this Agreement. The Tribe shall also include any recommendations related to the timely and effective performance of the Tribe's responsibilities under the Agreement.

9. Cooperation in Litigation

- a. If the State is sued by a third party related to the Agreement, the Tribe shall cooperate with the State in litigation. Cooperation includes, but is not limited to, making documents and other evidence held by the Tribe (including its officials, officers, employees, and tribal council) available to

the State, and making the Tribe's officials, officers, and employees available for deposition or testimony as necessary for the State to defend against the action brought by the third party. The State shall not pay for tribal attorney time or for lost wages, but the requesting party shall pay the Tribe's cooperation costs—as is customary—as follows:

- i. the cost of taking and transcribing a deposition, including the court reporter's fee and travel expenses to communities where a local court reporter is not available;
- ii. the fee of an interpreter or translator for a tribal witness;
- iii. long distance telephone charges for telephonic participation by a tribal official, officer, or employee at court proceedings, depositions, meetings called by the State or state attorneys, and witness interviews;
- iv. copying costs for paper copies, photographs, and microfilm;
- v. the cost of scanning, imaging, coding, and creating electronic media files, such as computer diskettes or tapes, and the cost of duplicating text files or otherwise copying documents or data in an electronic medium;
- vi. exhibit preparation costs;
- vii. travel costs for tribal witnesses to the extent permitted by Administrative Rule 7(b), and at the coach class fare or the actual fare, whichever is less; ground transportation, outside of the traveler's home city; and food and lodging at the same per diem rate allowed for state employees.

10. Mutual Agreement Not to Sue

The Parties agree not to sue each other under this Agreement. All disputes will be resolved under the terms of the Dispute Resolution Section of this Agreement. The Parties represent that, at the time of signing this Agreement, no assignment of claims for damages related to this Agreement has been made or executed to any other individual, firm or corporation, or other entity.

11. State Powers Retained

Nothing in this Agreement creates, alters, or diminishes the civil or criminal jurisdiction of the State, including any political subdivision of the State. Even where an offender has consented to tribal remedies in lieu of prosecution under state law, the State retains its authority to move forward with prosecution of the offense or crime. In making its determination to move forward with prosecution, the State shall consult with the Tribe on whether the case is a good candidate for the tribal civil diversion program because of the particular facts and circumstances of the offense or crime including, but not limited to, the offender's history with the tribal court.

12. Tribal Powers Retained

The Tribe is a sovereign government. Nothing in this Agreement creates, alters, or diminishes the jurisdiction of the Tribe, including the inherent and statutory authority of the Tribe over the health and welfare of the Tribe, for instance child protection and child custody matters, or the status of Indian country. Nothing in the Agreement shall prevent the Tribe from assuming protective custody of an individual under emergency circumstances to prevent imminent harm to self or others.

13. Relationship of the Parties

This Agreement is by and between two governments and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever.

14. Dispute Resolution

In the event of a dispute under this Agreement, the Parties shall first attempt to resolve the dispute informally and in good faith. If those efforts do not work, the Parties may engage in optional mediation of any dispute. The Parties shall choose a mediator by each submitting a list of three candidates in preferred order. The candidate who aligns in each Party's list would be the mediator for purposes of this Agreement. If no candidates align, then the Parties will attempt to agree on a candidate. If attempts at selection of a mediator or at mediation fail, then the termination option in this Agreement will control.

15. Term

This Agreement shall be effective when signed by both Parties. The term of this Agreement shall be one year from the effective date and shall renew automatically each year. The Parties may assess the Agreement each year and propose modifications at least thirty days prior to the renewal date.

16. Termination

This Agreement may be terminated by either Party upon sixty days written notice; however, the Agreement will remain in effect, if the Tribe so chooses, until the last case initiated prior to termination has been completed by the tribal court and the tribal remedies have been carried out by the offender, but in no case more than ninety days after termination of the Agreement.

17. Entire Agreement

This Agreement is the entire agreement between the State and the Tribe.

18. Survival of Agreement Terms

Notwithstanding anything herein to the contrary, the Parties understand and agree that all terms and conditions of this Agreement (including the exhibits) that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive the termination date and shall remain enforceable by the Parties.

19. Interpretation

Both Parties have had a full and fair opportunity to consult with legal counsel, to ask questions, and to consider this Agreement's specific provisions. This Agreement will not be interpreted in favor of or against either Party.

20. No Waiver for Failure to Demand Strict Performance

The failure by either Party to insist upon the strict performance of any part of this Agreement shall not be considered a waiver or relinquishment of any rights or obligations under this Agreement.

21. Modifications or Amendments

No modification to the Agreement shall take effect unless made in writing and signed by authorized representatives of the State and the Tribe. If the Tribe has any questions relating to the interpretation of this Agreement or associated laws, ordinances, regulations, or permits, state officials may request that the Tribe submit them in writing. The Tribe may rely only on written responses from state officials.

22. Contact Information for Notices Required under this Agreement

The official tribal representative responsible for ensuring compliance with this Agreement and for receiving notifications from the State is:

[name]
[address]
[phone]
[email].

Forms required to be submitted to the State under this Agreement, insurance information related to this agreement, and questions regarding the interpretation, enforcement, or renewal of this Agreement shall be directed to:

[name]
Attorney General’s Office
Opinions, Appeals, and Ethics Section
[address]
[phone].

[] Tribe

Date

[] State

Date

LIST OF EXHIBITS

EXHIBIT A: A RESOLUTION AUTHORIZING THE CIVIL DIVERSION AGREEMENT

EXHIBIT B: TRIBAL LIABILITY INSURANCE POLICY

EXHIBIT C: ELIGIBLE OFFENSES AND CRIMES

EXHIBIT D: TEMPLATE CASE FORM

EXHIBIT A

TRIBE OF

RESOLUTION _____

A RESOLUTION AUTHORIZING THE CIVIL DIVERSION AGREEMENT

WHEREAS: TRIBE NAME (the “Tribe”) is a federally recognized tribe; and

WHEREAS: The Tribal Council is the governing body for the Tribe; and

WHEREAS: The Tribal Council has the authority under its Constitution, bylaws, and ordinances to sign for and bind the Tribe, the Tribe’s governing body, and all tribal officials, employees, and successors to the commitments and conditions of the Civil Diversion Agreement; and

WHEREAS: The Tribe wishes to enter into a Civil Diversion Agreement with the State of Alaska; and

NOW THEREFORE BE IT RESOLVED THAT the Tribal Council hereby approves the provisions of the Civil Diversion Agreement and hereby authorizes the execution and delivery of the Civil Diversion Agreement by _____[position], _____[name] (or successor).

CERTIFICATION

The foregoing resolution was passed and approved by a duly convened meeting of the Tribal Council, dated this ___ day of _____, 20__.

[name], [position]

Date

[name], Council Secretary

Date

EXHIBIT B

TRIBAL LIABILITY INSURANCE POLICY

**EXHIBIT C
ELIGIBLE OFFENSES**

ALCOHOL OFFENSES		
State Statute	Description	
AS 04.11.501	Possession of alcohol after election where the majority of voters have voted to prohibit the possession of alcoholic beverages	
AS 04.16.050	Possession, control, or consumption of alcohol by persons under age	
AS 28.35.280	Minor operating a vehicle after consuming alcohol	
CLASS A MISDEMEANORS		
State Statute	Description	
AS 11.41.230	Assault in the fourth degree, but only if the offender has no assault conviction in the past ten years, no prior felony conviction for crimes against a person, and no prior referrals to a tribal court for assault in the fourth degree; OR the district attorney has determined that an offender should be referred to tribal court in the interests of justice.	†
AS 11.41.250	Reckless endangerment, but only if the offender has no assault conviction in the past ten years, no prior felony conviction for crimes against a person, and no prior referrals to a tribal court for assault in the fourth degree; OR the district attorney has determined that an offender should be referred to tribal court in the interests of justice.	†
CLASS B MISDEMEANORS		
State Statute	Description	
AS 11.31.100	Attempt to commit a crime if the crime attempted is a class A or class B misdemeanor	
AS 11.31.110	Solicitation of another to engage in a crime where the crime solicited is a class A or class B misdemeanor	
AS 11.41.460	Indecent exposure in the second degree (victim 16 years or older)	†
AS 11.46.150	Theft in the fourth degree (value less than \$250*)	
AS 11.46.220(c)(3)	Concealment of merchandise (value less than \$250*)	
AS 11.46.260(b)(3)	Removal of ID marks on property (value less than \$250*)	
AS 11.46.270(b)(3)	Unlawful possession (defaced, erased, or altered serial number or identification mark on property less than \$250*)	
AS 11.46.280(d)(4)	Issuing a bad check (value less than \$250*)	
AS 11.46.330	Criminal trespass in the second degree	†
AS 11.46.486	Criminal mischief in the fifth degree	†

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CLASS B MISDEMEANORS (continued)		
State Statute	Description	
AS 11.46.530(b)(3)	Criminal simulation (a person either makes or alters an object so that it appears to have a rarity, age, source, or authorship that it does not in fact possess, with intent to defraud; <i>or</i> with knowledge of its true character and with intent to defraud, the person possesses or utters such an object. Real object value must be less than \$250*).	
AS 11.56.755(b)(1)	Unlawful contact in the second degree (arrest was for a felony or class A misdemeanor)	
AS 11.56.758(b)(2)	Violation of custodian’s duty to report a violation of condition of release of a person released on a misdemeanor charge)	
AS 11.56.780	Hindering prosecution in the second degree	
AS 11.56.830	Impersonating a public servant in the second degree	
AS 11.61.110	Disorderly conduct	
AS 11.61.116(c)(1)	Sending an explicit image of a minor (image sent to another person)	
AS 11.61.120(a)(1)	Harassment 2-likely to provoke violence	
AS 11.61.120(a)(2)	Harassment 2-tie up phone line	†
AS 11.61.120(a)(3)	Harassment 2-repeated phone calls	†
AS 11.61.120(a)(4)	Harassment 2-anonymous, obscene, threatening communication	†
AS 11.61.120(a)(5)	Harassment 2-offensive physical contact	
AS 11.61.120(a)(6)	Harassment 2-publish/distribute pictures/films of genitals, anus, female breast, sexual acts	
AS 11.61.120(a)(7)	Harassment 2-repeatedly taunt minor through electronic communication, placing them in reasonable fear of physical injury	
AS 11.61.220	Misconduct involving weapons in the fifth degree	
AS 11.61.240(b)(5)	Criminal possession of explosives (intended to commit misdemeanor)	
AS 11.71.060	Misconduct involving a controlled substance in the fifth degree	
AS 11.76.115	Misconduct involving confidential information in the second degree	
AS 11.76.130	Interference with rights of physically or mentally challenged person	
AS 11.76.140(a)(2)	Avoidance of ignition interlock device (rent motor vehicle to	
AS 11.76.140(a)(3)	Avoidance of ignition interlock device (loan motor vehicle to	

* Adjusted for inflation.

† The highlighted crimes are crimes involving domestic violence when committed by a household member against a household member. See AS 18.66.990(3). Crimes involving domestic violence are subject to the special conditions of Section 6 under this Agreement.

“Household member” is defined as:

- (A) adults or minors who are current or former spouses;
- (B) adults or minors who live together or who have lived together;
- (C) adults or minors who are dating or who have dated;
- (D) adults or minors who are engaged in or who have engaged in a sexual relationship;

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- (E) adults or minors who are related to each other up to the fourth degree of consanguinity, whether of the whole or half blood or by adoption, computed under the rules of civil law;
- (F) adults or minors who are related or formerly related by marriage;
- (G) persons who have a child of the relationship; and
- (H) minor children of a person in a relationship that is described in (A)-(G).

See AS 18.66.990(5).

**EXHIBIT C:
TEMPLATE CASE FORM**

[Space for Tribal Court Seal]

Name of tribal court: _____

Location: _____

Date of offense or crime: _____

Offender's name: _____

Circumstances of offense or crime: _____

Remedy ordered by tribal court: _____

Name and position of person filling out form: _____

Signature and date: _____