

Arbitration

CHAPTER 24. SAN MANUEL ARBITRATION ORDINANCE¹

SMTC 24.1 Short Title

This Chapter shall be known and cited as the San Manuel Arbitration Ordinance of 2004 ("Code").

SMTC 24.2 Purpose

This Ordinance is adopted by the San Manuel Band of Serrano Mission Indians, a federally recognized Indian tribe ("Tribe"), acting through its General Council in the exercise of its inherent sovereign power to enact ordinances and otherwise safeguard and provide for the health and welfare of the Tribe and its members.

It is the purpose of this Code to authorize the arbitration of disputes in contractual agreements and to provide for the enforcement of agreements to arbitrate, and resulting arbitration awards, by the Tribal Court.

SMTC 24.3 Scope of Code and Repeal of Inconsistent Provisions

a. **Scope.** This Code applies to any written contract or other instrument entered into by the Tribe, by any subdivision, instrumentality or agency of the Tribe, or by any other person in a transaction that is subject to the jurisdiction of the Tribe, in which: (1) the parties thereto agree to settle by arbitration any controversy arising out of such contract or other instrument, and (2) the General Council designates, by resolution, that this Code shall apply.

b. **Inconsistent Provisions.** Any prior legislation or other Tribal laws that are inconsistent with the purpose and procedures established by this Code are hereby repealed to the extent of any such inconsistency.

SMTC 24.4 Enforceability of Agreements to Arbitrate

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

SMTC 24.5 Law to be Applied

a. In any contract or other instrument described in §24.3(a) of this Code, the parties may agree upon the jurisdiction whose substantive law shall govern the interpretation and enforcement of the contract, instrument or controversy. Such choice of law shall be valid and enforceable, and not subject to revocation by one party without the consent of the other party or parties thereto, provided that the subject matter of the contract, instrument or controversy,

¹ Adopted by the General Council on September 14, 2004.

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or at least one of the parties thereto, shall have some contact with the jurisdiction so selected.

b. In any proceeding under this Code, whenever the contract or other instrument sets forth a choice of law provision, the Tribal Court shall apply the procedural rules of the Tribal Court and the substantive law of the jurisdiction selected in such choice-of-law provision; provided that no procedural rule of the Tribal Court shall bar, unreasonably delay or impair any action, proceeding or remedy where such action, proceeding or remedy would not be barred, unreasonably delayed or impaired by the procedural rules of the courts of the jurisdiction whose substantive law applies.

c. In any proceeding in the Tribal Court relating to a contract or other instrument described in §24.3(a) of this Code, whenever the contract or other instrument does not set forth a choice of law provision, the Tribal Court shall apply the substantive law of the Tribe, including any applicable choice-of-law principles.

SMTC 24.6 Stay of Proceedings in Tribal Court and Order to Proceed with Arbitration

a. If any action for legal or equitable relief or other proceeding is brought in the Tribal Court by any party to any contract or instrument described in §24.3(a) of this Code, the Tribal Court shall not review the merits of the pending action or proceeding, but shall stay the action or proceeding until an arbitration has been had in compliance with the agreement.

b. A party to any contract or other instrument described in §24.3(a) of this Code claiming the neglect or refusal of another party thereto to proceed with an arbitration thereunder, may make application to the Tribal Court for an order directing the parties to proceed with the arbitration in compliance with their agreement. In such event, the Tribal Court shall order the parties to arbitration in accordance with the provisions of the contract or other instrument and the question of whether an obligation to arbitrate the dispute at issue exists shall be decided by the arbitrator(s).

SMTC 24.7 Advice of the Court on Tribal, State or Federal Law

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

SMTC 24.8 Time Within Which Award Shall be Rendered; Notice to the Parties

a. If the time within which an award is rendered has not been fixed in the arbitration agreement, the arbitrator(s) shall render the award within thirty (30) days from the date the arbitration has been completed. The parties may, by written agreement, agree to extend the time in which the award may be made.

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

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SMTC 24.9 Application for Order Confirming Award; Record to be Filed with Clerk of Court; Effect and Enforcement of Judgment

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

b. Any party applying to the Tribal Court for an order confirming an arbitration award shall, at the time the award is filed with the Clerk of the Tribal Court for entry of judgment thereon, file true and correct copies of the following papers with the Clerk: (1) the agreement to arbitrate; (2) if applicable, the General Council resolution approving application of this Code; (3) written identification of the arbitrator(s) and any material documenting the selection or appointment of the arbitrator(s); (4) any written agreement requiring the reference of any question as provided in §24.6; (5) each written extension of the time, if any, within which to make the award; (6) the award; and (7) evidence that all parties to the arbitration have received notice of the filing or the intent to file an application to the Tribal Court for confirmation of the arbitration award.

c. An arbitration award shall not be subject to review or modification by the Tribal Court, but shall be confirmed strictly as provided by the arbitrator; provided, that the Tribal Court may nevertheless decline to enforce any arbitration award if it finds that any of the following occurred:

1. the award was procured by corruption, fraud, or undue means;
2. there was evident partiality or corruption in the arbitrator(s);

3. the arbitrator(s) were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or

4. the arbitrator(s) exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

Where an arbitration award is so vacated, the Tribal Court may, in its discretion, direct a rehearing by the arbitrator(s).

d. In any of the following cases where the Tribal Court is authorized to make an order regarding arbitration, the Tribal Court may make an order modifying or correcting the arbitration award upon the application of any party to the arbitration:

1. where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award;

2. where the arbitrator(s) have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted; or

3. where the arbitration award is imperfect in matter of form not affecting the merits of the controversy.

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The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

e. The judgment confirming an award shall be docketed as if it were rendered in a civil action. The judgment so entered shall have the same force and effect in all respects as, and be subject to all the provisions of law relating to, a judgment in a civil action, and it may be enforced as if it has been rendered in a civil action in the Tribal Court. When the award requires the performance of any other act than the payment of money, the Tribal Court may direct the enforcement thereon in the manner provided by law.

SMTC 24.10 Arbitration Award Not Appealable

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

SMTC 24.11 Jurisdiction of the Tribal Court

To the extent allowed by federal law, the jurisdiction of the Tribal Court over any action to enforce an agreement to arbitrate, to compel arbitration pursuant to such an agreement to arbitrate and to enforce an award made by an arbitrator pursuant to such agreement to arbitrate, contained in any contract, agreement or other instrument described in §24.3(a) of this Code, shall be concurrent with the jurisdiction of any state or federal court to the jurisdiction of which the parties to such contract, agreement or other instrument shall have explicitly consented therein. Any consent to the jurisdiction of a state or federal court contained in a contract, agreement or other instrument described in §24.3(a) of this Code, and any waiver of the obligation of the parties to exhaust Tribal Court remedies shall be valid and enforceable in accordance with its terms when approved in writing by the General Council.

SMTC 24.12 Police Powers and Judgment Enforcement Remedies

The Tribe's police powers shall be available to secure and support any arbitration award under this Code, and all police or other law enforcement officials of the Tribe shall carry out any orders that may be entered by the Tribal Court pursuant to this Code.

SMTC 24.13 Severability

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

SMTC 24.14 No Waiver of Sovereign Immunity

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