FOREST COUNTY POTAWATOMI END OF LIFE DISPOSITION AND BURIAL SITES PROTECTION ORDINANCE

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END OF LIFE DISPOSITION AND
BURIAL SITES PROTECTION ORDINANCE

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FOREST COUNTY POTAWATOMI COMMUNITY
END OF LIFE DISPOSITION AND
BURIAL SITES PROTECTION ORDINANCE

I.

§ 1 General

1.1 Purposes

The purposes of this Ordinance are:

a) To promote end of life dignity through an orderly system for identifying the person(s) entitled to make decisions regarding Final Disposition of a Decedent's remains, and
b) To address the administration and honoring of Decedent advance directives, and
c) To address the administration and protection of Tribal Burial Sites, mindful of the sacred cultural values and traditions of the Forest County Potawatomi Community and its Members, and
d) To establish a record system to document the location of Tribal Member Decedents, and
e) To prevent the construction of buildings and other structures over the remains of a Tribal Member Decedent, with exception of Spirit Houses, and
f) To codify the Tribe's compliance with the Native American Graves Protection and Repatriation Act (25 U.S.C. Chapter 32).

All enrolled Tribal members, their Immediate Family members, and their Lineal Descendants may be laid to rest in an approved Tribal Burial Site on Tribal Lands, or otherwise have their Decedent's remains treated in a respectful manner. Protection of Tribal Burial Sites, both current and historic, including any associated Funerary Objects or archeological sites, shall be a Tribal priority both on Tribal lands, and wherever located or identified outside of Tribal lands. This Ordinance is intended to respect the religious and cultural traditions of all Tribal Members, and not to promote or favor one religious or cultural tradition over another.

1.2 Federal Graves Protection

All of the Tribal Burial Sites on Tribal Lands older than fifty (50) years shall be considered historic properties under Section 106 of the National Historic Preservation Act of 1966 (as amended in 2000). Tribal Burial Sites established on and after May 24, 1996, shall be protected under the federal regulations set forth by Executive Order 13007. In addition to the provisions within this ordinance, all Tribal Burial Sites shall be protected under the Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 and the Archaeological Resources Protection Act of 1979.

1.3 Authority

The Forest County Potawatomi General Council enacts this Ordinance pursuant to its authority under the Tribal Constitution, Article IV, § l(d).

1.4 Effective Date and Title

This Ordinance shall take effect upon the majority approval of the Forest County Potawatomi General Council and shall be known as the **"Forest County Potawatomi End of Life Disposition and Burial Sites Protection Ordinance."**

1.5 Sovereign Immunity

The Tribe, by adoption of this Ordinance, does not waive its sovereign immunity in any respect.

1.6 Amendment or Repeal

This Ordinance may be amended or repealed only by a majority vote of the Forest County Potawatomi General Council.

1.7 Jurisdiction

The Forest County Potawatomi Tribal Court shall have exclusive jurisdiction over all proceedings under this Ordinance, including over Members by virtue of their enrollment, and any other person who is not a Member, but who is otherwise eligible for burial on Tribal Lands.

1.8 Severability

If any provision of this Ordinance or its application to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance. This Ordinance can be given effect without the invalid provisions or applications, and to this end the provisions of this Ordinance are considered to be severable.

§ 2. Definitions

For the purpose of this Ordinance, the following words and phrases shall have the meanings given to them in this Section and by law:

"Archaeological Resources Protection Act" means the 1979 federal statute (as amended) protecting archaeological resources on public and Native American lands, codified as 16 U.S.C. §470aa (b).

"Burial" means interring human remains, or, for the purposes of this Ordinance, scattering or inurning cremated human remains in a Tribal Burial Site.

"Burial Sites" or "Sites" means any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which as part of the death rite or ceremony of a culture, individual human remains are deposited.

"Burial Site Manager" or "Manager" means a Tribal Member hired to manage Burial Sites pursuant to this ordinance.

"Cemetery" for the purposes of this Ordinance, means a place recognized or designated by the Tribe as the established location of more than one Burial Site.

"Columbarium" means a building, structure, or part of a building or structure that is used or intended to be used for the inurnment of cremated remains.

"Court" means the Forest County Potawatomi Community Tribal Court.

"Cremated Remains" means the human remains recovered from the cremation of a human body or body part and residue of a container or foreign materials that were cremated with the body or body part.

"Cremation" means the process of using heat to reduce human remains to bone fragments and includes the processing or pulverizing the bone fragments.

"Crematory authority" means a person who owns or operates a crematory registered with or licensed by the proper regulatory agency.

"Cultural Affiliation" is established when the preponderance of the evidence, based on geographical, kinship, biological, archeological, linguistic, folklore, oral tradition, historical evidence or other information or expert opinion, leads to such a conclusion.

"Cultural Heritage" or "Cultural Estate" means those things that a collective of people (for the purposes of this Ordinance, the Tribe) consider to be worthy of being valued, preserved, catalogued, exhibited, restored, and/or admired.

"Culture" or "Cultural" for the purposes of this Ordinance, means the product of all Potawatomi human activity since time immemorial, particularly those things that have been socially transmitted from one generation of Potawatomi to another, including beliefs, practices, objects, etc.

"Decedent" means a person who is deceased.

"Declarant" means an individual who executed an Authorization for Final Disposition.

"Department" means the FCPC Land and Natural Resources Department, or any successor Tribal Department as determined by the Executive Council.

"Disinterment" means removal of human remains from a burial site.

"Enrollment Department" means the Enrollment Department of the Forest County Potawatomi Community.

"Executive Order 13007" means the federal rule enacted on May 24, 1996, by the Executive Office of the President directing federal agencies to allow Native Americans to worship at sacred sites located on federal property and to avoid adversely affecting the physical integrity of such sites.

"Final Disposition" shall include:

(a) Arrangements for a viewing
(b) A funeral ceremony, memorial service, graveside service, or other last rite
(c) A burial, cremation and burial, or other disposition, or donation of the Decedent's body.

"Funerary Objects" means objects that are considered part of the death rite or ceremony and are placed with the Decedent either at the time of death or later and are intended to remain with or near the Decedent. This includes items exclusively made for burial purposes or to contain Cremated Remains.

"Historic and Cultural Preservation Review Board" or "Board" means the tribal entity appointed by Executive Council to provide guidance for protecting and preserving the Tribe's historic and cultural resources.

"Immediate Family" shall mean the spouse, parents, children, and siblings of the Decedent. For parents, children, and siblings this will include step- variations.

"Interment" means the placing of a corpse and/or ashes in a Plot. Interment may also include placing ashes in a Columbarium. It does not include the scattering of Cremated Remains.

"Inurnment" means the placement of cremated human remains in an urn and placement of such urn in a niche, Spirit House, grave, or other suitable location in the Burial Site.

"Lineal Descendants" means all children of the biological parents and their descendants, whether or not they have been adopted by others, adopted descendants and their descendants, and step-descendants.

"Majority" means fifty percent (50%) plus one (1) of the annually established quorum of the Forest County Potawatomi General Council.

"Member" or "Tribal Member" shall mean a person who is enrolled in the Forest County Potawatomi Community.

"National Historic Preservation Act" means the federal statute preserving historical and archaeological sites in the United States of America. Section 106 of this Act requires Federal agencies to consider the effects of federally funded projects on historic properties and to afford the Advisory Council on Historic Preservation (ACHP) an opportunity to comment on such projects prior to the expenditure of any Federal funds.

"Native American Graves Protection and Repatriation Act (NAGPRA)" means the federal statute which addresses the rights of lineal descendants, Indian Tribes, and Native Hawaiian organizations for Native American cultural items, including human remains, Funerary Objects, sacred objects, and objects of cultural estate.

"Natural" or "Intentionally Neglected" means a Tribal Burial Site intentionally left alone in accordance with Tribal custom.

"Niche" means a space in a columbarium that is used or intended to be used for the inurnment of cremated remains.

"Non-Member" means a person who is not enrolled in the Forest County Potawatomi Community, including those who may qualify for enrollment but who have not yet been enrolled.

"Parent" means a Parent whose parental rights have not been terminated.

"Plot" means a burial space located underground within the Tribal Burial Site.

"Reinterment" means reburial of a Decedent's remains.

"Repatriation" means return of possession or control of Native American cultural items to lineal descendants, culturally affiliated Indian Tribes, and Native Hawaiian organizations.

"Representative" means an individual specifically designated in an authorization for final disposition or, if that individual is unwilling or unable to carry out the declarant's decisions and preferences, a successor designated in the authorization for final disposition to do so.

"Right of Possession" means possession obtained with the voluntary consent of an individual or group who has the authority to transfer ownership of a Funerary Object, sacred object, or Object of Cultural Estate.

"Spirit House" means a structure placed over the Plot of a Decedent. Spirit Houses shall be limited in width and length to the size of the burial plot, as defined in the Ordinance.

"Spouse" means an individual lawfully married to another individual.

"Tribal Lands" or "Reservation" means any lands, the legal title to which is held in trust by the United States for the benefit of Forest County Potawatomi Community and any other land which is part of the Forest County Potawatomi Community Reservation.

"Tribal Member" or "Member" shall mean any person who is an enrolled Member of the Forest County Potawatomi Community.

"Tribe" or "Tribal" means the Forest County Potawatomi Community.

"Vandalism" means the intentional and malicious destruction or damage to any lands, monuments, flush markers, trees, plants, buildings, or any other natural or artificial structures within any of the Tribal Burial Sites.

II.

§ 1 Protection and Administration of Burial Sites

1.1 Administration

Tribal Burial Sites shall be administered and maintained in accordance with the provisions of this Ordinance by a Burial Site Manager, under the supervision of the Tribal Historic Preservation Office and with guidance from the Historic and Cultural Preservation Review Board. No person may bury a Decedent or store, bury or spread Cremated Remains in a Tribal Burial Site without notifying the Tribal Historic Preservation Office in writing.

§ 2 Management of Burial Sites

2.1 Administration

Subject to the availability of funds, the Tribal Historic Preservation Office shall be authorized to:

a) Hire a Burial Site Manager to assist with the requirements and enforcement of this Ordinance;
b) Create policies and procedures for maintenance of all Tribal Burial Sites within the boundaries of Tribal Lands; and
c) Access Tribal resources, including the necessary equipment and staff to satisfy the requirements of this Ordinance.

2.2 Burial Site Manager Duties

In addition to any other duties created by the Department, the duties and responsibilities of the Burial Sites Manager shall include:

a) Maintaining, archiving, and updating all Burial Site records in accordance with §9.
b) Assisting Tribal Members and the general public with locating Decedents in each of the Tribal Cemeteries and locating other Burial Sites.
c) Assisting with the development of the budget necessary to maintain Burial Sites in accordance with this Ordinance and the functions of the Office.
d) Requesting assistance from, and coordinating the activities of, persons assisting with Burials and Burial Site maintenance.
e) Developing plans for the development and operation of future Tribal Burial Sites in coordination with the Tribal Historic Preservation Office, the Historic and Cultural Preservation Review Board, and the Land Use Committee.
f) Enforcing the Burial Site requirements contained in this Ordinance, including any policies or regulations developed and promulgated thereto. Any such policies and regulations shall be subject to Executive Council approval.
g) Inspecting Tribal Burial Sites and Plots as required, pursuant to §6.

§ 3 Burial Site Types

(A) Three (3) types of Tribal Burial Sites may be established on Tribal Lands:

(1) Full Care: The Plots and Burial Sites shall be fully maintained by the Burial Site Manager in accordance with any applicable policies.

(2) Limited Care: The Manager shall limit the care to gardening, snow removal, mowing, and ensuring all paths are clear. The Immediate Family of the Decedent shall specify whether the Manager may maintain the Burial Site(s) and/or Plot(s).

(3) Restricted Care: The name and location of the Decedent within a Burial Site and/or Plot shall be listed as confidential, with the Decedent's personally identifiable information to be shared only with the Manager, the Tribal Historic Preservation Office, and Decedent's Immediate Family. Maintenance will be left in the care of the Immediate Family. The use of a marker shall be at the discretion of the Immediate Family. Sites or Plots may need approval from the Immediate Family, or if unavailable, the Historic and Cultural Preservation Review Board.

Any Plot within any of the Tribal Burial Sites may have Full, Limited, or Restricted care. If the Decedent did not specify prior to death, the care shall be determined by the Immediate Family of the Decedent. If the Decedent has no Immediate Family, the care shall be in accordance with Departmental policy.

(B) The Burial Site Manager may use a cultural symbol or post a sign to notify visitors of the Site type.

§ 4 Plots

4.1 Requirements

Each single Plot shall measure four (4) feet wide, ten (10) feet in length, and six (6) feet in depth. Companion Plots shall not exceed double the width, length, or depth of single Plots. Each Plot shall only be used for human remains, Cremated Remains and Funerary Objects.

4.2 Plot Maintenance

Plot maintenance shall be in compliance with a policy created by the Tribal Historic Preservation Office and approved by the Executive Council. Each Plot may also be maintained by the Decedent's Immediate Family so long as it is in general compliance with such policy.

4.3 Family Burial Sites

Any existing family Burial Sites shall be considered restricted, unless the Historical Preservation and Cultural Review Board is notified in writing by the Decedent's Immediate Family.

4.4 Prohibition on Private Burial Sites

As of the effective date of this Ordinance, no Burials involving the Interment of human remains will be permitted on lands leased from the Tribe.

§ 5 Disinterment

(A) A Decedent's remains may only be disinterred and/or reinterred pursuant to the following:
(1) as a result of, or in response to natural hazards (i.e. flooding, erosion), or
(2) an order issued by a court of competent jurisdiction and enforced by the Tribal Court pursuant to the Tribe's Foreign Judgment Enforcement Ordinance, or
(3) receipt of a written request signed by the person in charge of the disinterment and by any of the persons identified in section 1.3 of Article III of this ordinance, in order of priority stated, when persons in prior classes are not available at the time of the application, and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class.

(B) Any disinterment order issued by a court of competent jurisdiction shall constitute authorization to transport and rebury the disinterred remains.

(C) All costs involved in filing the disinterment permit, exhuming, transport, and reburial of the interred remains or cremated remains shall be the responsibility of the requestor.

§ 6 Maintenance

All maintenance tasks performed by the Burial Site Manager shall be documented by the Tribal Historic Preservation Office. The documentation shall, at a minimum, include the task and the start and completion dates.

(A) Unless prevented by extreme weather conditions, all Tribal Cemeteries shall be checked for any needed repairs or other issues each workday. Any damage found shall be reported to the Tribal Historic Preservation Office to determine a timeframe for the repair. If the repairs are associated with a Decedent's Plot, the Tribal Historic Preservation Office shall notify the family member(s) of the Decedent.

(B) Tribal Security shall conduct checks on all Tribal Cemeteries. Incidents of Vandalism/abuse of property shall be reported to the THPO and the Tribal Prosecutor.

(C) Only the Burial Site Manager, or their designee, may assist in the planting of shrubs or flowers at a specific gravesite at the family's request. No offensive or dangerous structures or monuments shall be permitted.

§ 7 Prohibited Behavior

(A) The following items shall be prohibited from all Tribal Burial Sites:

(1) Alcoholic beverages
(2) Illegal drugs

(3) Firearms, except upon the Tribal Executive Council's approval for military, law enforcement, and memorial services.
(4) Recreational vehicles, including snowmobiles, ATVs, and all other off-road vehicles.
(5) Driving any motor vehicle across, or parking upon, any Plot.
(6) Any unauthorized Disinterment.
(7) Vandalism to Burial Sites.

§ 8 Cremated Remains

(A) No person may cremate human remains on Tribal lands. Only cremated remains produced by an established Crematory Authority (or similar) located off of Tribal lands may be buried, inurned, or scattered on Tribal lands.

(B) The urn or similar container containing the cremated remains may be buried, inurned or scattered in a Tribal Cemetery.

(C) A person may dispose of cremated remains only in one of the following manners:

(1) Placing the remains in a Niche or Spirit House;
(2) Disposing of the remains in any other lawful manner, but only if the remains are reduced to a particle size of one-eighth inch or less.

(D) A person may not scatter Cremated remains on the following Tribal Lands:

(1) In gardens containing vegetation, fruits, and vegetables,
(2) Within 100 yards of any public Tribal buildings,
(3) Within 100 yards of public roads, walkways, or public trails, or
(4) On another person's property (including leased property) without the permission of the "owner"/lessee.

§ 9 Records

(A) The Tribal Historic Preservation Office shall keep and maintain records of all Plots and cremated remains. This includes, but is not limited to: Vandalism, locations of unrestricted Burial Sites/Plots and cremated remains, and whether the Burial Site Manager or the Decedent's family shall be responsible for the maintenance of each Family Burial Site/Plot.

(B) Tribal Burial Site records shall be backed up regularly with the Tribal IT Department.

§ 10 Closure

In the event there are no Plots available, and the Cemetery is unable to expand, the Cemetery shall be deemed closed for new Decedents. Cremated remains may be permitted on existing Plots with

approval from the Decedent's Immediate Family. Except for restricted Sites, the Cemetery shall be managed pursuant to §3.

III.

§1 Advance Directives and Authority Over Final Disposition

1.1 Eligibility

The following persons shall be eligible for burial in a Cemetery:

a) Enrolled Tribal Member(s),
b) Members of a Tribal Member's Immediate Family, including Non-Members, and
c) Lineal Descendant(s) of any Tribal Member.
d) The remains of any person deceased more than 50 years, and whom the Tribe has determined has or may have a Cultural Affiliation to the Tribe.

1.2 Notice to Tribe

Once the Tribe receives notice from:

a) An Immediate Family Member, or
b) An extended family member (with preference given to the nearest relative), or
c) Any other person or entity controlling the disposition of the human remains m question,

that a recent Decedent or human remains are eligible for Burial or repatriation in a Tribal Burial Site, and the Decedent, or the person responsible for the Final Disposition of the human remains, or the Tribe, supports such Burial or repatriation, as the case may be, the Department shall conduct the Burial or Repatriation in accordance with Departmental policy and this Ordinance.

1.3 Advance Directives: Order of Individuals with Control of Final

Any individual who is at least 18 years old and has not been adjudicated incompetent in a court of law may control final disposition of a Decedent's remains, including the appropriate location, manner, and conditions of final disposition as prioritized in the following order:

(1) A Representative of the Decedent acting under the Decedent's authorization for final disposition that conveys to Representative, or a successor Representative (see Authorization for Final Disposition form, attached as Exhibit A);
(2) The surviving Spouse of the Decedent;
(3) The surviving child of the Decedent, unless more than one child of the Decedent survives. In such an instance, the majority of the surviving children has control of the final disposition, except that fewer than the majority of the surviving children may control the

final disposition if that minority has used reasonable efforts to notify all of the surviving children and is not aware of opposition by the majority to the minority's intended final disposition.

(4) The surviving parent or parents of the Decedent or a surviving parent who is available if the other surviving parent is unavailable after the available surviving parent has made reasonable efforts to locate him or her.

(5) The surviving siblings of the Decedent, unless more than one sibling of the Decedent survives. In such an instance, the majority of the surviving siblings has control of the final disposition, except that fewer than the majority of the surviving siblings may control the final disposition if that minority has used reasonable efforts to notify all other surviving siblings and is not aware of opposition by the majority to the minority's intended final disposition.

(6) In descending order, an individual in the class of the next degree of kinship as computed according to the rules of civil law (see Exhibit B).

(7) A guardian of the person, if any, of the Decedent.

(8) Any individual other than an individual specified under subdivisions 1-7 who is willing to control the final disposition and who attests in writing that he or she has made a good faith effort, to no avail, to contact the individuals identified in subdivisions 1-7.

1.4 Authorization for Final Disposition

A. An individual who is of sound mind and has attained the age of 18 may voluntarily execute an Authorization for Final Disposition, which shall take effect on the date of execution.

B. An Authorization for Final Disposition may express the Declarant's special directions, instructions regarding religious observances, and suggestions concerning any of the following:

(1) Arrangements for a viewing.
(2) Funeral ceremony, memorial services, graveside service, or other last rite.
(3) Burial, cremation and burial, or other disposition, or donation of the declarant's body after death.

C. An Authorization for Final Disposition requires a Representative and one or more named successor Representative(s) to carry out the directions, instructions, and suggestions of the Declarant as expressed in the Declarant's Authorization for Final Disposition, unless the directions, instructions, and suggestions exceed available resources from the Decedent's estate or are unlawful, or unless there is no realistic possibility of compliance.

D. Except as provided in subsection (c) below, an Authorization for Final Disposition shall meet the following requirements:

(1) List the name and last-known address, as of the date of execution of the Authorization for Final Disposition, of each Representative and each successor Representative named, and be signed by each Representative and each successor Representative named.

(2) Be signed and dated by the Declarant, with the signature witnessed by 2 witnesses who each have attained the age of 18 and who are not related by blood, marriage, or adoption to the Declarant, or acknowledged before a Notary Public. If the Declarant is physically unable to sign an Authorization for Final Disposition, the

authorization shall be signed in the Declarant's name by an individual at the Declarant's express direction and in his or her presence; such a proxy signing shall take place or be acknowledged by the Declarant in the presence of 2 witnesses or a Notary Public.

E. A document executed by a member of the U.S. armed forces in the manner and on a form provided by the federal Department of Defense that designates a person to direct the disposition of the member's (of the armed forces) remains is a valid Authorization for Final Disposition under this section.

1.5 Court Authority to Designate Person Authorized to Control Final Disposition

If individuals on the same level of priority specified in section 1.3 are unable to agree on the final disposition, the Tribal Court may designate an individual as most fit and appropriate to control the final disposition, with all of the following applying:

A. After the Decedent's death, a petition regarding control of the final disposition shall be filed with the Tribal Court by any of the following:

(I) A relative of the Decedent.

(2) An individual seeking control of the final disposition who claims a closer personal relationship to the decedent than the decedent's next of kin and who was not in the employ of the decedent or the decedent's family.

(3) If 2 or more individuals on the same level of priority in section 4.3 cannot, by majority vote decide concerning the final disposition, any of those individuals or the funeral director, or the crematory authority that possesses the Decedent's remains.

B. In making determinations regarding final disposition, the Tribal Court may consider all of the following:

(I) The reasonableness and practicality of the proposed Final Disposition.
(2) The degree of personal relationship between the decedent and each of the individuals claiming the right of Final Disposition, including whether the Decedent was estranged from any of the individuals.
(3) Except as provided in subsection (C), below, the desires of the individual or individuals who are ready, able, and willing to pay the costs associated with Final Disposition.
(4) The express written desires of the Decedent.
(5) The degree to which any proposed Final Disposition would permit maximum participation by family members, friends, and others who wish to pay final respects to the Decedent.

C. An individual's payment or agreement to pay for all or part of the costs of final disposition does not, by itself, provide the individual any greater opportunity to control the final disposition than the individual otherwise has under this section.

1.6 Persons Prohibited from Controlling Final Disposition:

A. The following may not be authorized to control the final disposition of human remains:

(1) A person who has been charged with any of the following in connection with the Decedent's death (and the charges are publicly known):

(a) First degree intentional homicide or equivalent
(b) First degree reckless homicide or equivalent
(c) Second degree intentional homicide or equivalent
(d) Second degree reckless homicide or equivalent

(2) The prohibitions contained in this subsection shall not apply to any person for whom charges are dismissed or who is found not guilty of the offense.

B. Any individual who is otherwise authorized to control final disposition under the order of priority of individuals in this Section, but who fails to exercise this authorization within two days after he or she has been notified of the Decedent's death or who cannot be located after reasonable efforts have been made to do so.

C. The Decedent's spouse, if an action to terminate the marriage of the spouse and the Decedent was pending at the time of the Decedent's death, or, if a party objecting to the Decedent's Spouse controlling the final disposition can show, by a preponderance of the evidence, that the surviving Spouse and the Decedent were estranged at the time of death.

D. The following individuals, if they have a direct professional relationship with or provide professional services directly to the Declarant and are not related to the Declarant by blood, marriage, or adoption:

(1) The funeral director
(2) A crematory authority
(3) A cemetery authority
(4) An employee of a funeral director, crematory authority, or cemetery authority
(5) A health care provider
(6) A social worker

1.7 Revocation of Authorization for Final Disposition

A. A Declarant may revoke an Authorization for Final Disposition at any time by any of the following methods:

(1) Canceling, defacing, obliterating, burning, tearing, or otherwise destroying the Authorization for Final Disposition or directing some other person to cancel, deface, obliterate, bum, tear, or otherwise destroy the Authorization for final disposition in the presence of the declarant. "Canceling" may include the Declarant writing on the declaration of final disposition, "I hereby revoke this declaration for Final Disposition," and signing and dating that statement.
(2) Revoking in writing the authorization for final disposition. The Declarant shall sign and date any written revocation under this section.
(3) Executing a subsequent authorization for final disposition.

B. Penalty: Any person who intentionally conceals, cancels, defaces, obliterates, or damages the authorization for final disposition of another without the Declarant's consent may be held liable for civil contempt and fined not more than $500 in an action in Tribal Court.

1.8 Departmental Responsibilities

The Department shall prepare and provide copies of the Authorization for Final Disposition form and accompanying information for distribution to Tribal members, Immediate Family members, and other interested parties.

IV.

§1 Repatriation

1.1 Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony

Upon the request of the Tribe or a Lineal Descendant, and pursuant to 43 CFR§10.10, a museum or Federal agency must repatriate Funerary Objects, sacred objects, or objects of cultural patrimony if all the following criteria are met:

(A) The object meets the definitions established in§2 of this ordinance;

(B) The Cultural Affiliation of the object is established through the summary, consultation, and notification procedures of a museum or Federal agency or by presentation of greater evidence by the Tribe;

(1) The known lineal descendant presents evidence which, if standing alone before the introduction of evidence to the contrary, would support a finding that the museum or Federal agency does not have a Right of Possession to the objects;
(2) The agency or museum is unable to present evidence to the contrary proving that it does have a Right of Possession; and
(3) None of the exceptions listed in§1.4 of this section apply.

1.2 Notification

Pursuant to the provisions of NAGPRA, repatriation must take place within ninety (90) days of receipt from the written request from the Tribe stating the requirements of§1.1 of this section have been satisfied. The repatriation may not occur until at least thirty (30) days after the notice of intent to repatriate has been published.

1.3 Human Remains and Associated Funerary Objects

(A) Upon the request of a Lineal Descendant or the Tribe, a museum and Federal agency must expeditiously repatriate human remains and associated funerary objects if:

(1) the human remains or associated funerary objects meet the applicable definition.
(2) the affiliation of the deceased individual to known lineal descendant or an enrolled member of the Tribe;
(3) the human remains or associated funerary object has been reasonably traced through the procedures outlined in 43 CFR §10.9 and §10.14 or has been shown by a preponderance of the evidence presented by the Tribe; and
(4) None of the exceptions listed in §1.4 of this section apply.

(B) Notice of the Repatriation shall be sent by the FCPC NAGPRA representative in accordance with §1.2 of this section.

1.4 Exceptions

These requirements for repatriation do not apply to:

(A) Circumstances where human remains, funerary objects, sacred objects, or objects of cultural patrimony are indispensable to the completion of a specific scientific study, the outcome of which is of major benefit to the United States. Human remains, funerary objects, sacred objects, or objects of cultural patrimony in such circumstances must be returned no later than ninety (90) days after completion of the study; or

(B) Circumstances where there are multiple requests for repatriation of human remains, associated funerary objects, unassociated funerary objects, sacred objects, or objects of cultural patrimony and the museum or Federal agency, after complying with this part, cannot determine by a preponderance of the evidence which competing requesting party is the most appropriate claimant. In these circumstances, the museum or Federal agency may retain the cultural items in question until the competing requesting parties agree upon the appropriate recipient or the dispute is otherwise resolved pursuant to these regulations or by a court of competent jurisdiction; or

(C) Circumstances where a court of competent jurisdiction has determined that the repatriation of the human remains, funerary objects, sacred objects, or objects of cultural patrimony in the possession or control of a museum would result in a taking of property without just compensation within the meaning of the Fifth Amendment of the United States Constitution, in which event the custody of the objects must be as provided under otherwise applicable law. Nothing in these regulations must prevent a museum or Federal agency, where otherwise so authorized, or the Tribe, from expressly relinquishing title to, right of possession of, or control over any human remains, funerary objects, sacred objects, or objects of cultural patrimony.

(D) Circumstances where the repatriation is not consistent with other repatriation limitations identified in 43 CFR §10.15.

1.5 Place and Manner of Repatriation

(A) The repatriation of human remains, funerary objects, sacred objects, or objects of cultural patrimony must be accomplished by the museum or Federal agency in consultation with the requesting lineal descendants, or the Tribe, as appropriate, to determine the place and manner of the repatriation.

(B) The museum official or Federal agency official must inform the recipients of repatriations of any presently known treatment of the human remains, funerary objects, sacred objects, or objects of cultural patrimony with pesticides, preservatives, or other substances that represent a potential hazard to the objects or to persons handling the objects.

Legislative History for the Forest County Potawatomi Burial Sites Protection Ordinance

Recommended by the Ordinance Department 06/20/2024
Approved by Executive Council 06/20/2024
Approved by General Council 11/09/2024

Exhibit A

AUTHORIZATION FOR FINAL DISPOSITION

I,_____ _____
(Print name and address)

Being of sound mind, willfully, and voluntarily make known by this document my desire that, upon my death, the final disposition of my remains be under the control of my representative under the requirements of the Forest County Potawatomi End of Life Disposition and Burial Sites Protection Ordinance, and, with respect to that final disposition only, I hereby appoint the representative and any successor representative named in this document. All decisions made by my representative or any successor representative with respect to the final disposition of my remains are binding.

Name of Representative_____

Address_____

Telephone Number _____

If my representative dies, becomes incapacitated, resigns, refuses to act, ceases to be qualified, or cannot be located within the time necessary to control the final disposition of my remains, I hereby appoint the following individuals, each to act alone and successively, in the order specified, to serve as my successor representative:

I. Name of First Successor Representative _____

Address_____

Telephone Number _____

2. Name of Second Successor Representative _____

Address_____

Telephone Number _____

SUGGESTED SPECIAL DIRECTIONS_____

SUGGESTED INSTRUCTIONS CONCERNING RELIGIOUS OBSERVANCES

_____

SUGGESTED SOURCE OF FUNDS FOR IMPLEMENTING FINAL DISPOSITION DIRECTIONS AND INSTRUCTIONS _____

This authorization becomes effective upon my death.

I hereby revoke any prior authorization for final disposition that I may have signed before the date that this document is signed.

I hereby agree that any funeral director, crematory authority, or cemetery authority that receives a copy of this document may act under it. Any modification or revocation of this document is not effective as to a funeral director, crematory authority, or cemetery authority until the funeral director, crematory authority, or cemetery authority receives actual notice of the modification or revocation. No funeral director, crematory authority, or cemetery authority may be liable because of reliance on a copy of this document.

The representative and any successor representative, by accepting appointment under this document, assume the powers and duties specified for a representative identified in the Forest County Potawatomi End of Life Disposition and Burial Sites Protection Ordinance.

Signed this __ **day of**_____

Signature of Declarant_____

Exhibit A

I hereby accept appointment as representative for the control of final disposition of the declarant's remains and agree to the personal jurisdiction of the Forest County Potawatomi Tribal Court for any causes of action that may arise from my service as a representative under the Forest County Potawatomi End of Life Disposition and Burial Sites Ordinance.

Signed this _____day of_____

Signature of Representative _____

I hereby accept appointment as successor representative for the control of final disposition of the declarant's remains and agree to the personal jurisdiction of the Forest County Potawatomi Tribal Court for any causes of action that may arise from my service as a representative under the Forest County Potawatomi End of Life Disposition and Burial Sites Ordinance.

Signed this __ day of

Signature of First Successor Representative_____

Signed this _____ day of _____

Signature of Second Successor Representative _____

I attest that the declarant signed or acknowledged this authorization for final disposition in my presence and that the declarant appears to be of sound mind and not subject to duress, fraud, or undue influence. I further attest that I am not the representative or the successor representative appointed under this document, that I am aged at least 18, and that I am not related to the declarant by blood, marriage, or adoption.

Witness (Print Name) _____

Signature_____Date_____

Address_____

Witness(PrintName)_____

Signature _____ Date _____

Address_____

State of ___

County of_____

On (date)_____ before me personally appeared (name of declarant) _____, known to me or satisfactorily proven to be the individual whose name is specified in this document as the declarant and who has acknowledged that he or she executed the document for the purposes expressed in it. I attest that the declarant appears to be of sound mind and not subject to duress, fraud, or undue influence.

Notary Public_____

My Commission Expires_____

Exhibit B

Degrees of Kinship for Determining Disposition of Remains

