



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

**JUL ~ 8 2025**

The Honorable Amanda Augustine  
Chairperson, Augustine Band of Cahuilla Indians  
84-001 Avenue 54  
Coachella, California 92236

Dear Chairperson Augustine:

On January 30, 2025, the Department of the Interior (Department) received a memorandum, dated the same day, from the court-appointed mediator (Mediator) in *Augustine Band of Cahuilla Indians v. State of California, et al.*, No. 5:23-cv-00620-SSS-DTB notifying and transmitting to the Secretary of the Interior (Secretary) the Class III gaming compact selected by the Mediator (Mediator's Selected Compact) in accordance with the Indian Gaming Regulatory Act (IGRA). 25 U.S.C. § 2701 *et seq.* The Mediator's notice initiated the process for the Department to issue Class III gaming procedures consistent with IGRA. 25 U.S.C. § 2710(d)(7)(B)(vii).

On July 23, 2024, the District Court issued an order in *Augustine Band of Cahuilla Indians v. State of California, et al.*, No. 5:23-cv-00620-SSS-DTB, holding that the State did not negotiate in good faith by demanding that the Class III gaming compacts include provisions that were not proper subjects of negotiation under IGRA. The District Court ordered the State and Tribes to proceed with IGRA's remedial process under the District Court's continued supervision.

On January 7, 2025, the Mediator selected the Tribes' last best offer Class III gaming compact as the one which best comported with IGRA, and other federal law as required by the remedial process. On January 22, 2025, the State notified the Mediator that it would not consent to the terms of the Mediator's Selected Compact (Compact). The remedial process then requires the Mediator to transmit their selected Compact to the Department.<sup>1</sup>

After consulting with the Augustine Band of Cahuilla Indians (Tribe), I am issuing the enclosed Secretarial Procedures (these Procedures), as required by IGRA, under which the Tribe may conduct Class III gaming.

We note that the Compact contemplated that, in addition to the Tribal Gaming Commission's role as a regulator of the Tribe's gaming activities, the State could also have regulatory responsibilities largely consistent with the State's regulatory role in Class III gaming under numerous existing compacts with other Tribes in the State. The State refused to consent to the Compact and indicated it could not consent to fulfill such regulatory responsibilities under the terms of the Compact.<sup>2</sup>

The Secretary cannot unilaterally obligate the State to carry out the regulatory responsibilities contemplated in the Compact. The National Indian Gaming Commission (NIGC), however, already exercises regulatory authority over the Tribe's gaming through requirements of the Tribe's gaming ordinance and IGRA. Therefore, the NIGC has agreed to perform many of the regulatory

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<sup>1</sup> *Augustine Band of Cahuilla Indians v. State of California, et al.*, No. 5:23-cv-00620-SSS-DTB

<sup>2</sup> Letter from Nathan Voegeli, Senior Advisor for Tribal Negotiations, Office of the Governor, California to the Honorable Scott Bales, Judge (Ret.) dated January 22, 2025, declining to consent to the Mediator's selected compact.

responsibilities included in the Compact. The Tribe will memorialize this arrangement in a Memorandum of Understanding with the NIGC. Accordingly, Section 6.1(a) of these Procedures requires the Tribe to incorporate these Procedures into the Tribe's gaming ordinance, and Section 8.2(c) requires the Tribe to enter into a Memorandum of Understanding with the NIGC.

The IGRA requires the Secretary to prescribe procedures, in consultation with the Tribe, that are consistent with IGRA, relevant provisions of state law, and with terms that are consistent with, but not identical to, the Class III gaming compact selected by the mediator.<sup>3</sup> I find that these Procedures meet those requirements. By this letter and as required by IGRA, I am providing you with notification that I have proscribed these Procedures, which are now in effect, for the conduct of Class III gaming on the Tribe's Indian lands.

Sincerely,



Scott J. Davis  
Senior Advisor to the Secretary of the Interior  
Exercising the delegated authority of the  
Assistant Secretary— Indian Affairs

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<sup>3</sup> 25 U.S.C. § 2710 (d)(7)(B)(vii).

**SECRETARIAL  
PROCEDURES FOR  
THE AUGUSTINE BAND OF  
CAHUILLA INDIANS**

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## **PREAMBLE**

WHEREAS, the Tribe is the beneficial owner of the lands of the Augustine Indian Reservation, which lands are “Indian lands” as defined in IGRA, at 25 U.S.C. § 2703(4)(A), having been held by the United States in trust for the Tribe on and before October 17, 1988, and upon which the Tribe lawfully may operate gaming;

WHEREAS, pursuant to a Class III Gaming Compact executed in or about March, 2000 that took effect in May, 2000 (“2000 Compact”), the Tribe has operated Gaming Activities on its Reservation in full compliance with the terms of its 2000 Compact without having had a significant adverse impact on the off-Reservation environment or otherwise imposing any additional burdens on surrounding non-tribal jurisdictions;

WHEREAS, after trying and failing to reach agreement with the State on a new Compact to replace its expiring 2000 Compact, the Tribe sued the State pursuant to 25 U.S.C. § 2710(d)(7)(B), alleging that the State failed to negotiate in good faith by insisting on including in a new compact provisions that are not proper subjects of negotiation under IGRA because they are not directly related to the operation of Gaming Activities and/or constitute impermissible taxes, fees or other assessments for which the State failed to offer meaningful concessions;

WHEREAS, on July 23, 2024, the United States District Court for the Central District of California entered an order determining that by proposing to include in a new Class III Gaming Compact several provisions that are not proper subjects of negotiation because they are not directly related to the operation of Gaming Activities or that constituted taxes, fees or other assessments for which the State failed to offer meaningful concessions, the State failed to negotiate in good faith with the Tribe concerning the terms of a new Compact under which the Tribe may conduct Gaming Activities on its Reservation lands;

WHEREAS, following entry of the aforesaid order, the Tribe and the State entered into negotiations pursuant to IGRA’s remedial process concerning the terms of a new Compact authorizing the Tribe to continue operating Gaming Devices, banking and percentage card games, and games and devices permitted by State law to the California State Lottery, all of which constitute Gaming Activities under IGRA;

WHEREAS, the Tribe and the State did not agree on the terms of a new Compact authorizing the Tribe to continue conducting the above-described

Gaming Activities on the Indian lands of the Augustine Indian Reservation (“Reservation”) in Riverside County, California, in a manner that will protect the public health, safety and the environment while protecting tribal assets and preventing unethical or unlawful practices and criminal influences;

WHEREAS, on January 7, 2025, the mediator selected the Tribe’s last best offer compact as the compact that best comports with the terms of IGRA, any other applicable Federal law, and the District Court’s Order, and submitted the Plaintiff Tribe’s last best offer compact to the State Defendants and the Plaintiff Tribe; and

WHEREAS, under the IGRA, 25 U.S.C. § 2710(d)(7)(B)(vi), if the State “consents to a proposed compact during the 60-day period beginning on the date on which the proposed compact is submitted by the mediator to the State under clause (v), the proposed compact shall be treated as a Tribal-State compact.”; and the State notified the mediator that they elect not to accept the selected compact.

NOW, THEREFORE, based on the foregoing findings, the Secretary, as requested by the mediator appointed by the United States District Court for the Eastern District of California in *Augustine Band of Cahuilla Indians v. State of California, et al.*, No. 5:23-cv-00620-SSS-DTBx (C.D. Cal.), and as mandated by IGRA, 25 U.S.C. § 2710 (d)(7)(B)(vii), and in consultation with the Tribe, hereby promulgates these class III Gaming Secretarial Procedures for the Tribe.

## **SECTION 1.0. PURPOSES AND OBJECTIVES.**

The terms of these Secretarial Procedures are designed and intended to:

- (a) Regulate class III gaming, and only class III gaming, on the Tribe’s Indian lands to ensure its fair and honest operation in accordance with IGRA, and through that regulated class III gaming, enable the Tribe to develop self-sufficiency, promote tribal economic development, and create jobs and generate revenues to support the Tribe’s government and its governmental services and programs.
- (b) Promote ethical practices in conjunction with class III gaming, through the licensing and control of persons and entities employed in, or providing goods and services to, the Gaming Operation, protect against the presence or participation of persons whose criminal backgrounds, reputations, character, or associations make them unsuitable for participation in gaming,

thereby maintaining a high level of integrity in tribal government gaming, and protect the patrons and employees of the Gaming Operation and Gaming Facility.

## **SECTION 2.0. DEFINITIONS.**

**Sec. 2.1.** “AICPA Guide” means the current edition of the American Institute of Certified Public Accountants’ “Casino Audit Guide”, and as said Guide may be revised from time to time.

**Sec. 2.2.** “Applicable Codes” means the uniform fire, plumbing, electrical, mechanical, building, and related codes as adopted from time-to-time by the Western Fire Chiefs Association, the International Code Council, the International Association of Plumbing and Mechanical Officials, and the National Fire Protection Association, as approved by the American National Standards Institute, but excluding provisions not directly involving structural integrity or life safety. as that the provisions of those codes may be amended during the term of this Compact.

**Sec. 2.3.** “Applicant” means an individual or entity that applies for a tribal gaming license or State determination of suitability.

**Sec. 2.4.** “Association” means an association of California tribal and State gaming regulators, the membership of which comprises up to two (2) representatives from each tribal gaming agency of those tribes with whom the State has a Class III Gaming compact under IGRA or that operate Gaming Activities pursuant to procedures prescribed by the Secretary of the Interior in lieu of a compact, and up to two (2) delegates from the California Department of Justice, Bureau of Gambling Control, and the California Gambling Control Commission.

**Sec. 2.5.** “Class III Gaming” means the forms of gaming defined as such in 25 U.S.C. § 2703(8) and by the regulations of the National Indian Gaming Commission.

**Sec. 2.6.** “Commission” means the California Gambling Control Commission, or any successor agency of the State.

**Sec. 2.7.** “Compact” means this Tribal-State Compact between the State of California and the Augustine Band of Cahuilla Indians any references to Compact herein should be deemed to mean these Secretarial Procedures.

**Sec. 2.8.** “County” means the County of Riverside, California, a political subdivision of the State.

**Sec. 2.9.** “Financial Source” means any person or entity directly or indirectly extending financing in connection with the Tribe’s Gaming Facility.

**Sec. 2.10.** “Gaming Activity” or “Gaming Activities” means the Class III Gaming activities authorized under these Procedures.

**Sec. 2.11.** “Gaming Device” means any slot machine within the meaning of Article IV, Section 19, subdivision (f) of the California State Constitution. For purposes of calculating the number of Gaming Devices, each player station or terminal on which a Class III game is played and contains a random number generator that determines game outcomes constitutes a separate Gaming Device, irrespective of whether it is a part of an interconnected system of such terminals or stations. “Gaming Device” includes, but is not limited to, video poker but does not include electronic, computer or other technological aids that qualify as class II gaming as defined under IGRA.

**Sec. 2.12.** “Gaming Employee” means any natural person who is an employee of the Gaming Operation and (i) conducts, operates, maintains, repairs, accounts for, or assists in the actual conduct of any Gaming Activities, or is in any way responsible for supervising such Gaming Activities or persons who conduct, operate, maintain, repair, account for, assist, or supervise any such Gaming Activities; (ii) is in a category under federal gaming law requiring licensing; or (iii) is a person whose employment duties require or authorize access to areas of the Gaming Facility in which any activities related to Gaming Activities are conducted but that are not open to the public. Notwithstanding the foregoing, the definition of Gaming Employee does not include members or employees of the Tribal Gaming Commission; persons employed by the Gaming Operation who have no access to Gaming Operation cash, equipment used to operate Gaming Activities, or business records of Gaming Activities; or persons whose duties do not involve the actual operation of Gaming Activities or the accounting for revenues therefrom.

**Sec. 2.13.** “Gaming Facility” or “Facility” means any building containing Gaming Spaces, or the portion of an on-Reservation structure in which the business records, receipts, or funds of the Gaming Operation derived from or pertaining to Gaming Activities are maintained (but excluding off-site facilities primarily dedicated to storage of those records, and financial institutions), provided that nothing herein prevents or applies to the conduct of class II gaming (as defined



under IGRA) therein. Unless otherwise specified, the provisions of these Procedures shall apply only to Gaming Spaces within a Gaming Facility.

**Sec. 2.14.** “Gaming Operation” means the component of the Tribe’s business enterprise that offers and operates Gaming Activities, but does not include the Tribe’s governmental or other business activities, wherever occurring, that are not directly related to the actual operation of Gaming Activities.

**Sec. 2.15.** “Gaming Ordinance” means a tribal ordinance or resolution duly authorizing the conduct of Gaming Activities on the Tribe’s Indian lands in California and approved under IGRA.

**Sec. 2.16.** “Gaming Resources” means any goods or services provided or used in connection with Gaming Activities, whether exclusively or otherwise, including, but not limited to, equipment, furniture, Gaming Devices and ancillary equipment, implements of Gaming Activities such as playing cards, furniture designed primarily for Gaming Activities, maintenance or security equipment and services, and Class III Gaming management or consulting services. “Gaming Resources” does not include professional accounting and/or legal services.

**Sec. 2.17.** “Gaming Resource Supplier” means any person or entity who, directly or indirectly, does, or is deemed likely to, manufacture, distribute, supply, vend, lease, purvey, or otherwise provide, to the Gaming Operation or Gaming Facility at least twenty-five thousand dollars (\$25,000) in Gaming Resources in any twelve (12) month period, or who, directly or indirectly, receives or is deemed likely to receive, in connection with the Gaming Operation or Gaming Facility, at least twenty-five thousand dollars (\$25,000) in any consecutive twelve (12) month period, provided that the Tribal Gaming Commission may exclude a purveyor of equipment or furniture that is not specifically designed for, and is distributed generally for use other than in connection with, Gaming Activities, if the purveyor is not otherwise a Gaming Resource Supplier as described by Section 6.4.5, the compensation received by the purveyor is not grossly disproportionate to the value of the goods or services provided, and the purveyor is not otherwise a person who exercises a significant influence over the Gaming Operation.

**Sec. 2.18.** “Gaming Spaces” means the spaces within a Gaming Facility in which the operation of Gaming Activities actually takes place, including such areas as the actual casino gaming floor, vault, surveillance room, count room, casino management offices, casino information technology, and storage areas for Gaming

Devices and supplies that are directly related to the operation of Gaming Activities.

**Sec. 2.19.** “Gaming Tribe” means a Tribe that operates 350 or more Gaming Devices pursuant to a Class III Gaming Compact or procedures prescribed by the Secretary of the Interior in lieu of a Compact.

**Sec. 2.20.** “IGRA” means the Indian Gaming Regulatory Act of 1988 (P.L. 100-497, 18 U.S.C. Sec. 1166 *et seq.* and 25 U.S.C. Sec. 2701 *et seq.*) and any amendments thereto, as interpreted by all regulations, promulgated thereunder.

**Sec. 2.21.** “Limited Gaming Tribe” means a federally recognized Tribe in California that has a Class III Gaming compact with the State but is operating fewer than a combined total of three hundred fifty (350) Gaming Devices in all of its gaming operations wherever located, or does not have a Class III Gaming compact but is operating class II gaming, whether within or without California, during the three hundred sixty-five (365) days immediately preceding a distribution from the Revenue Sharing Trust Fund.

**Sec. 2.22.** “Management Contractor” means any Gaming Resource Supplier with whom the Tribe has contracted for the management of any Gaming Activity or Gaming Facility, including, but not limited to, any person who would be regarded as a management contractor under IGRA.

**Sec. 2.23.** “Net Win” means the drop from Gaming Devices, plus the redemption value of expired tickets, less fills, less free play, less payouts, less that portion of the Gaming Operation’s payments to a third-party wide-area progressive jackpot system provider that is contributed only to the progressive jackpot amount.

**Sec. 2.24.** “NIGC” means the National Indian Gaming Commission.

**Sec. 2.25.** “Non-Gaming Tribe” means a federally recognized Tribe in California, with or without a tribal-State Class III Gaming compact, that has not engaged in, or offered, class II gaming or Class III Gaming in any location whether within or without California, as of the date of distribution to such Tribe from the Revenue Sharing Trust Fund or during the immediately preceding three hundred sixty-five (365) days.

**Sec. 2.26.** “Revenue Sharing Trust Fund” (“RSTF”) means a fund created by the Legislature and administered by the State Gaming Agency, as trustee, with no duties or obligations except as set forth in Compacts entered into prior to this

Compact and substantially similar Compacts, for the receipt, deposit, and distribution of monies paid by gaming tribes for the benefit of Non-Gaming Tribes and Limited-Gaming Tribes. The State Gaming Agency has no discretion with respect to the use or disbursement by recipient tribes of the Revenue Sharing Trust Fund monies. Under California law, Cal. Gov. Code § 12012.75, the RSTF is authorized to serve as a depository of the trust funds and to allocate and disburse them on a quarterly basis to eligible Non-Gaming and Limited-Gaming Tribes.

**Sec. 2.31.** “Tribal Chair” or “Tribal Chairperson” means the person duly elected or selected under the Tribe’s constitution or governing documents, customs, or traditions to perform the duties specified therein, including serving as the Tribe’s official representative.

**Sec. 2.32.** “Tribal Gaming Commission” means the person, agency, board, committee, commission, or council designated under tribal law, including, but not limited to, an intertribal gaming regulatory agency approved to fulfill those functions by the NIGC, primarily responsible for carrying out the Tribe’s regulatory responsibilities under IGRA and the Tribe’s Gaming Ordinance. No person employed in, or in connection with, the management, supervision, or conduct of any gaming activity may be a member or employee of the Tribal Gaming Commission.

**Sec. 2.33.** “Tribe” means the Augustine Band of Cahuilla Indians, a federally recognized Indian Tribe, or an authorized official or agency thereof.

**Sec. 2.34.** “Secretarial Procedures” or “Procedures” means these Secretarial Procedures.

### **SECTION 3.0. SCOPE OF CLASS III GAMING AUTHORIZED.**

- (a) The Tribe is hereby authorized and permitted to operate only the following Gaming Activities under the terms and conditions set forth in these Procedures:
  - (1) Gaming Devices;
  - (2) any banking or percentage Class III card game; and
  - (3) any devices or games that are authorized under State law to the California State Lottery; *provided* that the Tribe will not offer such games through use of the Internet, unless any other person,

organization, or entity in the State is permitted to do so under State and federal law.

- (b) Nothing herein shall be construed to preclude the Tribe from offering class II gaming or preclude the negotiation of a separate compact governing the conduct of off-track wagering on the Tribe's Indian lands.
- (c) Nothing herein shall be construed to authorize or permit the operation of any Class III Gaming that the State lacks the power to authorize or permit under the California Constitution.
- (d) The Tribe shall not engage in class III gaming that is not expressly authorized in these Secretarial Procedures; provided, that if, at any time subsequent to the Effective Date of these Secretarial Procedures, the State authorizes any additional form(s) of class III gaming not already expressly authorized by these Secretarial Procedures, the Tribe shall be entitled to operate such form(s) of class III gaming by amending these Secretarial Procedures as set forth in section 13.

#### **SECTION 4.0. AUTHORIZED LOCATION OF GAMING FACILITY, NUMBER OF GAMING DEVICES**

##### **Sec. 4.1. Authorized Number of Gaming Devices.**

The Tribe shall not be limited with respect to the number of Gaming Devices that it may operate, but its right to operate any Gaming Devices shall be subject to its making the payments set forth under Section 5 herein in accordance with the terms set forth therein.

##### **Sec. 4.2. Authorized Gaming Facilities.**

The Tribe may establish and operate on its Indian lands the number of Gaming Facilities that the Tribe, in its discretion, determines are appropriate for its market conditions and economic needs.

##### **Sec. 4.3. Reserved.**

**Sec. 4.4. Effective Date of Revenue Contribution Provisions.**

The provisions of these procedures establishing or superseding existing revenue sharing obligations of the Tribe will take effect on the first day of the first full calendar month following the Effective Date of these Procedures.

**Sec. 4.5. Reserved.**

**Sec. 4.6. Exclusivity.**

- (a) If the exclusive right of California Indian tribes under the California Constitution to operate Gaming Devices, banked or percentage card games and/or games and equipment authorized by State law to the California Lottery is abrogated by the enactment, amendment, or repeal of a State statute or constitutional provision, or the conclusive and dispositive judicial construction of a statute or the State Constitution by a federal or California appellate court after the effective date of these Procedures, that Gaming Devices or banked or percentage card games or games or equipment authorized by State law to the California Lottery may lawfully be operated by another person, organization, or entity (other than an Indian Tribe operating pursuant to a Class III Gaming compact or Secretarial procedures prescribed by the Secretary of the Department of the Interior pursuant to 25 U.S.C. § 2710(d)(7)(B)(vii), or games or equipment operated by the California State Lottery pursuant to State law) within California, the Tribe shall have the right to exercise one (1) of the following options:
  - (1) terminate these Procedures, in which case the Tribe will lose the right to operate Gaming Devices and other Gaming Activities authorized by these Procedures; or
  - (A) continue under these Procedures with an entitlement immediately to be relieved of all payment obligations imposed under the Procedures or any other agreement entered into with the State in connection with the Tribe's operation of Gaming Activities.

- (b) Nothing in this section is intended to preclude the California State Lottery from offering any lottery games or devices that are currently or may hereafter be authorized by the State Constitution, as long as such games are lotteries, and not either Gaming Devices or banking or percentage games.

**SECTION 5.0. REVENUE SHARING WITH NON-GAMING AND LIMITED-GAMING TRIBES.**

**Sec. 5.1. Creation of Revenue Sharing Trust Fund.**

- (a) The Tribe agrees with all other California tribes with compacts that that provide for the creation and disbursement of the Revenue Sharing Trust Fund defined in Section 2.26 hereof that each Non-Gaming and Limited Gaming Tribe in the State shall receive the sum of up to \$1.1 million per year from the Revenue Sharing Trust Fund. In the event there are insufficient monies in the Revenue Sharing Trust Fund to pay \$1.1 million per year to each Non-Compact Tribe and Limited Gaming Tribe, any available monies in that Fund shall be distributed to Non-Compact Tribes and Limited Gaming Tribes in equal shares.
- (b) A Gaming Tribe that becomes a Non-Gaming or Limited Gaming Tribe may not thereafter return to the status of a Gaming Tribe for a period of two years after becoming a Non-Gaming or Limited Gaming Tribe.

**Sec. 5.2. The Tribe's Obligation to Make Payments into the Revenue Sharing Trust Fund.**

- (a) The Tribe shall have no obligation to pay any amount to the State Gaming Agency for deposit into the Revenue Sharing Trust Fund unless (i) the California Revenue and Taxation Code is amended to create and continues in effect a conclusive and un rebuttable presumption that enrolled Tribal Members and their lineal descendants actually reside on the Tribe's Indian lands, and (ii) the Tribe operates more than one thousand two hundred (*i.e.*, 1,201+) Gaming Devices at any time in a given calendar year;

- (b) The Tribe agrees that (i) if the California Revenue and Taxation Code is amended to create a conclusive and un rebuttable presumption that enrolled Tribal Members and their lineal descendants actually reside on the Tribe's Indian lands, and for so long as that provision of the Revenue and Taxation Code remains in effect, and (ii) the Tribe operates more than one thousand two hundred (*i.e.*, 1,201+) Gaming Devices but fewer than two thousand five hundred one (2,501) Gaming Devices during a calendar quarter, the Tribe shall pay into the Revenue Sharing Trust Fund one and five-tenths percent (1.5%) of the quarterly average Gaming Device Net Win from the operation of all Gaming Devices in excess of three hundred fifty (*i.e.*, 351+) Gaming Devices but fewer than 2,501 Gaming Devices during the immediately preceding quarter; and
- (c) The Tribe agrees that (i) if the California Revenue and Taxation Code is amended to create a conclusive and un rebuttable presumption that enrolled Tribal Members and their lineal descendants actually reside on the Tribe's Indian lands, and for so long as that provision of the Revenue and Taxation Code remains in effect, and (ii) the Tribe operates two thousand five hundred one (2,501) or more Gaming Devices, the Tribe shall pay into the Revenue Sharing Trust Fund the amounts due under Section 5.2(b)(ii) above, and an additional one tenth of one percent (0.1%) of the quarterly average Gaming Device Net Win for each additional increment of one hundred (100) Gaming Devices in excess of two thousand five hundred (2,500) Gaming Devices operated during the immediately preceding quarter; *provided*, that no additional payment shall be due for Gaming Devices in excess of three thousand (3,000) Gaming Devices. For avoidance of doubt, if the Tribe were to operate 2,550 Gaming Devices, it would owe an additional 1.6% of the Net Win from Gaming Devices 2,501–2,550; if it were to operate 2,699 Gaming Devices, it would owe an additional 1.6% of the Net Win from Gaming Devices 2,501–2,600, an additional 1.7% of the Net Win from Gaming Devices 2,601–2,700, an additional 1.8% of the Net Win from Gaming Devices 2,701–2,800, an additional 1.9% of the Net Win from Gaming Devices 2,801–2,900, and additional 2% of the Net Win from Gaming Devices 2,901–3,000.

- (d) Notwithstanding the provisions of subparagraphs (a) through (c) of this Section 5.2, no payments shall be due or payable during any federally- or State-declared public health emergency in which the Tribe ceases operation of its Gaming Activities because members of the public and the Tribe's Gaming Employees are prohibited or discouraged by federal, State or County officials from travelling to and patronizing or working at the Tribe's Gaming Facility.

**Sec. 5.3. Quarterly Revenue Sharing Trust Fund Contribution Report.**

- (a) Within thirty (30) days following the end of each calendar quarter, the Tribe shall submit to the NIGC a report, prepared and certified by an authorized representative of the Gaming Operation or the Tribe, which sets forth the following information:
  - (1) The maximum number of Gaming Devices operated by the Tribe during the preceding calendar quarter;
  - (2) If the Tribe operated more than 1,200 Gaming Devices at any time during the preceding calendar quarter and the Tribe otherwise is obligated to pay into the Revenue Sharing Trust Fund, the Net Win from the number of Gaming Devices in excess of 350 in operation during the given quarter; and
  - (3) If the Tribe is obligated to pay into the Revenue Sharing Trust Fund, the specified percentage of the Net Win reported in subsection (b)(ii) above.
- (b) If the Tribe is obligated to make payments into the Revenue Sharing Trust Fund, at any time after the fourth calendar quarter, but in no event later than April 30 of the following calendar year, the Tribe shall provide to the NIGC an audited annual certification of its Net Win calculation from the operation of Gaming Devices. The audit shall be conducted in accordance with generally accepted auditing standards, as applied to audits for the gaming industry, by an independent certified public accountant who is licensed in the State of California, not



employed by the Tribe, the Tribal Gaming Commission, the Management Contractor (if any), or the Gaming Operation, is only otherwise retained by any of these entities to conduct regulatory audits or independent audits of the Gaming Operation, and has no financial interest in any of these entities.

- (c) If the audit shows that the Tribe made an overpayment from its Net Win to the Revenue Sharing Trust Fund during the year covered by the audit, the Tribe's next quarterly payment shall be reduced by the amount of the overage. If the audit shows that the Tribe made an underpayment to the Revenue Sharing Trust Fund during the year covered by the audit, the amount of the underpayment shall be offset against the remaining balance of the Tribe's Overpayment, if any, and the Tribe's next quarterly payment shall be increased by the amount of the underpayment not offset against said balance.
- (d) The NIGC shall be authorized to confer with the auditor at the conclusion of the audit process and to review all of the independent certified public accountant's final work papers and documentation relating to the audit. The Tribal Gaming Commission shall be notified of and provided the opportunity to participate in and attend any such conference or document review.
- (e) Unless the calculations in subdivision (b) and Net Win calculations specified in the audit provided pursuant to subdivision (c) have been verified in said audit, the NIGC may audit those calculations, and for that purpose shall have access to all records deemed necessary by the NIGC to verify the calculations in subdivision (b) and Net Win calculations, including access to the Gaming Device accounting systems and server-based systems and software, and to the data contained therein on a read-only basis. If the NIGC determines that the Net Win is understated or the deductions overstated, it will promptly notify the Tribe and provide a copy of the audit. The Tribe within thirty (30) days will either accept the difference or provide a reconciliation satisfactory to the NIGC. If the Tribe accepts the difference or does not provide reconciliation

satisfactory to the NIGC, the Tribe must immediately pay the amount of the resulting deficiency.

- (f) Notwithstanding anything to the contrary in Section 13.0, if the Tribe fails timely to remit the undisputed portion of any payments owed, or if, after conclusion of dispute-resolution proceedings concerning disputed amounts, the Tribe fails timely to remit any payments that the Tribe is determined owe it will be treated as a violation of these Procedures, subject to enforcement action by the NIGC.

**Sec. 5.4. Tracking and Disbursement of the Tribe's Payments into the Revenue Sharing Trust Fund.**

If the Tribe is obligated to pay into the Revenue Sharing Trust Fund, the State must comply with the following conditions concerning the receipt, custody, disbursement and accounting for the Tribe's payments:

- (a) The Tribe's payments into the Revenue Sharing Trust Fund shall be tracked separately from all other Tribes' payments.
- (b) In each year in which the State projects that the balance in the Revenue Sharing Trust Fund will be sufficient to distribute \$1.1 million to each California Tribe eligible to receive distributions from the Revenue Sharing Trust Fund without including the Tribe's payments into the Revenue Sharing Trust Fund, other California Tribes' payments into the Revenue Sharing Trust Fund shall be distributed quarterly to each eligible Tribe, and the Tribe's separately- tracked payments into the Revenue Sharing Trust Fund shall be distributed in equal shares to each eligible Tribe by January 31 of the following year. None of the Tribe's payments into the Revenue Sharing Trust Fund may be deposited into the any other fund created by the State or other tribal-state class III gaming compacts.
- (c) In each year in which the State projects that the balance in the Revenue Sharing Trust Fund will not be sufficient to distribute \$1.1 million to each California Tribe eligible to receive distributions from the Revenue Sharing Trust Fund, the Tribe's

payments into the Revenue Sharing Trust Fund shall be combined with the payments into the Revenue Sharing Trust Fund by other Tribes, and distributed in equal shares to each eligible Tribe on a quarterly basis.

- (d) The Commission shall serve as the trustee of the funds deposited into the Revenue Sharing Trust Fund. The Commission shall have no discretion with respect to the use or disbursement of the trust funds. Its sole authority shall be to serve as a depository of the trust funds and to receive payments into and make disbursements from the Revenue Sharing Trust Fund in the manner prescribed in this Section 5.4.

## **SECTION 6.0. LICENSING.**

### **Sec. 6.1. Gaming Ordinance and Regulations.**

- (a) Incorporation of Secretarial Procedures. These Secretarial Procedures, including amendments, shall be incorporated into the Tribal Gaming Ordinance by this reference. In the event any inconsistencies arise between these Secretarial Procedures and any provision of the Tribal Gaming Ordinance, these Secretarial Procedures shall govern.
- (b) All Gaming Activities conducted under these Procedures shall, at a minimum, comply (1) with a Gaming Ordinance duly adopted by the Tribe and approved in accordance with IGRA, (2) with all applicable rules, regulations, procedures, specifications, and standards duly adopted by the NIGC, the Tribal Gaming Commission, and (3) with the provisions of these Procedures.
- (c) The Tribal Gaming Commission shall make the following documents available to Gaming Operation patrons or their legal representatives, through electronic means or otherwise: the Gaming Ordinance; the rules of each Class III game operated by the Tribe, to the extent that such rules are not available for display on the Gaming Device or the table on which the Class III game is played; rules governing promotions; rules governing points and the player's club program, including rules regarding confidentiality of the player information, if any; the tort liability

ordinance specified in Section 12.5, subdivision (b); and the regulations promulgated by the Tribal Gaming Commission concerning patron disputes pursuant to Section 10.0. To the extent that any of the foregoing are available to the public on a website maintained by an agency of the federal government, or by the Tribe or the Gaming Operation, the Tribal Gaming Commission may refer patrons or their representatives to such website(s) for the requested information.

**Sec. 6.2. Tribal Ownership, Management, and Control of Gaming Operation.**

The Gaming Operation authorized under these Procedures shall be owned solely by the Tribe.

**Sec. 6.3. Prohibitions Regarding Minors.**

- (a) The Tribe shall not permit persons under the age of eighteen (18) years to participate in Gaming Activities, or to loiter in the vicinity of Gaming Activities, but may pass through Gaming Spaces while enroute to an area of the Gaming Facility in which no Gaming Activities are being conducted. For avoidance of doubt, the Tribe may employ persons under the age of eighteen (18) years to work in areas of a Gaming Facility in which no Gaming Activities are being operated.
- (b) If the Tribe permits the consumption of alcoholic beverages in the Gaming Facility, the Tribe shall prohibit persons under the age of twenty-one (21) years from being present in any Gaming Spaces in which alcoholic beverages may be consumed, except to the extent permitted by the Gaming Facility's Department of Alcoholic Beverage Control license.

**Sec. 6.4 Licensing Requirements and Procedures.**

**Sec. 6.4.1. Summary of Licensing Principles.**

All persons in any way connected with the Gaming Operation or Gaming Facility who are required to be licensed or to submit to a background investigation under IGRA, and any others required to be licensed under these Procedures, including, without limitation, all Gaming Employees, Gaming Resource Suppliers,

Financial Sources not otherwise exempt from licensing requirements, and any other person having a significant influence over the Gaming Operation, must be licensed by the Tribal Gaming Commission.

**Sec. 6.4.2. Gaming Facility.**

- (a) The Gaming Facility authorized by these Procedures shall be licensed by the Tribal Gaming Commission in conformity with the requirements of these Procedures, the Gaming Ordinance, IGRA, and any applicable regulations adopted by the NIGC. The license shall be reviewed and renewed every two (2) years thereafter. Verification that this requirement has been met shall be provided by the Tribe to the NIGC by sending, either electronically or by hard copy, a copy of the initial license and each renewal license to the NIGC in accordance with 25 CFR § 559. The Tribal Gaming Commission's certification that the Gaming Facility is being operated in conformity with these requirements shall be posted in a conspicuous and public place in the Gaming Facility at all times.
- (b) To assure the protection of the health and safety of all Gaming Facility patrons, guests, and employees, the Tribe shall adopt, or has already adopted, and shall maintain throughout the term of these Procedures, an ordinance that requires any Gaming Facility construction commenced after the effective date of these Procedures to meet or exceed the standards in the Applicable Codes. The Gaming Facility also shall comply with Title III of the federal Americans with Disabilities Act, of 1990, as amended, 42 U.S.C. § 12101 *et seq.*; *provided*, that nothing herein shall authorize or waive the Tribe's sovereign immunity to private suit under said Act. Notwithstanding the foregoing, the Tribe need not comply with any standard that specifically applies in name or in fact only to tribal facilities or is unrelated to the operation of Gaming Activities. Reference to Applicable Codes is not intended to confer code enforcement jurisdiction upon the State or its political subdivisions. For purposes of this section, the Tribal Gaming Commission or such other tribal government agency or official as may be designated by the Tribe's laws shall be responsible for enforcing the Applicable Codes and shall have same authority and discretion as comparable individuals and

entities exercising comparable authority outside the Tribe's Indian lands.

- (c) To assure compliance with the Applicable Codes during construction of a new Gaming Facility or structural modification of the Tribe's existing Gaming Facility, the Tribe shall require inspections and, in connection therewith, employ for any Gaming Facility construction, qualified plan checkers or review firms. To be qualified as a plan checker or review firm for purposes of these Procedures, plan checkers or review firms must be either California licensed architects, engineers or International Code Council ("ICC") certified building inspectors with relevant experience, or California licensed architects, engineers or ICC-certified building inspectors on the list, if any, of approved plan checkers or review firms provided by the County of Riverside or any incorporated city within said County. The Tribe shall also employ qualified project inspectors. To be qualified as a project inspector for purposes of these Procedures, project inspectors must possess the same qualifications and certifications as project inspectors utilized by any county within the State. The same persons or firms may serve as both plan checkers/reviewers and project inspectors. The plan checkers, review firms, and project inspectors shall hereinafter be referred to as "Inspector(s)." The Tribe shall require the Inspectors to report to the Tribal Gaming Commission in writing and within thirty (30) days after the discovery thereof, any failure to comply with the Applicable Codes. The Tribal Gaming Agency shall forward those reports along with the proposed remedies to the NIGC within 30 days of receiving the report. The Tribe agrees to correct any Gaming Facility condition noted in the inspections that does not meet the Applicable Codes (hereinafter "deficiency").
- (d) The Tribe shall cause the design and construction calculations, and plans and specifications that form the basis for new or structurally modified Gaming Facility construction (the "Design and Building Plans") to be available to the NIGC for inspection and copying by the NIGC upon its request.
- (e) In the event that material changes to a structural detail of the Design and Building Plans will result from contract change

orders or any other changes in the Design and Building Plans, such changes shall be reviewed by the qualified plan checker or review firm and field verified by the Inspectors for compliance with the Applicable Codes.

- (f) The Tribe shall maintain during construction all structural contract change orders for inspection and copying by the NIGC upon its request.
- (g) The Tribe shall maintain the Design and Building Plans depicting the as-built Gaming Facility, unless and until superseded by subsequent as-built Design and Building Plans upon which the superseding construction was based and shall make the same available to the NIGC for inspection and copying.
- (h) Upon final certification by the Inspectors that the Gaming Facility meets the Applicable Codes, the Tribal Gaming Commission shall forward the Inspectors' certification to the NIGC within ten (10) days of issuance.
- (i) Any failure to remedy within a reasonable period of time any material and timely raised deficiency that poses a serious or significant risk to the health or safety of any occupant shall be treated as a violation of these Procedures and be subject to enforcement action by the Secretary or the NIGC.
- (j) The Tribe shall also take all necessary steps to reasonably ensure the ongoing availability of sufficient and qualified fire suppression services to the Gaming Facility as set forth below:
  - (1) Within thirty (30) days after the effective date of these Procedures, and not less than biennially thereafter, the Gaming Facility shall be inspected, at the Tribe's expense, by a fire inspector certified by the ICC or the National Fire Protection Association and independent of Gaming Operation management, for purposes of certifying that the Gaming Facility meets a reasonable standard of fire safety and life safety; *provided*, that if a qualified fire inspector has certified within twelve (12) months prior to the effective date of these Procedures that the Gaming Facility

meets a reasonable standard of fire and life safety, the Tribe may satisfy this requirement by submitting a copy of that certification to the NIGC, and thereafter having the Gaming Facility inspected biennially in accordance with this subdivision;

- (2) The NIGC shall be entitled to designate and have a qualified representative or representatives, which may include local fire suppression entities, present during the inspection. During such inspection, the NIGC's representative(s) shall specify to the fire inspector any condition that the representative(s) reasonably believes would preclude certification of the Gaming Facility as meeting a reasonable standard of fire safety and life safety;
- (3) The fire inspector shall issue to the Tribal Gaming Commission and a report on the inspection within fifteen (15) days after its completion, or within thirty (30) days after commencement of the inspection, whichever first occurs, identifying any deficiency in fire safety or life safety at the Gaming Facility or in the ability of the Tribe to meet reasonably expected fire suppression needs of the Gaming Facility;
- (4) Within twenty-one (21) days after the issuance of the report, the fire inspector shall also require and approve a specific plan for correcting deficiencies, whether in fire safety or life safety, at the Gaming Facility or in the Tribe's ability to meet the reasonably expected fire suppression needs of the Gaming Facility, including deficiencies identified by the NIGC's representative. A copy of the report and plan of correction shall be delivered to the NIGC through the Tribal Gaming Commission.
- (5) Immediately upon correction of all deficiencies identified in the report and plan of correction, the fire inspector shall certify in writing to the Tribal Gaming Commission and the NIGC that all deficiencies have been corrected;



- (6) Any failure to correct all deficiencies identified in the report and plan of correction within a reasonable period of time shall be a violation of these Procedures, and any failure to promptly correct those deficiencies that pose a serious or significant risk to the health or safety of any occupants shall be a violation of these Procedures and grounds for enforcement action by the NIGC; and
- (7) Consistent with its obligation to ensure the safety of those within the Gaming Spaces, the Tribe shall promptly notify the NIGC of circumstances that it reasonably believes pose a serious or significant risk to the health or safety of any occupants, and take prompt action to correct such circumstances. Any failure to remedy within a reasonable period of time any serious or significant risk to health or safety shall be treated as a violation of these Procedures and subject to enforcement action by the NIGC.

**Sec. 6.4.3. Gaming Employees.**

- (a) Every Gaming Employee shall obtain, and thereafter maintain current, a valid tribal gaming license which license and determination shall be subject to biennial renewal; provided that in accordance with Section 6.4.9, those persons may be employed on a temporary or conditional basis pending completion of the licensing process.

**Sec. 6.4.4. Gaming Resource Suppliers.**

- (a) Every Gaming Resource Supplier shall be licensed by the Tribal Gaming Commission prior to the sale, lease, or distribution, or further sale, lease, or distribution, of any Gaming Resources to or in connection with the Tribe's Gaming Operation or Facility, every two (2) years for continuing compliance. In connection with such a review, the Tribal Gaming Commission shall require the Gaming Resource Supplier to update all information provided in the previous application.
- (b) Any agreement between the Tribe and a Gaming Resource Supplier shall be deemed to include a provision for its

termination without further liability on the part of the Tribe, except for the bona fide payment of all outstanding sums (exclusive of interest) owed as of, or payment for services or materials received up to, the date of termination, upon revocation or nonrenewal of the Gaming Resource Supplier's license by the Tribal Gaming Commission.

- (c) Notwithstanding subdivision (A.), the Tribal Gaming Commission may license a Management Contractor for a period of no more than seven (7) years. The Tribal Gaming Commission may elect to license a person or entity as a Gaming Resource Supplier. Subject to the Tribal Gaming Commission's compliance with the requirements of this subdivision, a Gaming Resource Supplier licensed under this subdivision may, during and only during the period in which the determination of suitability remains valid, engage in the sale, lease, or distribution of Gaming Resources to or in connection with the Tribe's Gaming Operation or Facility. The issuance of a license under this subdivision is in all cases subject to any later determination by the Tribal Gaming Agency that the Gaming Resource Supplier is not suitable or to a tribal gaming license suspension or revocation pursuant to Section 6.5.1, and does not extend the time during which the determination of suitability relied on by the Tribal Gaming Commission is valid. Nothing in this subdivision affects the obligations of the Tribal Gaming Commission, or of the Gaming Resource Supplier, under Sections 6.5.2 and 6.5.6 of these Procedures.

#### **Sec. 6.4.5. Financial Sources.**

- (a) Subject to subdivision (h) of this Section, each Financial Source shall be licensed by the Tribal Gaming Commission prior to the Financial Source extending financing in connection with the Tribe's Gaming Facility or Gaming Operation.
- (b) A license issued under this section shall be reviewed at least every two (2) years for continuing compliance. In connection with that review, the Tribal Gaming Commission shall require the Financial Source to update all information provided in the Financial Source's previous application. For purposes of this

section, that review shall be deemed to constitute an application for renewal.

- (c) A Gaming Resource Supplier who provides financing exclusively in connection with the provision, sale, or lease of Gaming Resources obtained from that Gaming Resource Supplier may be licensed solely in accordance with the licensing procedures applicable, if at all, to Gaming Resource Suppliers, and need not be separately licensed as a Financial Source under this section.
- (d) The Tribal Gaming Commission may license a person or entity as a Financial Source without requiring it to apply to the State Gaming Agency for a determination of suitability. Subject to the Tribal Gaming Commission's compliance with the requirements of this subdivision, a Financial Source licensed under this subdivision may, during and only during the period in which the determination of suitability remains valid, engage in financing in connection with the Tribe's Gaming Operation or Facility, without applying to the State Gaming Agency for a determination of suitability. A license issued under this subdivision expires upon the revocation or expiration of the determination of suitability relied on by the Tribal Gaming Commission.
- (e) (1) The Tribal Gaming Commission may, at its discretion, exclude from the licensing requirements of this section the following Financial Sources under the circumstances stated:
  - (A) any federally-regulated or State-regulated bank, savings and loan association, or other federally-or State-regulated lending institution;
  - (B) an entity identified by the Commission's Uniform Statewide Tribal Gaming Regulation CGCC-2, subdivision (f) (as in effect on the date the parties execute these Procedures), when that entity is a Financial Source solely by reason of being (i) a purchaser or a holder of debt securities or other forms of indebtedness issued directly or indirectly by the Tribe for a Gaming Facility or for the

Gaming Operation or (ii) the owner of a participation interest in any amount of indebtedness for which a Financial Source described in subdivision (h)(1)(A), or any fund or other investment vehicle which is administered or managed by any such Financial Source, is the creditor;

- (C) any investor who, alone or together with any person(s) controlling, controlled by or under common control with such investor, holds less than ten percent (10%) of all outstanding debt securities or other forms of indebtedness issued directly or indirectly by the Tribe for a Gaming Facility or for the Gaming Operation;
  - (D) any agency of the federal government, or of a tribal, State or local government providing financing, together with any person purchasing any debt securities or other forms of indebtedness of the agency to provide such financing;
  - (E) a real estate investment trust (as defined in 26 U.S.C. § 856(a)) which is publicly traded on a stock exchange, registered with the Securities and Exchange Commission, and subject to the regulatory oversight of the Securities and Exchange Commission; and
  - (F) an entity or category of entities that the Tribal Gaming Commission determines can be excluded from the licensing requirements of this section without posing a threat to the public interest or the integrity of the Gaming Operation.
- (2) The following are not Financial Sources for purposes of this section:
- (A) an entity identified by the Commission's Uniform Statewide Tribal Gaming Regulation CGCC-2,

subdivision (h) (as in effect on the effective date of these Procedures); and

- (B) a person or entity whose sole connection with a provision or extension of financing to the Tribe is to provide loan brokerage or debt servicing for a Financial Source at no cost to the Tribe or the Gaming Operation, provided that no portion of any financing provided is an extension of credit to the Tribe or the Gaming Operation by that person or entity.

#### **Sec. 6.4.6. Processing Tribal Gaming License Applications.**

- (a) Each Applicant for a tribal gaming license shall submit the completed application along with the required information and an application fee, if required, to the Tribal Gaming Commission in accordance with the rules and regulations of that agency.
- (b) At a minimum, the Tribal Gaming Commission shall require submission and consideration of all information required under IGRA, including parts 556 and 558 of title 25 of the Code of Federal Regulations, for licensing primary management officials and key employees as those terms are defined by 25 C.F.R. §§ 502.14 and 502.19 as may be amended from time to time.
- (c) For Applicants that are business entities, these licensing provisions shall apply to the entity as well as: (i) each of its officers, limited liability company members, and directors; (ii) each of its principal management employees, including any chief executive officer, chief financial officer, chief operating officer, and general manager; (iii) each of its owners or partners, if an unincorporated business; (iv) each of its shareholders who owns more than ten percent (10%) of the shares of the corporation, if a corporation, or who has a direct controlling interest in the Applicant; and (v) each person or entity (other than a Financial Source that the Tribal Gaming Commission has determined does not require a license under Section 6.4.5) that, alone or in combination with others, has provided financing in connection with any Gaming Operation or Class III Gaming authorized under

these Procedures, if that person or entity provided more than ten percent (10%) of either the start-up capital or the operating capital, or of a combination thereof, over a twelve (12) month period. For purposes of this subdivision, where there is any commonality of the characteristics identified in this Section 6.4.6, subdivision(c)(i) through (c)(v), inclusive, between any two (2) or more entities, those entities may be deemed to be a single entity. For purposes of this subdivision, a direct controlling interest in the Applicant referred to in subdivision (c)(iv) excludes any passive investor or anyone who has an indirect or only a financial interest and does not have ability to control, manage, or direct the management decisions of the Applicant.

- (d) Nothing herein precludes the Tribe or Tribal Gaming Commission from requiring more stringent licensing requirements.

#### **Sec. 6.4.7. Suitability Standard Regarding Gaming Licenses.**

- (a) In reviewing an application for a tribal gaming license, and in addition to any standards set forth in the Gaming Ordinance, the Tribal Gaming Commission shall consider whether issuance of the license is inimical to public health, safety, or welfare, and whether issuance of the license will undermine public trust that the Gaming Operation is free from criminal and dishonest elements and would be conducted honestly.
- (b) A license may not be issued unless, based on all information and documents submitted, the Tribal Gaming Commission is satisfied that the Applicant, and in the case of an entity, each individual identified in Section 6.4.6, subdivision (c) meets all of the following requirements:
  - (1) The person is of good character, honesty, and integrity;
  - (2) The person's prior activities, criminal record (if any), reputation, habits, and associations do not pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the conduct of

gaming, or in the carrying on of the business and financial arrangements incidental thereto; and

- (3) The person is in all other respects qualified to be licensed as provided, and meets the criteria established by, IGRA, NIGC regulations, the Gaming Ordinance, and any other criteria adopted by the Tribal Gaming Commission or the Tribe; provided, however, an Applicant shall not be found to be unsuitable solely on the ground that the Applicant was an employee of a tribal gaming operation in California that was conducted prior to May 16, 2000.

#### **Sec. 6.4.8. Background Investigations of Applicants**

- (a) The Tribal Gaming Commission shall conduct or cause to be conducted all necessary background investigations reasonably required to determine that the Applicant is qualified for a gaming license under the standards set forth in Section 6.4.7, and to fulfill all applicable requirements for licensing under IGRA, NIGC regulations and the Gaming Ordinance. The Tribal Gaming Commission shall not issue a gaming license, other than a temporary license pursuant to Section 6.4.9, until a determination is made that those qualifications have been met.
- (b) In lieu of completing its own background investigation, and to the extent that doing so does not conflict with or violate IGRA or the Tribe's Gaming Ordinance, and contingent upon the State Gaming Agency's agreement, the Tribal Gaming Commission may contract with the State Gaming Agency for the conduct of background investigations, may rely on a State determination of suitability previously issued under a Class III Gaming compact or Secretarial Procedures involving another Tribe and the State, or may rely on a State Gaming Agency license previously issued to the Applicant, to fulfill some or all of the Tribal Gaming Commission's background investigation obligations.
- (c) If the Tribal Gaming Commission contracts with the State Gaming Agency for the conduct of background investigations, then an Applicant for a tribal gaming license shall be required

to provide releases to the State Gaming Agency to make available to the Tribal Gaming Commission background information regarding the Applicant. The State Gaming Agency shall cooperate in furnishing to the Tribal Gaming Commission that information, unless doing so would violate California State or federal law, would violate any agreement the State Gaming Agency has with a source of the information other than the Applicant, or would impair or impede a criminal investigation, or unless the Tribal Gaming Commission cannot provide sufficient safeguards to assure the State Gaming Agency that the information will remain confidential.

- (d) In lieu of obtaining summary criminal history information from the NIGC, the Tribal Gaming Commission may, pursuant to the provisions in subdivisions (d) through (j), obtain such information from the California Department of Justice. If the Tribe adopts an ordinance confirming that article 6 (commencing with Section 11140) of chapter 1 of title 1 of part 4 of the California Penal Code is applicable to members, investigators, and staff of the Tribal Gaming Commission, and those members, investigators, and staff thereafter comply with that ordinance, then, for purposes of carrying out its obligations under this section, the Tribal Gaming Commission shall be an entity entitled to request and receive State summary criminal history information, within the meaning of subdivision (b)(13) of Section 11105 of the California Penal Code.
- (e) The information received shall be used by the requesting agency solely for the purpose for which it was requested and shall not be reproduced for secondary dissemination to any other employment or licensing agency. Additionally, any person intentionally disclosing information obtained from personal or confidential records maintained by a State agency or from records within a system of records maintained by a government agency may be subject to prosecution.
- (f) For the purposes of subdivision (d), the Tribal Gaming Commission shall submit to the California Department of Justice fingerprint images and related information required by the California Department of Justice of all Applicants, as defined by



Section 2.2, for the purposes of obtaining information as to the existence and content of a record of State or federal convictions and State or federal arrests and also information as to the existence and content of a record of State or federal arrests for which the California Department of Justice establishes that the person is free on bail or on his or her recognizance pending trial or appeal.

- (g) When received, the California Department of Justice shall forward to the Federal Bureau of Investigation requests for federal summary criminal history information received pursuant to this section. The California Department of Justice shall review the information returned from the Federal Bureau of Investigation and compile and disseminate a response to the Tribal Gaming Commission.
- (h) The California Department of Justice shall provide a State or federal level response to the Tribal Gaming Commission pursuant to Penal Code Section 11105, subdivision (p)(1).
- (i) For the persons described in subdivision (f), the Tribal Gaming Commission shall request from the California Department of Justice subsequent notification service, as provided pursuant to Section 11105.2 of the Penal Code.
- (j) The California Department of Justice shall charge a fee sufficient to cover the cost of processing the request described in this section.

#### **Sec. 6.4.9. Temporary Licensing.**

- (a) If the Applicant has completed a license application in a manner satisfactory to the Tribal Gaming Commission, and that agency has conducted a preliminary background investigation, and the investigation or other information held by that agency does not indicate that the Applicant has a criminal history or other information in his or her background that would either automatically disqualify the Applicant from obtaining a tribal gaming license or cause a reasonable person to investigate further before issuing a license, or that the Applicant is otherwise

unsuitable for licensing, the Tribal Gaming Commission may issue a temporary tribal gaming license and may impose such specific conditions thereon pending completion of the Applicant's background investigation, as the Tribal Gaming Commission in its sole discretion shall determine.

- (b) Special fees may be required by the Tribal Gaming Commission to issue or maintain a temporary tribal gaming license.
- (c) A temporary tribal gaming license shall remain in effect until suspended or revoked, or a final determination by the Tribal Gaming Commission is made on the application, or for a period for up to one (1) year, whichever comes first, unless the Tribe's Gaming Ordinance prescribes a shorter duration for a temporary tribal gaming license.
- (d) At any time after issuance of a temporary tribal gaming license, the Tribal Gaming Commission shall or may, as the case may be, suspend or revoke it in accordance with the provisions of Sections 6.5.1 or 6.5.5.
- (e) Nothing herein shall be construed to relieve the Tribe of any obligation under part 558 of title 25 of the Code of Federal Regulations as now in effect or that may be revised from time to time.

#### **Sec. 6.5. Tribal Gaming License Issuance.**

Upon completion of the necessary background investigation, the Tribal Gaming Commission may issue a tribal gaming license on a conditional or unconditional basis. Nothing herein shall create a property or other right of an Applicant in an opportunity to be licensed, or in a tribal gaming license itself, both of which shall be considered to be privileges granted to the Applicant in the sole discretion of the Tribal Gaming Commission.

##### **Sec. 6.5.1. Denial, Suspension, or Revocation of Licenses.**

- (a) Any Applicant's application for a tribal gaming license may be denied, and any license issued may be revoked, if the Tribal Gaming Commission determines that the application is

incomplete or deficient, or if the Applicant is determined to be unsuitable or otherwise unqualified for a tribal gaming license.

- (b) Pending consideration of revocation, the Tribal Gaming Commission may suspend a tribal gaming license in accordance with Section 6.5.5.
- (c) All rights to notice and hearing shall be governed by tribal law. The Applicant shall be notified in writing of any hearing and given notice of any intent to suspend or revoke the tribal gaming license.

**Sec. 6.5.2. Renewal of Licenses; Extensions; Further Investigation.**

- (a) Except as provided in Section 6.4.4, subdivision (c), the term of a tribal gaming license shall not exceed two (2) years, and application for renewal of a license must be made prior to its expiration. Applicants for renewal of a license shall provide updated material as requested, on the appropriate renewal forms, but, at the discretion of the Tribal Gaming Commission, may not be required to resubmit historical data previously submitted or that is otherwise available to the Tribal Gaming Commission. At the discretion of the Tribal Gaming Commission, an additional background investigation may be required at any time if the Tribal Gaming Commission determines the need for further information concerning the Applicant's continuing suitability or eligibility for a license.

**Sec. 6.5.3. Identification Cards.**

- (a) The Tribal Gaming Commission shall require that all persons who are required to be licensed wear, in plain view at all times while in the Gaming Facility, identification badges issued by the Tribal Gaming Commission. The Tribal Gaming Commission may allow temporary exceptions to this provision for the purposes of authorizing investigators who are actively investigating a matter within the Gaming Facility to monitor Gaming Activities.

- (b) Identification badges must display information including, but not limited to, a photograph and an identification number that is adequate to enable agents of the Tribal Gaming Commission to readily identify the person and determine the validity and date of expiration of his or her license.
- (c) The Tribe shall upon request provide the NIGC with the name, badge identification number (if any), and job title of all Gaming Employees.

#### **Sec. 6.5.4. Fees for Tribal Gaming License.**

The fees for all tribal gaming licenses shall be set by the Tribal Gaming Commission.

#### **Sec. 6.5.5. Summary Suspension of Tribal Gaming License.**

The Tribal Gaming Commission may summarily suspend the tribal gaming license of any licensee if the Tribal Gaming Commission determines that the continued licensing of the person could constitute a threat to the public health or safety or may violate the Tribal Gaming Commission's licensing or other standards. The Tribal Gaming Commission shall notify the NIGC within seven (7) days of any such determination. Any right to notice or hearing in regard thereto shall be governed by tribal law.

#### **Sec. 6.6. Reserved**

### **SECTION 7.0. APPROVAL AND TESTING OF GAMING DEVICES.**

#### **Sec. 7.1. Gaming Device Approval.**

- (a) No Gaming Device may be offered for play unless all of the following occurs:
  - (1) the manufacturer or distributor that sells, leases, or distributes such Gaming Device unless they have been licensed by the Tribal Gaming Commission;
  - (2) the software for each Class III game authorized for play on the Gaming Device has been tested, approved and certified by an independent gaming test laboratory or State or national governmental gaming test laboratory

(“Gaming Test Laboratory”) as operating in accordance with technical standards that meet or exceed industry standards;

- (3) a copy of the certification by the Gaming Test Laboratory, specified in subdivision (a)(2), is provided to the Tribal Gaming Commission by electronic transmission or by mail;
- (4) the software for the games authorized for play on the Gaming Device is tested by the Tribal Gaming Commission to ensure each Class III game authorized for play on the Gaming Device has the correct electronic signature prior to insertion into the Gaming Device, or if the software is to be installed on a server to which one or more Gaming Devices will be connected, prior to the connection of Gaming Devices to the server;
- (5) the hardware and associated equipment for each type of Gaming Device has been tested by the Gaming Test Laboratory prior to operation by the public to ensure operation in accordance with the standards established by the Tribal Gaming Commission that meet or exceed industry standards; and
- (6) the hardware and associated equipment for the Gaming Device has been tested by the Tribal Gaming Commission to confirm operation in accordance with the manufacturer’s specifications.

**Sec. 7.2. Gaming Test Laboratory Selection.**

The Gaming Test Laboratory shall be an independent commercial gaming test laboratory that is (i) recognized in the gaming industry as competent and qualified to conduct scientific tests and evaluations of Gaming Devices, (ii) licensed or approved by any state or tribal government within the jurisdiction of which the operation of Gaming Devices is authorized, and (iii) does not at the time of testing have a suspended license with any state gaming agency.

**Sec. 7.3. Maintenance of Records of Testing Compliance.**

The Tribal Gaming Commission shall prepare and maintain records of its compliance with Section 7.1 while any Gaming Device is on the gaming floor and for a period of one (1) year after the Gaming Device is removed from the gaming floor and shall make those records available for inspection by the NIGC upon request.

**Sec. 7.4 Reserved.**

**Sec. 7.5. Technical Standards.**

The Tribal Gaming Commission shall provide to the NIGC copies of its regulations for technical standards applicable to the Tribe's Gaming Devices at least thirty (30) days before the commencement of the Gaming Operation or within thirty (30) days after the effective date of these Procedures, whichever is later, and thereafter at least thirty (30) days before the effective date of any revisions to the regulations, unless exigent circumstances require that any revisions to the regulations take effect sooner in order to ensure Class III game integrity or otherwise to protect the public or the Gaming Operation, in which event the revisions to the regulations shall be provided to the NIGC as soon as reasonably practicable.

**Sec. 7.6. Transportation of Gaming Devices**

- (a) Subject to the provisions of subdivision (b), the Tribal Gaming Commission shall not permit any Gaming Device to be transported to or from the Tribe's Indian lands except in accordance with applicable law and at least ten (10) days' notice to the Sheriff's Department for the County in which the land is located.
- (b) Transportation of a Gaming Device from a Gaming Facility within California is permissible only if:
  - (1) The final destination of the Gaming Device is a gaming facility of any Tribe in California that has a Class III Gaming compact with the State or Secretarial Procedures that makes lawful the operation of Gaming Devices;

- (2) The final destination of the Gaming Device is any other State in which possession of the Gaming Device is made lawful by that State's law, tribal-State compact or Secretarial Procedures;
- (3) The final destination of the Gaming Device is another country, or any State or province of another country, wherein possession of Gaming Devices is lawful; or
- (4) The final destination is a location within California for testing, repair, maintenance, or storage by a person or entity that has been licensed by the Tribal Gaming Commission and has been found suitable for licensure by the State Gaming Agency.

## **SECTION 8.0. INSPECTIONS.**

### **Sec. 8.1. On-Site Regulation.**

These Secretarial Procedures recognize and respect the primary role of the Tribal Gaming Agency to perform on-site regulation and to protect the integrity of the Gaming Activities, the reputation of the Tribe and the Gaming Operation for honesty and fairness, and to maintain the confidence of patrons that tribal governmental gaming in California meets the highest standards of regulation and internal controls. Both the Tribe's Gaming Ordinance and the MOU required by section 8.2, provide the NIGC with the authority and responsibility to ensure the Tribe complies with all terms of these Secretarial Procedures and that the gaming is conducted with integrity and in a manner that protects the health, safety, and other interests of the people of California.

#### **Sec. 8.1.1. Investigation and Sanctions.**

- (a) The Tribal Gaming Commission shall investigate any reported violation of these Procedures and shall require the Gaming Operation to correct the violation upon such terms and conditions as the Tribal Gaming Commission determines are necessary.
- (b) The Tribal Gaming Commission shall be empowered by the Gaming Ordinance to impose fines or other sanctions within the jurisdiction of the Tribe against gaming licensees who interfere

with or violate the Tribe's gaming regulatory requirements and obligations under IGRA, the Gaming Ordinance, or these Procedures. Any right to notice or hearing in regard thereto shall be governed by tribal law. Nothing in these procedures expands, modifies, or impairs the jurisdiction of the Tribal Gaming Commission under IGRA, the Tribal Gaming Ordinance or other applicable tribal law.

- (c) The Tribal Gaming Commission shall report individual or continuing violations of these Procedures that pose a significant threat to gaming integrity or public health and safety, and any failures to comply with the Tribal Gaming Commission's orders, to the NIGC within ten (10) days of discovery.

#### **Sec. 8.2. Memorandum of Understanding with the National Indian Gaming Commission**

- (a) As set forth in the preamble of these Secretarial Procedures, the mediator's selected compact provided the State with authority to regulate the Tribe's Gaming Activities in the event that the State consented to the mediator's selected compact pursuant to 25 U.S.C. § 2710(d)(7)(B)(vi). The State, however, did not consent to regulate the Tribe's Gaming Activities under the mediator's selected compact and the Secretary cannot unilaterally obligate the State to carry out any regulatory responsibilities under these Secretarial Procedures.
- (b) Accordingly, the Tribe is responsible for ensuring compliance with these Secretarial Procedures, and the Tribal Gaming Agency shall fulfill the primary regulatory responsibilities set forth in these Secretarial Procedures.
- (c) The Tribe shall enter into a Memorandum of Understanding ("MOU") with the Chairman of the NIGC documenting the agreed-upon responsibilities and functions of the NIGC with respect to these Secretarial Procedures and the Tribe's Gaming Activities authorized by the Gaming Ordinance and governed by these Secretarial Procedures.
- (d) The Tribe shall not operate any Gaming Activities under these Secretarial Procedures in a manner that is inconsistent with any



federal regulations such as but not limited to NIGC Minimum Internal Control Standards or any other provision or standard subsequently agreed to in the MOU entered into with the Chairperson of the NIGC.

**Sec. 8.3. Cooperation with Tribal Gaming Agency**

The NIGC shall meet no less than annually with the Tribal Gaming Agency and cooperate in all matters relating to the enforcement of the provisions of these Secretarial Procedures.

**SECTION 9.0. RULES AND REGULATIONS FOR THE OPERATION AND MANAGEMENT OF THE GAMING OPERATION AND FACILITY.**

**Sec. 9.1. Adoption of Regulations for Operation and Management; Minimum Standards.**

It is the responsibility of the Tribal Gaming Commission to conduct on-site gaming regulation and control in order to enforce the terms of these Procedures, of IGRA, of NIGC gaming regulations, and of the Gaming Ordinance, to protect the integrity of the Gaming Activities, the reputation of the Tribe and the Gaming Operation for honesty and fairness, and to maintain the confidence of patrons that tribal governmental gaming in California meets the highest standards of fairness and internal controls. To meet those responsibilities, the Tribal Gaming Commission shall be vested with the authority to promulgate, and shall promulgate and enforce, rules and regulations governing, at a minimum, the following subjects pursuant to the standards and conditions set forth therein:

- (a) the enforcement of all relevant laws and rules with respect to the Gaming Activities, Gaming Operation and Gaming Facility, and the conduct of investigations and hearings with respect thereto, and to any other subject within its jurisdiction;
- (b) the physical safety of Gaming Facility patrons and employees, and any other person while in the Gaming Facility. Except as provided in Section 12.2, nothing herein shall be construed, however, to make applicable to the Tribe any State laws, regulations, or standards governing the use or sale of tobacco or products containing nicotine; the prevention of illegal activity within the Gaming Facility or with regard to the Gaming Operation or Gaming Activities, including, but not limited to,

the maintenance of employee procedures and a surveillance system as provided in subdivisions (e) and (f);

- (c) maintenance of a closed-circuit television surveillance system consistent with industry standards for gaming facilities of the type and scale operated by the Tribe, which system shall be approved by, and may not be modified without the approval of, the Tribal Gaming Commission. The Tribal Gaming Commission shall have current copies of the Gaming Facility floor plan and closed-circuit television surveillance system at all times, and any modifications thereof first shall be approved by the Tribal Gaming Commission;
- (d) establishment of employee procedures designed to permit detection of any irregularities, theft, cheating, fraud, or the like, consistent with industry practice;
- (e) maintenance of a list of persons permanently excluded from the Gaming Facility who, because of their past behavior, criminal history, or association with persons or organizations, pose a threat to the integrity of the Gaming Activities of the Tribe or to the integrity of regulated gambling within California. The Tribal Gaming Commission and the State Gaming Agency shall make a good faith effort to share information regarding such permanent exclusions. Nothing herein is intended to grant any third party the right to sue based upon any sharing of information;
- (f) the conduct of an audit of the Gaming Operation, not less than annually, by an independent certified public accountant, in accordance with industry standards; submission to, and prior approval by, the Tribal Gaming Commission of the rules and regulations of each Class III Gaming to be operated by the Tribe, and of any changes in those rules and regulations. No Class III game may be offered for play that has not received Tribal Gaming Commission approval;
- (g) the obligation of the Gaming Facility and the Gaming Operation to maintain a copy of the rules, regulations, and procedures for each Class III game as played, including, but not limited to, the

method of play and the odds and method of determining amounts paid to winners;

- (h) specifications and standards to ensure that information regarding the method of play, odds, and payoff determinations is visibly displayed or available to patrons in written form in the Gaming Facility and to ensure that betting limits applicable to any gaming station shall be displayed at that gaming station;
- (i) maintenance of a cashier's cage in accordance with tribal internal control standards that meet or exceed industry standards for such facilities;
- (j) specification of minimum staff and supervisory requirements for each Gaming Activity to be conducted; and
- (k) technical standards and specifications in conformity with the requirements of these Procedures for the operation of Gaming Devices and other games authorized herein or as provided in any regulation approved by the Gaming Regulators' Association.

## **Sec. 9.2. Manner in Which Incidents Are Reported.**

The Tribal Gaming Commission shall require the recording of any and all occurrences within the Gaming Facility that deviate from normal operating policies and procedures (hereinafter "incidents"). The Tribal Gaming Commission shall transmit copies of incident reports that it reasonably believes concern a significant or continued threat to public safety or gaming integrity to the NIGC within a reasonable period of time, not to exceed seven (7) days, after the incident. The procedure for recording incidents pursuant to this section shall also do all of the following:

- (a) specify that security personnel record all incidents, regardless of an employee's determination that the incident may be immaterial (and all incidents shall be identified in writing);
- (b) require the assignment of a sequential number to each incident report;

- (c) provide for permanent reporting in indelible ink in a bound notebook from which pages cannot be removed and in which entries are made on each side of each page, and/or in electronic form, provided the information is recorded in a manner so that, once the information is entered, it cannot be deleted or altered and is available to the NIGC.
- (d) require that each report include, at a minimum, all of the following:
  - (1) the record number;
  - (2) the date;
  - (3) the time;
  - (4) the location of the incident;
  - (5) a detailed description of the incident;
  - (6) the persons involved in the incident; and
  - (7) the security department employee assigned to the incident.

**Sec. 9.3. Minimum Internal Control Standards (MICS).**

- (a) The Tribe shall conduct its Gaming Activities pursuant to an internal control system that implements minimum internal control standards for Class III Gaming that are no less stringent than those contained in the Minimum Internal Control Standards of the NIGC (25 C.F.R. § 542), as they existed on the date of the issuance of these procedures, and as they have been or may be amended from time to time, without regard to the NIGC's authority to promulgate, enforce, or audit the standards. (2) any subsequent NIGC regulation or NIGC guidance that is at least as stringent as the Minimum Internal Control Standards of the NIGC, including the August 14, 2018, NIGC Guidance on the class III Minimum Internal Control Standards. These standards are posted on the NIGC website(s) and are referred to herein as the "Procedures MICS." These standards are posted on the NIGC's website(s) and are referred to herein as the "Procedure MICS." This requirement is met through compliance with the provisions set forth in this section and Sections 9.1 and 9.2. In the event that a new game is approved by the Secretary in accordance with the requirements of section 14.1 and controls specific to that game have not been promulgated by the NIGC, the Tribal Gaming Agency will consult

with other regulatory jurisdictions and implement controls no less stringent than existing industry standards for that game.

- (b) In the event the NIGC withdraws its regulations at 25 C.F.R. § 542, the Procedure MICS, as they may be amended from time to time, shall continue to serve as the minimum internal control standards for the purposes of these Procedures.
- (c) The minimum internal control standards set forth in the Procedures MICS shall apply to all Gaming Activities, Gaming Facilities and the Gaming Operation; however, the Procedures MICS are not applicable to any class II gaming activities. Should the terms in the Procedures MICS be inconsistent with these Secretarial Procedures, the terms in these Procedures shall prevail.

#### **Sec. 9.4. Program to Mitigate Problem Gambling.**

The Gaming Operation shall establish a program, approved by the Tribal Gaming Commission, to mitigate pathological and problem gambling by implementing the following measures:

- (a) It shall train Gaming Facility supervisors and gaming floor employees on responsible gaming and to identify and manage problem gambling;
- (b) It shall make available to patrons at conspicuous locations and ATMs in the structure(s) in which Gaming Spaces are located educational and informational materials that aim at the prevention of problem gambling and that specify where to find assistance, and shall display at conspicuous locations and at ATMs within the structure(s) in which Gaming Spaces are located signage bearing a toll-free help-line number where patrons may obtain assistance for gambling problems;
- (c) It shall establish self-exclusion measures whereby a self-identified problem gambler may request the halt of promotional mailings, the revocation of privileges for casino services, the denial or restraint on the issuance of credit and check cashing services, and exclusion from the structure(s) within which Gaming Spaces are located;

- (d) It shall establish involuntary exclusion measures that allow the Gaming Operation to halt promotional mailings, deny or restrain the issuance of credit and check-cashing services, and deny access to the structure(s) within which Gaming Spaces are located to patrons who have exhibited signs of problem gambling. No person involuntarily excluded under such measures shall be entitled to assert any claim whatsoever against the Tribe, the Gaming Operation or any official, employee or agent of the Tribe or the Gaming Operation as the result of such exclusion;
- (e) It shall make diligent efforts to prevent underage individuals from loitering in Gaming Spaces; and
- (f) It shall assure that advertising and marketing of the Tribe's Gaming Activities contain a responsible gambling message and a toll-free help-line number for problem gamblers, where practical, and that they make no false or misleading claims.

Any deficiency in the effectiveness of these measures or standards shall not constitute a material breach of these Procedures as long as the Tribe has made reasonable efforts to implement the foregoing.

Nothing herein is intended to grant any third party the right to sue the Tribe, the Gaming Operation, any officer, agent or employee of the Tribe or the Gaming Operation, or the State, the State Gaming Agency or any officer, agent or employee of the State based upon the implementation or any alleged deficiency or violation of these measures.

#### **Sec. 9.5. Enforcement of Regulations.**

The Tribal Gaming Commission shall ensure the enforcement of the rules, regulations, and specifications promulgated under these Procedures.

#### **Sec. 9.6. State Civil and Criminal Jurisdiction.**

Nothing in these Procedures affects the civil or criminal jurisdiction of the State under Public Law 280 (18 U.S.C. § 1162; 28 U.S.C. § 1360) or under IGRA, to the extent applicable.

### **Sec. 9.7. Tribal Gaming Commission Members.**

- (a) The Tribe shall take all reasonable steps to ensure that members of the Tribal Gaming Commission are free from corruption, undue influence, compromise, and conflicting interests in the conduct of their duties under these Procedures; shall adopt a conflict-of-interest code to that end; and shall ensure the prompt removal of any member of the Tribal Gaming Commission who is found to have acted in a corrupt or compromised manner, or is found to have violated the conflict of interest code.
- (b) The Tribe shall conduct a background investigation on each prospective member of the Tribal Gaming Commission; provided that if such member is elected through a tribal election process, that member may not participate in any Tribal Gaming Commission matters under these Procedures unless a background investigation has been concluded and the member has been found to be suitable.
- (c) The Tribe shall conduct a background investigation on each prospective employee of the Tribal Gaming Commission to ensure he or she satisfies the requirements of Section 6.4.7 Suitability Standard Regarding Gaming Licenses.

### **SECTION 10.0. PATRON DISPUTES.**

The Tribal Gaming Commission shall promulgate regulations consistent with fairness and prevailing industry standards governing patron disputes over the play or operation of any Gaming Activity, including any refusal to pay to a patron any alleged winnings from any Gaming Activities. The regulations shall meet the following minimum standards:

- (a) If patron makes an oral or written complaint to personnel of the Gaming Operation over the play or operation of any Class III game within three (3) calendar days of the play or operation at issue and the Gaming Operation does not resolve the complaint to the patron's satisfaction, the Gaming Operation shall provide the patron with a form on which the patron may submit within fifteen (15) calendar days of receipt of the form his/her complaint in writing to the Tribal Gaming Commission for resolution by the Tribal Gaming

Commission, and informing the patron that if dissatisfied with the Tribal Gaming Commission's resolution and if the amount in dispute is reasonably likely to exceed five hundred dollars (\$500.00), the patron will have the right to seek resolution in either the tribal court system (Tribal Court), if the Tribe has a Tribal Court, or if the Tribe does not have a Tribal Court, by a neutral forum designated and/or retained by the Tribal Gaming Commission for that purpose. If the patron is not provided with the aforesaid form and notification within thirty (30) days of the date upon which the patron timely submitted his/her complaint, the patron shall have 180 days from the date the claim arose in which to file the claim directly with the Tribal Court or neutral forum designated and/or retained by the Tribal Gaming Commission for that purpose;

- (b) Upon receipt of the patron's written request for a resolution of the patron's complaint pursuant to subdivision (a), the Tribal Gaming Commission shall conduct an appropriate investigation, shall provide to the patron a copy of its regulations concerning patron complaints, and shall render a decision in accordance with industry practice. The decision shall be issued within sixty (60) days of the patron's request, shall be in writing, shall be based on the facts surrounding the dispute, and shall set forth the reasons for the decision. If the amount in dispute is five hundred dollars (\$500.00) or less, the Tribal Gaming Commission's decision shall be final and not subject to further review;
- (c) If the patron is dissatisfied with the decision of the Tribal Gaming Commission issued pursuant to subdivision (b) on a complaint involving a disputed amount in excess of five hundred dollars (\$500.00), or if the Tribal Gaming Commission fails to issue a decision within the sixty (60)-day period regardless of the amount in dispute, the patron may request that the dispute be resolved either in the Tribal Court, if the Tribe has a Tribal Court, or by a neutral forum as referenced in subdivision (a). The Tribal Court or other neutral forum must afford the patron with a dispute resolution process that incorporates the essential elements of fairness and due process. Resolution of the dispute before the Tribal Court or other neutral forum shall be at no cost to the claimant (excluding claimant's own attorney's fees and expenses). Consistent with industry practice, if any alleged winnings are found to be a result of a mechanical,



electronic or electromechanical failure and not due to the intentional acts or gross negligence of the Tribe or its agents, the patron's claim for the winnings shall be denied but the patron shall be awarded reimbursement of the amounts wagered by the patron that were lost as a result of any mechanical, electronic or electromechanical failure. The judgment of the Tribal Court or other neutral forum, as appropriate, shall be final and not subject to further review, and the Gaming Operation shall be obligated as a matter of compliance to comply with the judgment of the Tribal Court or other neutral forum, as appropriate; and

- (d) To effectuate its consent to the Tribal Court or other neutral forum, as appropriate in this Section 10.0, the Tribe shall, in the exercise of its sovereignty, waive its right to assert sovereign immunity in connection with the jurisdiction of the Tribal Court or other neutral forum, as appropriate and in any action in the Tribe's designated forum to (i) enforce an obligation provided in this Section 10.0 or to (ii) enforce or execute a judgment based upon the award. However, such waiver shall not apply to claims made against individual tribal officials or employees.

## **SECTION 11.0. RESERVED**

## **SECTION 12.0. PUBLIC AND WORKPLACE HEALTH, SAFETY, AND LIABILITY.**

### **Sec. 12.1. General Requirements.**

The Tribe shall not conduct Class III Gaming in a manner that endangers the public health, safety, or welfare; *provided*, however, that nothing herein shall be construed to make applicable to the Tribe any State laws or regulations governing the use of or sale of tobacco or other products containing nicotine.

### **Sec. 12.2. Tobacco Smoke.**

Notwithstanding Section 12.1, the Tribe agrees to provide a non-smoking area in the Gaming Facility.

### **Sec. 12.3. Health and Safety Standards.**

To protect the health and safety of Gaming Facility patrons and Gaming Employees, the Tribe shall, for any Gaming Facility:

- (a) comply with the Applicable Codes;
- (b) adopt and comply with federal workplace and occupational health and safety standards. Subsequent to an inspection or enforcement action at the Gaming Facility by the Federal Occupational Safety and Health Administration or by another agency of the United States pursuant to federal law, the Tribe will provide a copy of the inspector's report or other documentation of the inspection to the NIGC within ten (10) days of receipt of the report or other documentation of the inspection;
- (c) comply with applicable tribal codes to the extent consistent with the provisions of these Procedures and other applicable federal laws regarding public health and safety;
- (d) although the Tribe is expressly excluded from the definition of "employer" under the federal Equal Employment Opportunity Act [42 U.S.C. § 2000e(b)] and the Americans with Disabilities Act [42 U.S.C. § 12111(5)(B)], and those statutes and other federal statutes dealing with workplace discrimination have been construed by the federal courts to not abrogate tribal sovereign immunity to private causes of action thereunder, the Tribe's policy is to prohibit workplace discrimination, harassment (including sexual harassment) and/or retaliation against Gaming Employees based on federally-protected characteristics and/or classifications, and to provide meaningful recourse to persons claiming to have been subjected to violations of that policy. Notwithstanding the foregoing, and to the extent consistent with applicable federal law, nothing herein shall preclude the Tribe from granting preference in employment, promotion and retention to its own citizens and members of their immediate families, and to citizens of other federally recognized Tribes.

### **Sec. 12.4. Tribal Gaming Facility Standards Ordinance.**

The Tribe shall maintain in effect its ordinance, or ordinances, establishing the standards and obligations described in Section 12.3 to which the Gaming Facility is held, and shall transmit any amendments to the ordinance(s) to the NIGC

not later than thirty (30) days after the effective date of any such amendment(s). In the absence of a promulgated tribal standard in respect to a matter identified in Section 12.3 or the express adoption of an applicable federal statute or regulation, as the case may be, in respect of any such matter, the otherwise applicable federal statute or regulation shall be deemed to have been adopted by the Tribe as the applicable standard.

#### **Sec. 12.5. Insurance Coverage and Claims.**

- (a) Except as provided in this subsection, the Tribe shall obtain and maintain commercial general liability insurance underwritten by an insurer with an A.M. Best rating of A or higher that provides coverage of no less than five million dollars (\$5,000,000) per occurrence for bodily injury, personal injury, and property damage directly arising out of, connected with, or relating to the operation of Class III Gaming Activities (Policy), provided that such injury or damage occurs within Gaming Spaces. Nothing herein requires the Tribe to agree to liability for punitive damages or attorney's fees or to waive its right to assert sovereign immunity in connection therewith. The Policy shall acknowledge in writing that the Tribe has expressly waived, and waived its right to assert, sovereign immunity for the purpose of adjudication in the Tribe's forum of those claims up to the greater of five million dollars (\$5,000,000) or the limits of the Policy and for the purpose of enforcement of any ensuing award or judgment, and shall include an endorsement providing that the insurer shall not invoke tribal sovereign immunity up to the limits of the Policy; however, such endorsement or acknowledgement shall not be deemed to waive or otherwise limit the Tribe's sovereign immunity for any portion of a claim that exceeds five million dollars (\$5,000,000) or the Policy limits, whichever is greater. Notwithstanding the foregoing, the Tribe may self-insure against such claims, whether individually or in conjunction with other Tribes, provided that the Tribe maintains or has readily available financial resources sufficient to satisfy such claims.
- (b) The Tribe shall adopt, and at all times hereinafter shall maintain in continuous force, an ordinance that sets forth the terms and conditions under which the Tribe waives its sovereign immunity to suit for money damages resulting from bodily injury, personal injury, and/or property damage, whether due to the negligent or intentional act(s) of

any tribal official, employee, agent or contractor, sustained in Gaming Spaces and directly and/or arising out of or relating to the operation of Gaming Activities, including procedures for fairly and promptly processing and adjudicating any claims for such money damages; *provided* that nothing in this Section shall require the Tribe to waive its immunity to suit except to the extent of the Policy limits or self-insurance set out above, or to consent to the award of punitive or exemplary damages or attorneys' fees. Nothing herein shall constitute the Tribe's consent to suit in the courts of California or any other jurisdiction other than the Tribe's forum.

**Sec. 12.6. Participation in State Programs Related to Employment.**

- (a) Not later than the effective date of these Procedures, the Tribe will advise the State of its election either to participate in the statutory workers' compensation system as provided in subdivision (a)(1) below or, alternatively, will forward to the NIGC all relevant ordinances that have been adopted and all other documents establishing the Tribe's own workers' compensation system and demonstrating that the Tribe's system is fully operational and compliant with the comparability standards set forth in subdivision (a)(2), including such waivers of the Tribe's sovereign immunity as are necessary to allow Gaming Employees to enforce the Tribe's workers' compensation system. The parties agree that contracts with independent contractors doing business with the Tribe in matters pertaining to the Tribe's Gaming Facility shall require compliance with all State workers' compensation laws and obligations.
- (1) Except as otherwise provided in subsection (2) below, the Tribe agrees that it will participate in the State's workers' compensation program with respect to Gaming Employees. The workers' compensation program includes, but is not limited to, State laws relating to the securing of payment of compensation through one (1) or more insurers duly authorized to write workers' compensation insurance in this State or through self-insurance as permitted under the State's workers' compensation laws. If the Tribe opts to participate in the State's workers' compensation program, all disputes arising from the workers' compensation laws shall be heard by the Workers' Compensation Appeals Board pursuant to the California Labor

Code. If the Tribe elects to participate in the State's workers' compensation system, the Tribe hereby consents to the jurisdiction of the State Workers' Compensation Appeals Board and the courts of the State of California solely for purposes of enforcement of this subdivision.

- (2) In lieu of participating in the State's statutory workers' compensation system, the Tribe may create and maintain a tribal system that provides redress for Gaming Employees' work-related injuries through requiring insurance or self-insurance. This system must include a scope of coverage, provision of up to ten thousand dollars (\$10,000) in medical treatment for an alleged injury until the date that liability for the claim is accepted or rejected, employee choice of physician provisions comparable to those mandated for comparable employees under State law, quality and timely medical treatment provided comparable to the State's medical treatment utilization schedule, availability of an independent medical examination to resolve disagreements on appropriate treatment (by an Independent Medical Reviewer on the State-approved list, a Qualified Medical Evaluator on the State-approved list, or an Agreed Medical Examiner upon mutual agreement of the employer and employee), the right to notice, hearings before an independent tribunal, a means of enforcement against the employer, and benefits (including, but not limited to, temporary and permanent disability, death, supplemental job displacement, and return to work supplement) comparable to those mandated for comparable employees under State law.

- (b) With respect to providing unemployment compensation benefits and unemployment compensation disability benefits for Gaming Employees, the Tribe agrees either to:

- (1) participate in the State's programs, which participation shall include compliance with the provisions of the California Unemployment Insurance Code. If the Tribe so chooses, the Tribe consents to the jurisdiction of the State agencies charged with the enforcement of that Code and of the courts of the State of California for purposes of enforcement, and to waive its right to assert its sovereign immunity in connection therewith; or

- (2) self-insure for providing such benefits, in which case the Tribe shall provide benefits comparable to those available under the State's program.

**Sec. 12.7. Emergency Services Accessibility.**

The Tribe shall make reasonable provisions for adequate emergency fire, medical, and related relief and disaster services for patrons and employees of the Gaming Facility.

**Sec. 12.8. Alcoholic Beverage Service.**

Purchase, sale, and service of alcoholic beverages within Gaming Spaces shall be subject to Tribal and Federal law.

**Sec. 12.9. Possession of Firearms.**

The possession of firearms by any person in the Gaming Facility is prohibited at all times, except for federal, State, tribal or local law enforcement personnel, or tribal security or other personnel authorized by tribal law, state law and/or federal law to possess firearms at the Gaming Facility.

**Sec. 12.10. Labor Relations.**

In the event that the National Labor Relations Board is determined by the United States Supreme Court, the final and unappealable judgment of a federal court within the federal Ninth Judicial Circuit, or an Act of Congress to lack jurisdiction over the Tribe's Gaming Operation as an employer, the Tribe shall confirm to the State that it has enacted and shall continue in effect the Tribal Labor Relations Ordinance set forth in Appendix A of these Procedures.

**SECTION 13.0. RESERVED.**

**SECTION 14.0. EFFECTIVE DATE AND TERM OF THESE SECRETARIAL PROCEDURES.**

**Sec. 14.1. Effective Date.**

These Secretarial Procedures shall be effective immediately when signed by the Assistant Secretary – Indian Affairs.

#### **Sec. 14.2. Term of the Secretarial Procedures.**

Once effective, these Procedures shall remain in effect unless one of the following events occurs:

- (a) These Procedures are terminated by mutual consent of the Parties; or
- (b) The Tribe duly adopts a resolution revoking tribal authority to conduct Class III Gaming upon the Tribe's Indian lands, as provided for in IGRA; or
- (c) In accordance with 16.10.

#### **SECTION 15.0. AMENDMENTS.**

##### **Sec. 15.1. Amendment.**

If the Tribe seeks to amend these Secretarial Procedures, it shall submit a request in writing to the Secretary pursuant to IGRA, provided that, except for a request to amend section 3.0(a), no such request may be sought for 12 months following the Effective Date of these Secretarial Procedures. The Secretary, or her or his designee, shall meet and confer with the Tribe regarding modifying these Secretarial Procedures to incorporate the Tribe's requested amendment. The Secretary's agreement to amend these Secretarial Procedures shall not be unreasonably withheld or delayed.

##### **Sec. 15.2. Most Favored Nation.**

Should the State or Department and any other Tribe within California amend a current Compact/Procedures or adopt a new Compact/Procedures with a term or terms that the Tribe considers more favorable than the comparable term or terms of these Secretarial Procedures, at the Tribe's request at any time, notwithstanding section 13.1 of these Secretarial Procedures, the Secretary, or her or his designee, shall meet and confer with the Tribe regarding modifying these Secretarial Procedures to add the more favorable term or terms. The Secretary's agreement to modify these Secretarial Procedures as provided in this section shall not be unreasonably withheld or delayed.

## **SECTION 16.0. NOTICES.**

Unless otherwise authorized indicated by these Procedures, all notices required or authorized to be served shall be served by first-class mail at the following addresses, or to such other address as either party may designate by written notice to the other:

### **Secretary of the Interior**

C/O Director Office of Indian  
Gaming  
1849 C Street NW  
MS 3543  
Washington, D.C. 20240,  
Or as listed in 25 C.F.R. Part 293

### **Tribal Chairperson**

Augustine Band of Cahuilla Indians  
84-001 Avenue 54  
Coachella, CA, 92236

### **Chairperson National Indian Gaming Commission**

C/O Regional Director  
Sacramento Regional Office  
801 I Street  
Suite 489  
Sacramento, California 95814

## **SECTION 17.0. CHANGES TO IGRA.**

These Procedures are intended to meet the requirements of IGRA as it exists on their effective date, and when reference is made to IGRA or to an implementing regulation thereof, the referenced provision is deemed to have been incorporated into the Procedures as if set out in full. Subsequent changes to IGRA that diminish the rights of the Tribe may not be applied retroactively to alter the terms of the Procedures, except to the extent that federal law validly mandates retroactive application without the respective consent of the Tribe, and approval by the Secretary of the Interior.

## **SECTION 18.0. MISCELLANEOUS.**

### **Sec. 18.1. Third-Party Beneficiaries.**

Notwithstanding any provision of law, and except as otherwise specifically provided in these Procedures, the Procedures are not intended and shall not be



construed to create any right on the part of a third party or third-party beneficiary to bring an action to enforce any of its terms.

### **Sec. 18.2. Calculation of Time.**

In computing any period of time prescribed by the Procedures, the day of the event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday under the Tribe's laws, the State's law, or federal law.

Unless otherwise specifically provided herein, the term "days" shall be construed as calendar days.

### **Sec. 18.3. Force Majeure.**

- (a) In the event of a force majeure event, including but not limited to: an act of God; accident; fire; flood; earthquake; or other natural disaster; strike or other labor dispute; riot or civil commotion; act of public enemy; enactment of any rule; order or act of a government or governmental instrumentality; effects of an extended restriction of energy use; federal, State, County or tribal declaration of a public health emergency, and other causes of a similar nature beyond the Tribe's control that causes the Tribe's Gaming Activities to be inoperable, operate at significantly less capacity, or discourages or prevents the public from patronizing the Tribe's Gaming Activities or prevents Gaming Employees or others from performing services in connection with the operation of the Tribe's Gaming Activities, the Tribe may so notify the NIGC, and upon giving such notification, immediately and temporarily shall be relieved of any obligations that it is prevented from performing under the Procedures during the force majeure event. Within thirty (30) days of the Tribe declaring a force majeure event by giving written notice thereof to the NIGC, the Tribe and the NIGC may meet and confer for the purpose of discussing the event and appropriate actions, if any, given the circumstances.

#### **Sec. 18.4. Compliance with Mediator's Choice of Last Best Compact Offer.**

These Secretarial Procedures are promulgated in compliance with the requirements of IGRA's remedial provisions, 25 U.S.C. § 2710(d)(7), and are consistent with: (1) the terms of the last best offer class III gaming compact selected by the mediator appointed by the court in *Augustine Band of Cahuilla Indians v. State of California, et al.*, No. 5:23-cv-00620-SSS-DTBx (C.D. Cal.); and (2) the State's position that it would not consent to regulate the Tribe's class III gaming under the mediator's selected compact. Under IGRA, these Secretarial Procedures are properly viewed as a full substitute for a class III gaming compact that would be in effect had a voluntary agreement been reached between the Tribe and the State, or if the State had consented to the court-appointed mediator's selection. Therefore, these Secretarial Procedures qualify for the exemption to the criminal prohibitions on gaming provided by Section 23 of IGRA.

IN WITNESS WHEREOF, the undersigned sign these Procedures on behalf of the Augustine Band of Cahuilla Indians.

Done this 8 day of July, 2025



\_\_\_\_\_  
Scott J. Davis

Senior Advisor to the Secretary of the Interior

Exercising the delegated authority of the Assistant Secretary – Indian Affairs

**APPENDIX A**  
**TRIBAL LABOR RELATIONS ORDINANCE**

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**Section 1: Threshold of applicability**

(a) This Ordinance shall apply to the Tribe's Gaming Employees as defined in the Class III Gaming Compact between the Tribe and the State now in effect ("the Compact"); *provided*, that this Ordinance shall not be of any force or effect unless the Tribe employs more than 250 Gaming Employees (excluding enrolled members of the Tribe or their lineal descendants) and the United States Supreme Court, the unappealed final judgment of a federal court within the Ninth U.S. Judicial Circuit, or an Act of Congress determines that the National Labor Relations Board lacks jurisdiction over the Tribe's Gaming Operation.

(b) Upon the request of a labor union submitted after this Ordinance becomes applicable, the Tribal Gaming Commission shall certify the number of the Tribe's Gaming Employees. Either party may dispute the certification of the Tribal Gaming Commission to the Tribal Labor Panel.

**Section 2: Definition of Eligible Employees**

(a) The provisions of this ordinance shall apply to the Tribe's Gaming Employees as defined in the Compact, except for any of the following:

- (1) any employee who is not an "employee" as defined in Section 2(3) of the National Labor Relations Act;
- (2) any employee of the Tribal Gaming Commission;
- (3) any employee of the security or surveillance department, other than those who are responsible for the technical repair and maintenance of equipment;
- (4) any cash operations employee who is a "cage" employee or money counter;  
or

(5) any dealer of a table game.

### **Section 3: Non-interference with regulatory or security activities**

Implementation of this Ordinance shall not interfere in any way with the duty of the Tribal Gaming Commission to regulate the gaming operation in accordance with the Tribe's National Indian Gaming Commission-approved gaming ordinance. Furthermore, the exercise of rights hereunder shall in no way interfere with the tribal casino's surveillance/security systems, or any other internal controls system designed to protect the integrity of the Tribe's gaming operations. The

Tribal Gaming Commission is specifically excluded from the definition of Tribe and its agents.

### **Section 4: Eligible Employees free to engage in or refrain from concerted activity**

Eligible Employees shall have the right to self-organization, to form, to join, or assist employee organizations, to bargain collectively through representatives of their own choosing, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities.

### **Section 5: Unfair Labor Practices for the Tribe**

It shall be an unfair labor practice for the Tribe and/or employer or their agents:

(1) to interfere with, restrain or coerce Eligible Employees in the exercise of the rights guaranteed herein;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it, but this does not restrict the Tribe and/or employer and a certified union from agreeing to union security or dues checkoff;

- (3) to discharge or otherwise discriminate against an Eligible Employee because s/he has filed charges or given testimony under this Ordinance;
- (4) to refuse to bargain collectively with the representatives of Eligible Employees;

#### **Section 6: Unfair Labor Practices for the union**

It shall be an unfair labor practice for a labor organization or its agents:

- (1) to interfere, restrain or coerce Eligible Employees in the exercise of the rights guaranteed herein;
- (2) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a primary or secondary boycott or a refusal in the course of his employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce or other terms and conditions of employment. This section does not apply to Section 11;
- (3) to force or require the Tribe and/or employer to recognize or bargain with a particular labor organization as the representative of Eligible Employees if another labor organization has been certified as the representative of such Eligible Employees under the provisions of this TLRO;
- (4) to refuse to bargain collectively with the Tribe and/or employer, provided it is the representative of Eligible Employees subject to the provisions herein;
- (5) to attempt to influence the outcome of a tribal governmental election, provided, however, that this section does not apply to enrolled tribal members.

## **Section 7: Tribe and union right to free speech**

The Tribe's and union's expression of any view, argument or opinion or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of interference with, restraint or coercion if such expression contains no threat of reprisal or force, promise of benefit, or false statement of fact.

## **Section 8: Access to Eligible Employees**

(a) Access shall be granted to any union seeking to organize Eligible Employees for the purposes of organizing Eligible Employees, provided that such organizing activity shall not interfere with patronage of the casino or any other tribal business or governmental facility or with the normal work routine of the Eligible Employees and shall be done on non-work time in non-work areas that are designated as employee break rooms or locker rooms that are not open to the public. The Tribe may require the union and/or union organizers to be subject to the same suitability criteria and licensing rules applicable to individuals or entities with similar levels of access to the casino, provided that such licensing shall not be unreasonable, discriminatory, or designed to impede access.

(b) The Tribe, in its discretion, may also designate additional voluntary access to a union or unions in such areas as employee parking lots and non-Casino facilities located on tribal lands.

(c) In determining whether organizing activities potentially interfere with normal tribal work routines, the union's activities shall not be permitted if the Tribal Gaming Commission determines that they compromise the operation of the casino:

- (1) security and surveillance systems throughout the casino, and reservation;
- (2) access limitations designed to ensure security;
- (3) internal controls designed to ensure security;

(4) other systems designed to protect the integrity of the Tribe's gaming operations, tribal property and/or safety of casino personnel, patrons, employees or tribal members, residents, guests or invitees.

(d) The Tribe shall provide to the union, upon a thirty percent (30%) showing of interest to the Tribal Labor Panel, an election eligibility list containing the full first and last name of the Eligible Employees within the sought after bargaining unit and the Eligible Employees' last known address within ten (10) normal (Monday- Friday) business days. Nothing herein shall preclude a Tribe from voluntarily providing an election eligibility list at an earlier point of a union organizing campaign.

(e) The Tribe agrees to facilitate the dissemination of information from the union to Eligible Employees at the tribal casino by allowing posters, leaflets and other written materials to be posted in non-public employee break areas where the Tribe already posts announcements pertaining to Eligible Employees. Actual posting of such posters, notices, and other materials, shall be by employees desiring to post such materials.

#### **Section 9: Indian preference explicitly permitted**

Nothing herein shall infringe on the Tribe's general police powers or preclude the Tribe from giving Indian preference in employment, promotion, seniority, lay-offs or retention to members of any federally recognized Indian Tribe or shall in any way affect the Tribe's right to follow tribal law, ordinances, personnel policies or the Tribe's customs or traditions regarding Indian preference in employment, promotion, seniority, lay-offs or retention. Moreover, in the event of a conflict between tribal law, tribal ordinance or the Tribe's customs and traditions regarding Indian preference and this Ordinance, the tribal law, tribal ordinance or the Tribe's customs and traditions shall govern.

#### **Section 10: Secret ballot elections required**

(a) Dated and signed authorized cards from thirty percent (30%) or more of the Eligible Employees within the bargaining unit verified by the elections officer will result in a secret ballot election to be held within 30 days from presentation to the elections officer.

(b) The election shall be conducted by the election officer. The election officer shall be a member of the Tribal Labor Panel chosen pursuant to the dispute resolution provisions herein. All questions concerning representation of the Tribe and/or Employer's Eligible Employees by a labor organization shall be resolved by the election officer. The election officer shall be chosen upon notification by the labor organization to the Tribe of its intention to present authorization cards, and the same election officer shall preside thereafter for all proceedings under the request for recognition; provided however that if the election officer resigns, dies or is incapacitated for any other reason from performing the functions of this office, a substitute election officer shall be selected in accordance with the dispute resolution provisions herein.

(c) The election officer shall certify the labor organization as the exclusive collective bargaining representative of a unit of employees if the labor organization has received the majority of votes by employees voting in a secret ballot election that the election officer determines to have been conducted fairly. If the election officer determines that the election was conducted unfairly due to misconduct by the Tribe and/or employer or union, the election officer may order a re-run election. If the election officer determines that there was the commission of serious Unfair Labor Practices by the Tribe that interfere with the election process and preclude the holding of a fair election, and the labor organization is able to demonstrate that it had the support of a majority of the employees in the unit at any point before or during the course of the Tribe's misconduct, the election officer shall certify the labor organization.

(d) The Tribe or the union may appeal any decision rendered after the date of the election by the election officer to a three (3) member panel of the Tribal Labor Panel mutually chosen by both parties.

(e) A union which loses an election and has exhausted all dispute remedies related to the election may not invoke any provisions of this labor ordinance at that particular casino until one year after the election was lost.



## **Section 11: Collective bargaining impasse**

Upon recognition, the Tribe and the union will negotiate in good faith for a collective bargaining agreement covering bargaining unit employees represented by the union. If collective bargaining negotiations result in impasse, and the matter has not been resolved within one hundred eighty (180) days, or such other time as mutually agreed to by the parties, by the tribal forum procedures set forth in Section 13(b) governing resolution of collective bargaining impasses, the union shall have the right to strike. Strike-related activity, including but not limited to picketing, shall not be conducted on the Tribe's Indian lands as defined in 25 U.S.C. Sec. 2703(4).

## **Section 12: Decertification of bargaining agent**

(a) The filing of a petition signed by thirty percent (30%) or more of the Eligible Employees in a bargaining unit seeking the decertification of a certified union, will result in a secret ballot election to be held no more than thirty (30) days from the presentation of the petition.

(b) The election shall be conducted by an election officer. The election officer shall be a member of the Tribal Labor Panel chosen pursuant to the dispute resolution provisions herein. All questions concerning the decertification of the labor organization shall be resolved by an election officer. The election officer shall be chosen upon notification to the Tribe and the union of the intent of the employees to present a decertification petition, and the same election officer shall preside thereafter for all proceedings under the request for decertification; provided however that if the election officer resigns, dies or is incapacitated for any other reason from performing the functions of this office, a substitute election officer shall be selected in accordance with the dispute resolution provisions herein.

(c) The election officer shall order the labor organization decertified as the exclusive collective bargaining representative if a majority of the employees voting in a secret ballot election that the election officer determines to have been conducted fairly vote to decertify the labor organization. If the election officer determines that the election was conducted unfairly due to misconduct by the Tribe and/or employer or the

union the election officer may order a re-run election or dismiss the decertification petition.

(d) A decertification proceeding may not begin until one (1) year after the certification of a labor union if there is no collective bargaining agreement. Where there is a collective bargaining agreement, a decertification petition may only be filed no more than ninety (90) days and no less than sixty (60) days prior to the expiration of a collective bargaining agreement. A decertification petition may be filed any time after the expiration of a collective bargaining agreement.

(e) The Tribe or the union may appeal any decision rendered after the date of the election by the election officer to a three (3) member panel of the Tribal Labor Panel mutually chosen by both parties.

### **Section 13: Binding dispute resolution mechanism**

(a) All issues shall be resolved exclusively through the binding dispute resolution mechanisms herein, with the exception of a collective bargaining negotiation impasse, which shall only go through the first level of binding dispute resolution.

(b) (1) The first level of binding dispute resolution for all matters related to organizing, election procedures, alleged unfair labor practices, and discharge of Eligible Employees shall be an appeal to a designated tribal forum such as the Tribal Council or a Grievance Board or Tribal Court, if any. The parties agree to pursue in good faith the expeditious resolution of these matters within strict time limits. The time limits may not be extended without the agreement of both parties. In the absence of a mutually satisfactory resolution, either party may proceed to the independent binding dispute resolution set forth below.

(2) All matters related to organizing, election procedures and alleged unfair labor practices prior to the union becoming certified as the collective bargaining representative of bargaining unit employees, shall be resolved by the designated tribal forum within thirty (30) working days.

(3) All matters after the union has become certified as the collective bargaining representative and relate specifically to impasse during negotiations, shall be resolved by the designated tribal forum within sixty (60) working days, after which the parties shall have the same rights, and be subject to the same limitations, as provided in the National Labor Relations Act in similar circumstances;

(c) The second level of binding dispute resolution shall be a resolution by the Tribal Labor Panel, consisting of ten (10) arbitrators appointed by mutual selection of the parties which panel shall serve all tribes that have adopted this ordinance. The Tribal Labor Panel shall have authority to hire staff and take other actions necessary to conduct elections, determine units, determine scope of negotiations, hold hearings, subpoena witnesses, take testimony, and conduct all other activities needed to fulfill its obligations under this Tribal Labor Relations Ordinance.

(1) Each member of the Tribal Labor Panel shall have relevant experience in federal labor law and/or federal Indian law with preference given to those with experience in both. Names of individuals may be provided by such sources as, but not limited to, Indian Dispute Services, Federal Mediation and Conciliation Service, and the American Academy of Arbitrators.

(2) Unless either party objects, one arbitrator from the Tribal Labor Panel will render a binding decision on the dispute under the Ordinance. If either party objects, the dispute will be decided by a three-member panel of the Tribal Labor Panel, which will render a binding decision. In the event there is one arbitrator, five (5) Tribal Labor Panel names shall be submitted to the parties and each party may strike no more than two (2) names. In the event there is a three (3) member panel, seven (7) TLP names shall be submitted to the parties and each party may strike no more than two (2) names. A coin toss shall determine which party may strike the first name. The arbitrator will generally follow the American Arbitration Association's procedural rules relating to labor dispute resolution. The arbitrator or panel must render a written, binding decision that complies in all respects with the provisions of this Ordinance.

(d) Under the third level of binding dispute resolution, either party may seek a motion to compel arbitration or a motion to confirm an arbitration award in Tribal Court, which may be appealed to federal court. If the Tribal Court does not render its decision within ninety (90) days, or in the event there is no Tribal Court, the matter may proceed directly to federal court. In the event the federal court declines jurisdiction, the Tribe agrees to a limited waiver of its sovereign immunity for the sole purpose of compelling arbitration or confirming an arbitration award in Tribal Court, or if there is no Tribal Court, in any court of competent jurisdiction. The parties are free to put at issue whether or not the arbitration award exceeds the authority of the Tribal Labor Panel.