# United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUL - 8 2025

The Honorable Temet Majel
Chairman, Pauma Band of Mission Indians
1010 Pauma Reservation Road
Pauma, California 92061

Dear Chairman Majel:

On November 20, 2024, the Office of Indian Gaming received the last best offer compact selected by the court appointed mediator in the *Pauma Band of Mission Indians v. Newsom et al., No. 2:21-01166 KES SKO (E.D. Cal. filed on June 30, 2021)* 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 of the Interior (Department) to issue Class III gaming procedures consistent with IGRA. 25 U.S.C. § 2710(d)(7)(B)(vii).

On April 22, 2024, the District Court issued an order in *Pauma Band of Mission Indians v. Newsom et al., No. 2:21-01166 KES SKO*, 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 September 30, 2024, 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 October 23, 2024, 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.[1]

After consulting with the Pauma Band of Mission 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.[2]

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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[1] *Pauma Band of Mission Indians v. Newsom et al., No. 2:21-01166 KES SKO*

[2] Letter from Nathan Voegeli, Senior Advisor for Tribal Negotiations, Office of the Governor, California to the Honorable S. James Otero, Judge (Ret.) dated October 23, 2024, 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 of these Procedures requires the Tribe to incorporate these Procedures into the Tribe's gaming ordinance, and Section 9.1(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.[3] 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

[3] 25 U.S.C. § 2710 (d)(7)(B)(vii).

# CLASS III GAMING SECRETARIAL PROCEDURES FOR THE PAUMA BAND OF LUISENO MISSION INDIANS OF THE PAUMA & YUIMA RESERVATION, CALIFORNIA

## TABLE OF CONTENTS


PREAMBLE ..... 1

SECTION 1.0 PURPOSES AND OBJECTIVES. ..... 5

SECTION 2.0 DEFINITIONS. ..... 6

SECTION 3.0 CLASS III GAMING AUTHORIZED AND PERMITTED... 10

SECTION 4.0 SCOPE OF CLASS III GAMING. ..... 10

SECTION 5.0 RESERVED. ..... 13

SECTION 6.0 LICENSING. ..... 13

SECTION 7.0 COMPLIANCE ENFORCEMENT. ..... 19

SECTION 8.0 RULES AND REGULATIONS FOR THE OPERATION AND MANAGEMENT OF THE TRIBAL GAMING OPERATION..... 21

SECTION 9.0 MEMORANDUM OF UNDERSTANDING WITH THE NATIONAL INDIAN GAMING COMMISSION. ..... 24

SECTION 10.0 PUBLIC AND WORKPLACE HEALTH, SAFETY, AND LIABILITY..... 24

SECTION 11.0 EFFECTIVE DATE AND TERM OF SECRETARIAL PROCEDURES. ..... 27

SECTION 12.0 AMENDMENTS; RENEGOTIATIONS. ..... 27

SECTION 13.0 NOTICES. ..... 29

SECTION 14.0 CHANGES IN IGRA. ..... 29

SECTION 15.0 MISCELLANEOUS..... 29

APPENDIX A Model Tribal Labor Relations Ordinance..... 32

# CLASS III GAMING SECRETARIAL PROCEDURES FOR THE PAUMA BAND OF LUISENO MISSION INDIANS OF THE PAUMA & YUIMA RESERVATION, CALIFORNIA

These Secretarial Procedures are prescribed by the Secretary of the United States Department of the Interior for, and in consultation with, the Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California, a federally-recognized sovereign Indian tribe (hereafter "Tribe"), pursuant to the Indian Gaming Regulatory Act of 1988 (P.L. 100-497, codified at 18 U.S.C. Sec. 1166 *et seq*. and 25 U.S.C. Sec. 2701 *et seq*.) (hereafter "IGRA"), and any successor statute or amendments.

## PREAMBLE

**WHEREAS**, in 2000, the Tribe and the State of California ("State") entered into a Tribal-State Compact ("2000 Compact") through which the Tribe received a meaningful concession of unique value related to what IGRA defines as "class III gaming" and about which the State was not otherwise required to negotiate, and in return the Tribe made numerous concessions sought by the State, including on matters that were not directly related to the regulation or operation of such Class III Gaming Activities; and,

**WHEREAS**, in particular, the concession of unique value provided by the State to justify the concessions it sought under the 2000 Compact was its support for Proposition 1A, a ballot initiative approved by California voters that, in March 2000, added Article IV, Section 19(f) to the California Constitution, thereby authorizing the Governor "to negotiate and conclude compacts, subject to ratification by the Legislature, for the operation of slot machines and for the conduct of lottery games and banking and percentage card games by federally recognized Indian tribes on Indian lands in California in accordance with federal law" (Cal. Const. art. IV, § 19(f)); and,

**WHEREAS**, this Proposition in turn meant that, without taking into account the Class III gaming the Tribe could otherwise operate under the scheme created by IGRA, "slot machines, lottery games, and banking and percentage card games are hereby permitted to be conducted and operated on tribal lands subject to [] compacts" (Cal. Const. art. IV, § 19(f)); and,

**WHEREAS**, the 2000 Compact authorized the Tribe to offer most of this Class III gaming, with Section 4.0, subsections (a) through (c) therein explaining that "[t]he Tribe is hereby authorized and permitted to operate" "Gaming Devices,"

"[a]ny banking and percentage card game," and "[t]he operation of 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 others in the state are permitted to do so under state and federal law;" and,

**WHEREAS**, pursuant to Modification No. 4 to the Tribe's 2000 Compact, Section 11.2.1, subsection (a) of the Tribe's 2000 Compact, the Compact was to expire on December 31, 2020, but if by that date, the Compact had not been replaced or extended, the Tribe's 2000 Compact would automatically be extended to June 30, 2022; and,

**WHEREAS**, on November 24, 2014, the Tribe sent the State an initial request to renegotiate the 2000 Compact to, *inter alia*, expand the scope of Class III Gaming Activities authorized by the 2000 Compact, making such request pursuant to Section 12.2 therein that provides "[t]his Gaming Compact is subject to renegotiation in the event the Tribe wishes to engage in forms of Class III gaming other than those games authorized herein and requests renegotiation for that purpose, provided that no such renegotiation may be sought for 12 months following the effective date of this Gaming Compact;" and,

**WHEREAS**, on June 4, 2021, more than six years and six months after the commencement of negotiations with the State, the Tribe made a final offer of a renegotiated compact to the State, and when the State rejected that offer, filed suit against the Governor and the State in the United States District Court for the Eastern District of California in an action entitled *Pauma Band of Mission Indians v. Newsom et al.*, No. 2:21-01166 KES SKO (E.D. Cal. filed on June 30, 2021); and,

**WHEREAS**, the allegations in the Tribe's complaint contended that the State failed to conduct negotiations for the renegotiated compact in good faith by refusing to negotiate for Class III gaming rights that are permitted under IGRA as well as by insisting on including in the compact provisions that are not proper subjects of negotiation under 25 U.S.C. § 2710(d)(3)(C)(i)-(vii), including those related to family law, State environmental law, and State tort law; and,

**WHEREAS**, during the course of the suit, the parties agreed to extend the termination date of the Tribe's 2000 Compact from June 30, 2022, to December 31, 2023, and then again from December 31, 2023, to December 31, 2024; and,

**WHEREAS**, also during the course of the suit, the United States Court of Appeals for the Ninth Circuit ("Ninth Circuit") issued its opinion in *Chicken*

*Ranch Rancheria of Me-Wuk Indians v. State of California*, 42 F.4th 1024 (9th Cir. 2022) ("*Chicken Ranch*") in which it specifically held IGRA does not authorize inclusion in compacts of provisions concerning family law, State environmental law, and State tort law, because such provisions are not directly related to the operation of Class III gaming; and,

**WHEREAS**, both the Ninth Circuit and United States Department of Interior – Bureau of Indian Affairs have recognized that the reasoning of the *Chicken Ranch* opinion extends further and would preclude other provisions that are not within the parameters established by 25 U.S.C. § 2710(d)(3)(C)(i)-(vii); and,

**WHEREAS**, following the issuance of the *Chicken Ranch* opinion, on October 2, 2023, the District Court issued an order ("District Court's Order") pursuant to the parties' joint stipulation finding that the State "failed to negotiate in good faith with" the Tribe "to conclude a Tribal-State compact governing the conduct of gaming activities" by insisting upon the inclusion in the compact of family law, State environmental law, and State tort law provisions in contravention of the Ninth Circuit's opinion in *Chicken Ranch*, and further ordering the parties "to proceed pursuant to the remedial process set forth in" IGRA "under the Court's continued supervision;" and,

**WHEREAS**, the remedial process set forth in IGRA at 25 U.S.C. § 2710(d)(7)(B) begins in subsection (iii) therein with the district court ordering the tribe and the state to conclude a compact within a 60-day period beginning on the issuance date for the court's order finding that the state "has failed to negotiate in good faith with the Indian tribe to conclude a Tribal-State compact governing the conduct of gaming activities;" and,

**WHEREAS**, the Tribe and the State failed to conclude a compact within this 60-day period; and,

**WHEREAS**, in such a situation, the remedial process enters the next stage set forth in 25 U.S.C. § 2710(d)(7)(B)(iv) in which the district court appoints a mediator to whom the state and the tribe shall submit "proposed compact[s] that represent[] their last best offer[s] for a compact;" and,

**WHEREAS**, under the same 25 U.S.C. § 2710(d)(7)(B)(iv), the court-appointed mediator then "select[s] from the two proposed compacts the one which best comports with the terms of [IGRA] and any other applicable Federal law and then findings and order of the court;" and,

**WHEREAS**, on April 22, 2024, the District Court issued an order pursuant to another joint stipulation by the parties appointing "retired United States District Judge Ronald B. Leighton… of the Western District of Washington to serve as the mediator in this matter pursuant to 25 U.S.C. § 2710(d)(7)(B)(iv);" and,

**WHEREAS**, on September 30, 2024, Judge Leighton issued an order in which he selected the Tribe's last best compact offer as the compact that best comports with "the principles established in IGRA" as well as the Ninth Circuit's opinion in *Chicken Ranch,* thereafter, submitting the Tribe's compact to the parties on October 2, 2024; and;

**WHEREAS**, at this point, under 25 U.S.C. §§ 2710(d)(7)(B)(vi) and (vii) of IGRA, the state is given the opportunity to either consent or not consent, respectively, to the tribe's compact during the 60-day period beginning on the date on which the proposed compact is submitted by the mediator to the state; and,

**WHEREAS**, on October 23, 2024, the State, through the Senior Advisor for Tribal Negotiations & Deputy Legal Affairs Secretary for Office of Governor Gavin Newsom, notified Judge Leighton that is it unable to consent to the Tribe's compact; and,

**WHEREAS**, when a state does not consent to a tribe's compact, IGRA then provides at 25 U.S.C. § 2710(d)(7)(B)(vii) that "the mediator shall notify the Secretary and the Secretary shall prescribe, in consultation with the Indian Tribe, procedures – (I) which are consistent with the proposed compact selected by the mediator under clause (iv), the provisions of [IGRA], and the relevant provisions of the laws of the State" and "(II) under which class III gaming may be conducted on the Indian lands over which the Indian Tribe has jurisdiction;" and,

**WHEREAS**, on November 20, 2024, Judge Leighton's office notified the Secretary of both the mediator's selection of the Tribe's compact and the State's inability to consent to such compact; and,

**WHEREAS**, on November 29, 2024, the Office of Indian Gaming, acting on behalf of the Secretary, confirmed receipt of the November 20, 2024, notice from Judge Leighton's office; and,

**WHEREAS**, the Secretary, since being notified of the court-appointed mediator's selection, has consulted with the Tribe regarding the prescription of these Secretarial Procedures; and,

**WHEREAS**, these Secretarial Procedures are consistent with the compact selected by the court-appointed mediator, the provisions of IGRA, and with the relevant provisions of the laws of the State, 25 U.S.C. § 2710(d)(7)(B)(vii)(I), except where modified only to the extent necessary to make these Secretarial Procedures consistent with both the selected compact and IGRA; and,

**WHEREAS**, the Secretary cannot unilaterally obligate the State to carry out any of the regulatory responsibilities assigned to the State in the last best compact offer selected by the mediator; and,

**WHEREAS**, as it happens, the Tribe's last best compact offer at Section 15.5 empowers the Tribe to opt-out of State regulation in favor of purely federal oversight at any point prior to the effective date of the compact, thereby having the federal government, via the National Indian Gaming Commission ("NIGC") or any successor agency, substitute in and take over all of the State's "functions under this Compact, including the regulation of the Tribe's Gaming Operation;" and,

**WHEREAS**, the Tribe shall thus have jurisdiction, subject to the concurrent jurisdiction of the United States and the NIGC, to regulate the Class III gaming to be conducted under these Secretarial Procedures on the Indians lands over which the Indian tribe has jurisdiction pursuant to 25 U.S.C. § 2710(d)(7)(B)(vii)(II); and,

**WHEREAS**, these Secretarial Procedures will afford the Tribe primary responsibility for the regulation of its Gaming Facilities and Gaming Activities to ensure the fairness of the playing of the Class III games, shield the games from criminal activity, ensure that the Tribe is the primary beneficiary of the Gaming Activities, and promote tribal economic development and self-sufficiency.

**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 *Pauma Band of Mission Indians v. Newsom, et al.,* No. 2:21-cv-01166 KES SKO (E.D. Cal. filed on June 30, 2021), 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) Evidence the goodwill and cooperation of the Tribe and the United States in fostering a mutually respectful government-to-government relationship that will

serve the mutual interests of the parties through the prescription of these Secretarial Procedures.

(b) Develop and implement a means of regulating 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 generate jobs and revenues to support the Tribe's government and governmental services and programs.

(c) Promote ethical practices in conjunction with that gaming, through the licensing and control of persons and entities employed in, or providing goods and services to, the Tribe's Gaming Operation and protecting 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.

## SECTION 2.0 DEFINITIONS.

Sec. 2.1. "Applicant" means an individual or entity that applies for a Tribal license.

Sec. 2.2. "Association" means an association of California tribal and state gaming regulators, the membership of which comprises up to two representatives from each tribal gaming agency of those tribes with whom the State has a gaming compact under IGRA, and up to two delegates each from the state Division of Gambling Control and the state Gambling Control Commission.

Sec. 2.3. "Banking game" or "banked game" shall contain the exception for "banking game" or "banked game" under Section 330.11 of the California Penal Code, to wit "'[b]anking game' or 'banked game' does not include a controlled game if the published rules of the game feature a player-dealer position and provide that this position must be continuously and systematically rotated amongst each of the participants during the play of the game, ensure that the player-dealer is able to win or lose only a fixed and limited wager during the play of the game, and preclude the house, another entity, a player, or an observer from maintaining or operating as a bank during the course of the game. For purposes of this section, it is not the intent of the Legislature to mandate the acceptance of the deal by every player if the division finds that the rules of the game render the maintenance of or operation of a bank impossible by other means. The house shall not occupy the player-dealer position." For the foregoing definition, the terms "Legislature" and

"division" shall be replaced by "parties" and "Tribal Gaming Agency," respectively, to make the language fit the unique structure of these Secretarial Procedures.

Sec. 2.4. "Class III gaming" means the forms of Class III gaming defined as such in 25 U.S.C. Sec. 2703(8) and by regulations of the National Indian Gaming Commission.

Sec. 2.5. "Controlled Games" or "Controlled Game" means the same as "controlled game" under Section 337j(e) of the California Penal Code, including the definition of subsection (e)(1) therein that states to wit "'controlled game' means any poker or Pai Gow game, any other game played with cards or tiles, or both, and approved by the Department of Justice, and any game of chance, including any gambling device, played for currency, check, credit, or any other thing of value that is not prohibited and made unlawful by statute or local ordinance."

Sec. 2.6. "Federal Gaming Agency" means the National Indian Gaming Commission.

Sec. 2.7. "Gaming Activities" means the Class III gaming activities authorized under these Secretarial Procedures.

Sec. 2.8. "Gaming Device" means a slot machine, including an electronic, electromechanical, electrical, or video device that, for consideration, permits: individual play with or against that device or the participation in any electronic, electromechanical, electrical, or video system to which that device is connected; the playing of games thereon or therewith, including, but not limited to, the playing of facsimiles of games of chance or skill; the possible delivery of, or entitlement by the player to, a prize or something of value as a result of the application of an element of chance; and a method for viewing the outcome, prize won, and other information regarding the playing of games thereon or therewith.

Sec. 2.9. "Gaming Employee" means any person who (a) operates, maintains, repairs, assists in any Class III gaming activity, or is in any way responsible for supervising such gaming activities or persons who conduct, operate, account for, or supervise any such gaming activity, (b) is in a category under federal or tribal gaming law requiring licensing, (c) is an employee of the Tribal Gaming Agency with access to confidential information, or (d) is a person whose employment duties require or authorize access to areas of the Gaming Facility that are not open to the public.

Sec. 2.10. "Gaming Facility" or "Facility" means any space within any building or structure on the Tribe's Indian lands in which Class III Gaming Activities occur.

Sec. 2.11. "Gaming Operation" means the business enterprise that offers and operates Class III Gaming Activities exclusively in the Facility or Facilities, but does not include any other governmental or other business activities owned or operated by the Tribe and wherever located, that are not directly related to the playing of a Class III game within the Gaming Facility.

Sec. 2.12. "Gaming Ordinance" means a tribal ordinance or resolution duly authorizing the conduct of Class III Gaming Activities on the Tribe's Indian lands and approved under IGRA.

Sec. 2.13. "Gaming Resources" means any goods or services provided or used in connection with Class III Gaming Activities, whether exclusively or otherwise, including, but not limited to, equipment, furniture, gambling devices and ancillary equipment, implements of gaming activities such as playing cards and dice, furniture designed primarily for Class III gaming activities, maintenance or security equipment and services, and Class III gaming consulting services. "Gaming Resources" does not include professional accounting and legal services.

Sec. 2.14. "Gaming Resource Supplier" means any person or entity who, directly or indirectly, manufactures, distributes, supplies, vends, leases, or otherwise purveys Gaming Resources to the Gaming Operation or Gaming Facility, provided that the Tribal Gaming Agency 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 of 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 Gambling Operation.

Sec. 2.15. "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*.) any amendments thereto, and all federal regulations promulgated thereunder.

Sec. 2.16. "Lottery" means the same as "lottery" under Section 319 of the California Penal Code, to wit "[a] lottery is any scheme for the disposal or distribution of property by chance, among persons who have paid or promised to pay any valuable consideration for the chance of obtaining such property or a

portion of it, or for any share or any interest in such property, upon any agreement, understanding, or expectation that it is to be distribution or disposed of by lot or chance, whether called a lottery, raffle, or gift enterprise, or by whatever name the same may be known."

Sec. 2.17. "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. 2.18. "National Indian Gaming Commission" or "NIGC" means the federal agency created by 25 U.S.C. § 2704.

Sec. 2.19. "Net Win" means the American Institute of Certified Public Accountants' definition of "Gross Gaming Revenue" or "gross gaming revenue" applicable at the time of calculation.

Sec. 2.20. "Secretarial Procedures" or "Procedures" means these Secretarial Procedures.

Sec. 2.21. "State" means the State of California or an authorized official or agency thereof.

Sec. 2.22. "Tribal Chairperson" means the person duly elected or selected under the Tribe's organic documents, customs, or traditions to serve as the primary spokesperson for the Tribe.

Sec. 2.23. "Tribal Gaming Agency" 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 National Indian Gaming Commission, as primarily responsible for carrying out the Tribe's regulatory responsibilities under IGRA and the Tribal 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 Agency.

Sec. 2.24. "Tribe" means the Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California, a federally recognized Indian tribe, or an authorized official or agency thereof.

## SECTION 3.0 CLASS III GAMING AUTHORIZED AND PERMITTED.

The Tribe is hereby authorized and permitted to engage in only the Class III Gaming Activities expressly referred to in Section 4.0 and shall not engage in Class III gaming that is not expressly authorized in that Section.

## SECTION 4.0 SCOPE OF CLASS III GAMING.

Sec. 4.1. Authorized and Permitted Class III gaming. The Tribe is hereby authorized and permitted to operate the following Gaming Activities under the terms and conditions set forth in these Secretarial Procedures:

(a) The operation of Gaming Devices.

(b) Any banking or percentage card game.

(c) Any Lottery games, provided that the Tribe will not offer such games through use of the Internet unless others in the state are permitted to do so under state and federal law.

(d) Any other Class III gaming that the State permits "for any purpose by any person, organization or entity," including any Class III gaming arising from the State's authorization of Controlled Games for play at nonprofit organization fundraisers under California Business and Professions Code § 19985 *et seq*.

(e) For any Class III gaming that the Tribe wants to introduce for play after the effective date of these Procedures, the Tribe shall notify the NIGC of its intent to offer such games for play at least 60 days in advance. This notification will include the Tribal Internal Controls, which shall remain in compliance with the applicable NIGC regulations. If the NIGC has not promulgated the needed game specific regulations, the Tribal Internal Controls shall be no less strict than those of the State of Nevada.

(f) Nothing herein shall be construed to preclude the Tribe from offering class I and II gaming.

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 sole discretion, determines are appropriate for its market conditions and economic needs, and may allocate its Gaming Devices among such Gaming Facilities in its sole discretion. The Tribe may combine and operate in each Gaming Facility any

forms and kinds of gaming permitted under law, except to the extent limited under IGRA, these Secretarial Procedures, or the Tribe's Gaming Ordinance.

Sec. 4.3. Authorized number of Gaming Devices.

Sec. 4.3.1. As of the effective date of these Secretarial Procedures, the Tribe is entitled to operate on its Indian lands the number of Gaming Devices that the Tribe, in its sole discretion, determines are appropriate for its market conditions and economic needs, pursuant to the applicable conditions set forth in Section 3.0 through 5.0 of these Secretarial Procedures.

Sec. 4.3.2. Revenue Sharing with Non-Gaming Tribes.

(a) For the purposes of this Section 4.3.2, the following definitions apply:

(i) A "Compact Tribe" is a tribe having secretarial procedures or a compact with the State that authorizes the Gaming Activities authorized by these Secretarial Procedures. Federally recognized tribes that are operating fewer than 350 Gaming Devices are "Non-Compact Tribes." Non-Compact Tribes shall be deemed third party beneficiaries of these Secretarial Procedures and other secretarial procedures and compacts identical in all material respects. A Compact Tribe that becomes a Non-Compact Tribe may not thereafter return to the status of a Compact Tribe for a period of two years after becoming a Non-Compact Tribe.

(ii) The Revenue Sharing Trust Fund is a fund created by the Legislature and administered by the California Gambling Control Commission, as Trustee, for the receipt, deposit, and distribution of monies paid pursuant to this Section 4.3.2.

Sec. 4.3.2.1. Revenue Sharing Trust Fund.

(a) The Tribe agrees with all Compact Tribes that are parties to compacts or secretarial procedures having this Section 4.3.2, that each Non-Compact Tribe in the State shall receive the sum of $1.1 million per year. 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, any available monies in that Fund shall be distributed to Non-Compact Tribes in equal shares. Monies in excess of the amount necessary to $1.1 million to each Non-Compact Tribe shall remain in the Revenue Sharing Trust Fund available for disbursement in future years.

(b) Payments made to Non-Compact Tribes shall be made quarterly and in equal shares out of the Revenue Sharing Trust Fund. The California Gambling Control Commission ("Commission") shall serve as the trustee of the 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 disburse them on a quarterly basis to Non-Compact Tribes. In no event shall the State's General Fund be obligated to make up any shortfall or pay any unpaid claims.

Sec. 4.3.2.2. Revenue Sharing Trust Fund Fees.

(a) The Tribe shall pay into the Revenue Sharing Trust Fund, on a quarterly basis, the following percentages of Net Win on the number of Gaming Devices in operation during such quarter within the indicated range(s):

| Number of Devices | Fee Per Device in Range Per Quarter |
|---|---|
| 1-1,200 | 0.0% |
| 1,201-1,600 | 0.5% |
| 1,601-2,000 | 1.0% |
| 2,001+ | 1.5% |

(b) The number of Gaming Devices in operation during a given quarter in subsection (a) shall be determined by first determining the total number of all Gaming Devices operated by the Tribe during a given quarter ("Quarterly Device Base"). The Quarterly Device Base is equal to the sum total of the maximum number of Gaming Devices in operation for each day of the calendar quarter, divided by the number of days in the calendar quarter that the Gaming Operation operates any Gaming Devices during the given calendar quarter.

(c) The quarterly contribution due under subsection (a) shall be determined and made not later than the thirtieth (30th) day following the end of each calendar quarter. At the time each quarterly contribution is made, the Tribe shall submit to the Commission a report ("Quarterly Contribution Report") certified by an authorized representative of the Tribe reflecting the Quarterly Device Base, the Net Win from all Gaming Devices in the Quarterly Device Base, and the Average Device Net Win. The "Average Device Net Win" is calculated by dividing the Net Win from all Gaming Devices in the Quarterly Device Base by the by the Quarterly Device Base.

(d) Tribes that make contributions into the Revenue Sharing Trust Fund during any quarter of a calendar year shall, within 120 days of their calendar year

end, submit an audit by a State-licensed independent CPA firm to verify the accuracy of the revenue sharing fees paid under subsection (a) and the Quarterly Contribution Reports under subsection (c). Copies of the results of the audit shall be submitted to the NIGC, and the Tribe shall remedy any shortfall in revenue sharing fees paid under subsection (a) within a reasonable period of time following the submission date of the audit. The process for the Tribe and the NIGC to resolve disputes under this subsection shall be set forth in the MOU.

## SECTION 5.0 RESERVED.

## SECTION 6.0 LICENSING.

Sec. 6.1. Gaming Ordinance and Regulations. All Gaming Activities conducted under these Secretarial Procedures shall, at a minimum, comply with a Gaming Ordinance duly adopted by the Tribe and approved in accordance with IGRA, and with all rules, regulations, procedures, specifications, and standards duly adopted by the Tribal Gaming Agency.

Sec. 6.2. Tribal Ownership, Management, and Control of Gaming Operation. The Gaming Operations authorized under these Secretarial Procedures shall be owned solely by the Tribe.

Sec. 6.3. Prohibition Regarding Minors. (a) Except as provided in subdivision (b), the Tribe shall not permit persons under the age of 18 years to be present in any room in which Class III Gaming Activities are being conducted unless the person is en-route to a non-gaming area of the Gaming Facility.

(b) If the Tribe permits the consumption of alcoholic beverages in the Gaming Facility, the Tribe shall prohibit persons under the age of 21 years from being present in any area in which Class III gaming activities are being conducted and in which alcoholic beverages may be consumed, as consistent with Tribal and any applicable Federal law.

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 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 Secretarial Procedures, including, but not limited to, all Gaming Employees and Gaming Resource Suppliers, and any other person having a significant influence over the Gaming Operation must be licensed by the Tribal Gaming Agency.

Sec. 6.4.2. Gaming Facility. (a) The Gaming Facility authorized by these Secretarial Procedures shall be licensed by the Tribal Gaming Agency in conformity with the requirements of these Secretarial Procedures, the Tribal Gaming Ordinance, IGRA, and any applicable regulations adopted by the NIGC. The license shall be reviewed and renewed, if appropriate, every two years thereafter. The Tribal Gaming Agency's certification to that effect shall be posted in a conspicuous and public place in the Gaming Facility at all times.

(b) In order to protect the health and safety of all Gaming Facility patrons, guests, and employees, all Gaming Facilities of the Tribe constructed after the effective date of these Secretarial Procedures, and all expansions or modifications to a Gaming Facility in operation as of the effective date of these Secretarial Procedures, shall meet the building and safety codes of the Tribe, which, as a condition for engaging in that construction, expansion, modification, or renovation, shall amend its existing building and safety codes if necessary, or enact such codes if there are none, so that they meet the standards of either the building and safety codes of any county within the boundaries of which the site of the Facility is located, or the Uniform Building Codes, including all uniform fire, plumbing, electrical, mechanical, and related codes then in effect provided that nothing herein shall be deemed to confer jurisdiction upon any county or the State with respect to any reference to such building and safety codes. Any such construction, expansion or modification will also comply with the federal Americans with Disabilities Act, P.L. 101-336, as amended, 42 U.S.C. § 12101 *et seq*.

(c) Any Gaming Facility in which gaming authorized by these Secretarial Procedures is conducted shall be issued a certificate of occupancy by the Tribal Gaming Agency prior to occupancy if it was not used for any Gaming Activities under IGRA prior to the effective date of these Secretarial Procedures, or, if it was so used, within one year thereafter. The issuance of this certificate shall be reviewed for continuing compliance every two years thereafter. Inspections by qualified building and safety experts shall be conducted under the direction of the Tribal Gaming Agency as the basis for issuing any certificate hereunder. The Tribal Gaming Agency shall determine and certify that, as to new construction or new use for gaming, the Facility meets the Tribe's building and safety code, or, as to facilities or portions of facilities that were used for the Tribe's Gaming Activities prior to these Secretarial Procedures, that the facility or portions thereof do not endanger the health or safety of occupants or the integrity of the Gaming Operation. The Tribe will not offer Class III gaming in a Facility that is constructed or maintained in a manner that endangers the health or safety of occupants or the integrity of the gaming operation.

(d) The NIGC shall designate an agent or agents to be given reasonable notice of each inspection by the Tribal Gaming Agency's experts, which NIGC agents may accompany any such inspection. The Tribe agrees to correct any Gaming Facility condition noted in an inspection that does not meet the standards set forth in subdivisions (b) and (c).

Sec. 6.4.3. Suitability Standard Regarding Gaming Licenses. (a) In reviewing an application for a gaming license, and in addition to any standards set forth in the Tribal Gaming Ordinance, the Tribal Gaming Agency 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 Tribe's Gaming Operations, or tribal government gaming generally, are free from criminal and dishonest elements and would be conducted honestly. A license may not be issued unless, based on all information and documents submitted, the Tribal Gaming Agency is satisfied that the applicant is all of the following:

(a) A person of good character, honesty, and integrity.

(b) A person whose 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 gambling, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the conduct of gambling, or in the carrying on of the business and financial arrangements incidental thereto.

(c) A person who is in all other respects qualified to be licensed as provided in these Secretarial Procedures, IGRA, the Tribal Gaming Ordinance, and any other criteria adopted by the Tribal Gaming Agency or the Tribe. 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. 6.4.4. Gaming Employees. (a) Every Gaming Employee shall obtain, and thereafter maintain current, a valid tribal gaming license, which 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. 6.4.5. Gaming Resource Supplier. Any Gaming Resource Supplier who, directly or indirectly, provides, has provided, or is deemed likely to provide at least twenty-five thousand dollars ($25,000) in Gaming Resources in any 12-month period, or who has received at least twenty-five thousand dollars ($25,000) in any

consecutive 12- month period within the 24- month period immediately preceding application, shall be licensed by the Tribal Gaming Agency prior to the sale, lease, or distribution, or further sale, lease, or distribution, of any such Gaming Resources to or in connection with the Tribe's Operation or Facility. These licenses shall be reviewed at least every two years for continuing compliance. In connection with such a review, the Tribal Gaming Agency shall require the Supplier to update all information provided in the previous application. For purposes of Section 6.5.2, such a review shall be deemed to constitute an application for renewal. 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 repayment 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 non-renewal of the Supplier's license by the Tribal Gaming Agency. The Tribe may choose to contract with the State to assist with any portions of a Gaming Resource Supplier's background investigation the Tribe deems necessary to help determine the suitability of any gaming resource supplier.

Sec. 6.4.6. Financial Sources. Any person extending financing, directly or indirectly, to the Tribe's Gaming Facility or Gaming Operation shall be licensed by the Tribal Gaming Agency prior to extending that financing, provided that any person who is extending financing at the time of the execution of these Secretarial Procedures shall be licensed by the Tribal Gaming Agency within ninety (90) days of such execution. These licenses shall be reviewed at least every two years for continuing compliance. In connection with such a review, the Tribal Gaming Agency shall require the Financial Source to update all information provided in the previous application. For purposes of Section 6.5.2, such a review shall be deemed to constitute an application for renewal. Any agreement between the Tribe and a Financial Source shall be deemed to include a provision for its termination without further liability on the part of the Tribe, except for the bona fide repayment of all outstanding sums (exclusive of interest) owed as of the date of termination, upon revocation or non-renewal of the Financial Source's license by the Tribal Gaming Agency. A Gaming Resource Supplier who provides financing exclusively in connection with the sale or lease of Gaming Resources obtained from that Supplier may be licensed solely in accordance with licensing procedures applicable, if at all, to Gaming Resource Suppliers, and need not be separately licensed as a Financial Source under this section. The Tribe may choose to contract with the State to assist with any portions of background investigations the Tribe deems necessary to help determine the suitability of any financial supplier. The Tribal Gaming Agency may, at its discretion, exclude from the licensing requirements of this section,

financing provided by a federally regulated or state-regulated bank, savings and loan, or other federally- or state-regulated lending institution; or any agency of the federal, state, or local government; or any investor who, alone or in conjunction with others, holds less than 10% of any outstanding indebtedness evidenced by bonds issued by the Tribe.

Sec. 6.4.7. Processing Tribal Gaming License Applications. 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 Agency in accordance with the rules and regulations of that agency. At a minimum, the Tribal Gaming Agency shall require submission and consideration of all information required under IGRA, including Section 556.4 of Title 25 of the Code of Federal Regulations, for licensing primary management officials and key employees. For applicants who are business entities, these licensing provisions shall apply to the entity as well as: (i) each of its officers 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 10 percent of the shares of the corporation, if a corporation; and (v) each person or entity (other than a financial institution that the Tribal Gaming Agency has determined does not require a license under the preceding section) that, alone or in combination with others, has provided financing in connection with any gaming authorized under these Secretarial Procedures, if that person or entity provided more than 10 percent of (a) the start-up capital, (b) the operating capital over a 12-month period, or (c) a combination thereof. For purposes of this Section, where there is any commonality of the characteristics identified in clauses (i) to (v), inclusive, between any two or more entities, those entities may be deemed to be a single entity. Nothing herein precludes the Tribe or Tribal Gaming Agency from requiring more stringent licensing requirements.

Sec. 6.4.8. Background Investigations of Applicants. The Tribal Gaming Agency 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 6.4.3, and to fulfill all requirements for licensing under IGRA, NIGC regulations, the Tribal Gaming Ordinance, and these Secretarial Procedures. The Tribal Gaming Agency shall not issue other than a temporary license until a determination is made that those qualifications have been met.

Sec. 6.4.9. Temporary Licensing of Gaming Employees. Notwithstanding anything herein to the contrary, if the applicant has completed a license application

in a manner satisfactory to the Tribal Gaming Agency, 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 license or cause a reasonable person to investigate further before issuing a license, or is otherwise unsuitable for licensing, the Tribal Gaming Agency may issue a temporary license and may impose such specific conditions thereon pending completion of the applicant's background investigation, as the Tribal Gaming Agency in its sole discretion shall determine. Special fees may be required by the Tribal Gaming Agency to issue or maintain a temporary license. A temporary license shall remain in effect until suspended or revoked, or a final determination is made by the Tribal Gaming Agency on the application. At any time after issuance of a temporary license, the Tribal Gaming Agency may suspend or revoke it in accordance with Sections 6.5.1 or 6.5.5. Nothing herein shall be construed to relieve the Tribe of any obligation under Part 558 of Title 25 of the Code of Federal Regulations.

Sec. 6.5. Gaming License Issuance. Upon completion of the necessary background investigation, the Tribal Gaming Agency may issue a 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 license itself, both of which shall be considered to be privileges granted to the applicant in the sole discretion of the Tribal Gaming Agency.

Sec. 6.5.1. Denial, Suspension, or Revocation of Licenses. (a) Any application for a gaming license may be denied, and any license issued may be revoked, if the Tribal Gaming Agency determines that the application is incomplete or deficient, or if the applicant is determined to be unsuitable or otherwise unqualified for a gaming license. Pending consideration of revocation, the Tribal Gaming Agency may suspend a license in accordance with Section 6.5.5. All rights to notice and hearing shall be governed by tribal law, as to which the applicant will be notified in writing along with notice of an intent to suspend or revoke the license.

Sec. 6.5.2. Renewal of Licenses; Extensions; Further Investigation. The term of a tribal gaming license shall not exceed two 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 Agency, may not be required to resubmit historical data previously submitted or that is otherwise available to the Tribal Gaming Agency. At the discretion of the Tribal Gaming Agency, an

additional background investigation may be required at any time if the Tribal Gaming Agency determines the need for further information concerning the applicant's continuing suitability or eligibility for a license.

Sec. 6.5.3. Identification Cards. The Tribal Gaming Agency 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 Agency. 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 Agency to readily identify the person and determine the validity and date of expiration of his or her license.

Sec. 6.5.4. Fees for Tribal License. The fees for all tribal licenses shall be set by the Tribal Gaming Agency.

Sec. 6.5.5. Suspension of Tribal License. The Tribal Gaming Agency may summarily suspend the license of any employee if the Tribal Gaming Agency determines that the continued licensing of the person or entity could constitute a threat to the public health or safety or may violate the Tribal Gaming Agency's licensing or other standards. Any right to notice or hearing in regard thereto shall be governed by Tribal law.

## SECTION 7.0 COMPLIANCE ENFORCEMENT.

Sec. 7.1. On-Site Regulation. It is the responsibility of the Tribal Gaming Agency to conduct on-site gaming regulation and control in order to enforce the terms of these Secretarial Procedures, IGRA, and the Tribal Gaming Ordinance with respect to Gaming Operation and Facility compliance, and to protect the integrity of the Gaming Activities, the reputation of the Tribe and the Gaming Operation for honesty and fairness, and the confidence of patrons that tribal government gaming in California meets the highest standards of regulation and internal controls. To meet those responsibilities, the Tribal Gaming Agency shall adopt and enforce regulations, procedures, and practices as set forth herein.

Sec. 7.2. Investigation and Sanctions. The Tribal Gaming Agency shall investigate any reported violation of these Secretarial Procedures and shall require the Gaming Operation to correct the violation upon such terms and conditions as the Tribal Gaming Agency determines are necessary. The Tribal Gaming Agency shall be empowered by the Tribal Gaming Ordinance to impose fines or other sanctions within the jurisdiction of the Tribe against gaming licensees or other persons who interfere with or violate the Tribe's gaming regulatory requirements

and obligations under IGRA, the Tribal Gaming Ordinance, or these Secretarial Procedures. The Tribal Gaming Agency shall report significant or continued violations of these Secretarial Procedures or failures to comply with its orders to thetNIGC.

Sec. 7.3. Tribal and State Jurisdiction. The Tribe shall have jurisdiction, subject to any concurrent jurisdiction of the United States, to regulate Class III gaming on the Indian lands. The State shall have no jurisdiction regarding any gaming addressed or regulated by IGRA. The Tribe shall update its gaming ordinance as needed to ensure that the NIGC shall have enforcement authority over any breach of these procedures. This authority is further agreed upon in the MOU set forth in Section 9.1, *infra.*

Sec. 7.4.1. Internal Controls. The Tribe has adopted the MICS and shall maintain minimum internal control standards which are consistent with or more stringent than the guidance 542 MICS issued by the NIGC on August 14, 2018, or as may be later amended by the Chairperson of the NIGC.

Sec. 7.4.2. NIGC Access. The NIGC shall have free access to inspect the Tribe's Gaming Facility and gaming records for purposes of determining the Tribe's compliance with the terms of these Secretarial Procedures, including any federal or tribal law incorporated herein by reference.

Sec. 7.4.3. Inspections. Agents of the NIGC shall present proper identification and immediately notify the managerial employee of his or her presence upon arrival at the Gaming Facility, if practicable.

Sec. 7.4.4. (a) Subject to the provisions of subdivision (b), the Tribal Gaming Agency shall not permit any Gaming Device to be transported to or from the Tribe's land except in accordance with applicable law and upon at least 10 days' notice to the Sheriff's Department for the county in which the land is located.

(b) Transportation of a Gaming Device from the Gaming Facility within California is permissible only if: (i) The final destination of the device is a gaming facility of any tribe in California that has a compact with the State or secretarial procedures with the Secretary; (ii) The final destination of the device is any other state in which possession of the device or devices is made lawful by state law or by tribal-state compact or secretarial procedures; (iii) The final destination of the device is another country, or any state or province of another country, wherein possession of the device is lawful; or (iv) 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 Agency.

## SECTION 8.0 RULES AND REGULATIONS FOR THE OPERATION AND MANAGEMENT OF THE TRIBAL GAMING OPERATION.

Sec. 8.1. Adoption of Regulations for Operation and Management; Minimum Standards. In order to meet the goals set forth in these Secretarial Procedures and required of the Tribe by law, the Tribal Gaming Agency shall be vested with the authority to promulgate, and shall promulgate, at a minimum, rules and regulations or specifications governing the following subjects, and to ensure their enforcement in an effective manner:

Sec. 8.1.1. The enforcement of all relevant laws and rules with respect to the Gaming Operation and Facility, and the power to conduct investigations and hearings with respect thereto, and to any other subject within its jurisdiction.

Sec. 8.1.2. Ensuring the physical safety of Gaming Operation patrons and employees, and any other person while in the Gaming Facility. Nothing herein shall be construed to make applicable to the Tribe any state laws, regulations, or standards governing the use of tobacco.

Sec. 8.1.3. The physical safeguarding of assets transported to, within, and from the Gaming Facility.

Sec. 8.1.4. The prevention of illegal activity from occurring within the Gaming Facility or with regard to the Gaming Operation, including, but not limited to, the maintenance of employee procedures and a surveillance system as provided below.

Sec. 8.1.5. The recording of any and all occurrences within the Gaming Facility that deviate from normal operating policies and procedures (hereafter "incidents"). The procedure for recording incidents shall: (1) specify that security personnel record all incidents, regardless of an employee's determination that the incident may be immaterial (all incidents shall be identified in writing); (2) require the assignment of a sequential number to each report; (3) 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 (4) require that each report include, at a minimum, all of the following:

(a) The record number.

(b) The date.

(c) The time.

(d) The location of the incident.

(e) A detailed description of the incident.

(f) The persons involved in the incident.

(g) The security department employee assigned to the incident.

Sec. 8.1.6. The establishment of employee procedures designed to permit detection of any irregularities, theft, cheating, fraud, or the like, consistent with industry practice.

Sec. 8.1.7. Maintenance of a list of persons barred 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 gaming within the State.

Sec. 8.1.8. The conduct of an audit of the Gaming Operation, not less than annually, by an independent certified public accountant, in accordance with the auditing and accounting standards for audits of casinos of the American Institute of Certified Public Accountants.

Sec. 8.1.9. Submission to, and prior approval, from the Tribal Gaming Agency of the rules and regulations of each Class III game to be operated by the Tribe, and of any changes in those rules and regulations. No Class III game may be played that has not received Tribal Gaming Agency approval.

Sec. 8.1.10. Addressing all of the following:

(a) Maintenance of a copy of the rules, regulations, and procedures for each game as played, including, but not limited to, the method of play and the odds and method of determining amounts paid to winners;

(b) Specifications and standards to ensure that information regarding the method of play, odds, and payoff determinations shall be visibly displayed or available to patrons in written form in the Gaming Facility;

(c) Specifications ensuring that betting limits applicable to any gaming station shall be displayed at that gaming station;

(d) Procedures ensuring that in the event of a patron dispute over the application of any gaming rule or regulation, the matter shall be handled in accordance with, industry practice and principles of fairness, pursuant to the Tribal Gaming Ordinance and any rules and regulations promulgated by the Tribal Gaming Agency.

Sec. 8.1.11. 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 Agency. The Tribal Gaming Agency shall have current copies of the Gaming Facility floor plan and closed-circuit television system at all times, and any modifications thereof first shall be approved by the Tribal Gaming Agency.

Sec. 8.1.12. Maintenance of a cashier's cage in accordance with industry standards for such facilities.

Sec. 8.1.13. Specification of minimum staff and supervisory requirements for each Gaming Activity to be conducted.

Sec. 8.1.14. Technical standards and specifications for the operation of Gaming Devices and other games authorized herein to be conducted by the Tribe, which technical specifications may be no less stringent than those approved by a recognized gaming testing laboratory in the gaming industry.

Sec. 8.2. State Civil and Criminal Jurisdiction. Nothing in these Secretarial Procedures affects the civil or criminal jurisdiction of the State under Public Law 280 (18 U.S.C. Sec. 1162; 28 U.S.C. Sec. 1360) or IGRA, to the extent applicable.

Sec. 8.3. (a) The Tribe shall take all reasonable steps to ensure that members of the Tribal Gaming Agency are free from corruption, undue influence, compromise, and conflicting interests in the conduct of their duties under these Secretarial Procedures; shall adopt a conflict-of-interest code to that end; and shall ensure the prompt removal of any member of the Tribal Gaming Agency who is found to have acted in a corrupt or compromised manner.

(b) The Tribe shall conduct a background investigation on a prospective member of the Tribal Gaming Agency, who shall meet the background requirements of a management contractor under IGRA; provided that, if such official is elected through a tribal election process, that official may not participate in any Tribal Gaming Agency matters under these Secretarial Procedures unless a

background investigation has been concluded and the official has been found to be suitable.

## SECTION 9.0 MEMORANDUM OF UNDERSTANDING WITH THE NATIONAL INDIAN GAMING COMMISSION.

Sec. 9.1.

(a) As set forth in the preamble of these Secretarial Procedures, the mediator's selected compact provided the State, subject to the Tribe's exercise of an advance opt-out provision therein, with authority to regulate the Tribe's Class III 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 Class III 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 perform 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 the Secretarial Procedures and the Tribe's Class III Gaming Activities authorized by the Gaming Ordinance and governed by these Secretarial Procedures.

(d) The Tribe shall not operate any Class III 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 subsequently any other provision or standard agreed to in the MOU entered into with the Chairperson of the NIGC.

## SECTION 10.0 PUBLIC AND WORKPLACE HEALTH, SAFETY, AND LIABILITY.

Sec. 10.1. The Tribe will not conduct Class III gaming in a manner that endangers the public health, safety, or welfare; provided that nothing herein shall be construed to make applicable to the Tribe any state laws or regulations governing the use of tobacco.

Sec. 10.2. Compliance. For the purposes of these Secretarial Procedures, the Tribal Gaming Operation shall:

(a) Comply with the building and safety standards set forth in Section 6.4.

(b) Carry no less than five million dollars ($5,000,000) in public liability insurance for patron claims, and the Tribe shall request its insurer to promptly and fairly settle all valid claims; provided that nothing herein requires the Tribe to agree to liability for punitive damages, any intentional acts not covered by the insurance policy, or attorneys' fees. On or before the effective date of these Secretarial Procedures or not less than 30 days prior to the commencement of Gaming Activities under these Secretarial Procedures, whichever is later, the Tribe shall adopt and make available to patrons a tort liability ordinance setting forth the terms and conditions, if any, under which the Tribe waives immunity to suit for money damages resulting from intentional or negligent injuries to person or property at the Gaming Facility or in connection with the Tribe's Gaming Operation, including procedures for processing 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 set out above.

(c) Adopt and comply with standards no less stringent than federal workplace and occupational health and safety standards.

(d) Comply with tribal codes and other applicable federal law regarding public health and safety.

(e) Adopt and comply with standards no less stringent than federal laws forbidding employers generally from discriminating in the employment of persons to work for the Gaming Operation or in the Gaming Facility on the basis of race, color, religion, national origin, gender, sexual orientation, age, or disability; provided that nothing herein shall preclude the tribe from giving a preference in employment to Indians, pursuant to a duly adopted tribal ordinance.

(f) Adopt and comply with standards that are no less stringent than state laws, if any, prohibiting a gaming enterprise from providing, allowing, contracting to provide, or arranging to provide alcoholic beverages, or food or lodging for no charge or at reduced prices at a gambling establishment or lodging facility as an incentive or enticement.

(g) Adopt and comply with standards that are no less stringent than state law, if any, prohibiting extensions of credit.

(h) Comply with provisions of the Bank Secrecy Act, P.L. 91-508, October 26, 1970, 31 U.S.C. Sec. 5311-5314, as amended, and all reporting requirements of the Internal Revenue Service, insofar as such provisions and reporting requirements are applicable to casinos.

Sec. 10.2.1. The Tribe shall adopt and, not later than 30 days after the effective date of these Secretarial Procedures, shall make available on request the standards described in subdivisions (a) and (c)-(h) of Section 10.2 to which the Gaming Operation is held. In the absence of a promulgated tribal standard in respect to a matter identified in those subdivisions, or the express adoption of an applicable federal statute or regulation in lieu of a tribal standard in respect to any such matter, the applicable federal statute or regulation shall be deemed to have been adopted by the Tribe as the applicable standard.

Sec. 10.3. Participation in state statutory programs related to employment. (a) In lieu of permitting the Gaming Operation to participate in the state statutory workers' compensation system, the Tribe may create and maintain a system that provides redress for employee work-related injuries through requiring insurance or self-insurance, which system must include a scope of coverage, availability of an independent medical examination, right to notice, hearings before an independent tribunal, a means of enforcement against the employer, and benefits comparable to those mandated for comparable employees under state or federal law.

(b) The Tribe agrees that its Gaming Operation will participate in the State's program for providing unemployment compensation benefits and unemployment compensation disability benefits with respect to employees employed at the Gaming Facility, including compliance with the provisions of the California Unemployment Insurance Code, and 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. In lieu of participating in the State's program set forth above, the Tribe may elect to self-insure for unemployment compensation benefits and unemployment compensation disability benefits for Gaming Employees, in which case the Tribe shall provide benefits comparable to those available under the State's program.

Sec. 10.4. Emergency Service 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. 10.5. Alcoholic Beverage Service. Standards for alcohol service shall be subject to applicable Tribal and federal law.

Sec. 10.6. Possession of firearms shall be prohibited at all times in the Gaming Facility except for state, local, or tribal security or law enforcement personnel authorized by tribal law and by federal or state law to possess firearms at the Facility.

Sec. 10.7. Labor Relations.

As of the effective date of these Secretarial Procedures, the organizational and representational rights of Gaming Operation employees are governed by the National Labor Relations Act as enforced by the National Labor Relations Board. In the event that the National Labor Relations Board subsequently is determined by the United States Supreme Court, the final and unappealable judgment of the Ninth Circuit, or an Act of Congress to lack jurisdiction over the Tribe as an employer of Gaming Operation employees, the Tribe shall confirm to the NIGC that is has enacted and shall continue in effect the Tribal Labor Ordinance set forth in Appendix A to these Secretarial Procedures.

## SECTION 11.0 EFFECTIVE DATE AND TERM OF SECRETARIAL PROCEDURES.

Sec. 11.1. Effective Date. These Secretarial Procedures shall be effective immediately when signed by the Assistant Secretary – Indian Affairs.

Sec. 11.2. Term of Secretarial Procedures.

Sec. 11.2.1. Effective. (a) Once effective these Secretarial Procedures shall be in full force unless one of the following events occurs: (1) these Secretarial Procedures are terminated by the mutual written consent of the Tribe and the Secretary; or (2) 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.

## SECTION 12.0 AMENDMENTS; RENEGOTIATIONS.

Sec. 12.1. The terms and conditions of these Secretarial Procedures may be amended at any time by the mutual and written agreement of both parties. The Secretary's agreement to amend these Secretarial Procedures shall not be unreasonably withheld or delayed, provided that no such request to amend by the Tribe may be sought for 12 months following the effective date of these Secretarial Procedures.

Sec. 12.2. Most Favored Nation.

Notwithstanding Section 12.1, should the State or the Department of the Interior, as the case may be, and any other tribe within California amend a current compact, adopt a new compact, or issue or amend secretarial 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, the Secretary shall agree to amend these Secretarial Procedures to add the more favorable term or terms pursuant to Section 12.3, *infra.* The Secretary's approval shall not be unreasonably withheld.

Sec. 12.3. Process and Negotiation Standards. All requests by the Tribe to amend or renegotiate these Secretarial Procedures shall be in writing, addressed to the Secretary, and shall include the activities or circumstances to be negotiated, together with a statement of the basis supporting the request. If the request meets the requirements of this Section, the parties shall confer promptly and determine a schedule for commencing negotiations within 30 days of the request.

Sec. 12.4. In the event the exclusive right of Indian tribes to operate Gaming Devices in California 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 California appellate court after the effective date of these Secretarial Procedures, that Gaming Devices may lawfully be operated by another person, organization, or entity (other than an Indian tribe pursuant to a compact or secretarial procedures) within California, or if Gaming Devices or banked or percentage card games may be lawfully operated by another person, organization, or entity (other than an Indian tribe operating pursuant to a Compact or Secretarial Procedures prescribed by the Secretary of the Interior pursuant to 25 U.S.C. § 2701(d)(7)(B)(b)(vii)) within California, the Tribe shall have the right to be relieved of its obligations to make payments into the Revenue Sharing Trust Fund in Section 4.0, *supra.*

## SECTION 13.0 NOTICES.

Unless otherwise indicated by these Secretarial Procedures, all notices required or authorized to be served shall be served by first-class mail at the following addresses:

**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

**Chairman National Indian Gaming Commission**
C/O Regional Director
Sacramento Regional Office
801 I Street
Suite 489
Sacramento, California 95814

**Tribal Chairperson**

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Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California
P.O. Box 369 Pauma Valley,
California 92061

## SECTION 14.0 CHANGES IN IGRA.

These Secretarial Procedures are intended to meet the requirements of IGRA as it reads on the effective date of these Secretarial Procedures, and when reference is made to the Indian Gaming Regulatory Act or to an implementing regulation thereof, the referenced provision is deemed to have been incorporated into these Secretarial 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 these Secretarial Procedures, except to the extent that federal law validly mandates that retroactive application without the Tribe's consent.

## SECTION 15.0 MISCELLANEOUS.

Sec. 15.1. Third Party Beneficiaries.

Notwithstanding any provision of law, these Secretarial Procedures are not intended to, and shall not be construed to, create any right on the part of a third party or third-party beneficiary.

Sec. 15.2. Complete agreement.

These Secretarial Procedures, together with all appendices, sets forth the full and complete authorization by the Secretary for the Tribe to conduct Class III Gaming Activities on the Indian lands over which the Indian tribe has jurisdiction as provided under 25 U.S.C. § 2710(d)(7)(B)(vii)(II) and supersedes, supplants, and extinguishes any prior agreements or understandings with respect to the subject matter hereof.

On the effective date of these Secretarial Procedures, any and all prior tribal-state Class III gaming compacts entered into between the Tribe and the State shall be null and void and of no further force and effect.

Sec. 15.3. Construction.

Neither the presence in another tribal-state compact of language that is not included in these Secretarial Procedures, nor the absence in another tribal-state compact of language that is included in these Secretarial Procedures shall be a factor in construing the terms of these Secretarial Procedures.

Sec. 15.4. Force Majeure.

In the event of a force majeure event, including but not limited to: an act of God; accident; fire; flood; earthquake; an epidemic or pandemic; 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; and other causes of a similar nature beyond the Tribe's control that causes the Tribe's Gaming Operation or Facility to be inoperable or operate at significantly less than its full capacity, the Tribe shall be relieved of any obligations that it is prevented from performing under these Secretarial 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 agree to meet and confer for the purpose of discussing the event and appropriate actions, if any given the circumstances.

15.5. 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 *Pauma Band of Mission Indians*

*v. Newsom, et al.,* No. 2:21-cv-01166 KES SKO (E.D. Cal. filed on June 30, 2021); and (2) the State's position that it would not consent to regulate the Tribe's class Ill gaming under the mediator's selected compact. Under IGRA, these Secretarial Procedures are properly viewed as a full substitute for a class Ill 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.

Sec. 15.6. References to the State and the State Gaming Agency in these Secretarial Procedures.

The State Gaming Agency and the State shall have no regulatory responsibilities or obligations to the Tribe, and the Tribe shall have no obligations to the State Gaming Agency.

Sec. 15.7. No Waiver of Sovereign Immunity.

Nothing in these Secretarial Procedures shall be interpreted as a waiver of either the Tribe's sovereign immunity or a Tribal official's personal immunity or immunities, whether express or implied, as to the State or any third party.

**IN WITNESS WHEREOF**, the undersigned executes these Secretarial Procedures on behalf of the Department of the Interior.

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

## Model Tribal Labor Relations Ordinance

### Section 1: Threshold of applicability

(a) Any tribe with 250 or more persons employed in a tribal casino and related facility shall adopt this Tribal Labor Relations Ordinance (TLRO or Ordinance). For purposes of this Ordinance, a "tribal casino" is one in which class III gaming is conducted pursuant to the tribal-state compact. A "related facility" is one for which the only significant purpose is to facilitate patronage of the class III gaming operations.

(b) Any tribe which does not operate such a tribal casino as of September 10, 1999, but which subsequently opens a tribal casino, may delay adoption of this ordinance until one year from the date the number of employees in the tribal casino or related facility as defined in 1(a) above exceeds 250.

(c) Upon the request of a labor union, the Tribal Gaming Commission shall certify the number of employees in a tribal casino or other related facility as defined in 1(a) above. 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 any person (hereinafter "Eligible Employee") who is employed within a tribal casino in which Class III gaming is conducted pursuant to a tribal-state compact or other related facility, the only significant purpose of which is to facilitate patronage of the Class III gaming operations, except for any of the following:

> (1) any employee who is a supervisor, defined as any individual having authority, in the interest of the tribe and/or employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;
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> (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.

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

Operation 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 check off;

(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 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 or promise of benefit.

**Section 8: Access to Eligible Employees**

(a) Access shall be granted to the union for the purposes of organizing Eligible Employees, provided that such organizing activity shall not interfere with patronage of the casino or related 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 licensing rules applied to individuals or entities with similar levels of access to the casino or related facility, 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 the Union 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 Labor Panel 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) working 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 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 Eligible 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 or related facility 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 by the tribal forum procedures set forth in Section 13(b) governing resolution of impasse within sixty (60) working days or such other time as mutually agreed to by the parties, the union shall have the right to strike. Strike-related picketing shall not be conducted on Indian lands as defined in 25 U.S.C. § 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 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 union 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 90 days and no less than 60 days prior to the expiration of a collective bargaining agreement. A decertification petition may be filed anytime 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 impasse, which shall only go through the first level of binding dispute resolution.

(b) 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 a Tribal Council, Business Committee, or Grievance Board. 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. The agreed upon time limits are set forth as follows:

> (1) 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.
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> (2) 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;

(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 (3) 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 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 issued pursuant to the Ordinance in the appropriate state superior court. The parties are free to put at issue whether or not the arbitration award exceeds the authority of the Tribal Labor Panel.