



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JAN 08 2025

The Honorable Bo Mazzetti
Chairman, Rincon Band of Luisenio Indians
One Government Center Lan
Valley Center, California 92082

Dear Chairman Mazzetti:

On November 1, 2024, the Department of the Interior (Department) received from the Rincon Band of Luisenio Indians (Tribe) a request seeking to amend its Secretarial Procedures in accordance with the Indian Gaming Regulatory Act (IGRA). 25 U.S.C. § 2701 *et seq.* The request is based on recent developments in Federal case law, the Department's changes to 25 C.F.R. Part 293, recently issued Secretarial Procedures for other California Tribes, and the most-favored-nation provision in the Tribe's Secretarial Procedures.

After consulting with the Tribe, I am issuing the enclosed 2024 Amended and Restated Secretarial Procedures (Secretarial Procedures), as required by IGRA, under which the Tribe may continue to conduct class III gaming.

The Tribe operates class III gaming on its gaming eligible lands in California pursuant to Secretarial Procedures initially promulgated by the Secretary of the Interior (Secretary) on Feb. 18, 2013, pursuant to an order submitting the last best offer compact to the Department from the Honorable Edward E. Panelli (ret.), the court-appointed mediator in *Rincon Band of Luiseno Mission Indians v. Brown.*¹ The Department amended the Tribe's Secretarial Procedures in 2019 and 2021.

The amendments requested by the Tribe are driven, in part, by a Nov. 21, 2022. Memorandum of Understanding (MOU) between the Tribe and the State of California (State), which relieved the State of its regulatory responsibilities under the Tribe's Secretarial Procedures. The Tribe sent notice of the MOU to both the Department and NIGC. Following that notice, on Jan. 1, 2023, the Tribe entered another MOU with the NIGC whereby the NIGC agreed to assume certain regulatory functions under the Secretarial Procedures. Other amendments to the Secretarial Procedures reflect the holding of the Ninth Circuit Court of Appeals in *Chicken Ranch Rancheria of Me-Wuk Indians v. California*, 42 F. 4th 1024 (9th Cir 2022), where the court determined that several subjects in Tribal-State class III gaming compacts with the State of California were not permitted under IGRA.

Many of the amendments are to provisions in the Secretarial Procedures that are no longer accurate or applicable, though still in effect. The amendments to the Secretarial Procedures delete those sections requiring the Tribe to pay into the State of California's Special Distribution Fund (SDF). which the State uses, in part, to defray its regulatory costs. The amendments delete provisions pertaining to either the State's regulatory functions or the Tribe's payments to the SDF. The amendments similarly

¹ *Rincon Band of Luiseno Mission Indians v. Brown*, No. 3:04-cv-01151-WMC (S.D. Cal.).

remove requirements to comply with California environmental law. The amendments, however, retain the State's management of the Revenue Sharing Trust Fund (RSTF), which collects revenue sharing from gaming Tribes in California and distributes the funds to eligible non-gaming or limited-gaming Tribes in California.

The Secretary cannot unilaterally obligate the State to carry out the responsibilities for regulating and administering the RSTF as outlined in the Tribe's proposed amendments to the Secretarial Procedures. Under the amended Secretarial Procedures, if the State is unwilling or unable to accept the Tribe's payments to the RSTF and disburse the payments consistent with the relevant provisions in the amended Secretarial Procedures, the Tribe will make those payments into an interest-bearing FDIC-insured Alternative Revenue Sharing Trust Fund administered by a disinterested third party designated by the Tribe. The Alternative RSTF funds are to be distributed in equal shares directly to all RSTF-eligible California Tribes by January 31 of each year following the year in which these Secretarial Procedures took effect.² The Tribe will continue to rely on the California Gambling Control Commission's list of tribes eligible to for these distributions. Any distribution to non-gaming or limited-gaming tribes from the Alternative RSTF will be in addition to funds those tribes receive from the State administered RSTF.

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 mediator's selected compact selected.³ I find that these Secretarial Procedures meet those requirements. By this letter, and as required by IGRA, I am providing you with notice that I have prescribed these Amended and Restated Secretarial Procedures for the conduct of class III gaming on the Tribe's Indian lands, and they are now in effect. in effect.

Sincerely,



Bryan Newland
Assistant Secretary – Indian Affairs

² See Sec. 4.4, *Amended and Restated Secretarial Procedures for the Rincon Band of Luiseno Indians*.

³ 25 U.S.C. § 2710 (d)(7)(B)(vii).

Amended and Restated SECRETARIAL PROCEDURES for the RINCON BAND OF LIBSENO INDIANS, also known as the RINCON BAND OF LUISENO MISSION INDIANS of THE RINCON RESERVATION (Tribe) a federally recognized sovereign Indian tribe

PREAMBLE

A. In 1988, Congress enacted the Indian Gaming Regulatory Act of 1988 (P.L. 100-497, codified at 25 U.S.C. Sec. 2701-2721) (hereafter "IGRA") as the federal statute governing Indian gaming in the United States. The purposes of IGRA are to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments; to provide a statutory basis for regulation of Indian gaming adequate to shield it from organized crime and other corrupting influences; to ensure that the Indian tribe is the primary beneficiary of the gaming operation; to ensure that gaming is conducted fairly and honestly by both the operator and players; and to declare that the establishment of an independent federal regulatory authority for gaming on Indian lands, federal standards for gaming on Indian lands, and a National Indian Gaming Commission are necessary to meet congressional concerns.

B. The system of regulation of Indian gaming fashioned by Congress in IGRA rests on an allocation of regulatory jurisdiction among the three sovereigns involved: the federal government, the state in which a tribe has land, and the tribe itself. IGRA makes Class III gaming activities lawful on the lands of federally-recognized Indian tribes only if such activities are: (1) authorized by a tribal ordinance, (2) located in a state that permits such gaming for any purpose by any person, organization or entity, and (3) conducted in conformity with a gaming compact entered into between the Indian tribe and the state and approved by the Secretary of the Interior or, alternatively, in conformity with Class III gaming procedures issued by the Secretary pursuant to the remedial provisions of IGRA, 25 U.S.C. Sec. 2710 (d)(7) et seq.

C. The Tribe is currently operating a tribal gaming casino offering Class III gaming activities on its reservation, which is located in San Diego County of California. On November 11, 2022, the Tribe and the State entered into an agreement, whereby the State agreed to cease regulating the Tribe's gaming and the parties agreed to transfer the regulatory responsibilities of the State Gaming Agency under the Secretarial Procedures to the National Indian Gaming Commission (NIGC). On January 3, 2023, the Tribe entered into a Memorandum of Understanding with the NIGC whereby the NIGC agreed to assume certain regulatory responsibilities over these Secretarial Procedures and tribal internal controls and the Tribal Gaming Agency shall monitor and enforce tribal compliance with the Secretarial Procedures and report significant or continued violations of the Secretarial Procedures to the NIGC. The Tribe agreed that the Tribal Gaming Agency shall utilize and enforce the regulations promulgated by the NIGC, 25 C.F.R. Part 542, Minimum Internal Control Standards.

Section 1.0. PURPOSES AND OBJECTIVES.

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

(a) 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 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.

(b) 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.

Sec. 2.0. DEFINITIONS

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

Sec. 2.2. "Alternative Revenue Sharing Trust Fund" or "Alternative RSTF" means a fund created by the Tribe pursuant to Section 5.1(c) of these Secretarial Procedures to accept payments from the Tribe for disbursement to eligible Limited Gaming and Non-Gaming Tribes.

Sec. 2.3 "Applicable Codes" means the uniform fire, plumbing, electrical, mechanical, building, and related codes as adopted from time-to-time by the Western Fire Chiefs Association, the International Code Council, the International Association of Plumbing and Mechanical Officials, and the National Fire Protection Association, as approved by the American National Standards Institute, but excluding provisions not directly involving structural integrity or life safety.

Sec. 2.4. "Applicant" means an individual or entity that applies for a Tribal gaming license.

Sec. 2.5. "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. 2.6. "Gaming Activities" means the Class III gaming activities authorized under these Secretarial Procedures.

Sec. 2.7. "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. 2.8. "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. 2.9. "Gaming Facility" or "Facility" means the physical building or structure situated on Indian lands where the Gaming Activities occur.

Sec. 2.10. "Gaming Operation" means the business enterprise that offers and operates 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. 2.11. "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. 2.12. "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. 2.13. "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 Section 6.4.5, the compensation received by the purveyor is not grossly disproportionate to the value of the goods or services provided, and the purveyor is not otherwise a person who exercises a significant influence over the Gaming Operation.

Sec. 2.13.1 "Gaming Spaces" means the areas within a gaming facility that are directly related to and necessary for the conduct of class III gaming such as: the casino floor; vault; count room; surveillance, management, and information technology areas; class III gaming

device and supplies storage areas; and other secured areas where the operation or management of class III gaming takes place.

Sec. 2.14. "IGRA" means the Indian Gaming Regulatory Act of 1988 (P.L. 100-497, 25 U.S.C. Sec. 2701 et seq.) any amendments thereto, and all regulations promulgated thereunder.

Sec. 2.15. "Limited-Gaming Tribe" is a federally recognized tribe in California that has a Class III Gaming compact with the State but is operating fewer than a combined total of three hundred fifty (350) Gaming Devices in all of its gaming operations wherever located.

Sec. 2.16. "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. 2.17. "Net Win" means "net win" as defined by the American Institute of Certified Public Accountants.

Sec. 2.18. "NIGC" means the National Indian Gaming Commission.

Sec. 2.19. "Non-Gaming Tribe" is a federally recognized tribe in California, with or without a tribal-state Class III Gaming compact, that has not engaged in, or offered, Class III Gaming in any location whether within or without California, as of the date of distribution to such tribe from the Revenue Sharing Trust Fund or during the immediately preceding three hundred sixty-five (365) days.

Sec. 2.20. The "Revenue Sharing Trust Fund" (RSTF) is a fund created by the California Legislature and administered by the State Gaming Agency, as trustee, with no duties or obligations except as set forth in these Secretarial Procedures, for the receipt, deposit, and distribution of monies paid by gaming tribes for the benefit of Non-Gaming Tribes and Limited-Gaming Tribes. The State Gaming Agency has no discretion with respect to the use or disbursement by recipient tribes of the RSTF monies. Under California law, § 12012.75, the RSTF is authorized to serve as a depository of the trust funds and to allocate and disburse them on a quarterly basis to eligible Non-Gaming and Limited-Gaming Tribes as specified by the California Legislature.

Sec. 2.21. "Secretarial Procedures" means these Secretarial Procedures, as amended.

Sec. 2.22. "State" means the State of California or an authorized official or agency thereof.

Sec. 2.23. "State Gaming Agency" means the entities authorized to investigate, approve, and regulate gaming licenses pursuant to the Gambling Control Act (Chapter 5 (commencing with Section 19800) of Division 8 of the Business and Professions Code).

Sec. 2.24. "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. 2.25. "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. 2.26. "Tribe" means the Rincon Band of Luiseno Indians, formally known as the Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California, a federally-recognized Indian tribe, or an authorized official or agency thereof.

Sec. 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.

Sec. 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, including any devices or games played on those Gaming Devices that are legally equivalent to devices and games the State has authorized any person, organization, or entity to play in California.
- (b) Any banking or percentage card game.
- (c) The 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.
- (d) Any other form of gaming authorized by the laws of the State of California for any person, organization, or entity, including other Indian Tribes for any purpose, provided that the Tribe will not offer such games through use of the Internet unless others in the State of California are permitted to do so under state and federal law.
- (e) If the State of California amends its laws to permit games on the Internet and such gaming is consistent with the laws of the United States, then nothing in these Secretarial Procedures shall be interpreted to prevent the Tribe from owning and

operating on the Tribe's Indian lands an Internet gaming website offering games in the State of California, provided that the Tribe establishes rules of play and Minimum Internal Control Standards (MICS) acceptable to at least as stringent as those promulgated by the State Gaming Agency, if any, prior to operating any such game as agreed upon by the Tribe and the NIGC consistent with the Tribe's gaming ordinance and the Memorandum of Understanding entered into pursuant to section 8.4 of these Secretarial Procedures.

(f) Nothing herein shall be construed to preclude negotiation of a separate compact governing the conduct of off-track wagering at the Tribe's Gaming Facility.

Sec. 4.2. Authorized Gaming Facility. As of the Effective Date of these Secretarial Procedures, the Tribe is entitled to 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. The Tribe may combine and operate in its 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 Gaming Devices

Sec. 4.3.1 As of the Effective Date of these Amended and Restated 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.

(a) The Tribe shall make payment into the Revenue Sharing Trust fund or the Alternative Revenue Sharing Trust Fund, as set forth in Section 4.3.3 for that certain highest number of Gaming Devices operated in the Gaming Facility in the previous quarter.

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

(a) Each eligible Non-Gaming Tribe and Limited-Gaming Tribe in the State is eligible to receive the sum of \$1.1 million per year. In the event there are insufficient monies in the RSTF to pay \$1.1 million per year to each eligible Non-Gaming Tribe and Limited-Gaming Tribe, any available monies in that fund shall be distributed to eligible Non-Gaming Tribes and Limited-Gaming Tribes in equal shares. To the extent legally feasible under these Secretarial Procedures and other existing compacts and secretarial procedures, monies in the RSTF in excess of the amount necessary to distribute \$1.1 million to each eligible Non-Gaming Tribe and Limited-Gaming Tribe shall be disbursed in equal shares to eligible Tribes in the first quarter of each successive calendar year.

(b) If the Tribe pays into the RSTF, the State Gaming Agency shall track and segregate the Tribe's payments into the RSTF from other Tribes' payments

into the RSTF. If, by the end of each calendar year, other Tribes' payments into the RSTF, together with any existing balance in the RSTF available for disbursement, will be insufficient to distribute \$1.1 million annually to each Non-Gaming and Limited Gaming Tribe, the State Gaming Agency shall use the Tribe's payments into the RSTF to make up as much of the shortfall as such payments will allow. If the State Gaming Agency determines that other Tribes' payments into the RSTF, together with any existing balance in the RSTF available for disbursement, will be sufficient to distribute \$1.1 million to each Non-Gaming and Limited Gaming Tribe, the State Gaming Agency shall distribute the total amount actually paid by the Tribe into the RSTF to all RSTF-eligible Tribes in equal shares by January 31 of the immediately following year.

Sec. 4.3.3 Revenue Sharing Trust Fund or Alternative Revenue Sharing Trust Fund Fee Schedule.

The Tribe shall pay into the Revenue Sharing Trust Fund, on a quarterly basis, in the following amounts:

Number of Gaming Devices	Fee Per Device Per Quarter/Annum
1-700	\$0.00/ \$0.00
701 - 1,100	\$225/\$900
1,101 - 1,600	\$487.50/1,950
1,601 and above	\$1,087.50/4,350

Sec.4.4. If the State is unwilling or unable to 1) accept the Tribe's RSTF payments and 2) disburse the payments consistent with section 4.3.2(a) of these Secretarial Procedures to eligible Limited Gaming and Non-Gaming Tribes, the Tribe shall make those payments into an interest-bearing FDIC-insured Alternative Revenue Sharing Trust Fund administered by a disinterested third party designated by the Tribe, to be distributed in equal shares directly to all RSTF-eligible California Tribes by January 31 of each year following the year in which these amended Secretarial Procedures took effect. The sole functions of the administrator of the Alternative RSTF shall be to receive and acknowledge the Tribe's payments, disburse the payments and accrued interest to all RSTF-eligible Tribes by January 31 of each year following the year in which these Secretarial Procedures took effect, inform each recipient Tribe of the source of the funds, and provide the Tribe with an accounting of the Tribe's payments into and disbursements from the Alternative RSTF. The Tribe shall pay the administrator of the Alternative RSTF a fee not to exceed the actual and reasonable costs incurred in administering the Alternative RSTF.

(a) Tribes that make contributions into the Alternative RSTF shall, within 120 days of their financial year end, submit an audit by a state licensed independent CPA firm to verify that deposit(s) made by the Tribe into the Alternative RSTF are consistent with these Secretarial Procedures. Copies of the results of the audit shall be sent directly to the NIGC.

(b) If the Tribe fails to submit an annual audit or fails to submit in whole or part, a payment due to the Alternative RSTF and fails to remedy the matter within a reasonable period of time, it shall be treated as a violation of these Secretarial Procedures.

4.5. Notwithstanding the provisions of Sections 4.3.2, 4.3.3, and 4.4, no payments shall be due or payable during any federally- or State-declared public health emergency in which the Tribe ceases operation of its Gaming Activities because members of the public and/or the Tribe's Gaming Employees are prohibited or discouraged by federal, State, County or Tribal officials from travelling to, patronizing, or working at the Tribe's Gaming Facility.

Sec. 5.0 Reserved

Sec. 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 NIGC and the Tribal Gaming Agency.

Sec. 6.1(a) Incorporation of Secretarial Procedures. These Secretarial Procedures, including amendments, shall be incorporated by reference into the Tribal Gaming Ordinance. In the event any inconsistencies arise between the Secretarial Procedures and any provision of the Tribal Gaming Ordinance, the Secretarial Procedures shall govern.

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 m 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, to the extent required by the state Department of Alcoholic Beverage Control.

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. The Tribe intends that the licensing process provided for in these Secretarial Procedures shall involve joint cooperation between the Tribal Gaming Agency and the NIGC, as more particularly described herein, pursuant to a Memorandum of Understanding dated January 3, 2023, as it may be amended from time to time, and which is incorporated herein by reference.

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, and IGRA. The license shall be reviewed and renewed, if appropriate, every two years thereafter. Verification that this requirement has been met shall be provided by the Tribe to the NIGC every two years. 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, the Gaming Facility the Tribe constructed after the effective date these Secretarial Procedures, and all expansions or modifications to the 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) The Gaming Facility 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) Following inspections by the Tribal Gaming Agency's experts, the Tribal Gaming Agency agrees to collect any Gaming Facility condition noted in an inspection that does not meet the standards set forth in subdivisions (b) and (c). The Tribal Gaming Agency shall submit to the NIGC any reports of an inspection within 10 days after completion of the report, which reports shall also be separately and simultaneously forwarded to the Tribal Chairperson. Upon certification by the Tribal Gaming Agency's experts that a Gaming Facility meets applicable standards, the Tribal Gaming Agency shall forward the experts' certification to the NIGC within 10 days of issuance.

Sec. 6.4.3. Suitability Standard Regarding Gaming Licenses. 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, in addition to any other criteria in IGRA or the Tribal Gaming Ordinance:

- (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 the effective date of these Secretarial Procedures.

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.
- (b) Except as provided in subdivisions (c) and (d), the Tribe will not employ or continue to employ, any person whose application to the Tribal Gaming Agency for a determination of suitability, or for a renewal of such a determination, has been denied or has expired without renewal.
- (c) Notwithstanding subdivision (a), the Tribe may retain in its employ a person whose application for a determination of suitability, or for a renewal of such a determination, has been denied by the NIGC, if: (i) the person holds a valid and current license issued by the Tribal Gaming Agency that must be renewed at least biennially; (ii) the denial of the application by the Tribal Gaming Agency is based solely on activities, conduct, or associations that antedate the filing of the person's initial application to the Tribal Gaming Agency for a determination of suitability; (iii) the person is not an employee or agent of any other gaming operation; and (iv) the person has been in the continuous employ of the Tribe for at least three years prior to the effective date of these Secretarial Procedures.
- (d)
 - (1) Notwithstanding subdivision (a), the Tribe may employ or retain in its employ a person whose application for a determination of suitability, or for a renewal of such a determination if the person is an enrolled member of the Tribe, as defined in this subdivision, and if (A) the person holds a valid and current license issued by the Tribal Gaming Agency that must be renewed at least biennially; (B) the denial of the application is based solely on activities, conduct, or associations that antedate the filing of the person's initial application for a determination of suitability; and (C) the person is not an employee or agent of any other gaming operation.
 - (2) For purposes of this subdivision, "enrolled member" means a person who is either (A) a person certified by the Tribe as having been a member of the Tribe for at least five (5) years; or (B) a holder of continuation of membership issued by the Bureau of Indian Affairs; or (C) if the Tribe has 100 or more enrolled members as of the date of execution of these Secretarial Procedures, a person certified by the Tribe as being a member pursuant to criteria and standards specified in a tribal Constitution that has been approved by the Secretary of the Interior.
- (e) Nothing herein shall be construed to relieve any person of the obligation to apply for a renewal of a determination of suitability as required by Section 6.5.6.

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. The Tribe shall not enter into, or continue to make payments pursuant to, any contract or agreement for the provision of Gaming Resources with any person whose application to the Tribal Gaming Agency for a determination of suitability has been denied or has expired without 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 based on a determination of unsuitability by the State Gaming Agency.

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 based on a determination of unsuitability. The Tribe shall not enter into, or continue to make payments pursuant to, any contract or agreement for the provision of financing with any person whose application for a determination of suitability has been denied or has expired without renewal. 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. 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, 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. In lieu of completing its own background investigation, and to the extent that doing so does not conflict with or violate IGRA or the Tribal Gaming Ordinance, the Tribal Gaming Agency may rely on a state certification of non-objection previously issued under a gaming compact involving another tribe, or may rely on a State gaming license previously issued to the applicant, to fulfill some or all of the Tribal Gaming Agency's background investigation obligation.

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 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. The NIGC may request suspension or revocation in accordance with IGRA and applicable NIGC regulations. 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.

(b) (i) Except as provided in paragraph (ii) below, upon receipt of notice that the NIGC has information that a person would be unsuitable for licensure in a gambling establishment subject to the jurisdiction of the NIGC, the NIGC may object to licensure or notify the Tribal Agency of such information. The Tribal Gaming Agency shall promptly make a suitability determination and may revoke any license that has theretofore been issued to the person.

(ii) Notwithstanding information forwarded to the Tribal Gaming Agency by NIGC that could support a determination of unsuitability, the Tribal Gaming Agency may, in its discretion, decline to revoke a tribal license issued to a person employed by the Tribe pursuant to Section 6.4.4(c) or Section 6.4.4(d).

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.

Sec. 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 the NIGC.

Sec. 7.3. Memorandum of Understanding with the National Indian Gaming Commission.

- (a) On December 12, 2022, the Tribe notified the Secretary and NIGC, that by mutual agreement, the Tribe and the State agreed the State would opt-out of its assumption of its regulatory responsibilities identified in the mediator's selected compact that formed the basis for these Secretarial Procedures, as issued on February 13, 2012.
- (b) Accordingly, the Tribe is responsible for ensuring compliance with these Secretarial Procedures, and the Tribal Gaming Agency shall continue fulfilling the primary regulatory responsibilities set forth in these Secretarial Procedures.
- (c) On January 3, 2023, the Tribe entered into a Memorandum of Understanding (MOU) with the NIGC wherein NIGC agreed to assume certain regulatory authority over these Secretarial Procedures and tribal internal controls. The Tribal Gaming Agency shall monitor and enforce tribal compliance with the Secretarial Procedures and report significant or continued violations of the Secretarial Procedures to the NIGC. Under the MOU, in part, the Tribe agreed that the Tribal Gaming Agency shall utilize and enforce the regulations promulgated by the NIGC, 25 C.F.R. Part 542, Minimum Internal Control Standards.
- (d) The Tribe shall not operate any Gaming Activities under these Secretarial Procedures in a manner that is inconsistent with any federal regulations such as, but not limited to, NIGC Minimum Internal Control Standards or any other provision or standard subsequently agreed to in the MOU with the Chairman of the NIGC.

Sec. 7.4. Access to Premises by NIGC; Notification; Inspections. Notwithstanding that the Tribe has the primacy responsibility to administer and enforce the regulatory requirements of these Secretarial Procedures, the NIGC shall have the right to inspect the Tribe's Gaming Facility with respect to Class III Gaming Activities only, and all Gaming Operation or Facility records relating thereto, subject to the following conditions:

Sec. 7.4.1. Inspection of public areas of the Gaming Facility may be made at any time without prior notice during normal Gaming Facility business hours.

Sec. 7.4.2. Inspection of areas of a Gaming Facility not normally accessible to the public may be made at any time during normal Gaming Facility business hours, immediately after the NIGC's authorized inspector notifies the Tribal Gaming Agency of his or her presence on the premises, presents proper identification, and requests access to the non-public areas of the Gaming Facility. The Tribal Gaming Agency, in its sole discretion, may require a member of the Tribal Gaming Agency to accompany the NIGC inspector at all times that the NIGC inspector is in a non-public area of the Gaming Facility. If the Tribal Gaming Agency imposes such a requirement, it shall require such member to be available at all times for those purposes and shall ensure that the member has the ability to gain immediate access to all non-public areas of the Gaming Facility. Nothing in these Secretarial Procedures shall be construed to limit the NIGC to one inspector during inspections.

Sec. 7.4.3.

(a) Inspection and copying of Gaming Operation papers, books, and records may occur at any time, immediately after notice to the Tribal Gaming Agency, during the normal hours of the Gaming Facility's business office, provided that the inspection and copying of those papers, books or records shall not interfere with the normal functioning of the Gaming Operation or Facility. Notwithstanding any other provision of California law, all information and records that the NIGC obtains, inspects, or copies pursuant to these Secretarial Procedures shall be, and remain, the property solely of the Tribe; provided that such records and copies may be retained by the NIGC as reasonably necessary for completion of any investigation of the Tribe's compliance with these Secretarial Procedures.

(b) (i) The NIGC will exercise utmost care in the preservation of the confidentiality of any and all information and documents received from the Tribe and will apply the highest standards of confidentiality consistent with the Freedom of Information Act. The Tribe may avail itself of any and all remedies under state law for improper disclosure of information or documents. To the extent reasonably feasible, the NIGC will consult with representatives of the Tribe prior to disclosure of any documents received from the Tribe, or any documents compiled from such documents or from information received from the Tribe, including any disclosure compelled by judicial process, and, in the case of any disclosure compelled by judicial process, will endeavor to give the Tribe immediate notice of the order compelling disclosure and a reasonable opportunity to interpose an objection thereto with the court.

(c) Records received by the NIGC from the Tribe in compliance with these Secretarial Procedures, or information compiled by the NIGC from those records, shall be exempt from disclosure to the maximum extent available under federal law.

Sec. 7.4.4. Notwithstanding any other provision of these Secretarial Procedures, the NIGC shall not be denied access to papers, books, records, equipment, or places where such access is reasonably necessary to ensure compliance with these Secretarial Procedures.

Sec. 7.4.5.

(a) Subject to the provisions of subdivision (b), the Tribal Gaming Agency shall not permit any Class III Gaming Device to be transported to or from the Tribe's land except in accordance with procedures established by the Tribal Gaming Agency 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 Class III 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 in place; (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; (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.

(c) Class III Gaming Devices transported off the Tribe's land in violation of this Section 7.4.5 or in violation of any permit issued pursuant thereto is subject to summary seizure by California peace officers.

Sec. 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 or electronic format); (2) require the assignment of a sequential number to each report; (3) provide for permanent reporting in a manner in

which pages cannot be removed, deleted or altered; 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 United States.

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. § 1162; 28 U.S.C. § 1360) or IGRA, to the extent applicable. In addition, criminal jurisdiction to enforce state gambling laws is transferred to the State pursuant to 18 U.S.C. § 1166(d), provided that no Gaming Activity conducted by the Tribe pursuant to these Secretarial Procedures may be deemed to be a civil or criminal violation of any law of the State.

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. If requested by the tribal government or the Tribal Gaming Agency, the State Gaming Agency may assist in the conduct of such a background investigation and may assist in the investigation of any possible corruption or compromise of a member of the agency.

Sec. 8.4. The Tribal Gaming Agency shall adopt regulations that require all operators of gaming on Rincon Indian lands to adopt minimum internal controls that meet or exceed the standards promulgated (e.g., 25 C.F.R. Part 542) or recommended by the NIGC (e.g., Bulletin 2018-3) without regard to whether the NIGC otherwise has authority to promulgate or recommend such standards.

Sec. 9.0. DISPUTE RESOLUTION PROVISIONS.

Sec. 9.0.1 NIGC enforcement of these Secretarial Procedures shall be consistent with IGRA and NIGC regulations, and any decisions or actions of the NIGC shall not be subject to arbitration.

Sec. 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 and insurance coverage set out above.
- (c) Adopt and comply with standards no less stringent than federal workplace and occupational health and safety standards; the Gaming Operation will allow for

inspection of Gaming Facility workplaces by state inspectors, during normal hours of operation, to assess compliance with these standards, unless inspections are regularly made by an agency of the United States government to ensure compliance with federal workplace and occupational health and safety standards. Nothing herein shall be construed as submission of the Tribe to the jurisdiction of those state inspectors, but any alleged violations of the standards shall be treated as alleged violations of these Secretarial Procedures.

(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) 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. 10.3. 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 law. Not later than the effective date of these Secretarial Procedures, or 60 days prior to the commencement of Gaming Activities under these Secretarial Procedures, the Tribe will advise the State of its election to participate in the statutory workers' compensation system or, alternatively, will forward to the State all relevant ordinances that have been adopted and all other documents establishing the system and demonstrating that the system is fully operational and compliant with the comparability standard set forth above. The parties agree that independent contractors doing business with the Tribe must comply with all state workers' compensation laws and obligations.
- (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.

- (c) As a matter of comity, with respect to persons employed at the Gaming Facility, other than members of the Tribe, the Tribal Gaming Operation shall withhold all taxes due to the State as provided in the California Unemployment Insurance Code and the Revenue and Taxation Code and shall forward such amounts as provided in said Codes to the State.

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 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. Notwithstanding any other provision of these Secretarial Procedures, the Tribe shall maintain the agreement that was entered into on or before October 13, 1999, as amended by Exhibit A attached hereto, that addresses organizational and representational rights of Class III Gaming Employees and other employees associated with the Tribe's Class III gaming enterprise, such as food and beverage, housekeeping, cleaning, bell and door services, and laundry employees at the Gaming Facility or any related facility, the only significant purpose of which is to facilitate patronage at the Gaming Facility.

Sec. 11.0. EFFECTIVE DATE AND TERM OF THESE SECRETARIAL PROCEDURES.

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

Sec. 11.2. These Secretarial Procedures shall remain in effect unless one of the following events occurs:

- (a) These Secretarial Procedures are terminated by mutual consent of the Tribe and the Secretary; or
- (b) The Tribe duly adopts a resolution revoking tribal authority to conduct class III gaming upon the Tribe's Indian lands, as provided for in IGRA.

Sec. 12.0. AMENDMENTS; RENEGOTIATIONS.

Sec. 12.1. If the Tribe seeks to amend these Amended and Restated Secretarial Procedures, it shall submit a request in writing to the Secretary pursuant to IGRA, provided that, except to amend section 4.1 no such request may be sought for 12 months following the Effective Date of the most recent amendment of these Secretarial Procedures. The Secretary, or her or his designee, shall meet and confer with the Tribe regarding modifying these Secretarial Procedures to incorporate the Tribe's requested amendment. The Secretary's agreement to amend these Secretarial Procedures shall not be unreasonably withheld or delayed.

Sec. 12.2.

Nothing herein shall be construed to constitute a waiver of any rights under IGRA in the event of an expansion of the scope of permissible gaming resulting from a change in state law.

Sec. 12.3. 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) within California, the Tribe shall have the right to be relieved of its obligations to make payments into the Revenue Sharing Trust Fund or, if activated, the Alternative RSTF as provided in Sections. 4.3.2, et seq., and continue gaming under these Secretarial Procedures. 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, as applicable:

For purposes of, but not limited to, amending, extending or otherwise modifying these Secretarial Procedures:

DIRECTOR, OFFICE OF INDIAN GAMING 1849 C Street, N.W, MS 3543 MIB

Washington, DC 20240

For all other purposes involving regulatory issues pursuant to the MOU with the NIGC for these Secretarial Procedures:

NATIONAL INDIAN GAMING COMMISSION

1849 C Street NW, Mail Stop #1621

Washington DC 20240

If the State Gaming Agency has undertaken any regulatory responsibilities vested in the Agency under State law and these Secretarial Procedures:

CALIFORNIA GAMBLING CONTROL COMMISSION

2399 Gateway Oaks Drive. Ste 220

Sacramento, CA 95833-4231

Sec. 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 State or 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 State's or the Tribe's respective consent

Sec. 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; revocation of prior requests to negotiate. These Secretarial Procedures, together with all addenda and approved amendments, sets forth the full and complete agreement and supersedes any prior agreements or understandings with respect to the subject matter hereof.

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 these Secretarial Procedures of language that is present in another tribal-state compact shall be a factor in construing the terms of these Secretarial Procedures.

15.4 Compliance with Mediator's Choice of Last Best Offer Compact. 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 the essential terms of the last best offer Class III gaming compact selected by mediator appointed by the court in *Rincon Band of Mission Indians of the Rincon Reservation v. Brown*, 04-cv-01151-WMC (S. D. Cal.). Under IGRA, these Secretarial Procedures are properly viewed as a full substitute for a Class III gaming compact that would be in effect had a voluntary agreement been reached between the Tribe and the State, or if the State had consented to the court-appointed mediator's selection. Therefore, these Secretarial Procedures qualify for the exemption to the criminal prohibitions on gaming provided by Section 23 of IGRA.

Sec. 15.5. Most Favored Tribe. If, after the effective date of these Secretarial Procedures, the State enters into a Compact with any other tribe that contains more favorable provisions with respect to any provisions of these Secretarial Procedures, at the Tribe's request, the Secretary, or his designee, shall meet and confer with the Tribe regarding modifying these Secretarial Procedures. The Secretary's agreement to modify

these Secretarial Procedures as provided in this section shall not be unreasonably withheld or delayed.

Sec. 15.6. Termination of Prior Compacts

As provided on the original date of issuance of these Secretarial Procedures, all prior tribal-state Class III Gaming compacts entered into between the Tribe and the State shall remain null and void and of no further force and effect.

Sec. 15.7. No Waiver of Sovereign Immunity

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

IN WITNESS WHEREOF, the undersigned executes and prescribes these Amended and Restated Secretarial Procedures on behalf of the Department of the Interior, Office of the Assistant Secretary-Indian Affairs.

Done this 8th day of January, 2025



Bryan Newland

Assistant Secretary - Indian Affairs

Attachment: Exhibit A: Amended Tribal Labor Relations Ordinance (TLRO Rev. 7.10.18)

EXHIBIT A

FIRST AMENDED TRIBAL LABOR RELATIONS ORDINANCE

WHEREAS, several federal appellate courts have interpreted that the National Labor Relations Act governs the rights of employees of tribal gaming operations to organize, and two federal appellate courts have expressly ruled that the NLRA applies to tribal gaming operations in California despite the terms of the Tribal Labor Relations Ordinances set forth in the tribal/state compacts in effect and approved by the Department of the Interior; and

WHEREAS, the Secretarial Procedures governing the Tribe's Class III Gaming Ordinance require that the Rincon Band comply with the Tribal Labor Relations Ordinance as set forth therein; and

WHEREAS, such ordinance is in conflict with certain provisions of the National Labor Relations Act, such that actions taken consistently with such ordinance and inconsistently with the National Labor Relations Act will likely fail to survive a legal challenge; and

WHEREAS, the Rincon Band has been advised by its legal counsel that it should proceed under the policy position that the inconsistent provisions of such Ordinance are void and unenforceable, and the Ordinance should therefore be amended; and

WHEREAS, the purpose of this Amended Ordinance is to identify the rights of employees of the Tribe's Gaming Facility to organize, and the right of the Tribe to take reasonable steps to ensure that the governmental revenue stream necessary to fund and mature critical governmental programs is not placed in jeopardy as a result of employees exercising their rights to organize. Additionally, the purpose of this Amended Ordinance is to set out the manner in which employees may exercise their rights to organize and the due process afforded to both the employees and the Band to ensure that their respective interests are adequately protected.

NOW THEREFORE BE IT RESOLVED that the Tribe amends and restates its Tribal Labor Relations Ordinance as follows:

Section 1: Definition of Eligible Employees

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;

- (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.

Section 2: 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 3: 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 4: Unfair Labor Practices for the tribe

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

- (1) to interfere with, restrain or coerce Eligible Employees in the exercise of the rights guaranteed herein;
- (2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it, but this does not restrict the tribe and/or employer and a certified union from agreeing to union security or dues checkoff;
- (3) to discharge or otherwise discriminate against an Eligible Employee because s/he has filed charges or given testimony under this Ordinance;
- (4) to refuse to bargain collectively with the representatives of Eligible Employees.

Section 5.01: Unfair Labor Practices for the union

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

- (a) to interfere, restrain or coerce Eligible Employees in the exercise of the rights guaranteed herein;
- (b) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to (a) engage in, a strike or a primary or secondary boycott or (b) engage in a refusal in the course of such individual employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services;
- (c) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce or other terms and conditions of employment where in either case the object thereof is to (a) force or require the Tribe or its agents to join any labor or employer organization, or (b) force or require the Tribe or its agents to assign particular work to Eligible Employees in a particular labor organization as the representative of such Eligible Employees if another labor organization has been certified as the representative under the provisions of this TLRO;
- (d) to force or require the tribe of its agents 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;
- (e) to refuse to bargain collectively with the tribe and/or its agent, provided it is the representative of Eligible Employees subject to the provisions herein;
- (f) to attempt to influence the outcome of a tribal governmental election, provided, however, that this section does not apply to tribal members.

Section 6: 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 7: Access to Eligible Employees

7.01 Upon request by a qualified labor union, the Tribe shall provide a designated place for a reasonable time,

- (a) The Tribe, in its discretion, may designate access to the Union in such areas as non-Casino facilities located on tribal lands;

(b) If the Tribe provides a designated place that is part of the Casino facilities, such as a non-public break room or cafeteria, 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.

7.02 Such organizing activity shall not interfere with patronage of the Casino or related facilities or with the normal work routine of the Eligible Employees and shall be done on non-work time.

(1) In determining whether organizing activities potentially interfere with normal tribal work routines, the union's activities shall not be permitted if such activities interfere with and /or compromise operations of the Casino;

(2) security and surveillance systems throughout the casino, and reservation;

(3) access limitations designed to ensure security;

(4) internal controls designed to ensure security;

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

7.03 The tribe shall provide to the union, upon a thirty percent (30%) showing of interest to the Tribe, 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

7.04 The tribe agrees to facilitate the dissemination of information from the union to Eligible Employees at the Tribe's 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. Casino management may impose reasonable restrictions on the times during which and places within which materials may be posted or otherwise made available to Eligible Employees.

Section 8: 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 9: Secret ballot elections required

9.01 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.

9.02 The election shall be conducted by a judge of the Rincon Tribal Court. The election officer shall resolve questions concerning representation of the Tribe and /or Employer's Eligible Employee by a labor organization. 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 appointed by the Rincon Tribal Court.

9.03 The election officer shall certify the labor organization as the exclusive collective bargaining representative of a unit of employees if the labor organization has received the majority of votes by employees voting in a secret ballot election that the election officer determines to have been conducted fairly. If the election officer determines that the election was conducted unfairly due to misconduct by the Tribe, its agent 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.

9.04 The tribe or the union may appeal any decision rendered after the date of the election by the election officer to the National Labor Relations Board.

9.05 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 the Tribe's Casino and/or related facility until one year after the election was lost.

Section 10: 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 sets 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. Sec. 2703 (4).

Section 11: Decertification of bargaining agent

11.01 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.

11.02 The election shall be conducted by a judge of the Rincon Tribal Court. The designated judge of the Rincon Tribal Court shall resolve all questions concerning the decertification of the labor organization. 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 judge of the Rincon Tribal Court shall preside thereafter for all proceedings under the request for decertification; provided however that if the judge of the Rincon Tribal Court resigns, dies or is incapacitated for any other reason from performing the functions of this office, a substitute election officer shall be selected by the Tribal Council.

11.03 The designated judge of the Rincon Tribal Court 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 designated judge of the Rincon Tribal Court determines to have been conducted fairly vote to decertify the labor organization. If the designated judge of the Rincon Tribal Court determines that the election was conducted unfairly due to misconduct by the Tribe and/or employer or the union the designated judge of the Rincon Tribal Court may order a re-run election or dismiss the decertification petition.

11.04 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 any time after the expiration of a collective bargaining agreement.

Section 12: Optional Binding Dispute Resolution Mechanism

If the labor union expressly consents in writing to adhere to the Optional Binding Dispute Resolution Mechanism and waives its rights to pursue remedies otherwise available by the National Labor Relations board under the National Labor Relations Act, all issues shall be resolved exclusively through the binding dispute resolution mechanisms herein,

12.01 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 a non-binding request to the designated judge of the Rincon Tribal Court. The parties agree to pursue in good faith the expeditious resolution of these matters to the designated judge of the Rincon Tribal Court within strict time limits. The time limits may not be extended without the agreement of both parties. The agreed upon time limits are set forth as follows:

(a) 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 submitted to the designated judge of the Rincon Tribal Court and resolved within thirty (30) working days of the referral of the matter to the designated judge or the Rincon Tribal Court by either or both parties.

(b) All matters after the union has become certified as the collective bargaining representative and relate specifically to impasse during negotiations, shall be submitted to the designated judge of the Rincon Tribal Court and resolved within sixty (60) working days of the referral of the matter to the designated judge of the Rincon Tribal Court by either or both parties.

12.02 The designated judge of the Rincon Tribal Court will also be empowered 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 the designated judge's obligations under this Tribal Labor Relations Ordinance.

12.03 An appeal may be taken from a decision of the designated judge of the Rincon Tribal Court within sixty (60) days of notification to the parties of a decision by the designated judge of the Rincon Tribal Court, by the filing of a notice of appeal with the Rincon Tribal Appeals Court. However, no decision of the designated judge of the Rincon Tribal Court will be reversed or modified by the Rincon Tribal Appeals Court absent circumstances involving evident partiality, fraud, corruption, a refusal to hear pertinent and material evidence, or acts exceeding the powers of the designated judge of the Rincon Tribal Court. The Rincon Tribal Appeals Court will apply the abuse of discretion standard of review to all appeals.

12.04 Decisions of the Rincon Tribal Appeals Court shall be final and binding on the parties.