FAIR EMPLOYMENT PRACTICES CODE
Ordinance # 05-600-03

Article I. Purpose; Findings

1.01. *Declaration and Policy.* As a sovereign Indian tribe, the Little River Band of Ottawa Indians has inherent authority to govern employment relations within its jurisdiction. It is the public policy of the Band to:

a. ensure that members of the Band and other Indians gain and maintain employment opportunities within the Band's jurisdiction;
b. prevent and remedy any discrimination in employment (other than to promote the employment of Band members and other Indians) on the basis of sex, race, color, national origin, religion, age, disability, veteran, marital status, or sexual orientation; and
c. ensure that employees within the jurisdiction of the Band work in safe conditions, receive fair compensation, and otherwise have fair terms and conditions of employment.

1.02. *Purposes.* The purpose of this Code is to:

a. prevent and remedy discrimination in employment, unless in furtherance of Indian employment preferences, on the basis of sex, race, color, national origin, religion, age, disability, veteran, marital status, or sexual orientation; and
b. establish standards for fair and safe working conditions.

1.03. *Findings.* The Tribal Council of the Little River Band of Ottawa Indians finds that:

a. the Constitution of the Little River Band of Ottawa Indians delegates to the Tribal Council the responsibility to "...exercise the inherent powers of the Little River Band by establishing laws through the enactment of ordinances and adoption of resolutions not inconsistent with this Constitution:

1. to govern the conduct of members of the Little River Band and other persons within its jurisdiction;
2. to promote, protect and provide for public health, peace, morals, education and general welfare of the Little River Band and its members[.]" *Article IV, Section 7(a).*

Article II. Adoption; Amendment; Repeal; Severability

2.01. *Adoption.* This Ordinance is adopted by Tribal Council resolution # 05-1102-564.

2.02. *Amendment.* This Ordinance may be amended in accordance with the procedures set forth in the Administrative Procedures Act - Ordinances. An emergency amendment to add Article XVI. Labor Organizations and Collective Bargaining was adopted by Resolution # 07-0620-334. Permanent adoption to add Article XVI Labor Organizations and Collective Bargaining was adopted by Resolution # 07-0801-427. Article XVI was revised and adopted on an emergency basis by Resolution #08-0206-32, and permanently adopted by Resolution #08-0319-76. Emergency amendments were again adopted to revise Article XVI, to add a new Article XII, Whistleblower Protection, to establish remedies for violations of new Article XII, and to correct minor typographical errors in the Code by Resolution # 08-1015-348. Further amendments were adopted by Resolution # 09-0304-60 to (1) require the posting of employee rights provided by this Code under Article XIII; (2) revise Article XII, Whistleblower Protection, to clarify investigation requirements; and (3) revise Article XVI to (a) more specifically describe public employer bargaining duties, (b) more specifically provide for Tribal Court review of certain disputes, (c) more specifically identify employee rights by separate article, (d) require good faith efforts by parties to resolve alleged unfair labor practices, (e) streamline procedures for the resolution of bargaining impasses, and (f) more specifically describe terms and conditions not subject to change during bargaining impasse. Amendments were made by Resolution # 09-0715-194 to (a)amend Article XVI, section 16.16(b) to correct a drafting error

regarding remedies available to public employees who suffer discrimination for exercising rights under section 16.14 and (b) amend section 16.25 to better clarify the scope of the limited waiver of sovereign immunity for the enforcement of rights and remedies against public employers. By Resolution 09-1202-334, emergency amendments were made to (a) add Article XVII to protect the integrity of this Code, (b) add an exception to the confidentiality rule stated in section 6.03 when employees fail to exhaust remedies provided for by this Code and to clarify the admissibility of FEPI reports in the Tribal Court under that section, (c) add new sections 6.09, 8.07, 10.07, 11.02, and 16.25 to provide for specific Tribal Court authority to resolve jurisdictional controversies, (d) to re-label prior sections 16.25 and 16.26 as current sections 16.26 and 16.27, respectively, and (e) to correct clerical errors, with permanent adoption by Resolution 10-0127-19. By Resolution 10-0728-268, amendments were made to (a) allocate the parties' responsibilities for paying for the services of arbitrators retained to resolve unfair labor practice charges under section 16.16(a)(2); (b) establish the 180 day time limitation for assertions of certain unfair labor practices under section 16.16(b); (c) protect potential confidential information from disclosure in the decisions of fact finders or arbitrators under sections 16.17(c) and 16.17(d); (d) eliminate from an arbitrator's mandatory consideration under section 16.17(d) items involving the public welfare of the Little River Band of Ottawa Indians; and (e) to provide an additional review process before Tribal Council for the resolution of bargaining impasses pursuant to new section 16.17(e).

2.03. *Repeal.* This Ordinance may be repealed in accordance with the procedures set forth in the Administrative Procedures Act - Ordinances.
2.04. *Severability Clause.* If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.
2.05. *Title.* This law shall be referred to as the Fair Employment Practices Code.
2.06. *Waiver of Sovereign Immunity.* The sovereign immunity of the Band is hereby waived for any actions brought pursuant to this Code and for any process, including subpoenas.
2.07. *Persuasive Authority.* Decisions of the United States Supreme Court and the Court of Appeals for the Sixth Circuit, and the regulations and guidelines of the United States Equal Employment Opportunity Commission shall be persuasive authority in guiding the construction of the provisions of this Code to the extent that they are similar to federal enactments addressing employment discrimination.

Article III. Definitions.
3.01. *Definitions.* For purposes of this Ordinance, certain terms are defined in this Article. The word "shall" is always mandatory and not merely advisory.
3.02. *Band* means the Little River Band of Ottawa Indians.
3.03. *Direct threat* means a significant risk to the health or safety of others that can not be eliminated by reasonable accommodation.
3.04. *Disability* means a physical or mental impairment of an individual which substantially limits one or more of such person's major life activities, the state of having a record of such impairment, or the state of being regarded as having such an impairment.

a. *Physical or mental impairment* means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, genitourinary; hemic and lymphatic; skin; and endocrine; cardiovascular; reproductive; any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities; and includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy,

muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

b. *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

c. *Having a record of such an impairment* means having a history of, or having been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

d. *Being regarded as having an impairment* means having B

1. a physical or mental impairment that does not substantially limit major life activities but is treated by an employer as constituting such a limitation,

2. a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

3. having none of the impairments defined in paragraph (a) of this section but being treated by an employer as having such an impairment and as being substantially limited by such impairment in one or more major life activities.

3.05. *Discriminate* means to segregate or separate, and, for purposes of section 4.02 as it relates to an individual with a disability, "discriminate" means:

a. Limiting, segregating or classifying a job applicant or employee in a way that adversely affects the opportunities or status of the applicant or employee because of the disability of the applicant or employee;

b. Excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

c. Not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the employer;

d. Denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if the denial is based on the need of the employer to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

e. Using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the employer, is shown to be job-related for the position in question and is consistent with business necessity; and

f. Failing to select and administer tests concerning employment in the most effective manner to ensure that, when the test is administered to a job applicant or employee who has a disability that impairs sensory, manual or speaking skills, the test results accurately reflect the skills, aptitude or any other factor of the applicant or employee that the test is designed to measure, rather than reflecting the impaired sensory, manual or speaking skills of the employee or applicant (except when such skills are the factors that the test is designed to measure).

"Discriminate" shall not mean treating Indians differently than non-Indians or Band members differently than other Indians in order to promote employment preferences for members of the Band or other Indians.

3.06. *Employee* means an individual employed by an employer. "Employee" does not include any individual employed by that individual's parents, spouse or child.

3.07. *Employee benefits*, for the purposes of Article VIII, addressing family and medical leave protection, "employee benefits" means all benefits, other than salary and wages, provided or made available to employees by an employer and includes group life insurance, health insurance, disability

insurance and pensions, regardless of whether benefits are provided by a policy or practice of an employer.

3.08. *Employer* means any type of organization, including tribal or foreign corporations and partnerships; the Band; any political subdivision, agency, or department of the Band; and any tribally chartered enterprise of the Band doing business on lands within the jurisdiction of the Band and employing any number of employees.

3.09. *Family medical leave*, for the purposes of Article VIII, addressing family medical leave protection, "family medical leave" means leave requested by an employee:

a. Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee;

b. Because of the birth of a son or daughter of the employee and in order to care for such son or daughter;

c. Because of the placement of a son or daughter with the employee for adoption or foster care;

d. In order to care for the spouse, or a son, daughter or parent of the employee, if such spouse, son, daughter, or parent has a serious health condition.

3.10. *Health care provider* for the purposes of Article VIII, addressing family medical leave protection, "health care provider" includes a medical or osteopathic doctor, psychologist, psychiatrist, or other health care provider recognized by the employer's health insurance carrier.

3.11. *Illegal drug* means a substance defined as unlawful by state and/or federal law or a prescribed drug used outside of the prescribed manner, or an over-the-counter drug used outside the prescribed manner.

3.12. *Indian* means an enrolled member of a federally recognized Indian tribe or band.

3.13. *Public body* means all of the following:

a. An officer, agency, department, division, commission, council, authority or other body of the Band;

b. A law enforcement agency or any member or employee of a law enforcement agency; and

c. The Tribal Court and any member or employee of the Band's judiciary.

3.14. *Qualified individual with a disability* means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that the individual holds or desires. For the purposes of this Code, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

3.15. *Reasonable accommodation* may include -

a. making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

b. job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

Reasonable accommodation shall not include making changes that would conflict with the application of the Band's policies or laws providing employment preferences for members of the Band or other Native Americans.

3.16. *Serious health condition* for the purposes of Article VIII, addressing family medical leave protection, "serious health condition" means an illness, injury, impairment or physical or mental condition that involves:

a. Inpatient care in a hospital, hospice or residential medical care facility; or

b. Continuing treatment by a health care provider.

3.17. *Tribal Court* means the Little River Band of Ottawa Indians Tribal Court.

3.18. *Undue hardship.*

a. *In General.* The term "undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors set forth in paragraph (b) of this section.

b. *Factors to Be Considered.* In determining whether an accommodation would impose an undue hardship on an employer, factors to be considered include -

1. the nature and cost of the accommodation needed under this Code;

2. the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

3. the overall financial resources of the employer; the overall size of the business of the employer with respect to the number of its employees; the number, type, and location of its facilities; and

4. the type of operation or operations of the employer, including the composition, structure, and functions of its workforce; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the employer.

Article IV. Unlawful Employment Discrimination

4.01. *Unlawful Discrimination: General Rule.* Except when based on a bona fide occupational qualification or in furtherance of the provision of employment preferences to members of the Band or other Indians pursuant to the law, rules, or policies of the Band or pursuant policies or actions giving preferences to Indians under 42 U.S.C. § 2000-2(i), it shall be unlawful employment discrimination, in violation of this Code B

a. For any employer to fail or refuse to hire or otherwise discriminate against any applicant for employment because of sex, race, color, national origin, religion, age, disability, veteran, marital status, or sexual orientation; or, because of those reasons, to discharge an employee or discriminate with respect to hire, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment or any other matter directly or indirectly related to employment; or, in recruiting of individuals for employment or in hiring them, to utilize any employment agency that the employer knows or has reasonable cause to know discriminates against individuals because of their sex, race, color, national origin, religion, age, or disability; or

b. For an employer to discriminate in any manner against individuals because they have opposed a practice that would be a violation of this Code or because they have made a charge, testified or assisted in any investigation, proceeding or hearing under this Code.

c. For any employer to discharge, threaten or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment as provided by Article XII section 12.03.

4.02. *Unlawful Discrimination Against Qualified Individual with a Disability; Medical Screening; Illegal Use of Drugs and Use of Alcohol.*

a. *General Rule.* An employer may not discriminate against a qualified individual with a disability because of the disability of the individual in regard to job application procedures, the hiring, advancement or discharge of employees, employee compensation, job training and other terms, conditions and privileges of employment.

b. *Medical Examinations and Inquiries.* The prohibition against discrimination referred to in paragraph (a) of this section shall include medical examinations and inquiries.

1. *Preemployment.*

A. *Prohibited Examination or Inquiry.* Except as provided in subparagraph (B), an employer shall not conduct a medical examination or make inquiries

of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability.

B. *Acceptable Inquiry.* An employer may make preemployment inquiries into the ability of an applicant to perform job-related functions.

C. *Prior Employment Injury with Employer.* An employer may make preemployment inquiries where the applicant was previously employed with the employer and suffered an on-the-job injury and where that injury is reasonably related to the ability to complete the job duties involved in the applied for position.

2. *Employment Entrance Examination.* An employer may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if B

A. all entering employees are subjected to such an examination regardless of disability;

B. information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except thatC

i. supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

ii. first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment;

iii. tribal government officials investigating compliance with this Code shall be provided relevant information on request; and

C. the results of such examination are used only in accordance with this Code.

3. *Examination and Inquiry During Employment.*

A. *Prohibited Examinations and Inquiries.* An employer shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

B. *Acceptable Examinations and Inquiries.* An employer may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that work site. An employer may make inquiries into the ability of an employee to perform job-related functions.

C. *Requirement.* Information obtained under subparagraph (B) regarding the medical condition or history of any employee is subject to the requirements of subparagraphs (B) and (C) of subparagraph (2).

c. *Drug and Alcohol Use Policies.* It shall not be a violation of this Code for an employer to adopt or administer reasonable policies or procedures, including but not limited to drug and alcohol testing, designed to ensure that an individual described in subparagraphs 3(A) or (B) is no longer engaging in the illegal use of drugs or the use or under the influence of alcohol while on the job.

1. *Medical Tests.* For purposes of paragraph (b) of this section, a test to determine the illegal use of drugs or alcohol use or under the influence of alcohol while on the job shall not be considered a medical examination.

2. *Qualified Individual with a Disability.* For purposes of this Code, the term "qualified

individual with a disability" shall not include any employee or applicant who is currently engaging in the illegal use of drugs or use or alcohol or under the influence of alcohol while on the job, when the employer acts on the basis of such use.

3. *Rules of Construction.* Nothing in subparagraph 4.02(c)(2) shall be construed to exclude as a qualified individual with a disability an individual who B

A. has successfully completed a supervised rehabilitation program and is no longer engaging in the illegal use of drugs or abuse of alcohol, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

B. is participating in a supervised rehabilitation program and is no longer engaging in such use; or

C. is erroneously regarded as engaging in such use, but is not engaging in such use.

4. *Authority of Employers.* An employer may:

A. prohibit the possession or use of illegal drugs and the possession or use of alcohol at the workplace by all employees;

B. require that employees may not be under the influence of alcohol or illegal drugs at the workplace;

C. require that employees behave in conformance with the requirements established under the federal Drug-free Workplace Act of 1988, 41 U.S.C. ' 701 et seq.; and

D. hold an employee who engages in the use of illegal drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior to which that entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of the employee, provided that an employer shall make reasonable accommodation to an alcoholic or drug user who is seeking treatment or has successfully completed treatment.

E. adopt written policies or procedures that allow for the use of pre-employment, random, reasonable suspicion, post-accident, and follow-up testing that does not violate the protections set forth in this section or the Constitution of the Little River Band of Ottawa Indians.

d. *Defenses.*

1. *General Provisions.* It is a defense to a charge of discrimination under section 4.02 if an alleged application of qualification standards, tests or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability is shown to be job-related and consistent with business necessity, and such performance can not be accomplished by reasonable accommodation.

2. *Qualification Standards Defined.* For the purposes of this section, the term "qualification standard" may include a requirement that an individual does not pose a direct threat to the health or safety of other individuals in the workplace.

3. *Disability.* This Code does not prohibit an employer from discharging or refusing to hire an individual with a disability, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of an individual with disability, if the individual, because of the disability, is unable to perform the duties or to perform the duties in a manner that would not endanger the health or safety of the individual or others or is unable to be at, remain at or go to or from the place where the duties of employment are to be performed.

4.03. *Unlawful Employment Discrimination on the Basis of Pregnancy.*

a. *Sex Defined.* For the purpose of Section 4.01(a), the word "sex" includes pregnancy and

medical conditions which result from pregnancy.

b. *Pregnant Women Who Are Able to Work.* It shall be unlawful employment discrimination in violation of this Code, except where based on a bona fide occupational qualification, for an employer to treat a pregnant woman who is able to work in a different manner from other persons who are able to work.

c. *Pregnant Women Who Are Not Able to Work.* It shall also be unlawful employment discrimination in violation of this Code, except where based on a bona fide occupational qualification, for an employer to treat a pregnant woman who is not able to work because of a disability or illness resulting from pregnancy, or from medical conditions which result from pregnancy, in a different manner from other employees who are not able to work because of other disabilities or illnesses.

d. *Employer Not Responsible for Additional Benefits.* Nothing in this subsection may be construed to mean that an employer is required to provide sick leave, a leave of absence, medical benefits or other benefits to a woman because of pregnancy or other medical conditions that result from pregnancy, if the employer does not also provide sick leaves, leaves of absence, medical benefits or other benefits for the employer's other employees and is not otherwise required to provide those leaves or benefits under tribal law or applicable federal law.

4.04. *Unlawful Age Discrimination by Imposing a Mandatory Retirement Age.* It shall be unlawful employment discrimination:

a. For any employer to fail or refuse to hire any applicant 40 years of age or older for employment because of the age of the individual; or

b. For any employer to require, as a condition of employment, any employee to retire at or before a specified age or after completion of a specified number of years of service.

4.05. *Types of Discrimination.* "Unlawful employment discrimination," includes

a. *Overt Discrimination.* an intentional, purposeful act of discrimination, such as direct epithets aimed at an individual because of sex, race, color, national origin, religion, age, or disability, resulting in adverse employment action.

b. *Harassment, Including Sexual Harassment.*

1. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature as well as unwelcome comments, jokes, acts and other verbal or physical conduct related to race, color, national origin, religion, age, disability, or an employee's report that is protected under Article XII, section 12.03 constitute unlawful workplace harassment when:

A. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

B. submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

C. such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

2. An employer is responsible for its acts and those of its supervisory employees with respect to the types of harassment described in subparagraph (1). When the supervisor's harassment culminates in a tangible employment action, such as discharge, demotion, or loss of benefits, liability attaches to the employer regardless of whether the employer knew or should have known of the harassment, and regardless of whether the specific acts complained of were authorized or even forbidden by the employer. When the supervisor's harassment does not culminate in a tangible employment action, the employer may raise an affirmative defense to liability or damages by proving by a preponderance of the evidence:

A. that the employer exercised reasonable care to prevent and correct promptly the harassing behavior, and

B. that the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.

3. With respect to persons other than an employer's supervisors as described in subparagraph (2), an employer is responsible for acts of workplace harassment where the employer, or its supervisory employees, knows or should have known of the conduct. An employer may rebut apparent liability for such acts by showing that it took immediate and appropriate corrective action;

c. *Unequal or Disparate Treatment.* treating persons in a different and less favorable manner than other similarly situated individuals on account of race or color, sex, disability, religion, age, national origin, or an employee's report that is protected under Article XII, section 12.03;

d. *Disparate Impact.* conduct which, although applied equally to all, has an adverse effect on persons because of their race or color, sex, disability, religion, age, national origin, or because they made a report that is protected under Article XII, section 12.03 as compared to the effect on other persons;

4.06. *Proof of unlawful discrimination.* Unlawful employment discrimination exists if a complainant shows that his or her race, color, sex, disability, religion, age, ancestry ,national origin, or making a report that is protected under Article XII, section 12.03, even if not the sole factor, was nonetheless a substantial factor motivating the employer's action. If the complainant would not have been rejected, discharged or otherwise treated differently, but for membership in the protected class, the existence of other reasonable grounds for the employer's action does not relieve the employer from liability.

Article V. Not Unlawful Employment Discrimination

5.01. *Indian Preference.* Nothing in this Code shall be construed to prohibit any action to provide employment preferences to members of the Band or other Indians pursuant to the laws, rules or policies of the Band or any employment policy or action that is permitted under 42 U.S.C. ' 2000e-2(i).

5.02. *Age.* It shall not be unlawful employment discrimination to discriminate on account of age to:

a. Comply with any tribal law relating to the employment of minors;

b. Observe the terms of any bona fide employee benefit plan such as a retirement, pension or insurance plan that does not evade or circumvent the purposes of this Code.

5.03. *Infectious and Communicable Diseases.* Assignment of individuals with an infectious or communicable disease is governed by the following.

a. In any case in which an individual has an infectious or communicable disease, which is transmitted to others through the handling of food and is included on the list developed by the United States Secretary of Health and Human Services under the federal Americans with Disabilities Act, Title I, Section 103(d)(1), an employer may refuse to assign or continue to assign the individual a job involving food handling, unless the risk of disease transmission can be eliminated by reasonable accommodation.

b. Nothing in this Code may be construed to preempt, modify or amend any tribal law applicable to food handling that is designed to protect the public health from individuals who pose a significant risk to the health or safety of others, which can not be eliminated by reasonable accommodation, pursuant to the list of infectious or communicable diseases and the modes of transmissibility published by the United States Secretary of Health and Human Services.

Article VI. Procedure before Fair Employment Practices Investigator and Complaints in Tribal Court

6.01. *Fair Employment Practices Investigators.* The Chief Judge of the Appellate Division of the Little River Band of Ottawa Indians Tribal Court shall establish a list of no more than three (3) attorneys who shall fulfill the functions of Fair Employment Practices Investigators (FEPIs) under this Article. The Chief Judge shall solicit applications from attorneys to serve as FEPIs and shall have discretion to make appointments of such individuals to serve as FEPIs under this Article, provided, however, that such individuals must reside within 70 miles of the reservation, be members, in good standing, with a state court bar and a federal court, and have experience in employment law and mediation. The Chief Judge shall establish a reasonable hourly rate and cost reimbursement schedule to compensate the appointed FEPIs. FEPIs shall serve as independent contractors for the Tribe and shall not be under any supervisory authority by the Tribal Court or any judge of the Tribal Court, provided, however, that the Chief Judge shall have discretion to remove any FEPI from the list for any reason and substitute new, qualified FEPIs, as appropriate. FEPIs shall have subpoena powers to investigate Charges of Discrimination.

6.02. *Charge of Discrimination.* Any person who believes that he or she has been subject to unlawful employment discrimination may file a Charge of Discrimination under oath with the Tribal Court Clerk on the "Charge of Discrimination" form available from the Tribal Court Clerk, setting forth the facts of alleged discrimination, provided that such a Charge of Discrimination must be filed with the Clerk not more than 180 days after the alleged act of unlawful employment discrimination. The Clerk shall date-stamp the Charge upon receipt and mail it, with an appropriate cover letter, to the next assigned FEPI. The assignment of Charges to FEPIs shall be consecutive, in alphabetical order by last name of FEPI, to ensure even distribution of Charges to FEPIs. The Clerk shall retain a copy of the Charge and the assignment to the FEPI.

6.03. *Investigation and Settlement Efforts.*

a. The FEPI shall mail the employer a copy of the Charge of Discrimination and investigate the allegations in the charge. The investigation shall result in a Report, to be completed within 70 days of the Tribal Court Clerk's receipt of the Charge, setting forth the following

1. Substance of complaint, including the name of the filing employee and the allegations of discrimination.
2. Persons interviewed.
3. A determination of whether there is reasonable cause to believe that a violation of this Code has occurred, including findings of fact and conclusions of law.

c. The FEPI shall mail copies of the Report to the complainant and to the employer upon completion.

d. If the Report finds reasonable cause to believe that discrimination in violation of this Ordinance has occurred, the FEPI shall convene a meeting of the employer (through a representative with authority negotiate a settlement if one can be reached) and the complainant within 21 days after mailing the Report and attempt to reach a conciliation agreement. Any such conciliation agreement may include any of the remedies provided by this Article.

e. If, without good cause, the employer fails to attend a conciliation meeting held pursuant to section 6.3(d), the Report shall be admissible in any subsequent action brought by the complainant under this Code. The FEPI shall make note any employer's failure to attend such a conciliation meeting as an Addendum to the Report, and describe the notice of the meeting that was provided to the employer. Copies of the Addendum shall be mailed to the complainant and the employer.

f. If within 60 days of the mailing of the Report, the parties fail to enter into a conciliation agreement signed by the complainant and the employer or otherwise resolve the dispute, the FEPI shall issue a "right to sue" letter to the complainant.

6.04. *Actions Filed by Complainants.* Within the time limitation set forth in section 6.06, a person who claims to have been subject to unlawful employment discrimination may file a civil action in the Tribal Court against the employer alleged to have engaged in unlawful discrimination in violation of this Code.

6.05. *Remedies.* In any action filed under this Code, the Tribal Court may grant the remedies set forth herein.

a. *Equitable Remedies.* If the court finds that unlawful discrimination occurred, its judgment must specify an appropriate remedy or remedies for that discrimination. The remedies may include, but are not limited to:

1. An order to cease and desist from the unlawful practices specified in the order;
2. An order to employ or reinstate a victim of unlawful employment discrimination, with or without back pay or reasonable front pay if reinstatement is unfeasible;

b. *Damages.* Subject to section 6.06, in cases of overt discrimination or unequal or "disparate treatment" as described in section 4.05, but not cases in which an employment practice is unlawful only for disparate impact, the court may award compensatory and punitive damages as provided in this subparagraph.

1. A complaining party may recover compensatory damages against an employer for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, provided, however, that such compensatory damages shall not include back pay, interest on back pay or any other type of relief authorized elsewhere under this subsection.
2. A complaining party may recover punitive damages against an employer if the complaining party demonstrates that the employer engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the rights of an aggrieved individual protected by this Code.
3. When a discriminatory practice involves the provision of a reasonable accommodation, damages may not be awarded when the employer demonstrates good faith efforts, in consultation with the person with the disability who has informed the employer that accommodation is needed, to identify and make a reasonable accommodation that would provide that individual with an equally effective opportunity and would not cause an undue hardship on the operation of the business.
4. The total sum of compensatory and punitive damages may not exceed $10,000 for employers with less than 50 employees, $25,000 for employers with between 50 and 99 employees, and $50,000 for employers with 100 or more employees

6.06. *Time Limitations.* Any action filed under this section shall be commenced not more than 2 years after the act of unlawful discrimination complained of.

6.07. *Attorneys' Fees and Costs.* In any civil action under this Code, the court, in its discretion, may allow the prevailing party reasonable attorneys' fees and costs, subject to the requirements of section 6.08.

6.08. *Limitations on Attorneys' Fees and Damages; Procedures.* Attorney fees under section 6.07 and civil penal damages or compensatory and punitive damages under section 6.05(b) may not be awarded to a plaintiff in a civil action under this Code unless the plaintiff alleges and establishes that, prior to the filing of the civil action, the plaintiff first filed a Charge of Discrimination with the Tribal Court Clerk and the FEPI has either:

a. Failed, within 90 days after finding reasonable grounds to believe that unlawful discrimination occurred, to enter into a conciliation agreement to which the plaintiff was a party; or

b. Issued a right-to-sue letter and the action was brought by the aggrieved person not more than 2 years after the act of unlawful discrimination of which the complaint was made.

6.09. *Resolution of Jurisdictional Disputes.* In any case or proceeding commenced under this Article VI, where the regulatory or adjudicatory jurisdiction of the Band or the Tribal Court is called into question, the Tribal Court shall address the jurisdictional question by means of a declaratory judgment.

Article VII. Sexual Harassment Policies and Training

7.01. *General.* All employers shall act to ensure a workplace free of sexual harassment by implementing the following minimum requirements set forth in this Article.

7.02. *Workplace Posting.* An employer shall post in a prominent and accessible location in the workplace a poster providing, at a minimum, the following information:

a. the illegality of sexual harassment; a description of sexual harassment, utilizing examples;

b. the complaint process begins by filing a written Charge of Discrimination with the Clerk of the Tribal Court; and

c. The text of this poster may meet, but may not exceed, eight-grade literacy standards.

7.03. *Employee Notification.*

a. Employers shall provide annually all employees with individual written notice that includes, at a minimum, the following information:

1. the illegality of sexual harassment;
2. the definition of sexual harassment under the Band's law;
3. a description of sexual harassment, utilizing examples; the employer's internal complaint process available to the employee;
4. the legal recourse and complaint process provided by Article VI; and
5. the protection against retaliation as provided pursuant to section 4.01(b).

b. This notice must be initially provided within 90 days after the effective date of this section.

c. The notice must be delivered in a manner to ensure notice to all employees without exception, such as including the notice with an employee's pay.

7.04. *Education and Training.* Employers shall conduct an education and training program for all new employees within one year of commencement of employment that includes, at a minimum, the following information: the illegality of sexual harassment; the definition of sexual harassment; a description of sexual harassment, utilizing examples; the employer's internal complaint process available to the employee; the legal recourse and complaint process available pursuant to Article VI, including the process for filing a Charge of Discrimination with the Clerk of the Tribal Court; and the protection against retaliation as provided under section 4.01(b). Employers shall conduct additional training for supervisory and managerial employees within one year of commencement of employment that includes, at a minimum, the specific responsibilities of supervisory and managerial employees and methods that these employees must take to ensure immediate and appropriate corrective action in addressing sexual harassment complaints.

Article VIII. Family Medical Leave Protection

8.01. *Family Medical Leave Requirement.* This Article applies to employers who employ 50 or more employees within a radius of 75 miles. Every employee who has been employed by the same employer for 12 consecutive months and at least 1250 hours during the previous 12 months is entitled to up to 12 work weeks of unpaid family medical leave in the 12-month period designated by the employer. The following conditions apply to family medical leave granted under this section:

a. The employee must give at least 30 days' notice of the intended date upon which family medical leave will commence and terminate, unless prevented by medical emergency from giving that notice;

b. The employer may require certification from a health care provider.

8.02. Family medical leave granted under this Article may consist of unpaid leave. If an employer provides paid family medical leave for fewer than 12 workweeks, the additional weeks of leave

necessary to attain the total of 12 weeks required may be unpaid. An eligible employee may elect, or an employer may require the employee, to substitute any accrued paid vacation leave, personal leave, sick leave or family leave of the employee for leave provided under this Article.

8.03. *Employee Benefits Protection.*

a. *Restoration.* Any employee who exercises the right to family medical leave under this section, upon expiration of the leave, is entitled to be restored by the employer to the position held by the employee when the leave commenced or to an equivalent position with equivalent employee benefits, pay and other terms and conditions of employment.

b. *Maintenance of Employee Benefits.* During any family medical leave taken under this Article the employer shall maintain health insurance coverage for the duration of such leave at the level and under the conditions coverage would have been provided if the employee had continued in employment.

c. *Certification.* As a condition of restoration to employment, the employer may require the employee to provide health provider certification that the employee is able to resume work. Nothing in this Article shall be construed to prohibit an employee from requiring an employee on leave to report periodically to the employer on the status and intention of the employee to return to work.

8.04. *Effect on Existing Employee Benefits.*

a. *Benefit Accrual.* The taking of family medical leave under this section shall not result in the loss of any employee benefit accrued before the date on which the leave commenced.

b. *Limitations.* Nothing in this Article shall be construed to entitle any restored employee to the accrual of any seniority or employment benefits during any period of leave or any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

8.05. *Prohibited Acts.*

a. *Unlawful Interference or Denial of Rights.* The employer may not interfere with, restrain or deny the exercise of or the attempt to exercise any right provided by this Article.

b. *Unlawful Discrimination Against Exercise of Rights.* The employer may not discharge or in any other manner discriminate against any employee for exercising any right provided by this Article.

c. *Unlawful Discrimination Against Opposition.* The employer may not discharge or in any other manner discriminate against any employee for opposing any practice made unlawful by this section.

8.06. *Judicial Enforcement.* A civil action may be brought in the Tribal Court by an employee against any employer to enforce this Article not later than two years after the date of the last event constituting the alleged violation for which the action is brought. In regard to a willful violation of Section 8.05, such action may be brought within three years. The court may enjoin any act or practice that violates or may violate this Article and may order any other equitable relief that is necessary and appropriate to redress the violation or to enforce the requirements of this Article.

8.07. *Resolution of Jurisdictional Disputes.* In any case or proceeding commenced under section 8.06, where the regulatory or adjudicatory jurisdiction of the Band or the Tribal Court is called into question, the Tribal Court shall address the jurisdictional question by means of a declaratory judgment.

Article IX. Employment Leave for Victims of Violence

9.01. *Required Leave.* An employer must grant reasonable and necessary leave from work, with or without pay, for an employee to:

a. Prepare for and attend court proceedings;

b. Receive medical treatment or attend to medical treatment for a victim who is the employee's daughter, son, parent or spouse; or

c. Obtain necessary services to remedy a crisis caused by domestic violence, sexual assault or stalking.

The leave must be needed because the employee or the employee's daughter, son, parent or spouse is a victim of violence, assault, sexual assaults under tribal, state, or federal law, stalking or any act that would support an order for protection under tribal, state, or federal law. An employer may not sanction an employee or deprive an employee of pay or benefits for exercising a right granted by this section.

9.02. *Definitions.* For purposes of this section, the terms "daughter," "son," "parent" and "spouse" have the same meanings as those terms have under federal regulations adopted pursuant to 29 U.S.C. § 2654, as in effect on January 1, 2002. An employer may require an employee to provide reasonable documentation of the family relationship, which may include a statement from the employee, a birth certificate, a court document or similar documents.

9.03. *Exceptions.* Section 9.01 is not violated if:

a. The employer would sustain undue hardship from the employee's absence;

b. The request for leave is not communicated to the employer within a reasonable time under the circumstances; or

c. The requested leave is impractical, unreasonable or unnecessary based on the facts then made known to the employer.

9.04. *Confidentiality.* Information and records received by an employer in connection with a request for leave under this section shall be kept confidential.

9.05. *Civil Penalties.* The Tribal Court may assess civil penalties of up to $300 against any employer for a violation of this section, provided that notice of the violation was given to the employer and an action for such penalties is commenced within 6 months of the occurrence.

Article X. Employee Wages and Hours

10.01. *Minimum Wage.* Any employee within the jurisdiction of the Band shall be paid an hourly wage of not less than the minimum wage established by federal law pursuant to federal Fair Labor Standards Act of 1938, Title 29 of the United States Code, sections 201 *et seq.*, as amended and regulations concerning the FLSA by the U.S. Department of Labor (FLSA). Such wage may be changed by vote of the Tribal Council. Provided that, tipped employees shall utilize the aggregate of hourly rate and tips to identify wage rate.

10.02. *Maximum Hours.* No employer shall employ any of its employees for a workweek longer than forty (40) hours unless such employee receives compensation for the employee's employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which the employee is employed.

10.03. *Exemptions.* The provisions in sections 10.02 and 10.04 shall not apply with respect to any employee employed in a bona fide executive, administrative, or professional capacity, or any other exemption category outlined in the FLSA.

10.04. *Private Right of Action.* Any individual aggrieved under this section may seek retroactive payment of unpaid minimum wages or unpaid overtime compensation against an employer in the Tribal Court.

10.05. *Statute of Limitations.* Any action to secure unpaid minimum wages or unpaid overtime compensation must be commenced within two years after the date on which such wages or overtime compensation should have been included in an employee's paycheck.

10.06. *Guidance.* For the purposes of interpreting and enforcing this section only, the Tribal Court may look to the FLSA and regulations thereunder as well as relevant case law for guidance, provided however that nothing in this Article shall be construed as an adoption by the Band of the FLSA, nor a waiver of sovereign immunity from suit for any claims or process under the FLSA.

10.07. *Resolution of Jurisdictional Disputes by Tribal Court.* In any case or proceeding commenced under section 10.04, where the regulatory or adjudicatory jurisdiction of the Band or the Tribal Court

is called into question, the Tribal Court shall address the jurisdictional question by means of a declaratory judgment.

Article XI. Occupational Health and Safety Standards

11.01. The provisions of the Occupational Safety and Health Act of 1970, Title 29 of the United States Code, sections 651 *et seq.*, as amended (OSHA), are adopted as the law of the Band and apply to all employers within the jurisdiction of the Band; provided, however, that the Band does not hereby waive its sovereign immunity from suit for any claims or process under OSHA.

11.02. In any case or proceeding commenced in the Tribal Court to enforce this Article XI, where the regulatory or adjudicatory jurisdiction of the Band or the Tribal Court is called into question, the Tribal Court shall address the jurisdictional question by means of a declaratory judgment.

Article XII. Whistleblower Protection

12.01. *Purpose.* The purpose of this Article is to protect employees who report violations of law from employment discrimination.

12.02. *Definitions.* For the purposes of this Article, the following terms shall have the following meanings:

a. *Applicable law* means duly enacted tribal ordinances and regulations that apply within the jurisdiction of the Little River Band of Ottawa Indians as well as federal laws expressly made applicable to Indian tribes or to the Little River Band of Ottawa Indians

b. *Employer* means "employer" as defined in Article III, but shall also include elected officials of the Band who exercise hiring, firing, and other authority over the terms and conditions of employment for employees.

12.03. *Discrimination prohibited.* Except as otherwise provided by sections 12.04-12.07, no employer may discharge, threaten or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because:

a. The employee, acting in good faith, or a person acting on behalf of the employee, reports, in writing, to the employer or to the Tribal Prosecutor what the employee has reasonable cause to believe is a violation of applicable law;

b. The employee, acting in good faith, or a person acting on behalf of the employee, reports, in writing, to the employer or to the Tribal Prosecutor what the employee has reasonable cause to believe is a condition or practice that would put at risk the health or safety of that employee or any other individual;

c. The employee is requested to participate in an investigation, hearing or inquiry held by a commission or authority of the Tribe, including the Tribal Court, as a result of making a report under subsections a or b;

d. The employee, acting in good faith, has refused to carry out a directive to engage in an activity that would be a violation of applicable law or that would expose the employee or any individual to a condition that would result in serious injury or death, after having sought and been unable to obtain a correction of the illegal activity or dangerous condition from the employer, provided that the request for correction is made in writing; or

e. The employee, acting in good faith and consistent with tribal and federal privacy laws, reports to the employer, to the patient involved or to the appropriate licensing, regulating or credentialing authority, in writing, what the employee has reasonable cause to believe is an act or omission that constitutes a deviation from the applicable standard of care for a patient by an employer charged with the care of that patient. For purposes of this paragraph, "employer" means a health care provider, health care practitioner or health care entity within the territorial jurisdiction of the Band.

12.04. *Initial report to employer required; exception.* Section 12.03 does not apply to an employee who has reported or caused to be reported a violation, or unsafe condition or practice to the Tribal

Prosecutor unless the employee has first given written notice of the alleged violation, condition or practice to a person having supervisory authority within the employer and has allowed the employer a reasonable opportunity to correct the alleged violation of applicable law, condition or practicePrior written notice to an employer is not required before reporting to the Tribal Prosecutor if the employee has specific reason to believe that a report to the employer will not result in promptly correcting the alleged violation of applicable law, condition or practice.

12.05. *Reported Activity Must Relate to the Operation of Tribal Government or Subordinate Economic Entity, or Occur within Employer Within the Jurisdiction of the Tribe.* Section 12.03 does not apply unless the reported violation involves applicable law that relates to the operation or function of the tribal government or subordinate economic entities owned by the Tribe or otherwise occurs within an employer within the Tribe's jurisdiction.

12.06. *Actual Knowledge Required.* Section 12.03 does not apply unless the reporting employee has actual knowledge of the activity being reported. This means the reporting employee must:

a. Have witnessed the alleged unlawful activity first-hand; and/or

b. Have access to, and possession of, tangible evidence which tends to establish or prove the alleged violation of applicable law, condition, or practice at issue.

12.07. *Written Report Required.* Except as provided by section 12.04, reports or notices of violations of applicable law, conditions or practices alleged in to be in violation of section 12.03 must be made in writing and shall include:

a. The name of the individual making the report and their position within, or relationship to, the Tribe, subordinate economic entity or other employer at issue;

b. The date the alleged violation of applicable law, or condition or practice at issue occurred;

c. The factual circumstances surrounding the alleged violation of applicable law, or condition or practice at issue;

d. Where a violation of applicable law is at issue, identification of the law alleged to have been violated;

e. How the individual has knowledge of the alleged violation of applicable law or condition or practice; and

f. The signature of the individual filing the report.

12.08. *Charge of Discrimination.* An employee who believes he or she has been subject to unlawful employment discrimination in violation of section 12.03 shall have all the procedural and substantive rights and remedies under Article VI, provided, however, that an elected official, who is found to have violated section 12.03 shall not be liable for any monetary award to any employee.

12.09. *Prosecutor's Duties Upon Receipt of Report.* When the Tribal Prosecutor receives a report from an employee under subsections 12.03(a) or 12.03(b), he shall proceed with an investigation as he sees fit and proceed, as he sees fit, to address with the employer such measures as would be appropriate to correct any violation of applicable law. Should the report involve an alleged crime, the Tribal Prosecutor shall inform the Chief of Police. Should the report involve a violation of a regulation of a particular Commission, the Tribal Prosecutor shall inform the Chair of the Commission.

12.10. *Employer's Duties Upon Receipt of Report.* When an employer receives a report from an employee under subsections 12.03(a) or 12.03(b), the employer shall duly investigate the allegations and, if they are warranted, establish a corrective plan, in writing, which shall state the expected time such plan will be completed. A copy of the corrective plan shall be provided to the Tribal Prosecutor.

12.11. *Failure to Implement Corrective Action Plan.* The Tribal Prosecutor shall have authority to commence an action in Tribal Court to obtain an order requiring an employer to implement a corrective action plan that has been prepared under subsection 12.09 or 12.10 or to take additional measures as the Tribal Court may find are necessary to protect the public health, safety and welfare.

Article XIII. Workplace Posters

Every employer subject to the provisions of this Code shall post a list, as directed by the Office of General Counsel, of the employee rights established by this Code. The list shall be posted in a common area of the workplace in a location that is readily visible to all employees.

Article XIV. Workers Compensation [reserved]

Article XV. Unemployment Insurance [reserved]

Article XVI. Labor Organizations and Collective Bargaining

16.01 Purpose.

The Little River Band of Ottawa Indians exercises powers of self-government over its members and territory. The Tribe has inherent authority to govern labor relations within its jurisdiction, and this includes regulating the terms and conditions under which collective bargaining may or may not occur within its territory. The Tribe's inherent authority further includes the right to protect the health, welfare, and political integrity of the Tribe from being harmed or threatened by the activities of non-members within the Tribe's territory. The purpose of this Article is to protect essential attributes of tribal self-government and the health and welfare of the members of the Tribe if labor organizations conduct operations within the jurisdiction of the Tribe.

16.02 Public Policy.

The Tribal Council declares that it is the policy of the Tribe to promote harmonious and cooperative relationships between tribal government and its employees by permitting employees within the Governmental Operations of the Band to organize and bargain collectively; to protect orderly Governmental Operations of the Band to provide for the health, safety, and welfare of the Band and its members; to prohibit and prevent all strikes by employees within the Governmental Operations of the Band; to protect the rights of employees within the jurisdiction of the Band to join or refuse to join, and to participate in or refuse to participate in, labor organizations; to protect the rights of tribal members to employment preferences; and to ensure the integrity of any labor organization doing business within the jurisdiction of the Band by requiring any such labor organization to obtain a license.

16.03 Definitions.

The definitions set forth in Article III shall not apply to this Article XVI. The following definitions apply to this Article XVI, whether the terms are stated in singular or plural form and whether the terms are capitalized or not.

Bargaining unit means a unit of employees within the Governmental Operations of the Band identified as an appropriate unit for representation pursuant to section 16.09 or such other criteria that may be recognized by resolution of the Tribal Council.

Confidential Employee means an employee of a public employer who assists or acts in a confidential capacity with respect to legal, financial, accounting or policy matters, and includes such employees who have access to information that is subject to use in contract negotiations,

the disposition of grievances, or other labor relations matters.

Fair share means an assessment to pay for the services of a labor organization with respect to negotiating and administering a collective bargaining agreement with a public employer.

Exclusive Bargaining Representative or *Exclusive Representative* means a labor organization that is lawfully elected to be the exclusive bargaining representative of a bargaining unit within the Governmental Operations of the Band,

Governmental Operations of the Band means the operations of the Little River Band of Ottawa Indian exercised pursuant to its inherent self-governing authority as a federally recognized Indian tribe or pursuant to its governmental activities expressly recognized or supported by Congress, whether through a subordinate economic organization of the Band or through a department, commission, agency, or authority of the Band including, but not limited to (1) the provision of health, housing, education, and other governmental services and programs to its members; (2) the generation of revenue to support the Band's governmental services and programs, including the operation of "Class II" and "Class III" gaming through the Little River Casino Resort; and (3) the exercise and operation of its administrative, regulatory, and police power authorities within the Band's jurisdiction.

Indian Gaming Regulatory Act means 25 U.S.C. §§ 2701-2721.

Jurisdiction of the Little River Band of Ottawa Indian Tribe means the jurisdiction or governmental authority -- including legislative, judicial, and regulatory authority -- that the Band may exercise pursuant to its inherent authority as a federally recognized Indian tribe or pursuant to Congressional enactment or delegation, including all such authority over all lands now or in the future held in trust by the United States for the benefit of the Tribe acquired by or for the Tribe pursuant to 25 U.S.C. § 1300k-4(b) or such other lands upon which gaming may lawfully be conducted pursuant to the Indian Gaming Regulatory Act.

Labor organization, labor association, or labor union means any organization of employees organized for the purpose of bargaining over hours of employment, rates of pay, working conditions, grievances, or other terms or conditions of employment.

Laws of the Band or *Laws of the Tribe* means the Constitution and Tribal Code of the Little River Band of Ottawa Indians, resolutions of the Tribal Council and the Tribal Regulations of the commissions, agencies, departments, and authorities of the Little River Band of Ottawa Indians.

Little River Band of Ottawa Indians, the *Band* or the *Tribe* means the Little River Band of Ottawa Indians.

Little River Casino Resort means the Band's gaming enterprise, including related hotel and restaurant services, located at 2700 Orchard Highway, Manistee, Michigan, wherein the Tribe operates Class II and Class III gaming to generate governmental revenue for the Tribe pursuant to the Indian Gaming Regulatory Act.

Lock Out means any action by a public employer that prevents employees from going to work for the purpose of coercing employees to accept terms or conditions sought by a public employer in a negotiation with an exclusive bargaining representative..

Management means individuals holding supervisory and managerial positions within a public employer, who, because of their supervisory and managerial positions, do not qualify to be within a bargaining unit, and, when context so indicates, such individuals who have been delegated authority by a public employer to negotiate with an exclusive bargaining representative.

Model Band-Union Election Procedures Agreement means the model agreement referred to in Section 16.26 of this Article.

Neutral Election Official or *Election Official* means the Neutral Election Official appointed by the Tribal Council for the purpose of (a) certifying a showing of 30% or more support for union representation and (b) overseeing any union election pursuant to an agreement entered into by the Band with a labor organization that comports with the terms of the Model Band-Union Election Procedures Agreement.

Nonmember public employees means employees within a bargaining unit who are not members of a labor organization.

Public Employee means non-supervisory regular full-time and part-time (working a minimum of four hours per week) employee of a public employer, excluding all supervisory, managerial, confidential, temporary, seasonal, and casual employees.

Public Employer means a subordinate economic organization, department, commission, agency, or authority of the Band engaged in any Governmental Operation of the Band.

Strike means an employee's refusal, in concerted action with other employees, to report for duty or to be willfully absent, in whole or in part, from the full, faithful and proper performance of the duties of employment for the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of employment. The terms "strike" includes boycotts of any kind designed to adversely affect a public employer. Notwithstanding the provisions of any other law, an employee within the Governmental Operations of the Band who, by concerted action with others and without the lawful approval of his or her supervisor, willfully absents himself or herself from his or her position, or abstains in whole or in part from the full, faithful and proper performance of his or her duties for the purpose of inducing, influencing or coercing a change in employment conditions, compensation, or the rights, privileges, or obligations of employment shall be considered to be on strike.

Subordinate Economic Organization means an economic enterprise operating within the jurisdiction of the Band, whether under a tribal or corporate charter, established by resolution or ordinance of the Tribal Council pursuant to Art. IV section 7 of the Constitution of the Little River Band of Ottawa Indians and wholly owned by the Band.

16.04 Time Calculations.

For any action that is to occur under the provisions of this Article XVI within 10 days or less, weekends, tribal, state and national holidays shall not be counted. The Neutral Election Official, mediators, fact finders, and arbitrators shall have discretion to extend the deadlines herein for matters they handle only for good cause shown by a party in advance of the deadline.

16.05 Freedom of Choice Guaranteed.

Except as otherwise provided in section 16.13, addressing fair share contributions to labor organizations by nonmember public employees, with respect to employment or the terms or conditions of employment within any public employer:

a. The right to work must be protected and maintained free from undue restraints and coercion. The right of persons to work shall not be denied or abridged by any public employer or by any labor organization on account of membership or non-membership in any labor union, labor organization, or association.
b. No person shall be required to become or remain a member of any labor union or labor organization as a condition of employment or continuation of employment.
c. No person shall be required, as a condition of employment or continuation of employment to be recommended, approved, referred, or cleared by or through a labor organization.
d. It shall be unlawful to deduct from the wages, earnings or compensation of an employee any union dues, fees, assessments, or other charges to be held for, transferred to, or paid over to a labor organization, unless the employee has first presented, and the public employer has received, a signed written authorization of such deductions, which authorization may be revoked by the employee at any time by giving written notice of such revocation to the public employer.
e. No person shall be required by any public employer to abstain or refrain from membership in any labor union or labor organization as a condition of employment or continuation of employment.
f. It shall be unlawful for any person, labor organization, or officer, agent or member thereof, or public employer, or officer or agent thereof, by any threatened or actual intimidation of an employee or prospective employee or his parents, spouse, children, grandchildren, or any other persons residing in the employee's or prospective employee's home, or by any damage or threatened damage to his property, to compel or attempt to compel such employee or prospective employee to join, affiliate with, or financially support a labor organization or to refrain from doing so, or to otherwise forfeit his rights as guaranteed by provisions of this Article. It shall be unlawful to cause or attempt to cause such employee to be denied employment or discharged from employment because of support or nonsupport of a labor organization by inducing or attempting to induce any other person to refuse to work with such employee.
g. Any agreement, understanding or practice, written or oral, implied or expressed, between any labor organization and any public employer which violates the rights of employees as guaranteed by the provisions of this Article is hereby declared to be against public policy, an illegal combination or conspiracy in restraint of trade, null and void and of no legal effect. Any strike, picketing, boycott, or other action by a labor organization for the sole purpose of inducing or attempting to induce any public employer to enter into any agreement prohibited by this Article is hereby declared to be for an illegal purpose and is a violation of this Article.

16.06 Strikes Affecting the Governmental and Operations of the Band Prohibited.

(a) *Declaration and Findings.* The Governmental Operations of the Band are critical to the public health, safety, and welfare of the Tribe and its members. No employee or labor organization shall interfere with, threaten or undermine the Governmental Operations of the Band.

(b) *No Right to Strike.* Employees within the Governmental departments and agencies of the Operations of the Band, including the Little River Casino Resort, have no right to strike.

(c) *Strikes Prohibited.* Strikes, work stoppages, or slowdowns against the Governmental Operations of the Band are contrary to the health, safety and welfare of the Tribe and its members, and are

therefore prohibited. No employee or labor organization shall engage in a strike, work stoppage or slowdown with respect to any Governmental Operation of the Band. No labor organization shall cause, instigate, encourage or support an employee strike against a public employer.

16.07 Lock Outs Prohibited. A public employer shall not engage in any action constituting a lock out.

16.08 Licensing and Registration of Labor Organizations

(a) No labor organization shall engage in organizing employees working for any public employer without a license issued by the Little River Band of Ottawa Indians Gaming Commission, which shall provide as follows:

(1) the right of such labor organization to conduct business within the Tribe's jurisdiction is a privilege, subject to the consent and regulatory authority of the Tribe;

(2) the consent of the Tribe to allow such labor organization to conduct business within the jurisdiction of the Tribe is conditioned upon such labor organization's agreement to be subject to the laws of the Tribe and its regulatory authority, including this Code;

(3) in consideration of the Tribe's consent to such labor organization's conduct of business within the jurisdiction of the Tribe, such labor organization agrees to (A) comply with all rules, regulations, and laws of the Tribe, (B) submit to the jurisdiction of the Tribe, including its Tribal Court, and (C) pay an annual business license fee in the amount of $500.00;

(4). such labor organization agrees that a license issued by the Tribe for conducting business within the territorial jurisdiction of the Tribe may be revoked by the Tribe at any time, with or without hearing, for any failure to comply with the laws of the Tribe; and

(5) such other requirements as the Gaming Commission may require under its regulations.

(b) Subject to the requirements of subsection 16.08(a), the Gaming Commission is hereby authorized by the Tribal Council of the Little River Band of Ottawa Indians to enact such regulations as it sees fit to investigate and license any labor organization seeking to conduct business within the jurisdiction of the Tribe.

(c) Any person who intentionally makes a false statement to the Gaming Commission shall be deemed to be in violation of this Article XVI.

16.09 Appropriate Bargaining Units.

An appropriate bargaining unit of public employees may be established under the terms of an agreement entered into by the Band with a labor union that comports with the terms of the Model Band-Union Elections Procedures Agreement.

16.10 Union Elections.

An election for a labor union to become the exclusive representative of an appropriate bargaining

unit of public employees may proceed under the terms of an agreement entered into by the Band that comports with the terms of the Model Band-Union Elections Procedures Agreement.

16.11 Bargaining Unit and Election Dispute Resolution.

Disputes between management and a labor organization seeking to represent public employees with respect to (1) the appropriateness of a bargaining unit or (2) election procedures may be resolved under the terms of an agreement entered into by the Band that comports with the terms of the Model Band-Union Elections Procedures Agreement.

16.12 Duty to Bargain in Good Faith.

(a) Except as otherwise provided by this Article XVI, if a labor organization is lawfully elected to be the exclusive bargaining representative of a bargaining unit of public employees, management and the exclusive bargaining representative shall

(1) bargain in good faith on wages, hours and other terms and conditions of employment , *provided that* (A) neither management nor the exclusive representative shall be required to agree to a proposal or to make a concession and (B) management decisions to hire, to layoff, to recall, or to reorganize duties shall not constitute "other terms and conditions of employment" under this paragraph, and

(2) enter into written collective bargaining agreements covering employment relations.

(b) The obligation to bargain collectively imposed by this section shall not be construed to require management and an exclusive representative to negotiate over matters that would conflict with the provisions of any other laws of the Tribe, and in the event of a conflict between the provisions of any other laws of the Tribe and an agreement entered into by a public employer and the exclusive representative in collective bargaining, the laws of the Tribe shall prevail.

16.13 Fair Share Provisions for Nonmember Public Employees; Deauthorization of Fair share provisions; Payroll Deductions

(a) Management and the exclusive bargaining representative may bargain over fair share provisions for nonmember public employees, provided that such a provision requires:

(1) any such nonmember public employee to pay only for a fair proportion of costs of negotiating a collective bargaining agreement and contract administration;

(2) fair share contributions by all nonmember public employees in the bargaining unit, with pro-rata reductions for nonmember public employees who hold part-time positions;

(3) the exclusive bargaining representative to notify all nonmember public employees within the bargaining unit (i) that they have the right to be a nonmember, (ii) that they have the right to object to paying for labor organization activities not germane to negotiating a collective bargaining agreement or administering an agreement and to obtain a reduction in fees for such nongermane activities, (iii) of sufficient information to enable them to intelligently decide whether or not to object, (iv) about procedures for filing objections, and (v) that if a nonmember public employee objects, the labor organization must explain to such employee the basis for the calculation of the fair share charged to the employee and that the employee

has the right to challenge the calculation before an arbitrator.

(b) Subject to subsection (d), the exclusive bargaining representative's notice and procedures under subsection (a)(3) shall comply with *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986) and its progeny.

(c) Public employers shall have no duty to assure that a labor organization provides the notice set forth in subsection (a)(3) prior to deducting fair share amounts from a public employee paycheck if such a deduction is agree to in a collective bargaining agreement pursuant to subsection (f).

(d) If a nonmember public employee objects to a fair share payment, and such employee and the exclusive bargaining representative cannot resolve the objection, either party shall notify the Neutral Election Official, who shall appoint an arbitrator to resolve the dispute. Such arbitrator shall have experience in public sector labor relations, shall be familiar with the issue of fair share contributions by public sector employees to labor organizations, and shall be a member of the National Academy of Arbitrators. The arbitrator shall hold such hearing and receive such evidence as the arbitrator sees fit to resolve the dispute and shall apply legal standards governing public sector labor relations, including *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986) and its progeny. The decision of the arbitrator shall be binding upon the employee and the labor organization. The fees and costs of the arbitrator shall be borne by the labor organization.

(e) Within 90-days after a public employer and a labor organization execute a collective bargaining agreement containing a fair share provision, one or more public employees within the bargaining unit may file with the Neutral Election Official a petition to have the fair share provision rescinded. The petition must be in writing and accompanied by a statement signed by 30% or more of the employees in the bargaining unit, stating that they wish to rescind the fair share agreement. The Neutral Election Official shall, within 5 days of receipt of such petition, determine whether the petition is properly supported and timely filed, and, if it is, he shall, within 14 days of such determination, direct a secret ballot election that comports with the mechanics for holding elections set forth in the Model Band-Union Election Procedures Agreement. If a majority of the votes cast in the election favor the fair share provision, it shall continue in effect. If there is no such majority, the Neutral Election Official shall certify deauthorization and the fair share agreement shall be deemed null and void as of the date of the petition, and the labor organization shall ensure the prompt refund of amounts withheld from nonmember employees, retroactive to the date of the petition, without interest.

(f) Payroll deduction of (i) the exclusive representative's membership dues for public employees who are members of a labor organization and (ii) fair share contributions of nonmember public employees shall be a mandatory subject of bargaining if either party chooses to negotiate the issue. The amount of the dues and, in the case of nonmember public employees, the amount of the fair-share contributions, shall be certified in writing by an official of the labor organization and shall not include special assessments, penalties or fines of any type. A public employer shall honor payroll deductions until the authorization is revoked in writing by the public employee in accordance with the negotiated agreement and for so long as the labor organization is certified as the exclusive representative. During the time that a certification of a labor union by the Neutral Election Official is in effect for a particular appropriate bargaining unit, a public employer shall not deduct dues for any other labor organization.

16.14 Rights of Public Employees

It shall be lawful for public employees to organize together or to form, join or assist in labor organizations, to engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection, or to negotiate or bargain collectively with their public employers through representatives of their own free choice.

Public employees also have the right to refuse to join or participate in the activities of labor organizations and to represent themselves individually in their employment relations with public employers.

16.15 Unfair Labor Practices.

(a) A public employer is prohibited from:

(1) Interfering with, restraining, or coercing public employees in the exercise of their rights guaranteed under section 16.14.

(2) Encouraging or discouraging membership in any labor organization by discrimination in regard to hiring, tenure, or other conditions of employment.

(3) Refusing to bargain collectively, failing to bargain collectively in good faith, or refusing to sign a final agreement agreed upon with the exclusive bargaining representative.

(4) Discharging or discriminating against a public employee because he or she has exercised rights guaranteed under section 16.14 or signed or filed an affidavit, petition, or complaint or given any information or testimony in any proceeding provided by this Article XVI.

(5) Dominating, interfering with, or assisting in the formation, existence, or administration of, any labor organization or contributing financial support to such an organization.

(6) Refusing to discuss grievances in good faith pursuant to the terms of the collective bargaining agreement with either the exclusive bargaining representative or the employee involved.

(b) A labor organization or anyone acting in its behalf or its officers, representatives, agents, or members are prohibited from:

(1) Interfering with, restraining, or coercing public employees in the exercise of any rights guaranteed them under this Article XVI or interfering with, restraining, or coercing management by reason of its performance of duties or other activities undertaken in the interests of the Governmental Operations of the Band.

(2) Causing or attempting to cause a public employer to discriminate against a public employee because of the employee's membership or nonmembership in a labor organization or attempting to cause a public employer to violate any of the provisions of this Article XVI.

(3) Refusing to bargain collectively or failing to bargain collectively in good faith with management.

(4) Discriminating against a public employee because he or she has exercised rights guaranteed under section 16.14 or signed or filed an affidavit, petition, or complaint or given any information or testimony in any proceeding provided for in this Article XVI.

(5) Participating in a strike against the Governmental Operations of the Band by instigating or supporting, in any positive manner, a strike. Any violation of this paragraph shall subject the violator to the civil penalties provided in this Article XVI.

(c) Notwithstanding the provisions of subsections (a) and (b), the parties' shall have the right to voice their views consistent with the protections afforded by the Tribe's Constitution, and the expression of any arguments or opinions shall not constitute, or be evidence of, an unfair labor practice or of any other violation of this Article XVI, if such expression contains no promise of benefits or threat of reprisal or force.

16.16 Resolution of Charges of Unfair Labor Practices; Breach of Duty of Fair Representation

(a) *Charges Involving Management or an Exclusive Representative*

(1) Charges, Notice, Good Faith Effort to Reach Early Resolution

(A) Should either management or an exclusive representative become aware of perceived conduct constituting an unfair labor practice, it shall notify the other party, in writing (which shall be transmitted electronically or by telecopier as well as via hard copy), of the charge and the alleged factual basis for the charge. The recipient party shall respond in writing (which shall be transmitted electronically or by telecopier as well as via hard copy), within 10 days of receipt of such written allegations. Management and the exclusive bargaining representative shall then make a good faith effort to resolve the alleged violation. This good faith effort shall include each party providing the other with unprivileged information relevant to the charge upon request.

(B) If such good faith efforts do not result in resolution of the charge, the objecting party may proceed to request arbitration.

(2) Arbitration

(A) If a claim is not resolved under subsection (a), charges of violations of unfair labor practices, including the duty to bargain in good faith, provided by this Article XVI shall, within 15 days of the receipt by either party of a written demand for arbitration (or such later time as the arbitrator may promptly schedule a hearing) be brought before an arbitrator, mutually agreed to by the exclusive bargaining representative and the public employer. If the parties are unable to agree upon an arbitrator, they shall use the American Arbitration Association (AAA) labor arbitrator selection procedure, provided that any arbitrator selected through the AAA labor arbitrator selection procedure shall be a member of the National Academy of Arbitrators.

(B) The selected arbitrator shall apply the law of the Band to resolve the charge, but in the absence of such law, the arbitrator shall apply persuasive authority

governing public sector labor relations.

(C) The arbitrator's decision shall be in writing and mailed to the parties, return receipt requested within 30 days of the completion of arbitration. Except as provided by subsection (3), the arbitrator's decision shall be final and binding upon the parties.

(D) Unless otherwise agreed to in writing by the public employer and the exclusive bargaining representative, if the arbitrator's decision is in favor of the public employer on every issue, the exclusive bargaining representative shall pay the fee of the arbitrator and if the arbitrator's decision is in favor of the exclusive bargaining representative on every issue, the public employer shall pay the fee of the arbitrator. Otherwise, the arbitrator shall allocate the cost of the arbitrator's services between the parties in accordance with the issues on which they have prevailed or not prevailed, and they shall pay their respective share of the arbitrator's fee in accordance with the arbitrator's decision.

(3) Judicial Review

(A) A party who claims that the arbitrator's decision is in violation of, or conflicts with, the laws of the Band or procured by corruption, fraud or other undue or illegal means, may, within 10 days of receipt of the arbitrator's decision, bring a petition for review of the arbitrator's decision to the Tribal Court for resolution by that member or the Tribal Court who is licensed to practice law.

(B) In any such review, the Tribal Court shall be to limited to review for errors of law and the issuance of an order affirming the arbitrator's decision or correcting it for legal error as is necessary to render it in compliance with the law of the Band.

(C) Should the Tribal Court find that a party's petition for review is frivolous or imposed solely for delay, it may impose sanctions upon such party, which may include paying for the attorney fees and costs incurred by the other party as a result of the petition.

(D) The decision of the Tribal Court shall be final and there shall be no right of appeal to the Court of Appeals.

(4) Time Limits

No unfair labor practice charge shall proceed to Arbitration or Judicial review under section 16.16(a) unless a demand is made under subsection 16.16(a)(2)(A) no later than 180 days after the alleged action constituting the alleged unfair labor practice.

(b) *Charges of Discrimination by Public Employees*

A public employee who believes he or she has been subjected to unlawful discrimination in violation of section 16.15(a)(4) or section 16.15(b)(4) may proceed to seek relief for such

discrimination under the procedures and remedies provided by Article VI, provided, however, that (i) damages under 6.05(b) may not be awarded, (ii) in the event that the Charge is against a labor organization, the labor organization shall be treated in the same manner as an employer, subject to a Charge of Discrimination under Article VI, and (iii) no complaint may be filed in the Tribal Court unless a Charge of Discrimination has first been filed within 180 days of the asserted violation of section 16.15(a)(4) or section 16.15(b)(4).

(c) *Claims for Breach of Duty of Fair Representation*

(1) Action in Tribal Court

A public employee within a bargaining unit, who claims that an exclusive bargaining representative has breached its duty of fair representation, may bring an action in the Tribal Court, no later than 180 days after the alleged breach, against the exclusive bargaining representative.

(2) Remedies

If the Tribal Court finds that an exclusive bargaining representative has breached its duty of fair representation to a public employee, the Court shall award the employee such relief as will make the employee whole.

16.17 Resolution of Bargaining Impasse

(a) *Agreement to Resolve Negotiation Impasse.*

As the first step in the performance of their duty to bargain, management and the exclusive bargaining representative shall endeavor to agree upon impasse procedures. Such procedures shall define the conditions under which an impasse exists. Any such agreement with respect to the resolution of impasse issues shall not conflict with the provisions of this section.

(b) *Subjects Not Within Procedures for Resolving Bargaining Impasse.*

Nonmandatory subjects of bargaining shall not be subject to the impasse procedures of this section. Unless mutually agreed to by the parties, the impasse procedures of this section shall not be invoked during the pendency of any charge regarding the required scope of good faith bargaining under section 16.12.

(c) *Mediation and Fact Finding.*

(1) *Mediation.* Following the commencement of negotiations, if management and the exclusive bargaining representative reach an impasse, and they do not otherwise agree to proceed directly to fact finding, they shall jointly retain a mediator to assist them in resolving the impasse issues. In the absence of an agreement on the mediator, either party may request the Election Official to appoint a mediator, and the Election Official's appointment of such mediator shall be binding on the parties. It shall be the function of the mediator to bring the parties together to effectuate a settlement of the dispute, but the mediator may not compel the parties to agree. Any appointed mediator shall be experienced in labor mediation, and shall be drawn from lists of such mediators maintained by the American Arbitration Association.

(2) *Fact Finding and Recommendation.* If the parties agree to proceed directly to fact finding in substitute for mediation or, if mediation under subsection (c)(1) does not result in an agreement on all impasse issues within 21 days of the appointment of the mediator, the parties shall jointly retain a fact finder. In the absence of an agreement on the fact finder, either party may request the Election Official to appoint a fact finder, and the Election Official's appointment of such fact finder shall be binding on the parties. The appointed fact finder shall be experienced in public sector labor relations, shall be drawn from lists of similar fact finders maintained by the American Arbitration Association, and shall be a member of the National Academy of Arbitrators.

Within 5 days of the appointment of the fact finder, the parties shall file with the fact finder a joint list of the issues as to which an impasse has been reached, provided that if such filing is not made jointly, each party shall file a list and serve a copy of the filing on the other party.

The fact finder shall conduct a hearing at a location agreed to by the parties or, failing agreement, at a location chosen by the fact finder that is convenient to the parties. The fact finder may administer oaths, may issue subpoenas (under the same terms that subpoenas may issue from the Tribal Court), and may petition the Tribal Court to enforce any subpoena compelling the attendance of witnesses and the production of records, subject to such protection order any party may obtain from the Tribal Court to protect against the disclosure of confidential or privileged information. The fact finder may request briefs, stipulations, or other written submissions from the parties to aid in reaching findings and recommendations. The fact finder shall make written findings of facts and recommendations for resolution of each dispute not later than 15 days from the close of hearing, and shall serve, by certified mail, return receipt requested, such findings upon the public employer, the exclusive bargaining representative, and the Election Official. In issuing said findings and recommendations, the fact finder shall redact any factual material deemed confidential pursuant to an agreement of the parties or pursuant to a protective order issued on behalf of a party.

Management and the exclusive bargaining representative shall immediately agree to accept the fact finder's recommendations or, commence further negotiations in a good faith effort to reach agreement. If, upon the expiration of 20 days after the Election Official's receipt of the fact finder's recommendations, the parties fail to jointly inform the Election Official that they have fully resolved all impasse issues, the Election Official shall make the fact finder's findings and recommendations public to the membership of the Tribe by arranging for publication on the Tribe's website, in the Tribe's newsletter to members, or both

(d) *Binding Arbitration.*

If the parties fail to resolve their disputes within 30 days of receipt of the fact finder's findings and recommendations, they may mutually agree in writing to proceed to binding arbitration. Absent agreement, either party may request that the impasse issues proceed to resolution by binding arbitration, and such request shall be served upon the other party, in writing, return receipt requested.

Within 10 days of the parties' written agreement or the receipt by one party of a request for binding arbitration, the parties shall jointly select an arbitrator, who shall not be the same individual who served as the fact finder. If the parties fail to agree on an arbitrator within the 10

day period, the selection shall be made using the procedures under the voluntary labor arbitration rules of the American Arbitration Association. Any arbitrator shall be drawn from lists of such arbitrators maintained by the American Arbitration Association, and shall be a member of the National Academy of Arbitrators.

The submission of the impasse items to the arbitrator shall be limited to those issues that had been considered by the fact finder and upon which the parties have not reached agreement. Within 10 days of the appointment of the arbitrator, management and the exclusive bargaining representative shall each submit to the arbitrator their respective recommendations for settling the dispute on each unresolved issue, the draft collective bargaining agreement to the extent that agreement has been reached, and the fact finder's findings of fact and recommendations.

The arbitrator shall conduct a hearing at a location agreed to by the parties or, failing agreement, at a location chosen by the arbitrator that is convenient to the parties. The arbitrator may administer oaths, may issue subpoenas (under the same terms that subpoenas may issue from the Tribal Court), and may petition the Tribal Court to enforce any subpoena compelling the attendance of witnesses and the production of records, subject to such protection order any party may obtain from the Tribal Court to protect against the disclosure of confidential or privileged information. The arbitrator shall issue a decision on each issue remaining at impasse not later than 30 days from the day of appointment. In issuing said findings and recommendations, the fact finder shall redact any factual material deemed confidential pursuant to an agreement of the parties or pursuant to a protective order issued on behalf of a party. The parties may continue to negotiate all offers until an agreement is reached or a decision is rendered by the arbitrator.

The arbitrator shall consider, in addition to any other relevant factors, the following factors:

(1) Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.

(2) Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.

The arbitrator shall select the most reasonable offer of the parties' respective final offers on each impasse item or the recommendations of the fact finder on each impasse item. The arbitrator shall provide a written summary of the selected provisions and agreed-upon provisions to each party and to the Election Official, return receipt requested.

Said selections of the arbitrator, together with the items already agreed upon by the management and the exclusive bargaining representative shall be deemed to be the collective bargaining agreement between the parties, provided, however, that, subject to subsection (e), provisions related to the public employer's obligation to pay wages, salaries, bonuses, insurance, pension or retirement contributions shall not be binding upon the parties.

(e) *Limited Review by Tribal Council of Economic Terms Recommended by Arbitrator Upon Rejection by Public Employer.*

If a public employer rejects an arbitrator's decision issued under section 16.17(d) regarding the public employer's obligation to pay wages, salaries, bonuses, insurance, pension or retirement

contributions, it shall so inform (i) the exclusive bargaining representative and (ii) the Tribal Council Speaker, in writing, within five (5) days of receipt of the arbitrator's decision.

Thereafter, the Tribal Council Recorder shall schedule a closed session meeting of the Tribal Council at which the public employer shall appear and show cause for why it has rejected the arbitrator's decision regarding its obligation to pay wages, salaries, bonuses, insurance, pension or retirement contributions. If the public employer is the Little River Casino Resort, any member of the Tribal Council that may have served on the Board of Directors of the Resort during the time that decisions were made about the Resort's bargaining position on any impasse issue addressed by an arbitrator's decision under section 16.17(d) shall abstain from voting and deliberating in accordance with the Tribe's Constitution and applicable law.
In advance of the Tribal Council meeting, the public employer shall submit to the Tribal Council the decision of the arbitrator, together with a written statement setting forth the reasons for its rejection of the decision, and it shall, at the same time, mail a copy of said written statement to the exclusive bargaining representative. In advance of the Tribal Council meeting, the exclusive bargaining representative shall be given the opportunity to submit a written statement setting forth the reasons why the Arbritrator's decision is appropriate and, upon submission of such a written statement to the Tribal Council, the exclusive bargaining representative shall mail a copy to the public employer.

At the scheduled meeting of the Tribal Council, both the public employer and the exclusive bargaining representative shall have the opportunity to be heard.

The Tribal Council shall decide only whether (a) the public employer's final offer regarding any impasse over wages, salaries, bonuses, insurance, pension or retirement shall become part of the parties' collective bargaining agreement or (b) the arbitrator's decision on any such impasse issue shall become part of the parties' collective bargaining agreement.

(f) *Costs of Impasse Resolution Proceedings*

Unless otherwise agreed to in writing, the public employer and the exclusive bargaining representative shall share equally all fees and costs of mediation, neutral arbitration, and binding arbitration provided for by this section.

(g) *Status of Terms and Conditions of Employment Pending Impasse Resolution*

At all times when an impasse remains unresolved, the status quo regarding wages and working conditions shall remain in effect even if a prior collective bargaining agreement governing the bargaining unit has expired. In such event, the status quo or the terms of any prior collective bargaining agreement shall continue in force and effect, until a new agreement shall be executed; provided, however, that for the purposes of this paragraph, the status quo, or continuing terms, shall not include fair share provisions, or increases to wages, increases in employer contributions to insurance, or increases in employer contributions to pensions.

(h) *Judicial Review*

(1) A party who claims that the arbitrator's decision is in violation of, or conflicts with, the laws of the Band or procured by corruption, fraud or other undue or illegal means, may, within 10 days of receipt of the arbitrator's decision, bring a petition for review

of the arbitrator's decision to the Tribal Court for resolution by that member or the Tribal Court who is licensed to practice law.

(2) In any such review, the Tribal Court shall be to limited to review for errors of law and the issuance of an order affirming the arbitrator's decision or correcting it for legal error as is necessary to render it in compliance with the law of the Band.

(3) Should the Tribal Court find that a party's petition for review is frivolous or imposed solely for delay, it may impose sanctions upon such party, which may include paying for the attorney fees and costs incurred by the other party as a result of the petition.

(4) The decision of the Tribal Court shall be final and there shall be no right of appeal to the Court of Appeals.

16.18 Duration of Collective Bargaining Agreements for Public Employees.

Collective bargaining agreements entered into by the public employer and an exclusive bargaining representative shall have terms of three years or less.

16.19 Decertification of Exclusive Representative.

(a) A member of a labor organization or the labor organization itself may initiate decertification of a labor organization as the exclusive representative of a bargaining unit if thirty percent (30%) of the public employees in the bargaining unit make a written request to the Neutral Election Official for a decertification election. Decertification elections may be held in a manner prescribed by the Neutral Election Official so long as they are in accord with the mechanics for holding elections set forth in the Model Band-Union Election Procedures Agreement. A decertification election shall only be valid if forty percent (40%) of the eligible employees in the bargaining unit vote in the election.

(b) When there is a collective bargaining agreement in effect, a request for a decertification election shall be made to the Neutral Election Official no earlier than 120 days and no later than 90 days before the expiration of the collective bargaining agreement.

(c) When, within the time period prescribed in subsection (b) of this section, a competing labor organization files a petition containing signatures of at least thirty percent (30%)of the public employees in the appropriate bargaining unit pursuant to an agreement entered into by the Band with such labor organization that comports with the terms of the Model Band-Union Elections Procedures Agreement, a representation election, rather than a decertification election, shall be conducted in accordance with the election procedures of such agreement.

(d) When an exclusive representative has been certified but no collective bargaining agreement is in effect, the Neutral Election Official shall not accept a request for a decertification election earlier than twelve months subsequent to a labor organization's certification as the exclusive representative

16.20 Policies of Public Employers Addressing Abuse of Alcohol and Drugs Not Subject to Collective Bargaining.

(a) *Declaration and Findings.* The abuse of alcohol and both legal and illegal drugs within

the public employers harms the health, safety and welfare of the Band and its members. Tribal communities, including that of the Band, are particularly vulnerable to drug and alcohol abuse, and the regulation of such abuse within public employers is critical to the health, safety, and welfare of the Band and its members.

(b) *Prohibition of Collective Bargaining Affecting Alcohol and Drug Testing Policies.* Public employers shall have the right to address the terms and conditions for testing public employees for alcohol and drug use, consistent with the laws of the Band, and such policies shall not be subject to bargaining with any labor organization.

16.21 Conflicts Between the Laws of the Band and Band-Union Election Procedures Agreement.

In the event of a conflict between any law of the Band and the provisions of the Model Band-Union Election Procedures Agreement or the provisions of an agreement entered into by the Band that comports with the terms of the Model Band-Union Elections Procedures Agreement, the laws of the Band shall control.

16.22 Conflicts Between Collective Bargaining Agreements and Personnel Policies.

Except as provided by 16.20, in the event of a conflict between the personnel policies or procedures of a public employer and the provisions of a collective bargaining agreement entered into by a public employer and a labor organization, the latter shall control.

16.23 Conflicts Between Collective Bargaining Agreements and Individual Contracts.

In the event of a conflict between the provisions of a collective bargaining agreement entered into by a public employer and a labor organization and the provisions of an individual contract of an employee within a bargaining unit, the terms of the collective bargaining agreement shall control.

16.24 Enforcement.

(a) *Strikes: Civil Actions, Penalties, Decertification and Exclusion* Any public employee or labor organization, and any employee or agent of any labor organization, that violates, or seeks to violate, the prohibition against strikes set forth in section 16.06 of Article XVI shall be subject to a civil action by the affected public employer for declaratory and injunctive relief in the Little River Band of Ottawa Indians Tribal Court. Upon a finding of any such violation by a labor organization or any person acting on behalf of a labor organization, the Court may impose a civil fine against the labor organization, not to exceed $5,000 for each violation. Upon a finding of any such violation by a public employee, the Court may impose a civil fine against the employee not to exceed $1,000 for each and the employer of such public employee shall have the right to suspend or terminate the employment of such public employee. Any labor organization found by the Tribal Court to be in violation of the prohibition against strikes shall be deemed decertified from representing any public employees and shall further be deemed not legally entitled to be present on tribal lands and subject to exclusion on a temporary or permanent basis.

(b) *Lock Outs: Civil Actions.* A public employee or labor organization shall have the right to seek declaratory and injunctive relief in the Little River Band of Ottawa Tribal Court against public employers to enforce the prohibition against lock outs set forth in Section 16.07 of this Article XVI.

Upon a finding by the Tribal Court that a public employer has violated section 16.07, the Tribal Court may award such employee or labor organization attorney fees and costs.

(c) *Licenses: Civil Actions, Penalties, Exclusions.* Any labor organization that (1) engages in activities that require a license under this Article XVI without such a license or (2) violates the terms of a license issued by the Gaming Commission in accordance with this Article XVI shall be subject to an action in the Tribal Court by the Gaming Commission or by the Band, through its General Counsel, for declaratory and injunctive relief. Any labor organization found by the Tribal Court to have violated the licensing requirements of this Article XVI or the terms of a license shall be subject to such civil penalty, not to exceed $5,000. Any labor organization found by the Tribal Court to be in violation the licensing requirements of this Article XVI or the terms of a license issued by the Gaming Commission shall be deemed not legally entitled to be present on tribal lands and subject to exclusion on a temporary or permanent basis.

(d) *Other Tribal Court Declaratory Authority.*

(1) Unresolved disputes between management and an exclusive bargaining representative over the duty to bargain in good faith, involving a controversy over whether a subject conflicts with the laws of the Tribe, may be brought by either party (or by the affected public employer or labor organization) to the Tribal Court for resolution by that member of the Tribal Court who is licensed to practice law by declaratory judgment.

(2) Unresolved disputes regarding an alleged conflict between a provision of a collective bargaining agreement and the laws of Tribe may brought by a party with standing (including the affected public employer or labor organization, an affected public employee, the Gaming Commission, the Tribal Council, or the Ogema) to the Tribal Court for resolution by that member of the Court who is licensed to practice law by declaratory judgment.

(3) Should the Tribal Court find that a party's request for declaratory judgment under subsection d(1) or d(2) of this section is frivolous or imposed solely for delay, it may impose sanctions upon such party, which may include paying for the attorney fees and costs incurred by the other party as a result of the action.

(4) A decision of the Tribal Court under subsection d(1) or d(2) of this section shall be final, and there shall be no right of appeal to the Court of Appeals.

16.25 Resolution of Jurisdictional Disputes.

In any case or proceeding commenced under this Article XVI, where the regulatory or adjudicatory jurisdiction of the Band or the Tribal Court is called into question, the Tribal Court shall address the jurisdictional question by means of a declaratory judgment.

16.26 Limited Waiver of Sovereign Immunity.

The waiver of sovereign immunity set forth in Article II, Sec. 2.06 is of no effect with respect to this Article XVI. With respect to this Article XVI, the Tribe hereby waives the sovereign immunity of public employers solely for (1) actions for declaratory and injunctive relief and attorney fees and costs under subsection 16.24(b) and 16.24(d); (2) actions for judicial review and for the specific remedies and sanctions provided for by subsections 16.16(a), 16.16(b), and 16.17(g); and (3) actions in the Little River Band Tribal Court to enforce a collective bargaining agreement.

16.27 Model Band-Union Election Procedures Agreement.

The Tribal Council has adopted, by Resolution Number 08-1015-350, a Model Band-Union Election Procedures Agreement, which may form the basis for future election procedures for a labor organization seeking to represent a bargaining unit within a public employer. The Tribal Council Executive Assistant shall provide a copy of the Model Band-Union Election Procedures Agreement upon written request of any person, organization or entity.

Article XVII. Integrity of Fair Employment Practices Code.

17.1 Findings

(a) The Little River Band of Ottawa Indians has enacted and implemented this Fair Employment Practices Code pursuant to its inherent sovereign authority, confirmed by the decisions of the United States Supreme Court, and pursuant to the Band's Constitution, which has been approved by the United States Secretary of the Interior in accordance with Congress's Act to Restore the Little River Band of Ottawa Indians, 25 U.S.C. §§ 1300k-1300k-7 and the Indian Reorganization Act, 25 U.S.C. § 476.

(b) In providing for procedures, rights, and remedies for employers, employees, and labor organizations under this Code, including those afforded through actions in the Little River Band of Ottawa Indians Tribal Court, the Tribal Council has carefully considered (and continues to consider) the values and interests of the Band in order to establish fair processes, rights, and remedies for the parties and interests at stake. This has included careful consideration of, amongst other things, (i) the time, costs, and inconvenience of parties and witnesses involved in proceedings to resolve controversies or to establish rights and remedies under this Code; (ii) the need to protect the governmental operations of the Band from undue burdens from litigation, while according fair treatment to employees within those operations; and (iii) methods to resolve disputes through early settlement, including mediation.

(c) The integrity of this Code is threatened if parties bypass the procedures, rights, and remedies established herein and seek, instead, to invoke procedures or remedies outside of this Code for controversies that this Code is designed to address and resolve in accordance with the unique public policies of the Band. Investigations or proceedings directed at employers, apart from those provided for by this Code, which seek to address controversies or rights covered by this Code, require the expenditure of time and resources to the detriment of those involved and, in many instances, to the governmental operations of the Band. Such investigations or proceedings also threaten duplicative witness testimony and production of documents already available, or undertaken, pursuant to the provisions of this Code.

17.2 Purpose

The purpose of this Article is to protect the integrity of the procedures, rights, and remedies established by this Code as described in the foregoing findings.

17.3 Definitions

As used in this Article, the following terms have the following meanings:

(a) Employee means any employee of an employer.

(b) Employer means any "employer," as defined in section 3.06 and any "public employer" as defined in section 16.03, and any agent, officer, or representative of such employer.

17.4 Prohibition of Employer Testimony and Documents Disclosure in External Proceedings When Employees Fail to Exhaust Tribal Remedies

(a) *Disclosures only with approval of Tribal Council.* Except with the express, written approval of the Tribal Council, employers are prohibited from giving testimony or witness statements of any kind or producing documents or other information of any kind in response to requests or subpoenas issued by outside authorities, other than those authorities expressly granted powers under this Code, engaged in investigations or proceedings on behalf of current or former employees, when such employees have failed to exhaust their remedies under this Code.

(b) *Examples of failure to exhaust remedies.* For the purposes of subsection 17.4(a), employees shall be deemed to have "failed to exhaust their remedies under this Code" if they have failed to exhaust the procedures, rights, remedies, and appeals (including opportunities to challenge jurisdiction) available under this Code or the procedures of the Little River Band of Ottawa Indians Tribal Court, and have, instead, invoked investigations or proceedings outside of those authorized by this Code to (i) address controversies or rights covered by this Code, such as discrimination (*see* Article VI), family medical leave (see Article VIII), minimum wages (see Article X), whistleblower protection (see Article XII), and unfair labor practices (see Article XVI, section 16.15) or (ii) challenge the assertion of jurisdiction under this Code.

17.5 Actions for Injunctive Relief to Prevent Disclosures.

The Little River Band of Ottawa Indians Tribal Court shall have authority to grant preliminary and permanent injunctions to prevent employer disclosures in violation of section 17.4, and the sovereign immunity of employers imbued with sovereign immunity from such actions is hereby waived.

17.6 Use of Reports of Fair Employment Practice Investigators.

Reports of Investigators prepared pursuant to sections 6.01-6.02 may be submitted in any proceedings or controversies related to an employee's failure to exhaust remedies under this Code as described in subsection 17.4(b), provided, however, that such reports shall remain subject to section 6.03(b) regarding their admissibility in Tribal Court for the purposes proving or disproving the merits of Charges of Discrimination filed under section 6.02.

I, Janine Sam, Tribal Council Recorder, do hereby certify that this is a true and correct copy of the Fair Employment Practices Code adopted by the Tribal Council on July 28, 2010.

Janine Sam
Tribal Council Recorder

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