

Gaming Enterprise Oversight Authority Act of 2024
Ordinance #24 - ____ - ____

Article I. Purpose; Findings.

- 1.01. *Purpose.* The purpose of this Ordinance is to create the Little River Band of Ottawa Indians Gaming Enterprise Oversight Authority for the purpose of maintaining appropriate oversight and competent management of the Tribe's Gaming Enterprise and to manage the gaming funds within the exclusive control of the Band and to ensure consistent regulatory compliance and the maximization of income for all existing and future Gaming Enterprises.
- 1.02. *Authority.* The Tribal Council of the Little River Band of Ottawa Indians (hereafter referred to interchangeably as band or tribe) adopts this Ordinance in accordance with the following constitutional authority:
- a. Article IV, Section 7(a) of the Constitution of the Little River Band of Ottawa Indians empowers the Tribal Council with the sole authority 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.” Among these powers are the power,
 - 1. to govern the conduct of members of the Little River Band and other persons within its jurisdiction; and,
 - 2. to promote, protect and provide for public health, peace, morals, education and general welfare of the Little River Band and its members.
 - b. Article V, Section 5(a)(l) of the Constitution provides that the Ogema shall enforce and execute the laws, ordinances, and resolutions of the Tribal Council consistent with the Constitution; and,
 - c. Article V, Section 5(a)(8) of the Constitution provides that the Ogema shall manage the economic affairs, enterprises, property, and other interests of the Tribe, consistent with ordinances and resolutions enacted by the Tribal Council; and,
 - d. Article V, Section 5(a)(4), of the Constitution provides that the Ogema has the power, with the approval of the Tribal Council, to appoint members of regulatory commissions and heads of subordinate organizations created by ordinance; and,
 - e. Article IV, Section 7(f), of the Constitution provides that Tribal Council is empowered to create by ordinance regulatory commissions or subordinate

organizations and to delegate to such organizations the power to manage the affairs and enterprises of the Little River Band; and,

- f. Article IV, Section 7(h), of the Constitution provides that the Tribal Council is empowered to approve appointments to regulatory commissions and heads of subordinate organizations created by ordinance.
- g. Article IV, Section 7(i), of the Constitution provides that the Tribal Council shall exercise the fiscal power to “manage any funds withing the exclusive control of the Little River Band and to appropriate these funds for the benefit of the Tribe and its members”.

1.03. *Findings.* The Tribal Council finds:

- a. That the Indian Gaming Regulatory Act of 1988 (“IGRA”) provides that a principal goal of federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal governments. Congress has created limitations regarding the use of gaming revenues by Indian Tribes, as well as imposing regulations by which tribes must operate their gaming enterprises; and
- b. That the Gaming Enterprise is the Tribe's primary source of governmental revenue and the creation of new employment opportunities for tribal members; and
- c. That applicable tribal and federal gaming regulations require the adequate monitoring and oversight of the Gaming Enterprise by the Tribe; and
- d. That Tribal gaming is a highly regulated business activity that requires skilled and experienced management and competent oversight in order to be successful; and
- e. That the Tribal Ogema is burdened with the responsibility for managing all business enterprises of the Band in addition to performing the wide range of duties of the Executive branch of government and cannot be reasonably expected to be actively involved in the day-to-day management of any or all tribal enterprises without the assistance of qualified and experienced business managers and advisors; and
- f. That the Tribal Council finds it necessary to establish a subordinate organization that can assume primary responsibility for overseeing the Management of the Gaming Enterprise of the Band to assist the General Manager and the Ogema with oversight of the day-to-day business activities of the Gaming Enterprise; and

- g. That such organization shall regularly report to the Tribal Ogema and to the Tribal Council as to the financial condition and needs of the Gaming Enterprise.

Article II. Adoption; Amendment; Repeal; Severability.

- 2.01. *Adoption.* This Ordinance is adopted by Resolution # _____ and repeals all prior ordinances, resolutions, and motions that are in conflict with this Ordinance.
- 2.02. *Amendment.* This Ordinance may be amended by the Tribal Council in accordance with the Constitution of the Little River Band of Ottawa Indians.
- 2.03. *Severability Clause.* If any provision of this Ordinance or its application to any person or circumstance is held invalid, such invalid provision shall be severed from this Ordinance and shall not affect other provisions or applications of this Ordinance which can be given effect without the severed provision or language, and to this end the provisions of this Ordinance are severable.
- 2.04. *Title.* This Ordinance shall hereafter be referred to as the "Gaming Enterprise Oversight Authority Act of 2024" ("Ordinance").

Article III. Definitions.

- 3.01. *Definitions.* For purposes of this Ordinance certain key terms are defined in this Article. When used in this Ordinance, the word "shall" is always to be understood to be mandatory and not merely advisory.
- 3.02. *At-Large Member* means the Tribal Ogema, who shall serve as a non-voting Member of the Gaming Enterprise Oversight Authority ("Authority") Board.
- 3.03. *Board* means the appointed members of the Gaming Enterprise Oversight Authority.
- 3.04. *Capital Expenditures* means funds expended by the Gaming Enterprise at the direction of the Oversight Authority that add to the value of or extend the useful life of the property and equipment or to adapt it to a new or different use. Expenses that keep the property and equipment in an ordinarily efficient operating condition and do not add to its value or appreciably add to its useful life are not capital expenditures.
- 3.05. *Collective Bargaining Agreement* means a contract between a Gaming Enterprise and a labor organization regarding wages, hours, terms or conditions of employment pursuant to the Fair Employment Practices Code.
- 3.06. *Contract* means an agreement between two or more parties creating obligations that are

enforceable or otherwise recognizable at law.

- 3.07. *Daily Operational Expense* means those expenses identified in the budget as necessary to operate and manage the Gaming Enterprise on a day-to-day basis and includes but is not limited to payroll, insurance premiums, utilities, and any payments made in accordance with the terms of an approved contract.
- 3.08. *Elected Official*, as used in this Ordinance, shall mean the Ogema and any sitting Tribal Council member.
- 3.09. *Gaming Enterprise*, as used in this Ordinance, shall mean the Little River Casino Resort and any other or future facility at which gaming is authorized under Tribal, State, and/or Federal Law including, but not limited to, the Indian Gaming Regulatory Act, the Tribal-State Gaming Compact(s), and the Tribal Gaming Ordinance. All Gaming Enterprises of the Little River Band of Ottawa Indians are wholly owned business entities of the tribal government and are considered public employers, and are authorized to conduct activities including, but not limited to, the following:
- a. Gaming activities authorized by tribal law.
 - b. Gaming activities authorized under the Tribal-State Gaming Compact;
 - c. Hotel and recreational activities;
 - d. Entertainment and conference activities;
 - e. Dining and banquet activities;
 - f. Activities reasonably related to subparagraphs (a)-(d) above; and
 - g. Other activities authorized from time to time by resolution of the Tribal Council amending this ordinance.
- 3.10. *General Manager*, as used in this Ordinance shall mean the person who is employed by the Little River Band of Ottawa Indians and licensed by the LRBOI Tribal Gaming Commission as the Primary Management Official responsible for the management of the Band's gaming enterprise. The General Manager shall have primary responsibility for the hiring and supervision of all subordinate gaming employees and is authorized to set up working policy for any gaming activity located within any licensed gaming enterprise of the LRBOI.
- 3.11. *Good Cause*, as used in this Ordinance as a basis for the removal of a Member of the

Oversight Authority, shall have the meaning ascribed to it under Article IX of this Ordinance.

- 3.12. *Oversight Authority* means the subordinate organization established by the Tribal Council by this Ordinance to work with and assist the General Manager and with the assistance of which the Ogema will perform his duties to manage the gaming operations of the Tribe to enhance and improve the market share and profitability of the gaming operations. The Oversight Authority shall carry out its duties by official directives, approvals and recommendations provided to the General Manager in accordance with this Ordinance.
- 3.13. *Primary Management Official* shall have the meaning ascribed to it by the Indian Gaming Regulatory Act and the implementing regulations of the Tribal Gaming Ordinance and other applicable regulations, as amended from time to time.
- 3.14. *Official Action* shall mean an action taken by Resolution or Motion approved by a majority of the Members of the Oversight Authority voting at an official meeting where a quorum is declared.
- 3.15. *Official Capacity*. A Member of the Oversight Authority is acting in his or her official capacity only when undertaking official actions sanctioned and approved by a majority of Members of the Oversight Authority voting in an official meeting.
- 3.16. *Public Employer* means a Gaming Enterprise or other subordinate economic organization, department, commission, agency, or authority of the Band engaged in any Governmental Operations or activity of the Band.

Article IV. General Manager-Responsibilities and Duties.

- 4.01. *General Manager*. The hiring, evaluation, and termination of a General Manager of the gaming enterprise shall be the joint responsibility of the Oversight Authority, the Tribal Ogema and the Tribal Council in accordance with the below requirements:
 - a. *Hiring a General Manager*. The Oversight Authority shall have the power to search and recruit applicants for the position of General Manager in accordance with the laws and resolutions of the Tribe provided, that any hiring shall be negotiated by the Tribal Ogema and will be effective upon its ratification and approval by the Tribal Council. However, any General Manager employed on the date this Ordinance is adopted shall remain the General Manager in accordance with and pursuant to the terms of any existing employment agreement with the General Manager. If there is no approved agreement in place at that time, upon the seating of a sufficient number of members of the Oversight Authority to establish a quorum, an

employment agreement shall be promptly negotiated and executed with the General Manager by the Oversight Authority on terms and conditions that are competitive in the surrounding market, or with a newly selected General Manager should those negotiations fail to result in an agreement satisfactory to both the existing General Manager, the Oversight Authority, the Tribal Ogema and the Tribal Council.

- b. *Evaluating the General Manager.* The Oversight Authority shall evaluate the performance of the General Manager on an annual basis or more frequently as the Authority shall determine necessary. The evaluations shall be shared with the Tribal Ogema and the Tribal Council to ensure they are apprised of any problems or issues that might exist.
- c. *Termination of the General Manager.* The Oversight Authority shall have the power to recommend the termination of the employment of the General Manager prior to the completion of any term of employment established by contract only for good cause. The Authority will make such a recommendation to the Tribal Ogema, who shall share the recommendation with the Tribal Council and consult with the Tribal Council prior to any termination. Where the General Manager is terminated for reasons other than for good cause, the General Manager shall be compensated for the remainder of any uncompleted term of employment at a rate equal to no less than one-half (½) of the value of the compensation remaining to be paid under the terms of the agreement if fully performed, or as may otherwise be stipulated in the General Manager's employment agreement.
- d. For purposes of such termination, in addition to breach of contract, good cause is defined as, i) the loss of the General Manager's gaming license; ii) the conviction of embezzlement or misuse of gaming revenue or other tribal funds, iii) the conviction of a criminal offense involving dishonesty or corruption and, iv) the repetitive demonstration of a lack of good judgment or leadership or any single event of a substantial abuse of the authority of the position.
- e. The General Manager shall be provided with written notice of termination stating the cause for termination and shall be entitled to a hearing before the tribal court by submitting a written demand to the Tribal Court Clerk within ten (10) days of termination requesting a hearing. The General Manager shall be entitled to defend against the charges of good cause by the presentation of evidence refuting the charges in the form of testimony of witnesses or by the presentment of documentary evidence. The Court Clerk shall issue subpoenas for witnesses to appear and give testimony under oath at the request of the General Manager or the Ogema or their legal counsels. The ruling of the tribal court shall be final, and no appeal shall be available to the General Manager or the Ogema once the tribal court has ruled.

4.02. *Responsibilities.* The General Manager shall be responsible for the following:

- a. to make presentations of monthly financial statements and reports to the Oversight Authority, the Ogema, and the Tribal Council and to comply and ensure continued compliance with the laws and resolutions enacted by the Tribal Council; and
- b. to meet any goals for the Gaming Enterprise established by the Oversight Authority; and
- c. to comply and ensure compliance with all applicable gaming laws and regulations, including the Indian Gaming Regulatory Act, the Tribal-State Gaming Compact, the Gaming Ordinance of the Tribe, and all other applicable laws, regulations, internal operating procedures, policies and minimum internal control standards; and
- d. to timely account for and transfer, or direct the accounting and transfer of, all revenues generated by the Gaming Enterprise, excluding authorized operating funds, within forty-eight (48) hours to the account or accounts authorized and established by the Tribal Council by law or resolution; and
- e. to make reasonable efforts to increase the number of Tribal Members employed by the Gaming Enterprise in accordance with business needs of the facilities the Indian Preference in Employment Ordinance (#15-600-02) and the available applications;
- f. to provide sufficient mentoring and training opportunities that will promote reasonable efforts to increase the number of Tribal Members employed by the Gaming Enterprise in management level positions in accordance with business needs and the Indian Preference in Employment Ordinance; and
- g. to maintain a consistent and regular attendance record; and
- h. to be held accountable, to the highest degree, for the accuracy and thoroughness of the records and reports of the Gaming Enterprise; and
- i. to be responsible for the successful overall direction and operation of all activities of the Gaming Enterprise.

4.03. *General Duties.* The General Manager shall:

- a. create, develop, and implement an effective strategy for the successful operation

of the Gaming Enterprise within the annual budget appropriation, including setting goals and objectives for future growth and expansion in accordance with the Annual Operating Plan and Annual Budget approved by the Tribal Council; and,

- b. ensure a high quality of management activities and operations in all areas of the Gaming Enterprise; and,
- c. have sole authority over the day-to day management of the gaming operations and all employees and staff along with other duties and responsibilities customary for a General Manager of a gaming, restaurant, hotel, and entertainment enterprise, including responsibility for the overall operation of the Gaming Enterprise, subject to any limitations or prohibitions set forth in this Ordinance or other applicable law.

4.04. *Specific Duties.*

- a. *Primary Management Official Employment.* The General Manager shall have the power to recruit, select and employ all subordinate Primary Management Officials for the Gaming Enterprise in accordance with the Gaming Ordinance and applicable laws and resolutions of the Tribe. The Oversight Authority shall be provided evaluation reports regarding the performance of all Primary Management Officials on an annual basis or more frequently as needed. The General Manager shall keep the Oversight Authority informed of any matters pertaining to concerns related to the performance or underperformance of Primary Management Officials under the supervision of the General Manager.
- b. *Personnel Manual.* The General Manager shall have the responsibility for creating or updating any existing Personnel Policies Manual for the Gaming Enterprise ensuring that the basic protections and rights of Gaming Enterprise employees are reasonably consistent with the Personnel Policies of the Band for tribal employees, subject to the overriding authority of the Tribal Council to establish employment regulations and laws by ordinance or resolution. The General Manager shall provide at least sixty (60) day advance notice to the Ogema and Tribal Council of all proposed amendments to the Personnel Manual.
- c. *Collective Bargaining Agreements; Contracts.* Subject to Section 16.06 of this Ordinance, the General Manager is expressly delegated the authority to negotiate Collective Bargaining Agreements for the Gaming Enterprise, subject to approval of the Oversight Authority. Collective Bargaining Agreements shall be forwarded to the Tribal Council Recorder for filing with the General Manager's Monthly Report.
 - 1. *Release of Financial Information.* The General Manager is expressly delegated authority to release necessary financial information to support the

Little River Casino's position(s) during any collective bargaining process. Financial information released shall be subject to the confidentiality provisions contained within Article XVI of the Fair Employment Practices Code.

- d. *Contracts.* The General Manager is responsible for the execution of any contract approved by the Oversight Authority or as is otherwise authorized within the authority of the General Manager by this Ordinance. Every contract shall be reviewed by the legal counsel engaged by the Oversight Authority.
- e. *Expenditures.* The General Manager may authorize all other expenditures of less than \$50,000.00, excluding budgeted daily operational expenses.
- f. *Compliance and Accounting Audits.* The General Manager shall comply fully with requests of the Tribal Council, the Gaming Commission, the Oversight Authority, and any auditors retained by the Tribe's Elected Officials to audit the Gaming Enterprise's compliance with regulatory and accounting requirements, and adherence to appropriate business practices and provide all requested assistance to each.

4.05. *Additional Duties of General Manager or Primary Management Officials at the Direction of the General Manager.* In addition to all other duties of the General Manager contained in this Ordinance, the General Manager, or his or her designated Primary Management Official, shall be responsible for carrying out the following additional duties:

- a. *Mandatory Reporting Requirements.* Ensuring the accuracy and timely submission of all mandatory budgets and reports in accordance with the schedules set forth in Article VI of this Ordinance.
- b. *Mandatory Distributions.* Ensuring the accuracy and timeliness of all mandatory distributions of gaming revenues in accordance with the schedules set forth in Article VII of this Ordinance.
- c. *Corrective Action Plans.* In the event mandatory distribution or reporting requirements are not met in accordance with the provisions of this Ordinance, the General Manager shall submit a comprehensive Corrective Action Plan to the Oversight Authority, copying the Ogema and the Tribal Council, which, at a minimum:
 - 1. identifies with specificity the individual(s) responsible for the Gaming Enterprise's failure to comply with the provisions of this Ordinance along

with any explanation of the reason(s) for the failure;

2. identifies with specificity any disciplinary action taken against the responsible individual(s) where appropriate; and
3. identifies with specificity what action the General Manager has taken to avoid future non-compliance with the provisions of this Ordinance; and
4. a Corrective Action Plan submitted under this Section shall be delivered to the Tribal Council Recorder within three (3) business days of the date of the failure or default. The Tribal Council Recorder shall place the matter on the next available Tribal Council closed session agenda for discussion.

Article V. Limitations on the Powers of the General Manager.

- 5.01. *Waivers of Sovereign Immunity.* The General Manager shall have no power to waive the sovereign immunity of the Tribe or of the Gaming Enterprise. Any waiver of sovereign immunity shall be approved in advance by the Oversight Authority and shall be limited in nature to exclude the Tribe and all tribal assets from liability and responsibility for any debts or obligations of the Gaming Enterprise. Notwithstanding the foregoing, any waiver of sovereign immunity previously granted in accordance with the applicable tribal law in force at the time shall remain in full force and effect in accordance with the terms of any such waiver.
- 5.02. *Limitations on Contracting Authority.* The General Manager shall not have the unilateral authority to enter or approve any contracts for legal services without the approval of the Tribal Council, nor for construction contracts without the approval of the Oversight Authority. The General Manager and the Oversight Authority shall not enter into any form of contract or agreement or initiate negotiations with any municipality, nation, Indian Tribe, state or body politic, without the prior approval of the Tribal Council. Contracts and agreements requiring approval of the Tribal Council shall be forwarded to the Tribal Council Recorder for filing with the General Manager's Monthly Report.
- 5.03. *Limitation on Authority to Obligate Funds.* The General Manager, with the approval of the Oversight Authority, shall have the authority to obligate funds in excess of the parameters of the approved budget without prior approval by the Tribal Council not to exceed the sum of Fifty Thousand dollars (\$50,000). Any request of the Oversight Authority for the expenditure or obligation of funds outside the parameters of the approved budget in excess of Fifty Thousand dollars (\$50,000) must be approved by Tribal Council. Any program which obligates funds outside the parameters of the approved budget and that is related to employee bonus or profit-sharing program must be approved by the Tribal Council.