

PROPOSED DRAFT CODE

GOVERNMENT CODE

ARTICLE 3

ENDOWMENT INVESTMENT FUND

The provisions of Article 3 were enacted on \_\_\_\_\_ by Ordinance No. \_\_\_\_\_)

CHAPTER 1. General Provisions

Section 1-101. Purpose.

The purpose of this Article of the Government Code is to:

- (A) Promote the general welfare of the Colorado River Indian Tribes and its Members;
- (B) Provide for the long-term investment of funds derived from profits from Tribal Enterprises, legal settlements, gifts, or any other unrestricted source in a manner designed to provide for the general welfare of the Tribes and its Members now and in perpetuity.
- (C) The goal for the fund shall be to accumulate and grow capital for the long-term economic growth and security and self-sufficiency of the Tribes and its Members.

Section 1-102. Definitions.

- (A) "CRIT" means the Colorado River Indian Tribes. It does not mean individual Members of the Tribes.
- (B) "Endowment Investment Fund" means a permanent account established pursuant to this Article by CRIT to invest and administer funds for the long term benefit of the Tribes and its Members.
- (C) "General Fund" means the primary governmental operating fund of the Tribes, utilized to account for all assets and liabilities of the Tribes not legally required to be accounted for in another fund.
- (D) "Income" means money or its equivalent derived from financial investments and includes interest, dividends, or capital appreciation.
- (E) "Investments" include, but not by way of limitation, every kind of property (real personal or mixed), limited partnerships, options, commodities, trust deeds of any priority, common trust funds, mutual funds, money market interests, government and corporate obligations of every kind and preferred or common stocks.

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- (F) "Investment Policy" means a policy adopted by Tribal Council and amended from time to time, as needed, governing the general manner in which the Endowment Investment Fund is managed, invested, and reinvested.
- (G) "Member(s)" means those persons who are duly recognized as enrolled members of the Colorado River Indian Tribes.
- (H) "Principal" means money or its equivalent deposited into the Endowment Investment Fund by CRIT and Income earned and added pursuant to the provisions of this Article.
- (I) "Registered Investment Advisor" means a person(s) or group qualified and experienced in investment management and registered with the Financial Industry Regulatory Authority retained by the Tribes, as approved by Tribal Council Resolution, to manage the investments of all funds in the Endowment Investment Fund.
- (J) "Tribal Council" means the duly elected governing body of the Colorado River Indian Tribes.
- (K) "Tribal Enterprise" means any tribal business, partnership, or economic development entity, agency or department of the Tribes, now in existence or hereafter duly created by the Tribal Council and owned by the Tribes.
- (L) "Tribes" means the Colorado River Indian Tribes. It does not mean individual Members of the Tribes.

Section 1-103. Establishment of the Endowment Investment Fund.

- (A) Initial Contribution. The Tribal Council shall create and fund an Endowment Investment Fund. The initial Principal amount contributed by Tribal Council within sixty (60) days of enactment of this Article shall be \$\_\_\_\_\_.
- (B) Additional Contributions to Principal. The Tribal Council may contribute, by Resolution, funds to the Endowment Investment Fund from other tribal revenues as may be available and may accept and contribute funds from other sources, individuals, third party person or entities with the exception of CRIT gaming revenues, federal or state grant or contract funds unless expressly authorized by law or regulation, and other restricted Tribal Enterprise revenues.
- (C) Contributions of Income. Up to 75% of the annual Income earned by or Capital appreciation, or any combination thereof, of the Endowment Investment Fund shall be available for the uses outlined in Section 1-104. The Endowment Investment Fund Principal shall grow by the undistributed income or appreciation.

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- (D) Reduction of Principal. The Principal held within the Endowment Investment Fund shall not be reduced except as approved by the affirmative vote of at least six (6) members of the Tribal Council.

Section 1-104. Permitted and Prohibited Uses of Principal and Income. Principal and Income can only be used as outlined herein.

- (A) Permitted Uses of Principal and Income. The Principal and Income within the Endowment Investment Fund may be used for the following purposes:

- (1) To meet any governmental or economic need of CRIT as authorized pursuant to the duly passed budget of the Tribes;
- (2) To fund a Member distribution only in accordance with a duly approved Revenue Allocation Plan;
- (3) To meet the expenses of a fiscal emergency or the response to a disaster which have not otherwise been budgeted by the Tribes; and
- (4) To pay the administrative costs, asset fees, and third party audit and analysis fees required for the management and auditing of the Endowment Investment Fund.

- (B) Prohibited Uses of Principal and Income. The Principal and Income within the Endowment Investment Fund shall not be encumbered, subject to, pledged, assigned, or used for the following purposes:

- (1) Direct loans to any person or entity, including to the Tribes, except as necessary to fund an approved loan program available to Members;
- (2) As collateral or security for any tribal debt, letter of credit, loan or note of any kind whatsoever from third parties to the Tribes; or
- (3) As an account that can be accessed or attached as security or consideration for a waiver of sovereign immunity, limited or otherwise.

Section 1-105. Oversight of the Endowment Investment Fund.

The Tribal Council shall exercise oversight over the Endowment Investment Fund. The Tribal Council shall engage an independent auditor to audit the Endowment Investment Fund on an annual basis. An executive summary of the audit shall be made available at next available Regular Tribal Council meeting following completion of the audit.

Section 1-106. Writ, Attachment, Judgment, or Lien.

The assets within the Endowment Investment Fund shall not be subject to any writ, attachment, judgment, or lien except as explicitly required under federal law.

Section 1-107. Sovereign Immunity and Member Rights.

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Nothing contained within this Article shall be construed as a waiver of the sovereign immunity of the Tribes, its officers, agents, or employees. Nothing contained herein shall be construed to create a private right of action for Members or any other individuals or entities.

### Section 1-108. Amendments.

- (A) This Article shall only be amended or repealed by the affirmative vote of at least six (6) members of the Tribal Council.

### Section 1-109. Severability.

If any provision of this Article shall, in the future, be declared invalid by a court of competent jurisdiction, the invalid portion shall be severed and the remaining provisions shall continue in full force and effect.

## CHAPTER 2. Investment Principles and Processes.

### Section 2-101. Investment Principles for the Endowment Investment Fund.

Money deposited in the Endowment Investment Fund shall be invested in a balanced investment portfolio, pursuant to the Investment Policy adopted by Tribal Council. Investments shall be made with judgment and care, under circumstances then prevailing. The Tribal Council shall have the following powers, to the extent not otherwise in conflict with the terms of the Tribes' Investment Policy:

- (A) To invest and reinvest the principal, and income, and to purchase or acquire and sell, exchange, or dispose of every kind of property, real, personal or mixed, and every kind of investment which persons of prudence, discretion and intelligence acquire for their own account and excluding any investments determined to be speculative.
- (B) To enter into, make, sign, seal, execute, deliver, acknowledge and perform any contract, agreement, writing, or thing that may, in the opinion of the Tribal Council or its designee, be necessary or proper to fulfill the purposes of this Chapter of the Code.

### Section 2-102. Adoption of Investment Policy for the Endowment Investment Fund.

After consultation with its Registered Investment Advisor, Tribal Council shall adopt an Investment Policy which shall control the manner and scope of investments made by the Endowment Investment Fund. The Investment Policy shall be adopted by Tribal Council resolution within sixty (60) days of enactment of this Article. It shall be reviewed annually and may be amended at any time by resolution of the Tribal Council. The Investment Policy shall, at a minimum, address the following matters:

- (A) An assessment of the amount of risk CRIT is willing to accept according to the then current and expected future economic conditions to determine the risk tolerance level and the classes of investments that are allowed;

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- (B) A determination of the proportionate amount (percentage) of investments (assets) CRIT will allocate toward equities and fixed income investments and the amount of investment loss CRIT is willing to accept before investments are rebalanced.
- (C) Establishing reasonable short term and/or long term investment objectives and define the length of time for each period as well as outlining CRIT's goals and guidelines for the investments. The Investment Policy should identify which investment classes are permitted and the allocation of these assets among various security classes to diversify.

### Section 2-103. Investment Advisor for Endowment Investment Fund.

Tribal Council shall appoint a Registered Investment Advisor. The Registered Investment Advisor shall be an individual or group qualified and experienced in investment management. As part of the duties of the Registered Investment Advisor, as set forth in the Investment Policy, the Registered Investment Advisor shall provide information on the performance of all individual portfolio managers to the Tribal Council. The Tribal Council shall delegate to the Registered Investment Advisor such duties and responsibilities as it deems appropriate to provide for the proper management and operation of the Endowment Investment Fund, consistent with the provisions of this Article. The Registered Investment Advisor shall provide written monthly performance reports and meet quarterly with Tribal Council on the investment performance and investment options in accordance with the parameters established by the Investment Policy.

### CHAPTER 3. Distributions from the Endowment Investment Fund.

Section 3-101. Authorization of Distribution of Income. The Registered Investment Advisor shall provide to the Tribal Council the total amount of Income earned within the immediately preceding calendar year. This amount shall be provided within sixty (60) days of end of the calendar year. Tribal Council may authorize up to 75% of the Income earned to meet the Tribes financial needs as established by the approved annual budget. Income shall only be distributed one-time each year.

Section 3-102. Transfer of Funds. The Tribal Treasurer shall transfer funds from the Endowment Investment Fund to the General Fund within thirty (30) days of approval of a resolution authorizing the distribution of Income. The Tribal Treasurer is authorized to transfer funds as required to pay administrative cost, asset fees, and third party analysis or audit fees.

Section 3-103. Dissolution of Endowment Investment Fund. The Endowment Investment Fund shall only be closed and dissolved if authorized by the affirmative vote of at least six (6) members of the Tribal Council. When the Endowment Investment Fund is dissolved and closed, no individual shall be entitled to any distribution or division of the assets within the fund. Any assets remaining in the Endowment Investment Fund shall be distributed as follows:

- (A) All liabilities of the Endowment Investment Fund shall be paid or adequate provision shall be made for payment;

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- (B) Assets held by the Endowment Investment Fund upon a condition that is triggered by dissolution shall be returned or otherwise conveyed in accordance with the requirements of the condition; and
- (C) All remaining assets shall be transferred to the General Fund to be used for any expenditure that complies with the authorized powers of the Constitution and By-Laws of CRIT.