AMENDMENT TO
THE TRIBAL-STATE GAMING
COMPACT BETWEEN
THE STATE OF CALIFORNIA
AND
THE HABEMATOOLEL POMO
OF UPPER LAKE
AMENDMENT TO
THE TRIBAL-STATE COMPACT BETWEEN
THE STATE OF CALIFORNIA AND
THE HABEMATOLEL POMO OF UPPER LAKE


PREAMBLE

WHEREAS, the State and the Tribe have conducted good faith negotiations for the purpose of agreeing upon amendments to the 2011 Compact; and

WHEREAS, the Tribe consists of approximately 273 members; and

WHEREAS, the Tribe has opened and is currently operating a Gaming Facility on its reservation pursuant to the 2011 Compact; and

WHEREAS, in 2011 the Tribe and the State completed negotiations for the 2011 Compact that protects the interests of the Tribe and its members, the surrounding community, and the California public, and promotes and secures long-term stability, mutual respect, and mutual benefits; and

WHEREAS, section 15.1 of the 2011 Compact provides that it may be amended upon the written agreement of both parties, and the Tribe and the State agreed to negotiate regarding amending the 2011 Compact’s provision regarding mandatory participation in the State’s workers’ compensation program; and

WHEREAS, the State and the Tribe share an interest in creating a framework within which the Gaming Facility can operate successfully to generate
revenue for essential government programs for tribal members while also ensuring that other interests, including an efficient and effective system to address the appropriate process to protect employees who are injured or become sick while performing work-related duties, are also furthered; and

WHEREAS, the Tribe and the State share an interest in ensuring that the Tribe is entitled to offer only the forms of Class III Gaming that the State possesses the power to authorize or permit under the California Constitution; and

WHEREAS, the State and the Tribe have agreed to new terms for a Tribal Labor Relations Ordinance; and

WHEREAS, the Tribe and the State recognize that this Amendment is authorized and negotiated and shall take effect pursuant to IGRA; and

WHEREAS, the State and the Tribe agree that all terms of this Amendment and the 2011 Compact are intended to be binding and enforceable.

NOW, THEREFORE, the Tribe and the State agree as set forth herein:

Section 3.1, subdivision (c) of the 2011 Compact is repealed and is replaced as follows:

(c) Nothing herein shall be construed to authorize or permit the operation of any Class III Gaming that the State lacks the power to authorize or permit under article IV, section 19, subdivision (f), of the California Constitution.

Section 12.6, subdivision (a) of the 2011 Compact is repealed and is replaced as follows:

(a) Not later than the effective date of this Amendment, the Tribe will advise the State of its election to continue to participate in the State’s statutory workers’ compensation system as provided in subdivision (a)(l) below or, alternatively, will forward to the State all relevant ordinances that have been adopted and all other documents establishing the system and demonstrating that the system is fully operational and compliant with the comparability standards set forth
in subdivision (a)(2), including such waivers of the Tribe's sovereign immunity as are necessary to allow Gaming Operation and Gaming Facility employees to enforce the Tribe's workers' compensation system. The parties agree that independent contractors doing business with the Tribe are bound by and must comply with all state workers' compensation laws and obligations.

(1) The Tribe agrees that it will participate in the State's workers' compensation program with respect to employees employed at the Gaming Operation and the Gaming Facility. The workers' compensation program includes, but is not limited to, state laws relating to the securing of payment of compensation through one or more insurers duly authorized to write workers' compensation insurance in this state or through self-insurance as permitted under the State's workers' compensation laws. All disputes arising from the workers' compensation laws shall be heard by the Workers' Compensation Appeals Board pursuant to the California Labor Code. The Tribe hereby consents to the jurisdiction of the State Workers' Compensation Appeals Board and the courts of the State of California for purposes of enforcement.

(2) In lieu of participating in the State's statutory workers' compensation system, the Tribe may create and maintain a system that provides redress for Gaming Operation and Gaming Facility employees' work-related injuries through requiring insurance or self-insurance. This system must include a scope of coverage, provision of up to ten thousand dollars ($10,000) in medical treatment for alleged injury until the date that liability for the claim is accepted or rejected, employee choice of physician provisions comparable to those mandated for comparable employees under state law, quality and timely medical treatment provided comparable to the state medical treatment utilization schedule, availability of an independent medical examination to resolve disagreements on appropriate treatment (by an Independent Medical Reviewer on the state-approved list, a Qualified Medical Evaluator on the state-approved list, or an Agreed Medical Examiner upon mutual agreement of the employer and employee), the right to notice,
hearings before an independent tribunal, a means of enforcement against the employer, and benefits (including, but not limited to, temporary and permanent disability, death, supplemental job displacement, and return to work supplement) comparable to those mandated for comparable employees under state law.

Section 18.3 of the 2011 Compact is repealed and is replaced as follows:

Sec. 18.3. Construction.

Neither the presence in another tribal-state Class III Gaming compact of language that is not included in the 2011 Compact or this Amendment, nor the absence in another tribal-state Class III Gaming compact of language that is present in the 2011 Compact or this Amendment shall be a factor in construing the terms of the 2011 Compact or this Amendment. In the event of a dispute between the parties as to the language of the 2011 Compact or this Amendment or the construction or meaning of any term thereof, the 2011 Compact and this Amendment will be deemed to have been drafted by the parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any party to the 2011 Compact or this Amendment.

A new section 18.8 is hereby added as follows:

Sec. 18.8. Representations.

(a) The Tribe expressly represents that as of the date of the undersigned’s execution of this Amendment, the undersigned has the authority to execute this Amendment on behalf of the Tribe, including any waiver of sovereign immunity and the right to assert sovereign immunity therein, and will provide written proof of such authority and of the ratification of this Amendment by the tribal governing body to the Governor no later than thirty (30) days after the execution of this Amendment by the undersigned.

(b) The Tribe further represents that it is (i) recognized as eligible by the Secretary of the Interior for special programs and services provided by the United States to Indians because of their status as Indians, and (ii) recognized by the Secretary of the Interior as possessing powers of self-government.
(c) In entering into this Amendment, the State expressly relies upon the foregoing representations by the Tribe, and the State’s entry into the Amendment is expressly made contingent upon the truth of those representations as of the date of the Tribe’s execution of this Amendment through the undersigned. If the Tribe fails to timely provide written proof of the undersigned’s aforesaid authority to execute this Amendment or written proof of ratification by the Tribe’s governing body, the Governor shall have the right to declare this Amendment null and void.

(d) This Amendment shall not be presented to the California State Legislature for a ratification vote until the Tribe has provided the written proof required in subdivision (a) to the Governor.

Exhibit B of the 2011 Compact is repealed and is replaced by the document attached hereto as Exhibit B.

IN WITNESS WHEREOF, the undersigned sign this Amendment to the Tribal-State Compact Between the State of California and the Habematolel Pomo of Upper Lake on behalf of the State of California and the Habematolel Pomo of Upper Lake.

STATE OF CALIFORNIA

By Edmund G. Brown Jr.
Governor of the State of California

HABEMATOLEL POMO OF UPPER LAKE

By Sherry Treppa
Chairperson of the Habematolel Pomo of Upper Lake

Executed this 16th day of August, 2018, at Sacramento, California

Executed this 9th day of July, 2018, at Sacramento, California

ATTEST:

Alex Padilla
Secretary of State, State of California

Deemed Approved

JAN 31 2019