# United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

NOV 23 2021

The Honorable Jose Simon III
Chairman, Middletown Rancheria of
Pomo Indians of California
P.O. Box 1035
Middletown, California 95461

Dear Chairman Simon:

On October 13, 2021, the Department of the Interior (Department) received the class III gaming compact (Compact) between the Middletown Rancheria of Pomo Indians of California (Tribe) and the State of California (State).

Pursuant to the Indian Gaming Regulatory Act (IGRA), the Secretary of the Interior (Secretary) may approve or disapprove a proposed compact within 45 days of its submission.[1] The Secretary may disapprove a compact only if the agreement violates IGRA, any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or the trust obligation of the United States to Indians.[2] If the Secretary does not act to approve or disapprove a compact within the 45 days, IGRA provides that it is considered to have been approved by the Secretary, "but only to the extent that the Compact is consistent with the provisions of [IGRA]."[3]

We have completed our review of the Compact, along with the additional material submitted by the Tribe and the State. Not only have we found certain provisions blatantly in violation of IGRA, but we have concerns with many of the provisions that seek to impose state control where it does not belong. For the following reasons, the Compact is disapproved as a violation of IGRA because it contains terms that are outside of the narrow scope of IGRA approved topics and are not "directly related to the operation of [Class III] gaming activities."[4]

**Summary**

State governments have a limited role in the regulation of class III Indian gaming under IGRA. Anticipating that states may attempt to expand their regulatory role, Congress provided safeguards in IGRA—such as limiting the topics that can be negotiated in a compact—to ensure that tribal sovereignty and self-determination would not be undermined. As tribal gaming has evolved, however—and despite these clear statutory safeguards—states have still managed to encroach on the

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[1] 25 U.S.C. § 2710(d)(8).
[2] *Id.* at § 2710(d)(8)(B).
[3] *Id.* at § 2710(d)(8)(C).
[4] 25 U.S.C. § 2710 (d)(3)(C)(vii).

rights of tribes, imposing state jurisdiction and regulation in areas not directly related to a tribe's gaming operation. We have serious concerns with this type of state encroachment and infringement on tribal sovereignty. While we cannot change decisions in the past, moving forward, we seek to ensure that compacts are negotiated strictly in accordance with IGRA and do not unintentionally or intentionally undermine tribal sovereignty.

**Background**

The Tribe has been gaming under a compact negotiated in 1999 (1999 Compact), approved by the Secretary, and published in the Federal Register in 2000, together with identical compacts approved at the same time for over 50 other tribes in California. Tribal gaming in California has grown substantially since that time, and it is now the largest gaming market in the United States. But while the Tribe's Class III gaming operations have grown only modestly since the Secretary approved the 1999 Compact, the Compact submitted to us today significantly expands upon the 1999 Compact's scope of provisions. For purposes of this decision, notable provisions from the 1999 Compact and the Compact are summarized below.

*1999 Compact Provisions*

Section 10.8 of the 1999 Compact, "Off-Reservation Environmental Impacts," provided that at least "90 days prior to the commencement of a Project . . . the Tribe shall adopt an ordinance providing for the preparation, circulation, and consideration by the Tribe of environmental impacts reports concerning potential off-reservation environmental impacts of any and all Projects to be commenced on or after the effective date of this Compact."[5] The 1999 Compact obligated the Tribe "to make a good faith effort to incorporate the policies and purposes of the National Environmental Policy Act [NEPA] and the California Environmental Quality Act [CEQA] consistent with the Tribe's governmental interests."[6]

Section 10.8.1 of the 1999 Compact defined the term "Project" as "any expansion or any significant renovation or modification of an existing Gaming Facility, or any significant excavation, construction, or development associated with the Tribe's Gaming Facility or proposed Gaming Facility."[7] The term "environmental impact reports" was defined by the 1999 Compact as "any environmental assessment, environmental impact report, or environmental impact statement, as the case may be."[8]

The term "Gaming Facility" was defined as:

> . . . any building in which Class III gaming activities or gaming operations occur or in which the business records receipts or other funds of the gaming operation are

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[5] 1999 Compact § 10.8.1.
[6] *Id.*
[7] 1999 Compact § 10.8.2(a)(2)(c).
[8] *Id.*

> maintained but excluding offsite facilities primarily dedicated to storage of those records and financial institutions) and all rooms, buildings and areas including parking lots and walkways, a principal purpose of which is to serve the activities of the Gaming Operation, provided that nothing herein prevents the conduct of Class II gaming (as defined under IGRA) therein.
> 1999 Compact § 2.8

The 1999 Compact defined the term "Gaming Operation" as the "the business that offers and operates Class III Gaming Activities, whether exclusively or otherwise."[9] The term "Gaming Activities" was defined as "the Class III gaming activities authorized under this Gaming Compact."[10]

Under the 1999 Compact, the Tribe was required to "inform the public of the planned Project," "take appropriate actions to determine whether the project will have any adverse impacts on the off-Reservation environment," and "receive and respond to comments by submitting all environmental impact reports" to the State's Office of Planning and Research and the county board of supervisors for public distribution."[11] Next, the 1999 Compact required consultation with the county board of supervisors or city council, as applicable, and "meet[ing] with them to discuss mitigation of significant adverse off-Reservation impacts," as well "meet[ing] with and provid[ing] an opportunity for comment by those members of the public residing off-Reservation within the vicinity of the Gaming Facility such as might be adversely affected by the proposed Project."[12]

After commencing a Project, the 1999 Compact required the Tribe to "keep the [local governing body] and potentially affected members of the public apprized [sic] of the project's progress," together with making "good faith efforts to mitigate any and all significant adverse off-Reservation environmental impacts."[13]

*2021 Compact Provisions*

The Compact significantly expands the 1999 Compact's "Off-Reservation Environmental Impacts" provisions.[14] Under Section 11, the Tribe is not permitted to commence any construction projects until it meets all environmental review and dispute resolution procedures.[15] That section further requires that the Tribe either prepare a Tribal Environmental Impact Document (TEID) or a Tribal Environmental Impact Report (TEIR), unless a Categorical Exemption applies.[16]

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[9] *Id.* at § 2.9.
[10] *Id.* at § 2.4.
[11] *Id.* at §§ 10.8.2(a)(1-3).
[12] *Id.* §§ 10.8.2(a)(4-5).
[13] *Id.* at §§ 10.8.2(b)(1-2).
[14] Compact at 71-99.
[15] *Id.* § 11.1.
[16] *Id.* at §§ 11.1(a-b) and 11.4(a). The Tribe currently operates over 350 Gaming Devices and would fall under the TEIR requirements.

The Compact also requires the Tribe "to adopt an ordinance incorporating the processes and procedures required under section 11.0 (Tribal Environmental Protection Ordinance)" (TEPO).[17] The TEPO incorporates NEPA and CEQA policies and purposes and requires the Tribe to not only submit a TEPO to the State, but should the State disagree with any aspect of it, the Tribe must participate in dispute resolution procedures. [18]

The Compact also expands the 1999 Compact's definition of "Project" to:

> . . . (i) the construction of a new Gaming Facility, (ii) a renovation, expansion or modification of an existing Gaming Facility, or (iii) *other activity involving a physical change to the reservation environment*, provided the principal purpose of which is directly related to the activities of the Gaming Operation, and any one of which may cause a Significant Effect on the Off-Reservation Environment. For purposes of this definition, section 11.0, and Appendix B, "reservation" refers to the Tribe's Indian lands within the meaning of IGRA or lands otherwise held in trust for the Tribe or its citizens by the United States.

The Compact defines "Gaming Facility" as:

> . . . any building in which Gaming Activities or any Gaming Operations occur, or in which the business records, receipts, or other funds of the Gaming Operation are maintained (but excluding off-site facilities primarily dedicated to storage of those records, and financial institutions), which may include parking lots, walkways, rooms, buildings, and areas that provide amenities to Gaming Activity patrons, if and only if, the principal purpose of which is to serve the activities of the Gaming Operation, provided that nothing herein prevents the conduct of class II gaming (as defined under IGRA) therein.
> Compact § 2.13

The term "Gaming Operation" is defined as "the business enterprise that offers and operates Gaming Activities, whether exclusively or otherwise, but does not include the Tribe's governmental or other business activities unrelated to the operation of the Gaming Facility."[19]

The Compact now includes a definition for the term "Interested Persons," which means:

> (i) all local, state, and federal agencies, which, if a Project were not taking place on Indian lands, would have responsibility for approving the Project or would exercise authority over the natural resources that may be affected by the Project, (ii) any incorporated city within ten (10) miles of the Project, and (iii) persons, groups, or

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[17] Compact § 11.2.
[18] *Id.*
[19] *Id.* at § 2.14.

> agencies that request in writing a notice of preparation of a draft tribal environmental impact report described in section 11.0, or have commented on the Project in writing to the Tribe or the County where those comments were provided to the Tribe."
> Compact § 2.20

The Compact defines "Significant Effect(s) on the Off-Reservation Environment" as:

> . . . a substantial or potentially substantial adverse change in any of the physical conditions of the off-reservation environment caused by the Project, including land, air, water, minerals, flora, fauna, ambient noise, cultural areas and objects of historic, cultural or aesthetic significance. For the purposes of this definition, "reservation" refers to the Tribe's Indian lands within the meaning of IGRA or lands otherwise held in trust for the Tribe by the United States.
> Compact § 2.26

Unless the Tribe determines that Categorical Exemption applies to the Project, a determination that is subject to challenge by the State up to and including binding arbitration, the Compact provides for an extraordinarily detailed process akin to CEQA that the Tribe must follow before commencing construction or renovation of a Gaming Facility.[20] This process includes requiring the Tribe to generate detailed environmental reports, prepare studies, and issue declarations of a Project's impacts, even if such impacts are not remotely related to its gaming activities.[21] The Compact also requires the Tribe to participate in meet and confers with Interested Persons, including entities well beyond the 1999 Compact's limitation to public and local government. Should the Tribe be unable to resolve differences with all of these parties, it may ultimately have to participate in dispute resolution procedures. If the Tribe determines that "Significant Effects on the Off-Reservation Environment of a Project cannot be mitigated to a level of insignificance, the Tribe shall proceed to prepare [a TEIR.]"[22] The TEIR provisions mandate issuance of a Tribal Mitigation Plan, including intergovernmental agreements."[23]

Finally, the Tribe shall not commence a Project until the local government and, if required, a Caltrans intergovernmental agreement, respectively, are executed by the parties or until any dispute related to the intergovernmental agreements is resolved, up to and including binding arbitration between the Tribe and either the local government or Caltrans, as applicable.[24]

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[20] *See generally* Compact at, but not limited to, §§ 11.4 through 11.7 and §§ 11.11 through 11.15.
[21] Compact § 11.5.
[22] *Id.* at § 11.5 (g); the Tribe currently operates more than 349 Gaming Devices and the TEIR provisions would apply. *See supra* at n.17.
[23] *Id.* at § 11.15(c).
[24] *Id.* §§ 11.15(c) and 11.16.

**Analysis**

**Permissible Subjects of Compact Negotiation**

The Compact contains several notable provisions that exceed the limitations on compact negotiations prescribed by Congress in IGRA. In 1987, the United States Supreme Court issued its decision in *California v. Cabazon Band of Mission Indians*, which affirmed the right of tribes to conduct gaming activities on their Indian lands in states where those activities were not prohibited under a criminal statute.[25] The following year Congress enacted IGRA largely in response to the *Cabazon* decision, and declared that "Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity."[26] The IGRA established a statutory scheme that limited tribal gaming and sought to balance tribal, state, and federal interests in regulating gaming activities on Indian lands. To ensure an appropriate balance between tribal and state interests, Congress limited the subjects over which tribes and states could negotiate in a class III gaming compact. Pursuant to IGRA, a tribal-state compact may include provisions relating to:

> (i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for the licensing and regulation of such activity;
> (ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations;
> (iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity;
> (iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities'
> (v) remedies for breach of contract;
> (vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing; and
> (vii) any other subjects that are *directly related to the operation of gaming activities.*
> 25 U.S.C. § 2710(d)(3)(C) (emphasis added).

Congress included these provisions and required the Secretary review tribal-state gaming compacts to fulfill the Department's trust responsibility to tribes by enforcing these provisions and to protect tribal authority to govern their own affairs. Congress sought to safeguard against states leveraging compact negotiations to impose jurisdiction or influence over matters unrelated to gaming and solely flowing from the Tribe's inherent sovereignty.[27]

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[25] *California v. Cabazon Band of Mission Indians*, 489 U.S. 202 (1987).
[26] 25 U.S.C. § 2701.
[27] 25 U.S.C. § 2702.

Congress included the tribal-state compact provisions to account for states' interests in the regulation and conduct of class III gaming activities, as defined by IGRA.[28] Those provisions limit the subjects over which states and tribes could negotiate a tribal-state compact.[29] In doing so, Congress also sought to establish "boundaries to restrain aggression by powerful states."[30] The legislative history of IGRA indicates that "compacts [should not] be used as subterfuge for imposing state jurisdiction on tribal lands."[31] The above referenced provisions limit the subjects over which states and tribes can negotiate a tribal-state compact.

In the Senate debate regarding S.555, which was enacted as the IGRA, Senator Evans stated:

> "As we are all aware, many Indian tribes are opposing S.555 at least in part because of the potential of extending State jurisdiction over Indian lands for certain gaming activities. I wish to make it very clear that the committee has only provided for a mechanism to permit the transfer of limited State jurisdiction over Indian lands where an Indian tribe requests such a transfer as part of a tribal-State gaming compact for class III gaming. We intend that the two sovereigns – the tribes and the States – will sit down together in negotiations on equal terms and come up with a recommended methodology for regulating class III gaming on Indian lands. Permitting the States even in this limited say in matters that are usually in the exclusive domain of tribal government has been permitted only with extreme reluctance. As discussed in the committee report, gambling is a unique situation and our limited intrusion on the right of tribal self-governance or State-tribal relations."
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> S. Rep. No. 446, 100th Cong., 2d Sess. 6 (1988), reprinted in 1988 U.S.C.C.A.N. 3071 (emphasis added).[32]

We conduct our review of tribal-state gaming compacts against this backdrop. Tribal governments are vested with the inherent authority to regulate gaming activities on their own lands. Congress through IGRA, prescribed a limited scope of a state's regulatory interests in class III gaming activities on Indian lands which are located within the state, provided the state permits the conduct of class III gaming. Therefore, we must view the scope of prescribed state regulatory authority over tribal gaming activities narrowly.[33]

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[28] *See* 25 U.S.C. §§ 2702(2) and 2710(b)(2)(F).
[29] 25 U.S.C. § 2710(d)(3)(c).
[30] *Rincon Band v. Schwarzenegger,* 602 F. 3d 1019 (9th Cir. 2010) (citing S. Rep. No. 100-446, at 33 (1988) (statement of Sen. John McCain)).
[31] *See* Committee Report for IGRA, S. Rep. 100-446 at 14.
[32] In the same colloquy, Sen. Inouye discussed the compact negotiation process, stating, "There is no intent on the part of Congress that the compacting methodology be used in such areas as taxation, water rights, environmental regulation, and land use." *Id.*
[33] *See* Testimony of Kevin K. Washburn, Assistant Secretary – Indian Affairs, before the Senate Committee on Indian Affairs, July 23, 2014 (emphasis added):

**Impermissible Subjects of Compact Negotiations**

When we review a tribal-state compact or amendment submitted under IGRA, we look to whether the provisions fall within the scope of categories prescribed at 25 U.S.C. § 2710(d)(3)(c). One of the most challenging aspects of this review is determining whether a particular provision adheres to the "catch-all" category at § 2710 (d)(3)(c)(vii): ". . . subjects that are directly related to the operation of gaming activities."

In the context of applying the "catch-all" category, we do not simply ask, 'but for the existence of the Tribe's class III gaming operation, would the particular subject regulated under a compact provision exist?'[34] If this question were used to provide the standard for determining whether a particular object of regulation was "directly related to the operation of gaming activities," it would permit states to use tribal-state compacts as a means to regulate tribal activities far beyond that which Congress intended when it originally enacted IGRA.[35] Instead, we must look to whether the regulated activity has a direct connection to the Tribe's conduct of class III gaming activities – "what goes on in a casino – each roll of the dice and spin of the wheel."[36]

As tribal gaming has evolved, many Tribes have developed businesses or amenities that are ancillary to their gaming activities, such as hotels, conference centers, restaurants, spas, golf courses, recreational vehicle parks, water parks, and marinas. These businesses are often located near or adjacent to tribal gaming facilities and co-branded and co-marketed with the tribal gaming facility. Many times, they are managed with the tribal gaming facility by the business arm of the tribe. However, they ordinarily are not "directly related to the operation of gaming activities" and therefore not subject to regulation through a tribal-state gaming compact.

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> "With regard to compacts, IGRA carefully describes the topics to address in a compact. Congress specifically named six subjects related to the operation and regulation of Class III gaming activity that may be addressed in a compact, and also included a limited catchall provision authorizing the inclusion of provisions for "any other subjects that are directly related to the operation of [Class III] gaming activities." *The Department closely scrutinizes tribal-state gaming compacts and disapproves compacts that do not squarely fall within the topics delineated in IGRA*. For example, Class II gaming is not an authorized subject of negotiation for class III compacts. The regulation of Class II gaming is reserved for tribal and federal regulation."

[34] Under IGRA, it would not be appropriate for tribal-state compacts to provide for state regulation of activities such as tribal housing developments, government programs, or reservation infrastructure Those activities involve intervening factors and otherwise are not "directly related" to class III gaming activities under IGRA.

[35] In 2011, we disapproved a proposed tribal-state gaming compact because we determined that it included provisions restricting tribal land use beyond the scope of specific subjects IGRA permits tribes and states to include in class III gaming compacts. *See,* Letter from Donald Laverdure, Principal Deputy Assistant Secretary – Indian Affairs, to Kimberly Vele, President of the Stockbridge-Munsee Community of Mohican Indians (February 18, 2011) (Stockbridge-Munsee Letter). In that instance, the proposed compact restricted the Stockbridge-Munsee Community of Mohican Indians from using the proposed gaming site for any purpose other than class III gaming.

[36] *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 792 (2014).

Mutually beneficial proximity, or even co-management alone is insufficient to establish a "direct connection" between the businesses and the class III gaming activity.[37] Because IGRA is very specific about the lawful reach of a compact, we interpret these provisions as applying only to the spaces in which the operation of gaming actually takes place such as the casino floor, vault, surveillance, count, casino management, casino information technology, gaming device and supplies storage areas, that are "directly related to the *operation* of class III gaming activities" and therefore subject to regulation under IGRA and an approved compact (together, "Gaming Spaces").[38] In performing this analysis, we keep in mind the Indian canons of construction and interpret this phrase to the benefit of the tribe. As such, we must construe this provision narrowly and not imply any diminishment of tribal sovereignty that does not exist.

Like many tribes, the Tribe has developed a casino resort complex, the Twin Pine Casino & Hotel. Beyond the Gaming Spaces regulated by the Tribe's Gaming Commission, the Tribe offers multiple restaurant options, a hotel, a bar and lounge, and a conference center. Absent the existence of Class III gaming under IGRA, no State civil regulatory laws or local government zoning ordinances, for example, would apply to the Tribe's hotel, its restaurants, conference center, or anywhere else on its Tribal lands.[39]

*Definitions*

We have repeatedly warned the State that definitions used for "Gaming Facility" and "Project" cause us significant concern because the Compact could be misconstrued to allow the State and its political subdivisions to regulate matters that are not directly related to gaming activities.[40]

These definitions are utilized throughout the Compact and result in the direct regulation of the Tribe and the Tribe's businesses and amenities that are ancillary to gaming activities. Using the "principal purpose" language (as seen in the definition of "Gaming Facility") is subterfuge for use of the "but for" test, which the Department has repeatedly disavowed.[41]

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[37] *See, e.g.*, Letter to the Honorable Harold Frank, Chairman, Forest County Potawatomi, from Kevin K. Washburn, Assistant Secretary – Indian Affairs, disapproving the *November 2014 Amendment to the Forest County Potawatomi Community of Wisconsin and the State of Wisconsin Class Ill Gaming Compact*, dated Jan. 9, 2015, at 5-7, and fn. 32. *See also,* Letter to the Honorable Peter S. Yucupicio, Chairman, Pascua Yaqui Tribe of Arizona, from the Director, Office of Indian Gaming, dated June 15, 2012, at 5, and fn. 9, discussing the American Recovery & Reinvestment Act of 2009 and IRS's "safe harbor" language to reassure potential buyers that tribally-issued bonds would be considered tax exempt by the IRS because the bonds did not finance a casino or other gaming establishment.

[38] 25 U.S.C. 2710 (d)(3)(C).

[39] Under Public Law 280, Congress authorized the State to enforce its criminal laws on the Tribe's lands.

[40] *See, e.g.,* Letter to the Honorable Vincent P. Armenta, Chairman, Santa Ynez Band of Chumash Mission Indians, from Kevin Washburn, Assistant Secretary – Indian Affairs (Dec. 17, 2015) (on file with the Office of Indian Gaming) (noting the Department has repeatedly warned the State of California that the definitions cause the Department concern).

[41] *Supra* n.40; Letter to the Honorable Chris Wright, Chairman, Dry Creek Rancheria Band of Pomo Indians, from John Tahsuda, Principal Deputy Assistant Secretary – Indian Affairs (Dec. 15, 2017) (noting that activities that are only indirectly related to gaming activities are not proper subjects for tribal-state gaming compacts).

The definition of Gaming Facility creates a broad interpretation of "directly related to the operation of gaming activity" that seeks to impose state regulation beyond Gaming Spaces that are "directly related to the *operation* of class III gaming activities" and therefore subject to regulation under IGRA and an approved compact.

The State submitted arguments claiming that the definitions contain limiting phrases to clarify that these definitions do not reach beyond those operations which are "directly related to gaming." The Tribe argues that the Secretary has accepted and by inaction approved these definitions to the extent they are consistent with IGRA. The Tribe notes that the State has not engaged in litigation with compacted tribes over the scope of their environmental reviews and has not taken the position that the compact's environmental provisions apply to non-gaming developments. We have considered the Tribe's and the States responses carefully. These responses do not change our concern that the State is using the class III gaming compact process to improperly regulate beyond Gaming Spaces. The State's reliance on "principal purpose" and "but for" as the standard for "directly related" reinforces our conclusion that the State is impermissibly using the Compact to regulate beyond Gaming Spaces. Thus, we reject the State's interpretation of the term "directly related to gaming" and note that it may stifle tribal economic development.

We acknowledge that the Department affirmatively approved the Tribe's 1999 Compact. Looking back, we have concerns with the definitions of Gaming Facility, Gaming Operation, and Project, but note the effect of those definitions in the 1999 Compact were never as broad as presented by this Compact. For example, the 1999 Compact definitions, when coupled with the two-page "Off-Reservation Environmental Impacts" section's language, merely provided for public notice — including to the local government abutting the Tribe's lands, comment, and mitigation provisions – resulting in a limited and reasonable process that did not interfere with the Tribe's authority to govern itself, proceed with a project, or otherwise use its lands.

In contrast, the Compact's definitions of Gaming Facility, Gaming Operation, Project, and Interested Persons, when coupled with requirements in the 28-page Section 11, go far beyond the 1999 Compact.

For example, where the 1999 Compact required notice to the public and the local government, the Compact's definition of Interested Persons that must be notified of the Tribe's contemplated Project under Section 11 now includes:

> (i) all local, state, and federal agencies, which, *if a Project were not taking place on Indian lands, would have responsibility for approving the Project or would exercise authority over the natural resources that may be affected by the Project, (ii) any incorporated city within ten (10) miles of the Project*, and (iii) persons, groups, or agencies that request in writing a notice of preparation of a draft tribal environmental impact report described in section 11.0, or have commented on the Project in writing

to the Tribe or the County where those comments were provided to the Tribe." (Emphasis added.)[42]

Even if we were to read the definitions of Gaming Facility, Gaming Operation, and Project, to *exclude* anything beyond the building's Gaming Spaces that are indisputably directly related to the *operation* of class III gaming activities, the Compact's provisions require notice and comment by individuals and entities that have the effect of interfering with the Tribe's ability to govern itself, proceed with a project, or otherwise use its lands.

*Environmental Regulation*

Triggered by the definitions discussed above, the Compact at Section 11 requires the Tribe to implement State environmental law and regulations for on-reservation projects. These provisions apply to any construction or renovation at the Gaming Facility beyond the Gaming Spaces to "other activity involving a physical change to the reservation environment, the principal purpose of which is directly related to the activities of the Gaming Operation."[43] Further, section 11.15(c) requires the Tribe to enter into intergovernmental agreements with the County, the City, and Caltrans prior to commencement of a project. Section 11.15(a)(1)-(2) requires that these intergovernmental agreements include compensation (payment) from the Tribe to the local governments for mitigation of effects on public safety and for public services provided to the Tribe. In effect, any project funded by, organized by, or related to, the Tribe's gaming business enterprise will trigger these provisions.

As written, these provisions address potential environmental impacts from on-reservation tribal activity that is not directly related to regulating the Gaming Spaces. Instead, Section 11 reaches far beyond a renovation of the casino floor, for example, to any renovations in the entire facility that does not involve the Gaming Spaces to any other renovations or construction of on-reservation business operated by the Tribe's gaming business enterprise. Moreover, the requirement to enter into an intergovernmental agreement prior to commencement of a project provides local governments an effective veto over an on-reservation Tribal project. Therefore, these provisions, as written, fall outside of the narrow range of topics IGRA permits in a compact and must be disapproved.

The Tribe and the State submitted supplementary information, which argued that these provisions were narrowly tailored to identify and address any potential "negative externalities caused by gaming." The State further argued that the environmental review is effectuated not through application of state law within the reservation, but through a Tribal Environmental Protection Ordinance (TEPO). Section 11.2 of the Compact requires that the Tribe adopt an ordinance that "will incorporate the relevant policies and purposes of NEPA [the National Environmental Policy Act] and CEQA [California Environmental Quality Act] consistent with legitimate governmental interests of the Tribe and the State, as reflected in section 11.0." Although this passage is similar to Section 10.8 of the 1999 Compact, the Compact goes on to require the Tribe to "submit its [TEPO] to the State" and, "[i]f the State identifies aspects of

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[42] Compact at § 2.20.
[43] Compact at § 2.25.

the [TEPO] that it believes are inconsistent with section 11.0, the matter will be resolved in accordance with the dispute resolution provisions of section 13.0."[44] That Section governs dispute resolution, including binding arbitration, which means that the TEPO could ultimately be imposed by an arbitration decision.

Further, at each relevant stage of the Tribe's environmental review process, the Compact requires the Tribe to notify the State of its determination and allow for the State to object to the Tribe's determination. If the State objects and Tribe and the State are unable to resolve the issue, the Compact's environmental dispute resolution sections are triggered, including binding arbitration in some instances.

The Tribe argues that the Secretary has accepted and by inaction approved these definitions to the extent they are consistent with IGRA. Contrary to the Tribe's assertion, the Secretary's inaction is not an approval of the definitions. Indeed, for over ten years the Department has repeatedly insisted that the broad nature of the definitions in question prevented approval of California compacts.[45]

The Tribe also argues that the State has not enforced these provisions. Whether or not the State has enforced the provision does not alleviate our concerns that the provisions violate IGRA. Additionally, these provisions may permit enforcement by local governments as well as by the State. The State's insistence on including these provisions in a compact have resulted in litigation with compacted tribes over the inclusion of these provisions in a compact.[46]

We are unpersuaded that these provisions are narrowly tailored to address only the potential negative externalities caused by gaming. Further, requiring a Tribe to adopt state law or its equivalent and permitting for the State to review and object to the Tribe's environmental review is effectively one step removed from the direct application of State law on the Tribe's reservation. As noted above, the broad definitions used in the Compact extend the reach of these provisions far beyond potential changes to the Tribe's Gaming Spaces.

*Child and Spousal Support Orders:*

The Compact at section 12.6(d) requires the Tribe's Gaming Operation to "recognize and enforce lawfully issued state child or spousal support orders or judgements entered against any person employed at the Gaming Operation or Gaming Facility." This provision appears to require automatic enforcement by obligating the Tribe to enforce State law and State court orders that are unrelated to gaming. The Tribe and the State both submitted supplementary information, which argued that the provision reflects comity and mutual exercises of sovereignty as well as recognition of the Tribe's

[44] Compact § 11.2.
[45] *See, e.g.,* Letter to the Honorable Vincent P. Armenta, Chairman, Santa Ynez Band of Chumash Mission Indians, from Kevin Washburn, Assistant Secretary – Indian Affairs (Dec. 17, 2015).
[46] *See Chicken Ranch Rancheria of Me-Wuk Indians v. Newsom*, No. 1:19-CV-0024 AWI SKO, 2021 U.S. Dist. LEXIS 63102 (E.D. Cal. Mar. 31, 2021).

existing practice.[47] The Tribe and the State further argue that this provision complies with IGRA because it is limited to "those working at the Gaming Operation or Gaming Facility." As noted above, we have serious concerns about the scope of the definitions for Gaming Operation and Gaming Facility.

The Tribe argues that the rationale employed in *Coyote Valley II,*[48] relating to labor relations applies to the inclusion of state child or spousal support provisions because the jobs for employees of the gaming facility or gaming operation would not exist but for the Tribe's gaming activities. As discussed above, the Department has serious concerns with the "but for" rationale as justification for including these provisions in a class III gaming compact.

Additionally, the Tribe admits in its response that the United States District Court for the Eastern District of California determined in the *Chicken Ranch* decision that requiring strict compliance with specific chapters of California law to enforce such orders was too attenuated from the conduct of gaming to fall within the permissible subjects of compact negotiation under IGRA. The Tribe urged the Department to "let the court decide whether this provision is outside the scope of the IGRA."[49] We decline the Tribe's invitation because it has become clear that the Department's past reluctance to disapprove these and similar provisions has been interpreted by the State as acquiescence. Under IGRA, Secretarial inaction on a compact is not acquiescence. Indeed, it is far from it because such compacts are "considered to have been approved by the Secretary, but only to the extent the compact is consistent with the provisions of [IGRA]."[50] Therefore, we conclude that Section 12.6(d) violates IGRA because it falls outside the permissible scope of subjects that may be included in a compact.[51]

*Tobacco*

The Compact at section 12.2, regulates the Tribe's sales of tobacco, a topic that is well outside of the scope of IGRA's compact provisions. Section 12.2 in relevant part states: "[the Tribe] further agrees not to offer or sell tobacco products to anyone younger than the minimum age specified in state law to legally purchase tobacco products." This provision directly regulates the Tribe's sales of tobacco products. In 2004, the Department severed a provision in the model Oklahoma gaming compact

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[47] Both point to a recently enacted State law establishing a procedure for recognition of a tribal court order for child support or spousal support. That state law requires a petition to the State court for recognition and entry of a judgment based on a Tribal court order, which can then be enforced as a matter of state law. However, neither the Compact nor the Tribe's supplementary information reflect a similar Tribal court petition process for recognition and entry of a judgment based on a State court order. *See* Tribe's response at 7-9; *see* AB 627.

[48] *In re Indian Gaming Cases ("Coyote Valley II")*, 331 F.3d 1094, 1116 (9th Cir. 2003).

[49] Tribes Response at 9.

[50] 25 U.S.C. § 2710 (d)(8)(C).

[51] *See* Letter to the Honorable Mathew Wesaw, Chairperson, Pokagon Band of Potawatomi Indians from Bryan Newland, Principal Deputy Assistant Secretary – Indian Affairs (June 29, 2021) (finding that a provision requiring that the Tribe comply with state law by withholding child support payments from the winnings of non-tribal patrons is outside the scope of subjects that may be included in a compact under IGRA).

because it included tobacco.[52] Similarly, in 2012, the Department disapproved a compact between the State of Massachusetts and the Mashpee Wampanoag Tribe because that compact included several topics outside the scope of IGRA's compact provisions.[53] In both cases the Department pointed to IGRA's text and legislative history as prohibiting states from using the IGRA compact process as subterfuge for imposing state jurisdiction on Tribes concerning issues not related to gaming.

The Tribe responded to our concerns on this issue by noting first the relevant section, Section 12.2, regulates the gaming environment by requiring the Tribe to maintain a non-smoking area and exhaust tobacco smoke from the Gaming Facility. The Tribe relies on the Department's prior approval of the *Second Amendment to the tribal-state compact for Class III gaming between the Confederated Tribes of the Colville Reservation and the State of Washington* in 2015 (Colville Amendment).[54] The relevant provisions in that amendment and the majority of Section 12.2 regulate the gaming environment. The Coville Amendment incentivized the Coville Tribe to offer a smoke free gaming facility. The majority of Section 12.2 similarly provides for a non-smoking section and reasonable steps to limit patrons' and employees' exposure to secondhand smoke. However, the last clause in Section 12.2 contains its fatal flaw. The Tribe and the State argued that provision is limited to the offering or sales of tobacco products within the Gaming Facility. We are unpersuaded that the relevant portion of Section 12.2 is so limited. The first portion of Section 12.2 mentions the Gaming Facility three times, in a way that directly ties the regulation of smoking to the Gaming Facility. However, the last clause prohibiting the sale of "tobacco products to anyone younger than the minimum age specified in state law to legally purchase tobacco products" is silent on where that prohibition applies. As a result, we construe that provision as applying to any Tribally owned business that sells tobacco.

The Tribe also argued that the regulation of the sales of tobacco products is necessary for the regulation of gaming because the regulated activities (tobacco sales) directly relate to the gaming operation. The Tribe relies on a combination of the Colville Amendment and studies showing a positive correlation between tobacco use and problem gambling. This argument underscores the Department's concern with provisions that are outside of IGRA's permissible subjects of compact negotiation.

The Tribe further seeks to distinguish the Department's disapproval in *Mashpee* by arguing that the tribal tobacco industry cannot be equated to tribal hunting and fishing rights. We disagree. The tribal right to grow tobacco is similar to the rights to hunt, fish, and gather.

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[52] *See, e.g.*, Letter to the Honorable Kenneth Blanchard, Governor Absentee Shawnee Tribe of Oklahoma, from the Principal Deputy Assistant Secretary – Indian Affairs, dated Dec. 17, 2004, approving the 2004 Oklahoma compact while severing Part 15D which related to the Tobacco Compact.

[53] Letter to the Honorable Cedric Cromwell, Chairperson, Mashpee Wampanoag Tribe, from Kevin Washburn, Assistant Secretary – Indian Affairs, dated Oct. 12, 2012, disapproving the Tribe's 2012 compact.

[54] The Tribe includes with its response a list of tribal-state gaming compacts in California that have been deemed approved and that contained similar tobacco provisions. The Tribe argues that because similar provisions appeared in other compacts, the Department approved those provisions. We disagree that the Department approved the provisions applying state law to the Tribes. A compact that is neither approved nor disapproved within 45 days of its receipt is "considered to have been approved by the Secretary, *but only to the extent the compact is consistent with the provisions of [IGRA].*" 25 U.S.C. § 2710(d)(8)(C) (emphasis added).

The State responded to our concerns on this issue by noting that "Federal law presently prohibits retailers from selling tobacco products to anyone under 21 years of age. 21 U.S.C. § 387f(d). Thus, under federal law, the Tribe is not authorized to sell tobacco products to anyone under the age of 21. Similarly, state law establishes a minimum age of 21 to legally purchase tobacco products." The fact that state law is consistent with Federal law does not change the fact that Section 12.2 of the compact applies state law onto the Tribe's sales of tobacco products. The State often leads the Nation in adopting more stringent standards for health and safety and may act to further restrict or prohibit the sale of tobacco as a matter of state law. Under IGRA, it is not permissible for tribal-state compacts to provide for state regulation of tobacco sales. Further, the general regulation of tobacco sales is well beyond the permitted scope of a class III gaming compact. Therefore, this clear violation of IGRA must be disapproved.

*Other Concerns*

In addition to the violations of IGRA discussed above, we have concerns with other provisions as well. Section 12.5 and Appendix F-2 requires the Tribe to adopt a tort claim ordinance which covers tort claims "arising out of, connected with, or relating to the operation of the Gaming Operation, the Gaming Facility, or the Gaming Activity." We are highly concerned with the State requiring the Tribe to adopt a tort claim ordinance that could be interpreted to apply to more than just activity directly related to gaming.

**Conclusion**

We understand the Tribe and the State worked hard to negotiate a Compact that met the parties' needs. The Department frequently provides technical assistance to Tribes and States negotiating compacts to help ensure the Compact reflects the proper scope of a class III gaming compact as proscribed by IGRA. For the reasons stated above we disapprove this Compact. We regret our decision could not be more favorable at this time. A similar letter is being sent to the Honorable Gavin Newsom, Governor of California.

Sincerely,

Bryan Newland
Assistant Secretary – Indian Affairs

# TRIBAL-STATE GAMING COMPACT

# BETWEEN

# THE STATE OF CALIFORNIA

# AND THE

# MIDDLETOWN RANCHERIA OF

# POMO INDIANS OF CALIFORNIA

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The Middletown Rancheria of Pomo Indians of California (Tribe), a federally recognized Indian tribe, and the State of California (State) enter into this tribal-state class III gaming compact pursuant to the Indian Gaming Regulatory Act of 1988.

## PREAMBLE

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

**WHEREAS**, the system of regulation of Indian gaming fashioned by Congress in IGRA rests on an allocation of regulatory jurisdiction among the three sovereigns involved: the federal government, the state in which a tribe has land, and the tribe itself. IGRA makes Class III Gaming Activities lawful on the lands of federally recognized Indian tribes only if such activities are: (i) authorized by a tribal ordinance; (ii) located in a state that permits such gaming for any purpose by any person, organization or entity; and (iii) conducted in conformity with a gaming compact entered into between the Indian tribe and the state and approved by the Secretary of the Department of the Interior; and

**WHEREAS**, in 1999, the Tribe and the State entered into the Tribal-State Compact Between the State of California and the Middletown Rancheria Band of Pomo Indians (1999 Compact), which enabled the Tribe, through revenues generated by its Gaming Operation, to improve the governance, environment, education, health, safety, and general welfare of its citizens, and to promote a strong tribal government, self-sufficiency, and to provide essential government services to its citizens; and

**WHEREAS**, pursuant to the 1999 Compact the Tribe currently operates a tribal gaming casino offering Class III Gaming Activities on its land, including approximately 349 Class III Gaming Devices; and

**WHEREAS**, during the term of the Tribe's 1999 Compact the Tribe paid a one-time prepayment fee of $437,500 for the purchase of additional Gaming Device licenses (to allow for operation of Gaming Devices in excess of the 700 the Tribe could operate for no additional license fees). However, circumstances changed and those licenses were never utilized, and the prepayment was never applied toward payment of additional annual licensing fees. Though the funds were never applied toward a ripe payment obligation, the funds were deposited in the Revenue Sharing Trust Fund for distribution to certain California Indian tribes, and the California Gambling Control Commission's records since the Tribe remitted the license fee have shown a credit for this amount to be paid toward Gaming Device licenses that will now be obsolete; and

**WHEREAS**, as a direct result of the Tribe's geographic location in rural Lake County, it has been significantly impacted by the effects of climate change and the resulting natural disasters over the term of the 1999 Compact, including the Valley Fire, the Tubbs/North Bay Fire, and the Mendocino Complex Fire. Each fire negatively impacted the Tribe's business in significant ways. Several of these fires threatened the physical safety of the Tribe's members and the rancheria itself, resulting in evacuations and road closures, smoke damage and debris removal services. Despite these material hardships, the Tribe emerged as a leader and safe haven in the community–offering free shelter and respite for first responders, turning over its events center for use by the California Office of Emergency Services as a staging area, and working with county and state emergency services personnel to help county residents and the general public. The Tribe's efforts allowed state and local law enforcement and first responders to more ably handle the response to these fires and provided a material benefit to the State and the local community; and

**WHEREAS,** the Tribe has faced significant hardship as a result of the global coronavirus pandemic, which resulted in many closures of the Tribe's Gaming Facility for more than one hundred (100) days, decimating the Tribe's ability to fund and run its government and provide for its membership; and

**WHEREAS**, the Tribe is committed to continuing to improve the environment, education status, and the health, safety and general welfare of its members and the surrounding community; and

**WHEREAS**, this Compact respects the Tribe's primary responsibility over the regulation of its Gaming Facility and will enhance the Tribe's economic development and self-sufficiency; and

**WHEREAS**, the State enters into this Compact out of respect for the sovereignty of the Tribe; in recognition of the fact that Indian gaming has become the single largest revenue producing activity for Indian tribes in the United States; to enhance tribal-state cooperation in areas of mutual concern; and out of a respect for the sentiment of the voters of California who first approved Proposition 5 in 1998 and then in amending the State Constitution through approval of Proposition 1A in 2000 expressed their belief that the slot machines and banked and percentage card games authorized herein should be allowed to be conducted by Tribes on Indian lands; and

**WHEREAS**, the State has a legitimate interest in promoting the purposes of IGRA for all federally recognized Indian tribes in California, whether gaming or non-gaming. The Tribe and the State share a joint sovereign interest in ensuring that tribal Gaming Activities are free from criminal and other undesirable elements; and

**WHEREAS**, the State and the Tribe have concluded that this Compact protects the interests of the Tribe and its members, the surrounding community, and the California public, and will promote and secure long-term stability, mutual respect, and mutual benefits; and

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

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

## SECTION 1.0. PURPOSES AND OBJECTIVES.

The terms of this Compact are designed and intended to:

(a) Evidence the goodwill and cooperation of the Tribe and the State in fostering a mutually respectful government-to-government relationship that will serve the mutual interests of the parties.

(b) Develop, enhance, and implement a means of regulating Class III Gaming, and only Class III Gaming, on the Tribe's Indian lands to

ensure its fair and honest operation in accordance with IGRA, and through that regulated Class III Gaming, enable the Tribe to develop self-sufficiency, promote tribal economic development, and generate jobs and revenues to support the Tribe's government and its governmental services and programs.

(c) Promote ethical practices in conjunction with Class III Gaming, through the licensing and control of persons and entities employed in, or providing goods and services to, the Gaming Operation, protect against the presence or participation of persons whose criminal backgrounds, reputations, character, or associations make them unsuitable for participation in gaming, thereby maintaining a high level of integrity in tribal government gaming, and protect the patrons and employees of the Gaming Operation and Gaming Facility, and the local communities.

(d) Achieve the objectives set forth in the preamble.

## SECTION 2.0. DEFINITIONS.

**Sec. 2.1.** "Applicable Codes" means the Middletown Rancheria Gaming Facility Building Code as provided in the Middletown Rancheria Gaming Facility Standards Ordinance, which incorporates the standards of the California Building Standards Code and the California Public Safety Code applicable to the County, as set forth in titles 19 and 24 of the California Code of Regulations, as those regulations may be amended during the term of this Compact, including, but not limited to, codes for building, electrical, energy, mechanical, plumbing, fire and safety.

**Sec. 2.2.** "Applicant" means an individual or entity that applies for a tribal gaming license or State determination of suitability.

**Sec. 2.3.** "Association" means an association of California tribal and state gaming regulators, the membership of which comprises up to two (2) representatives from each tribal gaming agency of those tribes with whom the State has a Class III Gaming compact or Secretarial procedures prescribed by the Secretary of the Department of the Interior pursuant to 25 U.S.C. § 2710(d)(7)(B)(vii) under IGRA, and up to two (2) delegates each from the California Department of Justice, Bureau of Gambling Control and the California Gambling Control Commission.

**Sec. 2.4.** "Categorical Exemption" shall mean those Projects that meet the criteria of the activities on the "List of Categorical Exemptions" attached as Appendix C to this Compact, or as otherwise agreed to in writing by the Tribe and the State. The terms and concepts used in Appendix C will be interpreted and applied in a manner consistent with and subject to applicable case law interpreting the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.).

**Sec. 2.5.** "Class III Gaming" means the forms of class III gaming defined as such in 25 U.S.C. § 2703(8) and by the regulations of the National Indian Gaming Commission.

**Sec. 2.6**. "Commission" means the California Gambling Control Commission, or any successor agency of the State.

**Sec. 2.7.** "Compact" means this Tribal-State Gaming Compact Between the State of California and the Middletown Rancheria of Pomo Indians of California.

**Sec. 2.8.** "County" means Lake County, California, a political subdivision of the State.

**Sec. 2.9.** "Financial Source" means any person or entity who, directly or indirectly, extends financing in connection with the Tribe's Gaming Facility or Gaming Operation.

**Sec. 2.10.** "Gaming Activity" or "Gaming Activities" means the Class III Gaming activities authorized under this Compact.

**Sec. 2.11.** "Gaming Device" means any slot machine within the meaning of article IV, section 19, subdivision (f) of the California Constitution. For purposes of calculating the number of Gaming Devices, each player station or terminal on which a game is played constitutes a separate Gaming Device, irrespective of whether it is part of an interconnected system to such terminals or stations. "Gaming Device" includes, but is not limited to, video poker, but does not include electronic, computer, or other technological aids that qualify as class II gaming (as defined under IGRA).

**Sec. 2.12.** "Gaming Employee" means any natural person who is an employee of the Gaming Operation and (i) conducts, operates, maintains, repairs, accounts for, or assists in any Gaming Activities, or is in any way responsible for

supervising such Gaming Activities or persons who conduct, operate, maintain, repair, account for, assist, or supervise any such Gaming Activities, (ii) is in a category under federal or tribal gaming law requiring licensing, or (iii) is a person whose employment duties require or authorize access to areas of the Gaming Facility in which any activities related to Gaming Activities are conducted but that are not open to the public. The definition of Gaming Employee does not include members or employees of the Tribal Gaming Agency.

**Sec. 2.13**. "Gaming Facility" or "Facility" means any building in which Gaming Activities or any Gaming Operations occur, or in which the business records, receipts, or funds of the Gaming Operation are maintained (but excluding off-site facilities primarily dedicated to storage of those records, and financial institutions), which may include parking lots, walkways, rooms, buildings, and areas that provide amenities to Gaming Activity patrons, if and only if, the principal purpose of which is to serve the activities of the Gaming Operation, provided that nothing herein prevents the conduct of class II gaming (as defined under IGRA) therein.

**Sec. 2.14.** "Gaming Operation" means the business enterprise that offers and operates Gaming Activities, whether exclusively or otherwise, but does not include the Tribe's governmental or other business activities unrelated to operation of the Gaming Facility.

**Sec. 2.15.** "Gaming Ordinance" means a tribal ordinance or resolution duly authorizing the conduct of Gaming Activities on the Tribe's Indian lands in California and approved under IGRA.

**Sec. 2.16.** "Gaming Resources" means any goods or services provided or used in connection with Gaming Activities, whether exclusively or otherwise, including, but not limited to, equipment, furniture, Gaming Devices and ancillary equipment, implements of Gaming Activities such as playing cards, furniture designed primarily for Gaming Activities, maintenance or security equipment and services, and Class III Gaming management or consulting services. "Gaming Resources" does not include professional accounting and legal services.

**Sec. 2.17.** "Gaming Resource Supplier" means any person or entity who, directly or indirectly, does, or is deemed likely to, manufacture, distribute, supply, vend, lease, purvey, or otherwise provide, to the Gaming Operation or Gaming Facility at least twenty-five thousand dollars ($25,000) in Gaming Resources in any twelve (12)-month period, or who, directly or indirectly, receives, or is deemed

likely to receive, in connection with the Gaming Operation or Gaming Facility, at least twenty-five thousand dollars ($25,000) in any consecutive twelve (12)-month period, provided that the Tribal Gaming Agency may exclude a purveyor of equipment or furniture that is not specifically designed for, and is distributed generally for use other than in connection with, Gaming Activities, if, but for the purveyance, the purveyor is not otherwise a Gaming Resource Supplier as defined herein, the compensation received by the purveyor is not grossly disproportionate to the value of the goods or services provided, and the purveyor is not otherwise a person who exercises a significant influence over the Gaming Operation.

**Sec. 2.18.** "IGRA" means the Indian Gaming Regulatory Act of 1988 (18 U.S.C. §§ 1166-1168; 25 U.S.C. § 2701 et seq.), and any amendments thereto, as interpreted by all regulations promulgated thereunder.

**Sec. 2.19.** "Initial Study" means a preliminary analysis prepared by or for the Tribe, which shall include:

(a) A description of the Project including its location;

(b) An identification of the environmental setting;

(c) An identification of the Project's potential Significant Effects on the Off-Reservation Environment by use of the checklist at Appendix B, provided that entries on the checklist are briefly explained to indicate that there is some evidence to support the entries. The brief explanation may be either through a narrative or a reference to another information source such as an attached map, photographs, or an earlier environmental analysis;

(d) A discussion of the ways to mitigate the Project's Significant Effects on the Off-Reservation Environment if any are identified; and

(e) The name of the person or persons who prepared or participated in the Initial Study.

**Sec. 2.20.** "Interested Persons" means (i) all local, state, and federal agencies, which, if a Project were not taking place on Indian lands, would have responsibility for approving the Project or would exercise authority over the natural resources that may be affected by the Project, (ii) any incorporated city within ten (10) miles of the Project, and (iii) persons, groups, or agencies that request in writing a notice of preparation of a draft tribal environmental impact report or document described in section 11.0, or have commented on the Project in

writing to the Tribe or the County where those comments were provided to the Tribe.

**Sec. 2.21.** "Management Contractor" means any Gaming Resource Supplier with whom the Tribe has contracted for the management of any Gaming Activity or Gaming Facility, including, but not limited to, any person who would be regarded as a management contractor under IGRA.

**Sec. 2.22.** "Mitigated Negative Declaration" means a Negative Declaration prepared for a Project when the Initial Study has identified potentially Significant Effects on the Off-Reservation Environment, but (i) revisions in the Project plans or proposals agreed to by the Tribe in a binding letter agreement between the Tribe and the State would avoid the effects or mitigate the effects to a point where clearly no Significant Effects on the Off-Reservation Environment would occur and (ii) there is no substantial evidence in light of the whole record before the Tribe that the Project as revised may have a Significant Effect on the Off-Reservation Environment.

**Sec. 2.23.** "Negative Declaration" means a written statement by the Tribe briefly describing the Initial Study prepared for a Project and the reasons that the Initial Study has identified no Significant Effect on the Off-Reservation Environment, which supports the Tribe's finding that substantial evidence in light of the whole record before the Tribe supports its determination that the preparation of a Tribal Environmental Impact Report or a Tribal Environmental Impact Document, as those terms are defined in section 11.0, is not required.

**Sec. 2.24.** "NIGC" means the National Indian Gaming Commission.

**Sec. 2.25.** "Project" means (i) the construction of a new Gaming Facility, (ii) a renovation, expansion or modification of an existing Gaming Facility, or (iii) other activity involving a physical change to the reservation environment, provided the principal purpose of which is directly related to the activities of the Gaming Operation, and any one (1) of which may cause a Significant Effect on the Off-Reservation Environment. For purposes of this definition, section 11.0, and Appendix B, "reservation" refers to the Tribe's Indian lands within the meaning of IGRA, or lands otherwise held in trust for the Tribe by the United States. "Project" does not include an activity that has been both described and the impacts of which have been previously addressed in a tribal environmental impact report or document described in section 11.0, or in an environmental impact report, statement, or assessment under the Tribe's 1999 Compact; nor does it include any

activity otherwise meeting the definition of "Project" for which a notice of preparation has issued pursuant to the Tribe's 1999 Compact prior to the effective date of this Compact, which activity the parties agree shall be governed by section 10.8 of the Tribe's 1999 Compact.

**Sec. 2.26.** "Significant Effect(s) on the Off-Reservation Environment" means a substantial or potentially substantial adverse change in any of the physical conditions of the off-reservation environment affected by the Project, including land, air, water, minerals, flora, fauna, ambient noise, cultural areas and objects of historic, cultural or aesthetic significance. For purposes of this definition, "reservation" refers to the Tribe's Indian lands within the meaning of IGRA or lands otherwise held in trust for the Tribe by the United States.

**Sec. 2.27.** "State" means the State of California or an authorized official or agency thereof designated by this Compact or by the Governor.

**Sec. 2.28.** "State Designated Agency" means the entity or entities designated or to be designated by the Governor to exercise rights and fulfill responsibilities established by this Compact.

**Sec. 2.29.** "State Gaming Agency" means the entities authorized to investigate, approve, regulate and license gaming pursuant to the Gambling Control Act (chapter 5 (commencing with section 19800) of division 8 of the California Business and Professions Code), or any successor statutory scheme, and any entity or entities in which that authority may hereafter be vested.

**Sec. 2.30.** "Tribal Chair" or "Tribal Chairperson" means the person duly elected under the Tribe's Constitution to perform the duties specified therein, including serving as the Tribe's official representative.

**Sec. 2.31.** "Tribal Gaming Agency" means the person, agency, board, committee, commission, or council designated under tribal law, including, but not limited to, an intertribal gaming regulatory agency approved to fulfill those functions by the NIGC, primarily responsible for carrying out the Tribe's regulatory responsibilities under IGRA and the Tribe's Gaming Ordinance. No person employed in, or in connection with, the management, supervision, or conduct of any Gaming Activity may be a member or employee of the Tribal Gaming Agency.

**Sec. 2.32.** "Tribe" means the Middletown Rancheria of Pomo Indians of California, a federally recognized Indian tribe, or an authorized official or agency thereof.

## SECTION 3.0. SCOPE OF CLASS III GAMING AUTHORIZED.

(a) The Tribe is hereby authorized and permitted to operate only the following Gaming Activities under the terms and conditions set forth in the Compact:

(1) Gaming Devices.

(2) Any banking or percentage card game.

(3) Any devices or games that are authorized under state law to the California State Lottery, provided that the Tribe will not offer such games through use of the Internet, unless any other person, organization, or entity in the state is permitted to do so under state and federal law.

(4) Off-track wagering on horse races at a satellite wagering facility pursuant to the requirements in the document attached hereto as Appendix E.

(b) 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.

(c) The Tribe shall not engage in Class III Gaming that is not expressly authorized in this Compact.

(d) Nothing herein shall be construed to preclude the Tribe from offering class II gaming.

## SECTION 4.0. AUTHORIZED NUMBER OF GAMING DEVICES, LOCATION OF GAMING FACILITIES, AND COST REIMBURSEMENT.

### Sec. 4.1. Authorized Number of Gaming Devices.

The Tribe is entitled to operate up to a total of one thousand two hundred (1200) Gaming Devices pursuant to the conditions set forth in section 3.0 and sections 4.2 through and including section 5.2.

### Sec. 4.2. Authorized Gaming Facilities.

The Tribe may establish and operate not more than two (2) Gaming Facilities and engage in Class III Gaming only on eligible Indian lands held in trust for the Tribe that are located within the boundaries of the Tribe's reservation and certain trust lands as those boundaries exist and on which Class III Gaming may lawfully be conducted under IGRA as of the execution date of this Compact as described in and represented on the map at Appendix A hereto. The Tribe retains the right to acquire additional eligible Indian lands under IGRA and, subject to the provisions of section 15.0, to request negotiation of an amendment to this Compact to authorize Class III Gaming on the subsequently acquired eligible Indian lands. The Tribe may combine and operate in each Gaming Facility any forms and kinds of gaming permitted under law, except to the extent limited under IGRA, this Compact, or the Tribe's Gaming Ordinance.

### Sec. 4.3. Special Distribution Fund.

(a) The Tribe shall pay to the State on a pro rata basis the State's 25 U.S.C. § 2710(d)(3)(C) costs incurred for purposes consistent with IGRA, including the performance of all its duties under this Compact, the administration and implementation of tribal-state Class III Gaming compacts and secretarial procedures prescribed by the Secretary of the Department of the Interior pursuant to 25 U.S.C. § 2710(d)(7)(B)(vii) (Secretarial Procedures), and funding for the Office of Problem Gambling, as determined by the monies appropriated in the annual Budget Act each fiscal year to carry out those purposes (Appropriation). The Appropriation and the maximum number of Gaming Devices operated by all federally recognized tribes in California determined to be in operation during the previous State fiscal year shall be reported annually by the State Gaming Agency to the Tribe on or before December 15. The term "operated" or

"operation" as used in this Compact in relation to Gaming Devices describes each and every Gaming Device available to patrons (including slot tournament contestants) for play at any given time.

(b) The Tribe's pro rata share of the State's 25 U.S.C. § 2710(d)(3)(C) costs in any given year this Compact is in effect shall be calculated by the following equation:

> The maximum number of Gaming Devices operated in the Tribe's Gaming Facility(ies) during the previous State fiscal year as determined by the State Gaming Agency, divided by the maximum number of Gaming Devices operated by all federally recognized tribes in California pursuant to tribal-state Class III Gaming compacts or Secretarial Procedures during the previous State fiscal year, multiplied by the Appropriation, equals the Tribe's pro rata share.

(1) Beginning the first full quarter after the effective date of this Compact, the Tribe shall pay its pro rata share to the State Gaming Agency for deposit into the Indian Gaming Special Distribution Fund established by the Legislature (Special Distribution Fund). The payment shall be made in four (4) equal quarterly installments due on the thirtieth (30th) day following the end of each calendar quarter (i.e., by April 30 for the first quarter, July 30 for the second quarter, October 30 for the third quarter, and January 30 for the fourth quarter); provided, however, that in the event this Compact becomes effective during a calendar quarter, payment shall be prorated for the number of days remaining in that initial quarter, in addition to any remaining full quarters in the first calendar year of operation to obtain a full year of full quarterly payments of the Tribe's pro rata share specified above. A payment year will run from January through December. If any portion of the Tribe's quarterly pro rata share payment is overdue, the Tribe shall pay to the State for purposes of deposit into the appropriate fund, the amount overdue plus interest accrued thereon at the rate of one percent (1%) per month or the maximum rate permitted by state law for delinquent payments owed to the State, whichever is less. All quarterly payments

shall be accompanied by the certification report specified in section 4.6.

(2) If the Tribe objects to the State's determination of the Tribe's pro rata share, or to the amount of the Appropriation as including matters not consistent with IGRA, the matter shall be resolved in accordance with the dispute resolution provisions of section 13.0. Any State determination of the Tribe's pro rata share challenged by the Tribe shall govern and must be paid by the Tribe to the State when due, and the Tribe's payment is a condition precedent to invoking the section 13.0 dispute resolution provisions.

(3) Only for purposes of calculating the Tribe's annual pro rata share under section 4.3, subdivision (a), any increase in the Appropriation for the current year shall be capped at an amount equal to five percent (5%) from the Appropriation used to calculate the Tribe's pro rata share in the immediately preceding year. The Appropriation, so capped, will be used to calculate the Tribe's pro rata share under the equation set forth in section 4.3, subdivision (b). The Parties anticipate and intend that annual increases in the pro rata share payment, will be significantly less than five percent (5%) annually on an ongoing basis, and that this five percent (5%) cap will be rarely, if ever, implemented.

(4) The foregoing payments have been negotiated between the parties as a fair and reasonable contribution, based upon the State's costs of regulating and mitigating certain impacts of tribal Class III Gaming Activities, as well as the Tribe's market conditions, its circumstances, and the rights afforded and consideration provided by this Compact.

(c) In any given State fiscal year, to the extent permissible and only in accordance with the conditions of California Government Code section 12012.96, the State Gaming Agency, upon approval by the California Department of Finance, shall reduce, or eliminate, the Tribe's pro rata share payment obligation to the Special Distribution Fund.

(d) In recognition that the Tribe was not able to apply the Gaming Device license pre-payment fees of four hundred thirty-seven thousand five hundred dollars ($437,500) that it paid into the Revenue Sharing Trust Fund pursuant to section 4.3.2.2, subdivision (e) of its 1999 Compact, the Gaming Device license pool is no longer utilized under this Compact, and the Tribe has no obligation to pay any amount into the Revenue Sharing Trust Fund because of the limited number of Gaming Devices authorized by section 4.1 of this Compact, the Tribe shall have the right to receive a credit against its pro rata Special Distribution Fund payment required by section 4.3, provided that the credit may be applied only when the Special Distribution Fund and the Revenue Sharing Trust Fund both are solvent and there are sufficient funds to cover the pro rata Special Distribution Fund payments to Non-Gaming Tribes and Limited-Gaming Tribes in accordance with the conditions of California Government Code section 12012.96. The total credit amount applied in any calendar year may amount to no more than twenty-five percent (25%) of the Tribe's Gaming Device license pre-payment fees of four hundred thirty-seven thousand five hundred dollars ($437,500) and shall cease when the Tribe has been credited with the total amount of four hundred thirty-seven thousand five hundred dollars ($437,500).

**Sec. 4.4. Use of Special Distribution Funds.**

Revenue placed in the Special Distribution Fund shall be available for appropriation by the Legislature for the following purposes:

(a) Grants, including any administrative costs, for programs designed to address and treat gambling addiction;

(b) Grants, including any administrative costs and environmental review costs, for the support of state and local government agencies impacted by tribal government gaming;

(c) Compensation for regulatory costs incurred by the State including, but not limited to, the Commission, the California Department of Justice, the Office of the Governor, the California Department of Public Health Programs, Office of Problem Gambling, the State Controller, the Department of Human Resources, the Financial Information

System for California, State Designated Agencies, and other state agencies in connection with the implementation and administration of Class III Gaming compacts and Secretarial Procedures in California;

(d) Compensation to state and local governments for law enforcement, fire, public safety, and other emergency response services provided in response to or arising from any threat to the health, welfare and safety of Gaming Facility patrons, employees, tribal citizens or the public generally, attributable to, or as a consequence of, intra-tribal government disputes; and

(e) Any other purposes specified by the Legislature that are consistent with IGRA, including funds necessary to ensure adequate funding to the Revenue Sharing Trust Fund.

**Sec. 4.5. Effective Date of Contribution Provisions.**

The provisions of this Compact establishing or superseding existing revenue sharing obligations of the Tribe will take effect on the first day of the first month following the effective date of this Compact.

**Sec. 4.6. Quarterly Payments and Quarterly Contribution Report.**

(a) (1) The Tribe shall remit quarterly to the State Gaming Agency (i) the payments described in section 4.3, for deposit into the Special Distribution Fund.

(2) If the Gaming Activities authorized by this Compact commence during a calendar quarter, the first payment shall be due on the thirtieth (30th) day following the end of the first full quarter of the Gaming Activities and shall cover the period from the commencement of the Gaming Activities to the end of the first full calendar quarter.

(3) All quarterly payments shall be accompanied by the certification specified in subdivision (b).

(b) At the time each quarterly payment is due, regardless of whether any monies are owed, the Tribe shall submit to the State Gaming Agency

a certification (the "Quarterly Contribution Report") prepared by the chief financial officer of the Gaming Operation that specifies the following:

(1) The calculation of the maximum number of Gaming Devices operated in the Gaming Facility for each day during the given quarter;

(2) The amount due pursuant to section 4.3; and

(3) The total amount of the quarterly payment paid to the State.

(c) The State Gaming Agency shall have access to all records deemed necessary by the State Gaming Agency to verify the maximum number of Gaming Devices operated in the Gaming Facility during the given quarter, including access to the Gaming Device accounting systems and server-based systems and software, and to the data contained therein on a read-only basis. The parties expressly acknowledge that the Quarterly Contribution Reports provided for in subdivision (b) are subject to section 8.4, subdivision (h).

(d) Notwithstanding anything to the contrary in section 13.0, any failure of the Tribe to remit the payments referenced in subdivision (a), will entitle the State to immediately seek injunctive relief in federal or state court, at the State's election, to compel the payments, plus accrued interest thereon at the rate of one percent (1%) per month, or the maximum rate permitted by state law for delinquent payments owed to the State, whichever is less; and further, the Tribe expressly consents to be sued in either court and hereby waives its sovereign immunity and its right to assert sovereign immunity against the State in any such proceeding. Failure to make timely payment shall be deemed a material breach of this Compact.

(e) If any portion of the payments under subdivision (a) of this section is overdue after the State Gaming Agency has provided written notice to the Tribe of the overdue amount with an opportunity to cure of at least fifteen (15) business days, and if more than sixty (60) calendar days have passed from the due date, then the Tribe shall cease operating all of its Gaming Devices until full payment is made.

**Sec. 4.7. Exclusivity.**

In recognition of the Tribe's agreement to make the payments specified in section 4.3, the Tribe shall have the following rights:

(a) In the event the exclusive right of Indian tribes to operate Gaming Devices in California is abrogated by the enactment, amendment, or repeal of a state statute or constitutional provision, or the conclusive and dispositive judicial construction of a statute or the State Constitution by a California appellate court after the effective date of this Compact that Gaming Devices may lawfully be operated by another person, organization, or entity (other than an Indian tribe operating pursuant to a Class III Gaming compact or Secretarial Procedures) within California, the Tribe shall have the right to exercise one (1) of the following options:

(1) Terminate this Compact, in which case the Tribe will lose the right to operate Gaming Devices and other Class III Gaming authorized by this Compact; or

(2) Continue under this Compact following the conclusion of negotiations with the State for Compact amendments that provide for the following: (i) compensation to the State for the costs of regulation, as set forth in section 4.3, subdivision (a); (ii) reasonable payments to local governments impacted by tribal government gaming, the amount to be determined based upon any intergovernmental agreement entered into pursuant to section 11.0; (iii) grants for programs designed to address and treat gambling addiction; and (iv) such assessments as may be permissible at that time under federal law. The negotiations shall commence within thirty (30) days after receipt of a written request by either the Tribe or the State to enter into negotiations, unless both parties agree in writing to an extension of time. If the Tribe and the State fail to reach agreement on the amount of the reduction of such payments within sixty (60) days following commencement of the negotiations specified in this subdivision (a)(2), the amount shall be determined by arbitration pursuant to section 13.2.

(b) Nothing in this section is intended to preclude the California State Lottery from offering any lottery games or devices that are currently or may hereafter be authorized by state law.

(c) Nothing in this section precludes the Tribe from discussing with the State the issue of whether any person or entity (other than an Indian tribe pursuant to a Class III Gaming compact or Secretarial Procedures) is engaging in the Gaming Activities specified in subdivision (a) of section 3.0 of this Compact.

## SECTION 5.0. REVENUE SHARING WITH NON-GAMING AND LIMITED-GAMING TRIBES.

### Sec. 5.1. Definitions.

For purposes of this section 5.0, the following definitions apply:

(a) The "Revenue Sharing Trust Fund" is a fund created by the Legislature and administered by the State Gaming Agency that, as limited trustee, is not a trustee subject to the duties and liabilities contained in the California Probate Code, similar state or federal statutes, rules or regulations, or under California state or federal common law or equitable principles, and has no duties, responsibilities, or obligations hereunder except for the receipt, deposit, and distribution of monies paid by gaming tribes for the benefit of Non-Gaming Tribes and Limited-Gaming Tribes. The State Gaming Agency shall allocate and disburse the Revenue Sharing Trust Fund monies on a quarterly basis as specified by the Legislature. Each eligible Non-Gaming Tribe and Limited-Gaming Tribe in the state shall receive the sum of one million one hundred thousand dollars ($1,100,000) per year from the Revenue Sharing Trust Fund. In the event there are insufficient monies in the Revenue Sharing Trust Fund to pay one million one hundred thousand dollars ($1,100,000) per year to each eligible Non-Gaming Tribe and Limited-Gaming Tribe, any available monies in that fund shall be distributed to eligible Non-Gaming Tribes and Limited-Gaming Tribes in equal shares. Monies deposited into the Revenue Sharing Trust Fund in excess of the amount necessary to distribute one million one hundred thousand dollars ($1,100,000) to each eligible Non-Gaming Tribe and Limited-Gaming Tribe shall remain in the Revenue

Sharing Trust Fund available for disbursement in future years, or deposited into the Tribal Nation Grant Fund, but shall not be used for purposes other than the Revenue Sharing Trust Fund or the Tribal Nation Grant Fund. In no event shall the State's general fund be obligated to make up any shortfall in the Revenue Sharing Trust Fund or to pay any unpaid claims connected therewith and, notwithstanding any provision of law, including any existing provision of law implementing the State Gaming Agency's obligations related to the Revenue Sharing Trust Fund under any Class III Gaming compact or Secretarial Procedures, Non-Gaming Tribes and Limited-Gaming Tribes are not third-party beneficiaries of this Compact and shall have no right to seek any judicial order compelling disbursement of any Revenue Sharing Trust Fund monies to them.

(b) The "Tribal Nation Grant Fund" is a fund created by the Legislature to make discretionary distribution of funds to Non-Gaming Tribes and Limited-Gaming Tribes upon application of such tribes for purposes related to effective self-governance, self-determined community, and economic development. The fiscal operations of the Tribal Nation Grant Fund are administered by the State Gaming Agency, which acts as a limited trustee, not subject to the duties and liabilities contained in the California Probate Code, similar California or federal statutes, rules or regulations, or under California or federal common law or equitable principles, and with no duties or obligations hereunder except for the receipt, deposit, and distribution of monies paid by gaming tribes for the benefit of Non-Gaming Tribes and Limited-Gaming Tribes, as those payments are directed by a State Designated Agency. The State Gaming Agency shall allocate and disburse the Tribal Nation Grant Fund monies as specified by a State Designated Agency to one (1) or more eligible Non-Gaming Tribe or Limited-Gaming Tribe upon a competitive application basis. The State Gaming Agency shall exercise no discretion or control over, nor bear any responsibility arising from, the recipient tribes' use or disbursement of Tribal Nation Grant Fund monies. The State Designated Agency shall perform any necessary audits to ensure that monies awarded to any tribe are being used in accordance with their disbursement in relation to the purpose of the Tribal Nation Grant Fund. In no event shall the State's general fund be obligated to pay any monies into the Tribal Nation Grant Fund or to pay any unpaid claims connected therewith and, notwithstanding any provision of

law, including any existing provision of law implementing the State's obligations related to the Tribal Nation Grant Fund or the Revenue Sharing Trust Fund under any Class III Gaming compact or Secretarial Procedures, Non-Gaming Tribes and Limited-Gaming Tribes shall have no right to seek any judicial order compelling disbursement of any Tribal Nation Grant Fund monies to them.

(c) A "Non-Gaming Tribe" is a federally recognized tribe in California, with or without a tribal-state Class III Gaming compact or Secretarial Procedures that, as of the date of the last distribution to such tribe from the Revenue Sharing Trust Fund or the Tribal Nation Grant Fund, and during the immediately preceding three hundred sixty-five (365) days, has not engaged in, or offered, class II gaming or Class III Gaming in any location whether within or without California.

(d) A "Limited-Gaming Tribe" is a federally recognized tribe in California that has a Class III Gaming compact with the State or Secretarial Procedures but is operating and has operated fewer than a combined total of three hundred fifty (350) Gaming Devices in all of its gaming operations wherever located, or does not have a Class III Gaming compact or Secretarial Procedures but is engaged in class II gaming, whether within or without California, during the immediately preceding three hundred sixty-five (365) days.

**Sec. 5.2. Payments to the Revenue Sharing Trust Fund and Tribal Nation Grant Fund.**

Under the terms of this Compact, the Tribe has no obligation to make payments into the Revenue Sharing Trust Fund or the Tribal Nation Grant Fund.

## SECTION 6.0. LICENSING.

**Sec. 6.1. Gaming Ordinance and Regulations.**

(a) All Gaming Activities authorized to be conducted under this Compact comply and will continue to comply with (i) with a Gaming Ordinance duly adopted by the Tribe and approved in accordance with IGRA, (ii) with all applicable rules, regulations, procedures, specifications, and standards duly adopted by the NIGC, the Tribal

Gaming Agency, and the State Gaming Agency, and (iii) with the provisions of this Compact.

(b) Upon request the Tribal Gaming Agency will make the following documents available for inspection by the State Gaming Agency: a copy of the Gaming Ordinance, and all of its rules, regulations, procedures, specifications, ordinances, or standards applicable to the Gaming Activities and Gaming Operation. This provision excludes the Tribal Gaming Agency's internal policies and procedures.

(c) The Tribal Gaming Agency agrees to make the following documents available to Gaming Operation patrons or their legal representatives, through electronic means or otherwise in its discretion: the Gaming Ordinance; the rules of each Class III Gaming game operated by the Tribe, to the extent that such rules are not available for display on the Gaming Device or the table on which the game is played; rules governing promotions, rules governing points and the player's club program, including rules regarding confidentiality of the player information, if any; the tort liability ordinance specified in section 12.5, subdivision (b); and the regulations promulgated by the Tribal Gaming Agency concerning patron disputes pursuant to section 10.0. To the extent that any of the foregoing are available to the public on a website maintained by an agency of the State of California or the federal government, or by the Tribe or the Gaming Operation, the Tribal Gaming Agency may refer requesters to such website(s) for the requested information.

**Sec. 6.2. Tribal Ownership, Management, and Control of Gaming Operation.**

The Gaming Operation authorized under this Compact is owned solely by the Tribe as required by IGRA.

**Sec. 6.3. Prohibitions Regarding Minors.**

(a) The Tribe has decided not to permit persons under the age of twenty-one (21) years to participate in Gaming Activities, or to loiter in the vicinity of the Gaming Facility where Gaming Activities are conducted. Persons under the age of twenty-one (21) years may be employed by the Gaming Operation in a non-gaming capacity. This

decision of the Tribe shall be maintained for the duration of this Compact.

(b) If the Tribe permits the consumption of alcoholic beverages in the Gaming Facility, the Tribe agrees to prohibit persons under the age of twenty-one (21) years from being present in any area in which alcoholic beverages may be consumed, except to the extent permitted by the Gaming Facility's California Department of Alcoholic Beverage Control license(s).

**Sec. 6.4. Licensing Requirements and Procedures.**

**Sec. 6.4.1. Summary of Licensing Principles.**

The Tribe agrees to require a tribal gaming license for all persons in any way connected with the Gaming Operation or Gaming Facility who are required to be licensed or to submit to a background investigation under IGRA, any others required to be licensed under this Compact, including, without limitation, all Gaming Employees, Gaming Resource Suppliers, Financial Sources not otherwise exempt from licensing requirements, and any other person having a significant influence over the Gaming Operation. Each person or entity must be licensed by the Tribal Gaming Agency and, except as otherwise provided, cannot have had any determination of suitability denied or revoked by the State Gaming Agency. The Tribe and the State intend that the licensing process provided for in this Compact shall involve mutual cooperation between the Tribal Gaming Agency and the State Gaming Agency, as more particularly described herein. A tribal gaming license issued by the Tribal Gaming Agency and any favorable suitability determination made by the State Gaming Agency prior to the effective date of this Compact in accordance with the licensing and suitability rules in section 6.0 of the 1999 Compact shall remain in effect until their expiration provided that the tribal gaming license or the suitability determination were issued before this Compact takes effect and the relevant expiration period is not more than two (2) years after the issuance of the tribal gaming license or suitability determination, after which time any further license renewal shall comply with the terms and requirements herein.

**Sec. 6.4.2. Gaming Facility.**

(a) Each Gaming Facility authorized by this Compact is licensed by the Tribal Gaming Agency in conformity with the requirements of the

Gaming Ordinance, IGRA, any applicable regulations adopted by the NIGC, as well as this Compact. The license shall be reviewed and renewed every two (2) years thereafter. The Tribe agrees to provide verification that this requirement has been met to the State by sending, either electronically or by hard copy, a copy of the initial license and each renewal license to the State Gaming Agency within twenty (20) days after issuance of the license or renewal. The Tribal Gaming Agency's certification that the Gaming Facility is being operated in conformity with these requirements will continue to be posted in a conspicuous and public place in the Gaming Facility.

(b) To assure the protection of the health and safety of all Gaming Facility patrons, guests, and employees, the Tribe has already adopted, and shall maintain throughout the term of this Compact, an ordinance that requires any Gaming Facility construction to meet or exceed the standards in the Applicable Codes. The Gaming Facility and construction, expansion, improvement, modification, or renovation to the Gaming Facility will also comply with title III of the federal Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. Notwithstanding the foregoing, the Tribe need not comply with any state standard that specifically applies in name or in fact only to tribal facilities. Without limiting the rights of the State under this section, reference to Applicable Codes is not intended to confer code enforcement jurisdiction upon the State or its political subdivisions. For purposes of this section, the terms "building official" and "code enforcement agency" as used in titles 19 and 24 of the California Code of Regulations mean the Tribal Gaming Agency or such other tribal government agency or official as may be designated by the Tribe's law. The building official and code enforcement agency designated by the Tribe's law may exercise authority granted to such individuals and entities as specified within the Applicable Codes with regard to the Gaming Facility.

(c) The Tribe's laws require inspections of all new construction and the Tribe will engage qualified plan checkers or review firms to ensure compliance with the Applicable Codes. To be qualified as a plan checker or review firm for purposes of this Compact, plan checkers or review firms must be either California licensed architects, engineers or International Code Council (ICC)- certified building inspectors with relevant experience, or California licensed architects, engineers

or ICC-certified building inspectors on the list, if any, of approved plan checkers or review firms provided by the city or County in which the Gaming Facility is located. The Tribe shall also employ qualified project inspectors. To be qualified as a project inspector for purposes of this Compact, project inspectors must possess the same qualifications and certifications as project inspectors utilized by the County in which the Gaming Facility is located. The same persons or firms may serve as both plan checkers/reviewers and project inspectors. The plan checkers, review firms, and project inspectors shall hereinafter be referred to as "Inspector(s)." The Tribe agrees to report any failure to comply with the Applicable Codes to the State Gaming Agency, in writing and within thirty (30) days after the discovery thereof. The Tribe agrees to correct any Gaming Facility condition noted in the inspections that does not meet the Applicable Codes (hereinafter "deficiency").

(d) The Tribe shall make the design and construction calculations, and plans and specifications that form the basis for the Gaming Facility construction (the "Design and Building Plans") to be available to the State Gaming Agency for inspection and copying by the State Gaming Agency, upon its request.

(e) In the event that material changes to a structural detail of the Design and Building Plans will result from contract change orders or any other changes in the Design and Building Plans, such changes shall be reviewed by the qualified plan checker or review firm and field verified by the Inspectors for compliance with the Applicable Codes.

(f) The Tribe shall maintain during construction all structural contract change orders for inspection and copying by the State Gaming Agency upon its request.

(g) The Tribe shall maintain the Design and Building Plans depicting the as-built Gaming Facility, unless and until superseded by subsequent as-built Design and Building Plans upon which the superseding construction was based, and shall make them available to the State Gaming Agency for inspection and copying by the State Gaming Agency upon its request, for the term of this Compact.

(h) Upon final certification by the Inspectors that the Gaming Facility meets the Applicable Codes, the Tribe agrees that the Tribal Gaming Agency will forward the Inspectors' certification to the State Gaming Agency within ten (10) days of issuance. If the State Gaming Agency objects to that certification, the Tribe shall make a good faith effort to address the State's concerns, but if the State Gaming Agency does not withdraw its objection, the matter will be resolved in accordance with the dispute resolution provisions of section 13.0.

(i) Any failure to remedy within a reasonable period of time any material and timely raised deficiency shall be deemed a violation of this Compact, and furthermore, any deficiency that poses a serious or significant risk to the health or safety of any occupant shall be grounds for the State Gaming Agency, pursuant to court order, to prohibit occupancy of the affected portion of the Gaming Facility until the deficiency is corrected. The Tribe agrees and asserts that it will not allow occupancy of any portion of the Gaming Facility that is constructed or maintained in a manner that endangers the health or safety of the occupants.

(j) The Tribe shall take all necessary steps to reasonably ensure the ongoing availability of sufficient and qualified fire suppression services to the Gaming Facility, and to reasonably ensure that the Gaming Facility satisfies all requirements of the Applicable Codes, as set forth below:

(1) Within thirty (30) days after the effective date of the Compact, and not less than biennially thereafter, and upon at least ten (10) days' notice to the State Gaming Agency, the Gaming Facility shall be inspected, at the Tribe's expense, by an independent fire inspector certified by the ICC or the National Fire Protection Association for purposes of certifying that the Gaming Facility meets a reasonable standard of fire safety and life safety; provided that, if a qualified fire inspector has certified, within twelve (12) months prior to the effective date of this Compact, that the Gaming Facility meets a reasonable standard of fire and life safety, the Tribe may satisfy this requirement by submitting a copy of that certification to the State, and thereafter having the Gaming Facility inspected biennially in accordance with this subdivision.

(2) The State Gaming Agency shall be entitled to designate and have a qualified representative or representatives, which may include local fire suppression entities, present during the inspection. During such inspection, the State Gaming Agency's representative(s) shall specify to the independent fire inspector any condition that the representative(s) reasonably believes would preclude certification of the Gaming Facility as meeting a reasonable standard of fire safety and life safety.

(3) The independent fire inspector shall issue to the Tribal Gaming Agency and the State Gaming Agency a report on the inspection within fifteen (15) days after its completion, or within thirty (30) days after commencement of the inspection, whichever first occurs, identifying any deficiency in fire safety or life safety at the Gaming Facility or in the ability of the Tribe to meet reasonably expected fire suppression needs of the Gaming Facility.

(4) Within twenty-one (21) days after the issuance of the report, the independent fire inspector shall also require and approve a specific plan for correcting deficiencies, whether in fire safety or life safety, at the Gaming Facility or in the Tribe's ability to meet the reasonably expected fire suppression needs of the Gaming Facility, including deficiencies identified by the State Gaming Agency's representative. A copy of the report and plan of correction shall be delivered to the State Gaming Agency and the Tribal Gaming Agency. If the independent fire inspector disagrees with an allegation of deficiency by the State Gaming Agency's representative, the Tribe may take the matter to dispute resolution pursuant to section 13.0.

(5) Immediately upon correction of all deficiencies identified in the report and plan of correction, the independent fire inspector shall certify in writing to the Tribal Gaming Agency and the State Gaming Agency that all deficiencies have been corrected.

(6) Any failure to correct all deficiencies identified in the report and plan of correction within a reasonable period of time shall be a violation of this Compact, and any failure to promptly

correct those deficiencies that pose a serious or significant risk to the health or safety of any occupants shall be a violation of this Compact and grounds for the State Gaming Agency to prohibit, pursuant to court order, occupancy of the affected portion of the Gaming Facility until the deficiency is corrected.

(7) Consistent with its obligation to ensure the safety of those within the Gaming Facility, the Tribe agrees to promptly notify the State Gaming Agency of circumstances that it reasonably believes pose a serious or significant risk to the health or safety of any occupants, and take prompt action to correct such circumstances. Any failure to remedy within a reasonable period of time any serious or significant risk to health or safety shall be deemed a violation of this Compact, and furthermore, any circumstance that poses a serious or significant risk to the health or safety of any occupant shall be grounds for the State Gaming Agency to seek a court order prohibiting occupancy of the affected portion of the Gaming Facility until the deficiency is corrected.

(k) Notwithstanding anything in section 6.4.2 or elsewhere in this Compact, the construction requirements of any Project that has taken place or has commenced prior to the effective date of this Compact shall be subject to the Gaming Facility license rules in section 6.4.2 of the 1999 Compact, provided that the Project was previously approved under section 6.4.2 of that compact.

**Sec. 6.4.3. Gaming Employees.**

(a) Every Gaming Employee shall obtain, and thereafter maintain current, a valid tribal gaming license, and except as provided in subdivision (b), shall obtain, and thereafter maintain current, a State Gaming Agency determination of suitability, which license and determination shall be subject to biennial renewal; provided that in accordance with section 6.4.9, those persons may be employed on a temporary or conditional basis pending completion of the licensing process and the State Gaming Agency determination of suitability.

(b) The State Gaming Agency and the Tribal Gaming Agency have identified those Gaming Employees who, in addition to a tribal

gaming license, must also apply for, obtain, and maintain, a finding of suitability from the State Gaming Agency. The general principles governing those Gaming Employees who must have both a tribal gaming license and a finding of suitability from the State Gaming Agency are set forth below, and are consistent with agreements between the State Gaming Agency and the Tribal Gaming Agency in effect at the time of execution of this Compact as provided in section 6.5.6, subdivision (a) of the 1999 Compact. These agreements shall remain in effect unless and until they are updated or amended through consultations between the State Gaming Agency and the Tribal Gaming Agency. In furtherance of these agreements, position titles of those Gaming Employees who must have both a tribal gaming license and a finding of suitability from the State Gaming Agency have been placed on what is referred to as the Compact Key Employee Position List. If no such Compact Key Employee Position List is in effect at the time of execution of this Compact, one shall be negotiated between the State Gaming Agency and the Tribal Gaming Agency. A Gaming Employee who is required to obtain and maintain current a valid tribal gaming license under subdivision (a) is not required to obtain or maintain a State Gaming Agency determination of suitability if any of the following applies:

(1) A Gaming Employee shall not be placed on the Compact Key Employee Position List if the employee's position title is subject to the licensing requirement of subdivision (a) solely because he or she is a person who conducts, operates, maintains, repairs, or assists in Gaming Activities, provided that this exception shall not apply if he or she supervises Gaming Activities or persons who conduct, operate, maintain, repair, assist, account for or supervise any such Gaming Activity, and is empowered to make discretionary decisions affecting the conduct or operation of the Gaming Activities.

(2) A Gaming Employee shall not be placed on the Compact Key Employee Position List if the employee's position title is subject to the licensing requirement of subdivision (a) solely because he or she is a person whose employment duties require or authorize access to areas of the Gaming Facility that are not open to the public, provided that this exception shall not apply if he or she supervises Gaming Activities or persons who

conduct, operate, maintain, repair, assist, account for or supervise any such Gaming Activity, and is empowered to make discretionary decisions affecting the conduct or operation of the Gaming Activities.

(3) Members and employees of the Tribal Gaming Agency are not subject to a finding of suitability from the State Gaming Agency.

(4) The State Gaming Agency and the Tribal Gaming Agency agree to exempt a Gaming Employee from the requirement to obtain or maintain current a State Gaming Agency determination of suitability.

(c) For those position titles not included on the Compact Key Employee Position List, notwithstanding subdivision (b), where the State Gaming Agency reasonably believes that licensure of an individual may pose a threat to gaming integrity or public safety, the State Gaming Agency may notify the Tribal Gaming Agency of its concerns and request a meeting with the Tribal Gaming Agency to review the tribal license application, and all materials and information received by the Tribal Gaming Agency in connection therewith, for any person whom the Tribal Gaming Agency has licensed, or proposes to license, as a Gaming Employee. Upon that request, the Tribal Gaming Agency shall meet with the State Gaming Agency and discuss such application and materials. If after the meeting the State Gaming Agency continues to believe that the person would be unsuitable for issuance of a license or permit for a similar level of employment in a gambling establishment subject to the jurisdiction of the State, it shall notify the Tribal Gaming Agency of its determination and the reasons supporting its determination. The Tribal Gaming Agency shall thereafter conduct a hearing in accordance with section 6.5.5 to reconsider issuance of the tribal gaming license and shall notify the State Gaming Agency of its determination immediately upon issuing its decision following conclusion of the hearing, which decision shall be final unless the State Gaming Agency requests within thirty (30) days of such notification that the decision be made the subject of dispute resolution pursuant to section 13.0. This subdivision (c) is intended and anticipated to be exercised infrequently, if at all, on a case-by-

case basis. Nothing in this subdivision (c) shall require the Tribal Gaming Agency to disclose or discuss any materials or information which are otherwise prohibited or restricted from disclosure under applicable federal law or regulation.

(d) Except as provided in subdivisions (e) and (f), the Tribe shall not employ, or continue to employ, any person whose application to the State Gaming Agency for a determination of suitability or for a renewal of such a determination has been denied or withdrawn, or whose determination of suitability has expired without renewal.

(e) Notwithstanding subdivisions (b) and (c), the Tribe may employ or retain in its employ a person whose application for a determination of suitability, or for a renewal of such a determination, has been denied by the State Gaming Agency, if:

(1) The person holds a valid and current license issued by the Tribal Gaming Agency that must be renewed at least biennially;

(2) The denial of the application by the State Gaming Agency is based solely on activities, conduct, or associations that antedate the filing of the person's initial application to the State Gaming Agency for a determination of suitability;

(3) The person is not an employee or agent of any other gaming operation; and

(4) The person has been in the continuous employ of the Tribe as a Gaming Employee for at least three (3) years prior to May 16, 2000.

(f) Notwithstanding subdivisions (b) and (c), the Tribe may employ or retain in its employ a person whose application for a determination of suitability, or for a renewal of such a determination, has been denied by the State Gaming Agency, if the person is an enrolled member of the Tribe (defined for purposes of this subdivision as a person who is a member of the Tribe as determined by the Tribe's law), and if:

(1) The enrolled member of the Tribe holds a valid and current license issued by the Tribal Gaming Agency that must be renewed at least biennially;

(2) The enrolled member of the Tribe is not an employee or agent of any other gaming operation; and

(3) Either subdivision (f)(3)(A) or (B) applies:

(A) The enrolled member was eligible for an exemption under section 6.4.4, subdivision (d) of the 1999 Compact, was granted a license by the Tribal Gaming Agency while the 1999 Compact was in effect, and the State Gaming Agency's denial of the application is based solely on activities, conduct, or associations that antedate the Tribal Gaming Agency's first grant of a license to the tribal member pursuant to the 1999 Compact; or

(B) The denial of the application by the State Gaming Agency is based solely on activities, conduct, or associations that antedate by at least five (5) years, the filing of the enrolled member of the Tribe's initial application to the State Gaming Agency for a determination of suitability.

(g) At any time after five (5) years following the effective date of this Compact, either the Tribal Gaming Agency or the State Gaming Agency may request to amend the position titles identified on the Compact Key Employee Position List.

(h) This section shall not apply to members of the Tribal Gaming Agency.

**Sec. 6.4.4. Gaming Resource Suppliers.**

(a) Every Gaming Resource Supplier shall be licensed by the Tribal Gaming Agency prior to the sale, lease, or distribution, or further sale, lease, or distribution, of any Gaming Resources to or in connection with the Tribe's Gaming Operation or Facility. Unless the Tribal Gaming Agency licenses the Gaming Resource Supplier pursuant to subdivision (d), the Gaming Resource Supplier shall also apply to the

State Gaming Agency for a determination of suitability at least thirty (30) days prior to the sale, lease, or distribution, or further sale, lease, or distribution, of any Gaming Resources to or in connection with the Tribe's Gaming Operation or Facility, except that for Gaming Devices the period specified under section 7.1, subdivision (a)(1) shall govern. The period during which a determination of suitability as a Gaming Resource Supplier is valid expires on the earlier of (i) the date two (2) years following the date on which the determination is issued, unless a different expiration date is specified by the State Gaming Agency, or (ii) the date of its revocation by the State Gaming Agency. If the State Gaming Agency denies or revokes a determination of suitability, the State Gaming Agency shall notify the Tribal Gaming Agency within seven (7) days of taking such action, and the Gaming Resource Supplier shall no longer be authorized to perform any work within or provide any goods or services to, in support of, or in connection with the Tribe's Gaming Operation or Facility thirty (30) days from the date on which the State Gaming Agency's decision takes effect under State law. The license and determination of suitability shall be reviewed at least every two (2) years for continuing compliance. In connection with such a review, the Tribal Gaming Agency shall require the Gaming Resource Supplier to update all information provided in the previous application. For purposes of section 6.5.2, such a review shall be deemed to constitute an application for renewal.

(b) Any agreement between the Tribe and a Gaming Resource Supplier shall be deemed to include a provision for its termination without further liability on the part of the Tribe, except for the bona fide payment of all outstanding sums (exclusive of interest) owed as of, or payment for services or materials received up to, the date of termination, upon revocation or nonrenewal of the Gaming Resource Supplier's license by the Tribal Gaming Agency based on a determination of unsuitability by the State Gaming Agency. Except as set forth above, the Tribe shall not enter into, or continue to make payments to a Gaming Resource Supplier pursuant to, any contract or agreement for the provision of Gaming Resources with any person or entity whose application to the State Gaming Agency for a determination of suitability has been denied or revoked or whose determination of suitability has expired without renewal.

(c) Notwithstanding subdivision (a), the Tribal Gaming Agency may license a Management Contractor for a period of no more than seven (7) years, but the Management Contractor must still apply for renewal of a determination of suitability by the State Gaming Agency at least every two (2) years and where the State Gaming Agency denies or revokes a determination of suitability, the State Gaming Agency shall notify the Tribal Gaming Agency within seven (7) days of taking such action, and the Management Contractor shall no longer be authorized to perform any work within or provide any goods or services to, in support of, or in connection with the Tribe's Gaming Operation thirty (30) days from the date on which the State Gaming Agency's decision takes effect under state law. Except where the State Gaming Agency has determined a Management Contractor to be unsuitable, nothing in this subdivision shall be construed to bar the Tribal Gaming Agency from issuing additional new licenses to the same Management Contractor following the expiration of a seven (7)-year license.

(d) The Tribal Gaming Agency may elect to license a person or entity as a Gaming Resource Supplier without requiring it to apply to the State Gaming Agency for a determination of suitability under subdivision (a) if the Gaming Resource Supplier has already been issued a determination of suitability that is then valid. In that case, and within seven (7) days of the issuance of the license, the Tribal Gaming Agency shall notify the State Gaming Agency of its licensure of the person or entity as a Gaming Resource Supplier, and shall identify in its notification the State Gaming Agency determination of suitability on which the Tribal Gaming Agency has relied in proceeding under this subdivision (d). Subject to the Tribal Gaming Agency's compliance with the requirements of this subdivision, a Gaming Resource Supplier licensed under this subdivision may, during and only during the period in which the determination of suitability remains valid, engage in the sale, lease, or distribution of Gaming Resources to or in connection with the Tribe's Gaming Operation or Facility, without applying to the State Gaming Agency for a determination of suitability. The issuance of a license under this subdivision is in all cases subject to any later determination by the State Gaming Agency that the Gaming Resource Supplier is not suitable or to a tribal gaming license suspension or revocation pursuant to section 6.5.1, and does not extend the time during which the determination of suitability relied on by the Tribal Gaming

Agency is valid. In the event the State Gaming Agency later revokes the determination of suitability relied on by the Tribal Gaming Agency, the State Gaming Agency shall notify the Tribal Gaming Agency of such revocation. Nothing in this subdivision affects the obligations of the Tribal Gaming Agency, or of the Gaming Resource Supplier, under sections 6.5.2 and 6.5.6 of this Compact.

(e) Except where subdivision (d) applies, within twenty-one (21) days of the issuance of a license to a Gaming Resource Supplier, the Tribal Gaming Agency shall provide to the State Gaming Agency summary reports, including any derogatory information, of the background investigations conducted by the Tribal Gaming Agency and written statements by the Applicant.

**Sec. 6.4.5. Financial Sources.**

(a) Subject to subdivision (h) of this section, each Financial Source shall be licensed by the Tribal Gaming Agency prior to the Financial Source extending financing in connection with the Tribe's Gaming Facility or Gaming Operation.

(b) Every Financial Source required to be licensed by the Tribal Gaming Agency shall, contemporaneously with the filing of its tribal license application, apply to the State Gaming Agency for a determination of suitability. In the event the State Gaming Agency denies or revokes the determination of suitability, the Tribal Gaming Agency shall deny or revoke the Financial Source's license within thirty (30) days of receiving notice of denial or revocation from the State Gaming Agency.

(c) A license issued under this section shall be reviewed at least every two (2) years for continuing compliance. In connection with that review, the Tribal Gaming Agency shall require the Financial Source to update all information provided in the Financial Source's previous application. For purposes of this section, that review shall be deemed to constitute an application for renewal.

(d) Any agreement between the Tribe and a Financial Source shall include, and shall be deemed to include, a provision for its termination without further liability on the part of the Tribe, except for the bona

fide repayment of all outstanding sums (exclusive of interest) owed as of the date of termination upon revocation or non-renewal of the Financial Source's license by the Tribal Gaming Agency based on a determination of unsuitability by the State Gaming Agency. The Tribe shall not enter into, or continue to make payments to a Financial Source pursuant to, any contract or agreement for the provision of financing with any person or entity whose application to the State Gaming Agency for a determination of suitability has been denied or whose determination of suitability has been revoked or has expired without renewal.

(e) A Gaming Resource Supplier who provides financing exclusively in connection with the provision, sale, or lease of Gaming Resources obtained from that Gaming Resource Supplier may be licensed solely in accordance with the licensing procedures applicable, if at all, to Gaming Resource Suppliers, and need not be separately licensed as a Financial Source under this section.

(f) The Tribal Gaming Agency may elect to license a person or entity as a Financial Source without requiring it to apply to the State Gaming Agency for a determination of suitability under subdivision (b) if the Financial Source has already been issued a determination of suitability that is then valid. In that case, the Tribal Gaming Agency shall immediately notify the State Gaming Agency of its licensure of the person or entity as a Financial Source, and shall identify in its notification the State Gaming Agency determination of suitability on which the Tribal Gaming Agency has relied in proceeding under this subdivision (f). Subject to the Tribal Gaming Agency's compliance with the requirements of this subdivision, a Financial Source licensed under this subdivision may, during and only during the period in which the determination of suitability remains valid, engage in financing in connection with the Tribe's Gaming Operation or Facility, without applying to the State Gaming Agency for a determination of suitability. The issuance of a license under this subdivision is in all cases subject to any later determination by the State Gaming Agency that the Financial Source is not suitable or to a tribal gaming license suspension or revocation pursuant to section 6.5.1, and does not extend the time during which the determination of suitability relied on by the Tribal Gaming Agency is valid. A license issued under this subdivision expires upon the revocation or

expiration of the determination of suitability relied on by the Tribal Gaming Agency. Nothing in this subdivision affects the obligations of the Tribal Gaming Agency, or of the Financial Source, under section 6.5.2 and section 6.5.6 of this Compact.

(g) Except where subdivision (f) applies, within twenty-one (21) days of the issuance of a license to a Financial Source, the Tribal Gaming Agency shall transmit to the State Gaming Agency a copy of the license and a copy of all tribal license application materials and information received by it from the Applicant that is not otherwise prohibited or restricted from disclosure under applicable federal law or regulation.

(h) (1) The Tribal Gaming Agency may, at its discretion, exclude from the licensing requirements of this section the following Financial Sources under the circumstances stated:

(A) Any federally-regulated or state-regulated bank, savings and loan association, or other federally- or state-regulated lending institution and any fund or other investment vehicle, including, without limitation, a bond indenture or syndicated loan, which is administered or managed by any such entity.

(B) An entity identified by the Commission's Uniform Statewide Tribal Gaming Regulation CGCC-2, subdivision (f) (as in effect on the date the parties execute this Compact), when that entity is a Financial Source solely by reason of being (i) a purchaser or a holder of debt securities or other forms of indebtedness issued directly or indirectly by the Tribe for a Gaming Facility or for the Gaming Operation or (ii) the owner of a participation interest in any amount of indebtedness for which a Financial Source described in subdivision (h)(l)(A), or any fund or other investment vehicle that is administered or managed by any such Financial Source, is the creditor.

(C) Any investor who, alone or together with any person(s) controlling, controlled by or under common control with

such investor, holds less than ten percent (10%) of all outstanding debt securities or other forms of indebtedness issued directly or indirectly by the Tribe for a Gaming Facility or for the Gaming Operation.

(D) Any agency of the federal government, or of a tribal, state or local government providing financing, together with any person purchasing any debt securities or other forms of indebtedness of the agency to provide such financing.

(E) A real estate investment trust (as defined in 26 U.S.C. § 856(a)) that is publicly traded on a stock exchange, registered with the Securities and Exchange Commission, and subject to the regulatory oversight of the Securities and Exchange Commission.

(F) An entity or category of entities that the State Gaming Agency and the Tribal Gaming Agency jointly determine can be excluded from the licensing requirements of this section without posing a threat to the public interest or the integrity of the Gaming Operation.

(2) In any case where the Tribal Gaming Agency elects pursuant to subdivision (h)(1) to exclude a Financial Source from the licensing requirements of this section, the Tribal Gaming Agency shall give thirty (30) days' notice thereof to the State Gaming Agency, and shall give the State Gaming Agency reasonable advance notice of any extension of financing by the Financial Source in connection with the Tribe's Gaming Operation or Facility, and upon request of the State Gaming Agency, shall provide it with sufficient documentation to support the Tribal Gaming Agency's exclusion of the Financial Source from the licensing requirements of this section. If the thirty (30)-day notice period required under this subdivision would have the potential to inhibit the ability of the Tribe to access financing by an excluded Financial Source, the Tribe may request a waiver of this notice period, which the State Gaming Agency shall have the authority to grant.

(3) The Tribal Gaming Agency and the State Gaming Agency shall work collaboratively to resolve any reasonable concerns regarding the initial or ongoing excludability of an individual or entity as a Financial Source. If the State Gaming Agency finds that an investigation of any Financial Source is warranted, the Financial Source shall be required to submit an application for a determination of suitability to the State Gaming Agency and shall pay the costs and charges incurred in the investigation and processing of the application, in accordance with the provisions set forth in California Business and Professions Code sections 19867 and 19951. Any dispute between the Tribal Gaming Agency and the State Gaming Agency pertaining to the excludability of an individual or entity as a Financial Source shall be resolved by the dispute resolution provisions in section 13.0.

(4) The following are not Financial Sources for purposes of this section.

(A) An entity identified by the Commission's Uniform Statewide Tribal Gaming Regulation CGCC-2, subdivision (h) (as in effect on the effective date of this Compact).

(B) A person or entity whose sole connection with a provision or extension of financing to the Tribe is to provide loan brokerage or debt servicing for a Financial Source at no cost to the Tribe or the Gaming Operation, provided that no portion of any financing provided is an extension of credit to the Tribe or the Gaming Operation by that person or entity.

(C) A person or entity that the State Gaming Agency has determined does not require licensure pursuant to any process the State Gaming Agency deems necessary due to the nature of financing services provided, the existence of current and effective federal or state agency oversight or licensure, attenuated interests of the person or entity as passive investors without the ability to exert significant influence over the Gaming Operation, or other grounds

that alleviate the need for licensure that, subject to its responsibilities under state law, the State Gaming Agency determines are appropriate.

(i) In recognition of changing financial circumstances, this section shall be subject to good faith renegotiation by the Tribe and the State, upon the request of either party; provided that the renegotiation shall not retroactively affect transactions that have already taken place where the Financial Source has been excluded or exempted from licensing requirements.

**Sec. 6.4.6. Processing Tribal Gaming License Applications.**

(a) Each Applicant for a tribal gaming license shall submit the completed application along with the required information and an application fee, if required, to the Tribal Gaming Agency in accordance with the rules and regulations of that agency.

(b) At a minimum, the Tribal Gaming Agency shall require submission and consideration of all information required under IGRA, including part 556.4 of title 25 of the Code of Federal Regulations, for licensing primary management officials and key employees.

(c) For Applicants that are business entities, these licensing provisions shall apply to the entity as well as: (i) each of its officers, limited liability company members, and directors; (ii) each of its principal management employees, including any chief executive officer, chief financial officer, chief operating officer, and general manager; (iii) each of its owners or partners, if an unincorporated business; (iv) each of its shareholders who owns more than ten percent (10%) of the shares of the corporation, if a corporation, or who has a direct controlling interest in the Applicant; and (v) each person or entity (other than a Financial Source that the Tribal Gaming Agency has determined does not require a license under section 6.4.5) that, alone or in combination with others, has provided financing in connection with any Gaming Operation or Class III Gaming authorized under this Compact, if that person or entity provided more than ten percent (10%) of either the start-up capital or the operating capital, or of a combination thereof, over a twelve (12)-month period. For purposes of this subdivision, where there is any commonality of the

characteristics identified in this section 6.4.6, subdivision (c)(i) through (v), inclusive, between any two (2) or more entities, those entities may be deemed to be a single entity. For purposes of this subdivision, a direct controlling interest in the Applicant referred to in subdivision (c)(iv) excludes any passive investor or anyone who has an indirect or only a financial interest and does not have the ability to control, manage, or direct the management decisions of the Applicant.

(d) Nothing herein precludes the Tribe or Tribal Gaming Agency from requiring more stringent licensing requirements.

**Sec. 6.4.7. Suitability Standard Regarding Gaming Licenses.**

(a) In reviewing an application for a tribal gaming license, and in addition to any standards set forth in the Gaming Ordinance, the Tribal Gaming Agency shall consider whether issuance of the license is inimical to public health, safety, or welfare, and whether issuance of the license will undermine public trust that the Gaming Operation is free from criminal and dishonest elements and would be conducted honestly.

(b) A license may not be issued unless, based on all information and documents submitted, the Tribal Gaming Agency is satisfied that the Applicant, and in the case of an entity, each individual identified in section 6.4.6, subdivision (c), meets all of the following requirements:

(1) The person is of good character, honesty, and integrity.

(2) The person's prior activities, criminal record (if any), reputation, habits, and associations do not pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the conduct of gaming, or in the carrying on of the business and financial arrangements incidental thereto.

(3) The person is in all other respects qualified to be licensed as provided, and meets the criteria established in this Compact, IGRA, NIGC regulations, the Gaming Ordinance, and any other criteria adopted by the Tribal Gaming Agency or the Tribe;

provided, however, an Applicant shall not be found to be unsuitable solely on the ground that the Applicant was an employee of a tribal gaming operation in California that was conducted prior to May 16, 2000.

**Sec. 6.4.8. Background Investigations of Applicants.**

(a) As set forth in the Tribe's Gaming Ordinance, the Tribal Gaming Agency is responsible for conducting and the Tribe agrees that the Tribal Gaming Agency shall conduct or cause to be conducted all necessary background investigations reasonably required to determine that the Applicant is qualified for a gaming license under the standards set forth in section 6.4.7, and to fulfill all applicable requirements for licensing under IGRA, NIGC regulations, the Gaming Ordinance, and this Compact. The Tribal Gaming Agency may issue a temporary license pursuant to section 6.4.9, until a determination is made that those qualifications have been met, at which time a license may be issued under this provision.

(b) In lieu of obtaining summary criminal history information from the NIGC, the Tribal Gaming Agency may, pursuant to the provisions in subdivisions (b) through (h), obtain such information from the California Department of Justice. If the Tribe adopts an ordinance confirming that article 6 (commencing with section 11140) of chapter 1 of title 1 of part 4 of the California Penal Code is applicable to members, investigators, and staff of the Tribal Gaming Agency, and those members, investigators, and staff thereafter comply with that ordinance, then, for purposes of carrying out its obligations under this section, the Tribal Gaming Agency shall be eligible to be considered an entity entitled to request and receive state summary criminal history information, within the meaning of subdivision (b)(13) of section 11105 of the California Penal Code.

(c) The information received shall be used by the Tribal Gaming Agency solely for the purpose for which it was requested and shall not be reproduced for secondary dissemination to any other employment or licensing agency. Additionally, any person intentionally disclosing information obtained from personal or confidential records maintained by a state agency or from records within a system of records maintained by a government agency may be subject to prosecution.

(d) For purposes of subdivision (b), the Tribal Gaming Agency shall submit to the California Department of Justice fingerprint images and related information required by the California Department of Justice of all Applicants for the purposes of obtaining information as to the existence and content of a record of state or federal convictions and state or federal arrests and also information as to the existence and content of a record of state or federal arrests for which the California Department of Justice establishes that the person is free on bail or on his or her recognizance pending trial or appeal.

(e) When received, the California Department of Justice shall forward to the Federal Bureau of Investigation requests for federal summary criminal history information received pursuant to this section. The California Department of Justice shall review the information returned from the Federal Bureau of Investigation and compile and disseminate a response to the Tribal Gaming Agency.

(f) The California Department of Justice shall provide a state or federal level response to the Tribal Gaming Agency pursuant to California Penal Code section 11105, subdivision (p)(1).

(g) For persons described in subdivision (d), the Tribal Gaming Agency shall request from the California Department of Justice subsequent notification service, as provided pursuant to section 11105.2 of the California Penal Code.

(h) The California Department of Justice shall charge a fee sufficient to cover the cost of processing the request described in this section.

**Sec. 6.4.9. Temporary Licensing.**

(a) If the Applicant has completed a license application in a manner satisfactory to the Tribal Gaming Agency, and that agency has conducted a preliminary background investigation, and the investigation or other information held by that agency does not indicate that the Applicant has a criminal history or other information in his or her background that would either automatically disqualify the Applicant from obtaining a tribal gaming license or cause a reasonable person to investigate further before issuing a license, or that the

Applicant is otherwise unsuitable for licensing, the Tribal Gaming Agency may issue a temporary tribal gaming license and may impose such specific conditions thereon pending completion of the Applicant's background investigation, as the Tribal Gaming Agency in its sole discretion shall determine.

(b) Special fees may be required by the Tribal Gaming Agency to issue or maintain a temporary tribal gaming license.

(c) A temporary tribal gaming license shall remain in effect until suspended or revoked, or a final determination is made on the application by the Tribal Gaming Agency, or for a period of up to one (1) year, whichever comes first.

(d) At any time after issuance of a temporary tribal gaming license, the Tribal Gaming Agency shall or may, as the case may be, suspend or revoke it in accordance with the provisions of sections 6.5.1 or 6.5.5, and the State Gaming Agency may request suspension or revocation before making a determination of unsuitability.

(e) Nothing herein shall be construed to relieve the Tribe of any obligation under part 558 of title 25 of the Code of Federal Regulations.

**Sec. 6.5. Tribal Gaming License Issuance.**

Upon completion of the necessary background investigation, the Tribal Gaming Agency may issue a tribal gaming license on a conditional or unconditional basis. Nothing herein shall create a property or other right of an Applicant in an opportunity to be licensed, or in a tribal gaming license itself, both of which shall be considered to be privileges granted to the Applicant in the sole discretion of the Tribal Gaming Agency.

**Sec. 6.5.1. Denial, Suspension, or Revocation of Licenses.**

(a) Any Applicant's application for a tribal gaming license may be denied, and any license issued may be revoked, if the Tribal Gaming Agency determines that the application is incomplete or deficient, or if the Applicant is determined to be unsuitable or otherwise unqualified for a tribal gaming license.

(b) Pending consideration of revocation, the Tribal Gaming Agency may suspend a tribal gaming license in accordance with section 6.5.5.

(c) All rights to notice and hearing shall be governed by tribal law. The Applicant shall be notified in writing of any hearing and given notice of any intent to suspend or revoke the tribal gaming license.

(d) Except as provided in subdivision (e), upon receipt of notice that the State Gaming Agency has determined that a person would be unsuitable for licensure in a gambling establishment subject to the jurisdiction of the State Gaming Agency, the Tribal Gaming Agency shall deny that person a tribal gaming license and promptly, and in no event more than sixty (60) days from the State Gaming Agency notification, revoke any tribal gaming license that has theretofore been issued to that person; provided that the Tribal Gaming Agency may, in its discretion, reissue a tribal gaming license to the person following entry of a final judgment reversing the determination of the State Gaming Agency in a proceeding between the Applicant and the State Gaming Agency in state court conducted pursuant to section 1085 or 1094.5 of the California Code of Civil Procedure, as provided by the California Gambling Control Act.

(e) Notwithstanding a determination of unsuitability by the State Gaming Agency, the Tribal Gaming Agency may, in its discretion, decline to revoke a tribal gaming license issued to a person employed by the Tribe pursuant to section 6.4.3, subdivision (e) or (f).

**Sec. 6.5.2. Renewal of Licenses; Extensions; Further Investigation.**

(a) Except as provided in section 6.4.4, subdivision (c), the term of a tribal gaming license shall not exceed two (2) years, and application for renewal of a license must be made prior to its expiration. Applicants for renewal of a tribal gaming license shall provide updated material, as requested, on the appropriate renewal forms, but, at the discretion of the Tribal Gaming Agency, may not be required to resubmit historical data previously submitted or that is otherwise available to the Tribal Gaming Agency. At the discretion of the Tribal Gaming Agency, an additional background investigation may be required at any time if the Tribal Gaming Agency determines the

need for further information concerning the Applicant's continuing suitability or eligibility for a license.

(b) Prior to renewing a tribal gaming license for an Applicant for a position identified on the Compact Key Employee Position List, a Gaming Resource Supplier, or a Financial Source, the Tribal Gaming Agency will provide the State Gaming Agency copies of all information and documents received in connection with the application for renewal of the tribal gaming license that is not otherwise prohibited or restricted from disclosure under applicable federal law or regulation, including the Criminal Justice Information Standards, for purposes of the State Gaming Agency's review of such Applicants.

(c) For those Applicants for a position identified on the Compact Key Employee Position List who are currently employed by the Tribe pursuant to section 6.4.3, subdivision (e) or (f), after the State Gaming Agency receives the information required by subdivision (b) and informs the Tribal Gaming Agency that the employee still meets the requirements of section 6.4.3, subdivision (e) or (f), the Applicant shall not be subject to the State Gaming Agency's consideration of renewal of its determination of suitability.

**Sec. 6.5.3. Identification Cards.**

(a) The Tribal Gaming Agency requires, and the Tribe agrees that the Tribal Gaming Agency will continue to require, that all persons who are required to be licensed wear, in plain view at all times while in the Gaming Facility, identification badges issued by the Tribal Gaming Agency. The Tribal Gaming Agency may allow temporary exceptions to this provision for the purposes of authorizing investigators who are actively investigating a matter within the Gaming Facility to monitor Gaming Activities.

(b) Identification badges must display information, including, but not limited to, a photograph and an identification number that is adequate to enable agents of the Tribal Gaming Agency to readily identify the person and determine the validity and date of expiration of his or her license.

(c) The Tribe shall upon request provide the State Gaming Agency with the name, badge identification number, and job title of all Gaming Employees.

**Sec. 6.5.4. Fees for Tribal Gaming License.**

The fees for all tribal gaming licenses shall be set by the Tribal Gaming Agency.

**Sec. 6.5.5. Summary Suspension of Tribal Gaming License.**

The Tribal Gaming Agency may summarily suspend the tribal gaming license of any licensee if the Tribal Gaming Agency determines that the continued licensing of the person could constitute a threat to the public health or safety or may violate the Tribal Gaming Agency's licensing or other standards. The Tribal Gaming Agency agrees to notify the State Gaming Agency within seven (7) days of any such determination. Any right to notice or hearing in regard thereto shall be governed by tribal law.

**Sec. 6.5.6. State Determination of Suitability Process.**

(a) The Tribe agrees that the State has its own interests in ensuring that certain Applicants be found suitable. For those Applicants as to whom or which a determination of suitability is required, the Tribe agrees to direct the Tribal Gaming Agency to transmit to the State Gaming Agency the Applicant's completed license application within sixty (60) days of the Tribal Gaming Agency's finding of suitability. The Tribal Gaming Agency will provide the State Gaming Agency with a notice of intent to license the Applicant, together with all of the following:

(1) A copy of all tribal license application materials and information received by the Tribal Gaming Agency from the Applicant that is not otherwise prohibited or restricted from disclosure under applicable federal law or regulation;

(2) An original, complete set of fingerprint impressions, rolled by a California state-certified fingerprint roller or by a person exempt from state certification pursuant to California Penal

Code section 11102.1, subdivision (a)(2), and which may be on a fingerprint card or obtained and transmitted electronically;

(3) A current photograph; and

(4) Except to the extent waived by the State Gaming Agency, such releases of information, waivers, and other completed and executed forms as have been obtained by the Tribal Gaming Agency.

(b) Upon receipt of a written request from a Gaming Resource Supplier or a Financial Source for a determination of suitability, the State Gaming Agency shall transmit an application package to the Applicant to be completed and returned to the State Gaming Agency for purposes of allowing it to make a determination of suitability for licensure.

(c) Investigation and disposition of applications for a determination of suitability by the State Gaming Agency shall be governed entirely by California state law, and the State Gaming Agency shall determine whether the Applicant would be found suitable for licensure in a gambling establishment subject to the State Gaming Agency's jurisdiction. Additional information may be required from the Applicant by the State Gaming Agency to assist it in its background investigation, to the extent permitted under state law for licensure in a gambling establishment subject to the State Gaming Agency's jurisdiction.

(d) The Tribal Gaming Agency shall require a licensee to apply for renewal of a determination of suitability by the State Gaming Agency at such time as the licensee applies for renewal of a tribal gaming license.

(e) Upon receipt of completed license or license renewal application information from the Applicant or the Tribal Gaming Agency, the State Gaming Agency may conduct a background investigation pursuant to state law to determine whether the Applicant is suitable to be licensed. The Tribal Gaming Agency agrees to provide to the State Gaming Agency summary reports, including any derogatory information, of the background investigations conducted by the Tribal Gaming Agency, written statements by the Applicant and any related

applications. While the Tribal Gaming Agency shall ordinarily be the primary source of application information, the State Gaming Agency is authorized to directly seek application information from the Applicant. If further investigation is required to supplement the investigation conducted by the Tribal Gaming Agency, and the Applicant is a Gaming Resource Supplier or a Financial Source, the Applicant will be required to pay the application fee charged by the State Gaming Agency pursuant to California Business and Professions Code section 19951, subdivision (a), but any deposit requested by the State Gaming Agency pursuant to section 19867 of that code shall take into account reports of the background investigation already conducted by the Tribal Gaming Agency and the NIGC, if any. Failure to provide information reasonably required by the State Gaming Agency to complete its investigation under California law or failure to pay the application fee or deposit can constitute grounds for denial of the application by the State Gaming Agency. The State Gaming Agency and Tribal Gaming Agency shall cooperate in sharing as much background information as possible, both to maximize investigative efficiency and thoroughness, and to minimize investigative costs.

(f) Upon completion of the necessary background investigation or other verification of suitability, the State Gaming Agency shall issue a notice to the Tribal Gaming Agency certifying that the State has determined that the Applicant is suitable, or that the Applicant is unsuitable, for licensure and, if unsuitable, stating the reasons therefore. Issuance of a determination of suitability does not preclude the State Gaming Agency from a subsequent determination based on newly discovered information that a person or entity is unsuitable for the purpose for which the person or entity is licensed.

(g) Prior to denying an application for a determination of suitability, or to issuing notice to the Tribal Gaming Agency that a person or entity previously determined to be suitable has been determined unsuitable for licensure, the State Gaming Agency shall notify the Tribal Gaming Agency and afford the Tribe an opportunity to be heard before any decision is made. If the State Gaming Agency denies an application for a determination of suitability, or issues notice that a person or entity previously determined suitable has been determined unsuitable

for licensure, the State Gaming Agency shall provide that person or entity with written notice of all appeal rights available under state law.

(h) Upon receipt of notice that the State Gaming Agency has determined that a person or entity is or would be unsuitable for licensure, except as provided in section 6.4.3, subdivisions (e) and (f), the Tribal Gaming Agency shall deny that person or entity a license, or immediately suspend or revoke that person's or entity's license, as provided in section 6.5.1. Any right to notice or hearing in regard thereto shall be governed by tribal law. Thereafter, the Tribal Gaming Agency shall revoke any tribal gaming license that has theretofore been issued to that person. The Tribal Gaming Agency may, in its discretion, reissue a tribal gaming license to the person or entity following entry of a final judgment reversing the determination of the State Gaming Agency in a proceeding in state court between the Applicant and the State Gaming Agency conducted pursuant to section 1085 or 1094.5 of the California Code of Civil Procedure, as provided by the California Gambling Control Act.

(i) The Commission, or its successor, shall maintain a roster of Gaming Resource Suppliers and Financial Sources that it has determined to be suitable pursuant to the provisions of this section, or through separate procedures to be adopted by the Commission. Upon application to the Tribal Gaming Agency for a tribal gaming license, a Gaming Resource Supplier that appears on the Commission's suitability roster may be licensed by the Tribal Gaming Agency under section 6.4.4, subdivision (d), and a Financial Source that appears on the Commission's suitability roster may be licensed by the Tribal Gaming Agency under section 6.4.5, subdivision (f), subject to any later determination by the State Gaming Agency that the Gaming Resource Supplier or Financial Source is not suitable or to a tribal gaming license suspension or revocation pursuant to sections 6.5.1 or 6.5.5; provided that nothing in this subdivision exempts the Gaming Resource Supplier or Financial Source from applying for a renewal of a State Gaming Agency determination of suitability.

**Sec. 6.6. Submission of New Application.**

Nothing in section 6.0 shall be construed to preclude an Applicant who has been determined to be unsuitable for licensure by the State Gaming Agency, or the

Tribe on behalf of such Applicant, from later submitting a new application for a determination of suitability by the State Gaming Agency in accordance with section 6.0, provided that the Applicant may not commence duties or activities until found suitable by the State Gaming Agency.

## SECTION 7.0. APPROVAL AND TESTING OF GAMING DEVICES.

### Sec 7.1. Gaming Device Approval.

(a) No Gaming Device may be offered for play unless all of the following occurs:

(1) The manufacturer or distributor that sells, leases, or distributes such Gaming Device (i) has applied for a determination of suitability by the State Gaming Agency at least fifteen (15) days before it is offered for play, (ii) has not been found to be unsuitable by the State Gaming Agency, and (iii) has been licensed by the Tribal Gaming Agency;

(2) The software for each game authorized for play on the Gaming Device has been tested, approved and certified by an independent gaming test laboratory or state or national governmental gaming test laboratory (Gaming Test Laboratory) as operating in accordance with technical standards that meet or exceed industry standards;

(3) A copy of the certification by the Gaming Test Laboratory, specified in subdivision (a)(2), is provided to the State Gaming Agency by electronic transmission or by mail, unless the State Gaming Agency waives receipt of copies of the certification;

(4) The software for the games authorized for play on the Gaming Device is tested by the Tribal Gaming Agency to ensure each game authorized for play on the Gaming Device has the correct electronic signature prior to insertion into the Gaming Device, or if the software is to be installed on a server to which one (1) or more Gaming Devices will be connected, prior to the connection of any Gaming Devices to the server;

(5) The hardware and associated equipment for each type of Gaming Device has been tested by the Gaming Test Laboratory prior to operation by the public to ensure operation in accordance with the standards established by the Tribal Gaming Agency that meet or exceed industry standards; and

(6) The hardware and associated equipment for the Gaming Device has been tested by the Tribal Gaming Agency to confirm operation in accordance with the manufacturer's specifications.

(b) If either the Tribal Gaming Agency or the State Gaming Agency requests new standards for testing, approval, and certification of the software for the game authorized for play on the Gaming Device pursuant to subdivision (a)(2), the party requesting the new standards shall provide the other party with a detailed explanation of the reason(s) for the request. If the party to which the request is made disagrees with the request, the State Gaming Agency and the Tribal Gaming Agency shall meet and confer in a good-faith effort to resolve the disagreement, which meeting and conferring shall include consultation with an independent Gaming Test Laboratory. If the disagreement is not resolved within one hundred twenty (120) days after the initial meeting between the regulators to discuss the matter, either the Tribe or the State may submit the matter to dispute resolution under section 13.0 of this Compact.

**Sec. 7.2. Gaming Test Laboratory Selection.**

(a) The Gaming Test Laboratory shall be an independent commercial gaming test laboratory that is (i) recognized in the gaming industry as competent and qualified to conduct scientific tests and evaluations of Gaming Devices, and (ii) licensed or approved by any state or tribal government within the jurisdiction of which the operation of Gaming Devices is authorized. At least thirty (30) days before the commencement of Gaming Activities pursuant to this Compact, or if such use follows the commencement of Gaming Activities, at least fifteen (15) days prior to reliance thereon, the Tribal Gaming Agency shall submit to the State Gaming Agency documentation that demonstrates the Gaming Test Laboratory satisfies (i) and (ii) herein. If, at any time, the Gaming Test Laboratory license and/or approval required by (ii) is suspended or revoked by any of those jurisdictions

or the Gaming Test Laboratory is found unsuitable by the State Gaming Agency, then the State Gaming Agency may reject the use of that Gaming Test Laboratory, and upon such rejection, the Tribal Gaming Agency shall ensure that the Gaming Test Laboratory discontinues its responsibilities under this section. Any such suspension, revocation, or determination of unsuitability shall not affect the Tribe's right to continue operating Gaming Devices that had been tested and evaluated by that Gaming Test Laboratory, but Gaming Devices tested, evaluated and approved by that Gaming Test Laboratory shall be re-tested, re-evaluated and re-approved by a substitute Gaming Test Laboratory within sixty (60) days from the date on which the Tribal Gaming Agency is notified of the suspension, revocation, or determination of unsuitability, or if circumstances require, any other reasonable timeframe as may be mutually agreed to by the Tribal Gaming Agency and the State Gaming Agency.

(b) The Tribe and the State Gaming Agency shall inform the Gaming Test Laboratory in writing that, irrespective of the source of payment of its fees, the Gaming Test Laboratory's duty of loyalty runs equally to the State and the Tribe; provided, that if the State Gaming Agency requests that the Gaming Test Laboratory perform additional work, the State Gaming Agency shall be solely responsible for the cost of such additional work.

**Sec. 7.3. Maintenance of Records of Testing Compliance.**

The Tribal Gaming Agency agrees to prepare and maintain records of its compliance with section 7.1 while any Gaming Device is on the gaming floor and for a period of one (1) year after the Gaming Device is removed from the gaming floor, and make those records available for inspection by the State Gaming Agency upon request.

**Sec. 7.4. State Gaming Agency Inspections.**

(a) The State Gaming Agency may inspect the Gaming Devices in operation at a Gaming Facility on a random basis not to exceed four (4) times annually to confirm that they operate and play properly pursuant to applicable technical standards. The inspections may be conducted onsite or remotely as a desk audit and include all Gaming

Device software, hardware, associated equipment, software maintenance records, and components critical to the operation of the Gaming Device. The State Gaming Agency shall make a good-faith effort to work with the Tribal Gaming Agency to minimize unnecessary disruption to the Gaming Operation including, where appropriate, performing desk audits rather than onsite physical inspections.

(b) The Tribal Gaming Agency shall cooperate with the State Gaming Agency's reasonable efforts to obtain information that facilitates the conduct of remote but effective inspections that minimize disruption to Gaming Activities. If the State Gaming Agency determines that more than two (2) annual onsite inspections are necessary or appropriate, it will provide the Tribal Gaming Agency with the basis for its determination that additional onsite inspections are justified, as set forth above. If the State Gaming Agency requires more than two (2) annual onsite inspections in successive years, the State and Tribe may meet and confer to discuss the basis for such determinations. During each random inspection, the State Gaming Agency may not remove a Gaming Device from play, except during inspection or testing, unless it obtains the concurrence of the Tribal Gaming Agency, which shall not be unreasonably withheld.

(c) Whenever practicable, the State Gaming Agency shall not require removal from play any Gaming Device that the State Gaming Agency determines may be fully and adequately tested while still in play. The inspections may include all Gaming Device software, hardware, associated equipment, software and hardware maintenance and testing records, and components critical to the operation of the Gaming Device. The random inspections conducted pursuant to this section shall occur during normal business hours outside of weekends and holidays and shall not remove from play more than five percent (5%) of the Gaming Devices then in operation at the Gaming Facility, provided that the five percent (5%) limitation on removal of Gaming Devices shall not apply where a Gaming Device, including but not limited to a progressive controller, makes limiting removal from play to no more than five percent (5%) infeasible or impossible.

(d) To minimize unnecessary disruption to the Gaming Operation, rather than conducting on-site inspections, the State Gaming Agency may

perform desk audits of the Tribe's Gaming Devices currently in operation. Upon receipt of notice from the State Gaming Agency of the intent to conduct a desk audit, the Tribal Gaming Agency shall provide the State Gaming Agency with a list of all of the Tribe's Gaming Devices currently in operation, together with the information for each such Gaming Device that supports a desk audit. This information shall include, but is not limited to, the following:

(1) Manufacturer;

(2) Game name or theme;

(3) Serial number;

(4) Machine or asset number;

(5) Manufacturer;

(6) Location;

(7) Denomination;

(8) Slot type (e.g., video, reel);

(9) Progressive type (e.g., stand alone, linked, wide area progressive);

(10) Software ID number for all certified software in the Gaming Device, including game, base or system, boot chips and communication chip; and

(11) Any other information deemed relevant and appropriate by the State Gaming Agency and the Tribal Gaming Agency.

(e) The State Gaming Agency shall provide notice to the Tribal Gaming Agency of its intent to conduct any on-site Gaming Device inspection with prior notice sufficient to afford the presence of proper staffing and, where applicable, manufacturer's representatives, to ensure the overall efficiency of the inspection process. The inspection shall not be unreasonably delayed and must take place within thirty (30) days

of notification unless the Tribal Gaming Agency and State Gaming Agency agree otherwise.

(f) The State Gaming Agency may retain and use qualified consultants to perform the functions authorized or specified herein but any such consultants shall be bound by the confidentiality and information use and disclosure provisions applicable to the State Gaming Agency and its employees. The State Gaming Agency shall ensure that any consultants retained by it have met the standards and requirements, including any background investigations, established by applicable regulations governing contract employees prior to participating in any matter under this Compact. The State Gaming Agency shall also take all reasonable steps to ensure that consultants are free from conflicting interests in the conduct of their duties under this Compact. The Tribal Gaming Agency, in its sole discretion, may require a member or staff of the Tribal Gaming Agency or a representative of the State Gaming Agency to accompany any consultant at all times that the consultant is in a non-public area of the Gaming Facility. Before an inspection commences, the State Gaming Agency inspectors shall present their state identification to the Tribal Gaming Agency upon request and any consultant that may have been engaged by the State Gaming Agency for inspections shall be accompanied by a State Gaming Agency employee with state identification.

(g) The State Gaming Agency promptly shall consult with the Tribal Gaming Agency concerning any material discrepancies noted and whether those discrepancies continue to exist.

**Sec. 7.5. Technical Standards.**

The Tribal Gaming Agency shall provide to the State Gaming Agency copies of its regulations for technical standards applicable to the Tribe's Gaming Devices at least thirty (30) days before the commencement of Gaming Activities or within thirty (30) days after the effective date of this Compact, whichever is later, and thereafter at least thirty (30) days before the effective date of any revisions to the regulations, unless exigent circumstances require that any revisions to the regulations take effect sooner to ensure game integrity or otherwise to protect the public or the Gaming Operation, in which event the revisions to the regulations shall be provided to the State Gaming Agency as soon as reasonably practicable.

**Sec. 7.6. Transportation of Gaming Devices.**

(a) Subject to the provisions of subdivision (b), the Tribal Gaming Agency shall not permit any Gaming Device to be transported to or from the Tribe's Indian lands except in accordance with procedures established by agreement between the State Gaming Agency and the Tribal Gaming Agency and upon at least ten (10) days' notice to the Sheriff's Department for the County.

(b) Transportation of a Gaming Device from a Gaming Facility within California is permissible only if:

(1) The final destination of the Gaming Device is a gaming facility of any tribe in California that has a Class III Gaming compact with the State or Secretarial Procedures that makes lawful the operation of Gaming Devices;

(2) The final destination of the Gaming Device is any other state in which possession of the Gaming Device is made lawful by that state's law, tribal-state compact, or Secretarial Procedures;

(3) The final destination of the Gaming Device is another country, or any state or province of another country, wherein possession of Gaming Devices is lawful; or

(4) The final destination is a location within California for testing, repair, maintenance, or storage by a person or entity that has been licensed by the Tribal Gaming Agency and has been found suitable for licensure by the State Gaming Agency.

(c) Any Gaming Device transported from or to the Tribe's Indian lands in violation of this section 7.6 or in violation of any permit issued pursuant thereto, is subject to summary seizure by California peace officers in accordance with California law.

## SECTION 8.0. INSPECTIONS.

### Sec. 8.1. On-Site Regulation.

This Compact reflects the previous relationship between the Tribe and the State pursuant to the 1999 Compact. It recognizes and respects the primary role of the Tribal Gaming Agency to perform on-site regulation and to protect the integrity of the Gaming Activities, the reputation of the Tribe and the Gaming Operation for honesty and fairness, and to maintain the confidence of patrons that tribal governmental gaming in California meets the highest standards of regulation and internal controls. This Compact also acknowledges and affords the State with the authority and responsibility to ensure that the Tribe complies with all of the terms of this Compact and that gaming is conducted with integrity and in a manner that protects the health, safety and other interests of the people of California.

### Sec. 8.1.1. Investigation and Sanctions.

(a) The Tribal Gaming Agency shall investigate any reported violation of this Compact and shall require the Gaming Operation to correct the violation upon such terms and conditions as the Tribal Gaming Agency determines are necessary.

(b) The Tribal Gaming Agency shall be empowered by the Gaming Ordinance to impose fines or other sanctions within the jurisdiction of the Tribe against tribal gaming licensees who interfere with or violate the Tribe's gaming regulatory requirements and obligations under IGRA, the Gaming Ordinance, or this Compact. Any right to notice or hearing in regard thereto shall be governed by tribal law. Nothing in this Compact expands, modifies, or impairs the jurisdiction of the Tribal Gaming Agency under IGRA, the Tribal Gaming Ordinance or other applicable tribal law.

(c) The Tribal Gaming Agency shall report individual or continuing violations of this Compact that pose a significant threat to gaming integrity or public health and safety, and any failures to comply with the Tribal Gaming Agency's orders, to the State Gaming Agency within ten (10) days of discovery.

**Sec. 8.2. Assistance by State Gaming Agency.**

The Tribe may request the assistance of the State Gaming Agency whenever it reasonably appears that such assistance may be necessary to carry out the purposes described in section 8.1.1, or otherwise to protect public health, safety, or welfare.

**Sec. 8.3. Access to Premises by State Gaming Agency; Notification; Inspections.**

(a) Notwithstanding that the Tribe and its Tribal Gaming Agency have the primary responsibility to administer and enforce the regulatory requirements of this Compact, the State Gaming Agency, including any consultant retained by it, shall have the right to inspect the Tribe's Gaming Facility, and all Gaming Operation or Gaming Facility records relating thereto as is reasonably necessary to ensure Compact compliance, including with adequate notice such records located in off-site facilities dedicated to their storage, subject to the conditions in subdivisions (b), (c), and (d). If the Tribe objects to the State's determination of the areas included within any inspection, the matter shall be resolved in accordance with the dispute resolution provisions of section 13.0. The State Gaming Agency shall ensure that any consultants retained by it have met the standards and requirements, including any background investigations, established by applicable regulations governing contract employees prior to participating in any matter under this Compact. The State Gaming Agency shall also take all reasonable steps to ensure that consultants are free from conflicting interests in the conduct of their duties under this Compact and shall provide the Tribal Gaming Agency with prior notice of the use of any consultant. The Tribal Gaming Agency, in its sole discretion, may require a member or staff of the Tribal Gaming Agency or a representative of the State Gaming Agency to accompany any consultant at all times that the consultant is in a non-public area of the Gaming Facility.

(b) Except as provided in section 7.4, the State Gaming Agency may inspect public areas of the Gaming Facility at any time without prior notice during normal Gaming Facility business hours.

(c) Inspection of areas of the Gaming Facility not normally accessible to the public may be made at any time during the normal administrative hours of the Tribal Gaming Agency, immediately after the State Gaming Agency's authorized inspector notifies the Tribal Gaming Agency of his or her presence on the premises, presents proper identification, and requests access to the non-public areas of the Gaming Facility. Inspection of areas of the Gaming Facility not normally accessible to the public may be made at any time outside the normal administrative hours of the Tribal Gaming Agency with fourteen (14) days' notice to the Tribal Gaming Agency, except that fourteen (14) days' notice is not required upon the existence of exigent circumstances that the State Gaming Agency reasonably determines may be a threat to gaming integrity or public safety. The Tribal Gaming Agency, in its sole discretion, may require a member or staff of the Tribal Gaming Agency to accompany the State Gaming Agency inspector at all times that the State Gaming Agency inspector is in a non-public area of the Gaming Facility. If the Tribal Gaming Agency imposes such a requirement, it shall require such member or staff to be available at appropriate times for those purposes and shall ensure that the member or staff has the ability to gain immediate access to all non-public areas of the Gaming Facility.

(d) Nothing in this Compact shall be construed to limit the State Gaming Agency to one (1) inspector during inspections.

**Sec. 8.4. Inspection, Copying and Confidentiality of Documents.**

(a) Inspection and copying of Gaming Operation papers, books, and records may occur at any time after the State Gaming Agency gives notice to the Tribal Gaming Agency during the normal administrative hours of the Tribal Gaming Agency, provided that the State Gaming Agency inspectors cannot require copies of papers, books, or records in such manner or volume that it unreasonably interferes with the normal functioning of the Gaming Operation or Gaming Facility, or with the operation of the Tribal Gaming Agency.

(b) In lieu of onsite inspection and copying of Gaming Operation papers, books, and records by its inspectors, the State Gaming Agency may request in writing that the Tribal Gaming Agency provide copies of such papers, books, and records as the State Gaming Agency deems

necessary to ensure compliance with the terms of this Compact. The State Gaming Agency's written request shall describe those papers, books, and records requested to be copied with sufficient specificity to reasonably identify the requested documents. Within ten (10) days after it receives the request, or such other time as the State Gaming Agency may agree in writing, the Tribal Gaming Agency shall provide one (1) copy of the requested papers, books, and records to the requesting State Gaming Agency. An electronic version of the requested papers, books, and records may be submitted to the State Gaming Agency in lieu of a paper copy so long as the software required to access the electronic version is reasonably available to the State Gaming Agency.

(c) Notwithstanding any other provision of California law, any confidential information and records, as defined in subdivision (d), that the State Gaming Agency obtains or copies pursuant to this Compact shall be, and remain, the property solely of the Tribe; provided that such confidential information and records and copies may be retained by the State Gaming Agency as is reasonably necessary to assure the Tribe's compliance with this Compact. The State Gaming Agency may provide such confidential information and records and copies to federal law enforcement and other state agencies or consultants that the State deems reasonably necessary in order to assure the Tribe's compliance with this Compact; provided that to the extent reasonably feasible, the State Gaming Agency will consult with representatives of the Tribe prior to such disclosure. Upon request, the State Gaming Agency shall provide the Tribal Gaming Agency with a current copy of information regarding its relevant policies regarding confidentiality of information.

(d) For the purposes of this section 8.4, "confidential information and records" means any and all information and records received from the Tribe pursuant to the Compact, except for information and documents that are in the public domain.

(e) The State Gaming Agency and all other state agencies and consultants to which it provides information and records obtained pursuant to subdivisions (a) or (b) of this section, which are confidential pursuant to subdivision (d), will exercise utmost care in the preservation of the confidentiality of such information and records and will apply the

highest standards of confidentiality provided under California state law to preserve such information and records from disclosure until such time as the information or record is no longer confidential or disclosure is authorized by the Tribe, by mutual agreement of the Tribe and the State, or pursuant to the arbitration procedures under section 13.2. The State Gaming Agency and all other state agencies and consultants may disclose confidential information or records as necessary to fully adjudicate or resolve a dispute arising pursuant to the Compact, in which case the State Gaming Agency and all other state agencies and consultants agree to preserve confidentiality to the greatest extent feasible and available. Before the State Gaming Agency provides confidential information and records to a consultant as authorized under subdivision (c), it shall enter into a confidentiality agreement with that consultant that meets the standards of this subdivision.

(f) The Tribe may avail itself of any and all remedies under state law for the improper disclosure of confidential information and records. In the case of any disclosure of confidential information and records compelled by judicial process, the State Gaming Agency will endeavor to give the Tribe prompt notice of the order compelling disclosure and a reasonable opportunity to interpose an objection thereto with the court.

(g) Except as otherwise provided in any regulation approved by the Association, the Tribal Gaming Agency and the State Gaming Agency shall confer and agree regarding protocols for the release to law enforcement agencies of information obtained during the course of background investigations.

(h) Confidential information and records received by the State Gaming Agency from the Tribe in compliance with this Compact, or information compiled by the State Gaming Agency from those confidential records, shall be exempt from disclosure under the California Public Records Act, California Government Code section 6250 et seq.

(i) Notwithstanding any other provision of this Compact, the State Gaming Agency shall not be denied access to papers, books, records, equipment, or places where such access is reasonably necessary to

ensure compliance with this Compact or to conduct or complete an investigation of suspected criminal activity in connection with the Gaming Activities or the operation of the Gaming Facility or the Gaming Operation.

(j) Upon request, the State Gaming Agency shall provide the Tribal Gaming Agency with a current copy of its records retention and destruction policy.

**Sec. 8.5. Cooperation with Tribal Gaming Agency.**

The State Gaming Agency shall meet periodically with the Tribal Gaming Agency and cooperate in all matters relating to the enforcement of the provisions of this Compact.

**Sec. 8.6. Compact Compliance Review.**

The State Gaming Agency is authorized to conduct an annual Compact compliance review (also known as a "site visit") to ensure compliance with all provisions of this Compact and any appendices hereto. The Tribal Gaming Agency will coordinate with the State Gaming Agency to address any irregularity that the State Gaming Agency reasonably determines may be a threat to gaming integrity or public safety. If a disagreement arises between the Tribal Gaming Agency and the State Gaming Agency and the issue is not resolved within one hundred twenty (120) days after the initial meeting between the regulators to discuss the matter, either the Tribe or the State may submit the matter to dispute resolution under section 13.0 of this Compact. Nothing in this section shall be construed to supersede any other audits, inspections, investigations, and monitoring authorized by this Compact.

**Sec. 8.7. Waiver of Materials.**

The State Gaming Agency shall retain the discretion to waive, in whole or in part, receipt of materials otherwise required by this Compact to be provided to the State Gaming Agency by the Tribal Gaming Agency or the Tribe.

## SECTION 9.0. RULES AND REGULATIONS FOR THE OPERATION AND MANAGEMENT OF THE GAMING OPERATION AND FACILITY.

### Sec. 9.1. Adoption of Regulations for Operation and Management; Minimum Standards.

The State recognizes that the Tribe is the primary regulator of its Gaming Operation and that is the responsibility of the Tribal Gaming Agency to conduct on-site gaming regulation and control in order to enforce the terms of this Compact, IGRA, NIGC gaming regulations, State Gaming Agency regulations, and the Gaming Ordinance, to protect the integrity of the Gaming Activities, the reputation of the Tribe and the Gaming Operation for honesty and fairness, and to maintain the confidence of patrons that tribal governmental gaming in California meets the highest standards of fairness and internal controls. To meet those responsibilities, the Tribal Gaming Agency is vested with the authority to promulgate, and shall continue to promulgate and enforce, rules and regulations governing, at a minimum, the following subjects pursuant to the standards and conditions set forth therein:

(a) The enforcement of all relevant laws and rules with respect to the Gaming Activities, Gaming Operation, and Gaming Facility, and the conduct of investigations and hearings with respect thereto, and any other subject within its jurisdiction.

(b) The physical safety of Gaming Operation and Gaming Facility patrons and employees, and any other person while in the Gaming Facility. Except as provided in section 12.2, nothing herein shall be construed, however, to make applicable to the Tribe state laws, regulations, or standards governing the use of tobacco.

(c) The physical safeguarding of assets transported to, within, and from the Gaming Facility.

(d) The prevention of illegal activity within the Gaming Facility or with regard to the Gaming Operation or Gaming Activities, including, but not limited to, the maintenance of employee procedures and a surveillance system as provided in subdivision (e).

(e) Maintenance of a closed-circuit television surveillance system consistent with industry standards for gaming facilities of the type and

scale operated by the Tribe, which system shall be approved by, and may not be modified without the approval of, the Tribal Gaming Agency. The Tribal Gaming Agency shall have current copies of the Gaming Facility floor plan and closed-circuit television surveillance system at all times, and any modifications thereof first shall be approved by the Tribal Gaming Agency.

(f) The establishment of employee procedures designed to permit detection of any irregularities, theft, cheating, fraud, or the like, consistent with industry practice.

(g) Maintenance of a list of persons permanently excluded from the Gaming Facility who, because of their past behavior, criminal history, or association with persons or organizations, pose a threat to the integrity of the Gaming Activities of the Tribe or to the integrity of regulated gambling within California. The Tribal Gaming Agency and the State Gaming Agency shall make a good faith effort to share information regarding such permanent exclusions. Nothing herein is intended to grant any third party the right to sue based upon any sharing of information.

(h) The conduct of an audit of the Gaming Operation, not less than annually, by an independent certified public accountant, in accordance with industry standards.

(i) Submission to, and prior approval by, the Tribal Gaming Agency of the rules and regulations of each Class III Gaming game to be operated by the Tribe, and of any changes in those rules and regulations. No Class III Gaming game may be offered for play that has not received Tribal Gaming Agency approval.

(j) The obligation of the Gaming Facility and the Gaming Operation to maintain a copy of the rules, regulations, and procedures for each game as played, including, but not limited to, the method of play and the odds and method of determining amounts paid to winners.

(k) Specifications and standards to ensure that information regarding the method of play, odds, and payoff determinations is visibly displayed or available to patrons in written form in the Gaming Facility and to

ensure that betting limits applicable to any gaming station are displayed at that gaming station.

(l) Maintenance of a cashier's cage in accordance with tribal internal control standards that meet or exceed industry standards for such facilities.

(m) Specification of minimum staff and supervisory requirements for each Gaming Activity to be conducted.

(n) Technical standards and specifications in conformity with the requirements of this Compact for the operation of Gaming Devices and other games authorized herein or as provided in any regulation approved by the Association.

**Sec. 9.2. Manner in Which Incidents Are Reported.**

The Tribe agrees that the Tribal Gaming Agency shall require the recording of any and all occurrences within the Gaming Facility that deviate from normal operating policies and procedures (hereinafter "incident(s)"). The Tribe agrees that the Tribal Gaming Agency shall transmit copies of incident reports that it reasonably believes concern a significant or continued threat to public safety or gaming integrity to the State Gaming Agency within a reasonable period of time, not to exceed seven (7) days, after the incident. The procedure for recording incidents pursuant to this section shall also do all of the following:

(a) Specify that security personnel record all incidents, regardless of an employee's determination that the incident may be immaterial (and all incidents shall be identified in writing).

(b) Require the assignment of a sequential number to each incident report.

(c) Provide for permanent reporting in indelible ink in a bound notebook from which pages cannot be removed and in which entries are made on each side of each page and/or in electronic form, provided the information is recorded in a manner so that, once the information is entered, it cannot be deleted or altered and is available to the State Gaming Agency pursuant to sections 8.3 and 8.4.

(d) Require that each report include, at a minimum, all of the following:

(1) The record number.

(2) The date.

(3) The time.

(4) The location of the incident.

(5) A detailed description of the incident.

(6) The persons involved in the incident.

(7) The security department employee assigned to the incident.

**Sec. 9.3. Minimum Internal Control Standards (MICS).**

(a) The Tribe agrees that it will conduct its Gaming Activities pursuant to an internal control system that implements minimum internal control standards for Class III Gaming that are no less stringent than those contained in (i) the Minimum Internal Control Standards of the NIGC (25 C.F.R. § 542), as they existed on October 20, 2006, and as they have been or may be amended from time to time, without regard to the NIGC's authority to promulgate, enforce, or audit the standards, or (ii) any subsequent NIGC regulation or NIGC guidance that is at least as stringent as the Minimum Internal Control Standards of the NIGC, including the August 14, 2018 NIGC Guidance on the Class III Minimum Internal Control Standards. These standards are posted on the State Gaming Agency website(s) and are referred to herein as the "Compact MICS." This requirement is met through compliance with the provisions set forth in this section and sections 9.1 and 9.2 of this Compact, or in the alternative, by compliance with the Commission's Uniform Statewide Tribal Gaming Regulation CGCC-8, as it exists currently and as it may hereafter be amended.

(b) In the event the Commission's Uniform Statewide Tribal Gaming Regulation CGCC-8 is rescinded or otherwise ceases to exist, or if the NIGC withdraws its regulations at 25 C.F.R. § 542, the Compact MICS, as they may be amended from time to time, shall continue to serve as the minimum internal control standards for the purposes of

this Compact. Any change, modification, or amendment thereto shall be effected by action of the Association.

(c) The minimum internal control standards set forth in the Compact MICS shall apply to all Gaming Activities, Gaming Facilities, and the Gaming Operation; however, the Compact MICS are not applicable to any class II gaming activities. Should the terms in the Compact MICS be inconsistent with this Compact, the terms in this Compact shall prevail.

**Sec. 9.4. Program to Mitigate Problem Gambling.**

The Gaming Operation has established and agrees to maintain a program, approved by the Tribal Gaming Agency, to mitigate pathological and problem gambling by implementing the following measures:

(a) Training Gaming Facility supervisors and gaming floor employees on responsible gaming and to identify and manage problem gambling.

(b) Making available to patrons at conspicuous locations and ATMs in the Gaming Facility educational and informational materials that aim at the prevention of problem gambling and that specify where to find assistance, and shall display at conspicuous locations and at ATMs within the Gaming Facility signage bearing a toll-free help-line number where patrons may obtain assistance for gambling problems.

(c) Establishing self-exclusion measures whereby a self-identified problem gambler may request the halt of promotional mailings, the revocation of privileges for casino services, the denial or restraint on the issuance of credit and check cashing services, and exclusion from the Gaming Facility.

(d) Establishing involuntary exclusion measures that allow the Gaming Operation to halt promotional mailings, deny or restrain the issuance of credit and check-cashing services, and deny access to the Gaming Facility to patrons who have exhibited signs of problem gambling. No person involuntarily excluded under such measures shall be entitled to assert any claim whatsoever against the Tribe, the Gaming Operation or any official, employee or agent of the Tribe or the Gaming Operation as the result of such exclusion.

(e) Making diligent efforts to prevent underage individuals from loitering in the area of the Gaming Facility where the Gaming Activities take place.

(f) Assuring that advertising and marketing of the Gaming Facility's Gaming Activities contain a responsible gambling message and a toll-free help-line number for problem gamblers, where practical, and that they make no false or misleading claims.

Any deficiency in the effectiveness of these measures or standards, as opposed to compliance with the program and measures specified above, does not constitute a material breach of this Compact.

Nothing herein is intended to grant any third party the right to sue based upon any alleged deficiency or violation of these measures.

**Sec. 9.5. Enforcement of Regulations.**

The Tribe agrees that the Tribal Gaming Agency shall ensure the enforcement of the rules, regulations, and specifications promulgated under this Compact.

**Sec. 9.6. State Civil and Criminal Jurisdiction.**

Nothing in this Compact expands, modifies or impairs the civil or criminal jurisdiction of the State, local law enforcement agencies and state courts under Public Law 280 (18 U.S.C. § 1162; 28 U.S.C. § 1360) or IGRA. Except as provided below, all state and local law enforcement agencies and state courts shall exercise jurisdiction to enforce the State's criminal laws on the Tribe's Indian lands, including the Gaming Facility and all related structures, in the same manner and to the same extent, and subject to the same restraints and limitations, imposed by the laws of the State and the United States, as is exercised by state and local law enforcement agencies and state courts elsewhere in the state. However, no Gaming Activity conducted by the Tribe pursuant to this Compact may be deemed to be a civil or criminal violation of any law of the state. Except for Gaming Activity conducted pursuant to this Compact, criminal jurisdiction to enforce the State's gambling laws on the Tribe's Indian lands, and to adjudicate alleged violations thereof, is hereby transferred to the State pursuant to 18 U.S.C. § 1166(d).

**Sec. 9.7. Tribal Gaming Agency Members.**

(a) The Tribe is obligated under its own laws and IGRA, and agrees to take reasonable steps, to ensure that members of the Tribal Gaming Agency are free from corruption, undue influence, compromise, and conflicting interests in the conduct of their duties under this Compact; and agrees to adopt a conflict-of-interest code to that end, if not already in place; and shall ensure the prompt removal of any member of the Tribal Gaming Agency who is found to have acted in a corrupt or compromised manner, or is found to have violated the conflict-of-interest code.

(b) The Tribe's Gaming Ordinance and this Compact require and the Tribe agrees that the Tribal Gaming Agency shall conduct a background investigation on each prospective member of the Tribal Gaming Agency; provided that if such member is elected through a tribal election process, that member may not participate in any Tribal Gaming Agency matters under this Compact unless a background investigation has been concluded and the member has been found to be suitable.

(c) The Tribe shall conduct a background investigation on each prospective employee of the Tribal Gaming Agency to ensure that he or she satisfies the requirements of section 6.4.7.

**Sec. 9.8. Uniform Statewide Tribal Gaming Regulations.**

(a) Uniform Statewide Tribal Gaming Regulations CGCC-1, CGCC-2, CGCC-7, and CGCC-8 (as in effect on the date the parties execute this Compact), adopted by the State Gaming Agency and approved by the Association, shall apply to the Gaming Operation until amended or repealed, without further action by the State Gaming Agency, the Tribe, the Tribal Gaming Agency or the Association.

(b) Any subsequent Uniform Statewide Tribal Gaming Regulations adopted by the State Gaming Agency and approved by the Association shall apply to the Gaming Operation until amended or repealed.

(c) No State Gaming Agency regulation adopted pursuant to this section shall be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association and the Tribe has had an opportunity to review and comment on the proposed regulation, except as provided in subdivision (f).

(d) Every State Gaming Agency regulation adopted pursuant to this section that is intended to apply to the Tribe (other than a regulation proposed or previously approved by the Association) shall be submitted to the Association for consideration prior to submission of the regulation to the Tribe for comment as provided in subdivision (c). A regulation adopted pursuant to this section that is disapproved by the Association shall not be submitted to the Tribe for comment unless it is re-adopted by the State Gaming Agency as a proposed regulation, in its original or amended form, with a detailed, written response to the Association's objections.

(e) Except as provided in subdivision (f), no regulation of the State Gaming Agency adopted pursuant to this section shall be adopted as a final regulation with respect to the Tribe's Gaming Operation before the expiration of thirty (30) days after submission of the proposed regulation to the Tribe for comment as a proposed regulation, and after consideration of the Tribe's comments, if any.

(f) In exigent circumstances (e.g., imminent threat to public health and safety), the State Gaming Agency may adopt a regulation that becomes effective immediately. Any such regulation shall be accompanied by a detailed, written description of the exigent circumstances, and shall be submitted immediately to the Association for consideration. If the regulation is disapproved by the Association, it shall cease to be effective, but may be readopted by the State Gaming Agency as a proposed regulation, in its original or amended form, with a detailed, written response to the Association's objections, and thereafter submitted to the Tribe for comment as provided in subdivision (e).

(g) The Tribe may object to a State Gaming Agency regulation adopted pursuant to this section on the ground that it is unnecessary, unduly burdensome, or unfairly discriminatory, and may seek repeal or

amendment of the regulation through the dispute resolution process of section 13.0.

(h) Chapter 3.5 (commencing with section 11340) of part 1 of division 3 of title 2 of the California Government Code does not apply to regulations adopted by the State Gaming Agency pursuant to this section.

## SECTION 10.0. PATRON DISPUTES.

The Tribe shall promulgate, and shall maintain in continuous force, the Middletown Rancheria of Pomo Indians of California Patron Gaming Disputes Ordinance, as set forth in Appendix F to this Compact. Any subsequent revisions to this ordinance shall provide substantially equivalent procedures for the fair and timely resolution of patron disputes and the Gaming Operation shall provide the State Gaming Agency with a copy of any such revised ordinance within thirty (30) days of its adoption. The Tribe hereby agrees to waive its right to assert tribal sovereign immunity with respect to any patron dispute claim initiated by a patron or patron's representative provided such a claim is administered in conformity with tribal law.

## SECTION 11.0. OFF-RESERVATION ENVIRONMENTAL IMPACTS.

### Sec. 11.1. Off-Reservation Environmental Impact Requirement Procedures.

The Tribe shall not commence construction on any Project until the requirements of section 11.0 and any dispute resolution procedures related to the Project initiated pursuant to sections 11.0 or 13.0 are completed.

(a) If the scope of a Project would allow the Tribe to operate no more than a cumulative total of three-hundred forty-nine (349) Gaming Devices and upon the completion of the Project the Tribe will operate no more than a cumulative total of three hundred forty-nine (349) Gaming Devices in all of its Gaming Facilities, the procedures specified in sections 11.3 through 11.5 and, if required under section 11.5, subdivision (g), the Tribal Environmental Impact Document (TEID) procedures of sections 11.6 through 11.10, shall apply to the Project.

(b) If, upon the completion of a Project, the Tribe will operate a cumulative total of three hundred fifty (350) Gaming Devices or more in all its Gaming Facilities, the procedures specified in sections 11.3 through 11.5 and, if required under section 11.5, subdivision (g), the Tribal Environmental Impact Report (TEIR) procedures of sections 11.10 through 11.17 shall apply to the Project.

(c) Nothing herein shall preclude the Tribe from undertaking multiple activities that may constitute Projects.

(d) To the extent any terms in this section 11.0 are not defined in this Compact, they will be interpreted and applied consistent with the policies and purposes of the California Environmental Quality Act, California Public Resources Code section 21000 et seq. (CEQA) and the National Environmental Policy Act of 1969, 42 U.S.C. § 4332 et seq. (NEPA).

**Sec. 11.2. Tribal Environmental Protection Ordinance.**

The Tribe shall adopt an ordinance incorporating the processes and procedures required under section 11.0 (Tribal Environmental Protection Ordinance). In fashioning the Tribal Environmental Protection Ordinance, the Tribe will incorporate the relevant policies and purposes of NEPA and CEQA consistent with legitimate governmental interests of the Tribe and the State, as reflected in section 11.0. No later than one hundred and twenty (120) days before starting the environmental review process required by section 11.0 for a Project, the Tribe will submit its Tribal Environmental Protection Ordinance to the State. If the State identifies aspects of the Tribal Environmental Protection Ordinance that it believes are inconsistent with section 11.0, the matter will be resolved in accordance with the dispute resolution provisions of section 13.0.

**Sec. 11.3. Activity Not a Project.**

The Tribe may determine, acting pursuant to its Tribal Environmental Protection Ordinance, that a proposed activity involving a physical change to the reservation environment, the principle purpose of which is directly related to the activities of the Gaming Operation, is not a Project because it will not cause a Significant Effect on the Off-Reservation Environment, and the Tribe shall notify the State within thirty (30) days of that determination and the basis therefor. The State shall inform the Tribe in writing of any objection to the Tribe's determination that the activity is not a Project and the basis upon which it objects within thirty

(30) days after receipt of adequate information regarding the Tribe's determination. If the Tribe disagrees with the State's determination that the proposed activity is a Project, the Tribe and the State shall meet to resolve the issue within thirty (30) days after the Tribe receives the State's objections. If after the meeting the State continues to object to the Tribe's determination that the activity is not a Project, the matter shall be resolved in accordance with the dispute resolution provisions of section 11.10.

**Sec. 11.4. Categorical Exemptions.**

(a) Pursuant to its Tribal Environmental Protection Ordinance, prior to the preparation of a TEID or a TEIR the Tribe may determine whether the Project falls within a Categorical Exemption included on the list of Categorical Exemption projects at Appendix C. If the Project qualifies as a Categorical Exemption, the Project is exempt from the requirements of sections 11.5 through 11.7 and sections 11.11 through 11.17. In determining whether a Categorical Exemption applies to a Project, the Tribe's findings shall be supported by substantial evidence.

(b) A Categorical Exemption shall not be used for a Project where there is a reasonable possibility that the Project will have a Significant Effect on the Off-Reservation Environment due to unusual circumstances. Categorical Exemptions are also inapplicable when the cumulative impact of successive projects of the same type in the same area, over time is significant.

(c) The Categorical Exemptions appearing on Appendix C related to the classes of Projects defined as new construction or conversion of small structures at paragraph 3 (§ 15303), minor alterations to land at paragraph 4 (§ 15304), and accessory structures at paragraph 5 (§ 15311), are qualified by consideration of where the Project is to be located and a Project that is ordinarily insignificant in its impact on the off-reservation environment as provided in the classes of Projects in these paragraphs of Appendix C may in a particularly sensitive environment be significant. Therefore, the classes of Projects in paragraphs 3 through 5 of Appendix C subject to a Categorical Exemption are considered to apply in all instances, except where the Project may result in an impact on an environmental resource of hazardous or critical concern that has been previously designated,

precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

(d) The applicability of a Categorical Exemption to a Project shall not affect the validity or enforceability of an existing government-to-government agreement, if any, that addresses off-reservation impacts of the Gaming Facility. However, if the Tribe has accepted a continuing obligation to mitigate an off-reservation impact or impacts that is reflected in an existing government-to-government agreement, and the Project does not significantly reduce the activities and resultant impacts or need for services, a Categorical Exemption is not available unless the term of the government-to-government agreement, or any amendment to that agreement, is commensurate with the period of time associated with the ongoing impact or impacts. If the State demonstrates that there is an ongoing off-reservation impact or need for services from state or local jurisdictions attributable to the Gaming Facility, and the Tribe has not entered into a government-to-government agreement or otherwise addressed the off-reservation impact or need for services from state or local jurisdictions attributable to the operation of the Gaming Facility, or the off-reservation impact or impacts is demonstrated to exceed the scope of the impacts addressed in the existing government-to-government agreement, a Categorical Exemption is not available.

(e) The Tribe shall notify the State in writing of a determination that the Project is subject to a Categorical Exemption, and the basis therefor, within thirty (30) days after the determination is made. If the State disputes the propriety of the Categorical Exemption, the State shall notify the Tribe in writing within thirty (30) days after receipt of the Tribe's notification and the Tribe and the State shall meet within thirty (30) days after the Tribe receives the State's written objections to resolve the issue. If after the meeting the State continues to object to the Tribe's determination that the Project is subject to a Categorical Exclusion, the matter shall be resolved in accordance with the dispute resolution provisions of section 11.10.

**Sec. 11.5. Initial Study, Negative Declaration, Mitigated Negative Declaration.**

If the Tribe determines that the Project is not subject to a Categorical Exemption and that the Project may cause a Significant Effect on the Off-

Reservation Environment, the Tribe shall prepare an Initial Study. The Tribe shall use the checklist at Appendix B for the Initial Study, and its findings shall be supported by substantial evidence. If, based upon the Initial Study, the Tribe determines that it is appropriate to do so, it may prepare a Negative Declaration or a Mitigated Negative Declaration for the Project.

(a) A Negative Declaration or a Mitigated Negative Declaration shall include:

(1) A brief description of the Project;

(2) The location of the Project, shown on a map; and

(3) An attached copy of the Initial Study documenting reasons to support the finding that the Project will not have a Significant Effect on the Off-Reservation Environment.

(b) A Negative Declaration shall also include:

(1) A proposed finding that the Project will not have a Significant Effect on the Off-Reservation Environment; and

(2) The factors considered during the Initial Study, including the reasons, based upon the Initial Study, that support the proposed finding of no Significant Effects on the Off-Reservation Environment.

(c) A Mitigated Negative Declaration shall also include:

(1) A description of proposed mitigation measures included in the Project to reduce the potential Significant Effects on the Off-Reservation Environment to a less-than-significant level; and

(2) The Tribe's commitment to enter into an enforceable binding letter agreement with the State under which the Tribe shall agree to perform the required mitigation.

(d) The Tribe shall give notice by mail of its adoption of a Negative Declaration or a Mitigated Negative Declaration to the State, the State Clearinghouse in the Office of Planning and Research (State Clearinghouse), the State Gaming Agency, the California Department of Justice, Office of the Attorney General, the County board of supervisors (and if the Gaming Facility is, or is to be, located within

the boundaries of an incorporated city, to the city council (City)), and to Interested Persons.

(e) Within thirty (30) days after receipt of the Tribe's notice given under subdivision (d), the State, the County or the City may request that the Tribe meet and confer with respect to the Negative Declaration or the Mitigated Negative Declaration. The Tribe and the requesting party or parties shall meet and confer within thirty (30) days after the Tribe's receipt of the first such request. If after meeting and conferring the County or the City objects to the Tribe's adoption of a Negative Declaration or a Mitigated Negative Declaration, the County or the City shall inform the State in writing of any objection to the Tribe's determination and the basis upon which the City or the County objects within ten (10) days after the meet and confer session.

(f) If after the meet and confer process provided in subdivision (e) the State objects to the Tribe's adoption of a Negative Declaration or a Mitigated Negative Declaration, the State shall inform the Tribe in writing of any objection to the Tribe's determination and the basis upon which the State objects within fifteen (15) days after the meet and confer session. If the Tribe disagrees with the basis upon which the State objects that the Project is not properly subject to a Negative Declaration or a Mitigated Negative Declaration, the Tribe and the State shall meet to resolve the issue within thirty (30) days after the Tribe receives the State's objections. If after the meeting the State continues to object to the Tribe's adoption of a Negative Declaration or a Mitigated Negative Declaration, the matter shall be resolved in accordance with the dispute resolution provisions of section 11.10.

(g) If the Tribe determines, based upon the Initial Study or at any time during the process for preparation and approval of a Negative Declaration or a Mitigated Negative Declaration that the off-reservation environmental effects of a Project cannot be mitigated to a level of insignificance, the Tribe shall proceed to prepare either a TEID if the Project meets the requirements of section 11.1, subdivision (a), or a TEIR if the Project meets the requirements of section 11.1, subdivision (b).

(1) For a proposed TEID Project, the Tribe shall comply with sections 11.6 and 11.7, with all applicable meet and confer and

dispute resolution procedures required by sections 11.7 through 11.10, and is subject to section 11.17.

(2) For a proposed TEIR Project, the Tribe shall comply with sections 11.10 through 11.18 and with all applicable meet and confer and dispute resolution procedures provided therein.

**Sec. 11.6. Off-Reservation Environmental Impacts of TEID Projects.**

For Projects subject to section 11.1, subdivision (a), when the preparation of a TEID is required, the following requirements shall apply.

(a) While each TEID shall be specific to the Project at issue, the Tribal Environmental Protection Ordinance shall require that the TEID address, at a minimum, the impacts of the Project on the following: (i) air quality; (ii) water resources; (iii) traffic; (iv) public services; (v) hazardous materials; and (vi) noise.

(b) So long as a document also meets the requirements of section 11.7, the term TEID includes any environmental assessment, environmental impact report, or environmental impact statement prepared in conformity with the Tribal Environmental Protection Ordinance, NEPA, or CEQA, as applicable.

**Sec. 11.7. TEID Procedures.**

Before commencement of a Project meeting the requirements of section 11.1, subdivision (a), the Tribe shall:

(a) Give written notice to the State, the State Clearinghouse, the State Gaming Agency, the California Department of Justice, Office of the Attorney General, the County (and if the Gaming Facility is located, or is to be located, within the boundaries of an incorporated city, to the City), and Interested Persons; and inform the public of the planned Project through posting on a publicly accessible website or similarly accessible medium and publication at least one (1) time in a newspaper of general circulation in the area of the Project, in whatever form the newspaper accepts legal notices for publication. If no newspaper exists in the area of the Project, the Tribe will post a notice on the Tribe's website.

(b) Take appropriate actions under the Tribal Environmental Protection Ordinance to determine whether the Project may have any Significant Effects on the Off-Reservation Environment.

(c) If it is determined that the Project does not meet the criteria for a Categorical Exemption, Negative Declaration or Mitigated Negative Declaration, the Tribe shall prepare a draft TEID. The draft TEID shall include, among other things:

(1) A description of the physical environmental conditions in the vicinity of the Project (the environmental setting and baseline conditions), as they exist at the time the draft TEID is prepared;

(2) A detailed description of proposed mitigation measures to address all identified Significant Effects on the Off-Reservation Environment and whether any proposed mitigation would not be feasible;

(3) If the Project is determined to have a Significant Effect on the Off-Reservation Environment for which there is no feasible mitigation, the TEID will consider alternatives in both location and scope, provided that the TEID need not address a "no project" alternative or alternatives that would cause the Tribe to forgo its right to engage in, or reduce the scale of, the Gaming Activities authorized by this Compact on its Indian lands, or require amendment or reconsideration of any existing tribal land-use plans; and

(4) Any direct growth-inducing impacts of the Project.

(d) For the purpose of receiving and responding to comments, submit the draft TEID to the State Clearinghouse, the State Gaming Agency, the California Department of Justice, Office of the Attorney General, the County (or if the Gaming Facility is or is to be located within the boundaries of a city, to the City) and to Interested Persons, and post on the Tribe's website for other members of the public, all of whom shall have at least thirty (30) days after receipt of the draft TEID, to submit written comments to the Tribe on the draft TEID.

(e) Consult with the County (and, if the Project is within a city, with the City) (collectively, the "Board"), and if requested by the Board, meet

to discuss mitigation of Significant Effects on the Off-Reservation Environment.

(f) Conduct a public meeting and provide an opportunity for public comment, including but not limited to those members of the public residing off-reservation within the vicinity of the Project such as might be affected by the Project, after which the public shall have thirty (30) days to submit written comments to the Tribe on the draft TEID.

(g) If the draft TEID identifies significant adverse traffic impacts to any portion of the state highway system or facilities (Traffic Impacts) under the jurisdiction of the California Department of Transportation (Caltrans) that are directly attributable to the Project, the Tribe shall give written notice to Caltrans of the Tribe's willingness to meet and confer with Caltrans for the purpose of developing measures that will mitigate the identified Traffic Impacts.

(h) No sooner than thirty (30) days after the conclusion of the comment periods, prepare a final TEID (Final TEID), giving due consideration to the comments, if any, received from the State, the Board, Caltrans, and members of the public. The Final TEID shall consist of:

(1) The draft TEID or a revision of the draft;

(2) Comments and recommendations received on the draft TEID either verbatim or in summary;

(3) A list of persons, organizations, and public agencies commenting on the draft TEID;

(4) The Tribe's responses to significant environmental issues raised in the review and consultation process, reflecting the Tribe's good-faith, reasoned analysis and consideration of each substantive comment bearing on any Significant Effect on the Off-Reservation Environment;

(5) Subject to subdivisions (i)(1) and (k), proposed measures to mitigate each Significant Effect on the Off-Reservation Environment identified in the Final TEID; and

(6) Any other information added by the Tribe.

(i) Prepare a decision by the Tribe (the "Report and Decision") regarding the Project in accordance with the Tribal Environmental Protection Ordinance. The Report and Decision shall, at a minimum, address the following:

(1) The timely mitigation of any Significant Effects on the Off-Reservation Environment where such effect is attributable, in whole or in part, to the Project, unless the Tribe has determined pursuant to subdivision (k) that the particular mitigation is infeasible, taking into account economic, environmental, social, technological, or other considerations.

(2) Mitigation of any effect on public safety or public services attributable to the Project, including the possibility of compensation for law enforcement, fire protection, emergency medical services and any other public services, to the extent such services are to be provided by the County (and, if the Project is within a city, the City) and its special districts to the Tribe for the purposes of serving the Gaming Facility.

(j) Within twenty (20) days after the Report and Decision is finalized, notice of availability of the Final TEID and the Report and Decision shall be published at least one (1) time in a newspaper of general circulation in the area of the Project, in whatever form the newspaper accepts legal notices for publication. If no newspaper exists in the area of the Project, the Tribe will post the notice on the Tribe's website. A copy of the Report and Decision and the Final TEID shall be published on the Tribe's website, and submitted to the State Clearinghouse, the State Gaming Agency, the California Department of Justice, Office of the Attorney General, the Board, and if subdivision (g) applies, Caltrans.

(k) The Report and Decision may include a determination by the Tribe that some unmitigated Significant Effects on the Off-Reservation Environment are unavoidable but acceptable after balancing the economic, legal, social, technological, or other benefits of the Project to the Tribe and the surrounding community, against its unavoidable environmental risks. If the specific economic, legal, social, technological, or other benefits of a Project outweigh the unavoidable Significant Effects on the Off-Reservation Environment, the Report and Decision shall be considered acceptable if:

(1) The Report and Decision identifies the specific overriding economic, legal, social, technological or other consideration(s) at issue;

(2) The determination that the unavoidable Significant Effects on the Off-Reservation Environment are outweighed by the overriding consideration(s) is supported by substantial evidence in the record upon which the Report and Decision is based;

(3) Alternative means, if feasible, to address the unavoidable Significant Effects on the Off-Reservation Environment to the community adversely affected by those effects have been adopted and implemented; and

(4) All other mitigation measures identified in the Final TEID that are feasible are adopted and implemented.

If the State disputes the propriety of a determination of infeasibility made under this subdivision, the dispute shall be resolved using the dispute resolution procedures set forth in section 11.10.

(l) If implementation of certain identified mitigation measures for which the Tribe proposes to be responsible would require cooperation by a non-tribal government agency, and that agency fails, refuses, or is unable to cooperate in the implementation of those mitigation measures, the Tribe shall so notify the State in writing, and shall be relieved of only those mitigation obligations until the relevant non-tribal government agency has taken the action(s) necessary for the Tribe to implement those measures. If the State disagrees with the Tribe's determination that the non-tribal government agency has failed, refused, or was unable to cooperate in the implementation of those mitigation measures or the Tribe's determination that the mitigation measures require a non-tribal government agency's cooperation, the Tribe and the State shall meet within thirty (30) days after the Tribe receives the State's objections to resolve the issue. If after the meeting the State objects in writing to the Tribe's determination that the non-tribal government agency has failed, refused, or was unable to cooperate in the implementation of those mitigation measures or the Tribe's determination that the mitigation measures require a non-tribal government agency's cooperation, the

dispute shall be resolved using the dispute resolution procedures set forth in section 11.10.

(m) Upon the Tribe's issuance of the Report and Decision satisfactory to the State, before the Tribe may commence construction of the Project the Tribe and the State shall enter into a binding and enforceable letter agreement (Mitigation Agreement) under which the Tribe shall agree to perform the mitigation and other obligations required by the Report and Decision.

(n) If the State subsequently contends that the Tribe has failed to comply with any requirements of the Mitigation Agreement, the State shall invoke the dispute resolution provisions of section 13.0.

(o) During the conduct of a Project, the Tribe shall use reasonable efforts to keep the Board and potentially affected members of the public apprised of the Project's progress.

**Sec. 11.8. TEID Dispute Resolution.**

If invoked by the Board or Caltrans, the following dispute resolution processes shall be utilized and completed before the Tribe begins construction of a Project meeting the requirements of section 11.1, subdivision (a):

(a) If, after reviewing the Tribe's Report and Decision, either the Board or Caltrans believes that the Final TEID fails to identify a Significant Effect on the Off-Reservation Environment or that the Tribe's proposed mitigation measures, if any, are inadequate (Compliance Issue), the Board or Caltrans may, within thirty (30) days after receipt of the Report and Decision, request in writing that the Board or Caltrans (as appropriate) representatives meet and confer with the Tribe in good faith for the purpose of attempting to reach a mutually satisfactory resolution of the Compliance Issue. The Tribe and the Board or Caltrans shall meet as soon as practicable, but no later than thirty (30) days after the request to resolve the Compliance Issue is delivered to the Tribe, and shall attempt to resolve the Compliance Issue within thirty (30) days of the first meeting. Any issues resolved through the meet and confer process shall be reduced to writing, signed by the Tribe and the Board or Caltrans, and appropriate changes shall be made to the Final TEID and the Report and Decision.

(b) Notice of any issue arising under subdivision (a) requiring the Board or Caltrans and the Tribe to meet and confer shall be delivered by the Board or Caltrans to the Tribe using the notice provisions of section 16.0.

(c) In the event that the Board or Caltrans and the Tribe are unable to resolve through the procedures of subdivision (a) any differences regarding whether the Tribe's Project will cause one (1) or more Compliance Issues, the Tribe shall initiate the procedures of subdivision (d).

(d) If the Tribe and the Board or the Tribe and Caltrans are unable to resolve all differences identified and addressed under the procedures of subdivision (a), the following procedures shall apply:

(1) The Tribe shall, within ten (10) days after completion of the meet and confer process with the Board or Caltrans, provide the State with written copies of the Report and Decision and the Final TEID and a written description of the unresolved Compliance Issue questions. The Tribe shall provide, at the same time, a copy of the same documents to the Board or Caltrans, as appropriate.

(2) The Board or Caltrans may provide any additional materials to the State with a copy to the Tribe, but may not submit materials to the State that have not been previously submitted to the Tribe. The State shall thereafter have sixty (60) days to review the materials submitted, which time may be extended by agreement of the Tribe and the State.

(3) If the State contends that the Report and Decision or the Final TEID fails to adequately address one (1) or more Compliance Issues, the State shall, within the sixty (60)-day-review period, so notify the Tribe in writing (Non-Compliance Notice), and request a meeting to discuss the matter.

(4) Within thirty (30) days after the Tribe's receipt of the Non-Compliance Notice, the State and the Tribe shall meet and confer in good faith for the purpose of attempting to reach a mutually satisfactory resolution of the outstanding Compliance Issues. Any Compliance Issues resolved through the meet and

confer process shall be reduced to writing in appropriate form, signed by the Tribe and the State, the Tribe shall make appropriate changes to the Final TEID and the Report and Decision, and the Tribe and the State shall enter into the Mitigation Agreement required by section 11.7, subdivision (m).

(5) If all Compliance Issues are not resolved as a result of the meet and confer process between the Tribe and the State, the State may, within twenty (20) days after the conclusion of the meet and confer process, verified by either the Tribe or the State in writing, initiate the dispute resolution process set forth in section 11.9.

**Sec. 11.9. State TEID Environmental Review Dispute Resolution Process.**

Environmental review disputes between the Tribe and the State that are unresolved using the procedures of section 11.8, subdivision (d) shall be resolved using the following Environmental Review Dispute Resolution Process (ERDR Process).

(a) To initiate the ERDR process, the State shall serve a written notice (ERDR Notice) on the Tribe, within twenty (20) days after the conclusion of the meet and confer process of section 11.8, subdivision (d), identifying with particularity those aspects and provisions of the Report and Decision or the Final TEID that the State alleges constitute a Compliance Issue.

(b) The dispute shall thereupon be resolved by arbitration and the costs of the arbitration shall be advanced by the State out of the Special Distribution Fund. The arbitrator shall be authorized to award or apportion costs against the Tribe as the arbitrator deems just. The arbitration shall be conducted by a single arbitrator selected as follows:

(1) Within thirty (30) days following the Tribe's receipt of the ERDR Notice, the State and the Tribe shall agree in writing upon a single retired federal judge or federal magistrate judge or other person to act as the arbitrator.

(2) If the State and the Tribe cannot agree on an arbitrator, then within forty-five (45) days following the Tribe's receipt of the ERDR Notice, the State and the Tribe shall meet and each shall submit to the other the names of not more than three (3) retired federal judges or federal magistrate judges. From the resulting group of names, three (3) names shall be randomly selected in a manner agreed upon by the Tribe and the State, and from that list of three (3) names, the State and the Tribe shall each be allowed to strike one (1) name from the list. A coin toss shall determine which party may strike the first name.

(c) Within thirty (30) days after being designated, the arbitrator shall initiate proceedings to determine whether the Report and Decision or the Final TEID has failed to adequately address a Compliance Issue. The arbitrator may determine the matter on the written submissions of the Tribe and the State, or may conduct an evidentiary hearing and receive oral testimony and legal argument. In making this determination, the arbitrator shall uphold the Report and Decision unless the arbitrator finds that: (i) the Report and Decision or the Final TEID is not supported by the findings; (ii) the Report and Decision findings are not supported by substantial evidence in light of the whole record; (iii) the Tribe has not substantially complied with the substantive provisions of the Tribal Environmental Protection Ordinance; or (iv) the Tribe has not otherwise substantially complied with the requirements of sections 11.6 or 11.7.

(d) Within twenty (20) days after closing the record, the arbitrator shall issue a written decision finding either that: (i) the Report and Decision and the Final TEID comply with the requirements of sections 11.6 and 11.7, or (ii) the Report and Decision and the Final TEID do not comply with the requirements of section 11.6 or 11.7 and identifying those specific provisions and aspects of the Report and Decision or the Final TEID that fail to comply. A decision under subdivision (d)(i) shall be final and binding and shall terminate the ERDR Process. If a decision is rendered under subdivision (d)(ii), the Tribe shall take such actions as are necessary to revise, amend or supplement the Report and Decision and the Final TEID, as appropriate, to address and correct the deficiencies identified in the arbitrator's decision.

(e) Following the issuance of the Tribe's revised, amended or supplemental Report and Decision and the Final TEID (collectively, the "Amended Report and Decision"), the Tribe shall provide a written copy of the Amended Report and Decision to the State. The State shall thereupon have thirty (30) days to review the Amended Report and Decision for compliance with the arbitrator's decision. If the State is satisfied that the Amended Report and Decision have corrected the deficiencies identified in the arbitrator's decision, the State shall so notify the Tribe in writing within the thirty (30)-day-review period, the ERDR Process shall thereupon be concluded, and the Tribe and the State shall enter into the Mitigation Agreement required by section 11.7, subdivision (m). If the State contends that the Amended Report and Decision fails to correct the deficiencies, the State shall so notify the Tribe in writing within the thirty (30)-day-review period, identifying with particularity the remaining deficiencies.

(f) If the State continues to contend the Amended Report and Decision fails to satisfy the requirements of sections 11.6 or 11.7, the Tribe and the State shall thereupon submit their dispute to the same arbitrator before whom the dispute was originally heard and follow the procedure provided by subdivisions (c) through (e) until any remaining environmental review disputes identified by the State are determined to be substantially addressed by the Tribe in accordance with the requirements of sections 11.6 and 11.7. If the same arbitrator is not available, a new arbitrator shall be selected using the procedures of subdivision (b).

(g) An arbitrator's decision rendered under subdivision (d)(ii) shall not be deemed a breach of this Compact and shall not be the basis for an action to terminate this Compact under section 13.5, provided that the Tribe continues to engage in the arbitration process provided for in subdivisions (b) through (f).

**Sec. 11.10. State and Tribe's Dispute Resolution Process.**

Disputes between the Tribe and the State regarding the Tribe's compliance with section 11.0 that are expressly made subject to this section 11.10 shall be resolved using the following process:

(a) To initiate the section 11.10 process, the State shall serve a written notice (Dispute Notice) on the Tribe, within thirty (30) days after the conclusion of the relevant meet and confer process, identifying with particularity those aspects and provisions of the Tribe's decision with which the State takes issue.

(b) The dispute shall thereupon be resolved by arbitration and the costs of the arbitration shall be advanced by the State out of the Special Distribution Fund. The arbitrator shall be authorized to award or apportion costs against the Tribe as the arbitrator deems just. The arbitration shall be conducted by a single arbitrator selected as follows:

(1) Within thirty (30) days following the Tribe's receipt of the Dispute Notice, the State and the Tribe shall agree in writing upon a single retired federal judge or federal magistrate judge or other person to act as the arbitrator.

(2) If the State and the Tribe cannot agree on an arbitrator, then within forty-five (45) days following the Tribe's receipt of the Dispute Notice, the State and the Tribe shall meet and each shall submit to the other the names of not more than three (3) retired federal judges or federal magistrate judges. From the resulting group of names, three (3) names shall be randomly selected in a manner agreed upon by the Tribe and the State, and from that list of three (3) names, the State and the Tribe shall each be allowed to strike one (1) name from the list. A coin toss shall determine which party may strike the first name.

(c) Within thirty (30) days after being designated, the arbitrator shall initiate proceedings to determine the issues raised by the Dispute Notice. The arbitrator may determine the matter on the written submissions of the Tribe and the State, or may conduct an evidentiary hearing and receive oral testimony and legal argument. In making this determination, the arbitrator shall uphold the Tribe's decision unless the arbitrator finds that: (i) the decision is not supported by substantial evidence in light of the whole record; (ii) the Tribe has not substantially complied with the substantive provisions of the Tribal Environmental Protection Ordinance; or (iii) the Tribe has not otherwise substantially complied with the relevant requirements of section 11.0.

(d) Within twenty (20) days after closing the record, the arbitrator shall issue a written decision finding either that: (i) the Tribe's decision complies with the relevant requirements of section 11.0, or (ii) the Tribe's decision does not comply with the relevant requirements of section 11.0, and identifying with specificity the basis upon which the arbitrator has made the decision. A decision under subdivision (d)(i) shall be final and binding and shall terminate the section 11.10 process. If a decision is rendered under subdivision (d)(ii), the Tribe shall take such actions as are necessary to address and correct the deficiencies identified in the arbitrator's decision.

(e) Following the issuance of the Tribe's revised, amended or supplemental decision (the "Amended Decision"), the Tribe shall provide a written copy of the Amended Decision to the State. The State shall thereupon have thirty (30) days to review the Amended Decision for compliance with the arbitrator's decision. If the State is satisfied that the Amended Decision has corrected the deficiencies identified in the arbitrator's decision, the State shall so notify the Tribe in writing within the thirty (30)-day-review period, the section 11.10 process shall thereupon be concluded, and the Tribe and the State shall take such actions as are necessary to implement the Amended Decision. If the State contends that the Amended Decision fails to correct the deficiencies, the State shall so notify the Tribe in writing within the thirty (30)-day-review period, identifying with particularity the remaining deficiencies.

(f) If the State continues to contend the Amended Decision fails to satisfy the requirements of section 11.0, the Tribe and the State shall thereupon submit their dispute to the same arbitrator before whom the dispute was originally heard and follow the procedure provided by subdivisions (c) through (e) until any remaining environmental review disputes identified by the State are determined to be substantially addressed by the Tribe in accordance with the requirements of section 11.0. If the same arbitrator is not available, a new arbitrator shall be selected using the procedures of subdivision (b).

(g) An arbitrator's decision rendered under subdivision (d)(ii) shall not be deemed a breach of this Compact and shall not be the basis for an action to terminate this Compact under section 13.5, provided that the Tribe continues to engage in the arbitration process provided for in subdivisions (b) through (f).

## Sec. 11.11. Tribal Environmental Impact Report for TEIR Projects.

For Projects subject to section 11.1, subdivision (b), when the preparation of a TEIR is required, the following requirements shall apply:

(a) Before the commencement of the Project, the Tribe shall cause to be prepared a comprehensive and adequate TEIR, analyzing the potentially Significant Effects on the Off-Reservation Environment of the Project pursuant to the process set forth in sections 11.2 through 11.5 and 11.11 through 11.17; provided, however, that information or data that is relevant to the TEIR and is a matter of public record or is generally available to the public need not be repeated in its entirety in the TEIR, but may be specifically cited as the source for conclusions stated therein; and provided further that such information or data shall be briefly described, that its relationship to the TEIR shall be indicated, and that the source thereof shall be reasonably available for inspection at a public place or public building. The TEIR shall provide detailed information about the Significant Effect(s) on the Off-Reservation Environment that the Project is likely to have, including each of the matters set forth in Appendix B, shall list ways in which the Significant Effects on the Off-Reservation Environment might be minimized, and shall include a detailed statement setting forth all of the following:

(1) A description of the physical environmental conditions in the vicinity of the Project (the environmental setting and baseline conditions), as they exist at the time the notice of preparation is issued;

(2) All Significant Effects on the Off-Reservation Environment of the Project;

(3) In a separate section:

(A) Any Significant Effect on the Off-Reservation Environment that cannot be avoided if the Project is implemented;

(B) Any Significant Effect on the Off-Reservation Environment that would be irreversible if the Project is implemented;

(4) Mitigation measures proposed to minimize Significant Effects on the Off-Reservation Environment, including, but not limited to, measures to reduce the wasteful, inefficient, and unnecessary consumption of energy;

(5) If the Project is identified to have Significant Effects on the Off-Reservation Environment for which there is no feasible mitigation, the TEIR will consider alternatives in both location and scope, provided that the TEIR need not address a "no project" alternative or alternatives that would cause the Tribe to forgo its right to engage in or reduce the scale of the Gaming Activities authorized by this Compact on its Indian lands or require amendment or reconsideration of any existing tribal land use plans;

(6) Whether any proposed mitigation would be infeasible, taking into account economic, environmental, social, technological, or other considerations;

(7) Any direct growth-inducing impacts of the Project; and

(8) Whether the proposed mitigation would be effective to substantially reduce the potential Significant Effects on the Off-Reservation Environment.

(b) The TEIR shall contain a statement indicating the reasons for determining that various effects of the Project on the off-reservation environment with respect to the matters set forth in Appendix B are not significant and consequently have not been discussed in detail in the TEIR.

(c) The TEIR shall clearly identify and describe the Significant Effects on the Off-Reservation Environment, including each of the items on Appendix B, giving due consideration to both the short-term and long-term effects.

(d) The TEIR's discussion of mitigation measures shall describe feasible measures that could minimize Significant Effects on the Off-Reservation Environment, and shall distinguish between the measures that are proposed by the Tribe and measures proposed by others. Where several measures are available to mitigate an effect, each should be discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures should not be deferred until some future time.

(e) If required by subdivision (a)(5), the TEIR must include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison.

(f) The TEIR shall contain an index or table of contents and a summary, which shall identify each Significant Effect on the Off-Reservation Environment with proposed measures and alternatives that would reduce or avoid that effect, and issues to be resolved, including the choice among alternatives and whether and how to mitigate the Significant Effects on the Off-Reservation Environment.

(g) Previously approved land use documents, including, but not limited to, general plans, specific plans, and local coastal plans, may be used in the cumulative impact analysis.

**Sec. 11.12. Notice of Preparation of Draft TEIR.**

(a) Upon commencing the preparation of the draft TEIR, the Tribe shall issue a notice of preparation to the State Clearinghouse, the State Gaming Agency, the County (and if the Gaming Facility is, or is to be, located within the boundaries of an incorporated city, to the City), the California Department of Justice, Office of the Attorney General, and all Interested Persons. The Tribe shall also post the notice of preparation on its website. The notice of preparation shall provide all Interested Persons with information describing the Project and its potential Significant Effects on the Off-Reservation Environment sufficient to enable Interested Persons to make a meaningful response or comment. At a minimum, the notice of preparation shall include all of the following information:

(1) A description of the Project;

(2) The location of the Project shown on a detailed map, preferably topographical, and on a regional map; and

(3) The probable off-reservation environmental effects of the Project.

(b) The notice of preparation shall also inform Interested Persons of the preparation of the draft TEIR and shall inform them of the opportunity to provide comments to the Tribe within thirty (30) days of the date of the receipt of the notice of preparation by the State Clearinghouse and the County. The notice of preparation shall also request Interested Persons to identify in their comments the off-reservation environmental issues and reasonable mitigation measures that the Tribe should analyze in the draft TEIR.

**Sec. 11.13. Notice of Completion of Draft TEIR.**

(a) No less than thirty (30) days following the receipt of the notice of preparation by the State Clearinghouse and the County, the Tribe shall file a copy of the draft TEIR and a notice of completion with the State Clearinghouse, the State Gaming Agency, the County (and if the Gaming Facility is, or is to be, located within the boundaries of an incorporated city, to the City), the California Department of Justice, Office of the Attorney General, and all Interested Persons. The Tribe shall also post the notice of completion and a copy of the draft TEIR on its website. The notice of completion shall include all of the following information:

(1) A brief description of the Project;

(2) The proposed location of the Project;

(3) An address where copies of the draft TEIR are available; and

(4) Notice of a period of forty-five (45) days during which the Tribe will receive comments on the draft TEIR.

(b) The Tribe will submit ten (10) copies each of the draft TEIR and the notice of completion to the County (and if the Gaming Facility is, or is

to be, located within the boundaries of an incorporated city, to the City), which will be asked to post public notice of the draft TEIR at the office of the County Board of Supervisors and/or the City and to furnish the public notice and a copy of the draft TEIR to the public libraries serving the County and/or the City. As an alternative to paper copies, the Tribe and the County and/or the City may agree that an electronic copy of the draft TEIR and notice of completion may be posted on the Tribe's website and submitted by the Tribe to the County and/or the City. In addition, the Tribe will provide public notice by the procedures specified below:

(1) Publication on the Tribe's website;

(2) Publication at least one (1) time by the Tribe in a newspaper, if any, of general circulation in the area affected by the Project, in whatever form the newspaper accepts legal notices for publication. If more than one (1) area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas, in whatever form the newspaper accepts legal notices for publication; and

(3) Direct mailing by the Tribe to the owners and occupants of property adjacent to, but outside, the Indian lands on which the Project is to be located. Owners of such property shall be identified as shown on the latest equalization assessment roll.

**Sec. 11.14. Issuance of Final TEIR.**

The Tribe shall prepare, certify and make available to the County, the City if applicable, the State Clearinghouse, the State Gaming Agency, the California Department of Justice, Office of the Attorney General, and all Interested Persons (and, in the event potentially significant traffic impacts are identified in the final TEIR, to Caltrans), at least fifty-five (55) days before the completion of negotiations pursuant to section 11.15 a final TEIR (Final TEIR).

(a) The Final TEIR shall consist of:

(1) The draft TEIR or a revision of the draft;

(2) Comments and recommendations received on the draft TEIR either verbatim or in summary;

(3) A list of persons, organizations, and public agencies commenting on the draft TEIR; and

(4) The responses of the Tribe to significant environmental points raised in the review and consultation process, reflecting the Tribe's good-faith, reasoned analysis and consideration of each substantive comment bearing on any off-reservation environmental impact.

(b) The Final TEIR may include a determination by the Tribe that some unmitigated Significant Effects on the Off-Reservation Environment are unavoidable but acceptable after balancing the economic, legal, social, technological, or other benefits of the Project to the Tribe and the surrounding community, against its unavoidable environmental risks. If the specific economic, legal, social, technological, or other benefits of a Project outweigh the unavoidable Significant Effects on the Off-Reservation Environment, the Final TEIR shall include all the following:

(1) The specific overriding economic, legal, social, technological or other consideration(s) at issue;

(2) The determination that the unavoidable Significant Effects on the Off-Reservation Environment are outweighed by the overriding consideration(s) is supported by substantial evidence in the record upon which the Final TEIR is based;

(3) Alternative means, if feasible, to address the unavoidable Significant Effects on the Off-Reservation Environment to the community adversely affected by those effects have been adopted and implemented; and

(4) All other mitigation measures identified in the Final TEIR that are feasible are adopted and implemented.

(c) If the Tribe makes a determination pursuant to subdivision (b), a Project may proceed only if such a determination is supported by substantial evidence and there is an agreement with the local affected

jurisdiction(s) pursuant to section 11.15, subdivision (a)(1) and/or, where appropriate, Caltrans, pursuant to section 11.15, subdivision (b), that the impacts to the affected community have been balanced with appropriate and commensurate benefits to the community. Substantial evidence includes facts, reasonable assumptions predicated upon facts, and expert opinions supported by facts. Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, or evidence which is clearly inaccurate or erroneous. If the State disputes the propriety of a determination of infeasibility made under subdivision (b), the dispute shall be resolved using the dispute resolution procedures set forth in section 11.10.

(d) Any other information added by the Tribe.

**Sec. 11.15**. **Intergovernmental Agreement.**

(a) Before the commencement of a Project, and no later than the issuance of the Final TEIR to the County and/or the City, the Tribe shall offer to commence government-to-government negotiations with the County and/or the City, and upon the County's and/or the City's acceptance of the Tribe's offer, the parties shall negotiate on a government-to-government basis and shall enter into an enforceable written agreement (hereinafter "intergovernmental agreement") with the County and/or the City with respect to the matters set forth below:

(1) The timely mitigation of any Significant Effect on the Off-Reservation Environment (consistent with the policies and purposes of NEPA and CEQA as described in Appendix B, Off-Reservation Environmental Impact Analysis Checklist), where such effect is attributable, in whole or in part, to the Project, unless the parties agree, based upon the information required by section 11.14, subdivision (b), that the particular mitigation is infeasible, taking into account economic, environmental, social, technological, or other considerations.

(2) Compensation for law enforcement, fire protection, emergency medical services and any other public services to be provided by the County and/or the City and its special districts to the Tribe for the purposes of the Gaming Operation, including the Gaming Facility, as a consequence of the Project.

(3) Mitigation of any effect on public safety attributable to the Project, including any compensation to the County or City as a consequence thereof, to the extent such effects are not mitigated pursuant to subdivision (a)(2).

(b) If the Final TEIR identifies traffic impacts to the state highway system or facilities that are directly attributable in whole or in part to the Project, then before the commencement of the Project, the Tribe shall negotiate an intergovernmental agreement with Caltrans (i) for timely mitigation of all traffic impacts on the state highway system and facilities directly attributable to the Project, and/or (ii) incorporating the facts and findings required pursuant to section 11.14 subdivision (b) and payment of the Tribe's fair share of cumulative traffic impacts. Alternatively, Caltrans may agree in writing that the Tribe may negotiate and conclude, prior to commencement of the Project, an intergovernmental agreement with the County that mitigates the traffic impacts to the state highway system or facilities and payment of the Tribe's fair share of cumulative traffic impacts.

(c) The Tribe shall not commence a Project until the intergovernmental agreement(s) with the County and the City specified in subdivision (a) and, if applicable the intergovernmental agreement with Caltrans specified in subdivision (b), are executed by the parties or are effectuated pursuant to section 11.16.

(d) If implementation of certain identified mitigation measures for which the Tribe proposes to be responsible would require cooperation by the County, the City, or Caltrans, and that entity fails, refuses, or is unable to cooperate in the implementation of those mitigation measures, the Tribe shall so notify the State in writing, and shall be relieved of only those mitigation obligations until the County, the City, or Caltrans has taken the action(s) necessary for the Tribe to implement those measures. If the State disagrees with the Tribe's determination that the County, the City, or Caltrans has failed, refused, or was unable to cooperate in the implementation of those mitigation measures or the Tribe's determination that the mitigation measures require the County's, the City's, or Caltrans' cooperation, the Tribe and the State shall meet within thirty (30) days after the Tribe receives the State's objections to resolve the issue. If after the meeting the State objects in writing to the Tribe's determination that the County, the City, or

Caltrans has failed, refused, or was unable to cooperate in the implementation of those mitigation measures or the Tribe's determination that the mitigation measures require the County's, the City's, or Caltrans' cooperation, the dispute shall be resolved using the dispute resolution procedures set forth in section 11.10.

(e) Nothing in this section requires the Tribe to enter into any other intergovernmental agreements with a state or local governmental entity other than as set forth in subdivisions (a) and (b).

**Sec. 11.16. Arbitration.**

To foster good government-to-government relationships and to assure that the Tribe is not unreasonably prevented from commencing a Project and benefiting therefrom, if an intergovernmental agreement with the County, the City, or Caltrans if required by section 11.15, subdivision (b), is not entered within seventy-five (75) days of the submission of the Final TEIR, or such further time as the Tribe and the County, the City, or Caltrans (for purposes of this section the "parties") may agree in writing, any party may demand binding arbitration before a JAMS arbitrator pursuant to JAMS Comprehensive Arbitration Rules with respect to any remaining disputes arising from, connected with, or related to the negotiation.

(a) The arbitration shall be conducted as follows:

(1) Each party shall exchange with each other within five (5) days of the demand for arbitration its last, best written offer made during the negotiation pursuant to section 11.15.

(2) The arbitrator shall schedule a hearing to resolve the matter within thirty (30) days of his or her appointment, unless the parties agree to a longer period. The arbitrator shall be limited to awarding only one (1) of the offers submitted, without modification, based upon that proposal which best provides feasible mitigation of Significant Effects on the Off-Reservation Environment and on public safety and most reasonably compensates for public services pursuant to section 11.15, without unduly interfering with the principal objectives of the Project or imposing environmental mitigation measures that are different in nature or scale from the type of measures that have been required to mitigate impacts of a similar scale of

other projects in the surrounding area, to the extent there are such other projects.

(3) The arbitrator shall take into consideration whether the Final TEIR provides the data and information necessary to enable the County, the City, or Caltrans if required by section 11.15, subdivision (b), to determine both whether the Project may result in a Significant Effect on the Off-Reservation Environment and whether the proposed measures in mitigation are sufficient to mitigate any such effect.

(4) If the respondent does not participate in the arbitration, the arbitrator shall nonetheless conduct the arbitration and issue an award, and the claimant shall submit such evidence as the arbitrator may require therefor. Review of the resulting arbitration award is waived by respondent's failure to participate.

(b) To effectuate this section, and in the exercise of its sovereignty, the Tribe agrees to expressly waive, and also waive its right to assert, sovereign immunity in connection with the arbitrator's jurisdiction and in any action to: (i) enforce the other party's obligation to arbitrate; (ii) enforce or confirm an arbitral award rendered in the arbitration; and (iii) enforce or execute a judgment in state or federal court based upon the award.

(c) Except as provided in subdivision (d), the arbitral award will be deemed to be the intergovernmental agreement for the purposes of the requirements of section 11.15.

(d) An arbitral award entered pursuant to this section as the result of arbitration between the Tribe and Caltrans will be deemed the intergovernmental agreement for the purposes of the requirements of section 11.15, subdivision (b).

(e) If the arbitral award requires mitigation, and implementation of the Tribe's mitigation obligations thereunder requires that the County, the City, or Caltrans issue any permit(s) or take any other action needed for the Tribe to implement those obligations, and the Tribe determines that the County, the City, or Caltrans has failed, refused, or is unable timely to take all necessary actions to enable the Tribe to implement

its mitigation obligations, the requirements and the process provided in section 11.15, subdivision (d) shall apply.

**Sec. 11.17. Failure to Prepare Adequate TEIR or TEID.**

The Tribe's failure to prepare a TEIR or a TEID that satisfies the requirements and standards of section 11.0 may be deemed a breach of this Compact and furthermore shall be grounds for issuance of an injunction or other appropriate equitable relief.

## SECTION 12.0. PUBLIC AND WORKPLACE HEALTH, SAFETY, AND LIABILITY.

**Sec. 12.1. General Requirements.**

The Tribe shall not conduct Class III Gaming in a manner that endangers the public health, safety, or welfare, provided, however, that nothing herein shall be construed to make applicable to the Tribe any state laws or regulations governing the use of tobacco.

**Sec. 12.2. Tobacco Smoke.**

Notwithstanding section 12.1, the Tribe agrees to provide a non-smoking area in the Gaming Facility and to utilize a ventilation system throughout the Gaming Facility that exhausts tobacco smoke to the extent reasonably feasible under state-of-the-art technology existing as of the date of the construction or significant renovation of the Gaming Facility, and further agrees not to offer or sell tobacco products to anyone younger than the minimum age specified in state law to legally purchase tobacco products.

**Sec. 12.3. Health and Safety Standards.**

To protect the health and safety of patrons and employees of the Gaming Facility, the Tribe shall, for the Gaming Facility:

(a) Adopt and comply with standards no less stringent than state public health standards for food and beverage handling. The Gaming Operation will allow inspection of food and beverage services by state or county health inspectors, during normal hours of operation, to assess compliance with these standards, unless inspections are

routinely made by an agency of the United States government to ensure compliance with equivalent standards of the United States Public Health Service. Nothing herein shall be construed as submission of the Tribe to the jurisdiction of those state or county health inspectors, but any alleged violations of the standards shall be treated as alleged violations of this Compact.

(b) Adopt and comply with standards no less stringent than federal water quality and safe drinking water standards applicable in California; the Gaming Operation will allow for inspection and testing of water quality by state or county health inspectors, as applicable, during normal hours of operation, to assess compliance with these standards, unless inspections and testing are made by an agency of the United States pursuant to, or by the Tribe under express authorization of, federal law, to ensure compliance with federal water quality and safe drinking water standards. Nothing herein shall be construed as submission of the Tribe to the jurisdiction of those state or county health inspectors, but any alleged violations of the standards shall be treated as alleged violations of this Compact.

(c) Comply with the building and safety standards set forth in section 6.4.2.

(d) Adopt and comply with federal workplace and occupational health and safety standards. Subsequent to an inspection or enforcement action by the Federal Occupational Safety and Health Administration or by an agency of the United States pursuant to federal law, the Tribe will provide a copy of the inspector's report or other documentation of the inspection to the State Gaming Agency within ten (10) days of receipt of the report or other documentation of the inspection.

(e) Adopt and comply with tribal codes to the extent consistent with the provisions of this Compact and other applicable federal law regarding public health and safety.

(f) (1) Comply with standards no less stringent than federal law that forbids discrimination, harassment or sexual harassment and seeks to provide fair opportunity in employment for all qualified persons and to prohibit discrimination in employment on the basis of characteristics of or being in a protected class as

defined by California state law including race, color, religion, ancestry, sex (including sexual orientation, gender identity/expression and pregnancy), age, genetic information, marital status, national origin, disability, medical condition or military/veteran status. The Gaming Operation shall promulgate and shall maintain in continuous force the Middletown Rancheria of Pomo Indians of California Gaming Facility Employment Discrimination Ordinance as set forth in Appendix F to this Compact. Any subsequent revisions to this ordinance shall provide substantially equivalent procedures no less stringent than federal law, for the fair and timely resolution of harassment or discrimination claims arising out of the employment of persons to work or working for, in connection with, or relating to the operation of, the Gaming Operation, Gaming Facility or Gaming Activities and the Gaming Operation shall provide the State Gaming Agency with a copy of any such revised ordinance within thirty (30) days of its adoption.

(2) Nothing herein shall preclude the Tribe from giving a preference in employment to members and descendants of federally recognized Indian tribes pursuant to a duly adopted tribal ordinance.

(3) With respect to all employment-related claims as defined in subdivision (f)(1), the Tribe shall obtain and maintain an employment practices liability insurance policy consistent with industry standards for non-tribal casinos and underwritten by an insurer with an A.M. Best rating of A or higher that provides coverage of at least three million dollars ($3,000,000) per occurrence for unlawful harassment, retaliation, or employment discrimination arising out of the employment of persons to work or working for, in connection with, or relating to the operation of, the Gaming Operation, Gaming Facility or Gaming Activities. The Tribe hereby agrees the liability coverage would be available to all claimants who prove claims for unlawful harassment, retaliation, or employment discrimination pursuant to the processes under this subdivision (f).

(4) The Tribe, in the exercise of its sovereignty, agrees to waive its right to assert sovereign immunity and any and all defenses based thereon, up to three million dollars ($3,000,000) of coverage available under the limits of the employment practices liability insurance policy, referenced in subdivision (f)(3), for an award based on a proven employment-related claim arising out of the employment of persons to work or working for, in connection with, or relating to the operation of, the Gaming Operation, Gaming Facility or Gaming Activities; provided, however, that nothing herein requires the Tribe to agree to liability for punitive damages or to waive its right to assert sovereign immunity in connection therewith. The foregoing waiver of immunity is expressly limited to the tribal adjudicative processes set forth in subdivision (f)(1) and in the employment discrimination ordinance, and to enforce an obligation required by, or to enforce or execute an ensuing award or judgment under, this subdivision (f).

(5) Consistent with subdivision (f)(4), the Tribe shall include an endorsement with its employment practices liability insurance policy providing that the insurer shall not invoke tribal sovereign immunity up to the limits of such policy for claimants alleging retaliation, harassment, or employment discrimination pursuant to the processes set forth in subdivision (f)(1); however, such endorsement or acknowledgement shall not be deemed to waive or otherwise limit the Tribe's sovereign immunity for the pursuit of any employment-related claim outside the processes set forth herein, or for any portion of a proven claim that exceeds three million dollars ($3,000,000) of insurance coverage.

(6) In the event the Tribe fails to promulgate and keep in continuous force the employment discrimination complaint ordinance specified in subdivision (f)(1), such failure shall constitute a breach of this Compact.

(7) The Gaming Operation shall provide written notice of the employment discrimination complaint ordinance and the procedures for bringing a complaint in its employee handbook. The Gaming Operation also shall post and keep posted in

prominent and accessible places in the Gaming Facility where notices to employees and applicants for employment are customarily posted, a notice setting forth the pertinent provisions of the employment discrimination complaint ordinance and information pertinent to the filing of a complaint.

(g) Adopt and comply with standards that are no less stringent than California state laws prohibiting a gambling enterprise from cashing any check drawn against a federal, state, county, or city fund, including but not limited to, Social Security, unemployment insurance, disability payments, or public assistance payments.

(h) Adopt and comply with, as a matter of tribal law, standards that are no less stringent than California state laws, if any, governing the terms of extension of credit to patrons by gambling enterprises.

(i) Comply with provisions of the Bank Secrecy Act, 31 U.S.C. §§ 5311-5314, as amended, and all reporting requirements of the Internal Revenue Service, insofar as such provisions and reporting requirements are applicable to gambling establishments.

(j) Adopt and comply with ordinances or policies no less stringent than (i) the minimum wage, maximum hour, child labor, and overtime standards set forth in the Fair Labor Standards Act, 29 U.S.C. §§ 206, 207 and 212, subject to 29 U.S.C. §§ 213 and 214; (ii) the United States Department of Labor regulations implementing the foregoing sections of the Fair Labor Standards Act, appearing at 29 Code of Federal Regulations, part 500 et seq.; (iii) the State's minimum wage law set forth in California Labor Code section 1182.12; and (iv) the State Department of Industrial Relations regulations implementing the State's minimum wage law contained at California Code of Regulations, title 8, sections 11000 to 11170. Notwithstanding the foregoing, only the federal minimum wage laws set forth in the Fair Labor Standards Act, 29 Code of Federal Regulations, part 500 et seq., shall apply to tipped employees. Nothing herein shall make applicable state law concerning overtime, or be construed as authorizing or creating any private cause of action against the Tribe or the Gaming Operation based upon an alleged violation of any of the foregoing standards.

**Sec. 12.4. Tribal Gaming Facility Standards Ordinance.**

The Tribe shall adopt in the form of an ordinance or ordinances the standards and obligations described in section 12.3 to which the Gaming Operation and Gaming Facility are held, and shall transmit the ordinance(s) to the State Gaming Agency not later than thirty (30) days after the effective date of this Compact. In the absence of a promulgated tribal standard in respect to a matter identified in section 12.3, or the express adoption of an applicable federal and/or state statute or regulation, as the case may be, in respect of any such matter, the otherwise applicable federal and/or California state statute or regulation shall be deemed to have been adopted by the Tribe as the applicable standard.

**Sec. 12.5. Insurance Coverage and Claims.**

(a) The Tribe shall obtain and maintain commercial general liability insurance consistent with industry standards for non-tribal casinos in the United States underwritten by an insurer with an A.M. Best rating of A or higher that provides coverage of no less than seven million seven hundred thousand dollars ($7,700,000) per occurrence for bodily injury, personal injury, and property damage directly arising out of, connected with, or relating to the operation of the Gaming Operation, Gaming Facility, or Gaming Activities (Policy). To effectuate the insurance coverage, the Tribe agrees to waive its right to assert sovereign immunity up to seven million seven hundred thousand dollars ($7,700,000), in accordance with the tribal ordinance referenced in subdivision (b), in connection with any claim for bodily injury, personal injury, or property damage, directly arising out of, connected with, or relating to the operation of the Gaming Operation, Gaming Facility, or the Gaming Activities, provided that such injury occurs at the Gaming Facility and that the waiver of immunity is limited solely to claims asserted and adjudicated pursuant to the Tribe's tort ordinance referenced in subdivision (b). Nothing herein requires the Tribe to agree to liability for punitive damages or to waive its right to assert sovereign immunity in connection therewith. The Policy shall acknowledge in writing that the Tribe has expressly waived, and waived its right to assert, sovereign immunity for the purpose of adjudication of those claims up to seven million seven hundred thousand dollars ($7,700,000) and for the purpose of enforcement of any ensuing award or judgment and shall include an endorsement providing that the insurer shall not invoke tribal

sovereign immunity up to the limits of the Policy; however, such endorsement or acknowledgement shall not be deemed to waive or otherwise limit the Tribe's sovereign immunity for any portion of the claim that exceeds seven million seven hundred thousand dollars ($7,700,000).

(b) The Tribe has adopted, and at all times hereinafter shall maintain in continuous force, the Middletown Rancheria of Pomo Indians of California Tort Claims Procedures Ordinance as set forth in Appendix F to this Compact, or as it may be amended from time to time; provided, however, that any amended tort claims ordinance related to claims for bodily injury, personal injury, and property damage directly arising out of, connected with, or relating to the operation of the Gaming Operation, Gaming Facility, or Gaming Activities, shall provide substantially equivalent procedures for the fair resolution of those tort claims, and that the Tribe shall provide the State Gaming Agency with a copy of any such amended tort claims ordinance within thirty (30) days of its enactment.

(c) In the event the Tribe fails to adopt and maintain in continuous force the ordinance specified in subdivision (b), such failure shall constitute a breach of this Compact.

**Sec. 12.6. Participation in State Programs Related to Employment.**

(a) Not later than the effective date of this Compact, the Tribe will advise the State of its election to participate in the 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 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 or Gaming Facility. The workers' compensation program includes, but is not limited to, state laws relating to the securing of payment of compensation through one (1) 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 of this subdivision.

(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 an 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's 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.

(b) The Tribe agrees that it will participate in the State's program for providing unemployment compensation benefits and unemployment compensation disability benefits with respect to employees employed

at the Gaming Operation or Gaming Facility, which participation shall include compliance with the provisions of the California Unemployment Insurance Code, and the Tribe agrees to waive its right to assert sovereign immunity in connection with the enforcement of the Tribe's obligations under the California Unemployment Insurance Code.

(c) As a matter of comity, the Tribe shall, with respect to all persons employed at the Gaming Operation or Gaming Facility, including nonresidents of California, but excluding California Indian tribal members who are exempt pursuant to California Revenue and Tax Code section 17131.7, withhold all amounts due to the State as provided in the California Unemployment Insurance Code and the California Revenue and Taxation Code, and the regulations thereunder, as may be amended, and shall forward such amounts to the State. The Tribe shall file with the Franchise Tax Board a copy of any information return filed with the Secretary of the Treasury, as provided in the California Revenue and Taxation Code and the regulations thereunder, except those pertaining to California Indian tribal members who are exempt pursuant to California Revenue and Tax Code section 17131.7. Any subsequent applicable changes to the California Revenue and Taxation Code and the regulations thereunder regarding the income tax withholding of tribal members shall supersede the tax withholding requirements of this subdivision. The Tribe shall notify the State prior to implementing any changes to the tax-withholding requirements of this subdivision. Any disagreement regarding the Tribe's proposed change in tax withholding shall be subject to the dispute resolution provisions of section 13.0 of this Compact.

(d) The Tribe shall require the Gaming Operation to keep in place and continue to enforce the Gaming Operation's current policy of recognizing and enforcing lawfully issued state child or spousal support orders or judgments entered against any person employed at the Gaming Operation or Gaming Facility.

### Sec. 12.7. Emergency Services Accessibility.

The Tribe shall make reasonable provisions for adequate emergency fire, medical, and related relief and disaster services for patrons and employees of the Gaming Facility.

### Sec. 12.8. Alcoholic Beverage Service.

Purchase, sale, and service of alcoholic beverages shall be subject to state alcoholic beverage laws.

### Sec. 12.9. Possession of Firearms.

The possession of firearms by any person in the Gaming Facility is prohibited at all times, except for federal, state, or local law enforcement personnel, or tribal law enforcement or security personnel authorized by tribal law and federal or state law to possess firearms at the Gaming Facility.

### Sec. 12.10. Labor Relations.

The Gaming Activities authorized by this Compact may commence only after the Tribe has adopted an ordinance identical to the Tribal Labor Relations Ordinance attached hereto as Appendix D, and the Gaming Activities may continue only as long as the Tribe maintains the ordinance. The Tribe shall provide written notice to the State that it has adopted the ordinance, along with a copy of the ordinance, before the effective date of this Compact.

## SECTION 13.0. DISPUTE RESOLUTION PROVISIONS.

### Sec. 13.1. Voluntary Resolution; Court Resolution.

In recognition of the government-to-government relationship of the Tribe and the State, the parties shall make their best efforts to resolve disputes that arise under this Compact by good faith negotiations whenever possible. Therefore, except for the right of either party to seek injunctive relief against the other when circumstances are deemed to require immediate relief, the Tribe and the State (for purposes of this section 13.0 also referred to as the "party" or "parties") shall seek to resolve disputes by first meeting and conferring in good faith in order to foster a spirit of cooperation and efficiency in the administration and monitoring of the

performance and compliance of the terms, provisions, and conditions of this Compact, as follows:

(a) Either party shall give the other, as soon as possible after the event giving rise to the concern, a written notice setting forth the facts giving rise to the dispute and with specificity, the issues to be resolved.

(b) The other party shall respond in writing to the facts and issues set forth in the notice within fifteen (15) days of receipt of the notice, unless both parties agree in writing to an extension of time.

(c) The parties shall meet and confer in good faith by telephone or in person in an attempt to resolve the dispute through negotiation within thirty (30) days after receipt of the notice set forth in subdivision (a), unless both parties agree in writing to an extension of time.

(d) If the dispute is not resolved to the satisfaction of the parties after the first meeting, either party may seek to have the dispute resolved by an arbitrator in accordance with this section, but neither party shall be required to agree to submit to arbitration.

(e) Disputes that are not otherwise resolved by arbitration or other mutually agreed means may be resolved in the United States District Court in the judicial district where the Tribe's Gaming Facility is located, or if the federal court lacks jurisdiction, in any state court of competent jurisdiction in or over the County. The disputes to be submitted to court action include, but are not limited to, claims of breach of this Compact, and failure to negotiate in good faith as required by the terms of the Compact, provided that the remedies expressly provided in section 13.4, subdivision (a)(ii) are the sole and exclusive remedies available to either party for issues arising out of this Compact, and supersede any remedies otherwise available, whether at law, tort, contract, or in equity and, notwithstanding any other provision of law or this Compact, neither the State nor the Tribe shall be liable for damages or attorney fees in any action based in whole or in part on issues arising out of this Compact, or based in whole or in part on the fact that the parties have either entered into this Compact, or have obligations under this Compact. The parties are

entitled to all rights of appeal permitted by law in the court system in which the action is brought.

(f) In no event may the Tribe be precluded from pursuing any arbitration or judicial remedy against the State on the ground that the Tribe has failed to exhaust state administrative remedies, and in no event may the State be precluded from pursuing any arbitration or judicial remedy against the Tribe on the ground that the State has failed to exhaust any tribal administrative remedies.

**Sec. 13.2. Arbitration Rules for the Tribe and the State.**

Provided that the remedies expressly provided in section 13.4, subdivision (a)(ii), are the sole and exclusive remedies available under this Compact, arbitration between the Tribe and the State shall be conducted before a JAMS arbitrator in accordance with JAMS Comprehensive Arbitration Rules and Procedures. Discovery in the arbitration proceedings shall be governed by section 1283.05 of the California Code of Civil Procedure, provided that no discovery authorized by that section may be conducted without leave of the arbitrator. The parties shall equally bear the cost of JAMS and the JAMS arbitrator. Either party dissatisfied with the award of the arbitrator may at the party's election invoke the JAMS Optional Arbitration Appeal Procedure (or if those rules no longer exist, the closest equivalent). In any JAMS arbitration under this section 13.2, the parties will bear their own attorney's fees. The arbitration shall take place within seventy-five (75) miles of the Gaming Facility, or as otherwise mutually agreed by the parties, and the parties agree that either party may file a state or federal court action to (i) enforce the parties' obligation to arbitrate, (ii) confirm, correct, or vacate the arbitral award rendered in the arbitration in accordance with section 1285 et seq. of the California Code of Civil Procedure, or (iii) enforce or execute a judgment based upon the award. The parties agree not to assert, and will waive, any defense alleging improper venue or forum non conveniens as to any state court located within the County or any federal court located in the Eastern District of California in any such action brought with respect to the arbitration award.

**Sec. 13.3. No Waiver or Preclusion of Other Means of Dispute Resolution.**

This section 13.0 may not be construed to waive, limit, or restrict any remedy to address issues not arising out of this Compact that is otherwise available to either the Tribe or the State, nor may this section 13.0 be construed to preclude,

limit, or restrict the ability of the parties to pursue, by mutual agreement and in writing, any other method of Compact dispute resolution, including, but not limited to, mediation.

**Sec. 13.4. Limited Waiver of Sovereign Immunity.**

(a) For the purpose of actions or arbitrations based on disputes between the State and the Tribe that arise under this Compact and the judicial enforcement of any judgment or award resulting therefrom, the State and the Tribe expressly waive their right to assert any and all sovereign immunity from suit and enforcement of any ensuing judgment or arbitral award and consent to the arbitrator's jurisdiction and further consent to be sued in federal or state court, as the case may be, provided that (i) the dispute is limited solely to issues arising under this Compact, (ii) neither the Tribe nor the State makes any claim for restitution or monetary damages (except that payment of any money expressly required by the terms of this Compact may be sought), and solely injunctive relief, specific performance (including enforcement of a provision of this Compact expressly requiring the payment of money to one or another of the parties), and declaratory relief (limited to a determination of the respective obligations of the parties under the Compact) may be sought, and (iii) nothing herein shall be construed to constitute a waiver of the sovereign immunity of either the Tribe or the State with respect to any third party that is made a party or intervenes as a party to the action.

(b) In the event that intervention, joinder, or other participation by any additional party in any action between the State and the Tribe would result in the waiver of the Tribe's or the State's sovereign immunity as to that additional party, the waivers of either the Tribe or the State provided herein may be revoked, except where joinder is required, as determined by the court, to preserve the court's jurisdiction, in which case the State and the Tribe may not revoke their waivers of sovereign immunity as to each other.

(c) The waivers and consents to jurisdiction expressly provided for under this section 13.0 and elsewhere in the Compact shall extend to all arbitrations and civil actions expressly authorized by this Compact, including, but not limited to, actions to compel arbitration, any arbitration proceeding herein, any action to confirm, modify, or vacate

any arbitral award or to enforce any judgment, and any appellate proceeding emanating from any such proceedings, whether in state or federal court.

(d) Except as stated herein or elsewhere in this Compact, no other waivers or consents to be sued, either express or implied, are granted by either party, whether in state statute or otherwise, including but not limited to California Government Code section 98005.

**Sec. 13.5. Judicial Remedies for Material Breach.**

(a) Subsequent to exhausting the section 13.0 dispute resolution provisions, after providing a thirty (30)-day written notice of an opportunity to cure any alleged breach of this Compact, unless the circumstances are deemed to require immediate relief, either the Tribe or the State (also referred to in this section as "party or parties") may bring an action in federal court for a declaration that the other party has materially breached this Compact. If the federal court rules that a party has materially breached this Compact, then the party found to have committed the breach shall have thirty (30) days to cure the material breach after a final decision has been issued by the court after any appeals. The court may order additional time to cure the breach if the material breach cannot be cured within thirty (30) days even in good faith and with due diligence.

(b) If the material breach is not cured within the time allowed by the court, then in addition to the declaration of material breach and any equitable remedies explicitly identified in section 13.0 that may have been awarded, the non-breaching party may seek, in the same federal court action, termination of the Compact as a further judicially imposed remedy. The court may order termination based on a finding that the respondent party has (i) breached its Compact obligations, and (ii) failed to cure the material breach within the time allowed. In the event a federal court determines that it lacks jurisdiction over such an action, the action may be brought in the superior court for the County, and any finding that termination is warranted shall be effective thirty (30) days after issuance of the termination order by the federal district court or superior court, as the case may be.

(c) The parties expressly waive, and also waive their right to assert, their sovereign immunity from suit for purposes of an action under this section, subject to the waiver qualifications stated in section 13.4.

## SECTION 14.0. EFFECTIVE DATE AND TERM OF COMPACT.

### Sec. 14.1. Effective Date.

This Compact shall be effective upon the occurrence of both of the following:

(a) The Compact is ratified in accordance with the Tribe's law and State law; and

(b) Notice that the Compact has been approved or deemed approved is published in the Federal Register as provided in 25 U.S.C. § 2710(d)(3)(B).

### Sec. 14.2. Term of Compact.

(a) Once effective, this Compact shall be in full force and effect for State law purposes for twenty-five (25) years following the effective date.

(b) If this Compact does not take effect by January 31, 2022, it shall be deemed null and void unless the Tribe and the State agree in writing to extend the date.

## SECTION 15.0. AMENDMENTS; RENEGOTIATIONS.

### Sec. 15.1. Amendment by Agreement

The terms and conditions of this Compact may be amended at any time by the mutual and written agreement of the Tribe and the State (also referred to in section 15.0 as "party" or "parties") during the term of this Compact set forth in section 14.2, provided that each party voluntarily consents to such negotiations, including the scope of such negotiations, in writing.

**Sec. 15.2. Negotiations for a New Compact.**

No sooner than eighteen (18) months before the termination date of this Compact set forth in section 14.2, either party may request the other party to enter into negotiations to extend the term of this Compact or to enter into a new Class III Gaming compact. If the parties have not agreed to extend the term of this Compact or have not entered into a new compact by the termination date in section 14.2, this Compact shall automatically be extended for one (1) year. If at the conclusion of that extended one (1)-year period the parties are engaged in negotiations that both parties agree in writing are proceeding towards conclusion of a new or amended compact, this Compact shall automatically be extended for an additional two (2) years.

**Sec. 15.3. Changes in the Law.**

If a federal or state court decides that, as a result of a change in the law, a provision of the Compact is invalid or inoperable but also decides that the Compact remains valid and the court's judgment is not stayed pending appeal, the parties shall meet and negotiate in good faith a replacement for that Compact provision and other appropriate related amendments. The parties shall meet within thirty (30) days after the ruling of invalidity or inoperability becomes effective.

**Sec. 15.4. Entitlement to Renegotiate Compact Based on Changed Market Conditions.**

Notwithstanding the foregoing sections 15.1 through 15.3, the State shall, within forty-five (45) days of the Tribe's written request, participate in good-faith negotiations with the Tribe to amend the Compact where the stated basis for the Tribe's request is changed conditions that either (i) materially and adversely affect the Tribe's Gaming Operation such that the Tribe no longer enjoys the benefits otherwise provided by this Compact and the Tribe's obligations under this Compact therefore become unduly onerous, or (ii) create new opportunities to expand its Gaming Operation beyond the limitations on Gaming Devices or Gaming Facilities of this Compact. The State has no obligation to enter into negotiations unless the Tribe provides information adequate to prove that its request meets the required basis for negotiations pursuant to this section.

**Sec. 15.5. Entitlement to Renegotiate Compact Based on State Authorization of New Forms of Class III Gaming.**

If the State authorizes Class III Gaming activities not expressly authorized in this Compact, the parties shall, at the Tribe's request, enter into good-faith negotiations pursuant to IGRA to amend section 3.0 of this Compact for the purpose of adding the newly authorized Class III Gaming activity and making other appropriate related Compact amendments.

**Sec. 15.6. Entitlement to Renegotiate for Gaming on Newly Acquired Indian Lands.**

The Tribe retains the right to acquire additional eligible Indian lands under IGRA and, subject to the provisions of section 15.0, to request negotiation of an amendment to this Compact to authorize Class III Gaming on the subsequently acquired eligible Indian lands.

**Sec. 15.7. Requests to Amend or to Negotiate a New Compact.**

All requests to amend this Compact or to negotiate to extend the term of this Compact or to negotiate for a new Class III Gaming compact shall be in writing, addressed to the Tribal Chair or the Governor, as the case may be, and shall include the activities or circumstances to be negotiated, together with a statement of the basis supporting the request. If the request meets both the requirements of this section and either section 15.1, 15.2, 15.3, 15.4, 15.5 or 15.6, the parties shall confer within forty-five (45) days of the request to determine (i) whether the request meets the requirements of section 15.0 and, if so, (ii) the scope of negotiations, and (iii) a schedule for commencing negotiations, and thereafter both parties shall negotiate in good faith. The Tribal Chair and the Governor of the State are hereby authorized to designate the person or agency responsible for conducting the negotiations, and shall execute any documents necessary to do so.

## SECTION 16.0. NOTICES.

Unless otherwise indicated by this Compact, all notices required or authorized to be served shall be served by first-class mail at the following addresses, or to such other address as either party may designate by written notice to the other:

Governor
Governor's Office
State Capitol
Sacramento, CA 95814

Tribal Chairperson
Middletown Rancheria of Pomo Indians of California
P.O. Box 1035
Middletown, CA 95461

## SECTION 17.0. CHANGES TO IGRA.

This Compact is intended to meet the requirements of IGRA as it reads on the effective date of this Compact, and when reference is made to IGRA or to an implementing regulation thereof, the referenced provision is deemed to have been incorporated into this Compact as if set out in full. Subsequent changes to IGRA that diminish the rights of the State or the Tribe may not be applied retroactively to alter the terms of this Compact, except to the extent that federal law validly mandates retroactive application without the State's or the Tribe's respective consent.

## SECTION 18.0. MISCELLANEOUS.

### Sec. 18.1. Third-Party Beneficiaries.

Notwithstanding any provision of law, this Compact is not intended to, and shall not be construed to, create any right on the part of a third party or third-party beneficiary to bring an action to enforce any of its terms.

### Sec. 18.2. Complete Agreement.

This Compact, together with all appendices, sets forth the full and complete agreement of the Tribe and the State and supersedes, supplants, and extinguishes any prior agreements or understandings with respect to the subject matter hereof.

**Sec. 18.3. Construction.**

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

**Sec. 18.4. Successor Provisions.**

Wherever this Compact makes reference to a specific statutory provision, regulation, or set of rules, it also applies to the provision, regulation, or rules, as they may be amended from time to time, and any successor provision or set of rules. Within thirty (30) days of discovery of the adoption of any subsequent amendment of such statutory provision, regulation, or rules or any successor provision (for purposes of this section "Amendment") either the Tribe or the State may give notice of its position that the Amendment does not apply to the Compact. If the Tribe and the State agree that the Amendment applies or does not apply to the Compact, that agreement shall be memorialized in a document endorsed by the Tribe and the State. If the parties do not agree that the Amendment applies or does not apply to the Compact, the parties shall resolve the dispute in accordance with section 13.0 of this Compact.

**Sec. 18.5. Ordinances and Regulations.**

Whenever the Tribe adopts or materially amends any ordinance or regulations required to be adopted and/or maintained under this Compact, in addition to any other Compact obligations to provide a copy to others, the Tribe shall provide a copy of such adopted or materially amended ordinance or regulations to the State Gaming Agency within thirty (30) days of the effective date of such ordinance or regulations and the State Gaming Agency shall provide the Tribe with written confirmation of receipt of the ordinance or regulations within thirty (30) days of receipt thereof.

**Sec. 18.6. Calculation of Time.**

In computing any period of time prescribed by this Compact, the day of the event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday under the Tribe's laws, the State's law, or federal law. Unless otherwise specifically provided herein, the term "days" shall be construed as calendar days.

**Sec. 18.7. Force Majeure.**

In the event of a force majeure event, including but not limited to: an act of God; accident; fire; flood; earthquake; or other natural disaster; strike or other labor dispute; epidemic or pandemic; riot or civil commotion; act of public enemy; enactment of any rule; order or act of a government or governmental instrumentality; effects of an extended restriction of energy use; or other causes of a similar nature beyond the Tribe's control that cause the Tribe's Gaming Operation or Facility to be inoperable or operate at significantly less capacity or be unable to meet one or more of its obligations under this Compact; the Tribe and the State agree to meet and confer for the purpose of discussing the event and the appropriate actions, if any, given the circumstances, including waiver or deferral of Compact payment obligations.

In the instance that a force majeure event impacts more than fifty percent (50%) of tribal gaming operations located in California, the State and the Tribe agree to allow the State to elect to meet and confer with several or all gaming tribes that have been impacted by the force majeure event for the purpose of discussing the event and appropriate actions, if any, given the circumstances.

**Sec. 18.8. Representations.**

(a) The Tribe expressly represents that as of the date of the undersigned's execution of this Compact the undersigned has the authority to execute this Compact 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 Compact by the tribal governing body to the Governor no later than thirty (30) days after the execution of this Compact by the undersigned.

(b) The Tribe further represents that it is (i) recognized as eligible by the Secretary of the Department 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 Department of the Interior as possessing powers of self-government.

(c) In entering into this Compact, the State expressly relies upon the foregoing representations by the Tribe, and the State's entry into the Compact is expressly made contingent upon the truth of those representations as of the date of the Tribe's execution of this Compact through the undersigned. If the Tribe fails to timely provide written proof of the undersigned's aforesaid authority to execute this Compact or written proof of ratification by the Tribe's governing body, the Governor shall have the right to declare this Compact null and void.

(d) In the event the Tribe (i) asserts in any dispute between the Tribe and the State that the undersigned lacked the authority to execute this Compact on behalf of the Tribe, or (ii) in any Compact-related dispute in the limited contexts set forth in this Compact, including, but not limited to, the Compact provisions governing tort, workers' compensation, patron, or employment discrimination claims, whether or not involving the State, asserts that its waiver of sovereign immunity is not valid based upon a claim by the Tribe that the representations regarding the authority to waive or the waiver did not comply with the Tribe's laws, then the State and the Tribe agree that the Tribe shall lose all rights to conduct Class III Gaming under the terms of this Compact. If the Tribe otherwise identifies a potential defect regarding the authority of the undersigned to execute this Compact or the effectiveness of the limited waivers of the Tribe's sovereign immunity, and takes action to resolve the defect, the Tribe's right to conduct Class III Gaming under the terms of this Compact are not implicated unless and until the Tribe makes the assertions specified in (i) or (ii) above.

(e) (1) The Tribe shall give written notice to the State of its intent to assert either that the undersigned lacked authority to execute this Compact on behalf of the Tribe or that its waiver of sovereign immunity is not valid for the reasons stated in this subdivision at least fourteen (14) days before making that

assertion, and shall cease conducting Class III Gaming within thirty (30) days of making the assertion.

(2) Within fourteen (14) days after identifying a potential defect regarding the authority of the undersigned to execute this Compact or the effectiveness of the limited waivers of the Tribe's sovereign immunity as stated in the Compact, the Tribe shall give written notice to the State of the facts related to the potential defect and the specific actions the Tribe is taking to cure the potential defect.

(f) This Compact 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.

IN WITNESS WHEREOF, the undersigned sign this Compact on behalf of the State of California and the Middletown Rancheria of Pomo Indians of California.

STATE OF CALIFORNIA

By Gavin Newsom
Governor of the State of California

Executed this 19th day of April, 2021, at Sacramento, California

MIDDLETOWN RANCHERIA OF POMO INDIANS OF CALIFORNIA

By Jose Simon III
Chairperson of Middletown Rancheria of Pomo Indians of California

Executed this 15th day of April, 2021, at Middletown Rancheria, Lake County, California

**ATTEST:**

Shirley N. Weber, Ph.D.
Secretary of State, State of California