



# United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

DEC 15 2017

The Honorable Chris Wright  
Chairman, Dry Creek Rancheria Band of Pomo Indians  
P.O. Box 607  
Geyserville, California 95441

Dear Chairman Wright:

On October 5, 2017, our office received from the State of California (State) a copy of the proposed Tribal-State Compact (Compact) between the State of California and the Dry Creek Rancheria Band of Pomo Indians (Tribe).

## **DECISION**

Under 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. 25 U.S.C. § 2710 (d)(8). If the Secretary does not approve or disapprove the proposed compact within 45 days, IGRA states that the compact is considered 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).

We undertook a thorough review of the Compact and the additional materials submitted by the parties. While we have concerns with some provisions in the Compact, we have taken no action within the prescribed 45-day review period. As a result, the Compact is "considered to have been approved by the Secretary, but only to the extent [it] is consistent with the provisions of [IGRA]." 25 U.S.C. § 2710(d)(8)(C). We proceed in this "deemed approved" manner because the Compact contains provisions that appear to give the State broad authority over non-gaming activities, such as a hotel and on-reservation development and thus may exceed the lawful scope of State authority in gaming compacts under IGRA.

The Compact takes effect upon the publication of notice in the Federal Register pursuant to Section 11 (d)(3)(B) of IGRA, 25 U.S.C. § 2710(d)(3)(B); 25 C.F.R. § 293.15. We have set forth an explanation of our concerns below.

## **DISCUSSION**

We briefly address two issues, one related to the revenue sharing provisions in the compact, and the other related to a jurisdictional concern.

## ***Revenue Sharing Provisions***

We review revenue sharing requirements in gaming compacts with great scrutiny. Our analysis first looks to whether the state has offered meaningful concessions to the tribe. We view this concept as one where the state concedes something it was not otherwise required to negotiate, such as granting exclusive rights to operate class III gaming or other benefits sharing a gaming-related nexus. We then examine whether the value of the concessions provide substantial economic benefits to the tribe in a manner justifying the revenue sharing required. We find here that the State has made meaningful concessions in light of the exclusivity of tribal gaming under Proposition 1 A in California. This exclusivity represents a substantial economic benefit to the Tribe.

The Compact provides that the Tribe will make no payments into the Revenue Sharing Trust Fund (RSTF) or Tribal Nations Grant Fund if it operates 1200 or fewer gaming devices. The Tribe may request renegotiation to increase the number of gaming devices to 1,500, in which case, it will pay 2% of its net win into the RSTF on all gaming devices operated in excess of 350. Compact § 5.2. The Tribe may operate two gaming facilities but the operation of the second facility is contingent upon an agreement with Sonoma County to mitigate costs for its second gaming facility. Compact § 4.2. The Tribe also agrees to pay to the State, on a pro rata basis, the State's regulatory fees based on the number of gaming devices operated by the Tribe. Compact § 4.3.

The Compact memorializes the exclusivity of Proposition IA in California, and provides that in the event the State allows gaming by other entities, the Tribe has the option to cease gaming or continue gaming under the Compact with an entitlement to a reduction of rates in regulatory costs, payments to local governments, and grants for programs designed to address gambling addictions. Compact § 4.5.

### a. Meaningful Concessions

An important part of our analysis involving class III gaming compacts in California involves the decision in *Rincon Band of Luiseno Mission Indians of the Rincon Reservation v. Schwarzenegger*<sup>1</sup> where the Ninth Circuit Court of Appeals provides guidance on the extent to which variations on tribal gaming exclusivity constitute "meaningful concessions" in exchange for revenue sharing under IGRA. In reaching its decision, the Court reiterated that to be lawful under IGRA, the State may request revenue sharing if the revenue sharing provision is (a) for uses "directly related to the operation of gaming activities," (b) consistent with the purposes of IGRA, and (c) not "imposed" because it is bargained for in exchange for a "meaningful concession."<sup>2</sup>

The State's voters approved Proposition 1 A in 2000, which effectively grants all California tribes the exclusive right to offer class III gaming within the State. We have consistently recognized

<sup>1</sup> *Rincon Band of Luiseno Mission Indians of the Rincon Reservation v. Schwarzenegger*, 602 F.3d 1019 (9th Cir. CaL2010), cert. denied at *Brown v. Rincon Band of Luiseno Mission Indians of the Rincon Reservation*, 131 S. Ct. 3055 (2011).

<sup>2</sup>

that this exclusivity constitutes a meaningful concession to all tribes seeking to participate in gaming under IGRA. We have reached the same conclusion in this instance; the State's concession of the ability to offer class III gaming exclusive of non-Indian operators constitutes a meaningful concession to the Tribe.

b. Substantial Economic Benefits

Under the second prong of our analysis, we believe that the State's concessions provide a substantial economic benefit to the Tribe in a manner justifying the revenue sharing required under the Compact. Here, in the event the Tribe chooses to operate more than 1,200 gaming devices, thus triggering the Compact's 2% revenue sharing requirement, the Tribe's financial projections reasonably conclude that the Tribe will generate substantial revenues over the life of the Compact, which will allow the Tribe to pay its debts, develop its economy and strengthen its government.

*Permissible and Impermissible Subjects of Compact Negotiation*

The Compact contains several notable provisions that implicate the limitations on compact negotiations prescribed by Congress in IGRA. 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 a class III gaming compact.<sup>3</sup> Congress also sought to establish "boundaries to restrain aggression by powerful states."<sup>4</sup> The legislative history of IGRA indicates that "compacts [should not] be used as subterfuge for imposing state jurisdiction on tribal lands."<sup>5</sup> We conduct our review of tribal-state gaming compacts against this legislative history.

When we review a tribal-state compact or amendment, 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 falls within the "catch-all" category at § 2710 (d)(J)(C)(vii): "... subjects that are directly related to the operation of gaming activities." In this case, the Compact's definitions of "Gaming Facility" and

<sup>3</sup> 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).

<sup>4</sup> *Rincon* at I027 (citing S. Rep. No. 100-446, at 33 (1988) (statement of Sen. John McCain)).

<sup>5</sup> See S. Rep. No. 100-446 at 14.

"Project" cause us significant concern because the Compact could be read to allow the State to regulate areas that are not directly related to gaming. When read together, the definitions of "Gaming Facility" and "Project" may encompass an expansive range of activities which we believe will not be directly related to the operation of gaming activities.

The definition of "Gaming Facility" encompasses any building in which gaming activities or gaming operations occur, including " . . . all rooms, buildings and areas, including hotels, parking lots and walkways, a principal purpose of which is to serve the activities of the Gaming Operation, rather than providing the operation with an incidental benefit." Compact § 2.12. The term "Project," includes other activities, "a principal purpose of which is to serve the Gaming Activities or Gaming Operation" and any construction or planned expansion of a hotel or infrastructure, a principal purpose of which is to serve the Gaming Facility. Compact § 2.23. Such activities may include access roads, water supply systems, and utility systems. *Id.* These definitions are overly broad and are not directly related to the operation of gaming activities.

Further, Section 11 of the Compact requires the Tribe to take certain actions prior to the commencement of any "Project." Compact § 11. We have significant concerns about whether Section 11 of the Compact, when read together with the definition of both "Gaming Facility" and "Project," exceeds the scope of provisions tribes and states may include in a class III gaming compact under IGRA. The term "Project" includes activities intended to serve the "Gaming Operations" which encompasses more than just the actual facilities in which gaming activities will be conducted. Arguably, the Compact could be read to apply to tribal activities that are not directly related to the conduct of class III gaming such as the development of a tribal power utility or road system. Notably, for purposes of defining a "Project," the Compact defines "reservation" as including not only the Tribe's Indian lands under IGRA, but also lands "otherwise held in trust by the Tribe by the United States." Compact § 2.23. The inclusion of other trust lands is overly broad.

Because IGRA is very specific about the reach of a lawful compact, we believe that these provisions must be interpreted to apply only to spaces in which gaming actually takes place, to spaces in which gaming-related funds or devices are kept, to spaces in which other activities directly related to gaming occur, and to spaces occupied or frequented by employees who work within the confines of the gaming operation. For example, the provisions cannot lawfully apply to hotel rooms and hotel-related spaces, or other areas occupied and used exclusively by hotel guests, housekeeping and other non-gaming-related hotel employees. Similarly, the provisions should not apply to businesses or amenities that are ancillary to gaming activities. In sum, activities that are only indirectly related to gaming activities are not proper subjects for tribal-state gaming compacts. While other businesses may often be located near or adjacent to tribal gaming facilities, they ordinarily are not "directly related to the operation of gaming activities," and, therefore not subject to regulation through a tribal-state compact. Nothing in IGRA or its legislative history indicates that Congress intended to allow tribal-state gaming compacts to be used to expand state regulatory authority over tribal activities that are not directly related to the conduct of class III gaming.

Although we decline to use our authority to disapprove the Compact, we caution the parties to avoid applying these provisions in a manner that does not directly relate to the operation of

gaming activities. To do so would violate the express provisions of IGRA that limit the scope of tribal-state gaming compacts, and would, therefore be unlawful.

## **CONCLUSION**

We undertook a thorough review of the Compact and the additional materials submitted by the Tribe, and decided to take no action within the prescribed 45-day review period. As a result, the Compact is "considered to have been approved by the Secretary, but only to the extent [it] is consistent with the provisions of [IGRA]." 25 U.S.C. § 2710(d)(8)(c).

The Compact is effective upon the publication of notice in the Federal Register, as required by 25 U.S.C. § 2710(d)(3)(8).

A similar letter is being sent to the Honorable Jerry Brown, Governor of California.

Sincerely,



John Tahsuda  
Principal Deputy Assistant Secretary - Indian  
Affairs Exercising the Authority of the  
Assistant Secretary of Indian Affairs

Enclosure

TRIBAL-STATE COMP ACT  
BETWEEN  
THE STATE OF CALIFORNIA  
AND THE  
DRY CREEK RANCHERIA  
BAND OF POMO INDIANS

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**TRIBAL-STATE COMPACT  
BETWEEN THE STATE OF CALIFORNIA AND THE  
DRY CREEK RANCHERIA BAND OF POMO INDIANS**

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

**PREAMBLE**

WHEREAS, in 1988, Congress enacted 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: (1) authorized by a tribal ordinance, (2) located in a state that permits such gaming for any purpose by any person, organization or entity, and (3) conducted in conformity with a gaming compact entered into between the Indian tribe and the state and approved by the Secretary of the Interior; and

WHEREAS, the Tribe currently operates a tribal gaming casino offering class III gaming activities on its land, including approximately 1,100 class III gaming devices pursuant to the Tribal-State Compact Between the State of California and the Dry Creek Rancheria Band of Pomo Indians entered into in 1999 (1999 Compact); and

WHEREAS, the State enters into this Compact out of respect for the sovereignty of the Tribe; in recognition of the historical 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, in first approving Proposition 5 in 1998 and then amending the State Constitution through approval of Proposition 1 A in 2000, expressed their belief that the forms of gaming authorized herein should be allowed; to be conducted exclusively 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 nongaming. The State contends that it has an equally legitimate sovereign interest in regulating the growth of Class III gaming activities in California. 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 Tribe and Sonoma County entered into a Memorandum of Agreement effective as of March 18, 2008, which has been interpreted, implemented, and modified under the letter agreements of May 28, 2010, May 23, 2011, and July 12, 2012 (collectively, the "MOA"); and

WHEREAS, the MOA accomplished several things, including: resolution of several disputes between the Tribe and Sonoma County, provision for off-reservation mitigations, establishment of a process to identify and mitigate potential off-reservation environmental impacts of future Tribal economic development projects, establishment of a process to resolve disputes arising under the MOA, creation of a framework for building and maintaining a mutually beneficial government to government relationship of the Parties, and identification of ways for the Parties to work together to provide services and benefits to the tribal community and Sonoma County residents; and

WHEREAS, in 2008, shortly after completing the MOA, a major economic downturn began and continued into 2010 and beyond, which resulted in the loss of financing for construction of the Tribe's planned resort project, and substantially negatively impacted the casino's economic performance; and in November 2013, changes in the Tribe's marketplace further added stress to the Tribe's economic situation; and

**WHEREAS** in 2014, the Tribe defaulted on over \$150 million in bonded indebtedness, and on over \$50 million in remaining payments due to the County under the MOA, putting the Tribe in breach of the MOA; and

**WHEREAS**, in 2013 the Tribe had initiated re-negotiations of the MOA, requesting that the County consider restructuring and compromising the Tribe's indebtedness due to the foregoing facts, which in conjunction with the restructuring of the Tribe's bonded indebtedness, would allow the Tribe to rebuild its business and revitalize its participation in the local economy; and

**WHEREAS**, in December 2015, the Tribe agreed to amend specific provisions of the MOA, which extends its term to December 31, 2030; and

**WHEREAS** the State supports the Tribe's efforts to mitigate off-reservation impacts and finds that it is in the best interest of the State and the Tribe to establish the term of the Tribe's Compact beyond the term of the MOA so that the Tribe and the County have sufficient time to communicate on all issues, and there is sufficient flexibility built into the Tribe's MOA to extend its term as appropriate in the future; 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) Enhance and implement a means of regulating Class III Gaming to ensure its fair and honest operation in a way that protects the interests of the Tribe, the State, its citizens, and local communities 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 the local communities.

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

## SECTION 2.0. DEFINITIONS.

Sec. 2.1. "Applicable Codes" means the most current adopted editions of building and fire codes in effect at the time of construction of a Project, as adopted by the Tribe as tribal law, which shall include or be consistent with the Applicable Codes identified in the MOA, as it may be amended. Nothing in this section shall be construed to grant to the County, or to limit the Tribe's, authority or jurisdiction with respect to such codes or any matter related directly or indirectly thereto.

Should the MOA expire or not otherwise be in force,

"Applicable Codes" shall mean the California Building 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 for a State Gaming Agency 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 gaming compact under IGRA, and up to two (2) delegates each from the state Department of Justice, Bureau of Gambling Control and the California Gambling Control Commission.



Sec. 2.4. "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. 2.5. "Commission" means the California Gambling Control Commission, or any successor agency of the State.

Sec. 2.6. "Compact" means this Tribal-State Compact Between the State of California and the *Dry Creek Rancheria Band of Pomo Indians*.

Sec. 2.7. "County" means the County of Sonoma, California, a political subdivision of the State.

Sec. 2.8. "Financial Source" means any person or entity who, directly or indirectly, or indirectly, extends financing to the Gaming Facility or Gaming Operation.

Sec. 2.9. "Gaming Activity" or "Gaming Activities" means the Class III Gaming activities authorized under this Compact.

Sec. 2.10. "Gaming Device" means any slot machine within the meaning of article IV, section 19, subdivision (t) 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. 2.11. "Gaming Employee" means any natural person who is an employee of the Gaming Operation and (a) 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 (b) is in a category under federal or tribal gaming law requiring licensing, or (c) 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. 2.12. "Gaming Facility" or "Facility" means any building in which Gaming Activities or any Gaming Operations occur, or in which business records, receipts, or funds of the Gaming Operation are maintained (excluding offsite facilities primarily dedicated to storage of those records and financial institutions), and all rooms, buildings, and areas, including hotels, parking lots, and walkways, a principal purpose of which is to serve the activities of the Gaming Operation rather than providing them with an incidental benefit, provided that nothing herein prevents the conduct of class II gaming (as defined under [GRA) therein. Nothing herein shall be construed to apply in a manner that does not directly relate to the operation of Gaming Activities.

Sec. 2.13. "Gaming Operation" means the business enterprise that offers and operates Gaming Activities, whether exclusively or otherwise.

Sec. 2.14. "Gaming Ordinance" means a tribal ordinance or resolution duly authorizing the conduct of Gaming Activities on the Tribe's eligible Indian lands in California and approved under IGRA.

Sec. 2.15. "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 consulting services. "Gaming Resources" does not include professional accounting and legal services.

Sec. 2.16. "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 described 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. 2.17. "IGRA" means the Indian Gaming Regulatory Act of 1988 (P.L. 100-497, 18 U.S.C. §§ 1166-1168 and 25 U.S.C. § 2701 et seq.), and any amendments thereto, as interpreted by all regulations promulgated thereunder.**

**Sec. 2.18. "Interested Persons" means (a) 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, (b) any incorporated city within ten (10) miles of the Project, and (c) 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.**

**Sec. 2.19. "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. 2.20. "MOA" means the Memorandum of Agreement between the Dry Creek Rancheria Band of Pomo Indians and the County of Sonoma dated March 18, 2008, and as amended.**

**Sec. 2.21. "Net Win" means drop from Gaming Devices, plus the redemption value of expired tickets, less fills, less payouts, less that portion of the Gaming Operation's payments to a third-party wide-area progressive jackpot system provider that is contributed only to the progressive jackpot amount.**

**Sec. 2.22. "NIGC" means the National Indian Gaming Commission.**

**Sec. 2.23. "Project" means (a) the construction of a new Gaming Facility (b) a renovation, expansion or significant renovation or modification of the Tribe's existing Gaming Facility, or (c) other activity, provided the principal purpose of which is directly related to the Gaming Operation or Gaming Activities, and any one of which may cause a Significant Effect on the Off-Reservation Environment as defined in section 2.24. "Project" does not include an activity that has been both described and the impacts of which have been previously addressed in section 3.43.5 of the MOA. 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.

Sec. 2.24. "Significant Effect(s) on the Off-Reservation Environment" occur(s) if any of the following conditions exist:

(a) A proposed Project has the potential to degrade the quality of the off-reservation environment, curtail the range of the environment, or achieve short-term, to the disadvantage of long-term, environmental goals.

(b) The possible effects of a Project on the off-reservation environment are individually limited but cumulatively considerable. As used herein, "cumulatively considerable" means that the incremental effects of an individual Project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

(c) The off-reservation environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

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

Sec. 2.26. "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. 2.27. "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. 2.28. "Tribal Chair" or "Tribal Chairperson" means the person duly elected or selected under the Tribe's constitution or governing documents to

perform the duties specified therein, including serving as the Tribe's official representative.

**Sec. 2.29. "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. 2.30. "Tribe" means the Dry Creek Rancheria Band of Pomo Indians, a federally recognized Indian tribe listed in the Federal Register or an authorized official or agency thereof.**

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

#### **Sec. 3.1. Authorized Class III Gaming.**

- (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 games.**
  - (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 others in the state not affiliated with or licensed by the California State Lottery are permitted to do so under state and federal law.**
  
- (b) Nothing herein shall be construed to preclude the Tribe from offering class II gaming or preclude the negotiation of a separate compact governing the conduct of off-track wagering at the Tribe's Gaming Facility.**

- (c) Nothing herein shall be construed to authorize or permit the operation of any Class III Gaming that the State lacks the power to authorize or permit under article IV, section 19, subdivision (f), of the California State Constitution.
- (d) The Tribe shall not engage in Class III Gaming that is not expressly authorized in this Compact.

**SECTION 4.0. AUTHORIZED LOCATION OF GAMING FACILITY, NUMBER OF GAMING DEVICES, COST REIMBURSEMENT, AND MITIGATION.**

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

The Tribe is entitled to operate up to a total of one thousand two hundred (1,200) Gaming Devices pursuant to the conditions set forth in section 3.1 and section 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, located within the boundaries of the Tribe's Rancheria, as those boundaries exist as of the execution date of this Compact, as legally described in, and represented on the map at Appendix A hereto, and on which Class III Gaming may lawfully be conducted under IGRA. The Tribe may combine and operate in its Gaming Facilities any forms and kinds of gaming permitted under law, except to the extent limited under IGRA, this Compact, or the Tribe's Gaming Ordinance. If the Tribe chooses to operate more than one (1) Gaming Facility, then one (1) of the two (2) Gaming Facilities shall have no more than five hundred ( 500) Gaming Devices and shall have a primary purpose other than gaming authorized under IGRA, and shall be subject to negotiation with the County pursuant to the MOA.

**Sec. 4.3. Special Distribution Fund.**

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 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 pursuant to tribal-state Class III Gaming compacts 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. The Tribe's pro rata share of the State's 25 U.S.C. § 2710(d)(3)(C) regulatory 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 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 during the previous State fiscal year, multiplied by the Appropriation, equals the Tribe's pro rata share.

- (a) Beginning the first full quarter after Class III Gaming commences under 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 Quarterly Contribution Report specified in section 4.4, subdivision (b).

- (b) 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 shall 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.
- (c) The Tribe's annual pro rata share payment amount under this section, shall be capped at an amount equal to a five (5%) percent increase from the Appropriation used to calculate the Tribe's pro rata share in the immediately preceding year.
- (d) 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.

#### **Sec. 4.3.1. 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, and State Designated Agencies in connection with the implementation and administration of Class III Gaming compacts 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 members 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 as that term is defined in this Compact.

#### **Sec. 4.4. Quarterly Payments and Quarterly Contribution Report.**

- (a)
  - (1) The Tribe shall remit quarterly to the State Gaming Agency the payments described in section 4.3, for deposit into the Special Distribution Fund. If the Tribe seeks to amend this compact pursuant to section 5.2 to increase the number of authorized gaming devices, that amended compact will address the Tribe's payment obligations into the Revenue Sharing Trust Fund and Tribal Nation Grant Fund in a manner consistent with other compacts.
  - (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") that specifies the following:

- (1) 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;
- (3) the total amount of the quarterly payment paid to the State.

The Quarterly Contribution Report shall be prepared by the chief financial officer of the Gaming Operation.

- (c) 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 waives 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.
- (d) 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. 4.5. Exclusivity.**

In recognition of the Tribe's agreement to make the payments specified in sections 4.3 and 5.2, 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) within California, the Tribe shall have the right to exercise one 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 with an entitlement to a reduction of the rates specified in sections 4.3 and 5.2 following the conclusion of negotiations, to provide for: (A) compensation to the State for the costs of regulation, as set forth in section 4.3; (B) 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 11.7; (C) grants for programs designed to address and treat gambling addiction; and (D) such assessments as authorized at such time under federal law. The negotiations shall commence within thirty (30) days after receipt of a written request by a party 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 reduction of such payments within sixty (60) days following commencement of the negotiations specified in this section, 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 invoking the dispute resolution provisions of section 13.0 to address the issue of whether any person or entity (other than an Indian tribe with an approved Class III Gaming compact) is engaging in the Gaming Activities specified in subdivisions (a) or (b) of section 4.1 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 a 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 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 in the Tribal Nation Grant Fund but shall not be diverted to any non-Revenue Sharing Trust Fund or any non-Tribal Nation Grant Fund use or purpose. 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, 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 state or federal statutes, rules or regulations, or under state 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 and Limited-Gaming Tribes 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, 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 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, that has not engaged in, or offered, class II gaming or Class III Gaming in any

location whether within or without California, as of the date of distribution to such tribe from the Revenue Sharing Trust Fund or the Tribal Nation Grant Fund, or during the immediately preceding three hundred sixty-five (365) days.

- (d) A "Limited-Gaming Tribe" is a federally recognized tribe in California that has a Class III Gaming compact with the State but is operating 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 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 or the Tribal Nation Grant Fund**

- (a) In recognition of the needs of the Tribe's more than one thousand (1,000) tribal members and the existence of binding and enforceable agreement with the County providing for mitigation and other investment in the local community the Tribe shall have no obligation to pay any amount to the State Gaming Agency for deposit into the Revenue Sharing Trust Fund or the Tribal Nation Grant Fund if the Tribe operates no more than one thousand two hundred (1,200) Gaming Devices at any time in a given calendar year. If the market conditions support additional devices, the Tribe may request renegotiation of the Compact to increase the number of authorized Gaming Devices and the State shall agree to enter into negotiations. The terms of the amended compact shall limit the Tribe to no more than one thousand five hundred (1,500) Gaming Devices and require it to pay into the Revenue Sharing Trust Fund and Tribal Nation Grant Fund either a specified annual amount, or a percentage of Net Win from Class III Gaming Devices not to exceed two percent (2%) of Net Win from Gaming Devices in excess of three hundred fifty (350). The payment provision agreed to during negotiations will reflect the parties' continued commitment to a compact that preserves the Tribe's ability to provide for its members while recognizing that additional revenue will enable it to make contributions to support the Revenue Sharing Trust Fund and Tribal Nation Grant Fund. If the MOA with the County ceases to be in effect, the State may request, and the Tribe shall agree to, renegotiation of this Compact to address issues related

to local mitigation and reasonable contributions to the Revenue Sharing Trust Fund and Tribal Nation Grant Fund.

- (b) The Tribe shall remit the payments referenced in subdivision (a) to the State Gaming Agency in quarterly payments, which payments shall be due thirty (30) days 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).
- (c) The quarterly payments referenced in subdivision (b) required by subdivision (a), shall be determined by first determining the total number of all Gaming Devices operated by the Tribe during a given quarter (Quarterly Device Base). The Quarterly Device Base is equal to the sum of the maximum number of Gaming Devices in operation for each day of the calendar quarter, divided by the number of days in the calendar quarter that the Gaming Operation operates any Gaming Devices during the given calendar quarter.
- (d) If any portion of the payments under subdivision (a), 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.
- (e) If any portion of the Tribe's payment(s) is overdue as required by subdivision (b), 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.
- (f) All payments made by the Tribe to the State Gaming Agency pursuant to subdivision (a) shall be deposited into the Revenue Sharing Trust Fund and the Tribal Nation Grant Fund in a proportion to be determined by the Legislature, provided that if 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, the State Gaming Agency shall deposit all payments into the Revenue Sharing Trust Fund.

**SECTION 6.0. LICENSING.**

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

- (a) All Gaming Activities conducted under this Compact shall, at a minimum, comply (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) The Tribal Gaming Agency shall make available for inspection by the State Gaming Agency upon request 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, but excluding the Tribal Gaming Agency's internal policies and procedures.
- (c) The Tribal Gaming Agency shall 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 shall be owned solely by the Tribe.

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

- (a) The Tribe shall prohibit persons under the age of eighteen (18) years from being present in any room or area in which Gaming Activities are being conducted unless the person is en-route to a non-gaming area of the Gaming Facility.
- (b) If the Tribe permits the consumption of alcoholic beverages in the Gaming Facility, the Tribe shall 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 state Department of Alcoholic Beverage Control for other commercial establishments serving alcoholic beverages.

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

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

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, and 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, 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 parties intend that the licensing process provided for in this Compact shall involve joint cooperation between the Tribal Gaming Agency and the State Gaming Agency, as more particularly described herein.

**Sec. 6.4.2. Gaming Facility.**

- (a) The Gaming Facility authorized by this Compact shall be licensed by the Tribal Gaming Agency in conformity with the requirements of this

Compact, the Gaming Ordinance, IGRA, and any applicable regulations adopted by the NIGC. The license shall be reviewed and renewed every two (2) years thereafter. Verification that this requirement has been met shall be provided by the Tribe to the State by sending a copy of the initial license and each renewal license, either electronically or by hard copy, and each renewal license to the State Gaming Agency within thirty (30) 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 shall be posted in a conspicuous and public place in the Gaming Facility at all times.

- (b) To assure the protection of the health and safety of all Gaming Facility patrons, guests, and employees, the Tribe shall adopt, or 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 Applicable Codes. The Gaming Facility and any construction, expansion, improvement, modification, or renovation thereto will also comply with Title III of the Americans with Disabilities Act, P.L. 101-336, as amended. Notwithstanding the foregoing, the Tribe need not comply with any 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 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 government agency or official as may be designated by the Tribe's law.
- (c) To assure compliance with the Applicable Codes, in all cases where the Applicable Codes would otherwise require a permit, the Tribe shall require inspections and, in connection therewith, shall employ for any Gaming Facility construction qualified plan checkers or review firms. 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 or engineers with relevant experience, or California licensed architects or engineers on the list, if any, of approved plan checkers or review firms provided by the County. 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. The plan checkers, review firms, and project inspectors shall hereinafter be referred to as "Inspector(s)." The Tribe shall require the Inspectors to maintain contemporaneous records of all inspections and report in writing any failure to comply with the Applicable Codes to the Tribe and the Tribal Gaming Agency and, if the failure is not remedied within thirty (30) days after giving notice of the failure to comply, shall give notice to the State Gaming Agency. The Tribe agrees to correct any Gaming Facility condition noted in the inspections that does not meet the Applicable Codes (hereinafter in this section "deficiency").

- (d) The Tribe shall cause the design and construction calculations, and plans and specifications that form the basis for the planned construction (the "Design and Building Plans") to be available to the State Gaming Agency for inspection and copying 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 and field verified by the Inspectors for compliance with the Applicable Codes.
- (f) The Tribe shall maintain during construction all other 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, which shall be available to the State Gaming Agency for inspection and copying 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 Tribal Gaming Agency shall 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 to prohibit occupancy of the affected portion of the Gaming Facility pursuant to a court order until the deficiency is corrected. The Tribe shall 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.
  
- G) The Tribe shall also 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 titles 19 and 24 of the California Code of Regulations applicable to similar facilities in the County and all requirements of the Dry Creek Rancheria-Sonoma County Department of Emergency Services Fire Protocol as incorporated into the MOA as Exhibit G (the "Tribal-County Fire Protocol") as set forth below:
  - (1) Not less than 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 Tribe shall ensure the Gaming Facility is inspected, at the Tribe's expense, by an independent expert and, if one exists, the Tribal Fire Department (Fire Department), for purposes of certifying that the Gaming Facility meets a reasonable standard of fire safety and life safety.
  
  - (2) In the event the MOA or the Tribal-County Fire Protocol are no longer in effect, the State Gaming Agency may designate and have a qualified representative or representatives, which may include local fire suppression entities, present during the inspection. During such inspection, the State's representative(s) shall specify to the independent expert any condition which 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 Fire Department, if one exists, or independent expert 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 Fire Department or independent expert 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 those identified by the State Gaming Agency's representatives. A copy of the report and plan for correcting deficiencies, if any, shall be delivered to the State Gaming Agency and the Tribal Gaming Agency.
- (5) Immediately upon correction of all deficiencies identified in the report, the Fire Department, if one exists, and independent expert 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 within a reasonable period of time shall be deemed 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 occupancy of the affected portion of the Gaming Facility pursuant to court order until the deficiency is corrected.
- (7) Consistent with its obligation to ensure the safety of those within the Gaming Facility, the Tribe shall promptly notify the State Gaming Agency of any circumstances that pose a serious

and significant risk to the health or safety of occupants and take prompt action to correct such circumstances. Any failure to remedy within a reasonable period of time any serious and significant risk to public 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 prohibit occupancy of the affected portion of the Gaming Facility pursuant to a court order until the deficiency is corrected.

- (k) Notwithstanding anything in section 6.4 or elsewhere in this Compact, any construction 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 those Gaming Employees identified in subdivision (b) shall also 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 will consult with the Tribal Gaming Agency to identify 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. Gaming Employees who must obtain and maintain a finding of suitability from the State Gaming Agency may be referred to as "Compact Key Employees" and are identified by position on the "Compact Key Employee Position List." 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. These principles are consistent with agreements between the State Gaming Agency and the Tribal Gaming Agency identifying

Gaming Employees who are not required to have a State Gaming Agency determination of suitability, as provided in section 6.5.6, subdivision (a) of the 1999 Compact and are referred to therein as "non-key Gaming Employee[s]," that are in effect at the time of execution of this Compact and any such agreements remain in effect unless and until they are updated or amended through consultations 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 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 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 determines it is reasonably necessary, the State Gaming Agency is authorized 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. If the State Gaming Agency determines 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. 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, or immediately suspend that person's or entity's license, as applicable. 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 or entity; provided that 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 conducted pursuant to section 1085 of the California Code of Civil Procedure. 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 subdivisions (e) or (f).
- (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 in accordance with subdivision (b) and section 6.5.6 for a determination of suitability or for a renewal of such a



determination has been denied, or whose determination of suitability has expired without renewal.

- (e) Notwithstanding subdivision (d), 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 for at least three (3) years prior to June 26, 2000.
  
- (t) Notwithstanding subdivision (d), 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, 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 denial of the application by the State Gaming Agency is based solely on activities, conduct, or associations that antedate by at least ten (10) years, the filing of the enrolled member of the Tribe's initial application to the State Gaming Agency for a determination of suitability; and
  - (3) The enrolled member of the Tribe is not an employee or agent of any other gaming operation.

For purposes of this subdivision (f), "enrolled member of the Tribe" means a person who is a member of the Tribe as determined by the Tribe's law.

- (g) At any time after five (5) years following the effective date of this Compact, either party to this Compact may request renegotiation of the scope of coverage of subdivision (b) or (c).

#### **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, and the Tribe shall require it to 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 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 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 non-renewal 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 promptly 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 section 6.5.2 and section 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 a copy of the license, and a copy of 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 (g) 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 Operation or Gaming Facility.

- (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 section 6.5.2, 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 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) 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 which is not otherwise prohibited or restricted from disclosure under applicable federal law or regulation.

- (g) (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.
  - (B) Any entity described in the Commission's Uniform Tribal Gaming Regulation CGCC-2, subdivision (t) (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 (g)(1)(A), or any fund or other investment vehicle which 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 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)) which 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 to exclude a Financial Source from the licensing requirements of this section, the Tribal Gaming Agency shall give no less than 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.
  - (3) Notwithstanding subdivision (g)(1), 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 from the licensing requirements of this section 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 regarding the initial or ongoing excludability of an individual or entity from the licensing requirements of this section as a Financial Source that cannot be promptly resolved by the Tribal Gaming Agency and the State Gaming

Agency 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 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.
- (h) In recognition of changing financial circumstances, this section shall be subject to good faith renegotiation by both parties, upon the request of either party in or after five (5) years from the effective date of this Compact; provided that 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, subdivisions (c)(i) through (c)(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 Applicant, and in the case of an entity, each individual identified in section 6.4.5, 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) 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 shall not issue a gaming license, other than a temporary license pursuant to section 6.4.9, until a determination is made that those qualifications have been met.
- (b) In lieu of completing its own background investigation, and to the extent that doing so does not conflict with or violate IGRA or the Gaming Ordinance, the Tribal Gaming Agency may contract with the State Gaming Agency for the conduct of background investigations, may rely on a State determination of suitability previously in effect that was issued under a Class III Gaming compact involving another tribe and the State, or may rely on a State Gaming Agency license previously issued to the Applicant to fulfill some or all of the Tribal Gaming Agency's background investigation obligations.

- (c) If the Tribal Gaming Agency contracts with the State Gaming Agency for the conduct of background investigations, then an Applicant for a tribal gaming license shall be required to provide releases to the State Gaming Agency to make available to the Tribal Gaming Agency background information regarding the Applicant. The State Gaming Agency shall cooperate in furnishing to the Tribal Gaming Agency that information, unless doing so would violate state or federal law, would violate any agreement the State Gaming Agency has with a source of the information other than the Applicant, or would impair or impede a criminal investigation, or unless the Tribal Gaming Agency cannot provide sufficient safeguards to assure the State Gaming Agency that the information will remain confidential.
- (d) In lieu of obtaining summary criminal history information from the NIGC, the Tribal Gaming Agency may, pursuant to the provisions in subdivisions (d) through (j), 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.
- (e) The information received shall be used by the requesting 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.
- (f) 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 Gaming Employees, as defined by section 2.11, 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 Department of Justice establishes that the person is free on bail or on his or her recognizance pending trial or appeal.

- (g) 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.
- (h) The California Department of Justice shall provide a state or federal level response to the Tribal Gaming Agency pursuant to Penal Code section 11105, subdivision (p)(1).
- (i) The Tribal Gaming Agency shall request from the California Department of Justice subsequent notification service, as provided pursuant to section 11105.2 of the Penal Code, for persons described in subdivision (f) above.
- (j) The 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 of Gaming Employees.**

- (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, 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. 6.5.0. 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) below, 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 any application by that person for a tribal gaming license and promptly, and in no event more than thirty (30) days from the State Gaming Agency notification, suspend and initiate revocation of 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 of the California Code of Civil Procedure.
- (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 section 6.4.3, subdivision (f).

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

- (a) 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 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 as agreed to by the Tribal Gaming Agency and the State Gaming Agency, or for any other individual or entity required by this Compact, the Tribal Gaming Agency shall deliver to the State Gaming Agency copies of all information and documents received in connection with the application for renewal of the tribal gaming license, which is not otherwise prohibited or restricted from disclosure under applicable federal law or regulation, for purposes of the State Gaming Agency's consideration of renewal of its determination of suitability.

### **Sec. 6.5.3. Identification Cards.**

- (a) The Tribal Gaming Agency shall 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 members of the public and 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) Upon request, the Tribe shall provide the State Gaming Agency with the name, badge identification number (if any), 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 shall summarily suspend the tribal gaming license of any licensee if the Tribal Gaming Agency determines that the continued licensing of the person or entity could constitute a threat to the public health or safety or may summarily suspend the license of any licensee if the Tribal Gaming Agency determines that the continued licensing of the person or entity may violate the Tribal Gaming Agency's licensing or other standards. The Tribal Gaming Agency shall 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) With respect to Applicants for licensing for a position identified on the Compact Key Employee Position List, the Applicant shall also file an application with the State Gaming Agency, prior to the Tribal Gaming Agency's issuance of a tribal gaming license, for a determination of suitability for licensure under the California Gambling Control Act; 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.
- (b) Upon receipt of an Applicant's completed license application and a determination by the Tribal Gaming Agency that it intends to issue either a temporary or permanent license, the Tribal Gaming Agency shall transmit within sixty (60) days to the State Gaming Agency for a determination of suitability for licensure under the California Gambling Control Act a notice of intent to license the Applicant, together with all of the following:

A copy of all tribal license application materials and information received by the Tribal Gaming Agency from the Applicant which 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 state-certified fingerprint roller or by a person exempt from state certification pursuant to 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.
- (c) 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.
- (d) Investigation and disposition of applications for a determination of suitability shall be governed entirely by 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 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.
- (e) 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.
- (f) Upon receipt of completed license or license renewal application information from 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 for association with Class III Gaming operations. 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. 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 the NIGC, and written statements by the Applicant and related applications, if any, for Gaming Employees, Gaming Resource Suppliers, and Financial Sources. If further investigation is required to supplement the investigation conducted by the Tribal Gaming Agency, 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 State 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.

- (g) 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 in a Gaming Operation 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. Upon receipt of notice that the State Gaming Agency has determined that a person or entity is or would be unsuitable for licensure, the Tribal Gaming Agency shall, except as provided in section 6.4.3, subdivisions (e) and (f), deny that person or entity a license and promptly, and in no event more than thirty (30) days from the issuance of the State Gaming Agency notification, revoke any tribal gaming license that has theretofore been issued to that person or entity; provided that 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 of the California Code of Civil Procedure. Any right to notice or hearing in regard to a tribal gaming license shall be governed by tribal law.

- (h) 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 had been determined unsuitable for licensure, the State Gaming Agency shall notify the Tribal Gaming Agency and afford the Tribe an opportunity to be heard. 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.
- (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 or Financial Source that appears on the Commission's suitability roster may be licensed by the Tribal Gaming Agency in the same manner as a Gaming Resource Supplier under subdivision (d) of section 6.4.4, 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 section 6.5.1 or section 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 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 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 the 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 the applicable technical standards in effect as of the effective date of this Compact, or such other technical standards as the State Gaming Agency and the Tribal Gaming Agency shall agree upon (Technical Standards), which agreement shall not be unreasonably withheld;**
  - (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 game 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 operation of the Gaming Device by the public.**

- (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 applicable Gaming Test Laboratory standards; and
  - (6) The hardware and associated equipment for the Gaming Device has been verified or tested by the Tribal Gaming Agency to ensure operation in accordance with the manufacturer's specifications.
- (b) Where either the Tribe 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 Tribal Gaming Agency received the State Gaming Agency's request, either party 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 or state or national governmental gaming test laboratory that is (1) recognized in the gaming industry as competent and qualified to conduct scientific tests and evaluations of Gaming Devices, and (2) 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 (1) and (2) herein. If, at any time, the

**Gaming Test Laboratory license and/or approval required by (a)(2) herein 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 such Gaming Test Laboratory but Gaming Devices tested, evaluated and approved by such Gaming Test Laboratory shall be re-tested, re-evaluated and re-approved by a substitute Gaming Test Laboratory.**

- (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 shall 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 shall 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, utilizing such consultants, if any, that it deems appropriate and whom it binds to the confidentiality requirements of this Compact, 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 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. An onsite inspection may consist of randomly testing Gaming Device software, hardware, associated equipment, software maintenance records, and components critical to the operation of the Gaming Device. The State Gaming Agency may not remove from play more than five percent (5%) of the Gaming Devices then in operation at the Gaming Facility, and may not remove a Gaming Device from play, except during inspection or testing or from the Gaming Facility at any time, unless it obtains the concurrence of the Tribal Gaming Agency which shall not be unreasonably withheld. The five percent (5%) limitation on inspections of Gaming Devices shall not apply if a Gaming Device's connection to other Gaming Devices, a progressive controller or similar linked system makes limiting removal from play of no more than five percent (5%) infeasible or impossible. Whenever practicable, the State Gaming Agency shall not require removal from play any Gaming Device that the Tribal Gaming Agency determines may be fully and adequately tested while still in play. The State Gaming Agency shall return any Gaming Device removed from a Gaming Facility to the Gaming Facility as soon as reasonably possible. The random inspections conducted pursuant to this section shall occur during normal business hours outside of weekends and holidays.

- (b) 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/Theme; (3) Serial Number; (4) Machine/Asset Number; (5) Manufacturer; (6) Location; (7) Denomination; (8) Slot Type (e.g., video, reel); (9) Progressive Type (e.g., stand alone, linked, WAP); (10) Software ID number for all certified software in the Gaming Device, including Game, Base/System, Boot Chips and Communication Chip; (11) any other information deemed relevant and appropriate by the State Gaming

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

- (c) The State Gaming Agency shall provide notify 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 Tribal Gaming Agency may accompany the State Gaming Agency inspector(s).
- (d) The State Gaming Agency, utilizing such consultants, if any, that it deems appropriate and whom it binds to the confidentiality requirements of this Compact, may conduct additional inspections at additional times upon reasonable belief of any irregularity and after informing the Tribal Gaming Agency of the basis for such belief, provided, that the Tribe may invoke dispute resolution under section 13.0 if the Tribal Gaming Agency has reason to believe that the number of inspections is unduly burdensome and/or lacks sufficient basis for the number of inspections in light of the Tribe's continued regulatory compliance.
- (e) For any inspections in this section, the State Gaming Agency may utilize consultants that the State Gaming Agency deems appropriate and whom it binds to the confidentiality requirements of 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. The State Gaming Agency shall also take all reasonable steps to ensure that any consultants are free from conflicting interests in the conduct of their duties under this Compact.

#### **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 within thirty (30) days after the effective date of this Compact if not previously provided and thereafter at least thirty (30) days before the effective date



of any material revisions to the regulations, unless exigent circumstances require that any revisions to the regulations take effect sooner in order to ensure game integrity or otherwise to protect the public of 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 Sheriffs Department for the County in which the land is located.**
- (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 compact with the State or class III procedures prescribed by the Secretary of the Interior which 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 state law, tribal-state compact, or class III procedures prescribed by the Secretary of the Interior;**
  - (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 Tribes Indian lands in violation of this section, 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 State and the Tribe operating pursuant to a Class III Gaming 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 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 Gaming Ordinance or other applicable tribal law.
- (c) The Tribal Gaming Agency shall report individual or continued 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 Commission and the

Bureau of Gambling Control in the California Department of Justice 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 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 but not limited to any consultants retained by it, shall have the right to inspect the Tribe's Gaming Facility, and all Gaming Operation or 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). 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 State Gaming Agency regulations governing contract employees.
- (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, unless exigent circumstances require access within a shorter period of time. 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 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 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 or to conduct or complete any investigation of suspected criminal activity; and provided further that 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, in order to renegotiate any provision thereof, or in order to conduct or complete any investigation of suspected criminal activity in connection with the Gaming Activities or the operation of the Gaming Facility or the Gaming Operation; provided that to the extent reasonably feasible, the State Gaming Agency will consult with representatives of the Tribe prior to such disclosure. Prior to the disclosure of any confidential information and records and copies to federal law enforcement and other state agencies, upon request, the State Gaming Agency shall provide the Tribal Gaming Agency with a current copy of its relevant confidentiality policy.
- (d) For the purposes of this section, "confidential information and records" means any and all information and records received from the Tribe pursuant to the Compact, except for information and records 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.

- (t) 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 Gaming Regulators' 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.
- (i) 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 Between State Gaming Agency and Tribal Gaming Agency.**

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

**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. Upon the discovery of an irregularity that the State Gaming Agency reasonably determines may be a threat to gaming integrity or public safety, and after consultation with the Tribal Gaming Agency, the State Gaming Agency may conduct additional periodic reviews in order to ensure compliance with all provisions of this Compact and its Appendices. 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.**

It 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, of IGRA, of NIGC gaming regulations, of State Gaming Agency regulations, and of the Gaming Ordinance, to protect the integrity of the Gaming Activities 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 shall be vested with the authority to promulgate, and shall 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 to any other subject within its jurisdiction.**
- (b) The physical safety of Gaming Facility patrons and employees, and any other persons while in the Gaming Facility. Except as provided in section 12.2, nothing herein shall be construed, however, to make applicable to the Tribe any 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 system at all times, and any modifications thereof first shall be approved by the Tribal Gaming Agency.**
- (f) The establishment of Tribal Internal Control Standards requiring 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 gaming within the State. The Tribal Gaming Agency and the State Gaming Agency shall make a good faith effort to share information regarding such permanent exclusions.

- (h) The conduct of an audit, at the Tribe's expense, 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 played that has not received Tribal Gaming Agency approval.
- (j) Maintenance of 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 Gaming Regulators' Association.

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

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 "incidents"). 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 (all incidents shall be identified in writing).
- (b) Require the assignment of a sequential number to each 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 shall 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 the Minimum Internal Control Standards of the NIGC (25 C.F.R. § 542), as they existed on October 10, 2008, and as they may thereafter be amended, without regard to the NIGC's authority to promulgate, enforce, or audit the 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 in section 9.1 or in the alternative by compliance with the statewide uniform regulation CGCC-8, as it may be amended.

- (b) In the event CGCC-8 is rescinded or otherwise ceases to exist, or if the NIGC withdraws its regulation at 25 C.F.R. § 542, the Minimum Internal Control Standards of the NIGC as they existed on October 10, 2008 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 Tribal-State 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 shall establish a program, approved by the Tribal Gaming Agency, to mitigate pathological and problem gambling by implementing the following measures:

- (a) It shall train Gaming Facility supervisors and gaming floor employees on responsible gaming and to identify and manage problem gambling.
- (b) It shall make available to patrons at conspicuous locations and ATMs in the Gaming Facility educational and informational materials which aim at the prevention of problem gambling and that specify where to find assistance.

- (c) It shall establish self-exclusion programs 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) It shall establish an involuntary exclusion program that allows 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. Nothing herein creates a right to sue the Tribe, the Tribal Gaming Agency, or the Gaming Operation, or any official, employee or agent of the Tribe, the Tribal Gaming Agency, or the Gaming Operation as the result of such exclusion.
- (e) It 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.
- (f) It shall make diligent efforts to prevent underage individuals from loitering in the area of the Gaming Facility where the Gaming Activities take place.
- (g) It shall assure that advertising and marketing of the Gaming Activities at the Gaming Facility contain a responsible gambling message and a toll-free help-line number for problem gamblers, where practical and that it makes no false or misleading claims.

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

#### **Sec. 9.5. 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 tribal 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 such Gaming Activity conducted pursuant to this Compact, criminal jurisdiction to enforce state 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. 9.6. Tribal Gaming Agency Members.**

- (a) The Tribe shall take all 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; shall adopt a conflict-of-interest code to that end; 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 a conflict of interest.
- (b) The Tribe 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 he or she satisfies the requirements of section 6.4.7.

#### **Sec. 9.7. Gaming Regulators' Association.**

- (a) Except as provided in subdivision (d), no State Gaming Agency regulation 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.

- (b) Every State Gaming Agency regulation 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 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.
- (c) Except as provided in subdivision (d), no regulation of the State Gaming Agency shall be adopted as a final regulation in respect to the Tribe's Gaming Operation before the expiration of 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.
- (d) 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 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, and thereafter submitted to the Tribe for comment as provided in subdivision (c).
- (e) The Tribe may object to a State Gaming Agency regulation on the ground that it is unnecessary, unduly burdensome, conflicts with a published final regulation of the NIGC, or unfairly discriminatory, and may seek repeal or amendment of the regulation through the dispute resolution process of section 13.0; provided that, if the regulation of the State Gaming Agency conflicts with a final published regulation of the NIGC, the NIGC regulation shall govern pending conclusion of the dispute resolution process.

## **SECTION 10.0. PATRON DISPUTES.**

The Tribal Gaming Agency shall promulgate regulations governing patron disputes over the play or operation of any game, including any refusal to pay to a patron any alleged winnings from any Gaming Activities, which regulations must meet the following minimum standards:

- (a) A patron who has a dispute over the play or operation of any game of the Gaming Operation must make a written complaint to personnel of the Gaming Operation within seven (7) days of the play or operation at issue (Initial Complaint).

  - (1) If the patron's Initial Complaint is not resolved to the patron's satisfaction by the Gaming Operation's management, the patron shall be given written notice by the Gaming Operation that the patron has the right to request, in writing, resolution of the complaint by the Tribal Gaming Agency. The patron must make the request to the Tribal Gaming Agency within fifteen (15) days of receiving the Gaming Operation's written notification. If the patron is dissatisfied with the Tribal Gaming Agency's resolution of the complaint, the patron may seek resolution in either the Tribe's tribal court, or if the tribal court is not available, through or a three (3)-member tribal claims commission pursuant to the terms and provisions in subdivision (c). The tribal claims commission shall consist of at least one (1) representative of the tribal government and at least one (1) commissioner who is not a member of the Tribe. No member of the tribal claims commission may be employed by the Gaming Facility or Gaming Operation.
  - (2) The written notice provided by the Gaming Operation must contain notice of all procedural provisions in subdivision (a)(1). If the patron is not provided with written notice by the Gaming Operation within thirty (30) days of the patron's submission of the Initial Complaint, then the patron may seek resolution of the complaint by the Tribal Gaming Agency up to one hundred eighty (180) days after submission of the Initial Complaint.
  - (3) An explanation of the dispute resolution process shall be posted or otherwise made available in each Gaming Facility.

- (b) Upon receipt of the patron's written request for a resolution of the patron's complaint pursuant to subdivision (a), the Tribal Gaming Agency shall conduct an investigation, shall provide to the patron a copy of its procedures concerning patron complaints, and shall render a decision consistent with industry practice. The Tribal Gaming Agency's decision shall be issued within sixty (60) days of the patron's written request, shall be in writing, shall be based on the facts surrounding the dispute, and shall set forth the reasons for the decision.**
- (c) If the patron is dissatisfied with the decision of the Tribal Gaming Agency issued pursuant to subdivision (b), or no decision is issued within the sixty (60) day period, the patron may request that any such complaint over any claimed prizes or winnings and the amount thereof, be settled either in the Tribe's tribal court or, if the tribal court is not available, by a three (3)-member tribal claims commission pursuant to the terms and provisions in subdivision (c). The tribal claims commission shall consist of at least one (1) representative of the tribal government and at least one (1) commissioner who is not a member of the Tribe. No member of the tribal claims commission may be employed by the Gaming Facility or Gaming Operation, The tribal court or tribal claims commission must afford the patron with a dispute resolution process that incorporates the essential elements of fairness and due process. Resolution of the dispute before the tribal court system or tribal claims commission shall be at no cost to the patron (excluding patron's attorney's fees). Consistent with industry practice, if any alleged winnings are found to be a result of a mechanical, electronic or electromechanical failure and not due to the intentional acts or gross negligence of the Tribe or its agents, the patron's claim for the winnings shall be denied but the patron shall be awarded reimbursement of the amounts wagered by the patron that were lost as a result of any mechanical, electronic or electromechanical failure.**
- (d) The Tribe shall consent to tribal court or tribal claims commission adjudication to the extent of the amount of winnings in controversy, and discovery in the tribal courts or tribal claims commission proceedings shall be governed by tribal rules and procedures**



comparable to the rules set forth in section 1283.05 of the California Code of Civil Procedure.

- (e) Any party dissatisfied with the award of the tribal court or the tribal claims commission may invoke the jurisdiction of the tribal appellate court, or in the absence of a tribal appellate court, the JAMS Optional Arbitration Appeal Procedure (or if those rules no longer exist, the closest equivalent), provided that if there is a tribal appellate court, the party making the election of JAMS must bear all costs and expenses of JAMS and the JAMS arbitrators associated with the JAMS Optional Arbitration Appeal Procedure, regardless of the outcome. The applicable JAMS Optional Arbitration Appeal Procedure, hereafter also known as the "JAMS appeal proceeding," shall take place in Sonoma County, California, shall use one (1) arbitrator and shall not be a de novo review, but shall be based solely upon the record developed in the tribal court. The JAMS appeal proceeding shall review all determinations of the tribal court on matters of law, but shall not set aside any factual determinations of the tribal court if such determination is supported by substantial evidence. The JAMS appeal proceeding will review the decision of the tribal court under the substantial evidence standard. The JAMS Optional Arbitration Appeal Procedure arbitrator does not take new evidence but reviews the record of the decision below to make sure there is substantial evidence that reasonably supports that decision. The JAMS Optional Arbitration Appeal Procedure arbitrator's appellate function is not to decide whether he or she would have reached the same factual conclusions but decide whether a reasonable fact-finder could have come to the same conclusion based on the facts in the record. If there is a conflict in the evidence and a reasonable fact-finder could have resolved the conflict either way, the decision of the tribal court will not be overturned on appeal. The arbitrator shall have no authority to award attorney's fees, costs or arbitration fees, regardless of outcome.

- (t) To effectuate its consent to the tribal court, the tribal claims commission and the JAMS Optional Arbitration Appeal Procedure in the section, the Tribe shall, in the exercise of its sovereignty, expressly waive, and also waive its right to assert, sovereign immunity in connection with the jurisdiction of the tribal court tribal claims commission and JAMS Optional Arbitration Appeal Procedure, and in any suit to (i) enforce an obligation under this section, or (ii)

enforce or execute a judgment based upon the award of the tribal court, tribal claims commission, or the arbitrator or the JAMS Optional Arbitration Appeal Procedure arbitrator.

**SECTION 11.0. OFF-RESERVATION ENVIRONMENTAL AND ECONOMIC IMPACTS.**

**Sec. 11.1. Tribal Environmental Impact Report.**

- (a) The Memorandum of Agreement (MOA), as defined in section 2.20, between the Dry Creek Rancheria Band of Pomo Indians and the County of Sonoma dated March 18, 2008, and as subsequently amended between the Tribe and County, establishes the process by which the Tribe identifies and mitigates off-reservation impacts. To the extent that MOA, including any amendments consented to by the Tribe and the County remains in effect, the Tribe is not subject to the requirements of this section. The terms and provisions of the MOA establish the relevant duties, standards and procedures for identification and mitigation of off-reservation impacts. In the event the MOA is no longer in effect, the Tribe will be subject to the provisions of this section. Before the commencement of any Project as defined in section 2.23, the Tribe shall cause to be prepared a tribal environmental impact report pursuant to the process and standards required by section 11.0, which is hereinafter referred to as a "TEIR," analyzing the potentially significant off-reservation environmental impacts of the Project pursuant to the process set forth in this section 11.0; 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 existing 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 proposed 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) **Alternatives to the Project; provided that the Tribe need not address alternatives that would cause it to forgo its right to engage in the Gaming Activities authorized by this Compact on its Indian lands;**
  - (6) **Whether any proposed mitigation would be feasible;**
  - (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)(c) **In addition to the information required pursuant to subdivision (a), the TEIR shall also contain a statement indicating the reasons for determining that various effects of the Project on the off-reservation**

environment are not significant and consequently have not been discussed in detail in the TEIR. In the TEIR, the direct and indirect Significant Effects on the Off-Reservation Environment, including each of the items in Appendix 8, shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. The discussion of mitigation measures shall describe feasible measures that could minimize significant adverse effects, and shall distinguish between the measures that are proposed by the Tribe and other 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. The TEIR shall also describe a range of reasonable alternatives to the Project or to the location of the Project, which would feasibly attain most of the basic objectives of the Project and which would avoid or substantially lessen any of the Significant Effects on the Off-Reservation Environment, and evaluate the comparative merits of the alternatives; provided that the Tribe need not address alternatives that would cause it to forgo its right to engage in the Gaming Activities authorized by this Compact on its Indian lands. The TEIR must include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison. The TEIR shall also 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. 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.

- (c) Subject to the foregoing, the Tribe may determine, in the exercise of its sovereign authority and pursuant to a duly enacted tribal environmental ordinance that a particular activity will not cause a Significant Effect on the Off-Reservation Environment. The Tribe shall provide written notice to the State that it has adopted a tribal environmental policy ordinance, along with a copy of the ordinance, prior to the effective date of this Compact. The Tribe shall notify the State within thirty (30) days of any determination made pursuant to its

tribal environmental ordinance that a particular activity is not a Project within the meaning of this Compact. If the State objects to the Tribe's determination the matter shall be resolved in accordance with the dispute resolution provisions of section 13.0.

- (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 and the National Environmental Policy Act.

### **Sec. 11.2. Notice of Preparation of Draft TEIR.**

- (a) Upon commencing the preparation of the draft TEIR, the Tribe shall issue a Notice of Preparation (NOP) to the State Clearinghouse in the State Office of Planning and Research (State Clearinghouse) and to the County for distribution to the public. The Tribe shall also post the NOP on its website. The NOP 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 NOP shall also include all of the following information:
- (1) A description of the Project;
  - (2) The proposed location of the Project shown on a detailed map, preferably topographical, and on a regional map; and
  - (3) The probable off-reservation environmental effects related to the Project.
- (b) The NOP 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 NOP by the State Clearinghouse and the County. The NOP shall also request Interested Persons to identify in their comments the off-reservation environmental issues, potentially Significant Effects on the Off-Reservation Environment and reasonable mitigation measures that the Tribe should analyze in the draft TEIR.

**Sec. 11.3. Notice of Completion of Draft TEIR.**

- (a) 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 the California Department of Justice, Office of the Attorney General. 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 comments on the draft TEIR may be submitted to the Tribe.
- (b) The Tribe will submit ten (10) copies each of the draft TEIR and the Notice of Completion to the County, which will be asked to post public notice of the draft TEIR at the office of the County Board of Supervisors and to furnish the public notice to the public libraries serving the County. Alternative to paper copies, the Tribe and County may agree that a single electronic copy of the draft TEIR and Notice of Completion may be submitted by the Tribe to the County. The County shall also be asked to serve in a timely manner the Notice of Completion to all Interested Persons, which Interested Persons shall be identified by the Tribe for the County, to the extent it can identify them. In addition, the Tribe will provide public notice by at least one
- (1) of the procedures specified below:
    - (I) Publication at least one (1) time by the Tribe in a newspaper of general circulation in the area affected by the Project. 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; or
    - (2) 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. 11.4. Issuance of Final TEIR.**

**The Tribe shall prepare, certify and make available to the County, the State Clearinghouse, the State Gaming Agency, the California Department of Justice, Office of the Attorney General, and, in the event potentially significant traffic impacts are identified in the Final TEIR, to the California Department of Transportation, at least fifty-five (55) days before the completion of negotiations pursuant to section 11.7 a Final TEIR, which shall consist of:**

- (a) The draft TEIR or a revision of the draft;**
- (b) Comments and recommendations received on the draft TEIR either verbatim or in summary;**
- (c) A list of persons, organizations, and public agencies commenting on the draft TEIR;**
- (d) 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 issues raised in the review and consultation process, and its response thereto;**
- (e) In the event the Tribe has determined that specific economic, legal, social, technological, or other considerations, including the legitimate needs of the Tribe to generate revenue to provide essential programs and services to its members, make infeasible the mitigation of Significant Off-Reservation Impacts, the TEIR shall identify the specific overriding economic, legal, social, technological or other consideration(s) supporting approval of the Project based on substantial evidence in the TEIR. A Project may proceed only if such a determination is supported by substantial evidence and there is agreement with the State that the impacts to the affected community have been balanced with appropriate and commensurate benefits to the same 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, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment; and**

- (f) Any other information added by the Tribe.**

**Sec. 11.5. Cost Reimbursement to County.**

**The Tribe shall reimburse the County for copying and mailing costs resulting from making paper copies of the NOP, Notice of Completion, and draft TEIR available to the public under this section 11.0.**

**Sec. 11.6. Failure to Prepare Adequate TEIR.**

**The Tribe's failure to prepare a TEIR that satisfies the requirements and standards of section 11.1 may be deemed a breach of this Compact and furthermore shall be grounds for issuance of an injunction or other appropriate equitable relief.**

**Sec. 11.7. Intergovernmental Agreement.**

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

- (l) Provisions providing for the timely mitigation of any Significant Effect on the Off-Reservation Environment (which effects may include, but are not limited to, aesthetics, agricultural resources, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, water resources, land use, mineral resources, traffic, noise utilities and service systems, and cumulative effects), where such effect is attributable, in whole or in part, to the Project. unless the parties agree that the particular mitigation is**



**infeasible, taking into account economic, environmental, social, technological, or other considerations.**

- (2) Provisions relating to compensation for law enforcement, fire protection, emergency medical services and any other public services, to the extent those services are to be provided by the County 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) Provisions providing for mitigation of any effect on public safety attributable to the Project, including any compensation to local affected jurisdictions as a consequence thereof, to the extent such effects are not mitigated pursuant to subdivision (a)(2) above.**
- (b) The Tribe shall not commence a Project until the intergovernmental agreement with the County specified in subdivision (a) is executed by the parties or is effectuated pursuant to section 11.8.**
- (c) 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 the intergovernmental agreement required by this section shall provide for timely mitigation of all traffic impacts on the state highway system and facilities directly attributable to the Project, and payment of the Tribe's fair share of cumulative traffic impacts.**
- (d) Nothing in this section requires the Tribe to enter into any other intergovernmental agreements with a local governmental entity other than as set forth above.**

### **Sec. 11.8. 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 is not entered within seventy-five (75) days of the submission of the Final TEIR, or such further time as the Tribe and the State (for purposes of this section "the parties") may agree in writing, either party may demand binding arbitration before a JAMS arbitrator pursuant to JAMS Comprehensive Arbitration with respect to any remaining**

disputes arising from, connected with, or related to the negotiation. The arbitration shall be conducted as follows:

- (a) 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 11.7.
- (b) The arbitrator shall schedule a hearing to be heard 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 11.7, without unduly interfering with the principal objectives of the Project or imposing environmental mitigation measures which 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.
- (c) The arbitrator shall take into consideration whether the Final TEIR provides the data and information necessary to enable the County to determine both whether the Project may result in a Significant Effect on the Environment and whether the proposed measures in mitigation are sufficient to mitigate any such effect.
- (d) 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 therefore. Review of the resulting arbitration award is waived.
- (e) To effectuate this section, and in the exercise of its sovereignty, the Tribe agrees to expressly waive, and to 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 any arbitral award rendered in the arbitration. or (iii) enforce or execute a judgment based upon the award,

- (f) The arbitral award will become part of the intergovernmental agreements with the State required under section 11.7.

## **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 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 tribal health standards for food and beverage handling that are no less stringent than State public health standards. The Tribe will allow, during normal hours of operation, inspection of food and beverage services in the Gaming Facility by non-tribal governmental health inspectors who provide evidence of authority demonstrating that they would have jurisdiction but for the Gaming Facility being on Indian lands, 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. Any report subsequent to an inspection or visit by the non-tribal governmental, including federal health inspectors shall be

transmitted within seventy-two (72) hours to the State Gaming Agency and the Tribal Gaming Agency, This includes any document that includes a citation or finding. Nothing herein shall be construed as submission of the Tribe to the jurisdiction of those non-tribal governmental health inspectors, but any violations of the standards may be the subject of dispute resolution per section 13.0.

- (b) Adopt and comply with standards no less stringent than federal water quality and safe drinking water standards applicable in California. The Tribe will allow, during normal hours of operation, inspection and testing of water quality at the Gaming Facility by State or County health inspectors, whichever inspector would have jurisdiction but for the Gaming Facility being on Indian lands, to assess compliance with these standards unless inspections and testing are routinely made by an agency of, or contractor for, the United States pursuant to federal law, and testing is routinely performed under the authority of the Tribe in compliance with federal law, the results of which are routinely provided to, and monitored by, an agency of the United States to ensure compliance with federal water quality and safe drinking water standards. Any report or other writings by the State, County, or federal health inspectors shall be transmitted within seventy-two (72) hours to the State Gaming Agency and the Tribal Gaming Agency. Nothing herein shall be construed as submission of the Tribe to the jurisdiction of those State or County health inspectors, but any violations of the standards may be the subject of dispute resolution pursuant to section 13.0. The State acknowledges the Tribe's authority to act pursuant to the appropriate delegation by the federal Environmental Protection Agency for purposes of the federal Clean Water Act.
- (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. The Tribe will allow inspection of Gaming Facility workplaces by state inspectors, during normal hours of operation, to assess compliance with these standards provided that there is no right to inspection by state inspectors where an inspection has been conducted by an agency of the United States pursuant to federal law during the previous calendar quarter and the

**Tribe has provided a copy of the federal agency's report to the State Gaming Agency within ten (10) days of the federal 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) Adopt and comply with tribal law that is consistent with federal and State law forbidding harassment, including sexual harassment, in the workplace, forbidding employers from discrimination in connection with the employment of persons to work or working for the Gaming Operation or in the Gaming Facility on the basis of race, color, religion, ancestry, national origin, gender, marital status, medical condition, sexual orientation, age, or disability, and forbidding employers from retaliation against persons who oppose discrimination or participate in employment discrimination proceedings (hereinafter "harassment, retaliation, or employment discrimination" or "employment-related claim"); provided that nothing herein shall preclude the Tribe from giving a preference *in* employment to members of the Tribe, members of federally recognized Indian tribes, or other Native Americans, pursuant to a duly adopted tribal ordinance. The tribal law required by this subdivision (f) is referred to hereafter as the "employment discrimination complaint ordinance."**
  
- (I) With respect to all employment-related claims as defined in subdivision (f), 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 which provides coverage of at least three million dollars (\$3,000,000) per occurrence for unlawful harassment, retaliation, or employment discrimination arising out of the claimant's employment in, in connection with, or relating to the operation of the Gaming Operation, Gaming Facility or Gaming Activities. To effectuate the insurance coverage, the Tribe, in the exercise of its sovereignty, shall expressly waive, and waive its right to assert, sovereign immunity and any and all defenses based thereon up to the greater of three million dollars (\$3,000,000) or the limits of the employment practices insurance policy, in accordance with the tribal ordinance referenced in subdivision**

**(f)(2) below, in connection with any claim for harassment, retaliation, or employment discrimination arising out of the claimant's employment in, 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 employment practices liability insurance policy shall acknowledge in writing that the Tribe has expressly waived, and waived its right to assert, sovereign immunity and any and all defenses based thereon for the purpose of arbitration of those claims for harassment, retaliation, or employment discrimination up to the limits of such policy 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 such 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 such policy limits or three million dollars (\$3,000,000), whichever is greater. Nothing in this provision shall be interpreted to supersede any requirement in the Tribe's employment discrimination complaint ordinance that a claimant must exhaust administrative remedies as a prerequisite to arbitration.**

**(2) The standards shall be subject to enforcement pursuant to an employment discrimination complaint ordinance which shall be adopted by the Tribe prior to the effective date of this Compact and which shall continuously provide at least the following:**

**{A) That California law shall govern all claims of harassment, retaliation, or employment discrimination arising out of the claimant's employment in, in connection with, or relating to the operation of, the Gaming Operation, Gaming facility or Gaming Activities; provided that California law governing punitive damages need not be a part of the ordinance. Nothing in this provision shall be construed as a submission of the Tribe to the jurisdiction of the California Department of Fair Employment and Housing**

or the California Fair Employment and Housing Commission.

- (B) That a claimant shall have one hundred-eighty ( 180) days from the date that an alleged discriminatory act occurred to file a written notice with the Tribe that he or she has suffered prohibited harassment, retaliation, or employment discrimination.
- (C) That, in the exercise of its sovereignty, the Tribe expressly waives, and also waives its right to assert, sovereign immunity with respect to the dispute resolution processes expressly authorized in the employment discrimination complaint ordinance and this section J 2.3, subdivision (f) relating to claims for harassment, retaliation, or employment discrimination, but only up to the greater of three million dollars (\$3,000,000) or the limits of the employment practices insurance policy referenced in subdivision (f)( 1) above; provided, however, such waiver shall not be deemed to waive or otherwise limit the Tribe's sovereign immunity for any portion of the claim that exceeds three million dollars (\$3,000,000) or the insurance policy limits, whichever is greater.
- (D) The employment discrimination complaint ordinance shall allow for the claim to be resolved in the first instance, either in the Tribe's tribal court, or if the tribal court is not available, by a three (3)-member tribal claims commission pursuant to the terms and provisions in subdivision (c). The tribal claims commission shall consist of at least one (1) representative of the tribal government and at least one (1) commissioner who is not a member of the Tribe. There also shall be available a tribal court of appeal, which shall consist of an individual appointed by the tribal council who is knowledgeable of the laws prohibiting harassment, retaliation, or employment discrimination. The tribal court or tribal claims commission must afford the claimant with a dispute resolution process that

**incorporates the essential elements of fairness and due process. No member of the tribal court, tribal claims commission, or tribal court of appeal may be employed by the Gaming Facility or the Gaming Operation. Resolution of the dispute before the tribal court tribal claims commission, or tribal court of appeal shall be at no cost to the claimant (excluding claimant's attorney's fees). The adjudication, including any appeal, shall take place on the Tribe's Indian lands, or at another location within the County.**

- (E) Discovery in the tribal courts or tribal claims commission proceedings shall be governed by tribal rules and procedures comparable to the rules set forth in section 1283.05 of the California Code of Civil Procedure.**
- (F) Any employee entitled to adjudicate disputes in the tribal court or tribal claims commission who is dissatisfied with the result may, at his or her election, appeal the matter to the tribal court of appeal that shall be established by the Tribe. The costs associated with adjudication by the tribal court of appeal shall be borne by the Tribe, and each party will bear its own attorney's fees. If there is a conflict in the evidence and a reasonable fact-finder could have found for either party, the decision of the tribal court or tribal claims commission will not be overturned on appeal.**
- (G) To effectuate its consent to the authority of the adjudicative bodies set forth in this section 12.3, subdivision (f), the Tribe shall, in the exercise of its sovereignty, expressly waive, and also waive its right to assert, sovereign immunity in connection with the jurisdiction of the tribal court, the tribal claims commission, and in any action in the tribal Court or tribal court of appeal to enforce an obligation provided in this section 12.3, subdivision (f), or to enforce or execute a judgment based upon the award.**

**(3) The employment discrimination complaint ordinance required**



under subdivision (f)(2) may require, as a prerequisite to invoking the dispute resolution processes expressly authorized in this section 12.3 subdivision (f), that the claimant exhaust the Tribe's administrative remedies, if any exist, in the form of a tribal employment discrimination complaint resolution process, for resolving the employment-related claim in accordance with the following standards:

- (A) Upon notice that the claimant alleges that he or she has suffered prohibited harassment, retaliation, or employment discrimination, the Tribe or its designee shall provide notice by personal service or certified mail, return receipt requested, that the claimant is required to proceed with the Tribe's employment discrimination complaint resolution process in the event that the claimant wishes to pursue his or her claim.
- (B) The claimant must bring his or her claim within one hundred eighty (180) days of receipt of the written notice (limitation period) of the Tribe's employment discrimination complaint resolution process as long as the notice thereof is served personally on the claimant or by certified mail with an executed return receipt by the claimant and the one hundred eighty (180) day limitation period is prominently displayed on the front page of the notice.
- (C) Adjudication may be stayed until the completion of the Tribe's employment discrimination complaint resolution process or one hundred eighty (180) days from the date the claim was filed, whichever first occurs, unless the parties mutually agree upon a longer period.
- (D) The decision of the Tribe's employment discrimination complaint resolution process shall be in writing, shall be based on the facts surrounding the dispute, shall be a reasoned decision, and shall be rendered within one hundred eighty (180) days from the date the claim was filed, unless the parties mutually agree upon a longer period.

- (4) Within fourteen (14) days following notification that a claimant claims that he or she has suffered harassment, retaliation, or employment discrimination, the Tribe shall provide notice by personal service or certified mail, return receipt requested, that the claimant is required within the specified limitation period to first exhaust the Tribe's employment discrimination complaint resolution process, if any exists, and if dissatisfied with the resolution, is entitled to adjudicate his or her claim before the tribal court or tribal claims commission at no cost to the claimant (except for the claimant's attorney's fees).**
- (5) In the event the Tribe fails to adopt the employment discrimination complaint ordinance specified in subdivision (f)(2), such failure shall constitute a breach of this Compact.**
- (6) The Tribe shall provide written notice of the employment discrimination complaint ordinance and the procedures for bringing a complaint in its employee handbook. The Tribe 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 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 standards that are no less stringent than State laws, if any, prohibiting a gambling or other gaming enterprise from providing, allowing, contracting to provide, or arranging to provide alcoholic beverages, for no charge or at reduced prices at a gambling establishment as an incentive or enticement.**

- (i) Adopt and comply with standards that are no less stringent than State laws, if any, prohibiting extensions of credit.
- (j) Comply with provisions of the Bank Secrecy *Act*, P.L. 91-508, October 26, 1970, 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.
- (k) The Tribe agrees to adopt ordinances or implement 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 C.F.R. §§ 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 that Labor Code section, California Code of Regulations title 8, sections 11000 to 11170. Notwithstanding the foregoing, the State's minimum wage law and its implementing regulations shall not apply to tipped employees.

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

The Tribe shall adopt in the form of an ordinance, or ordinances, the standards described in subdivisions (a) through (k) of section 12.3 to which the Gaming Operation and Gaming Facility are held and upon request, make available the ordinance(s) to the State Gaming Agency not later than thirty (30) days after the request is made. In the absence of a promulgated tribal standard in respect to a matter identified in those subdivisions, 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 State statute or regulation shall be deemed to have been adopted by the Tribe as the applicable standard.

#### **Sec. 12.S. Insurance Coverage and Claims.**

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 which provides coverage of no less than ten million dollars (\$10,000,000) per occurrence for bodily injury, personal injury, and property damage 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 expressly waives, and waives its right to assert., its sovereign immunity up to the greater of ten million dollars (\$10,000,000) or the limits of the Policy, in accordance with the tribal ordinance referenced in subdivision (b) below, in connection with any claim for bodily injury, personal injury, or property damage, arising out of, connected with, or relating to the operation of the Gaming Operation, Gaming Facility, or the Gaming Activities, including, but not limited to, injuries resulting from entry onto the Tribe's land for purposes of patronizing the Gaming Facility or providing goods or services to the Gaming Facility; provided, however, that nothing herein requires the Tribe to agree to liability for punitive damages or to waive its right to assert its 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 arbitration or adjudication of those claims up to the greater of ten million dollars (\$10,000,000) or the limits of the Policy referred to above 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 ten million dollars (\$10,000,000) or the Policy limits, whichever is greater.

- (b) The Tribe shall adopt, and at all times hereafter shall maintain in continuous force, an ordinance that provides for all of the following:
  - (1) The ordinance shall provide that the Tribe shall adopt as tribal law, provisions that are the same as California tort law to govern all claims of bodily injury, personal injury, or property damage arising out of, connected with, or relating to the operation of the Gaming Operation, Gaming Facility, or the Gaming Activities, including but not limited to injuries resulting from entry onto the Tribe's land for purposes of patronizing the Gaming Facility or providing goods or services

to the Gaming Facility, provided that California law governing punitive damages need not be a part of the ordinance. Further, the Tribe may include in the ordinance required by this subdivision a requirement that a person with claims for money damages against the Tribe file those claims within the time periods applicable for the filing of claims for money damages against public entities under California Government Code section 810 et seq. Under no circumstances shall there be any awards of attorney's fees or costs.

- (2) The ordinance shall also expressly provide for waiver of the Tribe's sovereign immunity and its right to assert sovereign immunity with respect to the arbitration or resolution of such claims in the Tribe's tribal court, or if the tribal court is not available, in the tribal claims commission, and in the tribal appellate court, or if the tribal appellate court is not available, in the JAMS Optional Arbitration Appeal Procedure, but only up to the greater of ten million dollars (\$10,000,000) or the limits of the Policy; provided, however, such waiver shall not be deemed to waive or otherwise limit the Tribe's sovereign immunity for any portion of the claim that exceeds ten million dollars (\$10,000,000) or the Policy limits, whichever is greater.
- (3) The ordinance shall allow for the claim to be resolved either in the Tribe's tribal court or, if the tribal court is not available, by a three (3)-member tribal claims commission pursuant to the terms and provisions in subdivision (c). The tribal claims commission shall consist of at least one (1) representative of the tribal government and at least one (1) commissioner who is not a member of the Tribe. No member of the tribal claims commission may be employed by the Gaming Facility or Gaming Operation. The tribal court or tribal claims commission must afford the patron with a dispute resolution process that incorporates the essential elements of fairness and due process. No member of the tribal court or the tribal claims commission may be employed by the Gaming Facility or Gaming Operation. Resolution of the dispute before the tribal court or tribal claims commission shall be at no cost to the claimant (excluding claimant's attorney's fees).

- (4) **The Tribe shall consent to tribal court or tribal claims commission Jurisdiction to the extent of the limits of the Policy. Discovery in the tribal courts or tribal claims commission proceedings shall be governed by tribal rules and procedures comparable to the rules set forth in section 1283.05 of the California Code of Civil Procedure.**
- (5) **Any party dissatisfied with the award of the tribal court or claims commission may, invoke the Jurisdiction of the tribal appellate court, or in the absence of a tribal appellate court, the JAMS Optional Arbitration Appeal Procedure (or if those rules no longer exist, the closest equivalent), provided that if there is a tribal appellate court, the party making the election of JAMS must bear all costs and expenses of JAMS and the JAMS arbitrators associated with the JAMS Optional Arbitration Appeal Procedure, regardless of the outcome. The applicable JAMS Optional Arbitration Appeal Procedure, hereafter also known as the "JAMS appeal proceeding," shall take place in Sonoma County, California, shall use one (1) arbitrator and shall not be a de novo review, but shall be based solely upon the record developed in the tribal court or tribal claims commission proceeding. The JAMS appeal proceeding shall review all determinations of the tribal court or tribal claims commission on matters of law but shall not set aside any factual determinations of the tribal court or tribal claims commission if such determination is supported by substantial evidence. The JAMS appeal proceeding will review the decision of the tribal court or tribal claims commission under the substantial evidence standard. The JAMS Optional Arbitration Appeal Procedure arbitrator does not take new evidence but reviews the record of the decision below to make sure there is substantial evidence that reasonably supports that decision. The JAMS Optional Arbitration Appeal Procedure arbitrator's appellate function is not to decide whether he or she would have reached the same factual conclusions but decide whether a reasonable fact-finder could have come to the same conclusion based on the facts in the record. If there is a conflict in the evidence and a reasonable fact-finder could have resolved the conflict either way, the decision of the tribal court or tribal claims commission will not be overturned on appeal. The**

arbitrator shall have no authority to award attorney's fees, costs or arbitration fees, regardless of outcome.

- (6) To effectuate its consent to the tribal court system or tribal claims commission, and the JAMS Optional Arbitration Appeal Procedure in the ordinance, the Tribe shall, in the exercise of its sovereignty, expressly waive, and also waive its right to assert, sovereign immunity in connection with the jurisdiction of the tribal court, tribal claims commission, and JAMS Optional Arbitration Appeal Procedure, and in any suit to (i) enforce an obligation under this section 12.5, or (ii) enforce or execute a judgment based upon the award of the tribal court, tribal claims commission, or the JAMS Optional Arbitration Appeal Procedure arbitrator.
  - (7) The ordinance may also require that the claimant first exhaust the Tribe's administrative remedies for resolving the claim (hereinafter the "Tribal Dispute Process") in accordance with the following standards: The claimant must bring his or her claim within one hundred eighty (180) days of receipt of written notice of the Tribal Dispute Process as long as notice thereof is served personally on the claimant or by certified mail with an executed return receipt by the claimant and the one hundred eighty (180)-day limitation period is prominently displayed on the front page of the notice. The ordinance may provide that any other dispute resolution process shall be stayed until the completion of the Tribal Dispute Process or one hundred eighty (180) days from the date the claim is filed in the Tribal Dispute Process, whichever first occurs, unless the parties mutually agree to a longer period.
- (c) Upon notice that a claimant claims to have suffered an injury or damage covered by this section, the Tribe shall provide notice by personal service or certified mail, return receipt requested, that the claimant is required within the specified limitation period to first exhaust the Tribal Dispute Process, if any, and if dissatisfied with the resolution, is entitled to the appeal process described in subdivision (b)(3) above.

- (d) In the event the Tribe fails to adopt the ordinance specified in subdivision (b), the tort law of the State of California, including applicable statutes of limitations, shall apply to all claims of bodily injury, personal injury, and property damage arising out of, connected with, or relating to the operation of the Gaming Operation, Gaming Facility, or the Gaming Activities, including but not limited to injuries resulting from entry onto the Tribe's land for purposes of patronizing the Gaming Facility or providing goods or services to the Gaming Facility; and the Tribe shall be deemed to have expressly waived, and to have waived its right to assert, sovereign immunity up to the greater of ten million dollars (\$10,000,000) or the limits of the Policy in connection with the arbitration of any such claims, any court proceedings based on such arbitration, including the arbitral award resulting therefrom, and any ensuing judgments.
- (e) The Tribe shall not invoke on behalf of any employee or agent, the Tribe's sovereign immunity in connection with any claim for, or any judgment based on any claim for, intentional injury to persons or property committed by the employee or authorized agent, without regard to the Tribe's liability insurance limits. Nothing in this subdivision prevents the Tribe from invoking sovereign immunity on its own behalf or authorizes a claim against the Tribe or a tribally owned entity.
- (f) In the event the Tribe fails to adopt 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) The Tribe agrees that it will participate in the State's workers' compensation program with respect to employees employed at the Gaming Operation and the Gaming Facility. The workers' compensation program includes, but is not limited to, State laws relating to the securing of payment of compensation through one or more insurers duly authorized to write workers' compensation insurance in this state or through self-insurance as permitted under the State's workers' compensation laws. If the Tribe participates in the State's workers' compensation program, it agrees that all disputes arising from the workers' compensation laws shall be heard by the Workers' Compensation Appeals Board pursuant to the California



Labor Code and hereby consents to the jurisdiction of the Workers' Compensation Appeals Board and the courts of the State of California for purposes of enforcement. The parties agree that independent contractors doing business with the Tribe are bound by all state workers' compensation laws and obligations.

- (b) 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 Facility employees' work-related injuries through requiring insurance or self-insurance, which 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 (either after thirty (30) days from the date of the injury is reported or if a medical provider network has been established, within the medical provider network), 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's approved list, a Qualified Medical Evaluator on the state's 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 or permanent disability, death, supplemental job displacement and return to work supplement) comparable to those mandated for comparable employees under State law. Not later than thirty (30) days after the effective date of this Compact, the Tribe will advise the State of its election to participate in the State's workers' compensation system 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 standard set forth above. The parties agree that independent contractors doing business with the Tribe must comply with all state workers' compensation laws and obligations.
- (c) 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 consents to the jurisdiction of the state agencies charged with the enforcement of that code and of the courts of the State of California for purposes of enforcement.

- (d) As a matter of comity, with respect to persons, including nonresidents of California, employed at the Gaming Operation or Gaming Facility, the Tribe shall withhold all amounts due to the State as provided in the California Unemployment Insurance Code and, except for tribal members living on the Tribe's reservation, as provided in 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 tribal members living on the Tribe's reservation. For purposes of this subdivision, "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, and "tribal members" refers to the enrolled members of the Tribe.
- (e) As a matter of comity, the Tribe shall recognize and enforce state and federal court judgments, and earnings withholding orders for taxes, support of a child, spouse or former spouse, in accordance with tribal law, provided that such law includes procedures for enforcement of all valid orders as they apply to any non-tribal member 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.**

The purchase, sale, and service of alcoholic beverages by or to patrons 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 only commence after the Tribe has adopted an ordinance identical to the Tribal Labor Relations Ordinance attached hereto as Appendix C, and the Gaming Activities may only continue 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, on or 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 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, 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 its 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.**

Arbitration between the Tribe and the State shall be conducted before a JAMS arbitrator in accordance with JAMS Comprehensive Arbitration. 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, 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. In any such action brought with respect to the arbitration award, the parties agree that venue is proper in any state court located within the County or in any federal court located in the Eastern District of California.

### **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 party, nor may this section 13.0 be construed to preclude, limit, or restrict the ability of the parties to pursue, by mutual agreement, 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 enforcement of any judgment or award resulting therefrom, the State and the Tribe expressly waive their right to assert their 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 t 3.0 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 Government Code section 98005.

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

### **Sec. 14.1. Effective Date.**

This Compact shall not be effective unless and until all of the following have occurred:

- (a) The Compact is ratified in accordance with State law; and
- (b) Notice of approval or constructive approval is published in the Federal Register as provided in 25 U.S.C. § 2710(d)(3)(B).

### **Sec. 14.2. Term of Compact; Termination.**

- (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) Subsequent to exhausting the section 13.0 dispute resolution provisions unless the circumstances are deemed to require immediate relief, either party may bring an action in federal court, after providing a thirty (30)-day written notice of an opportunity to cure any alleged breach of this Compact, for a declaration that the other party has materially breached this Compact or that a material part of this Compact has been invalidated. 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 after a final decision has been issued by the court after any appeals to cure the material breach. If the material breach is not cured within thirty (30) days, 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
  - (i) that the respondent party has breached its Compact obligations, and
  - (ii) that the respondent party 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 Sonoma 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. The parties expressly waive, and also waive their right to assert, their sovereign immunity from suit for purposes of an action under this subdivision, subject to the waiver qualifications stated in section 13.4.

- (c) If this Compact does not take effect by November 1, 2018, 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 both 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. Any amendments to this Compact shall be deemed to supersede, supplant and extinguish all previous understandings and agreements on the subject.

### **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 the parties are engaged in negotiations that both parties agree in writing is proceeding towards conclusion of a new or amended compact, this Compact shall automatically be extended for an additional two (2) years.

### **Sec. 15.3. 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 section 15.1 for an amendment to this Compact, or the



requirements of this section and section 15.2 for a new Class III Gaming compact, and all parties agree in writing to negotiate, the parties shall confer promptly and determine within forty-five (45) days of the request a schedule for commencing negotiations, and 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.

#### **Sec. 15.4. Entitlement to Renegotiate Compact.**

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 its Compact where the stated basis for the Tribe's request is changed market conditions that 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. The State's obligation to enter into negotiations shall not be triggered unless the Tribe provides information adequate to prove that its request meets the required basis for negotiations pursuant to this section.

#### **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 or facsimile transmission to 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  
Dry Creek Rancheria Band of Pomo Indians  
1550 Airport Blvd.  
Santa Rosa, CA 95403

#### **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 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 parties and supersedes 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 parties 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 parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any 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, or rules, as they may be amended from time to time, and any successor provision or set of rules.

### **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.

**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; 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; and other causes of a similar nature beyond the Tribe's control that causes the Tribe's Gaming Operation or Facility to be inoperable or operate at significantly less capacity; the parties agree to meet and confer 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 Interior for special programs and services provided by the United States to Indians because of their status as Indians, and (ii)

recognized by the Secretary of the Interior as possessing powers of self-government.

- (c) In entering into this 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) 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 Dry Creek Rancheria Band of Pomo Indians.

STATE OF CALIFORNIA

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


Executed this 18<sup>th</sup> day of August  
2017, at Sacramento, California

DRY CREEK RANCHERIA BAND  
OF POMO INDIANS

  
By Chris Wright  
Chairperson of the Dry Creek  
Rancheria Band of Pomo Indians

Executed this 16<sup>th</sup> day of August  
2017, at Santa Rosa,  
California

ATTEST:

  
Alex Padilla  
Secretary of State, State of  
California



## APPENDICES

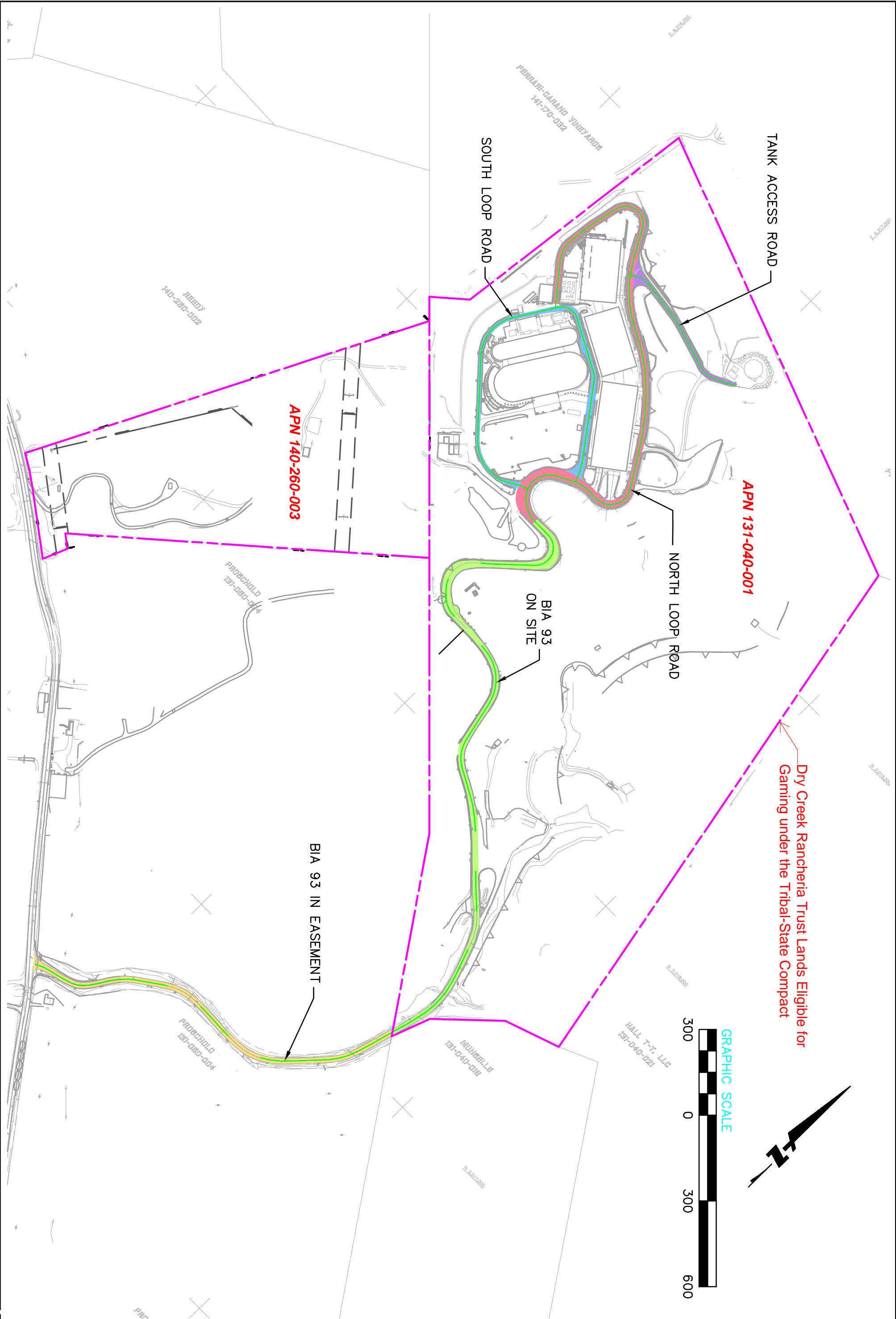
- A. Description and Map of the Dry Creek Rancheria Band of Pomo Indians' Rancheria
- B. Off-Reservation Environmental Impact Analysis Checklist
- C. Tribal Labor Relations Ordinance

## **APPENDIX A**

### **Description and Map of Dry Creek Rancheria Band of Pomo Indians' Rancheria**

The land referred to herein is situated in the County of Sonoma, State of California, and has the following parcel identifying numbers:


APN 131-040-001, APN 140-260-003.



Date:	No.	Revisions
JUNE		
Scale: 1"=300'		
Design: DN		
Drawn: CT		
Approved: JO		
Job No: 20080236		

**DRY CREEK RANCHERIA  
 BIA EXHIBITS  
 EXISTING ROADS**

PROPERTY OF DRY CREEK RANCHERIA BAND OF POMO INDIANS - CONFIDENTIAL - NOT TO BE DISCLOSED


**BKF**  
 ENGINEERS / SURVEYORS / PLANNERS  
 255 SHORELINE DR  
 SUITE 200  
 REDWOOD CITY, CA 94065  
 650-482-6300  
 650-482-6399 (FAX)

## APPENDIX B

### Off-Reservation Environmental Impact Analysis Checklist

#### I. Aesthetics

	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
<b>Would the project:</b>				
a) Have a substantial adverse effect on a scenic vista?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Substantially damage off-reservation scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Create a new source of substantial light or glare, which would adversely affect day or nighttime views of historic buildings or views in the area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

#### II. Agricultural and Forest Resources

	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
<b>Would the project:</b>				
a) Involve changes in the existing environment, which, due to their location or nature, could result in conversion of off-reservation farmland to non-agricultural use or conversion of off-reservation forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

#### III. Air Quality

	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
<b>Would the project:</b>				
a) Conflict with or obstruct implementation of the applicable air quality plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Violate any air quality standard or contribute to an existing or projected air quality violation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions, which exceed quantitative thresholds for ozone precursors)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



<b>Would the project:</b>	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
d) Expose off-reservation sensitive receptors to substantial pollutant concentrations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Create objectionable odors affecting a substantial number of people off-reservation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

#### **IV. Biological Resources**

<b>Would the project:</b>	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
a) Have a substantial adverse impact, either directly or through habitat modifications, on any species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?		<input type="checkbox"/>		<input type="checkbox"/>
b) Have a substantial adverse effect on any off-reservation riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Have a substantial adverse effect on federally protected off-reservation wetlands as defined by Section 404 of the Clean Water Act?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## V. Cultural Resources

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a) Cause a substantial adverse change in the significance of an off-reservation historical or archeological resource?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Directly or indirectly destroy a unique off-reservation paleontological resource or site or unique off-reservation geologic feature?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Disturb any off-reservation human remains, including those interred outside of formal cemeteries?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## VI. Geology and Soils

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a) Expose off-reservation people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ii) Strong seismic ground shaking?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
iii) Seismic-related ground failure, including liquefaction?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
iv) Landslides?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Result in substantial off-reservation soil erosion or the loss of topsoil?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## VII. Greenhouse Gas Emissions

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the off-reservation environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Conflict with any off-reservation plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### VIII. Hazards and Hazardous Materials

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a) Create a significant hazard to the off-reservation public or the off-reservation environment through the routine transport, use, or disposal of hazardous materials?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Create a significant hazard to the off-reservation public or the off-reservation environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed off-reservation school?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Expose off-reservation people or structures to a significant risk of loss, injury or death involving wildland fires.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### IX. Water Resources

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a) Violate any water quality standards or waste discharge requirements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Substantially deplete off-reservation groundwater supplies or interfere substantially with groundwater recharge such that there should be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Create or contribute runoff water which would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff off-reservation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Place within a 100-year flood hazard area structures, which would impede or redirect off-reservation flood flows?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<b>Would the project:</b>	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
g) Expose off-reservation people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## **X. Land Use**

<b>Would the project:</b>	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
a) Conflict with any off-reservation land use plan, policy, or regulation of an agency adopted for the purpose of avoiding or mitigating an environmental effect?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Conflict with any applicable habitat conservation plan or natural communities conservation plan covering off-reservation lands?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## **XI. Mineral Resources**

<b>Would the project:</b>	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
a) Result in the loss of availability of a known off-reservation mineral resource classified MRZ-2 by the State Geologist that would be of value to the region and the residents of the state?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Result in the loss of availability of an off-reservation locally important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## **XII. Noise**

<b>Would the project result in:</b>	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
a) Exposure of off-reservation persons to noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Exposure of off-reservation persons to excessive groundborne vibration or groundborne noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<b>Would the project result in:</b>	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
c) A substantial permanent increase in ambient noise levels in the off-reservation vicinity of the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) A substantial temporary or periodic increase in ambient noise levels in the off-reservation vicinity of the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### **XIII. Population and Housing**

<b>Would the project:</b>	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
a) Induce substantial off-reservation population growth?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere off-reservation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### **XIV. Public Services**

<b>Would the project:</b>	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
a) Result in substantial adverse physical impacts associated with the provision of new or physically altered off-reservation governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for any of the off-reservation public services:				
Fire protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Police protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Schools?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other public facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### **XV. Recreation**

<b>Would the project:</b>	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
a) Increase the use of existing off-reservation neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## XVI. Transportation / Traffic

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the off-reservation circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including, but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Conflict with an applicable congestion management program, including, but not limited to, level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated off-reservation roads or highways?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Substantially increase hazards to an off-reservation design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Result in inadequate emergency access for off-reservation responders?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## XVII. Utilities and Service Systems

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a) Exceed off-reservation wastewater treatment requirements of the applicable Regional Water Quality Control Board?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant off-reservation environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant off-reservation environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Result in a determination by an off-reservation wastewater treatment provider (if applicable), which serves or may serve the project that it has inadequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### XVIII. Cumulative Effects

Would the project:	<i>Potentially Significant Impact</i>	<i>Less Than Significant With Mitigation Incorporation</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>
a) Have impacts that are individually limited, but cumulatively considerable off-reservation? "Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past, current, or probable future projects.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## APPENDIX C

### Tribal Labor Relations Ordinance

#### Section 1: Threshold of Applicability

- (a) If the Tribe employs 250 or more persons in a tribal casino and related facility, it shall adopt this Tribal Labor Relations Ordinance (TLRO or Ordinance). For purposes of this Ordinance, a “tribal casino” is one in which class III gaming is conducted pursuant to the tribal-state compact. A “related facility” is one for which the only significant purpose is to facilitate patronage of the class III gaming operations.
- (b) Upon the request of a labor union or organization which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, the Tribal Gaming Commission shall certify the number of employees in a tribal casino or other related facility as defined in subsection (a) of this Section 1. Either party may dispute the certification of the Tribal Gaming Commission to the Tribal Labor Panel, which is defined in Section 13 herein.

#### Section 2: Definition of Eligible Employees

- (a) The provisions of this ordinance shall apply to any person (hereinafter “Eligible Employee”) who is employed within a tribal casino in which class III gaming is conducted pursuant to a tribal-state compact or other related facility, the only significant purpose of which is to facilitate patronage of the class III gaming operations, except for any of the following:
  - (1) any employee who is a supervisor, defined as any individual having authority, in the interest of the Tribe and/or employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;



- (2) any employee of the Tribal Gaming Commission;
  - (3) any employee of the security or surveillance department, other than those who are responsible for the technical repair and maintenance of equipment;
  - (4) any cash operations employee who is a “cage” employee or money counter; or
  - (5) any dealer.
- (b) On [month] 1 of each year, the Tribal Gaming Commission shall certify the number of Eligible Employees employed by the Tribe to the administrator of the Tribal Labor Panel.

### **Section 3: Non-Interference with Regulatory or Security Activities**

Operation of this Ordinance shall not interfere in any way with the duty of the Tribal Gaming Commission to regulate the gaming operation in accordance with the Tribe’s National Indian Gaming Commission- approved gaming ordinance. Furthermore, the exercise of rights hereunder shall in no way interfere with the tribal casino’s surveillance/security systems, or any other internal controls system designed to protect the integrity of the Tribe’s gaming operations. The Tribal Gaming Commission is specifically excluded from the definition of Eligible Employees.

### **Section 4: Eligible Employees Free to Engage in or Refrain From Concerted Activity**

Eligible Employees shall have the right to self-organization, to form, to join, or assist employee organizations, to bargain collectively through representatives of their own choosing, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities.

## **Section 5: Unfair Labor Practices for the Tribe**

It shall be an unfair labor practice for the Tribe and/or employer or their agents:

- (a) to interfere with, restrain or coerce Eligible Employees in the exercise of the rights guaranteed herein;
- (b) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it, but this does not restrict the Tribe and/or employer and a certified union from agreeing to union security or dues check off;
- (c) to discharge or otherwise discriminate against an Eligible Employee because s/he has filed charges or given testimony under this Ordinance; or
- (d) after certification of the labor organization pursuant to Section 10, to refuse to bargain collectively with the representatives of Eligible Employees.

## **Section 6: Unfair Labor Practices for the Union**

It shall be an unfair labor practice for a labor organization or its agents:

- (a) to interfere, restrain or coerce Eligible Employees in the exercise of the rights guaranteed herein;
- (b) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a primary or secondary boycott or a refusal in the course of his employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce or other terms and conditions of employment. This section does not apply to Section 11;
- (c) to force or require the Tribe and/or employer to recognize or bargain with a particular labor organization as the representative of Eligible

Employees if another labor organization has been certified as the representative of such Eligible Employees under the provisions of this TLRO;

- (d) to refuse to bargain collectively with the Tribe and/or employer, provided it is the representative of Eligible Employees subject to the provisions herein; or
- (e) to attempt to influence the outcome of a tribal governmental election, provided, however, that this section does not apply to tribal members.

### **Section 7: Tribe and Union Right to Free Speech**

- (a) The Tribe's and union's expression of any view, argument or opinion or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of interference with, restraint, or coercion if such expression contains no threat of reprisal or force or promise of benefit.
- (b) The Tribe agrees that if a union first offers in writing that it and its local affiliates will comply with (b)(1) and (b)(2), the Tribe shall comply with the provisions of (c) and (d).
  - (1) For a period of three hundred sixty-five (365) days following delivery of a Notice of Intent to Organize (NOIO) to the Tribe:
    - (A) not engage in strikes, picketing, boycotts, attack websites, or other economic activity at or in relation to the tribal casino or related facility; and refrain from engaging in strike-related picketing on Indian lands as defined in 25 U.S.C. § 2703(4);
    - (B) not disparage the Tribe for purposes of organizing Eligible Employees;
    - (C) not attempt to influence the outcome of a tribal government election; and
    - (D) during the three hundred sixty-five (365) days after the Tribe received the NOIO, the Union must collect dated

and signed authorization cards pursuant to Section 10 herein and complete the secret ballot election also in Section 10 herein. Failure to complete the secret ballot election within the three hundred sixty five (365) days after the Tribe received the NOIO shall mean that the union shall not be permitted to deliver another NOIO for a period of two years (730 days).

- (2) Resolve all issues, including collective bargaining impasses, through the binding dispute resolution mechanisms set forth in Section 13 herein.
- (c) Upon receipt of a NOIO, the Tribe shall:
- (1) within two (2) days provide to the union an election eligibility list containing the full first and last names of the Eligible Employees within the sought-after bargaining unit and the Eligible Employees' last known addresses and telephone numbers and email addresses;
  - (2) for period of three hundred sixty-five (365) days thereafter, Tribe will not do any action nor make any statement that directly or indirectly states or implies any opposition by the Tribe to the selection by such employees of a collective bargaining agent, or preference for or opposition to any particular union as a bargaining agent. This includes refraining from making derisive comments about unions; publishing or posting pamphlets, fliers, letters, posters or any other communication which could reasonably be interpreted as criticizing the union or advising Eligible Employees to vote "no" against the union. However, the Tribe shall be free at all times to fully inform Eligible Employees about the terms and conditions of employment it provides to employees and the advantages of working for the Tribe; and
  - (3) resolve all issues, including collective bargaining impasses, through the binding dispute resolution mechanisms set forth in Section 13 herein.

- (d) The union's offer in subsection (b) of this Section 7 shall be deemed an offer to accept the entirety of this Ordinance as a bilateral contract between the Tribe and the union, and the Tribe agrees to accept such offer. By entering into such bilateral contract, the union and Tribe mutually waive any right to file any form of action or proceeding with the National Labor Relations Board for the three hundred sixty-five (365)-day period following the NOIO.
- (e) The Tribe shall mandate that any entity responsible for all or part of the operation of the casino and related facility shall assume the obligations of the Tribe under this Ordinance. If at the time of the management contract, the Tribe recognizes a labor organization as the representative of its employees, certified pursuant to this Ordinance, the labor organization will provide the contractor, upon request, the election officer's certification which constitutes evidence that the labor organization has been determined to be the majority representative of the Tribe's Eligible Employees.

### **Section 8: Access to Eligible Employees**

- (a) Access shall be granted to the union for the purposes of organizing Eligible Employees, provided that such organizing activity shall not interfere with patronage of the casino or related facility or with the normal work routine of the Eligible Employees and shall be done on non-work time in non-work areas that are designated as employee break rooms or locker rooms that are not open to the public. The Tribe may require the union and or union organizers to be subject to the same licensing rules applied to individuals or entities with similar levels of access to the casino or related facility, provided that such licensing shall not be unreasonable, discriminatory, or designed to impede access.
- (b) The Tribe, in its discretion, may also designate additional voluntary access to the Union in such areas as employee parking lots and non-casino facilities located on tribal lands.
- (c) In determining whether organizing activities potentially interfere with normal tribal work routines, the union's activities shall not be permitted if the Tribal Labor Panel determines that they compromise the operation of the casino:

- (1) security and surveillance systems throughout the casino, and reservation;
  - (2) access limitations designed to ensure security;
  - (3) internal controls designed to ensure security; or
  - (4) other systems designed to protect the integrity of the Tribe's gaming operations, tribal property and/or safety of casino personnel, patrons, employees or tribal members, residents, guests or invitees.
- (d) The Tribe agrees to facilitate the dissemination of information from the union to Eligible Employees at the tribal casino by allowing posters, leaflets and other written materials to be posted in non-public employee break areas where the Tribe already posts announcements pertaining to Eligible Employees. Actual posting of such posters, notices, and other materials shall be by employees desiring to post such materials.

### **Section 9: Indian Preference Explicitly Permitted**

Nothing herein shall preclude the Tribe from giving Indian preference in employment, promotion, seniority, lay-offs or retention to members of any federally recognized Indian tribe or shall in any way affect the Tribe's right to follow tribal law, ordinances, personnel policies or the Tribe's customs or traditions regarding Indian preference in employment, promotion, seniority, lay-offs or retention. Moreover, in the event of a conflict between tribal law, tribal ordinance or the Tribe's customs and traditions regarding Indian preference and this Ordinance, the tribal law, tribal ordinance, or the Tribe's customs and traditions shall govern.

### **Section 10: Secret Ballot Elections**

- (a) The election officer shall be chosen within three (3) business days of notification by the labor organization to the Tribe of its intention to present authorization cards, and the same election officer shall preside thereafter for all proceedings under the request for recognition; provided, however, that if the election officer resigns, dies, or is

incapacitated for any other reason from performing the functions of this office, a substitute election officer shall be selected in accordance with the dispute resolution provisions herein. Dated and signed authorized cards from thirty percent (30%) or more of the Eligible Employees within the bargaining unit verified by the elections officer will result in a secret ballot election. The election officer shall make a determination as to whether the required thirty percent (30%) showing has been made within one (1) working day after the submission of authorization cards. If the election officer determines the required thirty percent (30%) showing of interest has been made, the election officer shall issue a notice of election. The election shall be concluded within thirty (30) calendar days of the issuance of the notice of election.

- (b) Upon the showing of interest to the election officer pursuant to subsection (a), within two (2) working days the Tribe shall provide to the union an election eligibility list containing the full first and last names of the Eligible Employees within the sought after bargaining unit and the Eligible Employees' last known addresses and telephone numbers and email addresses. Nothing herein shall preclude a Tribe from voluntarily providing an election eligibility list at an earlier point of a union organizing campaign with or without an election. The election shall be conducted by the election officer by secret ballot pursuant to procedures set forth in a consent election agreement in substantially the same form as Attachment 1. In the event either that a party refuses to enter into the consent election agreement or that the parties do not agree on the terms, the election officer shall issue an order that conforms to the terms of the form consent election agreement and shall have authority to decide any terms upon which the parties have not agreed, after giving the parties the opportunity to present their views in writing or in a telephonic conference call. The election officer shall be a member of the Tribal Labor Panel chosen in the same manner as a single arbitrator pursuant to the dispute resolution provisions herein at Section 13(b)(2). All questions concerning representation of the Tribe and/or Eligible Employees by a labor organization shall be resolved by the election officer.
- (c) The election officer shall certify the labor organization as the exclusive collective bargaining representative of a unit of employees if the labor organization has received the support of a majority of the

Eligible Employees in a secret ballot election that the election officer determines to have been conducted fairly. The numerical threshold for certification is fifty percent (50%) of the Eligible Employees plus one. If the election officer determines that the election was conducted unfairly due to misconduct by the Tribe and/or employer or union, the election officer may order a re-run election. If the election officer determines that there was the commission of serious Unfair Labor Practices by the Tribe, or in the event the union made the offer provided for in Section 7(b) that the Tribe violated its obligations under Section 7(c), that interferes with the election process and precludes the holding of a fair election, and the labor organization is able to demonstrate that it had the support of a majority of the employees in the unit at any time before or during the course of the Tribe's misconduct, the election officer shall certify the labor organization as the exclusive bargaining representative.

- (d) The Tribe or the union may appeal within five (5) days any decision rendered after the date of the election by the election officer to a three (3) member panel of the Tribal Labor Panel mutually chosen by both parties, provided that the Tribal Labor Panel must issue a decision within thirty (30) days after receiving the appeal.
- (e) A union which loses an election and has exhausted all dispute remedies related to the election may not invoke any provisions of this ordinance at that particular casino or related facility until one (1) year after the election was lost.

### **Section 11: Collective Bargaining Impasse**

- (a) Upon recognition, the Tribe and the union will negotiate in good faith for a collective bargaining agreement covering bargaining unit employees represented by the union.
- (b) Except where the union has made the written offer set forth in Section 7(b), if collective bargaining negotiations result in impasse, the union shall have the right to strike. Strike-related picketing shall not be conducted on Indian lands as defined in 25 U.S.C. § 2703(4).



- (c) Where the union makes the offer set forth in Section 7(b), if collective bargaining negotiations result in impasse, the matter shall be resolved as set forth in Section 13(c).

## **Section 12: Decertification of Bargaining Agent**

- (a) The filing of a petition signed by thirty percent (30%) or more of the Eligible Employees in a bargaining unit seeking the decertification of a certified union, will result in a secret ballot election. The election officer shall make a determination as to whether the required thirty percent (30%) showing has been made within one (1) working day after the submission of authorization cards. If the election officer determines the required thirty percent (30%) showing of interest has been made, the election officer shall issue a notice of election. The election shall be concluded within thirty (30) calendar days of the issuance of the notice of election.
- (b) The election shall be conducted by an election officer by secret ballot pursuant to procedures set forth in a consent election agreement in substantially the same form as Attachment 1. The election officer shall be a member of the Tribal Labor Panel chosen in the same manner as a single arbitrator pursuant to the dispute resolution provisions herein at Section 13(b)(2). All questions concerning the decertification of the union shall be resolved by an election officer. The election officer shall be chosen upon notification to the Tribe and the union of the intent of the Eligible Employees to present a decertification petition, and the same election officer shall preside thereafter for all proceedings under the request for decertification; provided however that if the election officer resigns, dies or is incapacitated for any other reason from performing the functions of this office, a substitute election officer shall be selected in accordance with the dispute resolution provisions herein.
- (c) The election officer shall order the labor organization decertified as the exclusive collective bargaining representative if a majority of the Eligible Employees support decertification of the labor organization in a secret ballot election that the election officer determines to have been conducted fairly. The numerical threshold for decertification is fifty percent (50%) of the Eligible Employees plus one (1). If the election officer determines that the election was conducted unfairly

due to misconduct by the Tribe and/or employer or the union the election officer may order a re-run election or dismiss the decertification petition.

- (d) A decertification proceeding may not begin until one (1) year after the certification of a labor union if there is no collective bargaining agreement. Where there is a collective bargaining agreement, a decertification petition may only be filed no more than ninety (90) days and no less than sixty (60) days prior to the expiration of a collective bargaining agreement. A decertification petition may be filed any time after the expiration of a collective bargaining agreement.
- (e) The Tribe or the union may appeal within five (5) days any decision rendered after the date of the election by the election officer to a three (3) member panel of the Tribal Labor Panel chosen in accordance with Section 13(c), provided that the Tribal Labor Panel must issue a decision within thirty (30) days after receiving the appeal.

### **Section 13: Binding Dispute Resolution Mechanism**

- (a) All issues shall be resolved exclusively through the binding dispute resolution mechanisms herein.
- (b) The method of binding dispute resolution shall be a resolution by the Tribal Labor Panel, consisting of ten (10) arbitrators appointed by mutual selection of the parties which panel shall serve all tribes that have adopted this ordinance. The Tribal Labor Panel shall have authority to hire staff and take other actions necessary to conduct elections, determine units, determine scope of negotiations, hold hearings, subpoena witnesses, take testimony, and conduct all other activities needed to fulfill its obligations under this Ordinance.
  - (1) Each member of the Tribal Labor Panel shall have relevant experience in federal labor law and/or federal Indian law with preference given to those with experience in both. Names of individuals may be provided by such sources as, but not limited to, Indian Dispute Services, Federal Mediation and Conciliation Service, and the American Academy of Arbitrators.

- (2) Unless either party objects, one (1) arbitrator from the Tribal Labor Panel will render a binding decision on the dispute under the Ordinance. If either party objects, the dispute will be decided by a three (3)-member panel, unless arbitrator scheduling conflicts prevent the arbitration from occurring within thirty (30) days of selection of the arbitrators, in which case a single arbitrator shall render a decision. If one (1) arbitrator will be rendering a decision, five (5) Tribal Labor Panel names shall be submitted to the parties and each party may strike no more than two (2) names. If the dispute will be decided by a three (3)-member panel, seven (7) Tribal Labor Panel names will be submitted and each party can strike no more than two (2) names. A coin toss shall determine which party may strike the first name. The arbitrator will generally follow the American Arbitration Association's procedural rules relating to labor dispute resolution. The arbitrator must render a written, binding decision that complies in all respects with the provisions of this Ordinance within thirty (30) days after a hearing.
- (c)
    - (1) Upon certification of a union in accordance with Section 10 of this Ordinance, the Tribe and union shall negotiate for a period of ninety (90) days after certification. If, at the conclusion of the ninety (90)-day period, no collective bargaining agreement is reached and either the union and/or the Tribe believes negotiations are at an impasse, at the request of either party, the matter shall be submitted to mediation with the Federal Mediation and Conciliation Service. The costs of mediation and conciliation shall be borne equally by the parties.
    - (2) Upon appointment, the mediator shall immediately schedule meetings at a time and location reasonably accessible to the parties. Mediation shall proceed for a period of thirty (30) days. Upon expiration of the thirty (30)-day period, if the parties do not resolve the issues to their mutual satisfaction, the mediator shall certify that the mediation process has been exhausted. Upon mutual agreement of the parties, the mediator may extend the mediation period.

- (3) Within twenty-one (21) days after the conclusion of mediation, the mediator shall file a report that resolves all of the issues between the parties and establishes the final terms of a collective bargaining agreement, including all issues subject to mediation and all issues resolved by the parties prior to the certification of the exhaustion of the mediation process. With respect to any issues in dispute between the parties, the report shall include the basis for the mediator's determination. The mediator's determination shall be supported by the record.
- (d) In resolving the issues in dispute, the mediator may consider those factors commonly considered in similar proceedings.
- (e) Either party may seek a motion to compel arbitration or a motion to confirm or vacate an arbitration award, under this Section 13, in the appropriate state superior court, unless a bilateral contract has been created in accordance with Section 7, in which case either party may proceed in federal court. The Tribe agrees to a limited waiver of its sovereign immunity for the sole purpose of compelling arbitration or confirming or vacating an arbitration award issued pursuant to the Ordinance in the appropriate state superior court or in federal court. The parties are free to put at issue whether or not the arbitration award exceeds the authority of the Tribal Labor Panel.

## Attachment 1

### CONSENT ELECTION AGREEMENT PROCEDURES

Pursuant to the Tribal Labor Relations Ordinance adopted pursuant to section 12.10 of the compact, the undersigned parties hereby agree as follows:

1. **Jurisdiction.** Tribe is a federally recognized Indian tribal government subject to the Ordinance; and each employee organization named on the ballot is an employee organization within the meaning of the Ordinance; and the employees described in the voting unit are Eligible Employees within the meaning of the Ordinance.

2. **Election.** An election by secret ballot shall be held under the supervision of the elections officer among the Eligible Employees as defined in Section 2 of the Ordinance of the Tribe named above, and in the manner described below, to determine which employee organization, if any, shall be certified to represent such employees pursuant to the Ordinance.

3. **Voter Eligibility.** Unless otherwise indicated below, the eligible voters shall be all Eligible Employees who were employed on the eligibility cutoff date indicated below, and who are still employed on the date they cast their ballots in the election, i.e., the date the voted ballot is received by the elections officer. Eligible Employees who are ill, on vacation, on leave of absence or sabbatical, temporarily laid off, and employees who are in the military service of the United States shall be eligible to vote.

4. **Voter Lists.** The Tribe shall electronically file with the elections officer a list of eligible voters within two (2) business days after receipt of a Notice of Election.

5. **Notice of Election.** The elections officer shall serve Notices of Election on the Tribe and on each party to the election. The Notice shall contain a sample ballot, a description of the voting unit and information regarding the balloting process. Upon receipt, the Tribe shall post such Notice of Election conspicuously on all employee bulletin boards in each facility of the employer in which members of the voting unit are employed. Once a Notice of Election is posted, where the union has made the written offer set forth in Section 7(b) of the Tribal Labor Relations Ordinance, the Tribe shall continue to refrain from

publishing or posting pamphlets, fliers, letters, posters or any other communication which should be interpreted as criticism of the union or advises employees to vote “no” against the union. The Tribe shall be free at all times to fully inform employees about the terms and conditions of employment it provides to employees and the advantages of working for the Tribe.

6. Challenges. The elections officer or an authorized agent of any party to the election may challenge, for good cause, the eligibility of a voter. Any challenges shall be made prior to the tally of the ballots.

7. Tally of Ballots. At the time and place indicated below, ballots shall be co-mingled and tabulated by the elections officer. Each party shall be allowed to station an authorized agent at the ballot count to verify the tally of ballots. At the conclusion of the counting, the elections officer shall serve a Tally of Ballots on each party.

8. Objections and Post-election Procedures. Objections to the conduct of the election may be filed with the elections officer within five (5) calendar days following the service of the Tally of Ballots. Service and proof of service is required.

9. Runoff Election. In the event a runoff election is necessary, it shall be conducted at the direction of the elections officer.

10. Wording on Ballot. The choices on the ballot shall appear in the wording and order enumerated below.

FIRST: [\*\*\*]

SECOND: [\*\*\*]

THIRD: [\*\*\*]

11. Cutoff Date for Voter Eligibility: [\*\*\*]

12. Description of the Balloting Process. A secret ballot election will take place within thirty (30) days after delivery of the voter list referenced in paragraph 4. The employer will determine the location or locations of the polling places for the election. There must be at least one (1) neutral location (such as a high school, senior center, or similar facility) which is not within the gaming facility and employees must also be afforded the option of voting by mail through procedures established by the elections officer. Such procedures must include provisions that

provide meaningful protection for each employee's ability to make an informed and voluntary individual choice on the issue of whether to accept or reject a union. Such procedures must also ensure that neither employer nor union representatives shall observe employees personally marking, signing, and placing their ballot in the envelope. Only voters, designated observers and the election officer or supporting staff can be present in the polling area. Neither employer nor union representatives may campaign in or near the polling area. If the election officer or supporting staff questions an employee's eligibility to vote in the election, the ballot will be placed in a sealed envelope until eligibility is determined. The box will be opened under the supervision of the election officer when voting is finished. Ballots submitted by mail must be received by the elections officer no later than the day of the election in order to be counted in the official tally of ballots.

13. Voter List Format and Filing Deadline: Not later than two (2) business days after receipt of the Notice of Election, the Tribe shall file with the elections officer, at [\*\*address\*\*], an alphabetical list of all eligible voters including their job titles, work locations and home addresses.

Copies of the list shall be served concurrently on the designated representative for the [\*\*\*]; proof of service must be concurrently filed with elections officer.

In addition, the Tribe shall submit to the elections officer on or before [\*\*\*], by electronic mail, a copy of the voter list in an Excel spreadsheet format, with columns labeled as follows: First Name, Last Name, Street Address, City, State, and Zip Code. Work locations and job titles need not be included in the electronic file. The file shall be sent to [\*\*\*].

14. Notices of Election: Shall be posted by the Tribe no later than [\*\*\*].

15. Date, Time and Location of Counting of Ballots: Beginning at [\*\*time\*\*] on [\*\*date\*\*], at the [\*\*address\*\*].

16. Each signatory to this Agreement hereby declares under penalty of perjury that s/he is a duly authorized agent empowered to enter into this Consent Election Agreement.

(Name of Party)
By
(Title) (Date)

(Name of Party)
By
(Title) (Date)

(Name of Party)
By
(Title) (Date)

(Name of Party)
By
(Title) (Date)

Date approved: \_\_\_\_\_

**[\*\*Author\*\*]**  
Elections Officer