

**TRIBAL-STATE GAMING COMPACT**

**Between the**

**LYTTON RANCHERIA OF**

**CALIFORNIA**

**and the**

**STATE OF CALIFORNIA**

**TRIBAL-STATE COMPACT  
BETWEEN THE STATE OF CALIFORNIA AND THE  
LYTTON RANCHERIA OF CALIFORNIA**

The Lytton Rancheria of California (“Lytton” or "the Tribe"), a federally recognized Indian tribe, and the State of California (hereinafter "the State"), enters into this tribal-state compact pursuant to the Indian Gaming Regulatory Act of 1988 (hereinafter "IGRA").

**PREAMBLE**

WHEREAS, Congress passed, and the President of the United States signed into law, Section 819 of the Omnibus Indian Advancement Act of 2000, creating the San Pablo, California reservation for the purpose of restoring to Lytton its right to engage in tribal government gaming pursuant to IGRA; and

WHEREAS, the U.S. Assistant Secretary of the Interior-Indian Affairs proclaimed on June 29, 2004 pursuant to Section 819 that the Tribe's trust lands in the City of San Pablo constitute its reservation; and

WHEREAS, the State has an obligation to negotiate a compact in good faith with Lytton for purposes of its conducting Class III Gaming; and

WHEREAS, Lytton has conducted itself responsibly, entering into a binding, enforceable Municipal Services Agreement with the City of San Pablo, which establishes their respective rights regarding payments to the City, contributions to charities, environmental matters, law enforcement, building codes and other important issues; and

WHEREAS, the State and Lytton have conducted extensive negotiations for the purpose of agreeing upon terms of a Tribal-State Compact (hereinafter the “Compact”); and

WHEREAS, pursuant to this Compact, the Tribe has agreed to make a fair revenue contribution to the State, to enter into arrangements to mitigate to the extent practicable the off-reservation environmental and direct fiscal impacts on local communities and local governments, to safeguard against criminal activity, to establish a program to address gambling addiction, and to offer meaningful consumer and employee protections; and

WHEREAS, this Compact will afford the Tribe primary jurisdiction over the regulation of its Gaming Facility and will enhance tribal economic development and self-sufficiency; and

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

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

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

**SECTION 1.0. PURPOSES AND OBJECTIVES.**

The terms of this Compact are designed to:

- (a) Evidence the goodwill and cooperation of the Tribe and the State in fostering a mutually respectful government-to-government relationship that will serve the mutual interests of the parties.
- (b) Develop and implement a means of regulating the 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 that gaming, through the licensing and control of persons and entities employed in, or providing goods and services to, the Tribe's 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.

## **SECTION 2.0. DEFINITIONS.**

**Sec. 2.1.** "Applicable Codes" means the California Building Code and the California Public Safety Code applicable to the City of San Pablo, 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.** "Class III Gaming" means the forms of class III gaming defined in 25 U.S.C. § 2703(8) and by the regulations of the National Indian Gaming Commission.

**Sec. 2.4.** "Compact" means this compact.

**Sec. 2.5.** "Financial Source" means any person or entity who, directly or indirectly, extends financing to the Gaming Facility or Gaming Operation.

**Sec. 2.6.** "Lytton" or "the Tribe" means the Lytton Rancheria of California, a federally recognized Indian tribe listed in the Federal Register as the Lytton Rancheria of California, or an authorized official or agency thereof.

**Sec. 2.7.** "Gaming Activity" or "Gaming Activities" means the Class III Gaming activities authorized under this Compact in section 4.1.

**Sec. 2.8.** "Gaming Device" means any slot machine within the meaning of article IV, section 19, subdivision (f) of the California Constitution. "Gaming Device" includes, but is not limited to, instant lottery game devices and video poker devices. Each player station of a multi-player slot machine constitutes a separate Gaming Device.

**Sec. 2.9.** "Gaming Employee" means any natural person who (a) operates, maintains, repairs, or assists in any Class III Gaming, or is in any way responsible for supervising such Gaming Activities or persons who conduct, operate, account for, or supervise any such Gaming Activity, (b) is in a category under federal or tribal gaming law requiring licensing, (c) is an employee of the Tribal Gaming Agency with access to confidential information, or (d) is a person whose employment duties require or authorize access to areas of the Gaming Facility that are not open to the public.

**Sec. 2.10.** “Gaming Facility” or “Facility” means any building in California in which Gaming Activities or any Gaming Operations occur, or in which the business records, receipts, or other funds of the Gaming Operation are maintained (excluding offsite facilities 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.

**Sec. 2.11.** “Gaming Operation” means the business enterprise that offers and operates Gaming Activities, whether exclusively or otherwise.

**Sec. 2.12.** “Gaming Ordinance” means a tribal ordinance or resolution duly authorizing the conduct of Gaming Activities on Lytton’s Indian lands in California and approved under IGRA.

**Sec. 2.13.** “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. 2.14.** “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 Tribe’s Gaming Operation or Facility at least twenty-five thousand dollars (\$25,000) in Gaming Resources in any 12-month period, or who, directly or indirectly, receives, or is deemed likely to receive, in connection with the Tribe’s Gaming Operation or Facility, at least twenty-five thousand dollars (\$25,000) in any consecutive 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, 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. 2.15.** “IGRA” means the Indian Gaming Regulatory Act of 1988 (P.L. 100-497, 18 U.S.C. § 1166 et seq. and 25 U.S.C. § 2701 et seq.), and any amendments thereto, as interpreted by all regulations promulgated thereunder.

**Sec. 2.16.** “Interested Persons” means (i) all local, state, and federal agencies, which, if a Project were not taking place on Indian lands, would have responsibility for approving the Project or would exercise authority over the natural resources that may be affected by the Project, and (ii) persons, groups or agencies that request in writing a notice of preparation of a draft TEIR or have commented on the Project in writing to the Tribe, the County of Contra Costa, or the City of San Pablo.

**Sec. 2.17.** “Management Contractor” means any Gaming Resource Supplier with whom Lytton 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. 2.18.** “Net Win” means the total amount wagered, less all prizes and payouts (as determined by GAAP) and participation fees. Participation fees shall be defined as payments made to Gaming Resource Suppliers on a periodic basis by the Gaming Operation for the right to lease or otherwise offer for play Gaming Devices that the Tribe does not own and that are not generally available for outright purchase by gaming operators.

**Sec. 2.19.** “NIGC” means the National Indian Gaming Commission.

**Sec. 2.20.** “Project” is defined as any activity occurring on Indian lands, which is authorized by this Compact, a principal purpose of which is to serve the Tribe’s Gaming Activities or Gaming Operation, and which may cause either a direct physical change in the off-reservation environment, or a reasonably foreseeable indirect physical change in the off-reservation environment. This definition shall be understood to include, but not be limited to, the construction or planned expansion of any Gaming Facility and any other construction or planned expansion, a principal purpose of which is to serve a Gaming Facility, including, but not limited to, access roads, parking lots, a hotel, utility or waste disposal systems, or water supply, as long as such construction or expansion causes a direct or indirect physical change in the off-reservation environment.

**Sec. 2.21.** “San Pablo Parcel” means that certain parcel of land in San Pablo, California, together with all buildings, structures, parking areas, and other

improvements thereon as legally described and represented on the map at Exhibit D hereto.

**Sec. 2.22.** “Significant Effect(s) on the Off-Reservation Environment” is the same as “Significant Effect(s) on the Environment” and 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 to achieve short-term, to the disadvantage of long-term, environmental goals.

(b) The possible effects on the off-reservation environment of a Project 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 effect 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 Indian lands within the meaning of IGRA or lands otherwise held for the Tribe in trust by the United States.

**Sec. 2.23.** “State” means the State of California or an authorized official or agency thereof designated by this Compact or by the Governor.

**Sec. 2.24.** “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 Business and Professions Code), or any successor statutory scheme, and any entity or entities in which that authority may hereafter be vested.

**Sec. 2.25.** “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. 2.26.** “Tribal Chairperson” means the person duly elected under Lytton's Constitution to perform the duties specified therein, including serving as Lytton's official representative when the tribal council is not in session.

**Sec. 2.27.** “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 Lytton’s regulatory responsibilities under IGRA and the Tribal 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.

**SECTION 3.0. SCOPE AND LOCATION OF CLASS III GAMING AUTHORIZED.**

**Sec. 3.1. Authorized and Permitted Class III Gaming.**

- (a) Lytton is hereby authorized to operate only the following Gaming Activities under the terms and conditions set forth in this 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 Lytton will not offer such games through use of the Internet unless others in the state are permitted to do so under state and federal law.
- (b) Nothing herein shall be construed to preclude Lytton from offering class II gaming or preclude the negotiation of a separate compact governing the conduct of off-track wagering at Lytton's Gaming Facility.
- (c) Nothing herein shall be construed to authorize the operation of the game known as roulette, or any banking or percentage game played with dice.
- (d) Lytton shall not engage in Class III Gaming that is not expressly authorized in this section.

- (e) In recognition of the potential impact of the Gaming Activities on charitable organizations which use bingo as a fundraising tool, Lytton agrees, in the exercise of its sovereignty, to relinquish the right to operate the game of chance commonly known as bingo at the San Pablo parcel during the term of this Compact.

### **Sec. 3.2. Authorized Gaming Facility.**

The Gaming Activities herein referred may be conducted only at a Gaming Facility situated on the San Pablo parcel.

## **SECTION 4.0. AUTHORIZED NUMBER OF GAMING DEVICES, REVENUE CONTRIBUTION, AND EXCLUSIVITY.**

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

Subject to section 4.2, the Tribe is entitled to operate up to 2,500 Gaming Devices pursuant to the conditions set forth in section 4.3.3.

### **Sec. 4.2. Renegotiation Over Number of Gaming Devices**

On or after January 1, 2008, upon the request of the Tribe, the parties shall negotiate in good faith over the maximum number of Gaming Devices authorized under Section 4.1, based on market conditions and the off-reservation effects of the Gaming Activities on the surrounding community, including the City of San Pablo.

### **Sec. 4.3.3. Revenue Contribution.**

- (a) Subject to the deductions allowed under subdivision (c), the Tribe shall pay quarterly to the State, as specified in subdivision (b), twenty-five percent (25%) of its Net Win generated from the operation of its Gaming Devices and banking and percentage card games from the immediately preceding quarter. The payment specified herein has been negotiated between the parties as a fair contribution, based upon the urban location of the Tribe's reservation, market conditions, the exclusivity provisions specified in section 4.3.5 and the Tribe's circumstances.

- (b) The Tribe shall remit to such agency, trust, fund or entity, as the State Director of Finance, pursuant to law, from time to time, shall specify to the Tribe in writing, the payment referenced in subdivision (a) in quarterly payments, which quarterly payments shall be based on the Net Win generated from the Gaming Devices and banking and percentage card games during the immediately preceding quarter, due on the thirtieth 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). If the Gaming Activities authorized by this Compact commence during a calendar quarter, the first payment shall be due on the thirtieth day following the end of the first full quarter of the Gaming Operation and shall cover the period from the commencement of the Gaming Activities to the end of the first full calendar quarter. Said quarterly payments shall be accompanied by the certification specified in subdivision (e).
- (c) The Tribe may deduct the following from the twenty-five percent (25%) payment specified in subdivision (a):
- (1) Payments made during the same calendar quarter pursuant to an intergovernmental agreement with the City of San Pablo, as specified in Section 11.8.7, subdivision (b), and section 11.8.8;
  - (2) Payments made during the same calendar quarter pursuant to an intergovernmental agreement with the County of Contra Costa, as determined pursuant to sections 11.8.7, subdivision (a), and 11.8.8;
  - (3) Payments made during the same calendar quarter pursuant to an intergovernmental agreement with the State Department of Transportation or a State Designated Agency to mitigate off-reservation traffic impacts as specified in section 11.8.7, subdivision (c); and
  - (4) The quarterly payment of \$750,000 made pursuant to section 5.
- (d) The quarterly payments specified under subdivision (a) shall be accompanied by a certification of the deductions specified in subdivision (c) and of the Net Win calculation, which shall be prepared by the Chief Financial Officer of the Gaming Operation. At any time after the fourth quarter payment (which is due by January 30), but in no

event later than April 30, the Tribe shall also provide an annual certification of the Net Win calculation and of the deductions specified in subdivision (c) by an independent certified public accountant who is not employed by the Tribe, the Tribal Gaming Agency, or the Gaming Operation, is only otherwise retained by any of these entities to conduct regulatory audits or independent audits of the Gaming Operation, and has no financial interest in any of these entities. Copies of the certifications prepared by the Chief Financial Officer of the Gaming Operation and the independent certified accountant shall also be sent to the State Gaming Agency. The State Gaming Agency may audit the Net Win calculation and the deductions specified in subdivision (c), and if it determines that the Net Win is understated or the deductions overstated, it will promptly notify the Tribe and provide a copy of the audit. The Tribe within twenty (20) days will either accept the difference or provide a reconciliation satisfactory to the State Gaming Agency. If the Tribe accepts the difference or does not provide a reconciliation satisfactory to the State Gaming Agency, the Tribe must immediately pay the amount of the resulting deficiency plus accrued interest thereon at the rate of 1.0% per month or the maximum rate permitted by state law for delinquent payments owed to the State, whichever is less. If the Tribe does not provide a reconciliation satisfactory to the State Gaming Agency, the Tribe, once payment is made, may commence dispute resolution under section 13.0. The parties expressly acknowledge that the certifications are subject to section 8.4(h).

- (e) Notwithstanding anything to the contrary in section 13, any failure of the Tribe to remit the payments referenced in subdivision (a) pursuant to subdivisions (b), (c), and (d) 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 1.0% 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 to enforce said payment obligations. Failure to make timely payment shall be deemed a material breach of this Compact.
- (f) If the State Director of Finance decides, in his or her discretion, to assign, in whole or in part, the Tribe's payments referenced in subdivision (a) to a third party for purposes of securitizing the income

stream in the form of bonds that can be issued to investors, the Tribe will use reasonable efforts and cooperate in good faith to aid the issuance of said bonds in accordance with Exhibit B.

- (g) This section constitutes a "Section 4.3.3" within the meaning of article 6.5 (commencing with section 63048.6) of Chapter 2 of Division 1 of Title 6.7 of the California Government Code.

#### **Sec. 4.4. Exclusivity.**

In recognition of the Tribe's agreement to make the payments specified in section 4.3.3 and section 5, the Tribe shall have the following rights:

(a) In the event the bonds referenced in section 4.3.3, subdivision (f), are issued, securitized by the Tribe's payments, during the life of said bonds and in order to protect the Tribe's ability to make the payments underlying said bonds, the State shall not thereafter authorize an Indian tribe pursuant to an express concurrence of the Governor under Section 20(b)(1)(A) of IGRA (25 U.S.C. §2719 (b)(1)(A)) or any person or entity other than a federally recognized Indian tribe to engage in any Gaming Activities specified in subdivisions (a)(1) and (a)(2) of section 3.1 of this Compact within the Tribe's core geographic market. Nothing herein is intended to preclude the State Lottery from offering any lottery games or devices that are authorized by the California Constitution as it exists as of July 1, 2004.

(b) For purposes of this section, the Tribe's core geographic market, as specified in subdivision (a), consists of the geographic area that is within a 35-mile radius of the San Pablo Parcel.

(c) In the event that the State authorizes an Indian tribe pursuant to an express concurrence of the Governor under Section 20(b)(1)(A) of IGRA (25 U.S.C. § 2719(b)(1)(A)) or any person or entity other than a federally recognized Indian tribe to engage in Gaming Activities in violation of subdivision (a), the Tribe shall have the right to enjoin such gaming or the authorization of said gaming as a substantial impairment of the right specified in subdivision (a), which is necessary to assure the marketability of the bonds referenced in section 4.3.3, subdivision (f), to protect the bondholders of said bonds, and to afford the Tribe the stability in its Gaming Operation during the life of the bonds; provided that no remedy other than an injunction is available against the State or any of its political subdivisions for a violation of subdivision (a), and the parties agree that such

substantial impairment of the right specified in subdivision (a) will cause irreparable harm that cannot be adequately remedied by damages.

(d) Where the bond referenced in section 4.3.3, subdivision (f), has been issued, securitized by the Tribe's annual payments, in the event that the State authorizes an Indian tribe pursuant to an express concurrence of the Governor under Section 20(b)(1)(A) of IGRA (25 U.S.C. § 2719(b)(1)(A)) or any person or entity other than a federally recognized Indian tribe to engage in Gaming Activities in violation of subdivision (a) and said person or entity commences within the Tribe's core geographic market said prohibited Gaming Activities, the Tribe shall have the right to cease the payments specified in section 4.3.3 and section 5, until said person or entity ceases said Gaming Activities or reaches an agreement with the Tribe to share revenues with it in an effort to mitigate the irreparable harm.

(e) If the bonds referenced in section 4.3.3, subdivision (f), are not issued or following the life of said bonds, the Tribe shall be relieved of its obligation to make the payments specified in section 4.3.3 and section 5, if and only if an Indian tribe pursuant to an express concurrence of the Governor under section 20(b)(1)(A) of IGRA (25 U.S.C. § 2719(b)(1)(A)) or any person or entity other than a federally recognized Indian tribe engages in the Gaming Activities specified in subdivision (a)(1) of section 3.1 of the Compact within the Tribe's core geographic market, until such time that such gaming ceases.

(f) Notwithstanding the Tribe's cessation of payments under section 4.3.3 and section 5, if the Tribe operates no more than 2000 Gaming Devices throughout any calendar year, it shall compensate the State for the actual and reasonable costs of regulation, as determined by the State Director of Finance, or failing agreement on that amount, as determined by arbitration pursuant to section 13.2 of the Compact; provided that where the Tribe nonetheless operates more than 2,000 Gaming Devices, it shall instead pay 20% of the Net Win attributable to all Gaming Devices above 2,000 pursuant to subdivisions (b), (d), (e), and (g) of section 4.3.3, but in no event shall pay less than the actual and reasonable costs of regulation, as determined above, if that amount is greater.

## **SECTION 5.0. REVENUE SHARING WITH NON-GAMING TRIBES.**

### **Sec. 5.1. Definitions.**

For purposes of this section, the following definitions apply:

- (a) The "Revenue Sharing Trust Fund" is a fund created by the Legislature and administered by the California Gambling Control Commission, as trustee, for the receipt, deposit, and distribution of monies paid pursuant to this section.
- (b) A "Non-Gaming Tribe" is a federally recognized tribe in California, with or without a tribal-state compact, which has not engaged in, or offered, class II or Class III Gaming as of the date of the distribution from the Revenue Sharing Trust Fund or during the immediately preceding 365 days.
- (c) A "Non-Compact Tribe" is a federally recognized tribe that has a compact with the State but is operating fewer than 350 Gaming Devices.

**Sec. 5.2. Revenue Sharing Trust Fund.**

- (a) The Tribe shall pay \$750,000 quarterly to the State Gaming Agency for deposit into the Revenue Sharing Trust Fund for distribution on an equal basis to the Non-Gaming Tribes only.
- (b) The Tribe acknowledges that various compacts with the State provide for payments to the Revenue Sharing Trust Fund for the benefit of Non-Compact Tribes, which include Non-Gaming Tribes. Nothing in this Compact affects the distribution of those payments. However, the payments made by the Tribe to the Revenue Sharing Trust Fund pursuant to this Compact shall be made only to Non-Gaming Tribes in equal shares with the objective of increasing the annual payment to those tribes.
- (c) The California Gambling Control Commission shall serve as trustee of the Revenue Sharing Trust Fund. It shall have no discretion with respect to the use or disbursement of the Revenue Sharing Trust Fund. The California Gambling Control Commission's sole authority shall be to serve as a depository of the trust funds and to disburse them on a quarterly basis to Non-Gaming and other Non-Compact Tribes as specified in the tribal-state compacts. 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 Non-Compact Tribes and Non-Gaming Tribes are not third party beneficiaries of this Compact.

## **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 rules, regulations, procedures, specifications, and standards duly adopted by the NIGC and the Tribal Gaming Agency, and (iii) the provisions of this Compact.
- (b) The Tribal Gaming Agency shall transmit a copy of the Tribal Gaming Ordinance, and all of its rules, regulations, procedures, specifications, or standards applicable to the Gaming Activities, to the California Gambling Control Commission within twenty (20) days following execution of this Compact, or within twenty (20) days following their adoption or amendment.
- (c) The Tribe and the Tribal Gaming Agency shall make available a copy of the following documents to any member of the public upon request: NIGC minimum internal control standards, the Tribal Gaming Ordinance, this Compact, the rules of each Class III game operated by the Tribe, and the regulations promulgated by the Tribal Gaming Agency concerning patron disputes.

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

The Gaming Operations 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 twenty-one (21) years from being present in any room or area in which Class III 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 21 years from being present in any room or 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 alcohol.

#### **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 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, but not limited to, all Gaming Employees, Gaming Resource Suppliers, Financial Sources, and any other person having a significant influence over the Gaming Operation, must be licensed by the Tribal 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 Tribal Gaming Ordinance, IGRA, and any applicable regulations adopted by the NIGC. The license shall be reviewed and renewed every year 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 to the California Gambling Control Commission within twenty (20) days after issuance of the license or renewal. The Tribal Gaming Agency's certification that the Gaming Facility is being operated in conformity with these requirements shall be posted in a conspicuous and public place in the Gaming Facility at all times.
- (b) The present Gaming Facility has been constructed in accordance with all rules, regulations, and codes of the City of San Pablo. The Gaming Facility shall be maintained in accordance with said codes. Any modification, alteration, improvement, or expansion of the Gaming Facility, or any new construction of a Gaming Facility, shall comply with the Applicable Codes. 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, the terms "building official" and "code enforcement

agency" as used in the Applicable Codes mean the Tribal Gaming Agency or such other Tribal government agency or official as may be designated by the Tribe's law.

- (c) Inspection of the Gaming Facility, or any modification, improvement, expansion, or other construction on the San Pablo Parcel shall be conducted for purposes of determining compliance with the Applicable Codes pursuant to the terms of any agreement reached between the Tribe and the City of San Pablo. In the absence of any such agreement, in order to determine compliance with the Applicable Codes, in all cases where the Applicable Codes would otherwise require a permit, the Tribe shall employ appropriate plan checkers or review firms that either are California licensed architects or engineers with relevant experience or are on the list, if any, of approved plan checkers or review firms provided by the City of San Pablo, and shall employ project inspectors that have been either approved as Class 1 certified inspectors by the Division of the State Architect or approved as Class A certified inspectors by the Office of Statewide Health Planning and Development or their successors. In any case, the Tribe shall require all inspectors to report in writing any failure to comply with the Applicable Codes to the Tribal Gaming Agency and the State Designated Agency. The plan checkers, review firms, and project inspectors shall hereinafter be referred to as "Inspector(s)."
  
- (d) In all cases where the Applicable Codes would otherwise require plan check, the Tribe shall require those responsible for any construction to provide the documentation set forth below:
  - (1) 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 provided to the State Designated Agency within fifteen (15) days of their completion;
  
  - (2) 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, the Tribe shall provide such change orders or other changes to the State Designated Agency within five (5) days of the change's execution or approval;

- (3) The Tribe shall maintain during construction all other contract change orders for inspection and copying by the State Designated Agency upon its request;
  - (4) The Tribe shall maintain the Design and Building Plans for the term of this Compact.
- (e) In all events, the State Designated Agency may designate an agent or agents to be given reasonable notice of each inspection by an Inspector required by Section 108 of the California Building Code, and said State agents may accompany the Inspector on any such inspection. The Tribe agrees to correct any Gaming Facility condition noted in said inspection that does not meet the Applicable Codes (hereinafter “deficiency”). Upon not fewer than three (3) business days’ notice to the Tribal Gaming Agency, except in circumstances posing an immediate threat to the life or safety of any person, in which case no advance notice is required, the State Designated Agency shall also have the right to conduct an independent inspection of the Gaming Facility to verify compliance with the Applicable Codes before public occupancy and shall report to the Tribal Gaming Agency any alleged deficiency; provided, however, that prior to any exercise by the State of its right to inspect without notice based upon alleged circumstances posing an immediate threat to the life or safety of any person, the State Designated Agency shall provide to the Tribal Gaming Agency notice in writing specifying in reasonable detail those alleged circumstances.
- (f) Upon final certification by the Inspector that a Gaming Facility meets the Applicable Codes, the Tribal Gaming Agency shall forward the Inspector’s certification to the State Designated Agency within ten (10) days of issuance. If the State Designated Agency objects to that certification, the Tribe shall make a good faith effort to address the State’s concerns, but if the State Designated Agency does not withdraw its objection, the matter will be resolved in accordance with the dispute resolution provisions of section 13.0.
- (g) Any failure to remedy within a reasonable period of time any material and timely raised deficiency shall be deemed a violation of the Compact, and furthermore, any deficiency that poses a serious or significant risk to the health or safety of any occupants shall be grounds for the State Designated Agency to prohibit occupancy of the

affected portion of the Gaming Facility pursuant to a court order until the deficiency is corrected.

- (h) Nothing herein shall prohibit the Tribe and the City of San Pablo from negotiating, or having negotiated, additional or more stringent standards in connection with any modifications or improvements to the San Pablo Parcel.
- (i) 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 Title 19 of the California Code of Regulations applicable to similar facilities in the City of San Pablo as set forth below:
  - (1) Not less than thirty (30) days before the commencement of the Gaming Activities, and not less than biennially thereafter, and upon at least ten (10) days' notice to the State Designated Agency, the Gaming Facility shall be inspected, at the Tribe's expense, by a Tribal official, if any, who is responsible for fire protection on the reservation or by an independent expert for purposes of certifying that the Gaming Facility meets a reasonable standard of fire safety and life safety.
  - (2) The State Designated Agency shall be entitled to designate and have a qualified representative or representatives present during the inspection. During such inspection, the State's representative(s) shall specify to the Tribal official or independent expert, as the case may be, any condition which the representative(s) reasonably believes would preclude certification of the Gaming Facility as meeting a reasonable standard of fire and life safety.
  - (3) The Tribal official or independent expert shall issue a report on the inspection within fifteen (15) days, identifying any deficiency in fire 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 fifteen (15) days after the issuance of the report, the Tribal official or independent expert shall also require and

approve a specific plan for correcting deficiencies, whether in fire 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 Designated Agency's representatives. A copy of the report shall be served on the State Designated Agency and the Tribal Gaming Agency.

- (5) Immediately upon correction of all deficiencies identified in the report, the Tribal official or independent expert shall certify in writing to the Tribal Gaming Agency and the State Designated 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 the 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 the Compact and grounds for the State Gaming Agency or other State Designated Agency to prohibit occupancy of the affected portion of the Gaming Facility pursuant to court order until the deficiency is corrected.

### **Sec. 6.4.3. Gaming Employees.**

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

operates, maintains, repairs, or assists in Class III Gaming, provided that he or she does not supervise Gaming Activities or persons who conduct, operate, account for or supervise any such Gaming Activity, and is not empowered to make discretionary decisions affecting the conduct of the Gaming Operation.

- (2) The employee 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 he or she does not supervise Gaming Activities or persons who conduct, operate, account for or supervise any such Gaming Activity, and is not empowered to make discretionary decisions affecting the conduct of the Gaming Operation.
  - (3) If the State Gaming Agency, in consultation with the Tribal Gaming Agency, exempts the Gaming Employee from the requirement to obtain or maintain current a State Gaming Agency determination of suitability.
- (c) Notwithstanding subdivision (b), 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 that determination. Upon receipt of such notification, the Tribal Gaming Agency, in accordance with section 6.5.1, subdivision (d), shall deny that person a tribal gaming license and shall promptly revoke any tribal gaming license theretofore 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 in state court conducted pursuant to Section 1085 of the California Code of Civil Procedure.
- (d) The Tribe shall not employ, or continue to employ, any person whose application to the State Gaming Agency for a determination of

suitability, or for a renewal of such a determination, has been denied or has expired without renewal.

- (e) At any time five (5) years after the effective date of this Compact, either party to this Compact may request renegotiation of the scope of coverage of subdivision (b).
- (f) This section shall not apply to members of the Tribal Gaming Agency.

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

- (a) Every Gaming Resource Supplier shall be licensed by the Tribal Gaming Agency prior to the sale, lease, or distribution, or further sale, lease, or distribution, of any Gaming Resources to or in connection with the Tribe's Gaming Operation or Facility. Every Gaming Resource Supplier shall also apply to the State Gaming Agency for a determination of suitability at least thirty (30) days prior to the sale, lease, or distribution, or further sale, lease, or distribution, of any Gaming Resources to or in connection with the Tribe's Gaming Operation or Facility. Where the State Gaming Agency denies the determination of suitability, the Tribal Gaming Agency shall deny, revoke, or not renew the license. The license and determination of suitability shall be reviewed at least every two (2) years for continuing compliance. For purposes of section 6.5.2, such a review shall be deemed to constitute an application for renewal. 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.
- (b) Any agreement between the Tribe and a Gaming Resource Supplier shall 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. 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 has expired without renewal.

**Sec. 6.4.5. Financial Sources.**

- (a) Every Financial Source shall be licensed by the Tribal Gaming Agency prior to extending any financing in connection with the Tribe's Gaming Operation or Facility. Every Financial Source shall also apply to the State Gaming Agency for a determination of suitability at least ninety (90) days prior to extending any financing in connection with the Tribe's Gaming Operation or Facility. Where the State Gaming Agency denies the determination of suitability, the Tribal Gaming Agency shall deny, revoke, or not renew the license. The license and determination of suitability shall be reviewed at least every two (2) years for continuing compliance. For purposes of section 6.5.2, such a review shall be deemed to constitute an application for renewal. In connection with such a review, the Tribal Gaming Agency shall require the Financial Source to update all information provided in the previous application.
- (b) Any agreement between the Tribe and a Financial Source shall 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 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 has expired without renewal.
- (c) 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.

(d)(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) A federally-regulated or state-regulated bank, savings and loan association, or other federally- or state-regulated lending institution.
  - (B) An entity identified by Regulation CGCC-2, subdivision (f) (as in effect on July 1, 2004) of the California Gambling Control Commission, when that entity is a Financial Source solely by reason of being (i) a purchaser or a holder of debt securities issued directly or indirectly by the Tribe for a Gaming Facility or by the Gaming Operation or (ii) the owner of a participation interest in any amount of indebtedness for which a Financial Source described in subdivision (d)(1)(A) is the creditor.
  - (C) An investor who, alone or together with any person controlling, controlled by or under common control with such investor, holds less than 10% of all outstanding debt securities issued directly or indirectly by the Tribe for a Gaming Facility or by the Gaming Operation.
  - (D) An agency of the federal, state or local government providing financing, together with any person purchasing any debt securities of the agency to provide such financing.
- (2) The following are not Financial Sources for purposes of this section.
- (A) An entity identified by Regulation CGCC-2, subdivision (h) (as in effect on July 1, 2004) of the California Gambling Control Commission.
  - (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.

- (e) In recognition of changing financial circumstances, this section shall be subject to good faith renegotiation by both parties in or after five (5) years from the effective date of this Compact upon request of either party; provided such 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 Section 556.4 of Title 25 of the Code of Federal Regulations, for licensing primary management officials and key employees.
- (c) For Applicants who are business entities, these licensing provisions shall apply to the entity as well as: (i) each of its officers 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; and (v) each person or entity (other than a financial institution that the Tribal Gaming Agency has determined does not require a license under the preceding section) that, alone or in combination with others, has provided financing in connection with any 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 clauses (i) to (v), inclusive, between any two or more entities, those entities may be deemed to be a single entity.

- (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 Tribal 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 Tribe's Gaming Operations are free from criminal and dishonest elements and would be conducted honestly.
- (b) A license may not be issued unless, based on all information and documents submitted, the Tribal Gaming Agency is satisfied that the Applicant, and in the case of an entity each individual identified in section 6.4.6, meets all 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 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 Tribal 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 requirements for licensing under IGRA, NIGC regulations, the Tribal Gaming Ordinance, and this Compact. The Tribal Gaming Agency shall not issue other than a temporary license 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 Tribal 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 issued under a gaming compact involving another tribe and the State, or may rely on a state gaming license previously issued to the Applicant, to fulfill some or all of the Tribal Gaming Agency's background investigation obligations.
- (c) 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 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 or that provision of the information would violate state or federal law.
- (d) 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 considered to be an entity entitled to receive state summary criminal history information within the meaning of subdivision (b)(12) of section 11105 of the California Penal Code. The California Department of Justice shall provide services to the Tribal Gaming Agency through the California Law Enforcement Telecommunications System (CLETS), subject to a determination by

the CLETS advisory committee that the Tribal Gaming Agency is qualified for receipt of such services, and on such terms and conditions as are deemed reasonable by that advisory committee.

**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.
- (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.
- (e) Nothing herein shall be construed to relieve the Tribe of any obligation under Part 558 of Title 25 of the Code of Federal Regulations.

**Sec. 6.5. Tribal Gaming License Issuance.** Upon completion of the necessary background investigation, the Tribal Gaming Agency may issue a tribal gaming license on a conditional or unconditional basis. Nothing herein shall create a property or other right of an Applicant in an opportunity to be licensed, or in a

tribal gaming license itself, both of which shall be considered to be privileges granted to the Applicant in the sole discretion of the Tribal Gaming Agency.

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

- (a) Any 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, as to which the Applicant shall be notified in writing along with notice of an intent to suspend or revoke the tribal gaming license.
- (d) Upon receipt of notice that the State Gaming Agency has determined that a person would be unsuitable for licensure in a gambling establishment subject to the jurisdiction of the State Gaming Agency, the Tribal Gaming Agency shall deny that person a tribal gaming license and promptly revoke any tribal gaming license that has theretofore been issued to that person; provided that the Tribal Gaming Agency may, in its discretion, re-issue a tribal gaming license to the person 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.

**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 which 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 license, 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 for purposes of the State Gaming Agency's consideration of renewal of its determination of suitability.
- (c) At the discretion of the State Gaming Agency, an additional background investigation may be required if the State Gaming Agency determines the need for further information concerning the Applicant's continuing suitability for a license.

### **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 chest height at all times while in the Gaming Facility, identification badges issued by the Tribal Gaming Agency.
- (b) Identification badges must display information, including, but not limited to, a photograph and the person's name, 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) The Tribe shall monthly 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 License.** The fees for all tribal gaming licenses shall be set by the Tribal Gaming Agency.

**Sec. 6.5.5. Suspension of Tribal Gaming License.** The Tribal Gaming Agency shall summarily suspend the tribal gaming license of any employee 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 employee 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. Any right to notice or hearing in regard thereto shall be governed by Tribal law.

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

- (a) The State Gaming Agency and the Tribal Gaming Agency (together with tribal gaming agencies under other gaming compacts) shall cooperate in developing standard licensing forms for tribal Gaming Employee license applications, on a statewide basis, that reduce or eliminate duplicative or excessive paperwork, which forms and procedures shall take into account the Tribe's requirements under IGRA and the expense thereof. To facilitate the State Gaming Agency's ability to obtain any criminal information that may relate to the Applicant, each application form shall be printed showing the State Gaming Agency's approval of its use, but said approval shall not be unreasonably withheld.
- (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 ten (10) 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:
  - (1) A copy of all tribal license application materials and information received by the Tribal Gaming Agency from the Applicant.
  - (2) An original set of fingerprint cards.
  - (3) A current photograph.
  - (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 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) A determination of suitability is valid for the term of the tribal gaming license held by the Applicant, and the Tribal Gaming Agency shall require a licensee to apply for renewal of a determination of suitability 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. 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), as may be amended from time to time, but any deposit requested by the State Gaming Agency pursuant to section 19867 of that Code, as may be amended from time to time, 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 therefor.
- (h) Prior to denying an application for a determination of suitability, 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, the State Gaming Agency shall provide the Applicant with written notice of all appeal rights available under state law.
- (i) The State Gaming Agency shall maintain a roster of Gaming Resource Suppliers that it has determined to be suitable pursuant to the provisions of this section, or through separate procedures to be adopted by the State Gaming Agency. Upon application to the Tribe for a tribal gaming license, a Gaming Resource Supplier that appears on the State Gaming Agency's suitability roster may be licensed by the Tribal Gaming Agency, subject to any later determination by the State Gaming Agency that the Gaming Resource Supplier is not suitable or to a request for tribal gaming license suspension or revocation pursuant to section 6.5.1.

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

**Sec. 7.1. Gaming Device Approval.** No Gaming Device may be offered for play unless all the following occurs:

- (a) The manufacturer or distributor which sells, leases, or distributes such Gaming Device (i) has applied for a finding 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;

- (b) 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 governmental gaming test laboratory (the “Gaming Test Laboratory”) as operating in accordance with the standards of Gaming Laboratories International, Inc. known as GLI-11 and GLI-12, or the technical standards approved by the State of Nevada, or such other technical standards as the State Gaming Agency and the Tribal Gaming Agency shall agree upon, which agreement shall not be unreasonably withheld, and a copy of said certification 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;
- (c) 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 insertion into the Gaming Device; and
- (d) The hardware and associated equipment for the Gaming Device has been tested by the Gaming Test Laboratory to ensure operation in accordance with the manufacturer’s specifications.

**Sec. 7.2. Gaming Test Laboratory Selection.** The Gaming Test Laboratory shall be an independent or state governmental gaming test laboratory recognized in the gaming industry which (i) is competent and qualified to conduct scientific tests and evaluations of Gaming Devices, and (ii) is licensed or approved by any of the following states: Arizona, California, Colorado, Illinois, Indiana, Iowa, Michigan, Missouri, Nevada, New Jersey, or Wisconsin. The Tribal Gaming Agency shall submit to the State Gaming Agency documentation that demonstrates the Gaming Test Laboratory satisfies (i) and (ii) herein 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, within fifteen (15) days prior to reliance thereon. If, at any time, the Gaming Test Laboratory license and/or approval required by (ii) herein is suspended or revoked by any of those states or the Gaming Test Laboratory is found unsuitable by the State Gaming Agency, then the State Gaming Agency may reject the use of such Gaming Test Laboratory, and upon such rejection, the Tribal Gaming Agency shall ensure that such Gaming Test Laboratory discontinues its responsibilities under this section.

**Sec. 7.3. Independent Audits.** The Tribal Gaming Agency shall ensure that compliance with section 7.1 is audited annually by an independent auditor and

shall provide the results of such audits to the State Gaming Agency within five (5) business days of completion. For purposes of this section, an independent auditor shall be a certified public accountant and/or certified internal auditor who is not employed by the Tribe, the Tribal Gaming Agency, or the Gaming Operation, has no financial interest in any of these entities, and is only otherwise retained by any of these entities to conduct regulatory audits, independent audits of the Gaming Operation, or audits under this section.

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

- (a) The State Gaming Agency, utilizing such consultants, if any, deemed appropriate, may inspect the Gaming Devices in operation at the Gaming Facility on a random basis not to exceed four (4) times annually to confirm that they operate and play properly pursuant to the manufacturer's technical standards. Said random inspections conducted pursuant to this subdivision shall occur during normal business hours from 7 a.m. to 5 p.m. outside of Fridays, weekends, and holidays and shall not remove from play more than 5% of the Gaming Devices operating at the Gaming Facility.
- (b) The State Gaming Agency shall provide notice to the Tribal Gaming Agency of such inspection at or prior to the commencement of the random inspection, and the Tribal Gaming Agency may accompany the State Gaming Agency inspector(s).
- (c) The State Gaming Agency, utilizing such consultants, if any, deemed appropriate, may conduct additional inspections upon reasonable belief of any irregularity and after informing the Tribal Gaming Agency of the basis for such belief.
- (d) 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.

**Sec. 7.5. Technical Standards.** The Tribal Gaming Agency shall provide to the State Gaming Agency copies of its regulations for technical standards applicable to the Tribe's Gaming Devices at least thirty (30) days before the commencement of the Gaming Operation and at least thirty (30) days before the effective date of any revisions to the regulations.

**Sec. 7.6. State Gaming Agency Designation.** For purposes of sections 7.1 to 7.5, the State Gaming Agency shall be the California Gambling Control Commission, unless the State provides otherwise by written notice pursuant to section 16.

**Sec. 7.7. 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 land 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 Police Department in the City of San Pablo.
- (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 which makes lawful the receipt of such Gaming Device;
  - (2) The final destination of the Gaming Device is any other state in which possession of the Gaming Devices is made lawful by state law or by tribal-state compact;
  - (3) The final destination of the Gaming Device is another country, or any state or province of another country, wherein possession of the Gaming Device 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 off the Tribe's land in violation of this section 7.7, or in violation of any permit issued pursuant thereto, is subject to summary seizure by California peace officers.

## **SECTION. 8.0. INSPECTIONS.**

### **Sec. 8.1. 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 Tribal Gaming Ordinance to impose fines or other sanctions within the jurisdiction of the Tribe against gaming licensees or other persons who interfere with or violate the Tribe's gaming regulatory requirements and obligations under IGRA, NIGC gaming regulations, the Tribal Gaming Ordinance, or this Compact as long as said fines or sanctions comport with principles of federal due process.
- (c) The Tribal Gaming Agency shall report violations of this Compact and any failures to comply with its orders to the California Gambling Control Commission and the Division 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 to Class III Gaming, including such records located in off-site facilities dedicated to their storage subject to the conditions in subdivisions (b), (c), and (d).

- (b) The State Gaming Agency may inspect public areas of the Gaming Facility at any time without prior notice during normal Gaming Facility business hours (8:00 a.m. to 5:00 p.m.).
- (c) Inspection of areas of the Gaming Facility not normally accessible to the public may be made at any time the Gaming Facility is open to the public, 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. The Tribal Gaming Agency, in its sole discretion, may require a member 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 to be available at all times for those purposes and shall ensure that the member 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, immediately after the State Gaming Agency gives notice to the Tribal Gaming Agency, during the hours from 8:00 a.m. to 5:00 p.m. Monday through Friday, and at any other time that a Tribal Gaming Agency employee, a Gaming Facility employee, or a Gaming Operation employee is available onsite with physical access to offices, including off-site facilities, where the papers, books, and records are kept. The Tribe shall cooperate with, and cannot refuse, said inspection and copying, provided that the State Gaming Agency inspectors cannot require copies of papers, books, or records in such volume that it unreasonably interferes with the normal functioning of the Gaming Operation or Facility.
- (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 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 and the State Gaming Agency does not object.

- (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 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 complete any investigation of suspected criminal activity; and provided further that the State Gaming Agency may provide such confidential 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.
- (d) "Confidential information and records" means information and records treated as confidential or protected from disclosure under California state law, including, but not limited to, trade secrets, non-public financial data, player tracking data, internal controls, and internal reports related to security and prevention of theft. The Tribe shall designate as confidential each page of each record it believes to be confidential under California state law, and in all such cases the State shall treat the record as confidential until such time that the designation is removed. If the State objects to such designation with respect to any record or page(s) of a record, the matter will be resolved in accordance with the arbitration procedures under section

13.2. The State need not treat as confidential any page or record not so designated.

- (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 deemed confidential pursuant to subdivision (d), will exercise 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 documents from disclosure until such time as the confidential designation may be removed by the Tribe, by mutual agreement, or pursuant to the arbitration procedures under section 13.2. Before the State Gaming Agency provides confidential information or records to a consultant retained under subdivision (c), it shall enter a confidentiality agreement with that consultant that meets the standards of this subdivision.
- (f) The Tribe may avail itself of any and all remedies under state law for the improper disclosure of confidential information or records. In the case of any disclosure of confidential information or 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) The Tribal Gaming Agency and the State Gaming Agency shall confer regarding protocols for the release to law enforcement agencies of information obtained during the course of background investigations.
- (h) Confidential 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) Notwithstanding any other provision of this Compact, the State Gaming Agency shall not be denied access to papers, books, records, equipment, or places where such access is reasonably necessary, to ensure compliance with this Compact or to conduct or complete an investigation of suspected criminal activity in connection with the Gaming Activities or the operation of the Gaming Facility or the Gaming Operation.

**SEC. 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, and of the Tribal 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, 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 Operation and 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 person while in the Gaming Facility. 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, 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.

- (f) The recording of any and all occurrences within the Gaming Facility that deviate from normal operating policies and procedures (hereinafter “incidents”). The regulations will provide, and the Tribe agrees, that the Tribal Gaming Agency shall transmit copies of incident reports to the State Gaming Agency forthwith. The procedure for recording incidents pursuant to said regulations shall also do all of the following:
  - (1) 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).
  - (2) Require the assignment of a sequential number to each report.
  - (3) 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.
  - (4) Require that each report include, at a minimum, all of the following:
    - (A) The record number.
    - (B) The date.
    - (C) The time.
    - (D) The location of the incident.
    - (E) A detailed description of the incident.
    - (F) The persons involved in the incident.
    - (G) The security department employee assigned to the incident.
- (g) The establishment of employee procedures designed to permit detection of any irregularities, theft, cheating, fraud, or the like, consistent with industry practice.
- (h) Maintenance of a list of persons barred 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 shall transmit a copy of the list to the State Gaming Agency quarterly and shall make a copy of the current list available to the State Gaming Agency upon request. Notwithstanding anything in this Compact to the contrary, the State Gaming Agency is authorized to make the copies of the list available to other Tribal Gaming Agencies, to licensees of the California Gambling Control Commission, the California Horse Racing Board, and other law enforcement agencies.

- (i) The conduct of an audit, at the Tribe's expense, of the annual financial statements of the Tribe's Gaming Activities pursuant to section 4.3.3, subdivision (d).
- (j) Submission to, and prior approval by, the Tribal Gaming Agency of the rules and regulations of each Class III game to be operated by the Tribe, and of any changes in those rules and regulations. No Class III game may be played that has not received Tribal Gaming Agency approval.
- (k) The obligation of the Gaming Facility and the Gaming Operation to maintain a copy of the rules, regulations, and procedures for each game as played, including, but not limited to, the method of play and the odds and method of determining amounts paid to winners.
- (l) 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 is displayed at that gaming station.
- (m) Maintenance of a cashier's cage in accordance with industry standards for such facilities.
- (n) Specification of minimum staff and supervisory requirements for each Gaming Activity to be conducted.
- (o) Technical standards and specifications for the operation of Gaming Devices and other games authorized herein to be conducted by the Tribe.

**Sec. 9.2. Program to Mitigate Problem Gambling.** The Tribal Gaming Agency shall establish a program 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 visible locations and ATM's in the Gaming Facility educational and informational materials aimed at the prevention of problem gambling and specifying 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, 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 cash checking services, and deny access to the Gaming Facility to patrons who have exhibited signs of problem gambling.
- (e) It shall display at conspicuous locations and at ATM's 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 gaming message and a toll-free help-line number for problem gamblers, where practical, and that it make no false or misleading claims.
- (h) It shall adopt a code of conduct, derived, inter alia, from that of the American Gaming Association, that addresses responsible gambling and responsible advertising.

**Sec. 9.3. Enforcement of Regulations.** The Tribal Gaming Agency shall ensure the enforcement of the rules, regulations, and specifications promulgated under this Compact, including under section 9.1.

**Sec. 9.4. State Civil and Criminal Jurisdiction.** Nothing in this Compact affects the civil or criminal jurisdiction of the State under Public Law 280 (18 U.S.C. § 1162; 28 U.S.C. § 1360) or IGRA to the extent applicable. Except as provided below, all state and local law enforcement agencies and state courts shall exercise jurisdiction to enforce the State's criminal laws within the San Pablo Parcel, 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, to the fullest extent permitted by decisions of the United States Supreme Court related to Public Law 280. The Tribe hereby consents to such criminal jurisdiction. However, no Gaming Activity conducted by the Tribe pursuant to this Compact may be deemed to be a 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, and to adjudicate alleged violations thereof, is hereby transferred to the State pursuant to 18 U.S.C. § 1166(d).

**Sec. 9.5. 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 its enforcement; 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 to have a conflict of interest.
- (b) The Tribe shall conduct a background investigation on a prospective member of the Tribal Gaming Agency, who shall meet the background requirements of a management contractor under IGRA; 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. If requested by the tribal government or the Tribal Gaming Agency, the State Gaming Agency may assist in the conduct of such a background

investigation and may assist in the investigation of any possible corruption or compromise of a member of the agency.

- (c) In the event that the State Gaming Agency determines the member to be unsuitable, the State Gaming Agency shall serve upon the Tribe a written notice of its finding of unsuitability and request the removal of the member. Upon receipt of notice that the State Gaming Agency has determined the member to be unsuitable, the Tribe shall either remove that member from the Tribal Gaming Agency or demand an expedited arbitration pursuant to section 13.2.
- (d) If the Tribe demands an expedited arbitration of the State's determination of unsuitability, the arbitrator shall make a de novo determination as to whether the State Gaming Agency's determination of unsuitability is justified using the following bases for such determination.
  - (1) To be found suitable, the member must be all of the following:
    - (A) A person of good character, honesty, and integrity.
    - (B) A person whose prior activities, criminal record, if any, reputation, habits, and associations do not pose a threat to the public interest of this state, or to the effective regulation and control of controlled gambling, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of controlled gambling or in the carrying on of the business and financial arrangements incidental thereto.
    - (C) A person that is in all other respects qualified to be licensed as provided in section 6.4.7 of this Compact.
  - (2) A member is deemed unsuitable if any of the following apply:
    - (A) the person, or any partner, officer, director, or shareholder of the person, has any financial interest in any business or organization that is engaged in any form of gambling prohibited by Section 330 of the California Penal Code, whether within or without the State of California.

- (B) the person fails to clearly establish eligibility and qualification in accordance with section 6.4.7 of this Compact.
- (C) the person fails to provide information, documentation, and assurances required by sections 6.4.7, 6.4.8, subdivision (c), or 6.5.6 of this Compact or requested by the Tribal Gaming Agency, or fails to reveal any fact material to qualification, or supplies information that is untrue or misleading as to a material fact pertaining to the qualification criteria.
- (D) the person has been convicted of a felony, including a conviction by a federal court or a court in another state for a crime that would constitute a felony if committed in California.
- (E) the person has been convicted of any misdemeanor involving dishonesty or moral turpitude within the ten-year period immediately preceding the beginning of their service on the Tribal Gaming Agency, unless the applicant has been granted relief pursuant to Section 1203.4, 1203.4a, or 1203.45 of the California Penal Code; provided, however, that the granting of relief pursuant to Section 1203.4, 1203.4a, or 1203.45 of the California Penal Code shall not constitute a limitation on the discretion of the arbitrator to determine the person's compliance with the requirements of Sections 6.4.7 and 9.5, subdivision (d)(1) of this Compact.
- (F) the person has been associated with criminal profiteering activity or organized crime, as defined by Section 186.2 of the California Penal Code.
- (G) the person has exhibited contumacious defiance of any legislative investigatory body, or other official investigatory body of any state or of the United States, when that body is engaged in the investigation of crimes relating to gambling; official corruption related to gambling activities; or criminal profiteering activity or organized crime, as defined by Section 186.2 of the California Penal Code.
- (H) the person is less than twenty-one (21) years of age.

In all cases, in coming to a decision, the arbitrator must give due consideration for the proper protection of the health, safety and welfare of the residents of the State, and must take into account whether membership on the Tribal Gaming Agency would undermine public trust that the Gaming Operation is free from criminal and dishonest elements and would be conducted honestly.

**Sec. 9.6. State Gaming Agency Regulations.**

(a) Pursuant to the procedures set forth in section 9.7, the State Gaming Agency may adopt regulations governing matters encompassed in sections 6.0, 7.0, and 9.1 under the following circumstances:

(1) The State Gaming Agency may adopt regulations that apply to any aspect of the Gaming Operation that is not addressed by a regulation of the Tribal Gaming Agency, as long as the regulations are not inconsistent with the terms of this Compact.

(2) The State Gaming Agency may adopt regulations that apply to any subjects covered by sections 6.0, 7.0, and 9.1 when it deems that the regulations adopted by the Tribal Gaming Agency in connection with said subject are ineffective in addressing it, as long as they are not inconsistent with the terms of this Compact.

(3) In circumstances that present an imminent threat to public health or safety, the State Gaming Agency may adopt a regulation that becomes effective immediately, regardless of whether the Tribe or Tribal Gaming Agency has enacted a regulation on the subject and regardless of whether the regulation is deemed ineffective. Any such regulation shall be accompanied by a detailed, written description of the exigent circumstances, and shall be submitted immediately to the Tribal Gaming Agency. A regulation adopted by the State Gaming Agency pursuant to this subdivision shall be effective to the same extent, and subject to the same provisions governing arbitration, as a regulation adopted under subdivision (b) of section 9.7.

(b) Chapter 3.5 (commencing with section 11340) of Part 1 of Division 3 of Title 2 of the California Government Code does not apply to regulations adopted by the State Gaming Agency in respect to the Gaming Operations under this Section.

**Sec. 9.7. Limitations on Adoption of State Gaming Regulations.**

(a) To promote respectful relations between the Tribe and the State, except as provided in section 9.6, subdivision (a)(3), no regulation of the State Gaming Agency adopted under section 9.6, subdivisions

(a)(1) and (2), shall be effective with respect to the Tribe's Gaming Operation until all of the following procedures have been exhausted:

- (1) When the State Gaming Agency suspects, with respect to an aspect of the Gaming Operation that no such regulation exists, or that an existing regulation is ineffective in addressing a subject, it may so notify the Tribal Gaming Agency, set forth the reasons for its position, and request a meeting for the purpose of considering the adoption of a regulation by the Tribal Gaming Agency or the State Gaming Agency. The notification shall propose a date for the meeting, which shall not be less than ten (10) days following the date the notification is made.
- (2) Representatives of the Tribal Gaming Agency shall meet with the representatives of the State Gaming Agency (for purposes of this section, the "parties") on the date proposed in the notification, or such other date as may be mutually agreed. In the absence of agreement upon a different date, the date proposed in the notification shall control. The parties at the meeting shall confer in good faith over the necessity for the adoption of a regulation and ways in which effective regulation may be achieved. Any proposal of a regulation by the Tribal Gaming Agency, either at or at any time prior to the meeting, shall be without prejudice to its right to dispute either the necessity of a regulation or the effectiveness of a regulation in existence.
- (3) Within thirty (30) days following the meeting, the Tribal Gaming Agency may propose a regulation for the purpose of addressing the subject as to which the State Gaming Agency provided notification. The Tribal Gaming Agency may adopt the regulation only after inviting comment or objection by the State Gaming Agency, and the Tribal Gaming Agency must provide at least thirty (30) days for the State Gaming Agency to comment or object by providing a copy of the proposed regulation to the State Gaming Agency at least thirty (30) days prior to the date of its intended adoption. Prior to adoption of any regulation under this paragraph, the Tribal Gaming Agency shall respond in writing to each comment and objection of the State Gaming Agency.

- (4) If the Tribal Gaming Agency adopts a regulation as provided in subparagraph 3, the State Gaming Agency may, if dissatisfied with the regulation, make a demand for binding arbitration upon the Tribal Gaming Agency, in which case arbitration shall proceed as provided in subdivision (d).
- (b) If the Tribal Gaming Agency does not propose a regulation within thirty (30) days following the meeting specified in subdivision (a)(2) and adopt a regulation as provided in subdivision (a)(3) within seventy (70) days of the meeting specified in subdivision (a)(2), the State Gaming Agency may adopt a regulation for the purpose of addressing the subject as to which it provided the Tribal Gaming Agency notification pursuant to subdivision (a)(1). Except as provided in section 9.6, subdivision (a)(3), the State Gaming Agency shall adopt no regulation under this subdivision without first providing the proposed regulation to, and inviting comment or objection by, the Tribal Gaming Agency at least thirty (30) days prior to the intended adoption of the regulation. The Tribal Gaming Agency shall provide its comments or objections, if any, to the State Gaming Agency at least ten (10) days prior to the date of the intended adoption of the regulation. Prior to adoption of any regulation under this subdivision, the State Gaming Agency shall respond in writing to each comment and objection of the Tribal Gaming Agency.
- (c) If the State Gaming Agency adopts a regulation as provided in subdivision (b), the Tribal Gaming Agency may, if dissatisfied with the regulation, make a demand upon the State Gaming Agency for binding arbitration, in which case the arbitration shall proceed as provided in subdivision (d).
- (d) Neither a demand for arbitration nor the pendency of arbitration shall impair the effect of a regulation adopted by the Tribal Gaming Agency under subdivision (a)(3) or by the State Gaming Agency under subdivision (b). Arbitration, when demanded, shall proceed before a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Each party shall exchange with the other within fifteen (15) days of the demand for arbitration a single proposal in the form of a regulation that the party proposes to adopt. If either party has adopted a regulation pursuant to subdivisions (a) or (b), that regulation shall constitute the proposal of

that party. The arbitrator shall be limited to determining whether the Compact authorizes a regulation to be adopted with respect to the aspect of the Gaming Operation at issue, and if so, which of the proposals before the arbitrator most effectively addresses the subject in light of the purposes and objectives of sections 6.0, 7.0, and 9.1 of this Compact. Unless the arbitrator determines that no regulation is required by the Compact, the arbitrator shall issue an order, effective upon issuance, which shall identify which of the two (2) proposals is to be given effect as a regulation. If requested by a party at the hearing, a reasoned statement of the arbitrator's decision shall be included in the order. Review of the arbitrator's order is waived. In order to effectuate this provision, and in the exercise of its sovereignty, the Tribe agrees to waive, and does hereby 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, or (ii) enforce or confirm any arbitral order rendered in the arbitration.

- (e) The proposal identified by the arbitrator's order as the proposal to be given effect shall be effective as follows: If the proposal so identified is in effect on the date the arbitrator's order is issued, it need not be readopted and shall be effective from the date of adoption. If the proposal so identified is not in effect on the date the arbitrator's order is issued, it shall be adopted as a regulation by the party that proposed it not earlier than thirty (30) days after the date of the arbitrator's order. Any proposal adopted as a regulation pursuant to sections 9.6 and 9.7 prior to the arbitrator's order that is not adopted by the arbitrator pursuant to subdivision (d) shall cease to be effective upon the date of the arbitrator's order.
- (f) Nothing in this section 9.7 shall be deemed to preclude either the State or the Tribe from seeking, under section 13.1, a resolution of the question whether a regulation adopted under section 9 conflicts with a final published regulation of the NIGC.

## **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 makes a complaint to personnel of the Gaming Operation over the play or operation of any game within seven (7) days of said play or operation shall be notified in writing of his or her right to request, within fifteen (15) days of such written notification, resolution of the dispute by the Tribal Gaming Agency, and if dissatisfied with the resolution, to seek binding arbitration of the dispute before a retired judge pursuant to the terms and provisions in subdivision (c). If the patron is not provided with the aforesaid notification within thirty (30) days of the patron's complaint, the deadlines herein shall be removed, leaving only the relevant statutes of limitations under California law that would otherwise apply.
- (b) Upon request by the patron for a resolution of his or her complaint, the Tribal Gaming Agency shall conduct an appropriate investigation, shall provide to the patron a copy of its regulations concerning patron complaints, and shall render a decision in accordance with industry practice extant in Nevada and New Jersey. The decision shall be issued within sixty (60) days of the patron's 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, or no decision is issued within the sixty (60) day period, the patron may request that the dispute be settled by binding arbitration before a single arbitrator, who shall be a retired judge, in accordance with the streamlined arbitration rules and procedures of JAMS (or if those rules no longer exist, the closest equivalent). Upon such request, the Tribe shall consent to such arbitration, and agree to abide by the decision of the arbitrator; provided, however, that 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 arbitrator shall deny the patron's claim for the winnings but shall award reimbursement of the amounts wagered by the patron which were lost as a result of any said failure. To effectuate such consent, the Tribe shall, in the exercise of its sovereignty, waive its right to assert sovereign immunity in connection with the arbitrator's jurisdiction and in any action to
  - (i) enforce the Tribe's or the patron's (for purposes of this section, the

“parties”) obligation to arbitrate, (ii) confirm, correct, modify, or vacate the arbitral award rendered in the arbitration, or (iii) enforce or execute a judgment based upon said award. The cost and expenses of such arbitration shall be initially borne by the Tribe, but the arbitrator shall award to the prevailing party its costs and expenses (but not attorney fees). Any party dissatisfied with the award of the arbitrator may at that party’s election invoke the JAMS Optional Arbitration Appeal Procedure (and if those rules no longer exist, the closest equivalent); provided that the party making such election must bear all the costs and expenses of JAMS and the arbitrators associated with the Appeal Procedure, regardless of the outcome.

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

### **Section 11.8.1. Tribal Environmental Impact Report.**

- (a) Before the commencement of any Project as defined in section 2.20 herein, the Tribe shall cause to be prepared a tribal environmental impact report, 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 11.8; provided, however, that information or data which is relevant to such a TEIR and is a matter of public record or is generally available to the public need not be repeated in its entirety in said 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 which the Project is likely to have, including each of the matters set forth in Exhibit A, shall list ways in which the Significant Effects on the Environment might be minimized, and shall include a detailed statement setting forth all of the following:
- (1) All Significant Effects on the Environment of the proposed Project;
  - (2) In a separate section:

- (A) Any Significant Effect on the Environment that cannot be avoided if the Project is implemented;
  - (B) Any Significant Effect on the Environment that would be irreversible if the Project is implemented;
- (3) Mitigation measures proposed to minimize Significant Effects on the Environment, including, but not limited to, measures to reduce the wasteful, inefficient, and unnecessary consumption of energy;
  - (4) 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;
  - (5) Whether any proposed mitigation would be feasible;
  - (6) Any direct growth-inducing impacts of the Project; and
  - (7) Whether the proposed mitigation would be effective to substantially reduce the potential Significant Effects on the Environment.
- (b) In addition to the information required pursuant to subdivision (a), the TEIR shall also contain a statement briefly 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 on Exhibit A, 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 which 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 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 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 Environment. Previously approved land use documents, including, but not limited to, general plans, specific plans, and local coastal plans, may be used in cumulative impact analysis. The Tribe shall consider any recommendations from the City of San Pablo concerning the person or entity to prepare the TEIR.

### **Section 11.8.2. Notice of Preparation of Draft TEIR.**

- (a) Upon commencing the preparation of the draft TEIR, the Tribe shall issue a Notice of Preparation to the State Clearinghouse in the State Office of Planning and Research (“State Clearinghouse”), to the County of Contra Costa (the "County"), and the City of San Pablo (the "City") for distribution to the public. The Notice shall provide all Interested Persons, as defined in section 2.16, with information describing the Project and its potential Significant Effects on the Environment sufficient to enable Interested Persons to make a meaningful response or comment. At a minimum, the Notice shall include all of the following information:
  - (1) A description of the Project;
  - (2) The location of the Project shown on a detailed map, preferably topographical, and on a regional map; and
  - (3) The probable off-reservation environmental effects of the Project.

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

**Section 11.8.3. Notice of Completion of the Draft TEIR.**

- (a) Within no less than thirty (30) days following the receipt of the Notice of Preparation by the State Clearinghouse and the County, the Tribe shall file a copy of the draft TEIR and a Notice of Completion with the State Clearinghouse, the County, the City, and the California Department of Justice. The Notice of Completion shall include all of the following information:
  - (1) A brief description of the Project;
  - (2) The proposed location of the Project;
  - (3) An address where copies of the draft TEIR are available; and
  - (4) Notice of a period of forty-five (45) days during which the Tribe will receive comments on the draft TEIR.
- (b) The Tribe will submit ten (10) copies each of the draft TEIR and Notice of Completion to the County and the City which will be asked to post public notice of the draft TEIR at the office of the County Board of Supervisors or the City Council (as the case may be) and to furnish the public notice to the public libraries serving the County or the City (as the case may be). The County shall also be asked to serve in a timely manner the Notice of Completion to all Interested Persons. In addition, the Tribe will provide public notice by at least one of the procedures specified below:
  - (1) Publication at least one time by the Tribe in a newspaper of general circulation in the area affected by the Project. If more than one 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.

**Section 11.8.4. Issuance of Final TEIR.** The Tribe shall prepare, certify and make available to the County, the City, and the State Gaming Agency at least fifty-five (55) days before the completion of negotiations pursuant to section 11.8.7 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; and
- (e) Any other information added by the Tribe.

**Section 11.8.5.** The Tribe shall reimburse the County and the City for copying and mailing costs resulting from making the Notice of Preparation, Notice of Completion, and Draft TEIR available to the public under this section 11.8.

**Section 11.8.6.** The Tribe's failure to prepare a TEIR when required may warrant an injunction where appropriate.

**Section 11.8.7. Intergovernmental Agreements.**

- (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 the State, and upon the County's acceptance of the Tribe's offer, shall negotiate with the County and the State, and shall enter into an enforceable written agreement with both

the County and the State with respect to the matters set forth below, to the extent such matters are not within the jurisdiction of the City of San Pablo or covered by subdivision (c) herein:

- (1) 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 be provided by the County and its special districts to the Tribe for the purposes of the Tribe's Gaming Operation as a consequence of the Project.
- (3) Provisions providing for reasonable compensation for programs designed to address gambling addiction.
- (4) Provisions providing for mitigation of any effect on public safety attributable to the Project, including any compensation to the County as a consequence thereof.

(b) Before the commencement of a Project, and no later than the issuance of the Final TEIR to the City, the Tribe shall offer to commence negotiations with the City and the State, and upon the City's acceptance of the Tribe's offer, shall negotiate with the City and the State, and shall enter into an enforceable written agreement with both the City and the State with respect to the matters set forth below to the extent they are within the City's jurisdiction:

- (1) 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 be provided by the City to the Tribe for the purposes of the Tribe's Gaming Operation as a consequence of the Project.
- (3) Provisions providing for reasonable compensation for programs designed to address gambling addiction.
- (4) Provisions providing for mitigation of any effect on public safety attributable to the Project, including any compensation to the City as a consequence thereof.

(c) Before the commencement of a Project, and no later than the issuance of the Final TEIR to the State Gaming Agency, the Tribe shall negotiate with the State Department of Transportation or the State Designated Agency (if one is designated) and shall enter into an enforceable written agreement with the State Department of Transportation or the State Designated Agency to timely mitigate the off-reservation traffic impacts of the Project on the State highway system and facilities, where such impacts are attributable, in whole or in part, to the Project. The State Department of Transportation shall have authority to enter into such agreement with the Tribe in order to implement this subdivision.

(d) Nothing in this section 11.8.7 requires the Tribe to enter into any other intergovernmental agreements with a local governmental entity other than as set forth in subdivisions (a) and (b).

**Section 11.8.8. Arbitration.** In order 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 agreement with either the County and State, or the City and State is not entered within fifty-five (55) days of the submission of the Final TEIR, or such further time as the

Tribe, the County, the City, and the State (for purposes of this section “the parties”) may mutually agree in writing, any party may demand binding arbitration before a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association as set forth herein with respect to any remaining disputes arising from, connected with, or related to the negotiation of its respective agreement:

(a) The arbitration shall be conducted as follows: 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 11.8.7. The arbitrator shall schedule a hearing to be heard within thirty (30) days of his or her appointment. As between the Tribe, the County, and the State, or the Tribe, the City, and the State, the arbitrator shall be limited to awarding only one 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 11.8.7, 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. The arbitrator shall take into consideration whether the final TEIR provides the data and information necessary to enable the County and/or the City to determine both whether the Project may result in a Significant Effect on the Off-Reservation Environment and whether the proposed measures in mitigation are sufficient to mitigate any such effect. If a respondent or respondents do not participate in the arbitration, the arbitrator shall nonetheless conduct the arbitration and issue an award, and the claimant shall submit such evidence as the arbitrator may require therefor.

(b) Review of the resulting arbitration award is waived.

(c) In order to effectuate this section, and in the exercise of its sovereignty, the Tribe agrees to waive its right to assert sovereign immunity in connection with the arbitrator’s jurisdiction or 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 said award.

(d) The arbitral award will become part of the written agreement(s) required under section 11.8.7.

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

**Sec. 12.1. General Requirements.** The Tribe will 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 existing state-of-the-art technology.

**Sec. 12.3. Health and Safety Standards.** For the purposes of this Compact, the Tribe shall:

- (a) Adopt and comply with state public health standards for food and beverage handling. The Tribe will allow, during normal hours of operation, inspection of food and beverage services in the Gaming Facility by state, county, or city health inspectors, whichever inspector 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 or other writing by said health inspectors shall be transmitted within twenty-four (24) hours to the State Gaming Agency. Nothing herein shall be construed as submission of the Tribe to the jurisdiction of those state, county, or city health inspectors, but any violations of the standards shall be treated as violations of this Compact and may serve as a basis to issue, pursuant to section 13.0, orders requiring corrective action, including an order to enjoin the food and beverage operations of the Gaming Facility where warranted to protect public health or safety.
- (b) Adopt and comply with federal water quality and safe drinking water standards applicable in California. The Tribe will allow, during normal hours of operation, for inspection and testing of water quality at the Gaming Facility by state, county, or city 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 the United States pursuant to federal law to ensure compliance with federal water quality and safe drinking water standards. Any report or other writings by said state, county, city or federal health inspectors shall be transmitted within twenty-four (24) hours to the State Gaming Agency. Nothing herein shall be construed as submission of the Tribe to the jurisdiction of those state, county, or city health inspectors, but any violations of the standards shall be treated as violations of this Compact and may serve as a basis to issue, pursuant to section 13.0, orders requiring corrective action, including an order to enjoin the use or disposal of water at the Gaming Facility to the extent warranted to protect public health or safety.

- (c) Comply with the building and safety standards set forth in section 6.4.2.
- (d) Adopt and comply with federal and state workplace and occupational health and safety standards. The Tribe will allow for inspection of Gaming Facility workplaces by state inspectors, during normal hours of operation, to assess compliance with these standards, and consents to the jurisdiction of the state agencies charged with the enforcement of those laws, including the Occupational Safety and Health Standards Board and Occupational Safety and Health Appeals Board, and of the courts of the State of California for purposes of enforcement; 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 said 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 standards no less stringent than federal laws and state laws forbidding employers from discrimination in connection with the employment of persons working for the Gaming Operation or in the Gaming Facility on the basis of race, color, religion, national origin, gender, sexual orientation, age, or disability.
- (g) Adopt and comply with state laws prohibiting a gaming 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 state laws, if any, prohibiting a gambling or other enterprise from providing, allowing, contracting to provide, or arranging to provide alcoholic beverages, or food or lodging for no charge or at reduced prices at a gambling establishment, lodging facility, or other enterprise as an incentive or enticement.
- (i) Adopt and comply with 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.

**Sec. 12.4. Tribal Gaming Facility Standards Ordinance.** The Tribe shall adopt in the form of an ordinance, and not later than thirty (30) days after the effective date of this Compact, shall transmit to the State Designated Agency, the standards described in subdivisions (a)-(j) of section 12.3 to which the Gaming Facility is held. In the absence of a promulgated tribal standard in respect to a matter identified in those subdivisions, or the express adoption of an applicable 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. 12.5. Insurance Coverage and Claims.**

- (a) The Tribe shall obtain and maintain commercial general liability insurance consistent with industry standards for non-tribal casinos in the United States underwritten by an insurer with an A.M. Best rating of A or higher ("Policy") 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 Facility or Gaming Activities. In order to effectuate the insurance coverage, the Tribe shall waive its right to assert its sovereign immunity up to 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 Facility, 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 sovereign immunity in connection therewith. The Policy shall acknowledge in writing that the Tribe has waived its right to assert sovereign immunity for the purpose of arbitration of those claims up to 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 the Policy limits.

- (b) The Tribe shall adopt, and at all times hereinafter shall maintain in continuous force, an ordinance that provides for all of the following:
  - (1) The ordinance shall provide that California tort law, including all applicable statutes of limitations, shall govern all claims of bodily injury, personal injury, or property damage arising out of, connected with, or relating to the operation of the 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.
  - (2) Said ordinance shall also expressly provide for waiver of the Tribe's right to assert sovereign immunity with respect to the arbitration of such claims but only up to 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 the Policy limits.
  - (3) Said ordinance shall provide for the Tribe's consent to binding arbitration before a single arbitrator who shall be a retired judge in accordance with the comprehensive arbitration rules and procedures of JAMS (or if those rules no longer exist, the closest

equivalent) to the extent of the limits of the Policy, that discovery in the arbitration proceedings shall be governed by Section 1283.05 of the California Code of Civil Procedure, that the Tribe shall initially bear the cost of JAMS and the arbitrator, but the arbitrator may award costs to the prevailing party not to exceed those allowable in a suit in California Superior Court, and that any 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), provided that the party making such election must bear all costs and expenses of JAMS and the arbitrators associated with the Appeal Procedure regardless of the outcome. To effectuate its consent to the foregoing arbitration procedure, the Tribe shall, in the exercise of its sovereignty, waive its right to assert its sovereign immunity in connection with the arbitrator's jurisdiction and in any action to (i) enforce the parties' obligation to arbitrate, (ii) confirm, correct, modify, or vacate the arbitral award rendered in the arbitration, or (iii) enforce or execute a judgment based upon said award.

- (4) 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 said notice. The ordinance may provide that any arbitration shall be stayed until the completion of the Tribal Dispute Process or one-hundred-eighty (180) days from the date the claim is filed, 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, entitled to arbitrate his or her claim de novo before a retired judge.

- (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 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 will be deemed to have waived its right to assert sovereign immunity 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) Employees or authorized agents of the Tribe may not invoke, and 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 public liability insurance limits. Nothing herein prevents the Tribe from invoking sovereign immunity on its own behalf or authorizes a claim against the Tribe or a tribally owned entity.

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

- (a) The Tribe agrees to participate in the State's workers' compensation program with respect to employees employed at the Gaming Facility. The workers' compensation program includes, but is not limited to, state laws relating to the securing of payment of compensation through one or more insurers duly authorized to write workers' compensation insurance in this State or through self-insurance as permitted under the State's workers' compensation laws. All disputes arising from the workers' compensation laws shall be heard by the Workers' Compensation Appeals Board pursuant to the California Labor Code. The Tribe hereby consents to the jurisdiction of the 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) The Tribe agrees to participate in the State's program for providing unemployment compensation benefits and unemployment compensation disability benefits with respect to employees employed at the Gaming Facility, including 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.
- (c) As a matter of comity, with respect to persons employed at the Gaming Facility, other than members of the Tribe living on the reservation, the Tribe shall withhold all taxes due to the State as provided in the California Unemployment Insurance Code, and except for Tribal members living on the Tribe's reservation, the Revenue and Taxation Code, and shall forward such amounts as provided in said Codes to the State.
- (d) As a matter of comity, the Tribe shall, with respect to the earnings of any person employed at the Gaming Facility, comply with all earnings withholding orders for support of a child, or spouse or former spouse, and all other orders by which the earnings of an employee are required to be withheld by an employer pursuant to Chapter 5 (commencing with Section 706.010) of Division 1 of Title 9 of Part 2 of the California Code of Civil Procedure, and with all earnings assignment orders for support made pursuant to Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the California Family Code or Section 3088 of the Probate Code.

**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.** Standards for alcohol service shall be subject to applicable law.

**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 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 Exhibit C, which affords the employees the right to self-organization and to select a representative through secret ballot, and the Gaming Activities may only continue as long as the Tribe maintains said ordinance. The Tribe shall provide written notice to the State that it has adopted said ordinance before commencing the Gaming Activities authorized by this Compact.

## **SECTION 13.0. DISPUTE RESOLUTION PROVISIONS.**

**Sec. 13.1. Voluntary 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 issue 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) Disagreements 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 any state court of competent jurisdiction in Contra Costa County. The disputes to be submitted to court action include, but are not limited to, claims of breach of 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.** Unless otherwise specified in this Compact, arbitration shall be conducted before a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and shall be held in the federal judicial district in which the Tribe's Gaming Facility is located at a location selected by the arbitrator. Each side shall initially bear one-half the costs and expenses of the American Arbitration Association and the arbitrator, but the arbitrator shall award the prevailing party its costs, including the costs of the American Arbitration Association and the arbitrator; however, the parties shall bear their own attorney fees. The provisions of section 1283.05 of the California Code of Civil Procedure shall apply, provided that no discovery authorized by that section may be conducted without leave of the arbitrator. The decision of the arbitrator shall be in writing, shall give reasons for the decision, and shall be binding. Judgment on the award may be entered in any federal or state court having jurisdiction thereof.

**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 that is otherwise available to either party, nor may this section be construed to preclude, limit, or restrict the ability of the parties to pursue, by mutual agreement, any other method of dispute resolution, including, but not limited to, arbitration or mediation.

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

- (a) For the purpose of actions or arbitrations brought pursuant to this section 13.0 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 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 side makes any claim for monetary damages (except that payment of any money required by the terms of this Compact may be sought, and injunctive relief, specific performance (including enforcement of a provision of this Compact requiring the payment of money to one or another of the parties), and declaratory relief 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 or other participation by any additional party in any action between the State and the Tribe would waive the parties' sovereign immunity as to that additional party, the waivers of either the Tribe or the State provided herein may be revoked, unless joinder is required to preserve the court's jurisdiction.
- (c) The waivers and consents provided for under this section 13.0 shall extend to all arbitrations and civil actions 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 proceedings emanating from a matter in which an immunity waiver has been granted. 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.

### **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 by statute 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 until December 31, 2025. No sooner than eighteen (18) months prior to the aforementioned termination date, either party may request the other party to enter into negotiations to extend this Compact or to enter into a new compact.
- (b) 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. Upon issuance of such a declaration by the trial court, unless said declaration is stayed, the complaining party may unilaterally terminate this Compact upon service of written notice on the other party. 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 Contra Costa County. The parties expressly waive their immunity to suit for purposes of an action under this subdivision, subject to the qualifications stated in section 13.4.
- (c) Notwithstanding anything to the contrary herein, if any initiative is adopted in California at the general election in November 2004 that becomes effective and binding and that authorizes anyone other than an Indian tribe with a federally authorized compact to conduct the Gaming Activities specified in section 3.1, subdivision (a)(1), anywhere in this State, the Tribe (i) shall have the right to terminate this Compact by written notice filed with the California Secretary of State within ninety (90) days of the initiative taking effect and becoming binding, or (ii) may continue under this Compact, except that the Tribe shall be entitled to cease the revenue contributions to the State pursuant to section 4.3.3; shall compensate the State for the actual and reasonable costs of regulation, as determined by the State Director of Finance, or failing agreement on that amount as determined by arbitration pursuant to section 13.2 of the Compact; shall pay quarterly to the State Gaming Agency for deposit into the

Revenue Sharing Trust Fund \$225 for each Gaming Device in operation during the preceding quarter in excess of 350 Gaming Devices, up to 750 devices; \$485 for each Gaming Device in operation during the preceding quarter in excess of 750 devices, up to 1250 devices; and \$1085 for each Gaming Device in operation during the preceding quarter in excess of 1250 devices, notwithstanding anything in section 5.2, subdivision (a) to the contrary; and shall be limited to a maximum number of 2000 Gaming Devices, notwithstanding anything in section 4.1 to the contrary, provided, however, that the Tribe may negotiate the right to operate additional Gaming Devices if the Tribe reaches agreement with the State to provide reasonable consideration therefor.

## **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.

**Sec. 15.2. Requests to Amend or Renegotiate.** All requests to amend or renegotiate this Compact shall be in writing, addressed to the Tribal Chairperson 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 the requirements of this section, 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 Chairperson of the Tribe and the Governor of the State are hereby authorized to designate the person or agency responsible for conducting the negotiations, and shall execute any documents necessary to do so.

## **SECTION 16.0. NOTICES.**

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

Governor  
Governor's Office  
Attention: Legal Affairs Secretary  
State Capitol  
Sacramento, California 95814

Tribal Chairperson  
Lytton Rancheria of California  
1250 Coddington Center, Suite 1  
Santa Rosa, California 95401

## **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 that retroactive application without the State's or the Tribe's respective consent.

## **SECTION 18.0. MISCELLANEOUS.**

**Sec. 18.1. Third Party Beneficiaries.** Except to the extent expressly provided under this Compact, 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 addenda and approved amendments, 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 compact of language that is not included in this Compact, nor the absence in another tribal-state compact of language that is present in this Compact shall be a factor in construing the terms of this Compact.

### **Sec. 18.4. 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 Lytton, including any waiver of the right to 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 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.

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

STATE OF CALIFORNIA

LYTTON RANCHERIA OF CALIFORNIA

\_\_\_\_\_  
By Arnold Schwarzenegger  
Governor of the State of California

\_\_\_\_\_  
By Margie Mejia  
Chairperson of the  
Lytton Rancheria

**ATTEST:**

\_\_\_\_\_  
By Kevin Shelley  
Secretary of State, State of California

## **EXHIBITS**

- A. Off-Reservation Environmental Impact Analysis Checklist
- B. Securitization
- C. Tribal Labor Relations Ordinance
- D. Map and Description of San Pablo Parcel

# EXHIBIT A

## 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 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?	<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 Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<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 Game 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. 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"/>

### VIII. Water 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) 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"/>
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"/>

## IX. Land Use

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
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"/>

## X. Mineral Resources

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
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"/>

## XI. Noise

Would the project result in:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
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"/>
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"/>

## XII. 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"/>

## XIII. 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"/>

## XIV. 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"/>

**XV. Transportation / Traffic**

<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) Cause an increase in off-reservation traffic, which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume-to-capacity ratio on roads, or congestion at intersections)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Exceed, either individually or cumulatively, a level of service standard 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"/>

**XVI. Utilities and Service Systems**

<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) 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"/>

## XVII. Cumulative Effects

<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 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"/>

## **EXHIBIT B**

### **SECURITIZATION**

The following provisions are included in this agreement in order to facilitate the securitization of the payments to be received by the State pursuant to Section 4.3.3, should the State decide to do so.

1. The Tribe and the State agree that the intended form of the financing will include a structure that does not require public disclosure of tribal or tribal business enterprise financial information or business information not currently in the public domain.
2. In order to assist the State in the securitization of the annual payments described herein, the Tribe agrees to consider in good faith all arrangements designed to comply with requests by insurers, letter of credit providers or other financial institutions in connection with the provision of credit enhancement by such parties on any such securitization. In connection therewith, the Tribe will provide relevant requested information to the rating agencies, credit enhancers, and involved investment bankers (subject to confidentiality agreements), including information relating to its financial and operating data (including any market studies or management analysis), its legal organization, any service or management contracts, and any outstanding indebtedness; provided, however, that the Tribe is not required to consider any agreement in which the Tribe guarantees the obligations of any other Tribe or entity.
3. The Tribe agrees to use its reasonable best efforts to obtain such approvals as are necessary to provide that payments required to be made pursuant to this Compact shall constitute an operating expense of the Tribe and shall be senior in priority to any payment of any bank loans or other obligations for borrowed money currently existing or incurred hereafter during the term of this Compact.
4. The Tribe will provide a limited waiver of sovereign immunity as necessary to provide for the enforcement of any arrangements agreed to in Section 2 above.
5. The Tribe will provide customary legal opinions affirming the validity and enforceability of this Compact and any arrangements agreed to in Section 2 above, the priority of the payment of the amounts required to be paid by the Tribe hereunder, and the Tribe's waiver of sovereign immunity.

6. The covenant of the State to maintain the exclusivity set forth in Section 4.4, subdivision (a) in the event that bonds are issued constitutes an important inducement to the Tribe, and granting such exclusivity in return for such payments is purely a financial matter, and has been negotiated by the parties pursuant to articulated federal policy pursuant to the IGRA. Nothing herein shall preclude the State from exercising the police power in the event that the health, welfare or well-being of the citizens of the State shall require such exercise; provided, however, that the State acknowledges and recognizes that expansion of gaming within the exclusive geographic core market described in Section 4.4, subdivision (b) in a manner violative of this Compact is not an exercise of such police power and is purely a financial matter.

## EXHIBIT C

### MODEL TRIBAL LABOR RELATIONS ORDINANCE

#### **Section 1: Threshold of applicability**

- (a) Upon the employment of 250 or more persons in a Tribal Casino and Related Facility, if any, once they are open to the public, the provisions of this Tribal Labor Relations Ordinance (TLRO or Ordinance) shall become effective immediately.. For purposes of this ordinance, a “Tribal Casino” is one in which class III gaming is conducted pursuant to a tribal-state compact between the State of California and this Tribe. 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, the Tribal Gaming Commission shall certify the number of employees in the Tribal Casino or other Related Facility as defined in 1(a) above. Either party may dispute the certification of the Tribal Gaming Commission to the Tribal Labor Panel.

#### **Section 2: Definition of Eligible Employees**

- (a) The provisions of this ordinance shall apply to any person (hereinafter “Eligible Employee”) who is employed within the Tribal Casino or other Related Facility, 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 auditor; or
- (5) any dealer.

### **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 Tribe and its agents.

### **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:

- (1) to interfere with, restrain or coerce Eligible Employees in the exercise of the rights guaranteed herein;
- (2) 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 checkoff;

- (3) to discharge or otherwise discriminate against an Eligible Employee because s/he has filed charges or given testimony under this Ordinance;
- (4) 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:

- (1) to interfere, restrain or coerce Eligible Employees in the exercise of the rights guaranteed herein;
- (2) 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;
- (3) 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;
- (4) to refuse to bargain collectively with the Tribe and/or employer, provided it is the representative of Eligible Employees subject to the provisions herein;
- (5) 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**

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.

## **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 Tribal 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;
  - (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 shall provide to the union, upon a thirty percent (30%) showing of interest to the Tribal Labor Panel, an election eligibility list containing the full first and last name of the Eligible Employees within the sought after bargaining unit and the Eligible Employees' last known address within ten (10) working days. Nothing herein shall preclude a tribe from voluntarily providing an election eligibility list at an earlier point of a union organizing campaign.

- (e) 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: Secret ballot elections**

- (a) 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 to be held within 30 days from presentation to the elections officer, unless the Tribe and a labor organization have agreed to a different arrangement that affords the majority of Eligible Employees the right to choose a labor organization as their exclusive collective bargaining representative.
- (b) The election shall be conducted by the election officer. The election officer shall be a member of the Tribal Labor Panel chosen pursuant to the dispute resolution provisions herein. All questions concerning representation of the Tribe and/or Employer's Eligible Employees by a labor organization shall be resolved by the election officer. The election officer shall be chosen upon 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.
- (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 majority of votes by employees voting in a secret ballot election that the election officer determines to have been conducted fairly. 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 that interfere with the election process and preclude 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 point before or during the course of the tribe's misconduct, the election officer shall certify the labor organization.

- (d) The tribe or the union may appeal 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.
- (e) A union which loses an election and has exhausted all dispute remedies related to the election may not invoke any provisions of this labor ordinance at the Tribal Casino or Related Facility until one year after the election was lost.

### **Section 10: Collective bargaining impasse**

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. If collective bargaining negotiations result in impasse, and the matter has not been resolved by the tribal forum procedures sets forth in Section 12 (b) governing resolution of impasse within sixty (60) working days or such other time as mutually agreed to by the parties, 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. Sec. 2703 (4).

### **Section 11: 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 to be held 30 days from the presentation of the petition.
- (b) The election shall be conducted by an election officer. The election officer shall be a member of the Tribal Labor Panel chosen pursuant to the dispute resolution provisions herein. All questions concerning the decertification of the labor organization 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 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 employees voting in a secret ballot election that the election officer determines to have been conducted fairly vote to decertify the labor organization. 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 90 days and no less than 60 days prior to the expiration of a collective bargaining agreement. A decertification petition may be filed anytime after the expiration of a collective bargaining agreement.
- (e) The Tribe or the union may appeal 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.

## **Section 12: Binding dispute resolution mechanism**

- (a) All issues shall be resolved exclusively through the binding dispute resolution mechanisms herein, with the exception of a collective bargaining negotiation impasse, which shall only go through the first level of binding dispute resolution.
- (b) The first level of binding dispute resolution for all matters related to organizing, election procedures, alleged unfair labor practices, and discharge of Eligible Employees shall be an appeal to a designated tribal forum such as a Tribal Council, Business Committee, or Grievance Board.

The parties agree to pursue in good faith the expeditious resolution of these matters within strict time limits. The time limits may not be extended without the agreement of both parties. In the absence of a mutually satisfactory resolution, either party may proceed to the independent binding dispute resolution set forth below. The agreed upon time limits are set forth as follows:

- (1) All matters related to organizing, election procedures and alleged unfair labor practices prior to the union becoming certified as the collective bargaining representative of bargaining unit employees, shall be resolved by the designated tribal forum within thirty (30) working days.
  - (2) All matters after the union has become certified as the collective bargaining representative and relate specifically to impasse during negotiations, shall be resolved by the designated tribal forum within sixty (60) working days;
- (c) The second level 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 Tribal Labor Relations 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 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-member panel of the Tribal Labor Panel, which will render a binding decision. In the event there is one arbitrator, five (5) Tribal Labor Panel names shall be submitted to the parties and each party may strike no more than two (2) names. In the event there is a three (3) member panel, seven (7) TLP names shall be submitted to the parties and each party may 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 or panel must render a written, binding decision that complies in all respects with the provisions of this Ordinance.

- (d) Under the third level of binding dispute resolution, either party may seek a motion to compel arbitration or a motion to confirm an arbitration award in Tribal Court, which may be appealed to federal court. If the Tribal Court does not render its decision within 90 days, or in the event there is no Tribal Court, the matter may proceed directly to federal court. In the event the federal court declines jurisdiction, the tribe agrees to a limited waiver of its sovereign immunity for the sole purpose of compelling arbitration or confirming an arbitration award issued pursuant to the Ordinance in the appropriate state superior court. The parties are free to put at issue whether or not the arbitration award exceeds the authority of the Tribal Labor Panel.

## EXHIBIT D

### DESCRIPTION AND MAP OF PROPOSED CLASS III GAMING SITE

REAL PROPERTY in the City of San Pablo, County of Contra Costa, State of California, described as follows:

#### PARCEL ONE:

Real property in the City of San Pablo, Contra Costa County, California, being portions of Lots 140 to 151, inclusive, as designated on the Map entitled "Map of the San Pablo Rancho, Accompanying and Forming a Part of the Final Report of the Referees in Partition," which Map was filed in the Office of the Recorder of County of Contra Costa, State of California, on March 1, 1894, described as follows:

Beginning at a point on the southwestern line of San Pablo Avenue, being the most westerly corner of the parcel of land described in the deed to the City of San Pablo, recorded August 24, 1981, Book 10461, Official Records, Page 629, being also the most northerly corner of the parcel of land described in the Deed to Redevelopment Agency of the City of San Pablo, a public body corporate and politic, recorded November 10, 1994, series No. 94-274209, Official Records; thence from said point of beginning along the exterior lines of said Redevelopment Agency of the City of San Pablo Parcel (94-274209) the following three (3) courses: South  $42^{\circ} 04' 40''$  West, 173.80 feet; South  $47^{\circ} 56' 00''$  East, 154.15 feet; and South  $42^{\circ} 04' 40''$  West, 210.39 feet to the most westerly corner of said Redevelopment Agency of the City of San Pablo Parcel.(94-274209) thence along the northwestern line of said Redevelopment Agency of the City of San Pablo Parcel (94-274209), South  $47^{\circ} 56' 00''$  East, 194.07 feet to the most westerly corner of the parcel of land described in the Deed to West Contra Costa Hospital District, recorded August 16, 1995, Series No. 95-134333, Official Records; thence along the exterior lines of said West Contra Costa Hospital District Parcel (95-134333) the following three (3) courses: North  $42^{\circ} 04' 00''$  East, 16.00 feet; South  $47^{\circ} 56' 00''$  East, 200.00 feet and South  $42^{\circ} 04' 00''$  West, 16.00 feet to a portion on said northwesterly line of Redevelopment Agency of the City of San Pablo Parcel (94-274209); thence along the said northwesterly line, South  $47^{\circ} 56' 00''$ , East, 114.98 feet to the most westerly corner of the parcel of and described in the Deed to Redevelopment Agency of the City of San Pablo, a public body corporate and politic, recorded August 16, 1995, Series No. 95-134332, Official Records; thence along the exterior of said Redevelopment Agency of the City of San Pablo Parcel (95-134332) the following two (2) course: Along the arc of a tangent curve concave to the West, having a radius of 125.00 feet, through an angle of  $90^{\circ} 00' 40''$ , an arc distance of 196.37 feet; and North  $42^{\circ} 04' 40''$  East, 363.03 feet to a point on the West line of San Pablo Avenue as shown on that certain Record of Survey filed on November 3, 1975 in Book 59 of Licensed Surveyor Maps at Pages 44,45, and 46; thence along said West line of San Pablo Avenue, North  $20^{\circ} 46' 00''$  West 207.22 feet to a point on a tangent curve to the left having a radius of 685.00 feet; thence along said tangent curve through an angle of  $1^{\circ} 21' 35''$ , an arc distance of 16.26 feet to the most southerly corner of Parcel One described in the Deed to the City of San Pablo, recorded August 24, 1981, Book 10461, Official Records, Page 624, said corner being a point on a non-tangent curve to the left having a radius of 455.00 feet, a radial line through said point bearing North  $67^{\circ} 33' 54''$  East; thence along said curve, along the

southwestern lines of Parcels 1 and 2 of said City of San Pablo Deed (10461 OR 624), and along the southwestern line of said City of San Pablo Deed (10461 OR 629), through an angle of 25° 29' 54", an arc distance of 202.49 feet; thence tangent to said curve, along said southwestern line of City of San Pablo Deed (10461 OR 629), North 47° 56' 00" West, 393.41 feet to the point of beginning.

**PARCEL TWO:**

Right of way granted in the Deed to Bishop El Rancho Property, Inc., recorded January 6, 1964, Book 4525, Official Records, Page 196, as follows:

**PARCEL A:**

A non-exclusive right of way as an appurtenance to the lands of the Grantee lying to the southeast for use as a roadway for vehicles of all kinds, pedestrians and animals over the following described parcel of land:

The northwest 15 feet, front and rear measurements of the southeast 28.41 feet, front and rear measurements of Lot 150, as designated on the Map entitled "Map of the San Pablo Rancho, Accompanying and Forming a Part of the Final Report of the Referees in Partition", which Map was filed in the Office of the Recorder of the County of Contra Costa, State of California on March 1, 1894.

**EXCEPTING FROM PARCEL A:**

That portion in the Notice of Pendency of Action in favor of the City of San Pablo recorded July 17, 1981 in Book 10411, Page 84, Contra Costa County Records.

**PARCEL B:**

A non-exclusive right of way as an appurtenance to the lands of the Grantee lying to the southeast for use as a roadway for vehicles of all kinds, pedestrians and animals and as a right of way for sewer pipe lines over the southwest 25 feet of the northwest 35 feet, front and rear measurements, of the southeast 63.41 feet, front and rear measurements of Lot 150 as designated on the Map entitled "Map of the San Pablo Rancho Accompanying and Forming a Part of the Final Report of the Referees in Partition," which Map was filed in the Office of the Recorder of the County of Contra Costa, State of California, on March 1, 1894.

A.P.Nos.: 417-190-014, 015, 020 and 021

**PARCEL THREE:**

Portion of Lot 139, as shown on the Map of San Pablo Rancho, filed March 1, 1894, in the Office of the County Recorder of Contra Costa County, described as follows:

Beginning on the northwesterly corner of Lot 138 of the San Pablo Rancho, thence from said point of beginning, South 5° 55" West along the West, line of said Lot 138, 520.74 feet to the center of Wildcat Creek; thence along said center line as follows:

North 77° 14' 00" West, 12.54 feet; South 83° 01' 00" West, 44.88 feet; North 62° 44' 00" West, 94.38 feet; North 49° 29' 00" West, 69.30 feet; South 88° 16' 00" West, 59.40 feet;. South 89° 16' 00" West, 102.30 feet; North 63° 14' 00" West, 56.76 feet; North 38° 14' 00" West, 42.24 feet and North 80° 29' 00" West, 10.56 feet to the line between Lots 139 and 140 of the San Pablo Rancho.

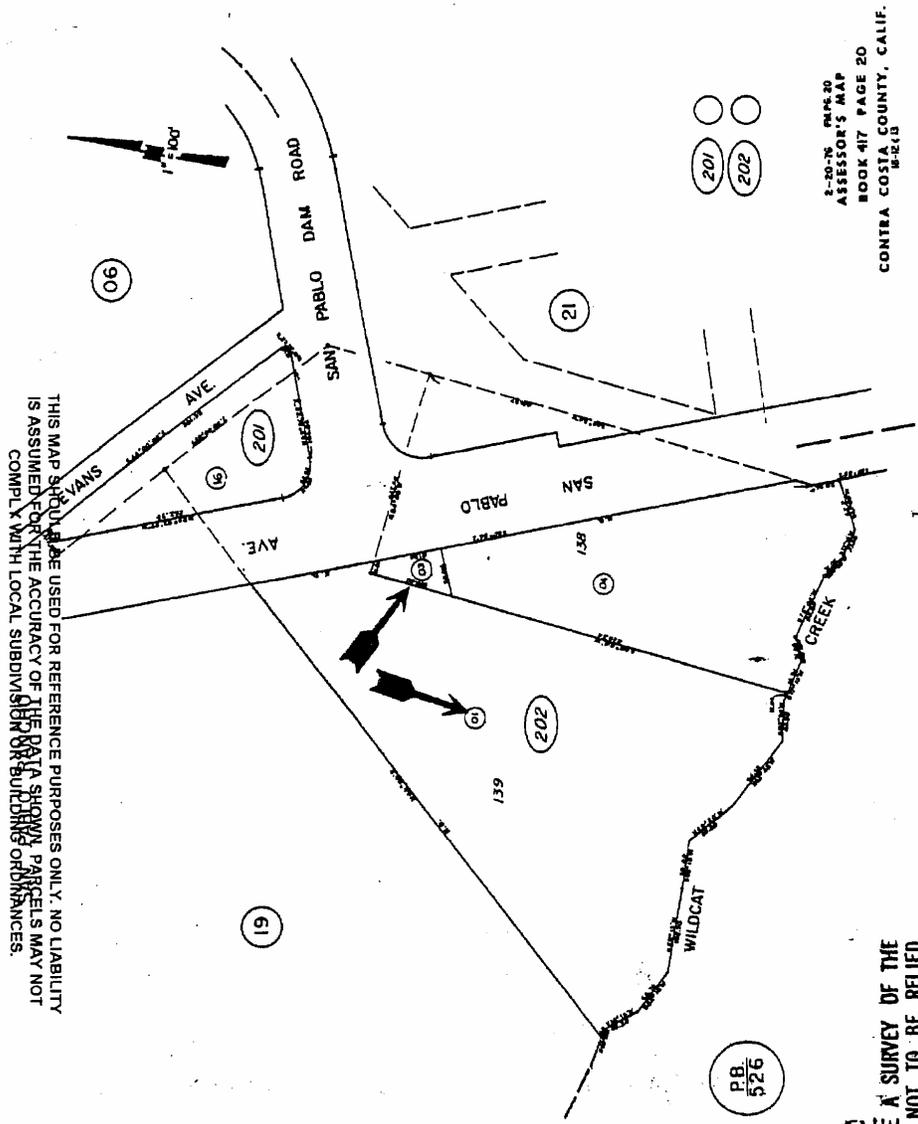
Thence North 42° 04' 40" East along said line, 687.51 feet to the southwest line of the parcel of land described in the Deed from Bertha Evans, et vir, to State of California, dated April 8, 1927, recorded May 10, 1927 in Book 89 of Official Records, Page 196; thence South 20° 46' East along said line and along the southwest line of the parcel of land described in the deed from William A. Wilke to State of California, dated April 8, 1927, recorded May 10, 1927 in Book 89 of Official Records, Page 195, 146.54 feet to a point on the northerly line of said Lot 138 which bears South 84° 05' 00,' East 16.84 feet from the point of beginning; thence North 84° 05' 00', West, 16.84 feet to the point of beginning.

**PARCEL FOUR:**

A portion of Lot 138 as shown on the Map of the San Pablo Rancho, described as follows:

Beginning at the intersection of the North line of Lot 138 San Pablo Rancho with the West line of San Pablo Avenue, said point being the northwest corner of that parcel described in the Deed to the State of California, recorded May 7, 1927, Book 84, Official Records, Page 150; thence from said point of beginning, South 20° 46' East, along the West line of said San Pablo Avenue, 84 OR 150, 81.97 feet; thence South 69° 14' West, 60.04 feet to the East line of that parcel of land described in the Deed to Lucky Lanes, Inc., recorded February 14, 1962, Book 4056, Official Records, Page 477, said line being the West line of said Lot 138; thence along the exterior boundary of said Lucky Lanes Parcel, 4056 OR 477 North 5° 55, East, 100.20 feet to the northwest corner of said Lot 138; thence along the North line of said Lot 13 8 North 84° 05' East, 16.84 feet to the point of beginning.

A.P.Nos.: 417-202-001 and 003



THIS MAP SHOULD BE USED FOR REFERENCE PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE DATA SHOWN. PARCELS MAY NOT COMPLY WITH LOCAL SUBDIVISION OR BUILDING ORDINANCES.

2-20-76 PMAP 20  
 ASSESSOR'S MAP  
 BOOK 417 PAGE 20  
 CONTRA COSTA COUNTY, CALIF.

**NOTICE**

THIS MAP MAY OR MAY NOT BE A SURVEY OF THE LAND DEPICTED HEREON. IT IS NOT TO BE RELIED UPON FOR ANY PURPOSE OTHER THAN ORIENTING ONE'S SELF AS TO THE GENERAL LOCATION OF THE PARCEL OR PARCELS OF INTEREST. FIRST AMERICAN TITLE COMPANY ASSUMES NO LIABILITY FOR LOSS OR DAMAGE RESULTING FROM RELIANCE THEREON.

Description: Contra Costa, CA Assessor Map 417.20 Page: 1 of 1  
 Order: 77 Comment: