



# Scotts Valley Band of Pomo Indians

June 19, 2010

The Honorable George Skibine  
Chairman  
National Indian Gaming Commission  
1441 L Street, N.W.  
Suite 9100  
Washington, D.C. 20005

RE: Management Agreement between the Scotts Valley Band of Pomo  
Indians and Seminole SV Entertainment, LLC

Dear Chairman Skibine:

The Scotts Valley Band of Pomo Indians (the "Tribe") respectfully submits the Management Agreement dated June 19, 2010 by and between the Tribe and Seminole SV Entertainment, LLC (Seminole SV), and all agreements, instruments and documents collateral to the Management Agreement, for your approval pursuant to 25 U.S.C. §2710.

On August 27, 2007, the Tribe submitted a Management Agreement dated March 23, 2007 by and between the Tribe and Richmond Gaming, Ltd. In January, 2010, Richmond Gaming, Ltd. transferred or assigned that Management Agreement to CCC Entertainment, LLC. CCC Entertainment, LLC later changed its name to Seminole SV Entertainment, LLC. By this letter, the Tribe expressly withdraws the previous submittal, as the attached Management Agreement and related exhibits, entirely supersedes and replaces the March 23, 2007 Management Agreement and the same is no longer of any force or effect.

In closing, the Tribe very much appreciated the advice, direction and cooperation provided by your staff, including Penny Coleman, John Hay and Elaine Saiz and we look forward to working with you and your staff on this critical governmental project. If you, or your staff, have any questions or require any additional information or material, please do not hesitate to call me at your convenience.

Sincerely,

Donald Arnold  
Chairman

JUN 21 2010



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June 20, 2010

Mr. John Hay, Esq.  
Senior Attorney  
National Indian Gaming Commission  
1441 L Street NW, Ste. 9100  
Washington, DC 20005

JUN 21 2010

Ms. Elaine Saiz  
Director of Contracts  
National Indian Gaming Commission  
1441 L Street NW, Ste. 9100  
Washington, DC 20005

Re: Management Agreement by and between the Scotts Valley Band of Pomo Indians and Seminole SV Entertainment, LLC

Dear John and Elaine:

We are pleased to submit to the NIGC for review and approval, our new Management Agreement with the Scotts Valley Band of Pomo Indians. As you know, our entire teams have worked diligently over the past few months to compile and submit a Management Agreement in full compliance with the NIGC rules and regulations. We believe we have done so, and we hope that you agree. We agree that it is possible that something may have "fallen through the crack," but hope not. In the event that you find anything that requires our attention or raises any questions, please don't hesitate to contact us.

Enclosed are two complete sets of the following:

Management Contract Submission Binder dated June 19, 2010  
Background Investigation Applications for:

- Seminole SV Entertainment, LLC
- Seminole California Management, LLC
- [ ] Seminole Tribe of Florida
- CCC Entertainment Holding Company, LLC

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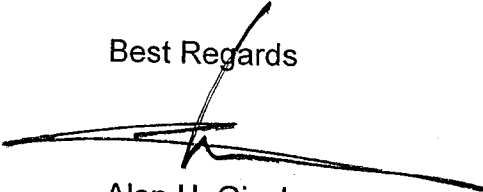
Checks in the total amount of [ ] to cover initial deposits for background investigations

As we have discussed, our team has partnered with the Seminole Tribe of Florida and we expect that their acknowledged expertise and experience will enhance the success of this project. This new partnership led to a change in the name of our company from CCC Entertainment, LLC to Seminole SV Management, LLC and a change in the terms of our operating agreement. There may be changes in the future, both to the structure of Seminole California Management, LLC and to the membership interests of Seminole SV Entertainment, LLC. We will notify you immediately of any such change(s) and will timely file any documents required under the NIGC rules and regulations.

We thank you for the guidance and assistance that both of you have provided to our team. We have learned much since our previous application and we thank you for your patience as worked through the process. It is our desire to move ahead as rapidly as possible to make this dream a reality for the Scotts Valley Tribe.

Again, thank you for your time and consideration. Please let us know immediately if you have any questions or concerns.

Best Regards



Alan H. Ginsburg

cc: Penny Coleman, Acting General Counsel  
Donald Arnold, Chairman, Scotts Valley Band of Pomo Indians  
Jim Shore, General Counsel, Seminole Tribe of Florida  
W. Ed Thomas, General Counsel, Scotts Valley Band of Pomo Indians

# Filzer Gruttadaurio Strickland LLP

An Ohio Limited Liability Partnership

Paul N. Filzer  
(Admitted in MI, PA, DC)

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Joshua J. Strickland  
(Admitted in OH)

REPLY TO:  
Paul N. Filzer  
Florida Office  
(828) 686-4906  
Paul@fgstrballaw.com

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December 26, 2006

City of Richmond  
Richmond, California

Re: *Municipal Services Agreement*

Ladies and Gentlemen:

We have acted as special counsel to the Scotts Valley Band of Pomo Indians, a federally recognized Indian tribe (the "Tribe"), in connection with the negotiation, authorization, execution and delivery of a Municipal Services Agreement dated as of December 27, 2006 between the City of Richmond, California (the "City") and the Tribe (the "Agreement" or "MSA"). This opinion letter is being provided to you at the request of the Tribe and as condition to the City entering into the Agreement.

For purposes of the opinions set forth in this letter, we have reviewed the following:

1. The Agreement;
2. The Constitution of the Scotts Valley Band of Pomo Indians of the Sugar Bowl Reservation, as revised and approved by the qualified voters of the Tribe on September 24, 1994 (the "Constitution");
3. Tribal Council Resolution No. 19-06 adopted by the Tribal Council at a regular meeting of the Tribal Council on November 4, 2006 ("Tribal Council Authorizing Resolution");
4. General Council Resolution No. 23-06 adopted by the General Council at a special meeting of the General Council on December 9, 2006 ("General Council Authorizing Resolution");
5. 25 U.S.C. §§ 2701- 2721 and regulations of the National Indian Gaming Commission promulgated thereunder (as presently in effect, collectively "IGRA"); and
6. 25 U.S.C. § 81, as amended to date.

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In addition, we have examined such other laws, have made such legal and factual examinations and have made such inquiries and examined such other documents, proceedings and certificates of the Tribe as deemed necessary or appropriate as a basis for the opinions set forth in this letter.

In our examination, we have assumed the legal capacity of all natural persons, the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as facsimile, electronic, certified or photostatic copies, and the authenticity of the originals of such copies. We have also assumed that the City has the power and authority to execute, deliver and perform its obligations under the MSA and that it has taken all necessary action to authorize and has executed and delivered the MSA. We have also assumed that the Agreement has not been modified in any way by any oral agreement, written document or course of conduct and that the Agreement contains the entire agreement of the parties with respect to the matters covered, and there are no other agreements between the parties contrary to or not contained in the Agreement.

We note that we are not general counsel to the Tribe and have been engaged only to serve as special counsel to the Tribe in connection with the development of the Project and certain related matters. We are not attorneys admitted to practice in the courts of the Tribe, nor are we licensed, certified or qualified in matters of the Tribe's laws generally. Our opinion is limited in its entirety to matters of the Tribe's law and applicable federal law in effect on the date hereof.

Based on the foregoing, and in reliance thereon and subject to the qualifications and exceptions stated herein, we are of the opinion as of the date hereof that:

1. The Tribe is a federally recognized Indian tribe.
2. The Tribal Council is the governing body of the Tribe.
3. The Tribe, acting through the Tribal Council, has full power and authority to enter into the Agreement, and to perform its obligations thereunder.
4. The Tribal Council Authorizing Resolution and the General Council Authorizing Resolution (collectively, the "Resolutions") have been validly adopted by the Tribal Council and the General Council, respectively, and are in full force and effect, without any amendment or repeal thereof since of the date of such action. No action to cause the amendment or repeal of all or any part of the Resolutions is pending or, to our knowledge, threatened or proposed by any person with the power to cause or initiate a proceeding to cause such amendment or repeal.
5. The Agreement has been duly executed and delivered by the Tribe and constitutes a valid and binding obligation of the Tribe, enforceable against the Tribe in accordance with its terms, subject to (i) bankruptcy, insolvency, fraudulent transfer or conveyance, reorganization, arrangement, moratorium or other laws relating to or affecting creditors' rights or remedies; (ii) the application of equitable principles; (iii) the exercise of discretion by a court, arbitration panel or governmental agency; and (iv) law or principles of public policy concerning, affecting or limiting the enforcement of rights

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or remedies against sovereign entities such as the Tribe or within the area of its territorial sovereignty (other than the waiver of immunity, rights and agreements discussed in numbered opinion 6 below)

6. The limited waiver of sovereign immunity, waiver of rights to tribal court and other tribal forums, agreements to arbitrate, selection of judicial forums and choice of law provisions contained in the Agreement are valid and binding obligations of the Tribe.

7. No further consent, approval or filing, which has not been obtained or made, is required as a condition to the validity of the obligations of the Tribe under the Agreement.

8. Neither the Tribal Council nor the General Council, through initiative, referendum or otherwise, may take action in the future to void, cancel, abrogate, modify or amend the obligations of the Tribe under the Agreement or to impair any of the rights granted to the City by the Tribe pursuant to the Agreement.

This opinion is based on an analysis of existing law and is provided to you as a legal opinion only, and not as a guaranty or warranty of the matters discussed herein. Our opinion is limited to the matters expressly stated, and no other opinion may be implied or inferred. We have not undertaken to determine, or to inform any person, whether any such actions are taken or omitted or events do occur or any other matters come to our attention after the date hereof. In giving this opinion, it is expressly understood that no attorney-client relationship is being created with the City, and nothing in this opinion shall be deemed to constitute a waiver of the attorney-client privilege between our firm and the Tribe. This opinion may be relied upon only by you and solely for purposes of the MSA; provided, that no person may rely on any portion of this opinion which such person knows to be incorrect. This opinion may not be used, circulated, quoted or otherwise referred to or relied upon for any other purpose or by any other person.

Very truly yours,

FILZER GRUTTADAURIO STRICKLAND, P.L.L.



PAUL N. FILZER

**1 PAGE DENIED IN FULL  
PURSUANT TO  
EXEMPTION (b)(4)**

**Balances of Loans**

NO COST FOR THIS PAGE

## MUNICIPAL SERVICES AGREEMENT

This Municipal Services Agreement (the "MSA" or "Agreement") is made this 21st day of November 2006, by and between City of Richmond, California (the "City"), and the Scotts Valley Band of Pomo Indians (the "Tribe"), with reference to the following;

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### RECITALS

WHEREAS, the Tribe is a federally recognized Indian tribe; and

WHEREAS, the Federal government terminated its government-to-government relationship with the Tribe pursuant to the California Rancheria Termination Act of 1958; on September 3, 1965; and

WHEREAS, pursuant to the stipulated judgment in Scotts Valley Band of Pomo Indians et al. v. The United States, Civil No. C-86-3660 WWS (N.D. Cal. June 27, 1986) the Federal government restored government-to-government relationships with the Tribe on February 12, 1992; and

WHEREAS, the United States currently holds no property whatsoever in trust for the benefit of the Tribe; and

WHEREAS, the Tribe has requested that the Secretary of the Interior (the "Secretary") acquire title to six (6) parcels of real property totaling approximately 29.87 acres located within an unincorporated area of the County of Contra Costa adjacent to the City of Richmond (the "Property") in trust for the benefit of the Tribe; and

WHEREAS, the Tribe has provided the United States with evidence demonstrating that the Property, upon the Secretary accepting title to the Property in trust for the benefit of the Tribe, qualifies as "Restored Lands" within the scope and meaning of the Indian Gaming Regulatory Act (the "IGRA"), 25 U.S.C. § 2719(b)(1)(B)(i); and will therefore be eligible for gaming pursuant to and in accordance with the terms and provisions of the IGRA; and

WHEREAS, the Tribe has determined that the development, construction and operation of the Project, as defined in Section 1.2, pursuant to and in accordance with the terms and provisions of the IGRA is an important tribal government project which is intended to improve the economic condition of the Tribe and its members, increase tribal revenues, enhance the Tribe's economic self-sufficiency, and enable the Tribe to better serve the social, economic, educational and health needs of the Tribe's members; and

WHEREAS, as part of the Secretary's decision-making process, the Bureau of Indian Affairs (the "BIA"), must comply with the National Environmental Policy Act



("NEPA"), 42 U.S.C. § 4321, et seq., and the regulations promulgated thereunder, and the BIA has published an Administrative Draft Environmental Impact Statement (the "EIS") pursuant to NEPA; and

**WHEREAS**, neither the Secretary's acquisition of title to the Property in trust for the benefit of the Tribe, nor any other actions by either the United States, the State of California (the "State") or the City associated with the Project constitute "projects" of the City within the scope and meaning of the California Environmental Quality Act ("CEQA") and are not subject to the discretionary approval of the City; and

**WHEREAS**, Pursuant to Article VI, Section 1 (a) of the Constitution of the Scotts Valley Band of Pomo Indians of the Sugar Bowl Rancheria the Tribal Council of the Tribe (the "Tribal Council") is the duly authorized governing body of the Tribe empowered to fully exercise governmental responsibilities, to make tribal policy, pass Tribal codes and ordinances, and approve contracts, and carry out Tribal business on the Tribe's behalf; and

**WHEREAS**, although not legally required to do so, the Tribe nevertheless desires to make voluntary contributions to the City to mitigate potential impacts of the Secretary's acquisition of the Property in trust for the benefit of the Tribe and the development, construction, operation and maintenance of the Project; and

**WHEREAS**, the Tribe recognizes that significant law enforcement, fire protection, emergency service responders and public works will be required by the Tribe's development, construction, operation and maintenance of the Project based on the size and scope of the Project and the proposed number of patrons and employees, as established by the EIS; and

**WHEREAS**, the Property is not within the territorial boundaries of the City; however, because the Property is directly adjacent to the City, the police, firefighters and emergency medical providers of the City are best situated to be first responders in the event of a fire, emergency or unlawful conduct occurring on the Property; and

**WHEREAS**, although the City is not legally required to do so, the City is willing to provide the governmental services to the Tribe and the Property as set forth herein, and so desires to establish a cooperative and mutually respectful government-to-government relationship with the Tribe and to address other governmental issues of mutual interest to the City and the Tribe; and

**WHEREAS**, the Tribe has agreed to grant a limited waiver of its sovereign immunity and to the resolution of disputes with the City under this MSA as set forth below and has taken all action necessary under the laws of the Tribe to grant such waiver and consent to arbitration and jurisdiction as set forth in the MSA.

**NOW, THEREFORE**, the Parties hereby agree as follows:

## ARTICLE I SCOPE AND DEFINITIONS

**Section 1.1 Scope of Agreement.** This Agreement describes the services the City will provide to the Tribe and to the Property in connection with the Tribe's development, construction, operation and maintenance of the Project as defined below in Section 1.2, and the payments the Tribe will make to or on behalf of the City in consideration of such services and to otherwise mitigate any impacts which the Tribe's development, construction, operation and maintenance of the Project may have on the City or the surrounding community. Such services include law enforcement, fire protection, emergency response, transportation system management, public works and other City services.

**Section 1.2 The Project and Operations.** The Tribe's anticipated use of the Property consists of the construction and operation of a project (the "Project"), comprised of a gaming facility and associated amenities and administrative and support facilities in accordance with the Development Envelope as defined below in Section 1.4. The Tribe warrants and represents to the City that the Tribe shall, as soon as reasonably practical, but not later than one hundred and eighty (180) days prior to the anticipated commencement of construction of the Project, provide the City with an operational plan (the "Operational Plan") describing the operation of the Gaming Facility in sufficient detail to permit the determination of the nature and extent of City and other governmental services needed or useful for the operation of the Gaming Facility. Upon the Tribe's presentation of the Operational Plan to the City, the Parties shall, for a period of thirty (30) days, make available copies of the Operational Plan to any other political subdivision of the State which requests copies of the Operational Plan and which the Parties reasonably agree has a governmental interest in the Operational Plan, including, without limitation, Contra Costa County (the "County"), the West County Unified School District (the "School District"), West Contra Costa County Sanitary District and East Bay Municipal Utilities District ("East Bay MUD"), provided, however, that prior to receiving a copy of the Operational Plan such governmental unit must execute and deliver to the Parties a written certification acknowledging receipt of Article XI of this Agreement and expressly agreeing to be bound by the terms and provisions of Article XI of this Agreement. Except as expressly and explicitly provided for in this Agreement or pursuant to P.L. 83-280, nothing contained in this Section is intended or shall be construed as the Tribe granting or consenting to any jurisdiction of the State or any political subdivisions thereof, including, without limitation, the City, the County, the School District or East Bay MUD, over the Tribe, the Property, the Project, or the design, development, construction, operation or maintenance of any improvements on the Property. Except as expressly and explicitly provided for in this Agreement, nothing contained in this Section is intended or shall be construed as granting the State or any political subdivision thereof, including, without limitation, the City, the County, the School District or East Bay MUD, any approval authority with respect to any aspect of the Project or the Operational Plan. Subject to applicable Federal law, this MSA is

independent of the Tribal-State Compact and the obligations of the Tribe under any such Compact. Such Compact is not intended to amend any provision of this MSA.

**Section 1.3 Definitions.** All capitalized words and terms used in this Agreement shall have the meanings set forth herein. All references in this Agreement to any agreement or instrument shall include such agreement or instrument as the same may be amended, restated, modified, supplemented, replaced or substituted from time to time. Such definitions shall be equally applicable to both singular and plural forms of any of the words and terms therein defined.

**Section 1.4 "Development Envelope"** means the maximum extent of the development, and the associated land uses, of the Property anticipated by the Tribe, as described in Exhibit A attached hereto, as modified with the consent of the City pursuant to Section 4.1(b).

## ARTICLE II SERVICES PROVIDED

### Section 2.1 Law Enforcement.

**Section 2.1(a) P.L.83-280.** As a matter of Federal law, including Public Law 83-280, most state criminal laws will continue to apply on the Property after the United States accepts title to the Property in trust for the benefit of the Tribe (land held in trust by the United States for the benefit of the Tribe constitutes "Indian Lands" of the Tribe within the scope and meaning of Federal law, including, without limitation, the IGRA and the rules and regulations promulgated thereunder). The City of Richmond Police Department ("Richmond P.D.") and other such law enforcement agencies which have applicable jurisdiction over Indian Lands, including, without limitation the Contra Costa County Sheriff (the Sheriff") (collectively, the "Non-Tribal Law Enforcement Agencies") shall retain jurisdiction over the enforcement of those laws on the Property pursuant to and in accordance with applicable Federal law. The Parties agree, however, that the Tribe will have primary responsibility for maintaining order and safety on the Property and in improvements constructed on the Property, through the Scotts Valley Tribal Police Department (the "SVTPD") and the Facility Security Force (the "Facility Security") (collectively, the "Tribal Law Enforcement Agencies"), in full cooperation with the Non-Tribal Law Enforcement Agencies. These Non-Tribal Law Enforcement Agencies, including the Richmond P.D. will be responsible for apprehension and arrest of persons engaged in suspected criminal activity pursuant to Public Law 83-280. Nothing contained in this Agreement or any agreement, contract, understanding or document between the Parties executed pursuant to the terms and provisions of this Agreement is intended or shall be construed as expanding the jurisdiction of any Non-Tribal Law Enforcement Agency beyond the jurisdiction which such Agency would exercise over the Property pursuant to applicable Federal law in the absence of this Agreement and any other agreement, contract, understanding or document which the Parties execute pursuant to and in accordance with the terms and provisions hereof.

**Section 2.1(b) Cooperative Law Enforcement Agreement.** Notwithstanding the generality of Section 2.1(a) of this Agreement or any term or provision of this Agreement to the contrary, the Parties acknowledge and agree that the Tribe's intended use of the Property for the development, construction, operation and maintenance of the Project will present public safety and law enforcement issues which will require the coordinated efforts of both Non-Tribal and Tribal Law Enforcement Agencies. The Parties warrant and represent to each other that within thirty (30) days after the expiration of the thirty (30) day period provided for in Section 1.2 of this Agreement, the Parties, along with any Non-Tribal Law Enforcement Agency which elects to participate in a Cooperative Law Enforcement Agreement (a "CLEA") shall meet and enter into good faith negotiations for the purposes of entering into a CLEA which shall address in detail the rights, responsibilities and authority of all of the participating Law Enforcement Agencies with respect to the provision of public safety and law enforcement services to the Property. The CLEA shall address, among other things, (i) all operational issues which the Law Enforcement Agencies deem reasonable and necessary for the provision of law enforcement services on the Property, including, without limitation, staffing and scheduling matters, protocols for apprehension, detention and transfer of detainees and for the conduct of investigations involving activities occurring on the Property, (ii) the Tribe, or an instrumentality thereof, to develop and conduct, at its own expense, a training program focusing on Federal, Tribal and State Gaming Laws which shall be available for any member of the Richmond P.D., (iii) the Tribe's allocation of space within the Gaming Facility for use by the Richmond P.D., subject to the reasonable concerns of the Facility Security designed to preserve the integrity of the operations of the Gaming Facility (iv) a quick connect between the Facility Security Dispatch Center and the Richmond P.D. Dispatch Center, (v) reimbursement to the City, without mark-up, of fees paid to Contra Costa County or other agencies for transport or booking or similar services ("Incident Dependent Fees"), (vi) CCTV monitoring of the Gaming Facility parking areas, (vii) a process for the Tribal Law Enforcement Agencies to report all criminal activity occurring on the Property, or criminal or nuisance activities, vehicle or parking violations actually observed to occur off of the Property, to the Richmond P.D. in a timely manner, and (viii) a process for the Tribal Gaming Commission to provide the Richmond P.D. with periodic reports of all licenses issued by the Tribal Gaming Commission pursuant to the Tribal Gaming Ordinance. Notwithstanding the generality of the foregoing, any term or provision of this Agreement or the CLEA or applicable law to the contrary, the Parties warrant and represent to each other that the CLEA shall provide that prior to entering the Gaming Facility, for the purpose of investigating or enforcing state criminal laws, any Non-Tribal Law Enforcement Agency which is a Party to the CLEA shall provide the Director of Facility Security and the Chief of the SVTPD with reasonable notice of its intention to enter the Gaming Facility, and shall coordinate with such Tribal officers to ensure the integrity of Gaming Facility operations, except when, in the good faith and reasonable judgment of the law enforcement officers involved, their safety, or the safety of patrons or employees of the Gaming Facility, or the integrity of an investigation or enforcement action, would be materially compromised by doing so. The CLEA shall provide that, at a minimum, the City will provide to and for the benefit of the Gaming Facility law enforcement services of the same quality and general responsiveness

as are provided to commercial establishments in the City of Richmond. When finalized, the CLEA shall be deemed incorporated into, and made a part of, this Agreement. As used herein, the term "this Agreement" means and includes the CLEA.

Notwithstanding any term or provision of this Agreement to the contrary, the Parties expressly warrant and represent that the CLEA, with the exception of any payments, costs or expenses provided for in Section 3 of this Agreement, any Incident Dependent Fees, and any charges, fees or expenses the Tribe incurs pursuant to and in accordance with Section 2.7 of this Agreement, shall not provide for any payment by the Tribe, the Gaming Facility, the Project, the SVTPD, the Facility Security or any other person or entity associated with the development, financing, construction, maintenance, management or operation of the Property, Gaming Facility, or the Project to the City, any Non-Tribal Law Enforcement Agency, including, without limitation, the Richmond P.D. or any agency or instrumentality of any of the foregoing, it being the express and explicit agreement of the Parties that the payments provided for in Section 3 of this Agreement, fees paid under Section 2.7, and any Incident Dependent Fees are intended and shall be construed as the sole and exclusive compensation to the City, the Richmond P.D., all other Non-Tribal Law Enforcement Agencies and any agency or instrumentality of any of the foregoing for the provision of law enforcement services pursuant to the terms and provisions of this Agreement.

**Section 2.1(c) Law Enforcement Requirements.** The Parties acknowledge and agree that the CLEA shall, among other things, contain an itemized listing of the additional law enforcement infrastructure, equipment and personnel which the Richmond P.D. shall reasonably require in order to adequately perform any of the public safety or law enforcement functions which the City has under existing applicable law or assumes pursuant to and in accordance with this Agreement or the CLEA (the "Law Enforcement Improvements"). Notwithstanding the generality of the foregoing, or any term or provision of this Agreement or the CLEA to the contrary, the City expressly warrants and represents to the Tribe that the City shall use funds it receives pursuant to Section 3.1 of this Agreement to acquire the Law Enforcement Improvements identified in the CLEA.

The City further warrants and represents to the Tribe that (i) all Law Enforcement Improvements shall be of substantially the same quality as those maintained by the Richmond P.D. at the time of acquisition, provided, however, that nothing contained herein is intended or shall be construed as limiting or restricting the method, manner or procedures by which the City acquires such Improvements, (ii) the City, through the Richmond P.D., shall, at its own cost and expense, properly maintain in good working order and repair any Law Enforcement Improvements which the Richmond P.D. acquires with funds the City receives pursuant to Section 3.1 of this Agreement, and (iii) that Richmond P.D. officers providing law enforcement services to the Property will meet the same qualifications as all other members of the Richmond P.D., and will be compensated and equipped on the same basis as other officers employed by the Richmond P.D.

Additionally, the Parties expressly and explicitly warrant and represent to each other that the CLEA, with the exception of any payments, costs or expenses provided for

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12/22/2006

in Section 3 of this Agreement, shall not provide for any payment by the Tribe, the Gaming Facility, the Project, the SVTPD, the Facility Security or any other person or entity associated with the development, financing, construction, maintenance, management or operation of the Property, Gaming Facility, or the Project to the City, any Non-Tribal Law Enforcement Agency, including, without limitation, the Richmond P.D. or any agency or instrumentality of any of the foregoing, it being the express and explicit agreement of the Parties that the payments provided for in Section 3 of this Agreement are intended as the sole and exclusive compensation to the City, the Richmond P.D., all and any agency or instrumentality of any of the foregoing for the acquisition, updating, modernization or supplementation of any law enforcement improvements any such Agency requires as a result of the development and operation of the Project identified in the CLEA or otherwise. Neither this Agreement nor the CLEA shall create or imply any obligation of the Tribe to pay any amount whatsoever to any other Non-Tribal Law Enforcement Agency, or any agency or instrumentality thereof for the acquisition, updating, modernization or supplementation of any law enforcement improvements any such Agency requires as a result of the development and operation of the Project identified in the CLEA or otherwise.

## **Section 2.2 Fire Protection and Emergency Response Services.**

**Section 2.2(a) Fire Protection and Emergency Response.** The Parties acknowledge and agree that the Tribe's development, construction, operation and maintenance of the Project will require significant fire protection and emergency response services. The Parties warrant and represent to each other that not later than thirty (30) days after the expiration of the thirty (30) day period provided for in Section 1.2 of this Agreement, the Parties shall meet and enter into good faith negotiations for the purposes of entering into a Fire Protection and Emergency Response Agreement (a "FPERA"), which shall detail the fire protection and emergency response services which the City, through the Richmond City Fire Department (the "Richmond F.D.") shall provide to the Tribe, the Property and the Project to adequately ensure the health, safety and welfare of the general public and the preservation of the Project and assets of the Tribe located on the Property. The FPERA shall address, among other things, all operational issues which the Parties deem reasonable and necessary for the provision of fire protection and emergency response services to the Property, including, without limitation, (i) staffing and scheduling issues, (ii) the development of a pre-fire plan designed to familiarize the Richmond F.D. with the Property and all improvements constructed on the Property, including, without limitation, the Gaming Facility, (iii) the Tribe's provision of as built designs and plans for all improvements constructed on the Property, (iv) Richmond F.D. practice drills, (v) the development of a Fire Disaster Management Plan, (vi) periodic inspections of all improvements constructed on the Property, and (vii) the conduct of any activities occurring on the Property reasonably related to the City's provision of fire protection and emergency response services to the Property. The FPERA shall provide that, at a minimum, the City will provide to and for the benefit of the Gaming Facility fire protection and emergency response services of the same quality and general responsiveness as are provided to commercial establishments in the City of Richmond. When agreed to, the FPERA shall be deemed incorporated into,

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12/22/2006

and made a part of, this Agreement. As used herein, the term "this Agreement" means and includes the FPERA.

Notwithstanding any term or provision of this Agreement to the contrary, the Parties expressly warrant and represent that the FPERA, with the exception of any payments, costs or expenses provided for in Section 3 of this Agreement and any additional charges, fees or expenses which the Tribe incurs pursuant to and in accordance with the terms and provisions of Section 2.7 of this Agreement, shall not provide for any payment by the Tribe, the Gaming Facility, the Project, or any other person or entity associated with the development, financing, construction, maintenance, management or operation of the Property, Gaming Facility, or the Project to the City, the Richmond F.D. or any agency or instrumentality of any of the foregoing, it being the express and explicit agreement of the Parties that the payments provided for in Section 3.2 of this Agreement are intended and shall be construed as the sole and exclusive compensation to the City, the Richmond F.D., and any agency or instrumentality of any of the foregoing for the provision of fire protection and emergency response services pursuant to the terms and provisions of this Agreement.

**Section 2.2(b) Fire Protection Improvements.** The Parties warrant and represent to each other that the FPERA shall provide for, fire protection improvements. These improvements will be, at the City's sole discretion, either 1) the construction and operation of a fully equipped fire station (the "Station") on a parcel of real property selected by the City within a radius of one and one-half miles from the Project, 2) upgrades to one or more of the the current fire stations, or 3) the consolidation and relocation of existing fire stations to a location within a radius of one and one-half miles from the Project (the "Fire Protection Improvements"). The City warrants and represents that the Station and or upgrades shall be built pursuant to and in accordance with the Essential Facility Standards, California Building Code, 2001, and that it will be completed and operational by the Commencement Date. Additionally, the Parties acknowledge and agree that the FPERA shall contain, among other things, depending on the Fire Protection Improvements chosen, (i) specific, detailed plans for the size, scope and construction of the Fire Protection Improvements, and (ii) an itemized listing of additional fire protection and emergency response infrastructure, equipment and personnel (including improvements to Station 68 and the acquisition of an additional engine and aerial ladder truck) which the Richmond F.D. or any agency or instrumentality thereof shall reasonably require for the Fire Protection Improvements or otherwise in order to adequately perform any services the Department undertakes to provide pursuant to and in accordance with the FPERA (collectively, "Fire Protection Improvements"). Notwithstanding the generality of the foregoing, or any term or provision of this Agreement or the FPERA to the contrary, the City expressly warrants and represents to the Tribe that the City shall use funds it receives pursuant to Section 3.1(b)(iii) of this Agreement to design, develop, and provide all of the Fire Protection Improvements as identified in the FPERA. Nothing in this Agreement shall be construed to constitute approval of development plans for a Station design, development, and construction of which shall conform to all applicable laws. The Fire Protection

Improvements may also be used by the City to respond to fire and other emergencies other than at the Project.

The City further warrants and represents to the Tribe that (i) all Fire Protection Improvements shall be of substantially the same quality as those maintained by the Richmond F.D. at the time of acquisition, provided, however, that nothing contained herein is intended or shall be construed as limiting or restricting the method, manner or procedures by which the City acquires such Fire Protection Improvements, (ii) the City, through the Richmond F.D., shall, at its own cost and expense, properly maintain in good working order any Fire Protection Improvements that the Richmond F.D. acquires with funds the City receives pursuant to Section 3.1(b)(iii) of this Agreement, and (iii) officers and personnel providing fire protection and emergency response services to the Property will meet the same qualifications as all other members of the Richmond F.D., and will be compensated and equipped on the same basis as other officers employed by the Richmond F.D.

Additionally, the Parties expressly and explicitly warrant and represent to each other that the FPERA, with the exception of any payments, costs or expenses provided for in Section 3 of this Agreement, shall not provide for any payment by the Tribe, the Gaming Facility, the Project, or any other person or entity associated with the development, financing, construction, maintenance, management or operation of the Property, Gaming Facility, or the Project to the City, the Richmond F.D. or any agency or instrumentality of any of the foregoing, it being the express and explicit agreement of the Parties that the payments provided for in Section 3 of this Agreement are intended as the sole and exclusive compensation to the City, the Richmond F.D., and any agency or instrumentality of any of the foregoing for the design, development, construction, repair and maintenance and acquisition of Fire Protection Improvements.

### **Section 2.3 Sewer Services and Storm Drainage.**

**Section 2.3(a) Provision of Sewer Services.** The Tribe shall use its best efforts to obtain sewage disposal services for the Property through an agreement with the West Contra Costa County Sanitary District ("WCCCSA") by connecting to WCCCSA's existing sewer system upon such terms and conditions shall be substantially similar to the terms and conditions upon which WCCCSA provides sewer services to similarly situated commercial users. The Tribe acknowledges that the City is not responsible for the provision of this service.

**Section 2.3(b) Infrastructure and Connection.** The Tribe warrants and represents to the City that the Tribe, at its expense, shall acquire all easements required, and shall construct or cause to be constructed all sewer infrastructure or improvements necessary for the Property and all improvements thereon, including, without limitation, the Gaming Facility, to connect to the WCCCSA's existing sewage collection system ("Sewer Improvements"). The Tribe further warrants and represents to the City that all Sewer Improvements shall be constructed pursuant to and in accordance with the City's sewer infrastructure standards in force at the time such Sewer Improvements are



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constructed. The Tribe warrants and represents to the City and the City that it shall not use the Property or any improvements thereon until the Tribe provides to the City a certificate, issued by a civil engineer licensed in the State of California, confirming that such Sewer Improvements have been inspected and comply with the WCCCSD's sewer infrastructure standards in force at the time such Sewer Improvements are constructed.

**Section 2.3(c) Connection Fees.** The Tribe warrants and represents to the City that the Tribe shall pay all fees and costs associated with connecting the Property and all improvements thereon, including, without limitation, the Gaming Facility, to the WCCCSD's existing sewage collection system, provided, however, that such fees and costs shall not exceed the fees and costs charged to similarly situated commercial users.

**Section 2.3(d) Easements and Maintenance.** The Tribe warrants and represents to the City that the Tribe shall grant to the WCCCSD such utility easements as are necessary and reasonable for WCCCSD, at its own cost, to maintain all Sewer Improvements in good working order and repair.

**Section 2.3(e) Assessments.** The Tribe warrants and represents to the City that the Tribe shall pay an amount equal to any sewer assessments and water pollution control charges which would be applicable to the Property as if title to the Property were not held in trust by the United States. Nothing contained in this Section 2.3 is intended or shall be construed as a tax upon either the Tribe, the Property or any improvements constructed thereon, including, without limitation, the Gaming Facility. Further, nothing contained in this Section is intended or shall be construed as the Tribe granting or consenting to any jurisdiction of the State of California, or any political subdivision or local government thereof, including, without limitation, the City or WCCCSD, over the Property or any Sewer Improvements constructed thereon.

**Section 2.3(f) Storm Water Pollution Prevention Plan.** The Parties acknowledge and agree that the preparation of a Storm Water Pollution Prevention Plan (the "SWPPP") is a condition to the United States Environmental Protection Agency ("EPA") issuing a National Pollutant Discharge Elimination System Permit, as required pursuant to the Federal Clean Water Act. The Tribe warrants and represents to the City that the Tribe will consult with the City in good faith during the preparation of the SWPPP, and that the Tribe will provide the City with copies of all filings and correspondence related to the SWPPP. The SWPPP shall incorporate provisions that minimize the amount of erosion occurring both during and after construction and that require the use of devices such as oil/water separators, which would help maintain water quality during Project operations. The Tribe will comply with the provisions of the CalTrans Quality Handbook 2002 and the California Stormwater BMP Handbook of Construction dated March 2003. If feasible in the Tribe's reasonable determination following C-3 guidelines, a bio-filtration swale to capture and filter run-off from the site's parking lots shall be incorporated into the grading and landscape construction plans. Building pads shall be established at elevations not less than one foot above the Federal Emergency Management Agency's 100-year event flood plain elevation.

**Section 2.3(g) Nature of Payments.** Notwithstanding any term or provision of this Agreement to the contrary, any payments which the Tribe makes to the City pursuant to this Section 2.3 shall not be included within any of the payments the Tribe makes to the City pursuant to Article III of this Agreement, and such payments shall be due and payable solely pursuant to and in accordance with the terms and provisions hereof.

#### **Section 2.4 Water Supply**

**Section 2.4(a) Provision of Services.** The Tribe shall use its best efforts to obtain water supply for the Property through an agreement with the East Bay Municipal Utilities District ("East Bay MUD") by connecting to East Bay MUD's existing water distribution system upon such terms and conditions shall be substantially similar to the terms and conditions upon which East Bay MUD provides water distribution services to similarly situated commercial users. The Tribe acknowledges that the City is not responsible for the provision of this service.

**Section 2.4(b) Infrastructure and Connection.** The Tribe warrants and represents to the City that the Tribe, as part of any agreement with East Bay MUD, shall, at its expense, acquire all easements required, and shall construct or cause to be constructed all water infrastructure or improvements necessary for the Property and all improvements thereon, including, without limitation, the Gaming Facility, to connect to the East Bay MUD's existing water distribution system ("Water Improvements"). The Tribe further warrants and represents to the City that all Water Improvements shall be constructed pursuant to and in accordance with the City's or East Bay MUD's water infrastructure standards in force at the time such Water Improvements are constructed. The Tribe warrants and represents to the City that it shall not use the Property or any improvements thereon until the Tribe provides to the City and East Bay MUD a certificate, issued by a civil engineer licensed in the State of California, confirming that such Water Improvements have been inspected and comply with the City's and/or East Bay MUD's water infrastructure standards in force at the time such Water Improvements are constructed.

**Section 2.4(c) Connection Fees.** The Tribe warrants and represents to the City that the Tribe shall pay all fees and costs East Bay MUD shall charge the Tribe associated with connecting the Property and all improvements thereon, including, without limitation, the Gaming Facility, to East Bay MUD's existing water distribution system, provided, however, that such fees and costs shall not exceed the fees and costs charged to similarly situated commercial users.

**Section 2.4(d) Easements and Maintenance.** The Tribe warrants and represents to the City that the Tribe shall dedicate all Water Improvements to the City and/or East Bay MUD, and shall grant to the City and/or East Bay MUD such utility easements as the Parties deem necessary and reasonable. The agreement between the Tribe and East Bay MUD shall specify the Party to such agreement that will be responsible for maintaining all Water Improvements in good working order and repair.

**Section 2.4(e) Assessments.** The Tribe warrants and represents to the City that the Tribe shall pay an amount equal to any assessments or other charges East Bay MUD would charge similarly situated commercial users which would be applicable to the Property as if title to the Property were not held in trust by the United States. Nothing contained in this Section 2.4 is intended or shall be construed as a tax upon the Tribe, the Property or any improvements constructed thereon, including, without limitation, the Gaming Facility. Further, nothing contained in this Section is intended or shall be construed as the Tribe granting or consenting to any jurisdiction of the State of California, or any political subdivision or local government thereof, including, without limitation, the City and East Bay MUD, over the Property or any Water Improvements constructed thereon.

**Section 2.5 Other Utilities (Gas, Electricity and Telephone).**

**Section 2.5(a) Provision of Services.** The Tribe shall use its best efforts to obtain gas, electric and telephone service for the Property through agreements with local area providers of such services (collectively, the "Utility Providers"), by connecting to the existing distribution facilities of such Utility Provider upon such terms and conditions shall be substantially similar to the terms and conditions upon which such Provider provides utility services to similarly situated commercial users. The Tribe acknowledges that the City is not responsible for the provision of these services.

**Section 2.5(b) Infrastructure and Connection.** The Tribe warrants and represents to the City that the Tribe, as part of any agreement with a Utility Provider shall, at its expense, acquire all easements required, and shall construct or cause to be constructed all infrastructure or improvements necessary for the Property and all improvements thereon, including, without limitation, the Gaming Facility, to connect to the existing distribution systems of the Utility Provider ("Utility Improvements"). The Tribe further warrants and represents to the City that all Utility Improvements shall be constructed pursuant to and in accordance with any applicable standards governing the construction of such Utility Improvements in force at the time such Utility Improvements are constructed. The Tribe warrants and represents to the City that it shall not use the Property or any improvements thereon until the Tribe provides to the City and the Utility Provider a certificate, issued by a civil engineer licensed in the State of California, confirming that such Utility Improvements have been inspected and comply with any applicable standards governing the construction of such Utility Improvements in force at the time such Utility Improvements are constructed.

**Section 2.5(c) Connection Fees.** The Tribe warrants and represents to the City that the Tribe shall pay all fees and costs associated with connecting the Property and all improvements thereon, including, without limitation, the Gaming Facility, to the existing utility distribution systems of the Utility Providers, provided, however, that such fees and costs shall not exceed the fees and costs charged to similarly situated commercial users.

**Section 2.5(d) Easements and Maintenance.** The Tribe warrants and represents to the City that the Tribe shall dedicate all Utility Improvements to the City and/or the specific Utility Providers, and shall grant to the City and/or the specific Utility Provider such utility easements as the Parties deem necessary and reasonable. The agreement between the Tribe and each Utility Providers shall specify the Party to such agreement that will be responsible for maintaining all Utility Improvements in good working order and repair.

**Section 2.5(e) Assessments.** The Tribe warrants and represents to the City that the Tribe shall pay an amount equal to any assessments or other charges the Utility Providers would charge similarly situated commercial users which would be applicable to the Property as if title to the Property were not held in trust by the United States. Nothing contained in this Section 2.4 is intended or shall be construed as a tax upon either the Tribe, the Property or any improvements constructed thereon, including, without limitation, the Gaming Facility. Further, nothing contained in this Section is intended or shall be construed as the Tribe granting or consenting to any jurisdiction of the State of California, or any political subdivision or local government thereof, including, without limitation, the City, over the Property or any Utility Improvements constructed thereon.

**Section 2.6 Project-Specific Traffic Improvements.**

**Section 2.6(a) EIS Required Mitigation Measures.** The Tribe acknowledges that it is required to comply with all of the traffic mitigation measures required in the Final EIS published by the Secretary in connection with the United States acquiring title to the Property in trust for the benefit of the Tribe.

**Section 2.6(b) Additional Traffic Mitigation Measures.** The Tribe agrees to pay or contribute to the following specific or additional traffic mitigation measures. As used in this Section 2.6 or the Final EIS, the term "proportionate share" means the percentage share derived from the percentage that the added trips resulting from the Project contribute to the new total trips at each specific study intersection and roadway segment or such other methodology utilized in the analysis underlying the Final EIS. The Tribe's proportionate share shall be determined as of the time the described mitigation project, or any part thereof or any alternative thereto, is undertaken by the appropriate governmental authority. The Tribe's proportionate share contribution shall be made on or prior to the date the project is approved and actually undertaken by the appropriate governmental authority. The Tribe shall provide copies of any traffic management plan to the City and the Transit Agency and involve the City Engineer in any such mitigation project, if desired by the City.

**Section 2.6(b)(1) Richmond Parkway at Parr Boulevard.** Unless adequate mitigation can be achieved by the location of driveways or other design features of the Project as reasonably determined by the City, the Tribe shall, at its sole cost, add a left-turn lane on the west-bound Parr Blvd. approach to the Richmond Parkway, provide two west-bound through lanes between the main entrance to the Gaming Facility and Richmond Parkway shall widen Parr Blvd. to three lanes in the west-bound approach to

the Richmond Parkway intersection, and make associated modifications to the traffic signal.

**Section 2.6(b)(2) Castro Street at Redwood Way/I-580** The parties anticipate that the cumulative impacts of both approved and planned Richmond waterfront and Hilltop projects, as well as possible projects in San Pablo, may cause significant unavoidable traffic impacts. They further anticipate that in light of these projects a "free" right turn for the right-turn movement from I-580 westbound off-ramp to northbound Richmond Parkway and widening the left-turn lane from southbound Castro Street to the Westbound I-580 on-ramp from one to two lanes (including possible widening of part of the ramp to receive the two lanes before merging back into one lane) may be necessary to maintain or improve future levels of service. The Tribe agrees to confer and cooperate with CalTrans or any other agency responsible for such improvements and to pay its proportionate share of costs for these improvements on or prior to the date the project is approved and actually undertaken by the appropriate governmental authority.

**Section 2.6(b)(3) Richmond Parkway at Goodrick Ave.** The Tribe will pay its proportionate share of an additional north-bound through lane on Richmond Parkway at Goodrick Ave. to meet LOS standards at rush hour and of repaving of Goodrick Ave. between Richmond Parkway and Parr Blvd.

**Section 2.6(b)(4) Richmond Parkway & San Pablo Ave.** The Tribe will pay its proportionate share of the Richmond Parkway -- San Pablo Avenue interchange project listed in Contra Costa County's Transportation Plan, if that project is constructed, or of such other feasible set of improvements as may be constructed to maintain adequate traffic operations at that intersection.

**Section 2.6(b)(5) Richmond Parkway Transit Center Parking and Access Improvements.** If the project is not yet funded from other sources the Tribe will contribute its proportionate share to the second phase of the Richmond Parkway Transit Center Parking and Access Improvements project (depending on the components of the second phase relating to improving traffic operations on Richmond Parkway).

**Section 2.6(b)(6) Richmond Parkway Transit Center Shuttle.** The Tribe will, at its own cost and expense, provide shuttle service from the proposed Richmond Parkway Transit Center to the Gaming Facility. The City acknowledges and agrees that all aspects of the shuttle service, including without limitation, the timing, frequency, scheduling, additional stops and assigned vehicles, will be within the commercially reasonable discretion of the Tribe.

**Section 2.6(b)(7) Richmond BART Station Shuttle.** The Tribe will, at its own cost and expense, provide shuttle service from the Richmond BART Station to the Gaming Facility. The City acknowledges and agrees that all aspects of the shuttle service, including, without limitation, the timing, frequency, scheduling, additional stops and assigned vehicles, will be within the commercially reasonable discretion of the Tribe.

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**Section 2.6(b)(8) Sidewalks.** The Tribe will, at its own cost and expense, provide sidewalks along the Project's Parr Blvd. frontage.

**Section 2.6(b)(9) Bicycle Racks.** The Tribe will provide bicycle racks in a secure location on the Property to accommodate up to 25 non-motorized bicycles.

**Section 2.6(b)(10) Bike Lane.** In connection with street improvements on Goodrick Avenue between Parr Boulevard and Richmond Parkway, the Tribe will, at its own cost and expense, install striping to establish a Class II bike lane along that section of road.

**Section 2.7 Additional Services.** At the request of the Tribe, the Richmond P.D., or other departments of the City will provide additional law enforcement, safety, emergency response and security personnel for special events and functions occurring at the Project. Where such additional services are requested and provided, the City Department will bill the Tribe for the actual costs of providing such services on an open book basis and shall cooperate with the Tribe in verifying such costs; provided that, to the extent the City has standard fees charged for such extra services to other organizations or persons for commercial events and functions, the Tribe agrees to pay those standard fees for any such services. Notwithstanding any other provision hereof, the City shall not charge the Tribe for any additional services requested by the Tribe hereunder at a rate or cost in excess of the lowest rate or cost that is charged by the City or any other person or entity requesting similar services, whether within or outside the City limits. The Tribe will pay such bills within 30 days of receipt.

The Parties acknowledge and agree that this Section is intended and shall be construed to apply only for services the Tribe expressly requests of the City for specific, non-regularly scheduled events or functions, and shall not be used in any way to exceed or evade the limitations on payments to the City by the Tribe contained in Sections 2.1, 2.2 or 3.2 of this Agreement.

**Section 2.8 Limitation on Jurisdiction.** Except as expressly and explicitly otherwise provided for in this Agreement or by operation of law, nothing in Article 2 shall be deemed to grant the State or any political subdivisions thereof, including, without limitation, the City, any jurisdiction over the Property, the Tribe or any instrumentality thereof, the Project, the Gaming Facility or any gaming activity conducted thereby.

### ARTICLE III MITIGATION

**Section 3.1 Non-Recurring Contributions.** In order to mitigate potential impacts of the Project on the City by providing the City the funds necessary for the City to provide the services and facilities required to be provided under this Agreement, the Tribe shall make a non-recurring contribution ("Non-Recurring Payment") the City or its designee in the total aggregate amount of Eight Million, Two Hundred Thirty-four

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Thousand, Five Hundred Dollars (\$8,234,500), in the manner specified in this Section 3.1

**Section 3.1(a) Conditions Precedent.** Notwithstanding any term or provision of this Agreement, or any other agreement, contract, understanding, document or instrument executed by either of the Parties pursuant to and in accordance with the terms and provisions hereof, the Tribe's obligation to make the Non-Recurring Payment is expressly and explicitly conditioned upon the satisfaction of each and every one of the following conditions;

- (i) the Secretary has accepted title to the Property in trust for the benefit of the Tribe; and
- (ii) the Parties have executed and entered into the CLEA and the FPERA, and all other agreements, documents, protocols and instruments specifically provided for herein or therein; and
- (iii) (a) the Secretary and/or the Chairman of the NIGC, as appropriate, have each either (i) approved this Agreement and all other agreements, documents, protocols and instruments necessary to consummate the transactions contemplated hereunder or thereunder, or (ii) has determined, in writing, that no such approval is required for such documents to constitute valid, binding obligations of the Parties enforceable pursuant to and in accordance with the terms and provisions of such documents, and (b) legal counsel for the Tribe has delivered to the City a legal opinion substantially in the form of the opinion set forth in Exhibit B to this Agreement; and
- (iv) The Tribe has commenced construction of the foundation structures for the main building of the Project.

**Section 3.1(b) Fire Improvement Payment.** A portion of the Non-Recurring Payment, in the aggregate amount of Seven Million, One Hundred Thousand Dollars (\$7,100,000) shall be paid to or on behalf of the City as follows:

- (i) Five Hundred Thousand Dollars (\$500,000) shall be paid to the City, in installments, for the acquisition of an engine truck, with the amount and date of each such installment to coincide with the dates and amounts of the City's contractual obligations for the acquisition of such engine truck;
- (ii) Nine Hundred Thousand Dollars (\$900,000) shall be paid to the City, in installments, for the acquisition on an aerial ladder truck, with the amount and date of each such installment to coincide with

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the dates and amounts of the City's contractual obligations for the acquisition of such engine truck;

- (iii) Five Million, Seven Hundred Thousand Dollars (\$5,700,000) shall be deposited in such bank account controlled by the City as the City shall designate immediately prior to the City executing and entering into a contract for any Fire Protection Improvements provided, however, that in the event that the City, after consultation with the Tribe regarding the Tribe's construction schedules and timelines, reasonably determines that it must incur architectural, design or engineering fees or expenses prior to soliciting bids for Fire Protection Improvements to be completed and operational by the Commencement Date, the Tribe, upon receipt of a request for funds from the City for the payment of such fees or expenses, shall advance such funds to the City and such advances shall be credited against the amount the Tribe is obligated to pay the City pursuant to this subsection. If Fire Protection Improvements are done in stages, the deposit shall be made in portions reflecting the cost of each stage and otherwise in accordance with the foregoing provisions, up to an aggregate of Five Million, Seven Hundred Thousand Dollars (\$5,700,000).

**Section 3.1(c) Remaining Payment.** The remainder of the Non-Recurring Payment (One Million, One Hundred Thirty-four Thousand, Five Hundred Dollars (\$1,134,500)) shall be made in installments as and when the City first incurs the obligation to pay for improvements, equipment or services called for by the CLEA, the FPERA or the City's Public Works Department to purchase the equipment or provide the service agreed to as part of this Agreement until the remainder of the Non-Recurring Payment has been exhausted.

**Section 3.2 Recurring Contributions.** In order to mitigate potential impacts of the Project on the City, by providing for the City's provision of the services the City has assumed and agreed to provide pursuant to and in accordance with the terms and provisions hereof the Tribe shall, as a government funding mechanism and as payment for such services, make annual recurring contributions ("Recurring Payments") to the City or its designee as set forth in this Section 3.2.

**Section 3.2(a) Conditions Precedent.** Notwithstanding any term or provision of this Agreement, or any other agreement, contract, understanding, document or instrument executed by either of the Parties pursuant to and in accordance with the terms and provisions hereof, the Tribe's obligation to make the contributions provided for in this Section 3.2 are expressly and explicitly conditioned upon the satisfaction of each and every one of the following conditions;

- (i) the Secretary has accepted title to the Property in trust for the benefit of the Tribe; and



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- (ii) the Parties have executed and entered into the CIEA and the FPERA, and all other agreements, documents, protocols and instruments specifically provided for herein or therein; and
- (iii) the Secretary and/or the Chairman of the NIGC, as appropriate has
  - (a) either (i) approved this Agreement and all other agreements, documents, protocols and instruments necessary to consummate the transactions contemplated under this Agreement, or (ii) has determined, in writing, that no such approval is required for such documents to constitute valid, binding obligations of the Parties enforceable pursuant to and in accordance with the terms and provisions of such documents; and (b) legal counsel for the Tribe has opined that upon the Effective Date, this Agreement shall constitute a valid, binding obligation of the Tribe enforceable in accordance with its terms, in a form acceptable to the City; and
- (iv) the Gaming Facility is open for the conduct of gaming by the general public pursuant to and in accordance with the IGRA (the "Commencement Date").

**Section 3.2(b) General Community Benefits Contribution.** In consideration of, and to mitigate the potential impacts of the Project on the City, the Tribe, subject to the satisfaction of the conditions set forth in Section 3.2(a) of this Agreement, and subject further to Section 8.4 of this Agreement, shall make a Recurring Payment to the City as follows:

- (i) During each of the two (2) years starting on the Commencement Date the Tribe shall make a Recurring Payment to the City in the amount of Six Million Dollars (\$6,000,000);
- (ii) During each of following two (2) years, the Tribe shall make a Recurring Payment to the City in the amount of Eight Million Dollars (\$8,000,000);
- (iii) During each of following two (2) years, the Tribe shall make a Recurring Payment to the City in the amount of Nine Million Dollars (\$9,000,000); and
- (iv) Thereafter, annually for the duration of the Term of this Agreement, the Tribe shall make a Recurring Payment to the City in an amount equal to the Recurring Payment for the prior year adjusted by an amount equal to the percentage change in the U.S. Department of Labor's Consumer Price Index for All Urban Consumers, U.S. City average for all items ("CPI-U") between the beginning of such prior year and the beginning of the year for which the payment is made.

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**Section 3.2(c) Annual Services Contribution.** In consideration of, and to mitigate the potential impacts of the Project on the City and the costs to the City of providing services to or necessitated by, the Project, the Tribe, subject to the satisfaction of the conditions set forth in Section 3.2(a) of this Agreement, and subject further to Section 8.4 of this Agreement, shall make annual payments ("Annual Services Contributions") to the City as follows:

- (i) During the first year starting on the Commencement Date, the Tribe shall make an Annual Services Contribution to the City in the amount of Seven Million Four Hundred Fifty-Nine Thousand Seven Hundred Dollars (\$7,459,700);
- (ii) Thereafter, each year for the duration of the Term of this Agreement, the Tribe shall make an Annual Services Contribution to the City in an amount equal to the Annual Services Contribution for the prior year adjusted by an amount equal to the percentage change in the U.S. Department of Labor's Consumer Price Index for All Urban Consumers, U.S. City average for all items ("CPI-U") between the beginning of such prior year and the beginning of the year for which the payment is made.

**Section 3.2(d) Payment Date.** Each Recurring Payment and each Annual Services Contribution shall be made in twelve (12) equal monthly installments, and shall be paid in a manner as the City shall reasonably request, with the first such installment payment due on the first day following the month in which the Commencement Date occurs. Thereafter, such payments and contributions shall be made on the first day of each month following the month for which such contribution was due.

**Section 3.2(e) No other Contributions.** With the exception of any payments which the Tribe may make pursuant to and in accordance with Section 2.7 of this Agreement, the Parties expressly warrant and represent to each other that the contributions the Tribe makes to the City pursuant to Section 3.2 of this Agreement are intended and shall be construed as the sole and exclusive payments and contributions which the Tribe shall make to the City in consideration for the City providing the services specified in Article II of this Agreement. The City expressly acknowledges and agrees that no other payments or any nature (other than any monetary damages which the City is determined to be entitled to recover in accordance with Article X of this Agreement) shall be due or payable from the Tribe, or any instrumentality thereof in connection with the City's performance of the obligations the City has assumed and agreed to perform hereunder, and that the Tribe shall not be required make any payments, reimbursements, contributions, or investment to, through or on behalf of the City for any taxes, fees, charges, cost reimbursements, service fees or other assessments, or pay the City any other contributions or payments in mitigation of any economic or other impacts of the Project or any other developments on the Property. Further, the City warrants and represents that, in the absence of a written agreement of the Parties to the contrary, the City shall be

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responsible for distribution to various City Departments or agencies of contributions the Tribe makes pursuant to this Section 3.2.

#### ARTICLE IV DEVELOPMENT AND CONSTRUCTION OF IMPROVEMENTS

**Section 4.1 (a) Concept Design.** The Tribe warrants and represents to the City that the Gaming Facility shall be designed, developed, constructed and maintained to reflect the cultural and historic background of the Tribe and the style and heritage of the City and the surrounding community. No later than one hundred eighty (180) days prior to the anticipated start of construction of the Project, the Tribe will provide the City with a general description of the concept design for the Gaming Facility including the proposed signage, which shall address all of the elements of, and shall fall within the permissible limits of, the Development Envelope (the "Concept Design"). The City, as soon as reasonably possible pursuant to and in accordance with applicable provisions of State and City law, shall conduct a public meeting to solicit public input and commentary on the Concept Design. No later than thirty (30) days after such public meeting, the City shall provide the Tribe with comments on the Concept Design. Within sixty (60) days after receipt of such comments the Tribe shall provide the City with a revised Concept Design incorporating such comments to the extent the Tribe in its sole discretion deems appropriate. As soon as reasonably possible thereafter, the City, pursuant to and in accordance with applicable provisions of State and City law, shall conduct a second public meeting to solicit public input and commentary on the revised Concept Design. No later than thirty (30) days after such public meeting, the City shall provide the Tribe with comments on the revised Concept Design. The Tribe shall have sole and exclusive authority with respect to the Concept Design, and nothing contained in this Section is intended or shall be interpreted as granting the State, City or any other political subdivision of the State any approval authority over the Concept Design, provided, however, that the Tribe shall provide the City with the final Concept Design approved by the Tribal Council.

**Section 4.1 (b) Development Envelope Modification** The Tribe agrees that it will develop and use the Property within the scope of the Development Envelope. In the event that the Tribe determines that it desires to modify the Development Envelope in any manner, the Tribe will notify the City in writing of the proposed modifications. The City agrees to review such modifications and determine whether or not to consent to such modifications within six (6) months of the date of such notification. During such review, the City staff shall meet and confer with the Tribe as to those elements of the proposed modification which the City may deem objectionable and shall provide the Tribe with any staff report on, or written evaluation of, the proposed modification. Failure to consent within such 6 month period shall be deemed to be a rejection of the modifications by the City. The Tribe acknowledges that the scope of the Development Envelope was a material consideration to induce the City to enter into this Agreement and to assume the obligations the City has agreed to assume and perform hereunder, and the Tribe expressly

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acknowledges that if the City rejects proposed modifications to the Development Envelope, any action by the Tribe to use or develop the Property which would be inconsistent with the Development Envelope shall constitute an Event of Default hereunder, and the City, subject to the terms and provisions of Section 9.3 hereof, may exercise any and all remedies available to the City hereunder.

**Section 4.2 Building Standards and Enforcement.** The Tribe warrants and represents to the City that the Tribe shall enact a Tribal Ordinance, pursuant to and in accordance with the Constitution of the Scotts Valley Band of Pomo Indians, adopting as tribal law building standards substantially equivalent to those set forth in the California Building Code 2001, as amended or supplemented by applicable City law as of the date construction of the project commences (the "Building Code"). Prior to any use or occupancy of any improvements constructed on the Property, the Tribe, for each such improvement, shall provide and deliver to the City "as built" plans and a certificate issued by a member of the International Conference of Building Officials attesting that the subject improvement complies with the Building Code. Nothing contained in this Section is intended or shall be construed as the Tribe granting or consenting to any jurisdiction of the State or any political subdivision or local government thereof over the Property or the design, development or construction of any improvements on the Property.

**Section 4.3 Soil Erosion Control.** The Tribe warrants and represents to the City that the Tribe will, prior to the commencement of construction of the Project, enact a Tribal Ordinance, pursuant to and in accordance with the Constitution of the Scotts Valley Band of Pomo Indians, adopting the grading and soil erosion control ordinances identical with the grading and soil erosion control standards of the City in force at the time construction of the Project commences.

**Section 4.4 Signs and Lighting.** The Tribe warrants and represents to the City that the Tribe will, prior to the commencement of construction of the Project, enact a Tribal Ordinance, pursuant to and in accordance with the Constitution of the Scotts Valley Band of Pomo Indians, adopting rules, regulations and restrictions relating to signage identical to those contained in City's Sign Ordinance in force at the time of the execution of this Agreement, provided, however, that such Tribal Ordinance shall allow scrolling lighted marquee signs meeting any applicable size and location standards set forth in the City Sign Ordinance. To the extent practical, as reasonably determined by the Tribe, the Tribe agrees to use downcast lighting for permanently installed lighting equipment.

**Section 4.5 Other Construction Matters.** In the construction of the Project, the Tribe shall assure that: (i) Where fill will be used, ground settlement shall be monitored by a California licensed geotechnical engineer to verify that settlement has stopped; (ii) Floor slabs that span pile caps and/or grade beams shall be used where settlement may occur; (iii) Construction activities shall be limited to the hours of 7:00 am to 7:00 pm on weekdays and to 8:30 am to 6:00 pm on weekends and holidays; (iv) Soil

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conservation practices shall be completed during the fall to reduce erosion during winter rains and spring runoff; and (v) Excavations will be sloped or shored to minimize ground movement and provide worker safety, which may require slopes of 2:1 (horizontal to vertical) or flatter due to the saturated and weak condition of the near surface soils. The Tribe will assure that, through the use of planting areas, detention basins, permeable surfaces or other measures, water run-off from the Project will not exceed pre-Project levels.

**Section 4.6 Compliance with CalOSHA** In the construction and operation of the Project and the Gaming Facility the Tribe will comply with the requirements of the California Occupational Safety and Health Administration.

**Section 4.7 Final Geotechnical Report.** The Tribe shall implement the recommendations of the preliminary geotechnical report (Blackburn Consulting, February 2004) and addendum to preliminary geotechnical report (Blackburn Consulting, October 2004). The Tribe shall cause a final, project specific, geotechnical report to be prepared by Blackburn Consulting or another qualified firm selected by the Tribe. Such report shall include:

- Further subsurface investigation and laboratory evaluation of soil characteristics as needed to support the final design
- Estimates of potential settlement for surface and pile supported structures and fill areas
- Evaluation of shallow soil conditions for placement of fill and over excavation requirements
- Verification of soil profile for site classifications
- Recommendation for preferred foundation types
- Corrosive characteristics of the soil and groundwater
- Drainage requirements if necessary
- Grading recommendations
- Pavement structural section design
- Additional subsurface investigation and pile load tests to evaluate the actual soil capacity and required pile length
- Verification that settlement has stopped where fill is used
- An analysis of soil and groundwater corrosion
- Determination:
  1. of the amount of preloading, timing of preloading, amount of vertical drainage required and magnitude of shallow foundation loading;
  2. of the appropriate fill construction design;
  3. of the necessity of long-term dewatering for some structures or pavement and short-term dewatering for construction of some improvements. Settlement induced by dewatering shall be considered in design;
  4. of the final required slopes at this site due to the saturated and weak condition of the near surface soils; and

5. of the possibility of reducing pavement sections with cement or lime treatment of the sub-grade and whether the pavement with heavy truck loads requires drainage (under-drains and sumps) or an elevated section to reduce the potential for premature pavement failure.

## ARTICLE V MAINTENANCE AND OPERATION OF THE PROJECT

**Section 5.1 Maintenance and Operation.** The Tribe warrants and represents to the City that the Tribe shall operate the Gaming Facility, and maintain all improvements constructed on the Property in compliance with the terms and provisions of the Compact and applicable Federal law, including, without limitation, the IGRA, and the regulations promulgated thereunder. The Tribe shall operate and maintain the Property so as not to create any condition that would constitute a nuisance under the City of Richmond Municipal Code.

### Section 5.2 Project Work Force

**Section 5.2(a) Construction.** The Tribe warrants and represents to the City that the Tribe will utilize Union labor during the physical construction or expansion of all improvements on the Property.

**Section 5.2(b) Equal Opportunity, First Source and Living Wage.** The Tribe agrees that, except as provided below, during the operation of the Project there shall be no discrimination on the basis of race, color, creed, religion, sex, sexual orientation, marital status, ancestry or national origin in the hiring, firing, promoting or demoting of any person engaged in the operation of the Project.

Prior to the Commencement Date, the Tribe shall enter into a First Source Agreement with the City which shall provide that, as soon as practicable, individuals qualified for employment and meeting one or more of the following descriptions: (i) Tribal Members and other Native Americans residing in proximity to the Gaming Facility, (ii) individuals participating in and qualified under the City's First Source Program, (iii) other individuals residing in Richmond, and (iv) individuals residing in the unincorporated area of North Richmond, Priority shall be given to such individuals in the order stated above. The number of persons employed at the gaming facility falling into one of the foregoing categories shall be at least forty percent (40%) of the number of Gaming Facility non-licensed employees. Non-licensed employees shall mean those employees at the Gaming Facility who are not required to undergo background checks or to be licensed under the terms of the Tribal Gaming Ordinance, any rules of the Tribal Gaming Commission or any applicable Compact or federal law. To facilitate the hiring objectives of the First Source Agreement, the Tribe shall offer training programs to assist City residents, Tribal members, and other Native Americans to become qualified for positions at the Gaming Facility to the extent permitted by applicable law. The First

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Source Agreement shall have such other commercially reasonable provisions as the parties may agree upon to facilitate and implement the Program and its purposes. The First Source Agreement shall establish reasonable measures intended to expand the Tribe's training and recruiting programs to remedy any shortfall in meeting the forty percent (40%) standard. Any disagreement regarding whether the Tribe has made all reasonable recruiting and training efforts reasonably calculated to meet the 40% standard shall be referred to a third party experienced in the implementation of municipal hiring policies and goals for recommendations pursuant to Section 10.2. The First Source Agreement shall provide that a willful, uncured breach by the Tribe shall be an Event of Default under this Agreement.

To the extent permitted by the Compact or applicable federal law, and subject to the provisions of any applicable collective bargaining agreement, The Tribe will enact a Tribal Ordinance providing for total compensation, including without limitation benefit levels, for non-licensed employees which are no less favorable to such employees than those established under the City's Living Wage Ordinance.

**Section 5.2(c) Worker's Compensation.** The Tribe warrants and represents to the City that the Tribe will comply with all Federal and State laws relating to worker's compensation insurance in the operation and maintenance of the Gaming Facility to the same extent as other similarly situated commercial enterprises.

**Section 5.2(d) Insurance.** The Tribe warrants and represents that prior to the commencement of construction of any improvements on the Property, the Tribe shall purchase and have in full force and effect at all times during the term of this Agreement an insurance policy with an insurance company having an A.M. Best A, VII rating or better, having general liability limits no less than Ten Million Dollars (\$10,000,000) per occurrence and Thirty Million Dollars (\$30,000,000) in aggregate. All insurance policies covering the Property or any improvements constructed thereon, including, without limitation, the Gaming Facility, shall name the City as additional insureds. All such insurance policies shall contain endorsements that the insurance company will only plead the defense or affirmative defense of sovereign immunity with respect to any potential liability in excess of the limits of the insurance coverage available and/or to the extent that there is no insurance coverage under the policy when defending any state or federal civil court proceeding on its own behalf, or on behalf of the Tribe or any named insureds against any claim for personal injury, wrongful death or property damage. True and correct copies of all applicable insurance policies, and any renewals, endorsements, amendments and replacements shall be supplied upon issuance to the City directly by the insurance company in certified form.

**Section 5.2(e) Indemnification.** The Tribe agrees to indemnify, hold harmless and defend the City, its agents, representatives, and employees, against all losses, claims, damages, penalties, judgments, liabilities and expenses (including, without limitation, all expenses of litigation or preparation therefor whether or not the City is a party thereto) which the City may pay or incur arising out of or relating to this Agreement or the transactions contemplated hereby resulting from a third-party claim, except to the

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extent determined in a final non-appealable judgment by a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of the City. The obligations of Tribe under this Section shall survive the termination of this Agreement.

**Section 5.2(f) Food and Beverage Handling.** The Tribe warrants and represents to the City that the Tribe will comply with State laws and regulations regarding the handling of food and beverages, including alcoholic beverages.

**Section 5.2(g) Recycling Practices.** The Tribe shall adopt and implement recycling and green matter disposal practices in conformity with programs established by the City applying generally to commercial enterprises within the City.

**Section 5.2(h) Labor Relations.** The Tribe shall adopt and implement labor relations policies affording Gaming Facility employees rights to organize, to bargain collectively, and to pursue grievance procedures substantially similar to those afforded to similarly situated employees under the National Labor Relations Act.

## ARTICLE VI CITY ENDORSEMENT

**Section 6.1(a) Scotts Valley Project.** "The City of Richmond: (i) requests that the Secretary accept title to the Property in trust for the benefit of the Tribe for gaming purposes within the meaning of 25 U.S.C. § 2719(b)(1)(B)(i), (ii) requests that the California Congressional Delegation openly and publicly support and facilitate the United States acquisition of title to the Property in trust for the benefit of the Tribe for gaming purposes within the meaning of 25 U.S.C. § 2719(b)(1)(B)(i), (iii) requests that the members of the California State Legislature representing the constituents of the City and the County openly and publicly support and facilitate the United States acquisition of title to the Property in trust for the benefit of the Tribe for gaming purposes within the meaning of 25 U.S.C. § 2719(b)(1)(B)(i), and (iv) requests that the Governor of California openly and publicly support and facilitate the United States acquisition of title to the Property in trust for the benefit of the Tribe for gaming purposes within the meaning of 25 U.S.C. § 2719(b)(1)(B)(i), and negotiate a Compact with the Tribe upon substantially the same terms and provisions as Compacts the State has entered into with other federally-recognized tribes within the State of California."

**Section 6.1(b) Guidiville Band of Pomo Indians.** The Tribe acknowledges that the Guidiville Band of Pomo Indians (the "Guidiville Band") has, or will petition the United States to accept title to real property located within the territorial boundaries of the City (the "Pt. Molate Property") in trust for the benefit of the Tribe for gaming purposes. The Tribe warrants and represents to the City that the Tribe shall take no action which the Tribe knowingly believes will prevent the United States from accepting title to the Pt. Molate Property in trust for the benefit of the Guidiville Band. Further, the Tribe warrants and represents to the City that the Tribe will take such action as the City



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shall request in support of the Guidiville Band's project, provided, however, the Tribe shall have no obligation whatsoever to take any action which the Tribe believes, in its sole and absolute discretion, may in any way jeopardize the Tribe's acquisition of the Property in trust for gaming under the IGRA or the Tribe's expected benefit from the operation of the Gaming Facility. This provision is exclusively for the benefit of the City and it may not be enforced by any party other than the City.

## ARTICLE VII CALIFORNIA ENVIRONMENTAL REVIEW

### Section 7.1 California Environmental Quality Act.

The Parties understand, acknowledge and agree that for purposes of the California Environmental Quality Act ("CEQA"):

1. The United States acquiring title to the Property in trust for the benefit of the Tribe, the Tribe's development, construction, operation and maintenance of the Project, including, without limitation, the Gaming Facility, the execution of this Agreement and any other agreements, documents, contracts or instruments executed and entered into by the Parties, or any instrumentality thereof, pursuant to this Agreement, and the Parties performance of the obligations such Party has assumed and agreed to perform hereunder or thereunder are not activities that, within the meaning of CEQA, (a) are directly undertaken by the City or the surrounding communities, (b) are supported, in whole or in part, through contracts, grants, subsidies, loans or other forms of assistance from the City or the surrounding communities, or (c) involve the issuance of a lease, permit, license, certificate or other entitlement for use by the City or the surrounding communities;
2. By approving, executing, delivering, performing and consummating the transactions contemplated by this Agreement, the City has not, and is not making any commitment in the future to, (a) issue any lease, permit, license, certificate or entitlement for use, (b) develop, construct or improve any facilities or cause any other physical changes to the environment, or (c) approve, shape, deliberate on or otherwise exercise judgment over the determination by the Secretary to accept title to the Property in trust for the benefit of the Tribe for gaming, or any aspect of the Tribe's development, construction, operation or maintenance of the Project;
3. The United States acquiring title to the Property in trust for the benefit of the Tribe, the Tribe's development, construction, operation and maintenance of the Project, including, without limitation, the Gaming Facility, the execution of this Agreement and any other agreements, documents, contracts or instruments executed and entered into by the Parties, or any instrumentality thereof, pursuant to this Agreement, and the Parties performance of the obligations such Party has assumed and agreed to

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perform hereunder or thereunder are not "projects" (as such term is defined in CEQA) of the City;

4. This Agreement should be construed to be a government payment and funding mechanism which does not commit the City to make any specific physical changes in the environment;

5. The City does not, in any event, have sufficient information as of the date of this Agreement to make any commitment to the Tribe to make any physical changes in the environment; and

6. If and to the extent the City hereafter determines that it is required to comply with CEQA with respect to any activities undertaken to fulfill its obligations under this Agreement, the City shall comply with CEQA at such time.

**Section 7.2 Additional Environmental Quality Issues.** The Tribe warrants and represents to the City that as of the date of execution, based on the Administrative Draft of the Environmental Impact Statement, the Tribe has not identified on the Property any of the following: (i) land subject to a Williamson Act (California Gov. Code § 51200 *et seq.*) contract or a conservation easement; (ii) unique, rare or threatened plant species or plant communities; (iii) prehistoric, paleontological, archeological, historic or cultural resources; (iv) mineral resources; (v) human remains, (vi) hazardous materials other than those identified to be mitigated in the ADFIS, or (vii) active fault lines or areas with active fault movement.

#### ARTICLE VIIA REPRESENTATIONS & WARRANTIES OF TRIBE

The Tribe represents and warrants to the City that:

**Section 7A.1 Existence and Standing.** The Tribe is a federally recognized Indian tribe, as determined by its inclusion in a list of such federally recognized Indian tribes promulgated by the Assistant Secretary Indian Affairs, [See Federal Register, Volume 65 Number 49 at 13300 (March 13, 2000)] The Tribe is a non-taxable entity for purposes of federal income taxation under the Code.

**Section 7A.2 Authority and Compliance with Other Documents.** The execution, delivery and performance by the Tribe of this Agreement have been duly authorized by all necessary action of the Tribe and do not:

(a) except for any consent or approval required from the BIA or NIGC, require any consent or approval not yet obtained (including, but not limited to, the consent of any enrolled Tribal member, any Tribal Council member, any General Council member, other tribal entity, security holder or creditor);

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(b) violate or conflict with any law or other governing documents of the Tribe or any custom or tradition of the Tribe;

(c) to the best of the Tribe's knowledge, violate any laws applicable to the Tribe;

(d) result in a breach of or default under, or would, with the giving of notice or the lapse of time or both, constitute a breach of or default under, or cause or permit the acceleration of any obligation owed under any agreement or other contractual obligations to which the Tribe is a party or by which the Tribe or any of its property is bound or affected, the result of which would have a material adverse effect on the business or operations of the Gaming Facility or the performance of the obligations in this agreement of the Tribe; or

(e) except for any consent or approval required from the BIA or NIGC, require any notice to or consent or approval of any governmental authority agency not already obtained.

**Section 7A.3 Litigation and Contingent Obligations.** Except as has been previously disclosed in writing to the City, there is no litigation, arbitration, governmental investigation, proceeding or inquiry pending or, to the knowledge of any of their officers or Tribal Council members, threatened against or affecting the Tribe which could have a material adverse effect on the Tribe's ability to perform its obligations under this Agreement. Other than any liability incidental to any litigation, arbitration or proceeding which has been previously disclosed in writing to the City, the Tribe has no material contingent obligations not provided for or disclosed in writing to the City.

**Section 7A.4 Accuracy of Information.** To the best of the Tribe's knowledge, no information furnished by the Tribe to the City or its attorneys, agents or representatives in connection with the negotiation of, or compliance with, this Agreement contained any material misstatement of fact or omitted to state a material fact or any fact necessary to make the statements contained therein not misleading.

**Section 7A.5 Licensure Requirements.** The Tribe has granted, or will grant, to the City, or exempt the City from, all licensing required under the applicable Tribal law.

**Section 7A.6 No Contrary Tribal Law.** The Tribe's execution, delivery and performance of this Agreement shall be approved by resolutions of the Tribe's General Council and Tribal Council, which shall provide that during the term of this Agreement the Tribe shall enact no law impairing the obligations of the Tribe and the rights of the City under this Agreement. Neither the Tribal Council nor any committee, agency, board or other official body, and no officer or official of the Tribe shall, by exercise of the police power or otherwise, act to modify, amend, or in any manner impair the obligations of the Tribe or the rights of the City under this Agreement. Any such action or attempted action shall constitute an Event of Default hereunder. However, nothing in this Section shall prevent the Tribe

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from enforcing any of its Tribal codes for the purposes of reasonably protecting public health and safety or the integrity of the gaming operations.

**Section 7A.7 No Usury Laws.** No laws of the Tribe, including usury or other laws, directly or indirectly limit or otherwise adversely affect the City's ability to timely collect all amounts due under this Agreement.

## ARTICLE VIII. REPRESENTATIONS & WARRANTIES OF CITY

The City represents and warrants to the Tribe that:

**Section 7B.1 Authority and Compliance with Other Documents.** The execution, delivery and performance by the City of this Agreement has been duly authorized by all necessary action of the City and does not:

- (a) require any consent or approval not yet obtained (including, but not limited to, the consent of any official of the City, the State, or any political subdivision thereof, or any other entity, security holder or creditor);
- (b) violate or conflict with any law or other governing documents of the City or State, or any political subdivision thereof;
- (c) violate any laws applicable to the City;
- (d) result in a breach of or default under, or would, with the giving of notice or the lapse of time or both, constitute a breach of or default under, or cause or permit the acceleration of any obligation owed under any agreement or other contractual obligations to which the City is a party or by which the City or any of its property is bound or affected; or
- (e) require any notice to or consent or approval of any governmental authority agency not already obtained.

**Section 7B.2 Binding Obligations.** This Agreement has been duly executed and delivered by the City and constitutes a legal, valid and binding obligation of the City.

**Section 7B.3 Ability to Provide Services.** The City has the ability to provide the services described in this Agreement assuming the Tribe makes the payment provided hereunder.

**Section 7B.4 Litigation and Contingent Obligations.** Except as has been previously disclosed in writing to the Tribe, there is no litigation, arbitration, governmental investigation, proceeding or inquiry pending or, to the knowledge of any of their officers or elected officials of the City, threatened against or affecting the City which could have a material adverse effect on the City's ability to perform its obligations

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under this Agreement. Other than any liability incidental to any litigation, arbitration or proceeding which has been previously disclosed in writing to the Tribe, the City has no material contingent obligations related to this Agreement not provided for or disclosed in writing to the Tribe.

**Section 7B.5 Accuracy of Information.** To the best of the City's knowledge, no information furnished by the City to the Tribe or its attorneys, agents or representatives in connection with the negotiation of, or compliance with, this Agreement contained any material misstatement of fact or omitted to state a material fact or any fact necessary to make the statements contained therein not misleading.

**Section 7A.6 No Contrary City Law.** Neither the City nor any committee, agency, board or other official body, and no officer or official of the City shall, by exercise of the police power or otherwise, act to modify, amend, or in any manner impair the obligations of the City or the rights of the Tribe under this Agreement. Any such action or attempted action shall constitute an Event of Default hereunder.

## ARTICLE VIII TERM

**Section 8.1 Effective Date.** This Agreement shall not become effective unless and until each of the following events has occurred (the "Effective Date"):

1. This Agreement has been approved or ratified by the City Council approved as to form by the City Attorney, and executed and delivered by the City; and
2. This Agreement has been approved or ratified by both the Tribe's Tribal Council and General Council, approved as to form by the Tribe's legal counsel, and executed and delivered by the Tribe; and
3. This Agreement has been approved by the Secretary pursuant to 25 U.S.C. §81(a), or the Parties have received written notice from the Secretary that approval of this Agreement is not required for this Agreement to constitute valid, binding obligations of the Parties enforceable pursuant to the terms and provisions hereof, and legal counsel for the Tribe has delivered to the City a legal opinion substantially in the form of the opinion set forth in Exhibit B to this Agreement.

**Section 8.2 Expiration Date.** Subject to Section 8.3 of this Agreement, this Agreement shall expire on the later of: (i) the twentieth (20th) anniversary of the Effective Date of this Agreement, or (ii) the date of the expiration or termination of the Compact, including any period for which the Compact is extended.

**Section 8.3 Termination Events.** Unless otherwise agreed to by the Parties, this Agreement shall automatically terminate in the event, and on the date, that:

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1. After the date upon which the United States acquires title to the Property in trust for the benefit of the Tribe, the Property (a) is thereafter no longer "Indian Country" within the meaning of Federal law, (b) is removed from trust or restricted status such that the Property is no longer held in trust by the United States for the benefit of the Tribe, or (c) is not eligible for the development or operation of the Project or the Gaming Facility for any reason; or
2. The Tribe advises the City in writing that the Tribe has permanently decided to: (i) withdraw any application requesting that the Secretary accept title to the Property in trust for the benefit of the Tribe, (ii) cease the development, construction, or operation of the Project, including the Gaming Facility; or
3. After the Compact becomes effective, such Compact expires or terminates for any reason or is determined by the Secretary or any court of competent jurisdiction to be unlawful or otherwise ineffective for any reason.

**Section 8.4 Suspension Events.** If, due to Force Majeure (as hereinafter defined), an act of God, or valid business considerations, operations of the Gaming Facility are suspended or terminated, all of the Parties' rights, liabilities and obligations of whatever nature under this Agreement or any other contract, agreement, document or instrument executed by or between the Parties pursuant to this Agreement shall be suspended as of the date of such suspension or termination until such time as such as the Gaming Facility recommences gaming operations open to the general public, and all of the Tribe's payment obligations under this Agreement, including, without limitation, the Tribe's obligations under Article 3 of this Agreement to make any Non-Recurring Payment or Recurring Payment, shall not accrue for the period of such suspension or termination. Notwithstanding the foregoing, during any period of suspension of operations, the Tribe shall make Recurring Payments in the amount of any non-variable direct costs to the City of performing services under this Agreement which cannot be mitigated as reasonably determined by the City. The Tribe acknowledges that layoffs of personnel by the City (as opposed to reassignment and utilization of normal attrition) are not reasonable mitigations. Any suspension of the rights, liabilities or obligations of the Parties pursuant to and in accordance with this Section 8.4 shall toll the Term of this Agreement, and the Term of this Agreement shall be automatically extended by the number of days that the operations of the Gaming Facility are suspended or terminated. For the purposes of this Section, the term "Force Majeure" shall include, without limitation, the following: earthquake; flood; fire; other natural disasters; changes in law, regulation or governmental policy that has a material adverse affect on the Project, riots, war, or terrorism. Nothing in this Section shall reduce the Tribe's liability for any payments due to the City pursuant to Article 3 of this Agreement which become due and payable for any period prior to the date that operations of the Gaming Facility are suspended or terminated.

**Section 8.5 Renegotiation.**

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**Section 8.5(a) Tribe's Renegotiation Events.** At the Tribe's request, the City shall renegotiate one or more of the provisions of this Agreement if there is a change in law or other circumstances which has a significant and adverse financial impact on the Project or the Gaming Facility. Such changes shall include, without limitation:

1. Any change in State or Federal Constitutions, laws, rules or regulations, guidelines or bulletins, or the construction or interpretation thereof, relating to IGRA or gaming on Indian lands, or ending the prohibition on Class III gaming (as defined in IGRA) or the operation of gaming devices by non-Indians in the State; or
2. A reduction in the scope of gaming permitted on the Property, whether pursuant to a change in Federal, State or local constitutions, laws, rules or regulations, the Compact or otherwise; or
3. The Compact, as amended or interpreted from time to time, (a) does not authorize the Tribe to conduct the scope of Class III (as defined in IGRA) gaming activities permitted by other federally-recognized Indian tribes in the State pursuant to Compacts approved by the Secretary as of the Effective Date of this Agreement, or (b) does not authorize the Tribe to operate at least 2,000 Class III Electronic Gaming Devices of the nature permitted by other federally-recognized Indian tribes in the State pursuant to Compacts approved by the Secretary as of the Effective Date of this Agreement.

**Section 8.5 (b) Renegotiation Procedures.** All requests by either Party to renegotiate or amend this Agreement shall be by written notice addressed to the other Party and shall identify the provisions of this Agreement to be negotiated. Upon receipt of such notice, the Parties shall be obligated to renegotiate such provisions in good faith. The Parties shall confer promptly and determine a schedule for commencing negotiations, within fifteen (15) business days of receipt of notice. The Parties are hereby authorized to designate the person or agency responsible for conducting the negotiations, and shall execute any documents necessary to do so. The purpose of the negotiations will be to renegotiate the provisions of this Agreement in good faith so that the Parties will retain substantially the same rights and economic benefits in the aggregate from the Project as contemplated on the Effective Date of this Agreement.

## ARTICLE IX EVENTS OF DEFAULT

**Section 9.1 Events of Default.** Each of the following occurrences shall constitute an Event of Default under this Agreement and each and every contract, agreement, document or instrument executed by or between the Parties pursuant to this Agreement (any such event, an "Event of Default"):

1. Any material representation or warranty made by or on behalf of a Party in this Agreement or in any contract, agreement, document or instrument executed by or between the Parties pursuant to this Agreement or in any report, certificate or other document furnished by or on behalf of the Tribe or the City shall prove to be false or misleading in any material respect when made.
2. Failure of the Tribe to make any payments as the same may become due and payable pursuant to the terms of this Agreement (subject to any applicable cure period), or to pay any amounts owing hereto.
3. A Party defaults in the due observance or performance of any of its obligations, representations, warranties or covenants hereunder or under any contract, agreement, document or instrument executed by or between the Parties pursuant to this Agreement and shall not have commenced and diligently pursued the cure of such default pursuant to Section 9.2 of this Agreement.
4. The existence of an Event of Default under any contract, agreement, document or instrument executed by or between the Parties pursuant to this Agreement.
5. Failure to take any and all reasonable steps necessary to secure any approvals required for this Agreement and contract, agreement, document or instrument executed by or between the Parties pursuant to this Agreement to constitute valid and binding obligations of the Parties enforceable pursuant to the terms and provisions hereof or thereof.

**Section 9.2 Notice and Right to Cure.** Upon the occurrence of an Event of Default, the Party claiming the Event (the "Non-defaulting Party") shall provide the other Party (the "Defaulting Party") with written notice of such Event of Default which shall, among other things, specifically advise the Defaulting Party of the actions the Defaulting Party must take, or refrain from taking, to cure such Event of Default. The Defaulting Party shall have thirty (30) days from and after the date of the written notice to cure such Event of Default (the "Cure Period"). Notwithstanding the foregoing, the Cure Period for the Tribe's failure to make any Recurring Payments due pursuant to and in accordance with the terms and provisions of Section 3.2 shall be three (3) business days from the date of such notice. Amounts due from the Tribe shall bear interest from the date of the Default at a rate equal to the prime rate of interest announced from time to time by *The Wall Street Journal* plus two percent (2%) per annum. If the Tribe is delinquent in such Recurring Payments two (2) times in any twelve (12) month period, the Tribe shall have no right to cure any subsequent delinquency in such Recurring Payments occurring in the twenty-four (24) month period following the second such delinquency. Any Cure Period shall be automatically extended for a reasonable time, in all cases except the Tribe's failure to make any payments due pursuant to and in accordance with the terms and provisions of Section 3.2 of this Agreement when and as such payment is due, if the Defaulting Party commences to cure such Event of Default within the Cure Period but cannot reasonably cure such Event of Default within such period. An Event of Default



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shall be deemed to continue until such Event of Default is cured to the written satisfaction of the Non-defaulting Party, which written instrument shall not be unreasonably withheld.

Upon the cure of an Event of Default to the written satisfaction of the Non-defaulting Party, which written satisfaction shall not be unreasonably withheld this Agreement shall be reinstated as though there had been no Event of Default. Notwithstanding the generality of the foregoing, upon the reinstatement of this Agreement resulting from Tribe's cure of an Event of Default, the term of this Agreement shall be extended by the number of days elapsed between the date the Event of Default occurred through the date the Event of Default was cured, as evidenced by City's written satisfaction, and the period so elapsed shall be considered to have tolled, rather than extended, the Term of this Agreement.

**Section 9.3 Rights and Remedies.** Upon the occurrence of an Event of Default which remains uncured under the terms of Section 9.2 hereof, the Non-Defaulting Party may, without notice or demand to the Defaulting Party, may (i) terminate this Agreement and any contract, agreement, document or instrument executed by or between the Parties pursuant to this Agreement and all of rights of the Defaulting Party hereunder or thereunder, the other Transaction Documents to which it is a Party, and Tribe's rights hereunder and thereunder, and (ii) pursue the Dispute Resolution procedures, including the right to seek monetary damages, contained in and pursuant to Article X of this Agreement.

**Section 9.4 Cumulative Remedies.** The remedies provided for in this Section 9.4 shall be cumulative to the extent permitted by applicable law, and may be exercised partially, concurrently or separately. The exercise of one or more remedies shall not be deemed to preclude the exercise of any other remedies.

## ARTICLE X DISPUTE RESOLUTION WAIVER OF SOVEREIGN IMMUNITY

**Section 10.1 Meet and Confer Process.** If the City or Tribe believes that the other has engaged in conduct, or has failed to take any action which constitutes, or with the passage of time may constitute an Event of Default under this Agreement, such Party (the "Complaining Party") may provide the other Party with a written notice, specifically identifying the action or the failure to act complained of, and requesting that the Parties meet and confer in good faith for the purpose of attempting to reach a mutually satisfactory resolution of the matter or matters specified in the written notice within fifteen (15) business days of the date of service of the written notice. This provision shall not apply in the case of the Tribe's failure to make any Recurring Payments due pursuant to and in accordance with the terms and provisions of Section 3.2.

**Section 10.2 Binding Arbitration.** Subject to the limitations, conditions and restrictions of Section 10.3, at the option of either party, claims or disputes arising under

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this Agreement may be resolved in Oakland, California by binding arbitration by a single neutral arbitrator in accordance with the Voluntary Commercial Arbitration Rules of the American Arbitration Association ("AAA") or any other rules mutually agreed upon by the parties. Both parties, in waiving immunity from suit or arbitration, recognized and agree that submitting to the rules of the AAA is deemed to be a consent that judgment upon any arbitration award may be entered in any court described in Section 11.4. No person shall be eligible to serve as an arbitrator if the person is related to, affiliated with, or has represented in a legal capacity either party to this Agreement. The parties hereto further agree that, notwithstanding the rules of the AAA or any other matter, the arbitration must comply with the requirements of Section 10.3 and the arbitrator may not award interim or permanent injunctive relief or any other relief or remedy not expressly permitted by Section 10.3. Any controversy concerning whether an issue is arbitrable shall be determined by the arbitrator. A decision of the arbitrator shall be final, legally binding and enforceable, but only to the extent expressly permitted by Section 10.3. Any action taken by an arbitrator in violation of this Section 10.2 or Section 10.3 shall be deemed conclusively to be outside the power and authority of the Arbitrator.

### **Section 10.3 Limited Waiver of Sovereign Immunity.**

**Section 10.3(a) Retention of Sovereign Immunity.** Except as expressly provided for in this Section 10.3, the Tribe, by entering into this Agreement and any contract, agreement, document or instrument executed by or between the Parties pursuant to this Agreement, and performing the obligations the Tribe has assumed and agreed to perform hereunder and thereunder, does not waive, limit or modify its sovereign immunity from arbitration, unconsented suit or judicial action. Further, nothing contained in this Agreement or in any contract, agreement, document or instrument executed by or between the Parties pursuant to this Agreement, or the Tribe's performance of the obligations the Tribe has assumed and agreed to perform hereunder and thereunder is intended or shall be construed as a waiver of the Tribe's sovereign immunity in any action commenced against the City by any third party resulting from or arising out of the City's performance of the obligations it has assumed and agreed to perform hereunder or under any contract, agreement, document or instrument executed by or between the Parties pursuant to this Agreement.

**Section 10.3(b) Scope of Waiver.** Subject to the provisions of Section 10.1 and this Section 10.3, the Tribe hereby expressly grants a limited waiver of its sovereign immunity from unconsented suit, waives the jurisdiction of any courts of the Tribe and consents to arbitration and suit in accordance with and pursuant to the terms and provisions of this Section 10.3.

**Section 10.3(c) Procedural Requirements.** The Tribe's waiver of its sovereign immunity as to arbitration and unconsented suit is effective if, and only if, each and every one of the following conditions is met:

A. The claim is made by the City, and not by instrumentality or agency thereof, or any other Person, corporation, partnership or entity, whatsoever,

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regardless of the capacity in which such other Person, corporation, partnership or entity purports to commence arbitration or suit against the Tribe, any agency or instrumentality thereof or the Gaming Facility; and

B. The claim alleges a breach by the Tribe of one or more specific obligations or duties the Tribe assumed pursuant to the terms and provisions of this Agreement or and any contract, agreement, document or instrument executed by or between the Parties pursuant to this Agreement; and

C. The claim seeks money damages for noncompliance with the terms and provisions of this Agreement or any contract, agreement, document or instrument executed by or between the Parties pursuant to this Agreement, provided, however, that the property, assets or funds specifically pledged and assigned to satisfy any judgment the City secures against the Tribe under this Agreement shall be limited to the Net Revenue of the Tribe specifically identified in Section 10.3(g)(1) of this Agreement, and provided further that notwithstanding any term or provision of this Agreement and any contract, agreement, document or instrument executed by or between the Parties pursuant to this Agreement, in no event shall injunctive or other equitable relief ever be available against the Tribe except as provided in Section 10.3(g).

**Section 10.3(d) Time Period.** The waiver granted herein shall commence on the Execution Date and shall continue for the longer one (1) year following the termination of this Agreement pursuant to and in accordance with the terms and provisions hereof, or two (2) years after the claim accrues or is discovered upon the exercise of due diligence, except that the waiver shall remain effective for any proceedings then pending, and all appeals therefrom.

**Section 10.3(e) Governing Law.** The Parties agree that any dispute arising out of or in connection with this Agreement and any contract, agreement, document or instrument executed by or between the Parties pursuant to this Agreement, shall be resolved first pursuant to applicable Federal law; second, pursuant to applicable State law; and third, pursuant to the applicable laws of the Tribe if no State or Federal law applies.

**Section 10.3(f) Service of Process.** In any proceeding brought pursuant to this Agreement, the Tribe consents to service made in accordance with the notice provisions of this Agreement or pursuant to the Federal Rules of Civil Procedure.

**Section 10.3(g) Enforcement.** The Tribe expressly waives sovereign immunity from a judgment or order consistent with the terms and provisions of this Section 10.3 which is final because either the time for appeal thereof has expired or the judgment or an order is issued by a court having final appellate jurisdiction over the matter. The Tribe waives its sovereign immunity in, and consents to the jurisdiction of, to be sued in and to accept and be bound by any order or judgment of the United States District Court for the Northern District of California, and any federal court having appellate jurisdiction thereover, consistent with the terms and provisions of this Section. Notwithstanding any

term or provision of the this Agreement or any contract, agreement, document or instrument executed by or between the Parties pursuant to this Agreement to the contrary, in the event that the United States District Court for the Northern District of California declines to exercise jurisdiction over any case or action arising under or in connection with this Agreement or any contract, agreement, document or instrument executed by or between the Parties pursuant to this Agreement the Tribe expressly consents to the jurisdiction of, and agrees to be bound by any order or judgment of Courts of the State with jurisdiction over Contra Costa County, California, and any Court with appellate jurisdiction thereover, and all of the terms and provisions of Section 10.3 shall apply with full force and effect to actions in such State Courts Without in any way limiting the generality of the foregoing, the Tribe expressly authorizes any Governmental Authorities who have the right and duty under Applicable Law to take any action authorized or ordered by any court, to take such action as entering onto the Property, or to enter into the Gaming Facility for the purpose of enforcing or giving effect to any judicial order or judgment entered against the Tribe or the Gaming Facility pursuant to the terms of this Agreement.

**Section 10.3(g)(1) Assets to Satisfy Enforcement Proceedings.** The assets of the Tribe or the Gaming Facility which shall be available to satisfy any enforcement proceedings or judgment in connection with this Agreement or any contract, agreement, document or instrument executed by or between the Parties pursuant to this Agreement shall be limited to the Net Revenue of the Gaming Facility as defined under the IGRA and the regulations promulgated thereunder.

**Section 10.3(g)(2) Limitation Upon Enforcement.** Damages awarded against the Tribe or the Gaming Facility shall be satisfied solely from assets specified in Section 10.3(g)(1) and Section 12.21 hereof, and shall not constitute a lien upon or be collectible from any other income or assets of the Tribe, except with the written consent of the Tribe.

**Section 10.3(g)(3) Expenses of Judicial Enforcement.** Except as ordered by a court of competent jurisdiction or an arbitrator, the prevailing Party shall recover costs, including, without limitation reasonable attorneys' fees, incurred in connection with any arbitration or judicial proceedings authorized under this Agreement. The Parties expressly agree that this provision shall survive the termination, for any reason, or expiration of this Agreement.

**Section 10.3(h) Tribal Council Resolution.** The Tribe represents to the City that the Tribal Council of the Tribe has adopted a resolution in accordance with the Tribe's Constitution which provides that (i) the Tribal Council has the authority to act on behalf of the Tribe in connection with the execution and delivery of this Agreement, (ii) the Tribal Council delegates authority to the Chairperson of the Tribe to execute and deliver this Agreement on behalf of the Tribe and (iii) the Tribe waives sovereign immunity on a limited basis as set forth in this Agreement.

**Section 10.4 Actions by the Tribe Against the City** Upon the occurrence of an Event of Default hereunder by the City, the Tribe's sole recourse under this Agreement

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shall be a claim for specific performance against the City to provide the services the City has assumed and agreed to perform hereunder pursuant to and in accordance with the terms and provisions hereof, and the Tribe shall not be entitled to withhold, suspend, place into escrow, offset, or reduce payments required by Article 3, and in no event shall the City be liable to the Tribe for money damages as a result of an Event of Default hereunder, and the Tribe hereby waives any and all such claims against the City arising under this Agreement.

## ARTICLE XI CONFIDENTIALITY

**Section 11.1(a) Definition.** "Confidential Information" is defined as any information disclosed, whether orally, in writing, or electronically, to the Tribe or City, or any officer, director, employee, shareholder, affiliate, agent or attorney thereof, by or on behalf of the Tribe or City or any officer, director, employee, shareholder, affiliate, agent or attorney thereof which relates in any way to the Tribe, City, the Gaming Facility the Project or the Property or which is identified by the Disclosing Party at the time of disclosure as "confidential." As used in this Agreement, the term "Disclosing Party" shall be the Party to this Agreement which discloses or causes the disclosure of Confidential Information, and the term "Receiving Party" shall be the Party to this Agreement which receives Confidential Information, provided, however, that the Receiving Party and the Disclosing Party with respect to any Confidential Information may not be the same Party. Confidential Information may include, without limitation: (i) organizational documents of the Tribe or City, or any member or affiliate thereof, (ii) any contracts, instruments, agreements or understandings to which either the Tribe or City is a Party and which relates to the Project, the Gaming Facility or the Property (iii) the Feasibility Study or any other studies or financial projections relating to the Project or the Gaming Facility, regardless of the source of such study or projection. All Parties acknowledge that no Disclosing Party shall be deemed to make any representation or warranty as to the accuracy or completeness of any Confidential Information provided to any Receiving Party or any other Party and nothing herein shall be deemed to obligate any Party to disclose any Confidential Information to any other Party, or to enter into any transaction with any other Party.

**Section 11.1(b) Restrictions.** The Receiving Party shall hold all Confidential Information in strict confidence, shall prevent unauthorized disclosure of the Confidential Information to any third Party, in whole or in part, and shall not use any Confidential Information for any purposes other than pursuing consummation of the transactions contemplated hereunder. The standard of care imposed on the Receiving Party for protecting Confidential Information will be reasonable and prudent care to prevent improper disclosure or use of Confidential Information, including, without limitation, by restricting access to the Confidential Information to only those employees or other persons who need access to it for purposes of the Receiving Party's performance of the obligations the Receiving Party has assumed and agreed to perform hereunder, and by obligating such persons to comply with the restrictions provided in this Agreement. In the event of loss or theft of any documents, items of work in progress, or any work products

embodying Confidential Information, the Receiving Party shall immediately notify the Disclosing Party.

**Section 11.1(c) Copying.** The Receiving Party shall not copy or reproduce Confidential Information in any form, without the written consent of the Disclosing Party, and shall keep accurate records of all copies or reproductions of Confidential Information made by the Receiving Party or persons on its behalf, which records shall be made available to the Disclosing Party upon request.

**Section 11.1(d) Permissible Disclosures.** A Receiving Party shall not be subject to the obligations of this Agreement with respect to Confidential Information which: (i) is or becomes known publicly through no wrongful act of the Receiving Party or persons acting on its behalf; or (ii) was already known to the Receiving Party at the time of disclosure, as shown by the Receiving Party's written records; or (iii) is disclosed to the Receiving Party by a third Party under no obligation of secrecy or confidentiality to the Disclosing Party and to whom the Disclosing Party disclosed the Confidential Information voluntarily; or (iv) is developed independently by an employee, agent or consultant of the Receiving Party with no knowledge of the Confidential Information disclosed by the Disclosing Party; (v) is approved for release by written authorization of the Disclosing Party, or (vi) is required to be disclosed pursuant to applicable law including without limitation, the Public Records Act or by the order of any court. The City shall give the Tribe as soon as reasonably possible written notice of any disclosure or impending disclosure falling within the provisions of clause (vi), above.

**Section 11.1(e) No License Granted.** No right or license, whether expressed or implied, in the Confidential Information is granted to the Receiving Party other than to use the Confidential Information in the manner and to the extent authorized by this Agreement, for evaluation by the Receiving Party and for the performance of the obligations the Receiving Party has assumed and agreed to perform hereunder. Upon termination of this Agreement pursuant to the terms and provisions hereof, the Receiving Party shall promptly return to the Disclosing Party, upon request, all Confidential Information and all copies thereof, and notes, extracts or derivative information related thereto, in whatever form of storage or retrieval. No information, release, public announcement, confirmation or denial concerning any potential transaction, the fact that discussions, negotiations or evaluations are taking place, or the terms, conditions or other facts with respect thereto will be made by any Party without prior coordination with, and express approval of each of the other Parties.

**Section 11.2 California Statutes.** Notwithstanding any term or provision of this Agreement or any contract, agreement, document or instrument executed by or between the Parties pursuant to this Agreement to the contrary, the City expressly acknowledges and agrees that in the event that the Brown Act, the Public Records Act or other statute of the State of California would require the City to publicly disclose any confidential commercial, proprietary information which the Tribe is required to provide to the City pursuant to the terms and provisions of this Agreement or any contract, agreement, document or instrument executed by or between the Parties pursuant to this

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Agreement, the Tribe shall not provide such information to the City, and the Tribe's failure to do so will not constitute an Event of Default under this Agreement. In the event that the Tribe does not disclose or provide such information or material, the Tribe shall provide the City a reasonable opportunity to inspect, review and analyze such information, provided that the City shall not copy any such information.

**Section 11.3 Freedom of Information Act.** The City acknowledges and agrees that certain information or material which the Tribe files with the United States in connection with or related to the Tribe's request for the Secretary to accept title to the Property in trust for the benefit of the Tribe is exempt from disclosure under the Federal Freedom of Information Act ("FOIA"). In the event that the Tribe's providing information or material to the City pursuant to and in accordance with the terms and provisions of this Agreement or any contract, agreement, document or instrument executed by or between the Parties pursuant to this Agreement would, in the opinion of the Tribe's legal counsel, result in a waiver of any exemption from disclosure available to the Tribe under FOIA with respect to such information or material, the Tribe shall not provide such information to the City, and the Tribe's failure to do so will not constitute an Event of Default under this Agreement. In the event that the Tribe does not disclose or provide such information or material, the Tribe shall provide the City a reasonable opportunity to inspect, review and analyze such information, provided that the City shall not copy any such information.

## ARTICLE XII GENERAL

**Section 12.1 Nature of Agreement.** This Agreement is not intended as and shall not be construed as a Management Agreement within the meaning of the IGRA.

**Section 12.2 The City's Interest.** Nothing contained herein grants or is intended (i) to grant the City a titled interest in the Property or to the Project or the Gaming Facility, or (ii) in any way to impair the Tribe's sole proprietary interest in the Gaming Facility.

**Section 12.3 Situs of the Agreement.** This Agreement shall be deemed entered into in Contra Costa County, California and governed by the laws of the State of California.

**Section 12.4 Notice.** Any notice required to be given pursuant to this Agreement shall be delivered to the appropriate Party by Certified Mail Return Receipt Requested, addressed as follows:

If to the Tribe:

The Scotts Valley Band of Pomo Indians  
P.O. Box 2008, Richmond, CA 94802

Attention: Tribal Chair

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If to the City:

City of Richmond  
1401 Marina Way South  
Richmond, CA 94804

Attention: City Manager

or to such other different address(es) as the City or the Tribe may specify in writing. Any such notice shall be deemed given two days following deposit in the United States mail or upon actual delivery, whichever first occurs.

**Section 12.5 Further Actions.** The Tribe and The City agree to execute all contracts, agreements and documents and to take all actions necessary to comply with the provisions of this Agreement and the intent hereof.

**Section 12.6 Waivers.** No failure or delay by the City or the Tribe to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement, or to exercise any right or remedy consequent upon the breach thereof, shall constitute a waiver of any such breach or any subsequent breach of such covenant, agreement, term or condition. No covenant, agreement, term, or condition of this Agreement and no breach thereof shall be waived, altered or modified except by written instrument. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

**Section 12.7 Captions.** The captions of each article, section and subsection contained in this Agreement are for ease of reference only and shall not affect the interpretational meaning of this Agreement.

**Section 12.8 Third Party Beneficiary.** This Agreement is exclusively for the benefit of the Parties hereto and it may not be enforced by any party other than the Parties to this Agreement and shall not give rise to liability to any third Party other than the authorized successors and assigns of the Parties hereto. Notwithstanding the generality of the foregoing, the Parties expressly and explicitly agree that neither the Gudiville Band nor any other corporation, person, entity, municipality or political subdivision of the State (except the City) associated with the Pt. Molate Property, shall have any rights of any nature whatsoever under this Agreement or in the Parties performance of the obligations such Party has assumed and agreed to perform pursuant to this Agreement.

**Section 12.9 Survival of Covenants.** Any covenant, term or provision of this Agreement which, in order to be effective, must survive the termination of this Agreement, shall survive any such termination.



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**Section 12.10 Estoppel Certificate.** The City and the Tribe each agree to furnish to the other Party, from time to time upon request, an estoppels certificate in such reasonable form as the requesting Party may request stating whether there have been any defaults under this Agreement known to the Party furnishing the estoppels certificate.

**Section 12.11 Periods of Time.** Whenever any determination is to be made or action is to be taken on a date specified in this Agreement, if such date shall fall on a Saturday, Sunday or legal holiday under the laws of the Tribe or the State of California, then in such event said date shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

**Section 12.12 Government Savings Clause.** Each of the Parties agrees to execute, deliver and, if necessary, record any and all additional instruments, certifications, amendments, modifications and other documents as may be required by any Governmental Authority for the satisfaction of any Legal Requirements pursuant to Applicable Law, including, without limitation, the United States Department of the Interior, BIA, the office of the Field Solicitor, the NIGC, in order to effectuate, complete, perfect, continue or preserve the respective rights, obligations, liens and interests of the Parties hereto to the fullest extent permitted by Applicable Law; provided, that any such additional instrument, certification, amendment, modification or other document shall not materially change the respective rights, remedies or obligations of the Tribe or the City under this Agreement or any other agreement or document related hereto.

**Section 12.13 Successors and Assigns.** Neither Party may assign this Agreement or the rights, benefits, liabilities or obligations of this Agreement to any other Party, except for an instrumentality of such government, with the express, prior written consent of the other Party, which consent may be withheld in the sole discretion of the non-assigning Party.

**Section 12.14 Severability.** If any provision, or any portion of any provision, of this Agreement is found to be invalid or unenforceable, such unenforceable provision, or unenforceable portion of such provision, shall be deemed severed from the remainder of this Agreement and shall not cause the invalidity or unenforceability of the remainder of this Agreement. If any provision, or any portion of any provision, of this Agreement is deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law. If, however, any material part of a Party's rights under this Agreement shall be declared invalid or unenforceable the Party whose rights have been declared invalid or unenforceable shall have the option to terminate this Agreement upon thirty (30) days written notice to the other Party, without liability on the part of the terminating Party.

**Section 12.15 Entire Agreement; Amendments.** This Agreement (together with the Exhibits herewith) sets forth the entire agreement between the Parties hereto with respect to the subject matter hereof and all agreements, covenants, representations, and warranties, express or implied, oral or written, of the Parties with respect to the subject matter hereof are contained herein. No other agreements, covenants, representations, or warranties, express or implied, oral or written have been made by any Party to the other with

respect to the subject matter of this Agreement. All prior and contemporaneous conversations, discussions, negotiations, possible and alleged agreements and representations, covenants and warranties with respect to the subject matter hereof, are waived, merged herein and superseded hereby. Each Party affirmatively represents that no promises have been made to that Party which are not contained in this Agreement or any contract, agreement, document or instrument executed by or between the Parties pursuant to this Agreement, and that no evidence of any promises not contained in this Agreement or any contract, agreement, document or instrument executed by or between the Parties pursuant to this Agreement shall be admitted into evidence on their behalf. This Agreement shall not be supplemented, amended or modified by any course of dealing, course of performance or uses of trade and may only be amended or modified by a written instrument duly executed by officers of both Parties. No amendment to this Agreement shall be effective unless and until the Secretary and/or the Chairman of the NIGC, as appropriate has either (i) approved such amendment to this Agreement, or (ii) has determined, in writing, that no such approval is required for such amendment to this Agreement to constitute valid, binding obligations of the Parties enforceable pursuant to and in accordance with the terms and provisions of such amendment to this Agreement.

**Section 12.16 Preparation of Agreement.** This Agreement was drafted and entered into after careful review and upon the advice of competent counsel; it shall not be construed more strongly for or against either Party.

**Section 12.17 Approvals of Tribe.** Where approval or consent or other action of the Tribe is required, such approval shall mean the written approvals of both the Tribal Council and General Council, evidenced by resolutions thereof, certified by a Tribal official as having been duly adopted, or such person or entity designated by resolution of the Tribal Council. Any such approval, consent or action shall not be unreasonably withheld or delayed; provided that the foregoing does not apply where a specific provision of this Agreement allows the Tribe an absolute right to deny approval or consent or withhold action.

**Section 12.18 Approvals of the City.** Where approval or consent or other action of the City is required, such approval shall mean the written approval of the City Council; evidenced by a resolution thereof, certified by a City official as having been duly adopted, or such person or entity designated by resolution of the City Council. Any such approval, consent or action shall not be unreasonably withheld or delayed; provided that the foregoing does not apply where a specific provision of this Agreement allows the City an absolute right to deny approval or consent or withhold action.

**Section 12.19 Execution.** This Agreement may be executed in counterparts.

**Section 12.20 Performance Delayed.** Neither the Tribe, nor the City will be liable for any failure or delay in the performance of its obligations hereunder which are due, in whole or in part, directly or indirectly, to any cause beyond the reasonable control of such Party, which in the exercise of due diligence could not have been avoided, including without limitation, fire, explosion, earthquake, storm, flood or other weather, unavailability of necessary utilities or raw materials, strike, lockout, unavailability of any

component, activities of a combination of workers or other labor difficulties, war, insurrection, riot, act of God or public enemy, law, act, order, export control regulation, proclamation decree, regulations, ordinance or instruction of government or other public authorities, or judgment or decree of a court of competent jurisdiction (not arising out of any breach by such Party of this Agreement). In the event of such occurrence, the Party so affected will give prompt notice to the other Parties, stating the period of time the occurrence is expected to continue.

**Section 12.21 Limited Recourse Obligations; No General Obligation.** Neither the General Obligation, nor the Full Faith and Credit or the Taxing Power of the Tribe is pledged to the payment of any amounts due hereunder or under any other agreement related hereto. Notwithstanding any other provisions herein, or in any agreement related hereto, the obligations of the Tribe to pay amounts due hereunder or on any loan acquired in connection with the Project, as well as any other claims, liabilities or obligations of the Tribe related hereto or thereto of any type or nature, are and shall be limited recourse obligations of the Tribe enforceable solely against the Net Revenue identified at Section 10.2 (g) (1) of this Agreement.

**Section 12.22 Approvals of the Department of the Interior.** Although the Parties believe approval is not required, the Parties will submit this Agreement to the Department of the Interior for either: (i) approvals pursuant to 25 U.S.C. § 81 or (ii) a written response that this Agreement does not require approval under 25 U.S.C. § 81.

**Section 12.23 Effect of Compact.** This Agreement and the obligations of the Parties under this Agreement are subject and subordinate to the terms and conditions of the Compact. Any provision of this Agreement which is inconsistent with the terms of the Compact shall be ineffective.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

CITY OF RICHMOND, CALIFORNIA:

By: Irma L. Anderson  
Irma L. Anderson  
Mayor

Date: December 27, 2006

SCOTTS VALLEY BAND OF POMO INDIANS

By: Donald Arnold  
Donald Arnold  
Tribal Chairman

Date: December 27, 2006

APPROVED AS TO FORM:

By: Mary J. Ruder, Assistant City Atty  
for City Attorney

Date: December 22, 2006

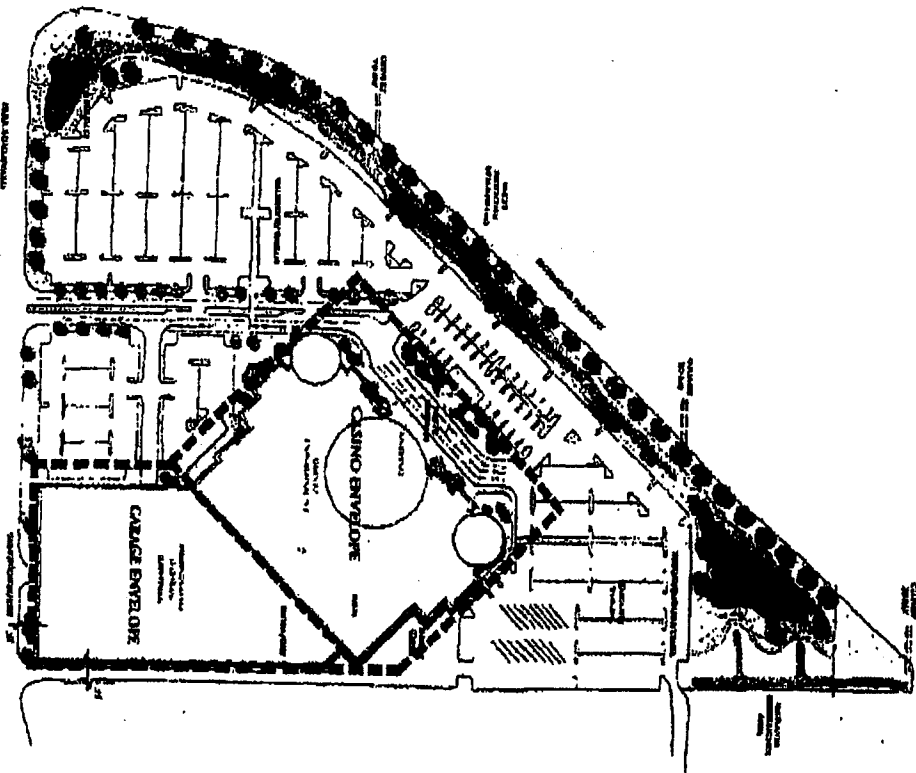
**EXHIBIT A**  
**City of Richmond**  
**Development Envelope**

**SITE PLAN - ALTERNATIVE A**

Richmond, California  
0 100' 200' 400' 800'  
NORTH

Description: Not to Exceed Limit

Casino Footprint:	240,000 SF
Parking Structure Footprint:	160,000 SF
Water Retention Areas:	105,000 SF
Surface Parking, Planting Areas, Landscaping and Fences:	800,000 SF
<b>Total:</b>	<b>1,305,000 SF</b>
Structure Height:	70 Ft.
Surface Parking:	1,250 Spaces
Garage Parking:	2,900 Spaces



**SUGAR BOWL CASINO**  
SCOTT'S VALLEY BAND OF POMO INDIANS



08-3776