

***MUNICIPAL SERVICES AGREEMENT***  
***BETWEEN***  
***THE LYTTON BAND OF POMO INDIANS***  
***AND***  
***THE CITY OF SAN PABLO***  
***AND***  
***THE REDEVELOPMENT AGENCY OF SAN PABLO***

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## EXHIBITS

- Exhibit A "Property" shall mean that certain parcel of land in San Pablo, California, together with all buildings, structures, parking areas and other improvements as legally described in Exhibit A attached, together with any other property acquired by the Band in the City of San Pablo for gaming or related purposes.
- Exhibit B Title to that certain parcel of land which is adjacent to Interstate Highway 80 and which is described in Exhibit B ("Sign Site"), on which a commercial sign for the Facility is now constructed.
- Exhibit C Lease at Exhibit C attached between the Redevelopment Agency of the City of San Pablo, the City of San Pablo, and Ladbroke San Pablo L.P. for the Sign Site.
- Exhibit D Diagram identifying traffic loop detector as graphically detailed in the attached Exhibit D.
- Exhibit E Property description of land containing traffic loop detector, legally described in the attached Exhibit E.
- Exhibit F Resolution 95-118 of the City Council of the City of San Pablo Establishing Fees on Gaming License Applicants, Employees and Pointholders Pursuant to Ordinance No.94-001, and Amending Master Fee Resolution 90-21.
- Exhibit G Resolution 98-34 of the City Council of the City of San Pablo Reducing Fees for Certain Gaming Work Permits and Amending Master Fee Resolution 90-21 and Resolution 95-118.

**Exhibit H**      **Agreement between the Lytton Band of Pomo Indians and Ladbroke San Pablo, LP assigning the lease and property described at Exhibits B and C to the Lytton Band of Pomo Indians.**

**Exhibit I**      **Graphic description of area containing underground drain pipes as depicted on the attached Exhibit I.**

**Exhibit J**      **Legal description of that area of the Property identified for the use, maintenance and repair of underground drain pipes by the City of San Pablo.**

# MUNICIPAL SERVICES AGREEMENT

THIS MUNICIPAL SERVICES AGREEMENT ("Agreement") is made as of the \_\_\_th day of September, 1999 by and between the LYTTON BAND OF POMO INDIANS (the "Band"), a federally recognized Indian Tribe, and the CITY OF SAN PABLO ("City"), Contra Costa County, California, and the Redevelopment Agency of the City of San Pablo ("Agency").

## 1. RECITALS

**WHEREAS**, the Band has entered into an agreement to purchase ("Purchase Agreement") certain real property ("Property") including improvements and an ongoing business together with buildings and related improvements ("Facility") which is located within the boundaries of the City, and

**WHEREAS**, the Facility is now obligated to make certain tax payments to the City, and

**WHEREAS**, the City now provides the Property and the Facility with certain public, service, and safety services, and

**WHEREAS**, the City and the Band wish for the Facility to comply with current state building and fire codes and desire that to the extent not inconsistent with the authority of the Band and with this agreement that the facility be maintained, operated, expanded, remodeled and improved in accordance with the ordinances of the City, as further described herein, and

**WHEREAS**, the Band intends to make only minor modifications to the Facility, and does not now intend to expand or remodel, but merely to change signs, logos, and make other minor adjustments necessary to accommodate gaming pursuant to the Indian Gaming Regulatory Act,

25 U.S.C. §2701 et seq. ("IGRA"), and

**WHEREAS**, the Band intends to convey title to the Property to the United States, to be held in trust for the Band pursuant to the Indian Reorganization Act of 1934, 25 U.S.C. § 465, and

**WHEREAS**, upon transfer of the Property to the United States, in trust for the Band, the Band will exercise sovereign power over the Property and the Facility, and will have jurisdiction to enact civil laws and regulations, including the power to regulate gaming by the Facility, pursuant to the IGRA, and

**WHEREAS**, the Band intends to enter into a compact with the State of California ("State") which provides for the joint exercise of jurisdiction of the Band and the State to regulate gaming on the Property pursuant to the IGRA, and

**WHEREAS**, the Band expects the compact with the State to meet the requirements of the IGRA and State law, and to deal with matters related to the operation of gaming, and

**WHEREAS**, the Band and the City wish to harmonize the civil regulation of gaming by the Band with the present regulation of gaming pursuant to the civil and police power of the City and the State of California, and

**WHEREAS**, the City and the Band wish to continue the uninterrupted delivery of City services to the Property and the Facility upon and after the transfer of the Property to the United States, in trust for the Band, and

**WHEREAS**, the City and the Band wish to assure that certain minimum health and safety regulations are maintained in the operation of the Facility including but not limited to compliance with building, fire, health, and other uniform codes; access for inspections and



emergency services; background checks of managers and employees; provision of law enforcement, premises security, and fire safety services; and health and safety related to exclusion of minors, regulation of alcoholic beverages, and provision of liability insurance; and other matters, and

**WHEREAS**, the Band shall maintain liability insurance in forms and amounts sufficient to meet the obligations of the Band pursuant to the Compact, Proposition 5, agreements with lenders and others, and

**WHEREAS**, the Band is willing to dedicate to the City one of the three seats on the Band Gaming Commission responsible for licensing employees of the Enterprise pursuant to the Band Gaming Code, and

**WHEREAS**, the Band is prepared to offer the City reasonable compensation in lieu of tax payments in return for the uninterrupted delivery of City Services to the Property and the Enterprise, and

**WHEREAS**, the Band and the City wish to take all necessary steps to cooperate with respect to the foregoing,

The City and the Band now enter into this binding agreement ("Agreement") and mutually covenant as follows:

## **2. DEFINITIONS**

As they are used in this Agreement, the terms listed below shall have the meaning assigned to them in this Section:

**"Band Gaming Commission"** or **"BGC"** shall mean the Band body created pursuant to the Band Gaming Code to regulate the Class II and Class III Gaming of the Band in accordance

with the Compact, the IGRA and the Band Gaming Code.

**“Band Gaming Code”** or **“Code”** shall mean the Code and any amendments thereto to be enacted by the Band which authorizes and regulates Class II and Class III Gaming on Indian lands subject to the governmental power of the Band, as approved by the National Indian Gaming Commission pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. §2701, et. seq. Those provisions of the Code referenced in this Agreement shall be consistent with the provisions hereof.

**“Chair”** shall mean the senior governing officer of the Band, duly elected pursuant to the Constitution, and recognized as such by the Area Director, Sacramento Area Office, Bureau of Indian Affairs.

**“Chief of Police”** shall mean the Chief of Police of the City of San Pablo.

**“Class II Gaming”** shall mean Class II Gaming as defined in the IGRA.

**“Class III Gaming”** shall mean Class III Gaming as defined in the IGRA.

**“City Council”** shall mean the governing body of the City of San Pablo.

**“City Manager”** shall mean the City Manager of the City of San Pablo

**“Compact”** shall mean the Band-State Compact which the Band intends to negotiate and execute with the State of California regarding Class III Gaming, if and when executed between the Band and the State and approved pursuant to the IGRA; as the same may, from time to time, be amended, or such other compact that may be substituted therefor.

**“Constitution”** shall mean the duly enacted Constitution of the Band.

**“Day”** shall mean calendar day unless otherwise indicated.

**“Effective Date”** shall mean the date this Agreement is approved by the last body

authorized to approve this Agreement on behalf of each party, and that all approvals required by 25 U.S.C. §81 and any other applicable federal law have been obtained.

**"Enterprise"** shall mean the enterprise created by the Band to engage in Gaming at the Facility, and which may include any other lawful commercial activity allowed in the Facility.

**"Facility"** shall mean all buildings, structures, parking areas and improvements; and all leased property, fixtures, furnishings and equipment attached to, whether existing on the Effective Date or not, forming a part of, or used for the operation of the Enterprise.

**"Fiscal Year"** shall mean the period commencing on July 1 of each year and ending on June 30 of the subsequent year.

**"Gaming"** shall mean any and all activities defined as Class II and Class III Gaming by the IGRA, NIGC Regulations, or the Compact.

**"Gross Gaming Revenues"** shall mean the total win (or hold) from Gaming activities paid to the Enterprise by patrons for Gaming after deducting the total of revenues paid to patrons as a result of Gaming, but before deducting costs and expenses, determined in accordance with GAAP consistently applied. Gross Gaming Revenues includes all:

- a) cash received from patrons for gaming; and
- b) cash received from patrons in payment for credit extended by the Enterprise to a patron for the purposes of gaming; and
- c) compensation received for conducting any game in which the Enterprise is not party to a wager;

less the total of all:

- d) cash paid out to patrons as prizes or winnings; and

- e) the cash value or cost (whichever is lower) of any non-cash prizes awarded to patrons; and

Gross Gaming Revenues do not include:

- f) the purported value of counterfeit money, chips, tokens, wagering instruments or credits; or
- g) coins of other countries which are received in gaming devices; or
- h) cash provided by the Enterprise to a patron and subsequently won by the Facility, for which the Enterprise can demonstrate that it has not been reimbursed; or
- i) the face value of any chip, token or other representative of value won by the Enterprise from a patron for which the Enterprise can demonstrate that it has not received cash.

**"IGRA"** shall mean the Indian Gaming Regulatory Act of 1988, PL 100-497, 25 U.S.C.

§ 2701 et seq. as the same may, from time to time, be amended.

**"JAMS"** shall mean the JAMS Endispute, 2 Embarcadero Center, San Francisco, California, 94111 or, if the aforementioned is not available, a similar or successor organization identified by mutual agreement of the parties which provides professional dispute resolution services.

**"Mayor"** shall mean the Mayor of the City of San Pablo.

**"NIGC"** shall mean the National Indian Gaming Commission, the federal Indian gaming regulatory body created pursuant to the IGRA.

**"Property"** shall mean that certain parcel of land in San Pablo, California, together with all buildings, structures, parking areas and other improvements as legally described and

represented on the map at Exhibit A attached, together with any other property acquired in trust by the United States for the Band within the City of San Pablo. The parties acknowledge that the Property, upon being taken in trust by the United States for the benefit of the Band shall become subject to applicable federal law and shall be afforded the same status as that enjoyed by comparable properties held in trust by the United States for other federally recognized Indian tribes, subject to the terms and conditions of this Agreement.

**“State”** shall mean the State of California.

**“State Gaming Agency”** shall mean the official, agency, board, or commission duly authorized to investigate, approve, and regulate gaming pursuant to the Compact or the Gambling Control Act (B&P § 19800, et seq.) or successor statute.

**“Term”** shall mean the term of this Agreement as described in Section 3.6.

**“Transfer Date”** shall mean the date that title to the Property has vested in the United States of America in trust for the Lytton Band of Pomo Indians, and the Secretary of the Interior has determined that the Property constitutes Indian land over which the Band has jurisdiction and qualifying under federal law as land upon which gaming may lawfully be conducted pursuant to the IGRA, and that all of the legal and other requirements for lawful conduct and operation of the Enterprise have been met and satisfied, including the execution of a Compact by the Band and the State of California.

**“Tribal Council”** shall mean the duly elected governing legislative body of the Band described pursuant to Constitution or, at the option of the Band, a designee committee or council created pursuant to resolution or ordinance of the Lytton Tribal Council.

“Uniform Codes” shall mean collectively the uniform building code, fire code, plumbing, mechanical, electrical, and other related codes adopted by the City consistent with the State uniform codes, along with the health and similar codes of Contra Costa County, which are also adopted by City.

### 3. GENERAL PROVISIONS

3.1 **Civil Jurisdiction.** The parties recognize and agree that, upon acceptance of the Property in trust for the Band by the United States, the Band shall exercise full civil jurisdiction over the Property, including jurisdiction over Gaming pursuant to the IGRA, except as otherwise provided by applicable federal law, the Compact, or this agreement.

3.2 **Criminal Jurisdiction.** The parties recognize and agree that the State of California is subject to Public Law 280, 67 Stat. 588, 18 U.S.C. § 1162, which conveys criminal jurisdiction for criminal offenses committed by any person, including members of the Band, upon the State and the City. The criminal jurisdiction of the City is in no way altered by acquisition of the Property by the United States in trust for the Band. The Chief of Police and the officers employed by the City shall have full and complete access to the Property and the Facility to act to enforce applicable law in the same manner, and to the same degree, and subject to the same restraints and protections under the laws of the State and the United States, as City police officers have with respect to property and buildings located elsewhere within the City. This provision shall constitute consent to such criminal jurisdiction under federal law.

3.3 **Enterprise Governed by Band Gaming Commission.** The body designated under the Band Gaming Code as approved by the NIGC pursuant to the IGRA, shall be the Band Gaming Commission, which shall consist of three (3) members. In partial consideration of the

obligations undertaken by City pursuant to this Agreement, the Band agrees that, for the duration of this Agreement, one of the three members of the BGC shall be the City Manager, or such other person as shall be appointed by the City Manager. The City representative shall enjoy all of the privileges and immunities of that office. Unless otherwise prohibited by state or federal law, any BGC member, including the City representative may choose to attend BGC meetings by telephone, and may vote by telephone. Any monetary payments for salary or expenses which would ordinarily be paid to such City representative as a member of the BGC, shall be made directly to the City of San Pablo. The Band shall appoint or remove such other members of the BGC from members of the Band as the Band believes appropriate, pursuant to the provisions of the Band Gaming Code, provided that no person employed in or in connection with the management, supervision, or conduct of any Gaming activity may be a member of the BGC. Each member of the BGC shall file and maintain with the Secretary of the Band a statement of economic interest disclosing all financial interests, including sources of income and gifts, interests in real property, and interests and positions in business entities.

The Band shall defend, indemnify, and hold harmless the City, its officials and employees, from and against all claims, lawsuits, liabilities and damages arising directly or indirectly out of any decision made by the BGC and/or the City representative on the BGC.

**3.4 Duties of the BGC; Voting; Reasonableness.** The BGC shall, *inter alia*, have the following powers and duties:

- (a) Conduct background checks of applicants for employment at the Facility with the assistance of the City and the State Gaming Agency;
- (b) Issue, modify, or revoke licenses for employees of the Facility; and

- (c) Establish fines and penalties for violation of the Band Gaming Code;
- (d) The Gaming Commission shall require that a plan for the security of the Facility ("Security Plan") be prepared prior to the Transfer Date, and thereafter the Security Plan shall be reviewed by the BGC at least annually. The unanimous approval of the BGC of the Security Plan shall be a prerequisite to the operation of gaming at the Facility. The Facility shall at all times operate in full compliance with the Security Plan. Any member of the BGC shall have the authority to commence a proceeding of the BGC to address any alleged violation of the Security Plan.

All decisions of the BGC shall be by majority vote except that unanimous consent shall be required to issue employee licenses; certify compliance with the security requirements set forth in Section 8.1; approve amendments to the Security Plan; establish fines or penalties for the violation of the Band Gaming Code; grant permits or otherwise authorize any event which may reduce the overall capacity of the parking spaces at the Property by more than 5% from that normally available; establish or amend meeting procedures and bylaws, and such other powers as the Tribal Council and the City may agree in writing to from time to time.

The parties acknowledge that the actions and determinations of the BGC shall be governed by a standard of reasonableness, and that any decision of the BGC shall be subject to a requirement that such decision have a rational basis in fact and law.

The Band Gaming Code shall be consistent with the foregoing and with this Agreement.

**3.5 Transfer Date.** The Facility shall not be operated pursuant to the IGRA prior to



the Transfer Date, but work may be performed on the Property prior to said date.

**3.6 Term.** This Agreement shall operate and remain in full force and effect as long as the Facility is operated for commercial Gaming and the United States continues to hold the Property in trust for the Band, or for a period of ninety-nine years from the date of approval by the Secretary, as provided in Section 10.9.

#### **4. SERVICES BY THE CITY OR OTHER AGENCIES**

**4.1 Water, Sewer, and Trash Removal and Disposal Services.** The City agrees to use its best efforts to reasonably assure that the agencies or governmental bodies with responsibility to provide water, sewer, and trash removal and disposal services, and other similar services continue after the Transfer Date to:

(1) provide the Property and the Facility with uninterrupted and sufficient flow of potable water; provide for the disposal of such sewage and waste water as required by applicable law; and collect, remove from the Property, and dispose of all solid waste generated by the Facility to the same extent as are normally provided to residents and businesses located within the City. The Band shall compensate the City for any financial contribution on the part of City in conjunction with these obligations as set forth herein. The City agrees to make timely payments to Contra Costa County, for pass-through to other taxing agencies, an amount equivalent to the amount of property tax the County is currently collecting for itself and other taxing agencies from the Property as of the 1998-1999 Fiscal Year, adjusted annually at the same rate of adjustment as would otherwise be applied to the Property if it were within the jurisdiction of the taxing agencies. In the event that the Band finds that delivery of these utility services is deficient, in that such services are not provided to the same extent and manner as are provided to

other residents and businesses located within the City, the Band shall notify the City in writing of the basis for such a finding. The City shall then respond within 15 days by: (a) correcting the deficiency, or (b) requesting other agencies outside the control of the City to correct deficiencies in service provided by those agencies, or (c) advising the Band in writing why the City feels that corrective action is not necessary. The Band may then accept the response of the City or exercise the dispute resolution procedures of this Agreement and seek relief which may include: (i) a determination that the Band may take appropriate corrective measures to correct the deficiency specified by Band in its notice, and (ii) a finding that the City shall be liable for all of Band's direct and indirect costs, including personnel costs and any public bidding expenses, incurred in enforcing the City's obligations under this Section.

**4.2 Safety Services.** The City shall provide appropriate and necessary police and fire protection and services to the Band, the Facility and the Property, or shall assure the availability of such services when the services are provided by another governmental agency, to the same extent and in the same manner as are normally provided to residents and businesses located within the City, and shall respond to requests for assistance from the Facility, when it is the provider of such services, without regard to the trust status of the Property. The Band shall compensate the City for these safety services as provided herein. In the event that the Band finds that the delivery of these safety services is deficient, in that such services are not provided to the same manner and extent as are provided to other residents and businesses located within the City, the Band shall notify the City in writing of the basis for such a finding. The City shall then respond within 15 days by: (a) correcting the deficiency, or (b) requesting other agencies outside the control of the City to correct deficiencies in service provided by those agencies, or (c)

advising the Band in writing why the City feels that corrective action is not necessary. The Band may then accept the response of the City or exercise the dispute resolution procedures of this Agreement and seek relief which may include: (i) a determination that the Band may take appropriate corrective measures to correct the deficiency specified by Band in its notice, and (ii) a finding that the City shall be liable for all of Band's direct and indirect costs, including personnel costs and any public bidding expenses, incurred in enforcing the City's obligations under this Section.

**4.3 Emergency Disaster Services.** Not later than ninety (90) days after the Transfer Date, and not less than biennially thereafter, the City shall submit to the Band a copy of a plan, certified and adopted by the City as described herein, for meeting the reasonably expected emergency response needs of the Facility in the event of a disaster. As used in the Section, the term "disaster" includes fire, earthquake, or other natural or man-made event that might reasonably be expected to occur and involve the Facility, and that, if it occurred, might reasonably be expected to cause catastrophic loss of life or injury. Biennially, or upon reasonable request by the Band or the State, the City shall conduct an assessment of the need for emergency response services at the Facility for any purpose, including in the event of disaster. If such an assessment is made at the request of the Band, such an assessment shall be at the Band's expense and shall be conducted by the City official responsible for emergency services. The City shall prepare a written report detailing the reasonably expected emergency response needs of the Facility and explaining how those needs would be met. The City shall propose adoption of a specific plan for meeting those needs and shall certify that the plan has been adopted by the City. A copy of the report and of such certified adopted plan shall be provided to the Band not later

than thirty (30) days after the certification or one hundred twenty (120) days after receipt of the Band's request for the conduct of the assessment, whichever is later.

**Section 4.4. Parity of Municipal Obligations.** The parties intend that the scope of obligations and liabilities of the City to the Band and the Facility regarding municipal services shall be on a parity with those obligations and liabilities which normally operate with respect to the citizens and businesses within the jurisdiction of the City. Consequently, nothing in this Section 4, and nothing in this Agreement shall: (i) expand or reduce any obligation of the City to provide services to the Band, the Facility or the Property, or (ii) expand or reduce any liability for damages with respect to the delivery of such services beyond those obligations and liabilities which would be imposed by law as to citizens and businesses otherwise subject to the jurisdiction of the City.

## **5. BUILDING, HEALTH, AND SAFETY CODES; IMPROVEMENTS**

**5.1 Band Uniform Building Codes.** The Facility has been constructed in accordance with all rules, regulations and codes of the City, including the Uniform Codes. It is the intent of the Band and the City that the Facility continue to be maintained in accordance with said Uniform Codes and that any modification, alteration, improvement, expansion, or other construction performed on the Facility shall be in accordance with the then applicable Uniform Codes in the same manner and to the same degree and subject to the same restraints and protections with respect to property and buildings located elsewhere within the City if such Uniform Codes were applicable to the Band and the Property. Any subsequent construction on the Property shall be in compliance with such Uniform Codes.

**5.2 Code and Safety Inspection.** Not later than thirty (30) days after the Transfer Date, and not less than biennially thereafter, and upon at least five (5) days' notice to the City, the Facility shall be inspected, at the expense of the Band, by an independent expert ("Band Code Inspector") appointed by BGC. The Band Code Inspector shall issue a report on the assessment within fifteen (15) days, identifying any deficiencies at the Facility, including compliance with the Uniform Codes, the fire suppression or other safety needs of the Facility, any deficiencies concerning health or welfare, or any other manner in which the Facility fails to comply with this Agreement. The Band Code Inspector shall propose adoption of a specific plan for correcting the deficiencies discovered. The report shall certify that neither the Facility, nor any portion thereof, endangers health or safety of occupants or the integrity of the gaming operation, and is in compliance with this Agreement, and shall be delivered to the City and the Band and be approved by the BGC.

The City shall be entitled to have a qualified representative(s) present during the inspection described above. During such inspection, the City's representative(s) shall report to the Band Code Inspector any condition(s) which the representative reasonably believes would preclude the Facility from being in compliance hereunder. The Band Code Inspector shall inform the City's representative of the corrective steps, if any, that will be taken in response to such report(s) and shall include the same in the final report.

Notwithstanding the foregoing, the City may request that the Band initiate additional inspections from time to time as the City believes are necessary. City shall give the Tribal Council and the Band Code Inspector five (5) days notice of such a request for inspection, and the inspection shall comply with the standards above.

Nothing in this Section or this Agreement confers jurisdiction to City over the Property. Jurisdiction over the Property shall vest in the Band upon the Transfer Date.

**5.3 Modifications or Improvements to the Facility.** The Band agrees that any modifications or improvements to the Property, or special events on the Property which would, in the absence of the jurisdiction of the Band, require approval or permits by the City ("Proposed Improvement Project" or "PIP"), shall be processed through the City's ordinary land use approval process, including environmental review pursuant to the California Environmental Quality Act. The City may require that the Band pay for the ordinary and necessary costs of such environmental review of the PIP. Following public notice and public hearing before the Planning Commission, if such hearing would otherwise be required, the Commission shall issue a decision expressing its opinion that the PIP be approved, approved with conditions, or denied. If the Band disagrees with the Commission decision, it shall appeal to the City Council, which shall hold a public hearing in the event of such an appeal, or in the event the PIP is heard by the Council without first being heard by the Planning Commission. The Planning Commission decision may also be appealed to the City Council by the City Manager or any member of the public. The City Council shall then issue a decision on the PIP. The Band shall be free to accept or reject the findings of the City Council, provided that any modifications or PIP comply with the terms and conditions of the Compact, and provided further that the Band shall comply with any reasonable conditions contained in the findings proposed by the City requiring additional parking spaces, or otherwise arranging for additional parking. Further, nothing herein shall relieve the Band under Section 5.1 from complying with the Uniform Codes.

**5.4 Landscaping and Maintenance.** The Band shall operate and maintain the

Facility as a first-class commercial gaming operation. The Band shall maintain the Property in first class condition, free of waste, graffiti, and debris and continuously maintain all landscaping thereon in a healthy condition, and in accordance with the landscaping plan on file with the Band. The Band agrees to provide the City with a copy of said landscaping plan within thirty days of the Transfer Date and thereafter to deliver any proposed amendments at least 14 days prior to the effective date of any amendments to the landscaping plan.

The Band shall operate and maintain the Property so as to not create any condition which would constitute a nuisance under the San Pablo Municipal Code assuming such Code were applicable. In the event that the City of San Pablo finds the property not to be so maintained or to conclude that circumstances may constitute a nuisance under the San Pablo Municipal Code if such Code were applicable, the City shall give the Band written notice thereof, specifying with particularity the grounds of the complaint ("Notice of Nuisance"). Should the Band fail to correct the problem within seven days of the notice, the City may exercise the dispute resolution procedures of this Agreement and seek expedited relief as provided by Section 9.11 of this Agreement which may include: (1) a determination that the City and its contractors may enter the Property and take the corrective measures specified by City in its notice, and (2) a finding that the Band shall be liable for all of the City's direct and indirect costs, including personnel costs and any public bidding expenses, incurred in enforcing the Band's obligations under this Section. Should proceedings pursuant to Section 9.11 of this Agreement be necessary to resolve disputes arising out of this Section 5.4, notwithstanding any other provision of this Agreement, absent an order of the arbitrator to the contrary, such proceedings shall commence and conclude within a period no later than 37 days from the date of the Notice of Nuisance.

## 6. BACKGROUND INVESTIGATIONS AND EMPLOYEES

6.1 **Background Investigations of Facility Employees.** The City agrees to accept and timely process the background investigations for license applications or renewals (“Applications”) of employees and prospective employees, managers and prospective managers (“Applicants”) of the Facility as those Applications are delivered to the Chief of Police by the Band Gaming Commission, and timely deliver the results of those investigations to the BGC, and also, as may be required pursuant to the Compact, to the State, and also as may be required by the IGRA, to the NIGC.

6.2 **Background Investigation Forms and Timely Processing.** The BGC shall work with the Chief of Police or a designee of Chief of Police to draft such forms as may be appropriate and efficient for these purposes. The City will normally process Applications within forty-five (45) days of delivery for California residents, and sixty (60) days of delivery for non-California residents. Time spent waiting for responses from the California Department of Justice shall be excluded from these time calculations. In the event that the Band finds that delivery of these background investigation services is deficient, the Band shall notify the City in writing of the basis for such a finding. The City shall then respond within 15 days by: (a) correcting the deficiency or (b) advising the Band in writing why the City feels that corrective action is not necessary. The Band may then accept the response of the City or exercise the dispute resolution procedures of this Agreement and seek relief which may include: (i) a determination that the Band may take appropriate corrective measures to correct the deficiency specified by Band in its notice, and (ii) a finding that the City shall be liable for all of Band’s direct and indirect costs, including personnel costs and any public bidding expenses, incurred in



enforcing or providing alternative sources to meet the City's obligations under this Section.

**6.3 Confidentiality of Applications.** The BGC and the City shall take all reasonable and prudent actions and implement all appropriate safeguards to secure and protect the confidentiality of Applications, as well as the investigations and reports ("Reports") which are generated as a result of those investigations. Under no circumstances shall Applications or Reports be made public, absent the consent of the Applicant, or otherwise as may be required by operation of applicable law.

**6.4 Identification Cards.** All persons required to be licensed shall wear, in plain view at all times while in the Facility, identification badges issued by the BGC. The badge shall include a photograph, identification number, and expiration date sufficient to identify the validity of their likeness. The Band may choose to have City prepare and issue such cards, and the City agrees to issue the cards, upon payment by the licensee to the Band of a reasonable fee. The Band shall reimburse the City for the reasonable cost of the cards pursuant to Section 6.5.

**6.5 Payment.** The City shall invoice the Band on a quarterly basis for the actual and reasonable costs and expenses of conducting such background checks. The Band agrees that, at the date of execution of this Agreement, the fees set forth in City Council Resolution 95-118 as amended by City Council Resolution 98-34, attached as Exhibit F and Exhibit G, are reasonable fees for the work which may be performed by the City for the completion of background checks and that the sum of \$25 per identification card is also reasonable. The Band shall pay the City within thirty (30) days of receipt of such invoices. If the Band has reason to believe that such invoices are erroneous, or fail to accurately reflect the actual and reasonable costs incurred by the City, the Band shall notify the City in writing of the basis for such a finding. The City shall then

respond within 15 days by: (a) correcting the error or (b) advising the Band in writing why the City feels that corrective action is not necessary. The Band may then accept the response of the City or exercise the dispute resolution procedures of this Agreement.

## **7. COMPENSATION, CHARITIES, AND BENEFITS**

### **7.1 Payments to the City.**

In partial consideration for the services and covenants which the City agrees to provide to the Band, and the Band agrees to:

- a. Make an annual "Minimum Municipal Services Payment" of One Million Five Hundred Thousand Dollars (\$1,500,000.00). Payments to the City of the Minimum Municipal Services Payment shall be made semi-annually, with one-half (½) due and payable on the 15th of December and the 15th of April. The Minimum Municipal Services Payment of One Million Five Hundred Thousand Dollars (\$1,500,000.00), shall increase or decrease annually in the same amount as real property taxes otherwise paid by owners of commercial property within the City. The parties acknowledge that at the date of execution of this Agreement this amount is 2% per year. In any year in which Contra Costa County is granting downward reassessments for other commercial properties, then upon written demand by the Band to the City between July 2 and September 15 of any year, the parties agree to negotiate a reduction of this amount based upon facts which would normally be relevant to annual adjustments made on taxes paid by similar commercial property within the City. Under no

circumstances shall the Minimum Municipal Services Payment increase or be reduced in an amount in excess of 2% per year.

b. Make an "Incremental Municipal Services Payment" to the City. The Incremental Municipal Services Payment of Three Million Five Hundred Thousand Dollars (\$3,500,000.00). shall be made quarterly, with one-fourth (1/4th) due and payable on the 15th of March, June, September and December. The Incremental Municipal Services Payment shall remain unadjusted for a period of three years from the Transfer Date. From and after the third year after the Transfer Date, the Incremental Municipal Services Payment shall be adjusted annually based on the annual increase in the CPI to the amount equal to the sum of \$3,500,000.00 and that amount which is the multiple of \$3,500,000.00 and a percentage determined by calculating the percentage change (if any) between:

- (i) the Consumer Price Index for San Francisco-Oakland City Average, All Items, Standard Reference Base 1982-84 = 100 ("CPI") as published by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS") for the month which, as of the first day of such calendar year is the latest month for which a CPI has been published by the BLS, and
- (ii) the CPI for the same month of the prior year.

The adjusted amount ( "Adjusted Incremental Municipal Services Payment") shall then be due and payable as provided by Section 7.1(b). If

the CPI is discontinued, comparable statistics on the purchasing power of the consumer dollar as published at the time of said discontinuation by a responsible financial periodical of recognized authority selected by mutual agreement of the parties, shall be used for making the above computation. If the Standard Reference Base used in computing the CPI is changed such that the CPI for the 1982-84 = 100 Standard Reference Base is no longer published, the figures used in making the foregoing adjustments shall accordingly be changed so that all increases in the CPI are taken into account notwithstanding any change in the Standard Reference Base. No other upwards adjustment shall be sought or made to the Incremental Municipal Services Payment.

- c. If the Band finds that the Adjusted Incremental Municipal Services Payment in any calendar year has exceeded 5.40% of Gross Gaming Revenues, the Band may within 60 days after the end of that year, request that, at the expense of the Band, a CPA selected by mutual agreement of the Band and the City shall review the books and records of the Enterprise and provide a certified report ("Report") to the Band and the City as to the amount which is equal to 5.40% of Gross Gaming Revenues. If the City accepts the Report, the amount paid by the Band to the City in the next payment due after the Report is delivered to the City and the Band shall then be reduced by the appropriate amount so that the total annual payment to the City is equal to 5.40% of Gross Gaming Revenues. If the City does

not accept the Report, the provisions of Section 9 of this Agreement shall apply; after the process set forth in Section 9 is concluded, the findings of the arbitrator shall then be substituted for the Report, and the adjustment in payments due the City, if any, shall then be made in the next payment due after the findings of the arbitrator are delivered to the parties.

- d. In the event that the Band does not enter into a Compact with the State, or that an existing Compact is terminated, and/or the Band operates only Class II Gaming, or in any other circumstances which result in the operation of only Class II Gaming at the Facility, notwithstanding any other provision of this Agreement, the Minimum Municipal Services Payment shall continue as provided in Section 7.1(a) but the total amount paid as the Incremental Municipal Services Payment shall be \$900,000 or 7.5% of Gross Gaming Revenues, whichever is larger. In such an event, the definition of gross gaming revenues shall not be as set forth in Section 2 of this Agreement, but shall be as defined in Section 9.04.020K of the San Pablo Municipal Code. The Incremental Municipal Services Payment shall be adjusted for inflation as provided by Section 7.1b. The payment schedules for the Minimum Municipal Services Payment and the Incremental Municipal Services Payment shall be as provided in this Section 7.1.

**7.2 Charitable Bingo Games.** The Band agrees to make payments as provided in this Section 7.2 to certain non-profit organizations which have operated charitable bingo games in the

City of San Pablo consistently and regularly over a minimum of three successive years prior to the Transfer Date ("Identified Charities"). At least 90 days prior to the Transfer Date the City shall provide the Band with a list of any such Identified Charities, along with accounting records sufficient to enable the Band to determine the average net revenues generated by such charitable bingo games for the three year period prior to the Transfer Date ("Basis Amount"). The Band may retain a Certified Public Accountant ("CPA") to review the financial data and report to the Band and the City findings as to whether that data are sufficient to support a conclusion as to the Basis Amount for each of the Identified Charities for that three year period. If the data are sufficient the CPA shall make a written report of the Basis Amounts. If the data are not sufficient, the CPA shall then make further inquiries, and attempt to gather sufficient information to make a finding as to the Basis Amounts. If the CPA reports that it is not possible to make a determination as to the Basis Amount for any given entity, the Band may then: (i) accept the claimed amount as the Basis Amount, or (ii) defer determination of the Basis Amount until such time as sufficient data is made available and the CPA reports that the data are sufficient to permit a finding of the Basis Amount. The Band agrees to provide revenues to each of the Identified Charities an amount which, when combined with any bingo gaming revenues generated by each Identified Charity is at least equal to one hundred and five percent of the Basis Amount, which shall be adjusted each year based on the formula set forth in Section 7.1(b) as to the CPI adjustment for the Incremental Municipal Services Payment.

**7.3 San Pablo Community Foundation.** The Band agrees to provide a minimum annual donation to the San Pablo Community Foundation of Twenty-Five Thousand Dollars (\$25,000.00), which shall be adjusted each year based on the formula set forth in Section 7.1(b)

as to the CPI adjustment for the Incremental Municipal Services Payment. The parties agree to meet to discuss whether the relevant terms of this Section 7 should be adjusted after the terms of the Compact payments are fully defined; provided, however, that nothing in this section shall compel the parties to reach agreement, or authorize an arbitrator or court to revise the Agreement pursuant to this section.

**7.4 City Fees, Assessments and Taxes.** In making any improvements or modifications to the Facility or the Property, the Band shall pay to City a fee to cover the costs of review of the improvements or modifications, which shall not exceed the fees which would otherwise be paid to the City in conjunction with fees for review of similar developments or improvements on properties elsewhere within the City. The Band shall not pay any business license fees or taxes. The Band shall not be subject to any existing or future assessment district which may encompass the Property. Band vendors shall be subject to licensing and fees as required by applicable law.

**7.5 Reservation of Band Status.** Nothing in this Agreement is intended to or shall operate to waive or dilute the tax exempt status of the Band under federal law; all such rights and privileges are reserved.

## **8. ADDITIONAL PROVISIONS**

**8.1 Security.** The Band shall employ or otherwise provide for and continuously maintain an adequate security and surveillance force at the Facility and on the Property to reasonably secure from theft, injury, or threat thereof, the person and property of patrons, contractors, licensees, and other persons entering upon the Facility. Not later than thirty (30)

days before the Transfer Date, and thereafter not less than biennially, the Band shall conduct an assessment of the need for security services at the Facility. Such an assessment shall be at the Band's expense and shall be conducted by the Band's chief security officer or an independent security examiner having no financial interest in the Tribe's gaming operations. The official or independent examiner shall prepare a written report ("Report") detailing the security needs presented by the Facility and describing how they are or will be met, including use of security services from the City or agencies within Contra Costa County, and shall submit said Report to the Band and to the City. City shall have thirty (30) days to comment thereon. The Report shall be subject to final approval by BGC, following receipt of the City's comments. Any dispute as to the contents of the report or compliance therewith shall be subject to Section 9 of this Agreement.

**8.2 Facility Signage.** There is a certain parcel of land adjacent to Interstate Highway 80 and which is described in Exhibit B ("Sign Site"). A lease between the Redevelopment Agency of the City of San Pablo, the City of San Pablo, and Ladbroke San Pablo L.P. attached hereto as Exhibit C ("Lease") will be assigned to the Band by Ladbroke San Pablo L.P. at the Transfer Date. The City and the Redevelopment Agency of the City agree to consent to the assignment of the Lease upon the Transfer Date, pursuant to the Assignment Agreement attached hereto as Exhibit H ("Sign Site Assignment"). The City and the Agency further agree that the Lease shall terminate upon conveyance of the Sign Site to the United States in trust on behalf of the Band, or to the Band in fee at any time within ten years of the Transfer Date. The Lease termination and title transfer shall occur upon no less than 120 days notice from the Band to the City and the Agency of the intention of the Band to acquire the Sign Site, but only upon receipt



by the City and the Agency of a payment from the Band for the fair market appraised value of the Sign Site, including therein the possibility that an electronic reader board will be part of the sign. Upon recommendation by the City, the Band agrees to enter into good faith negotiations for use of advertising space on the Sign Site with the operator of a hotel which may be located within 1,000 feet of the Sign Site.

Upon transfer of the Sign Site to the United States, or to the Band in fee, the Band agrees to maintain and refurbish the sign as necessary to keep the sign in commercially reasonable condition. The Band shall provide the City with at least thirty (30) days advance written notice of any intended changes in design or operation and receive City approval thereof. Any application for change shall be processed subject to Section 5.3, and any dispute shall be resolved pursuant to Section 9. The Band shall keep the words "San Pablo" displayed on the sign and on the Facility as a prominent part of the name of the Facility.

**8.3 Traffic Control, Parking and Access.** The parties mutually agree that the present parking, access roads, traffic signals and traffic flow adequately provide for the full use and occupancy of the Facility at any given time of operation, and that the parties shall meet to discuss actions which may be appropriate to deal with any increased traffic or parking congestion which may occur in the future. If increased traffic to and from, or lack of adequate parking at, the Facility can be ameliorated by improvements to the infrastructure of the City, the Band and the City shall meet to consider these improvements. The Band shall engage qualified professionals to conduct a comprehensive parking study ("Parking Study") to determine actual parking demand during the first three months after the Band commences operation of the Facility. If the Parking Study shows an actual or potential future parking shortage, the Band shall implement additional

measures, including but not limited to increasing the number of tandem parking spaces, providing offsite parking, and providing or expanding shuttle service to the BART. If the Parking Study reveals a need for it, the Band shall also implement an employee trip reduction program to be prepared and implemented in a manner consistent with the City's trip reduction ordinance, Chapter 10.36 of the San Pablo Municipal Code. Notwithstanding any other measures which might be implemented pursuant to the Parking Study, if the City determines that infrastructure improvements should be made in the City to improve traffic flow to and from the Facility, or parking nearby the Facility, the Band shall pay all reasonable costs associated with those improvements which would otherwise be paid by the City. If the Band disagrees with the Parking Study or the determination by the City as to the need for infrastructure improvements, the plan to address the perceived need, or the cost thereof, the parties shall resolve the dispute as provided by Section 9 of this Agreement.

**8.4 Continued Operation of Restaurant.** The Band agrees to continue to operate a restaurant on the premises during all normal business hours of the Facility. The restaurant seating area for food service patrons shall occupy approximately fourteen hundred (1,400) square feet of area.

**8.5 Access to Facility and Property.** The City shall have the right to inspect the Facility and the Property subject to the following conditions:

- a) **Public Areas.** The City may inspect the public areas of the Facility and Property at any time without prior notice during normal gaming facility business hours.
- b) **Private Areas.** The City may inspect the private areas of the Facility not accessible to the public at any time during normal gaming business hours within a reasonable

time after the City's authorized inspector notifies the BGC and the gaming facility manager of their presence on the Property and the presentation of proper identification. The Facility manager or his or her representative shall have the right to accompany the City's authorized inspector and shall be available for such purpose.

- c) Identity of Inspectors. City shall give Band reasonable advance notice of the person(s) authorized by City to perform inspections of the building to determine the physical condition of the building and the Property. The Band shall have a reasonable opportunity to conduct an inquiry into the person's identity, character and background and grant or deny approval, which shall not be unreasonably withheld.

**8.6 Collective Bargaining.** The Band shall, for the duration of this Agreement, continue to recognize the rights of employees at the Facility to collective bargaining and to comply with the National Labor Relations Act, as amended by the Labor Management Relations Act and all other applicable labor laws. Upon the Transfer Date, the Band shall assume the obligations of Ladbroke San Pablo L.P. pursuant to the collective bargaining agreement with the Hotel Employees and Restaurant Employees Union Local 2850 for the Casino San Pablo, or such other labor agreement as may be in force and effect at the Transfer Date. The Band and the City acknowledge that the provisions of this Section 8.6, and only this Section 8.6 operate to the benefit of present and future employees of the Facility, and for the limited purpose of assuring those employees of continuing rights to collective bargaining, Facility employees and their designated representatives shall be and are recognized as third party beneficiaries of this

Agreement as provided by this Section 8.6.

**8.7 Indemnification.** The Band agrees, with City's approval of attorneys, to defend, indemnify and hold harmless the City, its officials and employees, from and against any litigation arising directly or indirectly from the City's approval of this Agreement.

**8.8 Retail Cigarette Sales.** The Band agrees that retail cigarette sales at the Facility shall be limited to sales by the pack, and that cigarettes shall not be sold by the carton. The Band shall limit cigarette sales to any one customer, at any one time, to no more than two packs of cigarettes.

## 9. DISPUTE RESOLUTION

**9.1 City's Consent to Arbitration.** Except as provided in Section 9.9, the City agrees to submit all disputes arising pursuant to this Agreement to Arbitration, and agrees to waive any jurisdictional immunities it might otherwise enjoy or be entitled to assert which might prevent an arbitrator from hearing or deciding, or a court from enforcing, an arbitration award or order.

(a) The City consents to be sued in any of the following: the Contra Costa Superior Court, the California Court of Appeals for the First District, the United States District Court for the Northern District of California, the United States Court of Appeals for the Ninth Circuit, and the United States Supreme Court ("Forum Courts"). The parties agree that Suit may be brought in any of the Forum Courts for the purpose of compelling compliance with the provisions of this Agreement by injunctive relief or specific performance or compelling arbitration or enforcing any arbitration award or judgment arising out of this Agreement, or of the Band Gaming Code, or any rules, actions, or decisions of the Band Gaming Commission pursuant thereto, including but not limited to,

the issuance, non-issuance, condition, suspension, denial or revocation of any license.

(b) The Band and the City prefer to have disputes resolved by arbitration as provided in this Section 9. Only to the extent that arbitration does not provide an effective remedy, the parties agree that disputes arising out of the provisions of this Agreement shall first be presented to the Forum Courts as hereinafter provided. After a final determination that jurisdiction does not lie with the Forum Courts, and that the only effective jurisdiction lies with the Band Court, if and after it is established, the parties agree that the Band Court shall then hear and decide the matter. The Band agrees that prior to the Transfer Date, it will enact legislation in a form acceptable to the City which designates a retired Judge from the JAMS panel to hear and decide any matter arising out of this Agreement which requires a determination by the Band Court as provided in this Section 9.1(b).

**9.2 Band's Consent to Suit.** Subject to the provisions of this Article 9, the Band expressly waives its sovereign immunity from suit for the purpose of permitting or compelling arbitration as provided in this Section 9.

(a) The Band further expressly waives its sovereign immunity from suit in any of the Forum Courts as defined in Section 9.1(a). The Band agrees that suit may be brought in any of the Forum Courts for the purpose of compelling compliance with the arbitration provisions of this Agreement, or for obtaining injunctive relief or specific performance, or to preserve the status quo during disputes or for compelling arbitration or enforcing any arbitration award or judgment arising out of this Agreement, or of the Band Gaming Code, or any rules, actions, or decisions of the Band Gaming Commission pursuant thereto, including but not limited to, the issuance, non-issuance, condition, suspension,

denial or revocation of any license. Without in any way limiting the generality of the foregoing, the Band expressly authorizes any governmental authorities who have the right and duty under applicable law to take any action authorized or ordered by any such court, including without limitation, entering the Property and Facility for the purpose of executing against any property subject to a security interest or otherwise giving effect to any judgment entered; provided, however, that in no instance shall any enforcement of any kind whatsoever be allowed against any assets of the Band other than the limited assets of the Band specified in Section 9.9.

(b) The City and the Band prefer to have disputes resolved by arbitration as provided in this Section 9. Only to the extent that arbitration does not provide an effective remedy, the parties agree that the disputes arising out of the provisions of this Agreement shall first be presented to the Forum Courts as hereinafter provided. After a final determination that jurisdiction does not lie with the Forum Courts, and that the only effective jurisdiction lies with the Band Court, if and after it is established, the parties agree that the Band Court shall then hear and decide the matter. The Band agrees that prior to the Transfer Date, it will enact legislation in a form acceptable to the City which designates a retired Judge from the JAMS panel to hear and decide any matter arising out of this Agreement which requires a determination by the Band Court as provided in this Section 9.1(b).

**9.3 Arbitration.** All disputes, controversies or claims arising out of or relating to this Agreement or any collateral or related agreement, or any dispute related to amendment or notice of termination thereof, or of the Band Gaming Code, or any rules, actions, or decisions of the

Band Gaming Commission, including but not limited to, the issuance, non-issuance, condition, suspension, denial or revocation of any license required thereunder, shall be settled by binding arbitration. The provisions of Section 1283.05 of the California Code of Civil Procedure, as it may be amended, shall apply; provided that discovery otherwise authorized by Section 1283.05 may be limited by order of the arbitrator. The parties agree that binding arbitration shall be the sole remedy as to all disputes arising out of this Agreement, except for disputes requiring injunctive or declaratory relief, which shall be pursued as provided in Section 9.9(c) unless the parties mutually agree otherwise. Each party in any such court action for injunctive or declaratory relief shall bear its own costs and attorneys fees.

**9.4 Selection of Arbitrator.** The arbitrator shall be selected from JAMS unless the parties agree otherwise. The parties shall either mutually agree upon a single arbitrator, or each party shall delete names of arbitrators from a list of five provided by JAMS until only one name remains. The parties shall equally divide arbitration and court reporter fees, and shall each pay its own attorney fees. Allocation of any other costs of the arbitration shall be determined by the arbitrator.

**9.5 Choice of Law.** In determining any matter the Arbitrator(s) shall apply the terms of this Agreement, without adding to, modifying or changing the terms in any respect, and shall apply applicable federal, Band and California law.

**9.6 Place of Hearing.** All arbitration hearings shall be held at a place designated by the arbitrator(s) in Contra Costa County, California or such other place as may be agreed to by the parties.

**9.7 Arbitration Procedure.** Except as otherwise provided herein, the arbitration shall

be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association and the Federal Arbitration Act. Unless otherwise agreed by the parties, the parties shall submit their respective final positions to the arbitrator following the presentation of evidence. The arbitrator's final determination shall be limited to selecting one of the positions as submitted by the parties. The arbitrator shall be governed by the principle of strictly interpreting the provisions of the Agreement in accordance with their plain meaning and at the same time resolving any conflicts in accordance with reading the Agreement as a whole so as to give, insofar as possible, each party the benefit of its bargain.

**9.8 Confidentiality.** The parties and the arbitrator(s) shall maintain strict confidentiality with respect to the arbitration during the course of arbitration. Upon completion of arbitration or any judicial proceeding, confidentiality shall be maintained to the extent permitted by the State Public Records Act (Govt. Code § 6200, et seq.)

**9.9 Limitation of Actions.** The Band's waiver of immunity from suit is specifically limited to the following actions and judicial remedies:

- a) **Damages.** The enforcement of an award of money and/or damages by arbitration; provided that the arbitrator(s) and/or the court shall have no authority or jurisdiction to order execution against any assets or revenues of the Band except:  
(i) undistributed or future Net Revenues of the Enterprise; (ii) the future Net Revenues of any other gaming operations conducted by the Band; (iii) the assets of the Enterprise itself. In no instance shall any enforcement of any kind whatsoever be allowed against any assets of the Band other than the limited assets of the Band specified in this Section.



- b) Consents and Approvals. The enforcement of a determination by an arbitrator that either party's consent or approval has been unreasonably withheld contrary to the terms of this Agreement.
- c) Injunctive Relief and Specific Performance. An action that prohibits any party ("non-performing party") from taking any action that would prevent the other party ("performing party") from performing any duty or obligation pursuant to the terms of this Agreement, or that requires any party ("non-performing party") to specifically perform any obligation under this Agreement (other than an obligation to pay money which is provided for in subsection (a) above.
- d) Action to Compel Arbitration. An action to compel arbitration pursuant to this Section 9.9.
- e) Action to Preserve the Status Quo During Disputes. An action to preserve the status quo during disputes pursuant to Section 9.10.

Those actions specified in subsections c), d) and e), above may be judicially initiated.

**9.10 Performance During Disputes.** It is mutually agreed that during any kind of controversy, claim, disagreement or dispute, including a dispute as to the validity of this Agreement, the City and Band shall continue to possess the rights, duties, and obligations set forth in this Agreement, and the Band and the City shall continue their performance of the provisions of this Agreement and its Exhibits. The City and the Band shall each be entitled to injunctive relief from a civil court or other competent authority to maintain such rights, duties, and obligations during any dispute, controversy, claim or disagreement arising out of this

Agreement.

**9.11 Notice and Right to Cure.** The parties agree that before the dispute resolution mechanisms described in this Article may be utilized, the party claiming breach or damage shall give written notice of the alleged breach or damage to the other party, and both shall make a serious effort to meet, cure any breach, and otherwise make a good faith effort to resolve any differences for at least thirty (30) days following such notice, unless otherwise specified in this Agreement, before arbitration may be commenced.

## 10. GENERAL PROVISIONS

**10.1 Notice.** Any notice required to be given pursuant to this Agreement shall be delivered to the appropriate party by Federal Express or by Certified Mail Return Receipt Requested, addressed as follows:

If to the Band:

LYTTON BAND OF POMO INDIANS  
1250 Coddington Center  
Suite 1  
Santa Rosa, CA 95401  
Attn: Band Chair

Copies to:

James E. Townsend  
Band Attorney  
DORSEY & WHITNEY  
220 6th Street South  
Minneapolis, MN 55402

If to City or  
Redevelopment Agency :

Brian M. Libow  
City Attorney  
CITY OF SAN PABLO  
One Alvarado Square  
San Pablo, CA 94806

Rory Robinson  
City Manager

CITY OF SAN PABLO  
One Alvarado Square  
San Pablo, CA 94806

or to such other different address(es) as City or the Band may specify in writing using the notice procedure called for in this Section. Any such notice shall be deemed given two (2) days following deposit in the United States mail or upon actual delivery, whichever first occurs.

**10.2 Authority to Execute and Perform Agreement.** The Band and the City represent and warrant to each other that they each have full power and authority to execute this Agreement and to be bound by and perform the terms hereof. On request, each party shall furnish the other evidence of such authority. The persons executing this Agreement on behalf of the parties hereto warrant that (a) such party is duly organized and existing, (b) they are duly authorized to execute and deliver this Agreement on behalf of said party, (c) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (d) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

**10.3 Waivers.** No failure or delay by City or the Band 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.

**10.4 Captions.** The captions for each Section and Subsection are intended for convenience only.

**10.5 Interpretation; Severability.** It is the intent of the parties that this Agreement be interpreted as a whole to carry out the intent of the parties and insofar as possible to give each the benefit of their bargain. In the event any provision hereof is challenged as being invalid or unenforceable, it shall be construed, insofar as possible, to uphold its enforceability and if it cannot, and is held invalid or unenforceable, it shall be held severable and said invalidity shall not affect the validity of the remainder of this Agreement, so long as the fundamental purposes hereof can be obtained.

**10.6 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 Band 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.

**10.7 Amendment.** The parties may from time to time approve amendments hereto in the same manner as this Agreement was approved. Any change to or modification of this Agreement must be in writing signed by both parties hereto.

**10.8 Entire Agreement.** This Agreement, including the Exhibits referred to herein and any documents referenced herein or executed by the parties simultaneously herewith, are expressly incorporated herein by reference, constitutes the entire understanding and agreement of the parties hereto and supersedes all other prior agreements and understandings, written or oral, between the parties.

**10.9 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 the United States Department of the Interior, BIA, the NIGC, the office of the Field Solicitor, or any applicable statute, rule or regulation 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 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 Band or the City under this Agreement or any other agreement or document related hereto. In the event that the BIA determines that 25 U.S.C. §81 requires that this Agreement must be executed for a specific period of time, the parties agree that it shall be effective for a period of ninety-nine (99) years from the date of approval by the BIA. In the event that the BIA does not find that there must be a requirement for a specific term in order for this Agreement to be approved by the Secretary pursuant to 25 U.S.C. §81, it is the intent of the parties that this Agreement shall remain in full force and effect unless and until the parties mutually agree to terminate it.

**10.10 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. This agreement may not be unilaterally amended and shall be strictly construed as set forth herein to accomplish the purposes of the agreement

**10.11 Standard of Reasonableness.** Unless specifically provided otherwise, all provisions of this Agreement and all collateral agreements shall be governed by a standard of reasonableness.

**10.12 Execution.** This Agreement may be executed in four counterparts, two to be

retained by each party. Each of the four originals is equally valid.

**10.13 Status Under Federal Law.** This Agreement does not constitute, create or convey an interest or encumbrance in real estate and shall not be recorded in any real estate records. In the event of default by the Band hereunder, the City's remedies, other than remedies granted for the purpose of enforcing the Band's agreement to arbitrate as herein provided, or for the purpose of preserving the status-quo as herein provided, or for injunctive relief or specific performance to the extent specifically permitted in paragraph 9.9, shall be strictly limited to an award or money judgement for damages against the Band's interest in the assets identified in paragraphs (i) through (iii) of paragraph 9.9(a). The Band is not granting to or conferring upon the City any regulatory authority with respect to the Property, Facility or enterprise which are inconsistent with applicable federal law. The City and the Band covenant and agree that the City's continuing regulatory relationship with the Band with respect to the Property, Facility and Enterprise, shall be governed solely by the provisions of this Agreement and hereby acknowledge that any other regulatory or other rights or claims the City may have or claim with respect to the Property, Facility or Enterprise, or which are inconsistent with the provisions of this Agreement, including without limitation any regulatory or other rights or claims the City may have with respect to the Property, Facility or Enterprise pursuant to the following matters and instruments:

(i) inclusion of the Property, Facility and/or Enterprise in any project area of or established by the City or any redevelopment or other agency of the City including, without limitation the San Pablo Merged Project Area, the South Entrance Community Redevelopment Project, the Oak Park Community Redevelopment Project, the Bayview Community Redevelopment Project, The Tenth Township and Legacy Redevelopment Project Areas; and (ii) the matters provided or

evidenced by documents recorded in the Office of the County Recorder for Contra Costa County, State of California, December 1, 1987 in Book 14046, Page 569, Official Records, August 13, 1970 in Book 6192, Page 11, June 16, 1971, Book 6409, Page 91; October 22, 1971, Book 6504, Page 164; May 9, 1972, Book 6648, Page 210; June 3, 1976, Book 7887, Page 894; July 9, 1979, Book 9432, Page 170; November 23, 1973, Book 7097, Page 603; December 6, 1976, Book 8115, Page 869; December 6, 1976, Book 8115, Page 876; January 5, 1981, Book 10154, Page 644, March 20, 1997, Series No. 97-045269, Official Records; October 17, 1995, Series No. 95-179931, Official Records; October 27, 1995, Series No. 95-179931, Official Records; October 17, 1995, Series No. 179932, Official Records, shall be discharged effective upon the conveyance of title to the Property to the United States to be held in trust for the Band as herein contemplated; provided, however, that the City shall retain any and all rights under federal law that it would ordinarily have as such governing entity. If required by a title company or the federal government to complete the fee-to-trust transfer of the Property, the City and the Redevelopment Agency agree to initiate, pursue and complete such steps as may be required to remove the Property of record from any redevelopment project areas; provided, however, that this agreement shall not bar the discretion of future City Councils or future Redevelopment Agency Boards. The Band shall pay the administrative and legal costs incurred by the City and the Redevelopment Agency to amend such Redevelopment Plans.

**10.14 Use of Property by the City.** Subject to the terms and provisions of Sections 10.9 and 10.13, the Band agrees to arrange for Ladbroke San Pablo, L.P., or the then current fee owner of the Property, to grant and convey, simultaneous with or prior to the fee to trust transfer, recordable perpetual, nonexclusive easements to the West Contra Costa Health Care District and

the City in the forms provided in (a),(b), and (c) below:

- a) Ladbroke (the "Grantor") hereby grants and conveys to West Contra Costa Health Care District, its employees and invitees, the right of emergency temporary vehicular access across the Property by a route designated by Grantor or its successors or assigns, as it may be altered by Grantor or its successors or assigns from time to time, for such emergency temporary vehicular access only to the rear of Lot 140 as it is designated on the map entitled "Map of the San Pablo Rancho", accompanying and forming a part of the final report of the referees in partition, filed in the office of the Recorder of Contra Costa, County, State of California, on March 1, 1894, when and if vehicular access from Vale Road and from all other public or private roads to such Lot 140 is temporarily impossible, provided such emergency temporary vehicular access shall not continue for more than twenty (20) days. The permission granted by this paragraph is conditioned upon West Contra Costa Hospital District fully indemnifying Grantor, or its successors or assigns, for any damage or loss incurred by Grantor, or its successors or assigns, resulting from the use allowed under this paragraph.
- b) Grantor hereby grants and conveys to City the right to use the Property for access, maintenance and repair of the traffic loop detector as graphically detailed in the attached Exhibit D, and legally described in the attached Exhibit E. The City, when repairing or replacing the traffic loop detector, may remove any improvements built within the described area, and the City will only be responsible for repairing and replacing any pavement, landscaping and sidewalk



disturbed or destroyed.

- c) Grantor hereby grants and conveys to City the right to use that part of the Property graphically described on Exhibit I, and legally described on Exhibit J, for the use, maintenance and repair of underground drain pipes. The City, when repairing or replacing the underground drain pipes, may remove any improvements built over the area of the underground drain pipes, and will only be responsible for repairing or replacing pavement, landscaping and sidewalk disturbed or destroyed.

**SIGNATURE PAGES FOLLOW:**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

"BAND"

LYTTON BAND OF POMO INDIANS

9/29/99  
Date

By Margie Mejia  
Margie Mejia, Chair

APPROVED AS TO FORM:

DORSEY & WHITNEY



James E. Townsend  
Dorsey & Whitney LLP  
Band Attorney

"CITY"

CITY OF SAN PABLO

9/20/99  
Date

By Shirley Wysinger  
Shirley Wysinger, Mayor

ATTEST:

Genoveva Garcia Calloway  
City Clerk

"AGENCY"

REDEVELOPMENT AGENCY OF THE  
CITY OF SAN PABLO

9/20/99  
Date

By Shirley Wysinger  
Shirley Wysinger, Chair

ATTEST:

Genoveva Garcia-Collins  
City Clerk

APPROVED AS TO FORM:

Brian M. Libow  
Brian M. Libow  
City Attorney

Approved Pursuant to 25 U.S.C. §81

United States Department of Interior  
Bureau of Indian Affairs

By \_\_\_\_\_ Date \_\_\_\_\_, 2000  
Director  
Sacramento Area Office  
Bureau of Indian Affairs  
for the Secretary of the Interior and the  
Commissioner of Indian Affairs, acting under delegated authority

END OF SIGNATURES