

**DEPARTMENT OF THE INTERIOR****Bureau of Indian Affairs****Indian Gaming**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of Approved Tribal-State Gaming Compact Amendment.

**SUMMARY:** This notice publishes an Approval of the Third Amendment to the Wisconsin Winnebago Tribe, now known as the Ho-Chunk Nation and the State of Wisconsin Gaming Compact.

**DATES:** *Effective Date:* December 12, 2008.

**FOR FURTHER INFORMATION CONTACT:** Paula L. Hart, Acting Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219-4066.

**SUPPLEMENTARY INFORMATION:** Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100-497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. This Amendment modifies the existing arbitration provision by requiring that the parties utilize a last best offer format; establishes a term of twenty-five years; provides for the renegotiation of the revenue sharing and allows both parties to propose amendments to the Compact every five years.

Dated: November 28, 2008.

George T. Skibine,

*Acting Deputy Assistant Secretary for Policy and Economic Development.*

[FR Doc. E8-29420 Filed 12-11-08; 8:45 am]

BILLING CODE 4310-4N-P

**DEPARTMENT OF THE INTERIOR****Bureau of Indian Affairs****Indian Gaming**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of Tribal-State Class III Gaming Compact Amendment taking effect.

**SUMMARY:** This notice publishes the Amendment to the Tribal-State Gaming Compact between the State of California and the Shingle Springs Band of Miwok Indians taking effect.

**DATES:** *Effective Date:* December 12, 2008.

**FOR FURTHER INFORMATION CONTACT:**

Paula L. Hart, Acting Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219-4066.

**SUPPLEMENTARY INFORMATION:** Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100-497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. This Amendment reduces the number of gaming establishments the Tribe may operate; increases the number of gaming machines; and extends the term of the Compact to December 31, 2029. This Amendment is considered to have been approved but only to the extent that the Amendment is consistent with the provisions of the Indian Gaming Regulatory Act.

Dated: November 28, 2008.

George T. Skibine,

*Acting Deputy Assistant Secretary for Policy and Economic Development.*

[FR Doc. E8-29500 Filed 12-11-08; 8:45 am]

BILLING CODE 4310-4N-P

**DEPARTMENT OF THE INTERIOR****Bureau of Land Management**

[LLNML00000 L16100000.DP0000]

**Notice of Intent To Prepare an Amendment to the Mimbres Resource Management Plan (RMPA), and Associated Environmental Assessment (EA), Las Cruces District Office, New Mexico**

**AGENCY:** Bureau of Land Management (BLM), Interior.

**ACTION:** Notice of intent.

**SUMMARY:** The BLM Las Cruces District Office, New Mexico, intends to prepare an RMPA with an associated EA to analyze the possible disposal by either exchange or sale, of BLM-administered public lands in Grant County in southwestern New Mexico.

**DATES:** This Notice initiates the 30-day public scoping period to identify relevant issues. The scoping period will also be announced through local news media and on the BLM Web site (<http://www.blm.gov/nm>). The BLM will accept scoping comments for 30 days from the date of the publication of this Notice.

**ADDRESSES:** You may submit comments by any of the following methods:

- *E-mail:*

[nm\\_comments@nm.blm.gov](mailto:nm_comments@nm.blm.gov).

- *Fax:* 575-525-4412, Attention: Jennifer Montoya.

- *Mail or personal delivery:* District Manager, BLM Las Cruces District Office, 1800 Marquess Street, Las Cruces, NM 88005.

Documents pertinent to this proposal may be examined at the Las Cruces District Office at the above address.

**FOR FURTHER INFORMATION CONTACT:**

Jennifer Montoya, Planning and Environmental Coordinator, at the Las Cruces District Office; Telephone 575-525-4316; or e-mail at [Jennifer.Montoya@nm.blm.gov](mailto:Jennifer.Montoya@nm.blm.gov).

**SUPPLEMENTARY INFORMATION:** This document provides notice that the BLM Las Cruces District Office, Las Cruces, New Mexico, intends to prepare an RMPA with an associated EA for the Mimbres Planning Area and announces the beginning of the scoping process and seeks public input on issues and planning criteria.

The BLM is currently considering disposal of public lands in Grant County, New Mexico, and the exact acreage and legal descriptions will be determined by a Cadastral survey. The public lands proposed for disposal are currently identified for retention in Federal ownership in the 1993 Mimbres RMP. Therefore, the RMP must be amended to identify the public lands as suitable for exchange and/or sale. These public lands are a portion of and within the following areas:

**New Mexico Principal Meridian**

T. 17 S., R. 12 W.,

Secs. 3, 4, 9, 10, 15, 16, 20, 24 and 31.

T. 17 S., R. 11 W.,

Secs. 19 and 20.

T. 19 S., R. 15 W.,

Secs. 8, 16, 17, 21, 27 and 28.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the planning process. Preliminary issues for the planning area have been identified by the BLM personnel, other agencies, and in meetings with individuals and user groups. These issues are:

1. Should public lands adjacent to the Gila National Forest be identified for disposal? If so, which public lands?

2. What potential impacts would this proposed action have on the Gila National Forest?

3. What effects would this proposed action have on mining in the area?

Proposed planning criteria include the following:

1. The RMPA/EA process will be in compliance with the Federal Land

**AMENDMENT TO**

**THE TRIBAL-STATE GAMING COMPACT**

**BETWEEN**

**THE STATE OF CALIFORNIA**

**AND THE**

**SHINGLE SPRINGS BAND OF MIWOK INDIANS**

**AMENDMENT TO THE TRIBAL-STATE GAMING COMPACT  
BETWEEN THE STATE OF CALIFORNIA  
AND THE SHINGLE SPRINGS BAND OF MIWOK INDIANS**

WHEREAS, the State of California (hereinafter “the State”) and the Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (hereinafter “the Tribe”), entered into a compact in 1999 (hereinafter the “1999 Compact”); and

WHEREAS, the State and the Tribe have agreed to revise the 1999 Compact to promote good relations between tribal, state, and local governments and to enhance tribal economic development and self-sufficiency; and

WHEREAS, the Tribe agrees to make a fair revenue contribution to the State, to enter into arrangements to mitigate to the extent practicable the off-reservation environmental and direct fiscal impacts of its Gaming Facility on local communities and local governments, and to offer additional consumer protections; and

WHEREAS, in recognition of the fair revenue contribution and the measures enhancing protections for local governments and the public and to provide a sound basis for the Tribe’s decisions with respect to investment in, and the operation of, its Gaming Activities, the State agrees to amend the 1999 Compact to afford the Tribe the opportunity to operate additional Gaming Devices and to extend the term of the Compact; and

WHEREAS, the Tribe wishes to reaffirm its pledge to share its revenues with Non-Compact Tribes; and

WHEREAS, the State and the Tribe have concluded that this amendment to the 1999 Compact provides for a fair contribution to the State from the Tribe’s Gaming Operation, enhances the Tribe’s exclusive right to operate slot machines, protects the interests of the Tribe and the California public, and will promote and secure long-term stability, mutual respect, and mutual benefits; and

WHEREAS, the State and the Tribe recognize that this amendment is authorized and negotiated and shall take effect pursuant to the Indian Gaming Regulatory Act (“IGRA”); and

WHEREAS, the State and the Tribe agree that all terms of this amendment to the 1999 Compact (collectively the "Amended Compact") are intended to be binding and enforceable.

NOW, THEREFORE, the Tribe and the State hereby amend the 1999 Compact as follows:

**I. DEFINITIONS**

**Section 2.21** is repealed and replaced by the following:

**Section 2.21.** "Tribe" means the Shingle Springs Band of Miwok Indians, a federally-recognized Indian tribe, or an authorized official or agency thereof.

**II. AUTHORIZED FACILITIES**

**Section 4.2** is repealed and replaced by the following:

**Section 4.2.** Authorized Gaming Facilities. The Tribe may establish and operate not more than one Gaming Facility within the boundaries of the Shingle Springs Rancheria, as those boundaries existed as of January 1, 2007, located in El Dorado County, as legally described in, and represented on the map at, Exhibit C hereto, and only on the Tribe's Indian lands existing as of January 1, 2007. The Tribe may operate in the Gaming Facility any forms and kinds of gaming permitted by law, but only to the extent allowed under IGRA and the Tribe's Gaming Ordinance and specifically authorized by this Amended Compact. Notwithstanding anything to the contrary in this Amended Compact, however, any independent structures or other improvements ancillary to the Gaming Activities, in which no Class III gaming is conducted, including any roads, parking lots, or walkways, may be on contiguous land to the aforesaid Indian lands (i) which is held by the Tribe in fee where the Tribe's activities thereon are subject to the jurisdiction of State law and the State courts, or (ii) which is Indian land within the meaning of IGRA.

**III. REVENUE CONTRIBUTION**

**A.** Sections 2.15, 4.3.2.3, 5.0, 5.1, 5.2, and 5.3 are repealed.

B. Section 4.3.1 is repealed and replaced by the following:

**Section 4.3.1.**

- (a) The Tribe is entitled to operate no more than 5,000 Gaming Devices, but its right to operate any Gaming Devices shall be conditioned upon its making the payments set forth under subdivision (b) in accordance with the terms set forth in subdivision (c).
- (b) The Tribe agrees that in consideration of the exclusive right to operate Gaming Devices within the geographic region specified in Section 3.2 of this Amended Compact and to operate Gaming Devices outside the licensing system established by the 1999 Compact, and other valuable consideration, subject to the deduction allowed under subdivision (e), the Tribe shall pay to the State the following percentages of Net Win generated from the operation of the Tribe's Gaming Devices, as follows:

<u>Annual Net Win</u>	<u>Percentage</u>
\$0-\$200 million	20%
Over \$200 million	25%

The payment specified herein has been negotiated between the parties as a fair contribution to be made annually in quarterly payments based upon the Tribe's membership, market conditions, its circumstances, and the rights afforded by this Amended Compact.

- (c) The Tribe shall remit to such agency, trust, fund or entity, as the State Director of Finance, pursuant to law, from time to time, shall specify to the Tribe in writing, the payment referenced in subdivision (b) in quarterly payments, which quarterly payments shall be based on the Net Win generated from the Gaming Devices during the immediately preceding quarter, due on the thirtieth day following the end of each calendar quarter (i.e., by April 30 for the first quarter, July 30 for the second quarter, October 30 for the third quarter, and January 30 for the fourth quarter). If the Gaming Activities authorized by the Amended Compact commence during a calendar quarter, the

first payment shall be due on the thirtieth day following the end of the first full quarter of the Gaming Activities and shall cover the period from the commencement of the Gaming Activities to the end of the first full calendar quarter. The quarterly payments shall be accompanied by the certification specified in subdivision (g).

- (d) “Net Win” is drop, plus the redemption value of expired tickets, less fills, less payouts, less the actual cost of prizes awarded to a player as a result of a wager placed in connection with the play of a Gaming Device resulting in a winning wager, provided that the Tribe maintains adequate and detailed documents to support the cost of the prize, less Participation Fees. “Participation Fees” is defined as payments made to a Gaming Resource Supplier on a periodic basis by the Gaming Operation for the right to lease or otherwise license for play Gaming Devices that are owned by the Gaming Resource Supplier and which are not generally available for outright purchase by gaming operators. The Tribe assures that it holds no current interest in any company that supplies Gaming Devices and agrees that if it acquires such an interest in the future (except for an interest acquired through an investment in a diversified mutual fund, provided that the mutual fund does not hold a ten percent (10%) or greater interest in the company), it will forego the deduction of such fees with respect to that supplier in which it holds an interest.
- (e) The Tribe may deduct from the quarterly payments specified in subdivision (c) payments made during the same calendar quarter by the Tribe for the construction of a state highway project, specifically, High Occupancy Vehicle (“HOV”) lanes on Highway 50, pursuant to the Memorandum of Understanding and Intergovernmental Agreement Between the County of El Dorado and the Tribe dated September 28, 2006, up to a total of five million, two hundred thousand dollars (\$5,200,000) annually for a total of twenty (20) years.
- (f) “Gaming Device,” as defined in Section 2.6 of the Amended Compact, includes, but is not limited to, video poker, but does not include electronic, computer, or other technological aids

that qualify as Class II gaming (as defined under IGRA). For purposes of calculating the number of Gaming Devices, each player station, terminal or other device on which a game is played constitutes a separate Gaming Device, irrespective of whether it is part of an interconnected or server-based system of such terminals, stations or devices.

- (g) The quarterly payments made pursuant to subdivision (c) shall be accompanied by a certification of the Net Win calculation prepared by the chief financial officer of the Gaming Operation. The certification shall also specify the percentage applied to the quarterly Net Win, as specified in subdivision (b), and the total amount of the quarterly payment. At any time after the fourth quarter payment (which is due by January 30), but in no event later than April 30, the Tribe shall also provide to the agency, trust, fund or entity specified pursuant to subdivision (c) an annual certification of the Net Win calculation for the immediately preceding year by an independent certified public accountant who is not an employee of the Tribe, the Tribal Gaming Agency, or the Gaming Operation, is only otherwise retained by any of these entities to conduct regulatory audits or audits of the Gaming Operation, and has no financial interest in any of these entities. The State Gaming Agency shall have the right to confer with the independent certified public accountant during the certification process and to review and copy all of the independent certified public accountant's work papers and documentation. Copies of the quarterly certifications prepared by the chief financial officer of the Gaming Operation and the annual certifications prepared by the independent certified public accountant shall be sent to the State Gaming Agency at the same time they are provided to the agency, trust, fund or other entity specified pursuant to subdivision (c).
- (h) The State Gaming Agency may audit the Net Win calculation, and if it determines that the Net Win is understated, will promptly notify the Tribe and provide a copy of the audit. The State Gaming Agency shall have access to all records deemed necessary by the State Gaming Agency to verify the Net Win calculations, including access to the Gaming Device accounting systems and server-based systems and software and to the data

contained therein. The Tribe, within twenty (20) days, will either accept the difference or provide a reconciliation satisfactory to the State Gaming Agency. If the Tribe accepts the difference or does not provide a reconciliation satisfactory to the State Gaming Agency, the Tribe must immediately pay the amount of the resulting deficiency plus accrued interest thereon at the rate of one percent (1.0%) per month or the maximum rate permitted by state law for delinquent payments owed to the State, whichever is less. If the Tribe does not provide a reconciliation satisfactory to the State Gaming Agency, the Tribe, once payment is made, may commence dispute resolution under Section 9.0. The parties hereto expressly acknowledge that the certifications and information related to payments herein are subject to the confidentiality protections and assurances of Section 7.4.3, subdivision (c), of this Amended Compact.

- (i) Notwithstanding anything to the contrary in Amended Compact Section 9.0, any failure of the Tribe to remit its payments referenced in subdivision (b) pursuant to subdivisions (c), (d), (e), (f) and (g) will entitle the State to immediately seek injunctive relief in federal or state court, at the State's election, to compel the payments, plus accrued interest thereon at the rate of one percent (1.0%) per month or the maximum rate permitted by state law for delinquent payments owed to the State, whichever is less; and further, the Tribe expressly consents to be sued in either court, including any related courts of appeal, and expressly waives, and also waives its right to assert, sovereign immunity and any and all defenses based thereon in any such proceeding to enforce said payment obligations. Failure to make timely payment shall be deemed a material breach of this Amended Compact.
- (j) If any portion of the fee payments required by subdivision (b) herein remains overdue after the State Gaming Agency has provided written notice to the Tribe of the overdue amount with an opportunity to cure of at least twenty (20) days, the Tribe, not later than sixty (60) days after the date of the payment was due under subdivision (c), shall cease operating all of its Gaming Devices until full payment is made.

(k) If the State Gaming Agency determines that there is an insufficient amount in the Revenue Sharing Trust Fund in a fiscal year to distribute the quarterly payments required by Section 4.3.2.1 of the 1999 Compact pursuant to Government Code section 12012.90 to each eligible recipient Indian tribe, then the State Gaming Agency shall direct a portion of the revenue contribution referenced in subdivision (b) to increase the revenue contribution to the Revenue Sharing Trust Fund in Section 4.3.2.2 in an amount sufficient to ensure the Revenue Sharing Trust Fund has sufficient resources for each eligible recipient Indian tribe to receive quarterly payments pursuant to Government Code section 12012.90.

(l) This Section constitutes a "Section 4.3.1" within the meaning of article 6.5 (commencing with section 63048.6) of chapter 2 of division 1 of title 6.7 of the California Government Code.

**C. Section 4.3.2.2 is repealed and replaced by the following:**

**Section 4.3.2.2.** The Tribe shall pay to the State Gaming Agency for deposit into the Revenue Sharing Trust Fund an annual amount of four million, six hundred thousand dollars (\$4,600,000), to be paid in quarterly payments of one million, one hundred and fifty-thousand dollars (\$1,150,000) each within thirty (30) days of the end of each calendar quarter (on January 30, April 30, July 30, and October 30). If this Amendment becomes effective during a calendar quarter, payment shall be prorated for the number of days remaining in that quarter. A Revenue Sharing Trust Fund credit in the amount of three hundred thirty-eight thousand, eight hundred five dollars, and seventy-five cents (\$338,805.75) shall be applied to the first full quarterly payment due under this Section 4.3.2.2.

**D. Section 4.3.3 is repealed and replaced by the following:**

**Section 4.3.3.** If requested to do so by either party, the parties will promptly commence negotiations in good faith with the other concerning the number of Gaming Devices authorized by Section 4.3.1, subdivision (a).

- E. A new **Section 4.3.4** is added as follows:

**Section 4.3.4.** For purposes of Sections 4.3.1 and 4.3.2.2 of this Amended Compact, the State Gaming Agency shall be the California Gambling Control Commission, unless the State provides otherwise by written notice pursuant to Section 13.0.

#### IV. AUTHORIZATION AND EXCLUSIVITY

- A. **Section 12.4** is repealed.

- B. **Section 3.0** is repealed and replaced by the following:

**Section 3.0.** Authorization and Exclusivity of Class III Gaming.

- C. A new **Section 3.1** is added as follows:

**Section 3.1.** The Tribe is hereby authorized and permitted to engage in only the Gaming Activities expressly referred to in Section 4.1 and shall not engage in Class III gaming that is not expressly authorized in that Section.

- D. A new **Section 3.2** is added as follows:

**Section 3.2.**

- (a) In the event the State authorizes any person or entity other than an Indian tribe with a federally-approved Class III gaming compact to operate Gaming Devices within the Tribe's core geographic market, which for purposes of this Section consists of the geographic area that is within a one hundred (100) mile radius of the Tribe's Gaming Facility, and such person or entity thereafter legally offers for play Gaming Devices within the Tribe's core geographic market as specified in this subdivision, the Tribe shall have the right to: (i) terminate this Amended Compact, in which case the Tribe will lose the right to operate Gaming Devices and other Class III gaming and shall immediately cease all Gaming Activities, or (ii) continue under this Amended Compact, in which case the Tribe shall be relieved of its obligations to make payments to the State

specified in Sections 4.3.1, subdivision (b) and 4.3.2.2, except as set forth in subdivision (b) below, until such time that the operation of Gaming Devices by such person or entity within the Tribe's core geographic market ceases.

- (b) (i) Notwithstanding the Tribe's cessation of payments under subdivision (a)(ii), if the Tribe operates no more than 2,000 Gaming Devices throughout any calendar year, it shall nonetheless compensate the State for the actual and reasonable costs of regulation, as determined by the State Director of Finance, or failing agreement between the State and the Tribe on that amount, as determined by arbitration pursuant to Section 9.2 of this Amended Compact.
  - (ii) Notwithstanding the Tribe's cessation of payments under subdivision (a)(ii), if the Tribe operates more than 2,000 Gaming Devices, it shall nonetheless pay fifteen percent (15%) of the Net Win attributable to all Gaming Devices above 2,000 in quarterly payments in accordance with subdivisions (c), (d), (e), and (g) of Section 4.3.1, but in no event shall the Tribe pay less than the actual and reasonable costs of regulation, as determined in subdivision (b)(i).
  - (iii) For purposes of subdivision (b)(ii), the Net Win generated from the operation of all Gaming Devices above 2,000 Gaming Devices shall be calculated by multiplying the average Net Win per Gaming Device for the quarter by the maximum number of Gaming Devices operated during that quarter in excess of 2,000. The average Net Win per Gaming Device is the total Net Win for all Gaming Devices for the quarter divided by the maximum number of Gaming Devices operated during that quarter.
- (c) Nothing herein shall relieve the Tribe of any obligations it may have pursuant to any intergovernmental agreement entered into pursuant to Sections 10.8.7, 10.8.8, or 10.8.9.

- (d) Nothing herein precludes the State Lottery from offering any lottery games or devices that are currently or may hereafter be authorized by state law.

**V. TESTING OF GAMING DEVICES**

- A.** The following new **Section 7.5** is added as follows:

**Section 7.5. Testing of Gaming Devices.**

- (a) No Gaming Device may be offered for play unless all of the following occurs:
  - (i) The manufacturer or distributor which sells, leases, or distributes such Gaming Device (A) has applied for a determination of suitability by the State Gaming Agency at least fifteen (15) days before it is offered for play, (B) has not been found to be unsuitable by the State Gaming Agency, and (C) has been licensed by the Tribal Gaming Agency; and
  - (ii) The software for the game authorized for play on the Gaming Device has been tested, approved and certified by an independent or state governmental gaming test laboratory (the "Gaming Test Laboratory") as operating in accordance with either the standards of Gaming Laboratories International, Inc. known as GLI-11, GLI-12, and GLI-21, or the technical standards approved by the State of Nevada, or such other technical standards as the State Gaming Agency and the Tribal Gaming Agency shall agree upon, which agreement shall not be unreasonably withheld, and a copy of the certification is provided to the State Gaming Agency by electronic transmission or by mail unless the State Gaming Agency waives in writing receipt of copies of certification; and
  - (iii) The software for the game authorized for play on the Gaming Device is tested by the Tribal Gaming Agency or a Gaming Test Laboratory appointed by the Tribal Gaming Agency that is not the same laboratory that was

used for the certification required pursuant to subdivision (a)(ii) to ensure that each game authorized for play on the Gaming Device has the correct electronic signature prior to being opened for play by patrons; and

- (iv) The hardware and associated equipment for each type of Gaming Device has been tested by the Gaming Test Laboratory to ensure operation in accordance with the applicable Gaming Test Laboratory standards; and
  - (v) The hardware and associated equipment for each Gaming Device has been tested by the Tribal Gaming Agency prior to operation by the public to ensure operation in accordance with the manufacturer's specifications; and
  - (vi) The Tribal Gaming Agency shall maintain adequate records that demonstrate compliance with this subdivision (a).
- (b) The Gaming Test Laboratory shall be an independent or state governmental gaming test laboratory recognized in the gaming industry which (i) is competent and qualified to conduct scientific tests and evaluations of Gaming Devices, and (ii) is licensed or approved by any of the following states: Arizona, California, Colorado, Illinois, Indiana, Iowa, Michigan, Missouri, Nevada, New Jersey, or Wisconsin. The Tribal Gaming Agency shall submit to the State Gaming Agency documentation that demonstrates the Gaming Test Laboratory satisfies (i) and (ii) herein within thirty (30) days of the effective date of this Amended Compact, or if such use follows the effective date, within fifteen (15) days prior to reliance thereon. If, at any time, the Gaming Test Laboratory license and/or approval required by (ii) herein is suspended or revoked by any of those states or the Gaming Test Laboratory is found unsuitable by the State Gaming Agency, then the State Gaming Agency may reject the use of the Gaming Test Laboratory, and upon such rejection, the Tribal Gaming Agency shall ensure that the Gaming Test Laboratory discontinues its responsibilities under this Section. The Tribe and the State Gaming Agency shall inform the Gaming Test Laboratory in

writing that irrespective of the source of payment of its fees, the Gaming Test Laboratory's duty of loyalty runs equally to the State and the Tribe.

- (c) The Tribal Gaming Agency shall ensure that compliance with subdivisions (a) and (b) is audited annually by an independent auditor and shall provide the results of such audits to the State Gaming Agency within ten (10) days of completion. For purposes of this subdivision, an independent auditor shall be a certified public accountant and/or certified internal auditor who is not an employee of the Tribe, Tribal Gaming Agency, or the Gaming Operation, has no financial interest in any of these entities, and is only otherwise retained by any of these entities to conduct regulatory audits or audits under Section 8.1.8.
  
- (d) The State Gaming Agency and its consultants, if any, may inspect the Gaming Devices in operation at the Gaming Facility on a random basis not to exceed four (4) times annually to confirm that they operate and play properly pursuant to the manufacturer's technical standards. The inspections may include all Gaming Device software, hardware, and associated equipment and systems that support the operation of the Gaming Device. The random inspections conducted pursuant to this subdivision shall occur during the Gaming Facility's normal business hours outside of weekends and holidays. Whenever possible, the State Gaming Agency shall not require removal from play any Gaming Device that the State Gaming Agency determines may be fully and adequately tested while still in play. The State Gaming Agency shall provide notice to the Tribal Gaming Agency of such inspection at or prior to the commencement of the random inspection, and a member of the Tribal Gaming Agency shall accompany the State Gaming Agency inspector(s) during the inspection of the Gaming Devices. The Tribal Gaming Agency shall require a member to be available at all times for those purposes. If the Tribal Gaming Agency fails to promptly make a member available for purposes of the inspection, the State Gaming Agency may proceed with the inspection. The State Gaming Agency may conduct additional inspections only upon reasonable belief of any irregularity and after informing the Tribal Gaming Agency

of the basis for such belief. Any consultants engaged or used by the State Gaming Agency to assist and/or perform the State Gaming Agency's inspections pursuant to this subsection (d) shall be subject to the confidentiality protections and assurances set forth in Section 7.4.3 of this Amended Compact.

- (e) The Tribal Gaming Agency shall provide to the State Gaming Agency electronic or paper copies of its technical standards, regulations and internal controls applicable to the Tribe's Gaming Devices at least thirty (30) days before offering the Gaming Devices for play and at least thirty (30) days before the effective date of any revisions to the technical standards, regulations, and internal controls.
- (f) For purposes of this Section 7.5, the State Gaming Agency shall be the California Gambling Control Commission, unless the State provides otherwise by written notice pursuant to Section 13.0.

## **VI. BUILDING CODES**

Subdivision (d) of **Section 6.4.2** is repealed and subdivisions (d) through (l) of **Section 6.4.2** are added as follows:

### **Section 6.4.2.**

- (d) Subdivision (b) shall apply to any Gaming Facility constructed prior to the effective date of this Amended Compact, and subdivisions (e) through (l) herein shall apply to the construction of any Gaming Facility after the effective date of this Amended Compact and to any reconstruction, alteration of, or addition to, any Gaming Facility occurring after the effective date ("Covered Gaming Facility Construction").
- (e) In order to ensure the protection of the health and safety of all Gaming Facility patrons, guests, and employees, the Tribe shall adopt or has already adopted, and shall maintain throughout the term of this Amended Compact, an ordinance that requires any Covered Gaming Facility Construction to meet or exceed the California Building Code and the Public Safety Code applicable to the county in which the

Gaming Facility is located as set forth in Titles 19 and 24 of the California Code of Regulations, as those regulations may be amended during the term of this Amended Compact, including but not limited to, codes for building, electrical, energy, mechanical, plumbing, fire, and safety (“Applicable Codes”). All Covered Gaming Facility Construction will also comply with the federal Americans with Disabilities Act, P.L. 101-336, as amended, 42 U.S.C. § 12101 et seq. Notwithstanding the foregoing, the Tribe need not comply with any standard that specifically applies in name or in fact only to tribal facilities. Without limiting the rights of the State under this Section, reference to Applicable Codes is not intended to confer jurisdiction upon the State or its political subdivisions. For purposes of this Section, the terms “building official” and “code enforcement agency” as used in Title 19 and 24 of the California Code of Regulations mean the Tribal Gaming Agency or such other tribal government agency or official as may be designated by tribal law.

- (f) In order to ensure compliance with the Applicable Codes, in all cases where the Applicable Codes would otherwise require a permit, the Tribe shall require inspections and shall, for that purpose, employ for any Covered Gaming Facility Construction appropriate plan checkers or review firms that either are California licensed architects or engineers with relevant experience or are on the list, if any, of approved plan checkers or review firms provided by the county in which the Gaming Facility is located, and shall employ project inspectors that have been either certified in compliance with California Health and Safety Code sections 18949.25 through 18949.31 or approved as Class 1 certified inspectors by the Division of the State Architect or approved as Class A certified inspectors by the Office of Statewide Health Planning and Development or their successors. For purposes of this subdivision, the local agency referenced in California Health and Safety Code sections 18949.25 through 18949.31 shall be the Tribe. The Tribe shall require the inspectors to maintain contemporaneous records of all inspections and report in writing any failure to comply with the Applicable Codes to the Tribal Gaming Agency and an agency designated by the State (the “State Designated Agency”). The plan checkers, review firms, and project inspectors shall hereafter be referred to as “Inspector(s).”

- (g) In all cases where the Applicable Codes would otherwise require plan check, the Tribe shall require those responsible for any Covered Gaming Facility Construction to maintain for inspection and copying by the State Designated Agency or, upon its request, provide to the State Designated Agency, the documentation set forth below:
- (i) The design and construction calculations, and plans and specifications that form the basis for the planned Covered Gaming Facility Construction (the “Design and Building Plans”);
  - (ii) All contract change orders, and other documents that are related to any material changes to a structural detail of the Design and Building Plans or any other changes in the Design and Building Plans; and
  - (iii) All other contract change orders.

The Tribe shall maintain the Design and Building Plans and the as-built Design and Building Plans for the term of this Amended Compact or until the expiration of twenty four (24) months following permanent cessation of occupancy of the building to which such plans and other documents apply, whichever first occurs.

- (h) The State Designated Agency may designate an agent or agents to be given not less than three (3) business days’ advance notice of each inspection required under subdivision (f), and the State agent(s) may accompany the Inspector on any such inspection. The Tribe agrees to correct any Gaming Facility condition noted in the inspection that does not meet the Applicable Codes (hereinafter “deficiency”). Upon not less than three (3) business days’ notice to the Tribal Gaming Agency, except in circumstances posing a serious or significant risk to the health or safety of any persons, in which case no advance notice is required, the State Designated Agency shall also have the right to conduct an independent inspection of the Gaming Facility to verify compliance with the Applicable Codes before public occupancy and shall report to the Tribal Gaming Agency any alleged deficiency; provided, however, that prior to any exercise by the State of its right to inspect without notice based upon alleged circumstances posing a serious or significant threat to the health or safety of any person, the

State Designated Agency shall provide to the Tribal Gaming Agency, notice in writing specifying in reasonable detail those alleged circumstances.

- (i) Upon final certification by the Inspector that a Gaming Facility meets Applicable Codes, the Tribal Gaming Agency shall forward the Inspector's certification to the State Designated Agency within ten (10) days of issuance. If the State Designated Agency objects to that certification, the Tribe shall make a good faith effort to address the State Designated Agency's concerns, but if the State Designated Agency does not withdraw its objection, the matter will be resolved in accordance with the dispute resolution provisions of Section 9.0.
- (j) A Gaming Facility shall be issued a certificate of occupancy by the Tribal Gaming Agency based on the final certification specified in subdivision (i). The certificate of occupancy shall be reviewed for continuing compliance on a biennial basis. Inspections by Inspectors (as defined herein) shall be conducted under the direction of the Tribal Gaming Agency, as the basis for issuing any biennial renewals of the certificate of occupancy.
- (k) Any failure to remedy within a reasonable period of time any material and timely raised deficiency shall be deemed a violation of this Amended Compact unless the State has acted unreasonably in reporting the deficiency to the Tribe, and furthermore, any deficiency that poses a serious or significant risk to the health or safety of any person shall be deemed a material violation of this Amended Compact and grounds for the Tribal Gaming Agency, or the State Designated Agency pursuant to a court order, to prohibit occupancy of the affected portion of the Gaming Facility until the deficiency is corrected.
- (l) The Tribe shall also take all necessary steps to (i) reasonably ensure the ongoing availability of sufficient and qualified fire suppression services to the Gaming Facility and (ii) reasonably ensure that the Gaming Facility satisfies all requirements of the Tribe's fire codes and the fire codes and regulations applicable to the county in which the Gaming Facility is located. Not more than sixty (60) days after the effective date of this Amended Compact and not less than thirty (30) days before the commencement of Gaming Activities in any Gaming

Facility subject to the Covered Gaming Facility Construction requirements of this Section, and not less than biennially thereafter in both cases, and upon at least ten (10) days' notice to the State Designated Agency, the Gaming Facility shall be inspected, at the Tribe's expense, by a tribal official, if any, who is responsible for fire protection on the Tribe's lands, or by an independent expert, for purposes of certifying that the Gaming Facility meets a reasonable standard of fire safety and life safety. The State Designated Agency shall be entitled to designate and have a qualified representative or representatives present during the inspection. During such inspection, the State's representative(s) shall specify to the tribal official or independent expert, as the case may be, any condition which the representative(s) reasonably believes would preclude certification of the Gaming Facility as meeting a reasonable standard of fire safety and life safety. Within fifteen (15) days of the inspection, the tribal official or independent expert shall issue to the Tribal Gaming Agency and the State Designated Agency a report on the inspection, identifying any deficiency in fire safety or life safety at the Gaming Facility or in the ability of the Tribe to meet reasonably expected fire suppression needs of the Gaming Facility. Within fifteen (15) days after the issuance of the report, the tribal official or independent expert shall also require and approve a specific plan for correcting deficiencies, whether in fire safety at the Gaming Facility or in the Tribe's ability to meet the reasonably expected fire suppression needs of the Gaming Facility, including those identified by the State's representative(s). A copy of the plan shall be served on the State Designated Agency and the Tribal Gaming Agency within fifteen (15) days after issuance of the report. Immediately upon correction of all deficiencies identified in the report, the tribal official or independent expert shall certify in writing to the State Designated Agency that all previously identified deficiencies have been corrected. Any failure to correct all deficiencies identified in the report within a reasonable period of time shall be deemed a violation of the Amended Compact, and any failure to promptly correct those deficiencies that pose a serious or significant risk to the health or safety of any person shall be a material violation of the Compact and grounds for the State Gaming Agency or other State Designated Agency to prohibit occupancy of the affected portion of the Gaming Facility pursuant to a court order until the deficiency is corrected.

## VII. PATRON DISPUTES

**Section 8.1.10, subdivision (d)** is repealed and replaced by the following:

- (d) (i) The Tribal Gaming Agency shall promulgate regulations governing patron disputes over the play and the operation of any Gaming Activity, including any refusal to pay a patron any alleged winnings from any Gaming Activities, which regulations must meet the following minimum standards:
  - (A) A patron who makes a complaint to personnel of the Gaming Operation over the play or operation of any game within five (5) days of the play or operation shall be advised in writing of his or her right to request, within fifteen (15) days of the date of making the complaint, resolution of the complaint by the Tribal Gaming Agency, and if dissatisfied with that resolution, to seek binding arbitration of the dispute before a retired judge pursuant to the terms and provisions in subdivision (d)(i)(C) below. The written advisory provided to the patron shall include a patron dispute/complaint form that is consistent with industry standards and which the patron may use to request resolution of the complaint.
  - (B) Upon written request by the patron for a resolution of his or her complaint, the Tribal Gaming Agency shall conduct a complete investigation, shall provide to the patron a copy of its regulations concerning patron complaints, and shall render a decision in accordance with industry practice extant in Nevada and New Jersey. The decision shall be issued within sixty (60) days of the patron's request, shall be in writing, shall be based on the facts surrounding the dispute, and shall set forth the reasons for the decision.
  - (C) If the patron is dissatisfied with the decision of the Tribal Gaming Agency, or no decision is issued within the sixty (60) day period, the patron may request that the complaint over claimed prizes or winnings and the

amount thereof, be settled by binding arbitration before a single arbitrator, who shall be a retired judge, in accordance with the streamlined arbitration rules and procedures of JAMS (or if those rules no longer exist, the closest equivalent). The arbitration shall take place within twenty-five (25) miles of the exterior boundaries of the Shingle Springs Rancheria (the "Rancheria"). Upon such request, the Tribe shall consent to such arbitration and agree to abide by the decision of the arbitrator; provided, however, that if any alleged winnings are found to be a result of a mechanical, electronic or electromechanical failure, which is not due to the intentional acts or gross negligence of the Tribe or its agents, the arbitrator shall deny the patron's claim for the winnings but shall award reimbursement of the amounts wagered by the patron which were lost as a result of the failure, unless the arbitrator finds that such failure was the result of the intentional act or gross negligence of the patron. To effectuate its consent to arbitration, the Tribe shall expressly waive, and waive its right to assert, sovereign immunity and any and all defenses based thereon in connection with the arbitrator's jurisdiction and in any action brought in federal court or, if the federal court declines to hear the action, in any action brought in the courts of the State of California that are located in Sacramento County or El Dorado County, including courts of appeal, to (1) enforce the parties' obligation to arbitrate, (2) confirm, correct, modify, or vacate the arbitral award rendered in the arbitration, or (3) enforce or execute a judgment based upon the award. The Tribe agrees not to assert, and will waive any defense, alleging improper venue or forum non conveniens as to such courts. The cost and expenses of such arbitration shall be initially borne by the Tribe but the arbitrator shall award to the prevailing party its costs and expenses (but not attorney fees). Any party dissatisfied with the award of the arbitrator may at the party's election invoke the JAMS Optional Arbitration Appeal Procedure (and if those rules no longer exist, the closest equivalent); provided that the party making such

election must bear all costs and expenses of JAMS and the arbitrators associated with the Appeal Procedure regardless of the outcome.

- (ii) At such time that the Tribe establishes a tribal court system, the Tribe may give notice to the State that it seeks to renegotiate in good faith this subdivision (d), in which case, the State and the Tribe shall be obligated to negotiate in good faith the arrangements, if any, by which the tribal court system will adjudicate patron claims covered under this subdivision. In so negotiating, the State shall give due respect to the sovereign rights of the Tribe, and due consideration to the due process safeguards established in the tribal court system, the transparency of the tribal court system, and the appellate rights afforded under the system.

## VIII. PROBLEM GAMBLING

A new **Section 8.5** is added as follows:

### **Section 8.5.** Problem Gambling.

- (a) **Signage.** The Tribal Gaming Agency shall display at all public entrances, ATMs located in the Gaming Facility, and exits of the Gaming Facility signage bearing a toll-free help-line number where patrons may obtain assistance for gambling problems.
- (b) **Educational Materials.** The Tribal Gaming Agency shall make available to patrons at conspicuous locations and ATMs in the Gaming Facility educational and information materials which aim at the prevention of problem gambling and which specify where to find assistance.
- (c) **Training.** The Tribal Gaming Agency shall train Gaming Facility supervisors and gaming floor employees on responsible gaming and to identify and manage problem gambling.

- (d) Self-exclusion. The Tribal Gaming Agency shall establish self-exclusion programs whereby a self-identified problem gambler may request the halt of promotional mailings, the revocation of privileges for casino services, denial of or restraint on the issuance of credit and check casing services, and exclusion from the Gaming Facility.
- (e) Involuntary exclusion. The Tribal Gaming Agency shall establish an involuntary exclusion program that allows the Gaming Operation to halt promotional mailings, deny or restrain the issuance of credit and check cashing services, and deny access to the Gaming Facility to patrons who have exhibited signs of problem gambling.
- (f) The Tribal Gaming Agency shall make diligent efforts to prevent underage individuals from loitering in the area of the Gaming Facility where Gaming Activities take place.
- (g) The Tribal Gaming Agency shall assure that advertising and marketing of the Gaming Activities at the Gaming Facility contain a responsible gaming message and a toll-free help-line number for problem gamblers, where practical, and make no false or misleading claims.
- (h) The Tribal Gaming Agency shall adopt a code of conduct applicable to the Gaming Operation and Gaming Facility, derived, inter alia, from that of the American Gaming Association, that addresses responsible gambling and responsible advertising.

Nothing herein is intended to grant any third party the right to sue based on an alleged violation of these standards.

## **IX. INSPECTIONS, MONITORING, AND COMPLIANCE**

- A.** A new **Section 7.4.6** is added as follows:

**Section 7.4.6.** Cooperation with Tribal Gaming Agency. The State Gaming Agency shall meet periodically with the Tribal Gaming

Agency and cooperate in all matters relating to the enforcement of the provisions of this Amended Compact and its Appendix.

- B.** A new **Section 7.4.7** is added as follows:

**Section 7.4.7. Compact Compliance Review.** In addition to all other audits, inspections, investigations, and monitoring authorized by this Amended Compact, the State Gaming Agency is authorized to conduct an annual comprehensive Compact compliance review of the Gaming Operation, Gaming Facilities, and Gaming Activities to ensure compliance with all provisions of this Amended Compact, any exhibits and appendices hereto, including, without limitation, minimum internal control standards set forth in Appendix A, and with all laws, ordinances, codes, rules, regulations, policies, internal controls, standards, and procedures that are required to be adopted, implemented, or complied with pursuant to this Amended Compact. The State Gaming Agency may conduct additional periodic reviews of any part of the Gaming Operation, Gaming Facility, and Gaming Activities and other activities subject to this Amended Compact in order to ensure compliance with all provisions of the Amended Compact and its appendices.

- C.** A new **Section 7.4.8** is added as follows.

**Section 7.4.8. Retention of Records.** Throughout the term of this Amended Compact and during the pendency of any litigation arising from this Amended Compact, and for one (1) year following the termination of this Amended Compact, the Tribe shall require that all books and records relating to authorized Gaming Activities, including the records of any Management Contractor, the Gaming Operation, and the Tribal Gaming Agency, are separately maintained in order to facilitate auditing of these books and records to ensure compliance with this Amended Compact and its exhibits and appendices. All such records shall be maintained pursuant to generally accepted accounting principles and shall be suitable for audit pursuant to the standards of the American Institute of Certified Public Accountants. The Gaming Operation shall maintain all records it creates or receives relating to the operation and management of Gaming Activities. Records of the Tribal Gaming Agency and the Gaming Operation may be destroyed

prior to the time set forth herein upon written agreement of the Tribe and the State.

**X. TRIBAL AUDITS AND MINIMUM INTERNAL CONTROLS**

**A. Section 8.1.8** is repealed and replaced by the following:

**Section 8.1.8.** The conduct of an audit of the Gaming Operation, not less than annually, to be conducted in accordance with this Section.

- (a) The audit shall be conducted by an independent certified public accountant who is not an employee of the Tribe, the Tribal Gaming Agency, the Management Contractor, or the Gaming Operation, is only otherwise retained by any of these entities to conduct regulatory audits or independent audits of the Net Win calculations and certifications, and has no financial interest in any of these entities. The independent certified public accountant used for this purpose shall be licensed by the California Board of Accountancy and shall be approved by the State Gaming Agency, or other State Designated Agency, but the State shall not unreasonably withhold its consent.
- (b) The audit shall be conducted in accordance with the auditing and accounting standards for audits of casinos of the American Institute of Certified Public Accountants.
- (c) Prior to the commencement of the audit, the State Gaming Agency may provide written information to the independent certified public accountant and the Tribal Gaming Agency that it believes will assist in the conduct of the audit.
- (d) The Tribal Gaming Agency shall submit a copy of the audited financial statements, notes to the financial statements, all reports, and any management letter(s) the independent certified public accountant has prepared, to the California Gambling Control Commission, or other State Designated Agency, within twenty (20) days of receipt of the audit report by the Tribal Gaming Agency and no later than one hundred twenty (120) days following the end of the accounting period under review.

- (e) The State Gaming Agency shall be authorized to confer with the independent certified public accountant at the conclusion of the audit process and to review all of the independent certified public accountant's work papers and documentation relating to the audit of the Gaming Operation. The Tribal Gaming Agency shall be notified of and provided the opportunity to participate in and attend any such conference.
- (f) If the annual audit shows that the Tribe made an overpayment from its Net Win to the State during the year covered by the audit, the Tribe's next quarterly payment may be reduced by the amount of the overage. Conversely, if the annual audit shows that the Tribe made an underpayment to the State during the year covered by the audit, the Tribe's next quarterly payment shall be increased by the amount owing.

**B.** A new **Section 8.6** is hereby added as follows:

**Section 8.6.** The Tribe shall provide to the California Gambling Control Commission, within twenty (20) days of their submission to the NIGC, copies of the audited financial statements of Class III gaming and management letter(s), if any, provided to the NIGC. All submissions to the California Gambling Control Commission made pursuant to this Section 8.6 shall be subject to the confidentiality protections and assurances set forth in Section 7.4.3, subdivision (c) of this Amended Compact.

**C.** A new **Section 8.7** is hereby added as follows:

**Section 8.7.** Minimum Internal Control Standards.

- (a) The Tribe shall conduct its Gaming Activities pursuant to an internal control system that implements minimum internal control standards for Class III gaming that are no less stringent than those contained in the Minimum Internal Control Standards of the NIGC (25 C.F.R. Part 542), as they existed on October 19, 2006, and as they may be amended from time to time by the NIGC, without regard to the NIGC's authority to promulgate, enforce, or audit the standards. This requirement is

met through compliance with the provisions set forth in this Section 8.7 and in Section 8.0.

- (b) Within thirty (30) days of the effective date of this Amended Compact, the Tribal Gaming Agency shall, if it has not already done so, in accordance with the Tribal Gaming Ordinance, establish Tribal internal control standards for the Gaming Facility that shall: (i) provide a level of control that equals or exceeds the minimum internal control standards set forth in Appendix A to this Amended Compact as it exists currently and as it may be revised; (ii) contain standards for currency transaction reporting that comply with 31 C.F.R. Part 103, as it exists currently and as it may be amended; (iii) satisfy the requirements of Section 8.0; (iv) be consistent with this Amended Compact; (v) require the Gaming Operation to comply with the Tribal internal control standards; and (vi) if the Tribe has commenced Class III gaming operations, establish a deadline, which shall not exceed three (3) months from the effective date of this Amended Compact, by which the Gaming Operation must come into compliance with the Tribal internal control standards. The Tribal Gaming Agency may extend the deadline by an additional sixty (60) days if the Tribal Gaming Agency provides written notice to the State Gaming Agency no later than two (2) weeks before the three-month period expires.
- (c) The Gaming Operation shall operate the Gaming Facility pursuant to a written internal control system. The internal control system shall comply with and implement the internal control standards established by the Tribal Gaming Agency pursuant to subdivision (b) of this Section 8.7. The internal control system, and any proposed changes to the system, must be approved by the Tribal Gaming Agency prior to implementation. The internal control system shall be designed to reasonably assure that: (i) assets are safeguarded and accountability over assets is maintained; liabilities are properly recorded and contingent liabilities are properly disclosed; (iii) financial records including records relating to revenues, expenses, assets, liabilities, and equity/fund balances are accurate and reliable; (iv) transactions are performed in accordance with the Tribe's general or specific authorization;

- (v) access to assets is permitted only in accordance with the Tribe's specific authorization; (vi) recorded accountability for assets is compared with actual assets at frequent intervals and appropriate action is taken with respect to any discrepancies; and (vii) functions, duties and responsibilities are appropriately segregated and performed in accordance with sound practices by qualified personnel.
- (d) The Tribal Gaming Agency shall provide a copy of its written internal control standards and any changes to those internal control standards to the State Gaming Agency within thirty (30) days of approval by the Tribal Gaming Agency. The State Gaming Agency will review and submit to the Tribal Gaming Agency written comments or objections, if any, to the internal control standards and any changes to the standards, within thirty (30) days of receiving them, or by another date agreed upon by the Tribal Gaming Agency and the State Gaming Agency. The State Gaming Agency's review shall be for the purpose of determining whether the Tribal internal control standards and any changes to the standards provide a level of control which equals or exceeds the level of control required by the minimum internal control standards set forth in Appendix A as it exists currently and as it may be revised, and are consistent with this Amended Compact.
- (e) The minimum internal control standards set forth in Appendix A to this Amended Compact shall apply to all Gaming Activities, Gaming Facilities and Gaming Operations; however, Appendix A is not applicable to any activities not expressly permitted in this Amended Compact. Should the terms in Appendix A be inconsistent with this Amended Compact, the terms in this Amended Compact shall prevail.
- (f) The Tribal Gaming Agency and the State Gaming Agency shall, every three (3) years after the effective date of this Amended Compact, and not later than thirty (30) days after the three-year period, promptly commence negotiations to amend Appendix A to this Amended Compact to continue efficient regulation, foster statewide uniformity of Class III gaming operations, and address future circumstances, including,

without limitation, technological advancements and changes in industry standards. The Tribal Gaming Agency or the State Gaming Agency may, at any time, request negotiations to amend Appendix A to this Amended Compact for the purposes described in this subdivision (f). Such amendments to Appendix A shall not be considered to be an amendment to this Amended Compact. Any disputes regarding the contents of amendments to Appendix A shall be resolved in the manner set forth in Section 9.0 of this Amended Compact.

- (g) The Tribe shall cause, at its own expense and not less than annually at the Gaming Operation's fiscal year end, an independent certified public accountant to be engaged to perform "Agreed-Upon Procedures" to verify that the Gaming Operation is in compliance with the Tribal written internal control standards. The independent certified public accountant shall perform the Agreed-Upon Procedures in accordance with Part 542.3, subdivision (f), in Appendix A, as it may be revised. The independent certified public accountant shall issue a report of its findings to the Tribal Gaming Agency within one hundred twenty (120) days after the Gaming Operation's fiscal year end. Promptly upon receipt of the Agreed-Upon Procedures report, and in no event later than fifteen (15) days after receipt of the report, the Tribal Gaming Agency shall provide a complete copy of the Agreed-Upon Procedures report to the State Gaming Agency, along with a copy of any supporting reports or documents the independent certified public accountant has prepared, and any replies the Tribe has prepared in response to the independent certified public accountant's report. Failure to comply with this subdivision (g) shall be deemed a material breach of this Amended Compact.
- (h) For purposes of this Section 8.7, the State Gaming Agency shall be the California Gambling Control Commission, unless the State provides otherwise by written notice pursuant to Section 13.0 of the Amended Compact.

## **XI. PUBLIC AND WORKPLACE HEALTH, SAFETY, AND LIABILITY**

- A.** Section 10.1 is repealed and replaced by the following:

**Section 10.1.** The Tribe will not conduct Class III gaming in a manner that endangers the public health, safety, or welfare; provided, however, that nothing herein shall be construed to make applicable to the Tribe any state laws or regulations governing the use of tobacco. Notwithstanding the foregoing, the Tribe agrees to provide a non-smoking area in the Gaming Facility and not to offer or sell tobacco to anyone under eighteen (18) years of age. The Tribe further agrees to utilize a ventilation system throughout the Gaming Facility that exhausts tobacco smoke to the extent reasonably feasible using the best available control technology at the time of construction of any Gaming Facility and any Covered Gaming Facility Construction.

- B.** Sections 10.2, subdivisions (a), (b), and (c) are repealed and replaced by the following:

- (a) Adopt and comply with standards no less stringent than state public health standards for food and beverage handling. The Gaming Operation will allow inspection of food and beverage services by state or county health inspectors, during normal hours of operation of the Gaming Facility, to assess compliance with these standards, unless inspections are routinely made by an agency of the United States government to ensure compliance with equivalent standards of the United States Public Health Service. Any report or writing by any inspector shall be transmitted to the State Gaming Agency and the Tribal Gaming Agency within twenty-four (24) hours of its issuance to the Gaming Operation. Nothing herein shall be construed as a submission of the Tribe to the jurisdiction of those state or county health inspectors, but any alleged violations of the standards shall be treated as alleged violations of this Amended Compact.
- (b) Adopt and comply with standards no less stringent than federal water quality and safe drinking water standards applicable in California; the Gaming Operation will allow for inspection and testing of Gaming Facility water quality by state or county

health inspectors, as applicable, during normal hours of operation of the Gaming Facility, to assess compliance with these standards, unless inspections and testing are routinely made by an agency of the United States pursuant to, or by the Tribe under express authorization of, federal law, to ensure compliance with federal water quality and safe drinking water standards. Any report or writing by any inspector shall be transmitted to the State Gaming Agency and the Tribal Gaming Agency within twenty-four (24) hours of its issuance to the Gaming Operation. Nothing herein shall be construed as submission of the Tribe to the jurisdiction of those state or county health inspectors, but any alleged violations of the standards shall be treated as alleged violations of this Amended Compact.

- (c) Comply with the building and safety standards set forth in Section 6.4, as amended herein.

C. **Section 10.2, subdivision (d)** is repealed and replaced by the following:

**Section 10.2(d).**

- (i) The Tribe shall obtain and maintain a commercial general liability insurance policy consistent with industry standards for non-tribal casinos in the United States and underwritten by an insurer with an A.M. Best rating of A or higher (“Policy”), which provides coverage of no less than ten million dollars (\$10,000,000) per occurrence for bodily injury, property damage, and personal injury arising out of, connected with, or relating to the operation of the Gaming Facility or Gaming Activities. In order to effectuate the insurance coverage, the Tribe shall expressly waive, and also waive its right to assert, sovereign immunity and any and all defenses based thereon up to the limits of the Policy in accordance with the tribal ordinance referenced in subdivision (d)(ii) below in connection with any claim for bodily injury, property damage, or personal injury arising out of, connected with, or relating to the operation of the Gaming Facility, including, but not limited to, injuries resulting from entry onto the Tribe’s land for purposes

of patronizing the Gaming Facility or providing goods or services to the Gaming Facility; provided, however, that nothing herein requires the Tribe to agree to liability for punitive damages or to waive its right to assert sovereign immunity in connection therewith. The Policy shall acknowledge in writing that the Tribe has expressly waived, and also waived its right to assert, sovereign immunity and any and all defenses based thereon for the purpose of arbitration of those claims up to the limits of the Policy referred to above and for the purpose of enforcement of any ensuing award or judgment and shall include an endorsement providing that the insurer shall not invoke tribal sovereign immunity up to the limits of the Policy; however, such endorsement or acknowledgement shall not be deemed to waive or otherwise limit the Tribe's sovereign immunity beyond the Policy limits.

- (ii) The Tribe shall maintain in continuous force a Tort Liability Ordinance which shall, prior to the effective date of this Amended Compact and at all times hereafter, continuously provide at least the following:
  - (A) That California tort law, including all applicable statutes of limitations, shall govern all claims of bodily injury, property damage, or personal injury arising out of, connected with, or relating to the operation of the Gaming Facility or the Gaming Activities, including, but not limited to, injuries resulting from entry onto the Tribe's land for purposes of patronizing the Gaming Facility or providing goods or services to the Gaming Facility, provided that California law governing punitive damages need not be a part of the Tort Liability Ordinance.
  - (B) That a claimant shall have two (2) years from the date of accrual of a cause of action to file a written notification with the Tribe that the claimant claims to have suffered an injury or damage covered by this subdivision.
  - (C) That, in the exercise of sovereignty, the Tribe expressly waives, and also waives its right to assert, sovereign

immunity and any and all defenses based thereon, with respect to the arbitration of claims specified in this subdivision (d), and the judicial enforcement of any award or judgment based thereon, but only up to the limits of the Policy identified in subdivision (d)(i) above; provided, however, such waiver shall not be deemed to waive or otherwise limit the Tribe's sovereign immunity beyond the Policy limits.

- (D) That the Tribe consents to binding arbitration before a single arbitrator, who shall be a retired judge, in accordance with the comprehensive arbitration rules and procedures of JAMS (or if those rules no longer exist, the closest equivalent) to the extent of the limits of the Policy, that discovery in the arbitration proceedings shall be governed by section 1283.05 of the California Code of Civil Procedure, that the Tribe shall initially bear the cost of JAMS and the arbitrator, but the arbitrator may award costs to the prevailing party not to exceed those allowable in a suit in California Superior Court, and that any party dissatisfied with the award of the arbitrator may at the party's election invoke the JAMS Optional Arbitration Appeal Procedure (or if those rules no longer exist, the closest equivalent), provided that the party making such election must bear all costs and expenses of JAMS and the arbitrators associated with the Appeal Procedure regardless of the outcome. To effectuate its consent to the foregoing arbitration procedure, the Tribe shall expressly waive, and also waive its right to assert, its sovereign immunity and any and all defenses based thereon in connection with the arbitrator's jurisdiction and in any action brought in the United States District Court where the Tribe's Gaming Facility is located and any related courts of appeal, or, if the federal court declines to hear the action, in any action brought in the courts of the State of California that are located in Sacramento County or El Dorado County, including courts of appeal, to (1) enforce the parties' obligation to arbitrate, (2) confirm, correct, modify, or vacate the arbitral award rendered in the arbitration, or (3) enforce

or execute a judgment based upon the award. The Tribe agrees not to assert, and will waive, any defense alleging improper venue or forum non conveniens as to such courts.

- (E) The Tribe's Tort Liability Ordinance may require that, as a prerequisite to arbitration under subdivision (d)(ii)(D), the claimant first exhaust the Tribe's administrative remedies, if any, for resolving the claim (hereinafter the "Tribal Dispute Resolution Process") in accordance with the following standards:
  - (1) The claimant must bring his or her claim within one hundred eighty (180) days of receipt of the written notice of the Tribal Dispute Resolution Process as long as the notice thereof is served personally on the claimant or by certified mail with an executed return receipt by the claimant and the one hundred eighty (180)-day limitation period is prominently displayed on the front page of the notice.
  - (2) The Tort Liability Ordinance may provide that any arbitration shall be stayed until the completion of the Tribal Dispute Resolution Process or one hundred eighty (180) days from the date the claim was filed, whichever first occurs, unless the parties mutually agree upon a longer period.
  - (3) The decision of the Tribal Dispute Resolution Process shall be a reasoned decision, and shall be rendered within one hundred eighty (180) days from the date the claim was filed in connection with the Tribal Dispute Resolution Process.
- (iii) Within twenty-one (21) days following written notification that a claimant claims to have suffered an injury or damage covered by this subdivision (d), the Tribe shall notify the claimant by personal service or certified mail, return receipt requested, that the claimant is required within the specified limitation period to

first exhaust the Tribal Dispute Resolution Process, if any exists, and if dissatisfied with the resolution, or if no Tribal Dispute Resolution Process exists, is entitled to arbitrate his or her claim before a retired judge. Failure by the Tribe to comply with this subdivision (d)(iii) shall toll the limitation period so long as the failure continues.

- (iv) In the event the Tribe fails to adopt the Tort Liability Ordinance specified in subdivision (b), the tort law of the State of California, including applicable statutes of limitations, shall apply to all claims of bodily injury, personal injury, and property damage arising out of, connected with, or relating to the operation of the Gaming Facility or the Gaming Activities, including, but not limited to, injuries resulting from entry onto the Tribe's land for purposes of patronizing the Gaming Facility or providing goods or services to the Gaming Facility; and the Tribe shall be deemed to have waived its right to assert sovereign immunity up to the limits of the Policy in connection with the arbitration of any such claims, any court proceedings based on such arbitration, including the arbitral award resulting therefrom, and any ensuing judgments.
- (v) At such time that the Tribe establishes a tribal court system, the Tribe may give notice to the State that it seeks to renegotiate in good faith this subdivision (d), in which case, the State and the Tribe shall be obligated to negotiate in good faith the arrangements, if any, by which the tribal court system will adjudicate claims of bodily injury, property damage, or personal injury covered under this subdivision (d). In so negotiating, the State shall give due respect to the sovereign rights of the Tribe, and due consideration to the due process safeguards established in the tribal court system, the transparency of the tribal court system, and the appellate rights afforded under the system.

**D. Section 10.2, subdivision (f) is repealed and replaced by the following:**

- (f) Comply with tribal codes and applicable state and federal law regarding public health, public safety, and the environment.

E. **Section 10.2, subdivision (g)** is repealed and replaced by the following:

- (g) Adopt and comply with standards no less stringent than federal laws and state laws forbidding harassment, including sexual harassment, in the workplace, forbidding employers from discrimination in connection with the employment of persons to work or working for the Gaming Operation or in the Gaming Facility on the basis of race, color, religion, ancestry, national origin, gender, marital status, medical condition, sexual orientation, age, or disability, and forbidding employers from retaliation against persons who oppose discrimination or participate in employment discrimination proceedings (hereinafter “harassment, retaliation, or employment discrimination”); provided that nothing herein shall preclude the Tribe from giving a preference in employment to members of federally-recognized Indian tribes pursuant to a duly adopted tribal ordinance.
  
- (i) The Tribe shall obtain and maintain an employment practices liability insurance policy consistent with industry standards for non-tribal casinos in the United States and underwritten by an insurer with an A.M. Best rating of A or higher which provides coverage of at least three million dollars (\$3,000,000) per occurrence for unlawful harassment, retaliation, or employment discrimination arising out of the claimant’s employment in, in connection with, or relating to the operation of, the Gaming Operation, Gaming Facility or Gaming Activities (hereinafter “Policy”). In order to effectuate the Policy’s insurance coverage, the Tribe, in the exercise of its sovereignty, shall expressly waive, and also waive its right to assert, sovereign immunity and any and all defenses based thereon up to the limits of the Policy, in accordance with the tribal ordinance referenced in subdivision (g)(ii) below, in connection with any claim for harassment, retaliation, or employment discrimination arising out of the claimant’s employment in, in connection with, or relating to the operation of, the Gaming Operation, Gaming Facility or Gaming Activities; provided, however, that nothing herein requires the Tribe to agree to liability for punitive damages or to waive its right to assert sovereign immunity in connection therewith. The Policy shall acknowledge in writing that the Tribe has expressly waived, and also waived its right to assert, sovereign immunity and any and all defenses based

thereon for the purpose of arbitration of those claims for harassment, retaliation, or employment discrimination up to the limits of such Policy and for the purpose of enforcement of any ensuing award or judgment and shall include an endorsement providing that the insurer shall not invoke tribal sovereign immunity up to the limits of the Policy; however, such endorsement or acknowledgement shall not be deemed to waive or otherwise limit the Tribe's sovereign immunity for any portion of the claim that exceeds the limits of the Policy. Nothing in this provision shall be interpreted to supersede any requirement in the Tribe's employment discrimination complaint ordinance adopted pursuant to subdivision (g)(ii) that a claimant must exhaust administrative remedies as a prerequisite to arbitration.

- (ii) The standards shall be subject to enforcement pursuant to an Employment Discrimination Complaint Ordinance ("Ordinance") which shall be adopted by the Tribe prior to the effective date of this Amended Compact and which shall continuously provide at least the following:
  - (A) That California law shall govern all claims of harassment, retaliation, or employment discrimination arising out of the claimant's employment in, in connection with, or relating to the operation of, the Gaming Operation, Gaming Facility or Gaming Activities; provided that California law governing punitive damages need not be a part of the Ordinance. Nothing in this Section 10.2, subdivision (g), shall be construed as a submission of the Tribe to the jurisdiction of the California Department of Fair Employment and Housing or the California Fair Employment and Housing Commission.
  - (B) That a claimant shall have one year from the date that an alleged discriminatory act occurred to file a written notice with the Tribe that he or she has suffered prohibited harassment, retaliation, or employment discrimination.

- (C) That, in the exercise of its sovereignty, the Tribe expressly waives its right to assert sovereign immunity with respect to the binding arbitration of claims for harassment, retaliation, or employment discrimination, but only up to the limits of the Policy identified in subdivision (g)(i) above; provided, however, such waiver shall not be deemed to waive or otherwise limit the Tribe's sovereign immunity for any portion of the claim that exceeds the limits of the Policy.
- (D) That the Tribe consents to binding arbitration before a single arbitrator, who shall be a retired judge, in accordance with the comprehensive arbitration rules and procedures of JAMS (or if those rules no longer exist, the closest equivalent), that discovery in the arbitration proceedings shall be governed by section 1283.05 of the California Code of Civil Procedure, that the Tribe shall initially bear the cost of JAMS and the arbitrator, but the arbitrator may award costs to the prevailing party not to exceed those allowable in a suit in California superior court, and that any party dissatisfied with the award of the arbitrator may at the party's election invoke the JAMS Optional Arbitration Appeal Procedure (or if those rules no longer exist, the closest equivalent), provided that the party making such election must bear all costs and expenses of JAMS and the arbitrators associated with the Appeal Procedure, regardless of the outcome. The arbitration shall take place within seventy-five (75) miles of the Shingle Springs Rancheria, or as otherwise mutually agreed by the parties. To effectuate its consent to the foregoing arbitration procedure, the Tribe shall, in the exercise of its sovereignty, waive its right to assert sovereign immunity in connection with the arbitrator's jurisdiction and in any state or federal court action to (1) enforce the parties' obligation to arbitrate, (2) confirm, correct, or vacate the arbitral award rendered in the arbitration in accordance with section 1285 et seq. of the California Code of Civil Procedure, or (3) enforce or execute a judgment based upon the award. The Tribe agrees not to assert, and will waive, any defense alleging

improper venue or forum non conveniens as to any state or federal court located within Sacramento County or El Dorado County in any such action brought with respect to the arbitration award.

- (iii) The Employment Discrimination Complaint Ordinance required under subdivision (g)(ii) may require, as a prerequisite to binding arbitration under subdivision (g)(ii)(D), that the claimant exhaust the Tribe's administrative remedies, if any exist, in the form of a Tribal Discrimination Complaint Resolution Process, for resolving the claim in accordance with the following standards:
  - (A) Upon notice to the Tribe that the claimant alleges that he or she has suffered prohibited harassment, retaliation, or employment discrimination, the Tribe or its designee shall provide notice by personal service or certified mail, return receipt requested, that the claimant is required to proceed with the Tribe's Employment Discrimination Complaint Resolution Process in the event that the claimant wishes to pursue his or her claim.
  - (B) The claimant must bring his or her claim within one hundred eighty (180) days of receipt of the written notice ("limitation period") of the Tribe's Employment Discrimination Complaint Resolution Process as long as the notice thereof is served personally on the claimant or by certified mail with an executed return receipt by the claimant and the one hundred eighty (180) day limitation period is prominently displayed on the front page of the notice.
  - (C) The arbitration may be stayed until the completion of the Tribe's Employment Discrimination Complaint Resolution Process or one hundred eighty (180) days from the date the claim was filed, whichever first occurs, unless the parties mutually agree upon a longer period.
  - (D) The decision provided pursuant to the Tribe's Employment Discrimination Complaint Resolution

Process shall be in writing, shall be based on the facts surrounding the dispute, shall be a reasoned decision, and shall be rendered within one hundred eighty (180) days from the date the claim was filed, unless the parties mutually agree upon a longer period. The decision shall be delivered to the claimant by personal service or by certified mail, return receipt requested.

- (E) If a claimant is dissatisfied with the decision provided pursuant to the Employment Discrimination Complaint Resolution Process, the claimant may request that the complaint be settled by binding arbitration pursuant to subdivision (g)(ii)(D), provided the request for arbitration is made within one hundred eighty (180) days of receipt of the decision of the Tribe's Employment Discrimination Complaint Resolution Process.
- (iv) Within fourteen (14) days following notification to the Tribe that a claimant claims that he or she has suffered harassment, retaliation, or employment discrimination, the Tribe shall provide notice by personal service or certified mail, return receipt requested, that the claimant is required within the specified limitation period to first exhaust the Tribe's Employment Discrimination Complaint Resolution Process, if any exists, and if dissatisfied with the resolution, is entitled to arbitrate his or her claim before a retired judge in a binding arbitration proceeding.
- (v) In the event the Tribe fails to adopt the Ordinance specified in subdivision (g)(ii), persons who claim they have suffered prohibited harassment, retaliation, or employment discrimination may proceed to arbitration as provided in this subdivision (g), in which California employment discrimination law, including applicable statutes of limitations, shall apply to all such claims arising out of the claimant's employment in, in connection with, or relating to the operation of the Gaming Operation, Gaming Facility or Gaming Activities, and the Tribe shall be deemed to have waived its right to assert sovereign immunity up to the limits of the employment practices liability insurance policy in connection with the arbitration of any such

claims, any court proceedings based on such arbitration, including the arbitral award resulting therefrom, and any ensuing judgments. Nothing in this subdivision (g)(v), shall be interpreted as a waiver of the Tribe's sovereign immunity or consent to the jurisdiction of any court other than for the purposes set forth in this subdivision (g).

- (vi) The Tribe shall provide written notice of the employment discrimination complaint ordinance and the procedures for bringing a complaint in its employee handbook. The Tribe also shall post and keep posted in prominent and accessible places in the Gaming Facility where notices to employees and applicants for employment are customarily posted, a notice setting forth the pertinent provisions of the employment discrimination complaint ordinance and information pertinent to the filing of a complaint.
- (vii) The Tribe's failure to comply with this subdivision (g), shall be deemed a material breach of this Amended Compact.

**F.** A new **Section 10.2, subdivision (l)** is added as follows:

**Section 10.2.**

- (l) Adopt and comply with standards no less stringent than the standards of the Fair Labor Standards Act, 29 U.S.C. § 201, et seq., and the United States Department of Labor regulations implementing the Fair Labor Standards Act (29 C.F.R. § 500, et seq.).

**G.** **Section 10.3, subdivision (c)** is repealed and replaced by the following:

- (c) As a matter of comity, with respect to persons, including nonresidents of California, employed at the Gaming Facility or paid items of income by the Gaming Operation, the Gaming Operation shall withhold all taxes due to the State as provided in the California Unemployment Insurance Code and, except for members of the Tribe living on the Tribe's rancheria, the Revenue and Taxation Code, and the regulations thereunder,

and shall forward such amounts as provided in such Codes to the State. The Tribe shall file with the Franchise Tax Board a copy of any information return filed with the Secretary of the Treasury, as provided in the Revenue and Taxation Code and the regulations thereunder, except those pertaining to members of the Tribe living on the Tribe's rancheria.

**H.** A new **Section 10.3, subdivision (d)** is added as follows:

- (d) As a matter of comity, with respect to the earnings of any person employed at the Gaming Facility, the Gaming Operation shall comply with all earnings withholding orders for support of a child, or spouse, or former spouse, and all other orders by which the earnings of an employee are required to be withheld by an employer pursuant to chapter 5 (commencing with section 706.010) of division 1 of title 9 of part 2 of the California Code of Civil Procedure, and with all earnings assignment orders for support made pursuant to Chapter 8 (commencing with section 5200) of part 5 of division 9 of the California Family Code or section 3088 of the Probate Code, or their successor provisions.

## **XII. WORKERS' COMPENSATION**

**Section 10.3, subdivision (a)** is repealed and replaced by the following:

- (a) In lieu of permitting the Gaming Operation to participate in the state statutory workers' compensation system, the Tribe may create and maintain a system that provides redress for Gaming Facility employees' work-related injuries through requiring insurance or self-insurance, which system must include a scope of coverage, provision of up to ten thousand dollars (\$10,000) in medical treatment for alleged injury until the date that liability for the claim is accepted or rejected, employee choice of physician (either after thirty (30) days from the date of the injury is reported or if a medical provider network has been established, within the medical provider network), quality and timely medical treatment provided comparable to the state's medical treatment utilization schedule, availability of an independent medical examination to resolve disagreements on appropriate treatment (by an Independent Medical Reviewer on the state's

approved list, a Qualified Medical Evaluator on the state's approved list, or an Agreed Medical Examiner upon mutual agreement of the employer and employee), the right to notice, hearings before an independent tribunal, a means of enforcement against the employer, and benefits (including, but not limited to, disability, rehabilitation and return to work) comparable to those mandated for comparable employees under state law. Not later than the effective date of this Amended Compact, or sixty (60) days prior to the commencement of Gaming Activities under this Amended Compact, the Tribe will advise the State of its election to participate in the statutory workers' compensation system or, alternatively, forward to the State all relevant ordinances that have been adopted and all other documents establishing the system and demonstrating that the system is fully operational and compliant with the comparability standard set forth above. The parties agree that independent contractors doing business with the Tribe must comply with all state workers' compensation laws and obligations.

### **XIII. MITIGATION OF OFF-RESERVATION IMPACTS**

**Section 10.8** is repealed and replaced by the following:

**Section 10.8.** Off-Reservation Impact(s).

**Section 10.8.1.** Tribal Environmental Impact Report.

- (a) Before the commencement of any Project as defined in Section 10.8.6 herein, the Tribe shall prepare a Tribal Environmental Impact Report (hereafter "TEIR"), analyzing the potentially significant off-reservation environmental impacts of the Project pursuant to the process set forth in this Section 10.8; provided, however, that information or data which is relevant to such a TEIR and is a matter of public record or is generally available to the public need not be repeated in its entirety in the TEIR, but may be specifically cited as the source for conclusions stated therein; and provided further that the information or data shall be briefly described, that its relationship to the TEIR shall be indicated, and that the source thereof shall be reasonably available for inspection at a public place or public building. The TEIR shall provide detailed information about the

Significant Effect(s) on the Off- Reservation Environment which the Project is likely to have, including the matters set forth in Exhibit A, shall list ways in which the Significant Effects on the Environment might be minimized, and shall include a detailed statement setting forth all of the following:

- (i) All Significant Effects on the Off-Reservation Environment of the proposed Project;
  - (ii) In a separate section:
    - (A) Any Significant Effect on the Off-Reservation Environment that cannot be avoided if the Project is implemented;
    - (B) Any Significant Effect on the Off-Reservation Environment that would be irreversible if the Project is implemented;
  - (iii) Mitigation measures proposed to minimize Significant Effects on the Off-Reservation Environment, including, but not limited to, measures to reduce the wasteful, inefficient, or unnecessary consumption of energy;
  - (iv) Whether any proposed mitigation is feasible;
  - (v) A range of reasonable alternatives to the Project; provided that the Tribe need not address alternatives that would require it to forgo its right to engage in the Gaming Activities authorized by this Amended Compact on its Indian lands;
  - (vi) Any direct growth-inducing impacts of the Project; and
  - (vii) Whether the proposed mitigation would be effective to substantially reduce the potential Significant Effects on the Off- Reservation Environment.
- (b) In addition to the information required pursuant to subdivision (a), the TEIR shall also contain a statement briefly indicating

the reasons for determining that various effects of the Project on the off-reservation environment are not significant and consequently have not been discussed in detail in the TEIR. In the TEIR, the direct and indirect Significant Effects on the Off-Reservation Environment, including each of the items on Exhibit A, shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. The discussion of mitigation measures shall describe feasible measures which could minimize significant adverse effects, and shall distinguish between the measures that are proposed by the Tribe and other measures proposed by others. Where several measures are available to mitigate an effect, each should be discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures should not be deferred until some future time. The TEIR shall also describe a range of reasonable Project alternatives, which would feasibly attain most of the objectives of the Project and which would avoid or substantially lessen any of the Significant Effects on the Off-Reservation Environment, and evaluate the comparative merits of the alternatives; provided that the Tribe need not address alternatives that would cause it to forgo its right to engage in the Gaming Activities authorized by this Amended Compact on its Indian lands. The TEIR must include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison. The TEIR shall also contain an index or table of contents and a summary, which shall identify each Significant Effect on the Off-Reservation Environment with proposed mitigation measures and alternatives that would reduce or avoid that effect, and issues to be resolved, including the choice among alternatives and whether and how to mitigate the Significant Effects on the Environment. Previously approved land use documents, including, but not limited to, general plans, specific plans, and local coastal plans, may be used to discuss cumulative impact analysis.

**Section 10.8.2.** Notice of Preparation of Draft TEIR.

- (a) Upon commencing the preparation of the draft TEIR, the Tribe shall issue a Notice of Preparation to the State Clearinghouse in the State Office of Planning and Research (“State Clearinghouse”), to the County of El Dorado (“County”), to the public and to other Interested Persons, Agencies and Cities. The Notice shall provide all Interested Persons with information describing the Project and its potential Significant Effects on the Environment sufficient to enable Interested Persons to make a meaningful response or comment. At a minimum, the Notice shall include all of the following information:
  - (i) A description of the Project;
  - (ii) The location of the Project shown on a detailed map, preferably topographical, and on a regional map; and
  - (iii) The probable off-reservation environmental effects of the Project.
- (b) The Notice shall also inform Interested Persons of the opportunity to provide comments to the Tribe within thirty (30) days of the date of receipt of the Notice by the State Clearinghouse and the County. The Notice shall also request Interested Persons to identify in their comments the off-reservation environmental issues and reasonable mitigation measures that the Tribe will need to have explored in the draft TEIR.

**Section 10.8.3.** Notice of Completion of the Draft TEIR.

- (a) Within no less than thirty (30) days following receipt of the Notice of Preparation by the State Clearinghouse and the County, the Tribe shall file a copy of the draft TEIR and a Notice of Completion with the State Clearinghouse, the State Gaming Agency, the County, and the California Department of Justice. The Notice of Completion shall include all of the following information:

- (i) A brief description of the Project;
  - (ii) The proposed location of the Project;
  - (iii) An address where copies of the draft TEIR are available; and
  - (iv) Notice of a period of forty-five (45) days during which the Tribe may receive comments on the draft TEIR.
- (b) The Tribe will serve in a timely manner the Notice of Completion to all Interested Persons and post public notice of the draft TEIR in the office of the County Board of Supervisors and at the public libraries serving the County. In addition, the Tribe will provide public notice by at least one of the procedures below:
- (i) Publication of the Notice of Completion at least one time by the Tribe in a newspaper of general circulation in the area affected by the Project. If more than one area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas; or
  - (ii) Direct mailing by the Tribe of the Notice of Completion to the owners and occupants of property adjacent to, but outside, the Indian lands on which the Project is to be located. Owners of such property shall be identified as shown on the latest equalization assessment roll.

**Section 10.8.4. Issuance of Final TEIR.** The Tribe shall prepare, certify and make available to the County, the State Clearinghouse, the State Gaming Agency, and the California Department of Justice, a Final TEIR, which shall consist of:

- (a) The draft TEIR or a revision of the draft;
- (b) Comments and recommendations received on the draft TEIR either verbatim or in summary;

- (c) A list of persons, organizations, and public agencies commenting on the draft TEIR;
- (d) The responses of the Tribe to significant environmental points raised in the review and consultation process; and
- (e) Any other relevant comments and information added by the Tribe.

**Section 10.8.5.** The Tribe's failure to prepare a TEIR when required shall be deemed a material breach of this Amended Compact and furthermore shall be grounds for issuance of an injunction or other appropriate equitable relief.

**Section 10.8.6.** Definitions. For purposes of this Section 10.8, the following terms shall be defined as set forth in this Section 10.8.6.

- (a) "Project" is defined as any activity occurring on Indian lands, a principal purpose of which is to serve the Tribe's Gaming Activities or Gaming Operation and which may cause either a direct physical change in the off-reservation environment, or a reasonably foreseeable indirect physical change in the off-reservation environment. This definition shall be understood to include, but not be limited to, the construction or planned expansion of any Gaming Facility and any construction or planned expansion, a principal purpose of which is to serve a Gaming Facility, including, but not limited to, access roads, parking lots, a hotel, an entertainment facility, utility or waste disposal systems, or water supply, as long as such construction or expansion causes a direct or indirect physical change in the off-reservation environment. Notwithstanding the foregoing, "Project" shall not include the Tribe's Interchange Project, as described and evaluated in the September 2002 Final Environmental Impact Report/Environmental Assessment issued by the California Department of Transportation and Bureau of Indian Affairs, and which is described in that document (and is defined herein) to include the access road extending from Honpie Road on Shingle Springs Rancheria to the southwest over a contiguous 5.6-acre parcel held in trust for

the Tribe and an interchange connecting the access road to U.S. Highway 50 (between Shingle Springs Drive and Greenstone Road interchanges in El Dorado County) via an overpass and acceleration and deceleration lanes on Highway 50. Attached hereto as Exhibit B is a map reflecting the Interchange Project, which is in the Indian Reservations Roads system and which is also designated as Project ID No. 38330, Route No. 315, in the Indian Reservation Road Transportation Improvement Program. Nothing herein shall be interpreted to exclude from the definition of Project any reconstruction, alteration of, or addition to the Interchange Project that was not described and evaluated in the September 2002 Final Environmental Impact Report/Environmental Assessment.

- (b) “Significant Effect(s) on the Environment” has the same meaning as “Significant Effect(s) on the Off-Reservation Environment” and occur(s) if any of the following conditions exist:
  - (i) A proposed Project has the potential to degrade the quality of the off-reservation environment, reduce the off-reservation habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, eliminate an off-reservation plant or animal community, reduce the number or restrict the range of an endangered, rare or threatened species, or eliminate important examples of the major periods of California history or prehistory, or to achieve short-term, to the disadvantage of long-term, environmental goals.
  - (ii) The possible effects on the off-reservation environment of a Project are individually limited but cumulatively considerable. As used herein, “cumulatively considerable” means that the incremental effects of an individual Project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effect of probable future projects.

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

For purposes of this definition, reservation refers to Indian lands within the meaning of IGRA.

- (c) “Interested Persons” means (i) all local, State, and federal agencies, which, if a Project were not taking place on Indian lands, would have responsibility for approving the Project or would exercise authority over the natural resources that may be affected by the Project, (ii) any city with a nexus to the Project, and (iii) any other persons, groups, or agencies that request in writing a notice of preparation of a draft TEIR or have commented on the Project in writing to the Tribe or the County.

**Section 10.8.7. Intergovernmental Agreement.**

- (a) Before commencement of a Project and no later than when the Tribe issues its Final TEIR, the Tribe shall offer to begin negotiations with the County and upon the County’s acceptance of the Tribe’s offer, shall negotiate with the County and shall enter into an enforceable written agreement with the County which include all of the following:
  - (i) Provisions providing for the timely mitigation of any Significant Effect on the Off-Reservation Environment (which effects may include, but are not limited to, adverse changes in aesthetics, agricultural resources, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, water resources, land use, mineral resources, traffic, noise, utilities and service systems, and cumulative effects), where such effect is attributable, in whole or in part, to the Project, unless the parties agree that the particular mitigation is infeasible, taking into account economic, environmental, social, technological, and/or other considerations.

- (ii) Provisions relating to reasonable compensation for law enforcement, fire protection, emergency medical services and any other public services to be provided by the County to the Tribe for the purposes of the Tribe's Gaming Operation as a consequence of the Project.
  - (iii) Provisions providing for mitigation of any effect on public safety attributable to the Project, including any reasonable compensation to the County as a consequence thereof.
  - (iv) Provisions providing for reasonable compensation for programs designed to address gambling addiction.
- (b) The Tribe shall not commence a Project until the Intergovernmental Agreement specified in subdivision (a) is executed by the parties or is effectuated pursuant to Section 10.8.8.

**Section 10.8.8. Dispute Resolution Process**

- (a) In order to foster good government-to-government relationships and to assure that the Tribe is not unreasonably prevented from commencing a Project and benefiting therefrom, if an agreement with the County is not entered into within fifty-five (55) days of the submission of the Final TEIR, or such further time as the Tribe or the County (for the purposes of this Section "the parties") may mutually agree in writing, any party may demand binding arbitration before a single arbitrator pursuant to the comprehensive arbitration rules and procedures of JAMS (or if those rules no longer exist, the closest equivalent) with respect to disputes over mitigation or compensation on which the parties cannot reach agreement. Upon mutual agreement of the parties, the arbitration may be before a panel of three arbitrators. Any party dissatisfied with the award of the arbitrator may at the party's election invoke the JAMS Optional Arbitration Appeal Procedure (and if those rules no longer exist, the closest equivalent); provided that the party making such election must bear all costs and expenses of JAMS and the

arbitrators associated with the Appeal Procedure regardless of the outcome.

- (b) With respect to each dispute specified in subdivision (a), the arbitrator shall issue an award that provides for feasible mitigation of Significant Effects on the Off-Reservation Environment and on public safety and which reasonably compensates for public services pursuant to Section 10.8.8, without unduly interfering with the principal objectives of the Project or imposing environmental mitigation measures which are different in nature or scale from the type of measures that have been required to mitigate impacts of a similar scale of other projects in the surrounding area, to the extent there are such other projects. The arbitrator shall take into consideration whether the final TEIR provides the data and information necessary to enable the County to determine both whether the Project may result in a Significant Effect on the Off-Reservation Environment and whether the proposed measures in mitigation are sufficient to mitigate any such effect. The arbitrator may require the parties to produce evidence in support of or in opposition to any factual matter deemed by the arbitrator to be relevant and material to the determination of the dispute. If any party does not participate in the arbitration, the arbitrator shall nonetheless conduct the arbitration and issue an award, and the participating party or parties shall submit such evidence as the arbitrator may require therefor. The award shall be deemed part of the Intergovernmental Agreement provided for under Section 10.8.7, and upon request of either party, the arbitrator may include those mitigation and compensation measures upon which the parties have agreed in the award. To effectuate its consent to the foregoing arbitration procedure, the Tribe agrees to expressly waive, and also waive its right to assert, its sovereign immunity and any and all defenses based thereon in connection with the arbitrator's jurisdiction and in any action brought in the United States District Court where the Tribe's Gaming Facility is located and related courts of appeal, or, if the federal court declines to hear the action, in any action brought in the courts of the State of California that are located in Sacramento County or El Dorado County, including courts of appeal, to (1) enforce the parties' obligation to arbitrate, (2)

confirm, correct, modify, or vacate the arbitral award rendered in the arbitration, or (3) enforce or execute a judgment based upon the award. The Tribe agrees not to assert, and will waive, any defense alleging improper venue or forum non-conveniens as to such courts.

**Section 10.8.9.** Notwithstanding anything to the contrary herein, the Memorandum of Understanding and Intergovernmental Agreement entered into on September 28, 2006, between the County of El Dorado and the Tribe (“the MOU/IGA”) constitutes an Intergovernmental Agreement within the meaning of Section 10.8.7 and covers all Projects commenced during the term of this Amended Compact unless the County and the Tribe agree otherwise or unless the MOU/IGA terminates or otherwise becomes unenforceable prior to the termination of this Amended Compact. The Tribe agrees to implement the mitigation measures set forth in the MOU/IGA. Failure of the Tribe to implement the mitigation measures shall constitute a breach of this Amended Compact. Further, the Tribe agrees that the State may enforce the MOU/IGA on behalf of the County, as provided in Section K.5. of the MOU/IGA.

#### **XIV. LICENSURE OF FINANCIAL SOURCES**

**Section 6.4.6** is repealed and replaced by the following:

**Section 6.4.6.** Financial Sources.

- (a) Subject to subdivision (e) of this Section 6.4.6, any person or entity extending financing, directly or indirectly, to the Tribe for a Gaming Facility or a Gaming Operation (a “Financial Source”) shall be licensed by the Tribal Gaming Agency prior to extending that financing.
- (b) A license issued under this Section shall be reviewed at least every two (2) years for continuing compliance. In connection with such a review, the Tribal Gaming Agency shall require the Financial Source to update all information provided in the previous application. For purposes of Section 6.5.2, such a review shall be deemed to constitute an application for renewal.

- (c) Any agreement between the Tribe and a Financial Source shall include a provision for its termination without further liability on the part of the Tribe, except for the bona fide repayment of all outstanding sums (exclusive of interest) owed as of the date of termination, upon revocation or non-renewal of the Financial Source's license by the Tribal Gaming Agency based on a determination of unsuitability by the State Gaming Agency. The Tribe shall not enter into, or continue to make payments pursuant to, any contract or agreement for the provision of financing with any person whose application to the State Gaming Agency for a determination of suitability has been denied or has expired without renewal.
- (d) A Gaming Resource Supplier who provides financing exclusively in connection with the provision, sale, or lease of Gaming Resources obtained from that Supplier may be licensed solely in accordance with licensing procedures applicable, if at all, to Gaming Resource Suppliers, and need not be separately licensed as a Financial Source under this Section.
- (e) (i) The Tribal Gaming Agency may, at its discretion, exclude from the licensing requirements of this Section, the following Financial Sources under the circumstances stated.
  - (A) A federally-regulated or state-regulated bank, savings and loan association, or other federally- or state-regulated lending institution.
  - (B) An entity identified by Uniform Tribal Gaming Regulation CGCC-2, subdivision (f) (as in effect on July 1, 2006) of the California Gambling Control Commission, when that entity is a Financial Source solely by reason of being (1) a purchaser or a holder of debt securities issued directly or indirectly by the Tribe for a Gaming Facility or by the Gaming Operation or (2) the owner of a participation interest in any amount of indebtedness for which a Financial Source described in subdivision (e)(i)(A) is the creditor.

- (C) An investor who, alone or together with any person controlling, controlled by or under common control with such investor, holds less than 10% of all outstanding debt securities issued directly or indirectly by the Tribe for a Gaming Facility or by the Gaming Operation.
  - (D) An agency of the federal, state or local government providing financing, together with any person purchasing any debt securities of the agency to provide such financing.
- (ii) The following are not Financial Sources for purposes of this Section.
  - (A) An entity identified by Uniform Tribal Gaming Regulation CGCC-2, subdivision (h) (as in effect on July 1, 2006) of the California Gambling Control Commission.
  - (B) A person or entity whose sole connection with a provision or extension of financing to the Tribe is to provide loan brokerage or debt servicing for a Financial Source at no cost to the Tribe or the Gaming Operation; provided that no portion of any financing provided is an extension of credit to the Tribe or the Gaming Operation by that person or entity.
  - (C) The holder of any Letter-of-Credit-Backed Bonds identified in Uniform Tribal Gaming Regulation CGCC-1 (as in effect on July 1, 2006), so long as the holder meets the criteria set forth in both paragraphs (1) and (2) of subdivision (a) of Uniform Tribal Gaming Regulations CGCC-1.
- (f) In recognition of changing financial circumstances, this Section shall be subject to good faith renegotiation after one (1) year from the effective date of this Amended Compact upon request of either party; provided such renegotiation shall

not retroactively affect transactions that have already taken place where the Financial Source has been excluded or exempted from licensing requirements.

## **XV. EFFECTIVE DATE AND TERM OF COMPACT**

**A. Section 11.1** is amended to read in its entirety as follows:

**Section 11.1. Effective Date.** This Amended Compact shall not be effective unless and until all of the following have occurred: (a) The Amendment herein is ratified in accordance with state law; and (b) Notice of approval or constructive approval by the United States Secretary of the Interior is published in the Federal Register as provided in 25 U.S.C. § 2710(d)(3)(B).

**B. Section 11.2.1, subdivision (a)** is repealed and replaced by the following:

**Section 11.2.1(a).** Once effective, this Amended Compact shall remain in full force and effect until December 31, 2029.

**C. Section 11.2.1, subdivision (b)** is repealed.

## **XVI. NOTICES**

**Section 13.0** is repealed and replaced by the following:

**Section 13.0.** Unless otherwise indicated by this Amended Compact, all notices required or authorized to be served shall be served by first-class mail at the following addresses:

Governor  
State Capitol  
Sacramento, California 95814

Tribal Chairperson  
Shingle Springs Band  
of Miwok Indians  
Shingle Springs Rancheria  
5281 Honpie Road  
Placerville, CA 95667

The Tribe or State may change the address to which notices shall be sent by providing twenty (20) days' written notice to the other party.

## XVII. MISCELLANEOUS

- A. **Section 15.4** is repealed.
- B. A new **Section 15.7** is hereby added as follows:

**Section 15.7.** Calculation of time. In computing any period of time prescribed by this Amended Compact, the day of the event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday under the Tribe's laws, State law, or federal law. Unless otherwise specifically provided herein, the term "days" shall be construed as calendar days.

- C. A new **Section 15.8** is hereby added as follows:

**Section 15.8.** Whenever the Tribe adopts or amends any ordinance or regulation required to be adopted and/or maintained under the 1999 Compact or this Amended Compact, the Tribe shall provide a copy of such adopted or amended ordinance or regulation to the Governor's Legal Affairs Secretary within thirty (30) days of the effective date of such amended ordinance.

- D. A new **Section 15.9** is hereby added as follows:

**Section 15.9.** The Tribe expressly represents that, as of the date of the Tribe's execution of this Amended Compact, the undersigned Chairman has the authority to execute this Amendment on behalf of the Tribe, including any waivers of the right to sovereign immunity therein, and will provide written proof of such authority and of the ratification of this Amendment by the tribal governing body to the Governor no later than thirty (30) days after this Amendment's execution by the Tribal Chairman. In entering into this Amendment, the State expressly relies upon the foregoing representations by the Tribe, and the State's entry into this Amendment is expressly made contingent upon the truth of those representations. If the Tribe fails to provide written proof of authority to execute this Amendment or written proof of ratification by the Tribe's governing body within thirty (30) days of the Tribal Chairman's execution of this Amendment, the Governor shall have the right to declare this

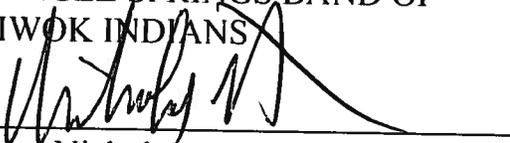
Compact null and void by written notice filed with the California Secretary of State.

IN WITNESS WHEREOF, the undersigned sign this Amendment on behalf of the State of California and the Shingle Springs Band of Miwok Indians.

STATE OF CALIFORNIA

  
By: Arnold Schwarzenegger  
Governor of the State of California

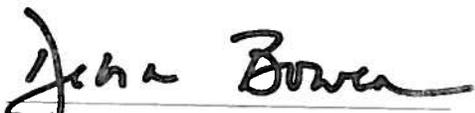
SHINGLE SPRINGS BAND OF MIWOK INDIANS

  
By: Nicholas H. Fonseca  
Chairman of the Shingle Springs Band of Miwok Indians

Executed this 30 day of June, 2008, at Sacramento, California

Executed this 30 day of June, 2008, at Sacramento, California

ATTEST:

  
Debra Bowen  
Secretary of State, State of California