

AMENDED AND RESTATED  
TRIBAL-STATE COMPACT FOR REGULATION  
OF CLASS III GAMING BETWEEN THE KLAMATH TRIBES AND  
THE STATE OF OREGON

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**PREAMBLE**

This amended and restated Compact is made between the State of Oregon (hereinafter "State") and the Klamath Tribes (hereinafter "Tribes") and pertains to Class III gaming conducted on tribal trust lands located within the 1954 boundaries of the Klamath Indian Reservation, pursuant to the Indian Gaming Regulatory Act (hereinafter "IGRA") of October 17, 1988 (Public Law 100-97), 25 U.S.C. § 2701 *et seq.* and the Klamath Tribes Restoration Act (Public Law 99-398), such lands to be described in Exhibit 1 to this Compact, and reflects the sovereign status and jurisdictional authority of the Tribes and addresses the legitimate concerns of the State. The terms of this Compact are unique to these Tribes and reflect the fact that the lands that are the subject of this Compact, have all the recognition, rights and privileges as were restored to the Tribes under the Klamath Indian Tribe Restoration Act (hereinafter "Restoration Act"), and were taken into trust to be used for Class III gaming under IGRA.

**SECTION 1. TITLE**

This Compact is entered into this 27 day of June, 2002, by and between the Klamath Tribes, a federally recognized Tribe of Indians, and the State of Oregon.

**SECTION 2. FINDINGS**

WHEREAS, the Tribes is a federally recognized Indian Tribe and are the government for the Klamath Tribes, located within the State of Oregon; and

WHEREAS, the State and the Tribes are separate sovereigns and each respects the laws of the other sovereign; and

WHEREAS, the public policy of the State is reflected in the Constitution, statutes and administrative rules of the State, and the Constitution provides that the "Legislative Assembly has no power to authorize, and shall prohibit, casinos from operation in the State"; and

WHEREAS, the Tribal public policy, as reflected in the Tribes' Constitution and ordinances, "recognize[s] our Tribe[s] for the continued preservation of its culture, identity and to provide a responsible organization to carry out the official business of the Tribe[s] including our treaty rights...and to establish ourselves as a body which...shall act to represent the Klamath Tribe[s] in its full relationships with the United States government, the State of Oregon, other Indian Tribes and associations, and all other persons or bodies"; and

WHEREAS, the United States Congress has enacted IGRA which declares federal policy and provides a statutory basis for operation of gaming by the Tribes as a means of promoting Tribal economic development, self-sufficiency, and strong Tribal government; and

WHEREAS, the Tribes exercises governmental authority over all Klamath Indian lands; and

WHEREAS, the Tribes' Gaming Operation is located on land described in 25 U.S.C. § 2719; and

WHEREAS, IGRA is intended to provide a statutory basis for regulation of gaming by the Tribes adequate to shield it from organized crime and other corrupting influences, to ensure that the Tribes is the primary beneficiary of the gaming revenues, and to ensure that gaming is conducted fairly and honestly by both the operators and players; and

WHEREAS, Congress has declared that it is a principal goal of federal Indian policy to promote Tribal economic development, Tribal self-sufficiency and strong Tribal government; and

WHEREAS, IGRA provides for a system of joint regulation by Indian Tribes and the federal government (to the exclusion of the State) of Class I and II gaming on Tribal lands as defined in IGRA; and

WHEREAS, IGRA establishes a system of agreements between Indian Tribes and States for the regulation of Class III gaming as defined in that Act; and

WHEREAS, IGRA provides that Class III gaming activities are lawful on Tribal lands only if such activities are (1) located in a state that permits such gaming for any purpose by any person, organization or entity, (2) authorized by Tribal Ordinance, and (3) conducted in accordance with a Tribal-State Compact; and

WHEREAS, the Congressional intent in passing IGRA was to reaffirm a long and well-established principle of federal Indian law as expressed in the United States Constitution, reflected in Federal statutes and articulated in decisions of the United States Supreme Court that unless authorized by an act of Congress, the jurisdiction of State governments does not extend to Tribal lands; and

WHEREAS, IGRA does not extend State jurisdiction or the application of State laws for any purpose other than jurisdiction and application of State laws to gaming conducted on Tribal land as set forth in this Compact; and

WHEREAS, in IGRA, Congress recognized a role for State public policy and State law in the regulation of Class III Gaming; and

WHEREAS, nothing in the Tribal-State Compact shall be construed to extend to any other activities or as an abrogation of other reserved rights of the Tribes or of the Tribes' sovereignty; and

WHEREAS, IGRA is intended to expressly preempt the field in the governance of gaming activities on Tribal lands; and

WHEREAS, the Tribes is authorized to act through Resolutions adopted by its Tribal Council; and

WHEREAS, the State of Oregon is authorized to act through the Governor of the State; and

WHEREAS, the Tribe and the State agree that the functions of monitoring and oversight will be fully funded by the Oregon gaming tribes; and

WHEREAS, the continued growth and success of tribal gaming depends upon public confidence and trust that the tribal gaming operation is honest, fair and secure, and is free from criminal and corruptive influences;

WHEREAS, public confidence and trust can be maintained only if there is strict compliance with laws and regulations related to licensed gaming establishments, by all persons involved in the gaming operation;

WHEREAS, the relationship between the State and the Tribes rests on mutual trust and the recognition that each has a primary duty to protect the gaming public through separate, appropriate responsibilities during the life of current and future Compacts;

NOW THEREFORE, in consideration of the mutual undertakings and agreements herein set forth, the Tribes and the State enter into the following Compact:

### **SECTION 3. DEFINITIONS**

As used in this Compact, and in its Appendix and Exhibit:

- A. "Average Daily Drop" means the difference between total wagers made, minus the total prizes paid on Class III VLTs in a day, with that difference divided by the number of Class III VLTs on the gaming floor on that day:

$$\frac{\text{Total wagers} - \text{total prizes paid}}{\text{VLTs}}$$

The Average Daily Drop for a certain period is the total of the Average Daily Drops for each day in that period, divided by the number of days in that period:

$$\frac{\text{Total Average Daily Drop for period}}{\text{Days in period}}$$

- B. "Background investigation" means a security and financial history check of a Class III Gaming Contractor or an applicant for a Tribal gaming license, whether the applicant is a prospective employee, consultant or vendor.
- C. "Certification" means the inspection process used by the Oregon State Lottery to approve video lottery game terminals and games, as described in the Appendix (MICS).
- D. "Class III Gaming Contract" means a contract that involves a Major Procurement or a Sensitive Procurement.
- E. "Class III Gaming Contractor" is any individual, business or other entity that proposes to consummate, or in fact consummates, a Class III Gaming Contract.
- F. "Consultant" means any person, other than an employee, who provides advice or expertise to the Tribes concerning the operation, management or financing, of the Tribes' Class III gaming activities for compensation. "Consultant" does not include a person engaged for the purpose of training or teaching employees of the Tribal Gaming Operation if the contract for those services is no greater than one month in duration. The term "Consultant" under this Compact shall not have the meaning for that term used by the National Indian Gaming Commission in its regulations and policies.
- G. "Controlling interest" means fifteen percent (15%) of the equity ownership of a company.
- H. "Counter Game" means keno and off-race course mutuel wagering.
- I. "Display" means the visual presentation of video lottery game features shown on the screen of a video lottery terminal.
- J. "Gaming Facility" means the building or buildings located on the tribal trust lands as described in Exhibit 1 to this Compact, including buildings used for storage of gaming equipment and machines, within which the Tribes operate Gaming Activities as defined under the Indian Gaming Regulatory Act and this Compact.
- K. "Gray Machine" means any electrical or electro-mechanical device, whether or not it is in working order or some act of manipulation, repair, adjustment or modification is required to render it operational that:
  - 1. Awards credits or contains or is readily adaptable to contain, a circuit, meter or switch capable of removing or recording the removal of credits earned by a player, other than removal during the course of continuous play; or
  - 2. Plays, emulates or simulates a casino game, bingo or keno. A device is no less a "gray machine" because, apart from its use or adaptability as such, it may also sell or deliver something of value on the basis other than chance.

“Gray Machine” does not include any device operated under the authority of State law or under the terms of this Compact.

- L. “High Security Employee” means any natural person who participates in the operation or management of the Tribal Gaming Operation, whether employed by the Tribes or by a person or entity providing on-site or off-site gaming operation or management services to the Tribes, including but not limited to: gaming operations administrators, managers and assistant managers, gaming facility surveillance or security personnel, dealers, croupiers, shift supervisors, cage personnel (including cashiers and cashier supervisors), drop and count personnel, gaming management consultants, video lottery terminal technicians, junket representatives; and any other person whose employment duties require or authorize access to areas of the Gaming Facility related to Class III gaming and which are not otherwise open to the public.
- M. “Key Employee” means any officer or any person who can substantially affect the course of business, make decisions or is in a sensitive position in an organization or corporation that is a Class III Gaming Contractor or an applicant for a Tribal gaming license.
- N. “Low Security Employees” means any employee of the Tribal Gaming Operation whose duties require the employee’s presence in any area of the Gaming Facility where Class III gaming activities take place, but who is not a High Security Employee and who is not involved in the operation of Class III gaming.
- O. “Major Procurement” means any procurement action or contract for the following products, systems or services used in Class III gaming:
  - 1. The printing of tickets;
  - 2. Any goods or services involving the receiving or recording of number selections or bets;
  - 3. Any goods, services, systems or products used to determine winners;
  - 4. Video devices or other equipment, except equipment specifically included in the definition of Sensitive Procurement;
  - 5. A contract or license to use a patented game or game product;
  - 6. Accounting systems or surveillance systems;
  - 7. A contract that provides for, or the terms of which will make necessary, a continuing relationship over time (more than thirty days) between the parties; or

8. A contract that involves or requires commitments by either party to the contract such that there would be substantial financial consequences to one of the parties if the contract or procurement action was terminated prematurely. For this purpose a contract involving consideration or value of \$100,000 or more shall be deemed to involve substantial financial consequences to one of the parties if the contract or procurement action was terminated prematurely.
- P. "New Class III Games" means those Class III gaming activities authorized pursuant to this Compact in addition to blackjack, video lottery terminals, keno, and off-track pari-mutuel wagering.
- Q. "Oregon State Police" refers to the Gaming Enforcement Division, or that administrative unit charged with gaming enforcement regulatory responsibilities, of the Department of State Police established under Oregon Revised Statutes section 181.020, or its successor agency established by law.
- R. "Owner" means any person or entity that owns five percent (5%) or more of the equity ownership of a company, alone or in combination with another person who is a spouse, parent, child or sibling.
- S. "Primary Management Official" means any person whether employed by the tribe or the Tribal Gaming Operation, who:
1. Has administrative or high-level management responsibility for part or all of the Class III Tribal Gaming Operation, whether as an employee or under a management contract;
  2. Has authority --
    - a. to hire and fire supervisory employees; or
    - b. to set or otherwise establish working policy for the gaming operations; or
  3. Is the chief financial officer or other person who has financial management responsibility for the Tribal Gaming Operation.
- T. "Sensitive Procurement" means any procurement action or contract that is not a "Major Procurement," for Class III gaming equipment (such as cards, dice, keno balls, roulette wheels, roulette balls, chips, tokens, VLT or keno paper, gaming tables, table layouts or the like), or any other products that are not used directly in the conduct of Class III gaming, but that directly affect the integrity, security, honesty, and fairness of the operation and administration of the Tribes' Class III gaming activities such as replacement parts for video lottery terminals (bill acceptors, printers), locks and keys for secure storage areas or gaming devices, or individual surveillance cameras.

- U. "Table game" means any Class III game allowed under this Compact except video lottery games, keno, off-race course mutuel wagering.
- V. "Tribal Gaming Operation" means the entity, whether or not separately incorporated, that operates Class III gaming under tribal authority, and receives revenues, issues prizes and pays expenses in connection with Class III games authorized under this Compact.
- W. "Video lottery terminal" or "terminal" means any electronic or other device, contrivance or machine where the game outcome decision-making portion of the overall assembly is microprocessor controlled wherein the ticket or game outcome is displayed on a video display screen, electronically controlled physical reels, or other electronic or electro-mechanical display mechanism and that is available for consumer play by one player at a time at the device upon payment of any consideration, with winners determined by the application of the element of chance and the amount won determined by the possible prizes displayed on the device and which awards game credits. Such device shall also display both win amounts and current credits available for play to the player.

#### **SECTION 4. AUTHORIZED CLASS III GAMING**

- A. This Compact shall be the only and entire Compact between the Tribes and State and any and all Class III gaming conducted in the Gaming Facility shall be pursuant to this Compact. To the extent that elements of this Compact need to be altered to incorporate changes to the agreements between the parties, including to permit additional Class III gaming, the parties shall provide such changes in accordance with subsection D of Section 12 of this Compact.
- B. Authorized Games.
  - 1. Subject to the provisions of this Compact, the Tribes may engage in the following Class III games: Video lottery games of chance, Keno, house banked blackjack, craps, roulette, pai-gow poker, Caribbean stud poker, let-it-ride, big 6 wheel, and off-race course mutuel wagering. Operation of any game under this paragraph must be pursuant to rules, procedures and internal controls for the game at least as stringent as the minimum internal control standards set forth in the minimum internal control standards attached as an Appendix to this Compact.
  - 2. Subject to, and in compliance with, the provisions of this Compact, including but not limited to subsection B(3) of this section, the Tribes may engage in any other Class III game that has been approved by the Nevada Gaming Commission or by an Indian tribe with an approved Class III Compact in the State in which the tribe conducts a gaming operation, provided, that for an Indian approved game, certification from the State where such Tribe conducts gaming that such game is permissible under IGRA shall be provided, and Oregon State Police review and approval shall be required. Operation of any game under this paragraph must be

pursuant to rules, procedures, and internal controls for the new game at least as stringent as the minimum internal control standards set forth in the Appendix to this Compact and, where appropriate, subject to new MICS developed and approved by both the Tribal Gaming Commission and Oregon State Police. In addition, the Tribes' authorization to engage in other Class III games under this paragraph shall be subject to adoption of a charitable contribution fund as set forth in Section 10(B), *provided*, that the numbers of VLTs set out in Section 4.D.2 are not subject to this condition.

3. Before the Tribes offer an additional Class III game under this subsection, the Tribes and the Oregon State Police must agree that the Tribes have adopted appropriate internal controls, surveillance plans, game rules and procedures, as provided in subsection E of this section, and that the Tribal Gaming Commission and the Oregon State Police are fully prepared to regulate and monitor the additional Class III game. In the event a dispute exists between the Tribe and the State about whether a particular gaming activity can be offered by the Tribe under this Compact and under IGRA, such dispute will be resolved pursuant to Section 16 of this Compact.
4. This section shall be construed consistent with federal classification of gaming activities. Notwithstanding any provision of this Compact, any gaming activity classified by federal regulation as Class II activity shall not be subject to the provisions of the Compact. However, the Tribe agrees that if any Class II gaming activities are conducted or intermingled in such a way that they are inseparable from Class III gaming activities, such as surveillance, those activities shall be considered as Class III for purposes of the regulatory authority of the State under this Compact.
5. This Compact shall not preclude the Tribe from seeking negotiation, consistent with the policies of IGRA and this Compact, to offer internet gaming in the event of a final federal judicial decision, final State of Oregon judicial decision, or congressional or State of Oregon legislative action permitting internet gaming. If the State disputes whether internet gaming may be offered consistent with this subsection and federal and/or state law, including IGRA, such dispute shall be resolved pursuant to Section 16 of this Compact. Compact negotiation as set forth in this subsection B(5) shall be initiated pursuant to Section 12(D) of this Compact. No such gaming shall be offered until dispute resolution concludes and all legal appeals are final. The Tribes agree that they will not offer sports book gaming as a gaming activity under this Compact unless another Indian tribe in the State of Oregon offers such gaming activity under an approved Tribal-State Gaming Compact.
6. The Tribes shall not offer any Class III games other than those authorized pursuant to Sections 4(B)(1) and (2) of this Compact.

- C. Gaming Location. Gaming authorized under this Compact shall be conducted only in the Gaming Facility on the Tribes' trust lands, as described in Exhibit 1 to this Compact.
- D. Number of Video Lottery Terminals.
1. The number of Class III video lottery games of chance authorized by this Compact shall not exceed 400. Subject to other terms of this Compact, the Tribes may determine in its discretion the location and spacing of Video Lottery Terminals within the Gaming Facility.
  2. The Tribes may request authorization for additional VLTs as follows: When the Tribal Gaming Operation has maintained 350 machines at an average daily drop agreed on by the parties in a memorandum of understanding, for each of any three consecutive months chosen by the Tribes, the Tribes may request an increase in the authorized number of VLTs. There will be no increase of authorized VLTs prior to execution of the memorandum of understanding. The Tribes shall make the request in writing to OSP. Upon verification of the average daily drop by OSP, the number of authorized VLTs will increase to 550. Pursuant to the same procedures, the Tribes may request authorization for additional VLTs according to the following formula. When the Tribal Gaming Operation has maintained 500 VLTs at the agreed upon average daily drop for each of any three consecutive months chosen by the Tribes, the number of VLT's authorized will increase to 700. Once the OSP has verified the requisite average daily drop provided pursuant to this subsection, the number of authorized VLTs will be automatically increased as provided for herein without need to execute a Compact amendment.
  3. After the Tribes are authorized to have 700 VLTs, the Tribes may request negotiations regarding amending the Compact to increase the number of authorized VLTs, pursuant to subsection 12(d). In such an event, the scope of the Compact amendment will be limited to the economic justification for the increase in the number of authorized video lottery games, and directly related matters, unless otherwise agreed by the parties.
  4. The Tribe may maintain VLTs that it is not using in storage at the Gaming Location, so long as the total number of VLTs in operation and in storage does not exceed 110% of the authorized number of VLTs, and so long as the site and manner of storage is approved by the Oregon State Police, and the Oregon State Police are provided access to the storage site.
  5. For purposes of the calculation of the authorized number of Class III Video Lottery Terminals in this subsection 4(D), a video lottery terminal providing for play by multiple players shall count as one VLT, as long as the total number of such devices does not exceed one (1) percent of the total authorized Video Lottery Terminals.

E. Addition of Authorized Games at Gaming Facility.

1. At least 60 days before any additional game authorized under this Compact is conducted at the Gaming Facility, the Tribal Gaming Commission shall:
  - a. Ensure that the Tribal gaming operation develops rules and procedures for a system of internal controls for the additional game that meet the minimum standards established in the Appendix to this Compact.
  - b. Require that the Tribal gaming operation provide appropriate training for all dealers, supervisors, surveillance personnel, Tribal Gaming Inspectors and any other employees involved in the conduct or regulation of the additional game, such that those employees have the knowledge and skills required under typical industry standards for the job function that employee performs, including but not limited to player money management and betting, card counting and detection of cheating methods. The Gaming Operation or Tribal Gaming Commission, as appropriate, will notify the Oregon State Police prior to beginning training and will provide the Oregon State Police the opportunity to participate.
  - c. Ensure that the Gaming Facility establishes a security and surveillance plan for the additional game that meets the minimum standards established in the Appendix hereto.
  - d. Adopt rules of operation for the game that meet the minimum standards established in the Appendix hereto, including rules of play and standards of equipment.
  - e. Notify the Oregon State Police that the Tribe proposes to offer the new game to the public, and provide to the Oregon State Police for review all of the internal controls, regulations, plans, procedures and rules required under this paragraph (1) of this subsection.
2. The Tribes agree to introduce additional games authorized under this section according to the following schedule, provided that the schedule may be shortened if the Tribes can satisfactorily meet the criteria established in a shorter time frame and the State has the regulatory capacity to regulate the additional games:
  - a. Within the sixty day period after the Secretary of the Interior approves this Compact, the Tribes may offer three of the additional games authorized under subsection B of this section in addition to all games already authorized under the prior Class III Gaming Compact between the Tribe and the State;

- b. Within the ninety day period after the sixty-day period specified in subparagraph (a) of this paragraph, three additional games authorized under subsection B of this section;
- c. After the period of time specified in subparagraphs (a) and (b) of this paragraph, one additional game authorized under subsection B of this section may be introduced in each following calendar quarter.

F. Table Games.

- 1. Wager Limits. The Tribes shall establish wager limits for all games. The maximum wager for any table game or counter game shall be \$500. Whenever the Tribes introduce an additional table or counter game, the Tribes shall establish an initial wager limit of \$100 per hand, play or bet under the Tribal Gaming Commission and the Oregon State Police certify that the game is being operated without regulatory violations and in accordance with industry standards, at which time the maximum wager for such game shall increase to \$500. The Tribe may request at any time that the maximum wager for any table game or counter game, be increased to \$1000 initial wager per hand. The State will not withhold its consent to an increase in the wager limit of any Table Game if there has been full compliance under the previous wager limit with the Minimum Internal Controls, the Tribal Gaming Ordinance, the rules of operation of the game or with the terms of this subsection for a period of ninety (90) days and upon mutual consent, which time frame can be extended by either party. The amount of any increase in the wager limit must be agreed to by both the State and the Tribe before the limits are changed on the gaming floor. If the State determines that there has not been full compliance with the Minimum Internal Controls, the Tribal Gaming Ordinance, rules of compliance or terms of this subsection, the State may require that the wager limit be reduced to a level where such full compliance is likely to occur.
- 2. For purposes of this subsection 4(F), "full compliance" means:
  - a. All of the rules, procedures and plans required under subsection 2 of this section have been adopted and approved by the Tribal Gaming Commission, have been approved by OSP as meeting the Minimum Internal Control Standards, and have been implemented;
  - b. All training required by the Minimum Internal Control Standards and the regulations of the Tribal Gaming Commission is up to date;
  - c. The Tribal Gaming Commission has adopted policies and procedures that set forth appropriate sanctions for employees who fail to follow the regulations and internal controls of the commission, gaming operation management has committed in writing to train employees and impose the sanctions for

violations, and the Tribal Gaming Commission's procedures provide for investigation of possible violations by the Gaming Operation;

- d. The Tribal Gaming Commission has adopted and implemented procedures for direct reporting of possible violations to the Tribal Gaming Commission by any employee of the Tribal Gaming Operation; and
- e. The Tribal Gaming Commission has maintained records of investigations of all reports of possible violations, and has promptly reported confirmed violations to the Oregon State Police including the action taken by the Commission or Gaming Operation management to correct the failure, and the discipline or sanctions imposed.

3. Number of Table Games. The Tribes may operate a maximum of 40 tables of Table Games at the Gaming Facility.

G. Off-Track Mutuel Wagering. The Tribes may conduct off-track mutuel wagering on races held at race courses within or outside the State. Any off-track mutuel wagering on races held at race courses outside the State shall be conducted in compliance with the applicable requirements of the Interstate Horse Racing Act of 1978, as amended, (15 U.S.C. § 3001 to 3007). All off-track mutuel wagering at the Gaming Facility shall be conducted in person and no wagers may be accepted by telephone or other electronic medium.

H. No wagers may be placed or accepted by telephone or other electronic medium, including over the internet or any future technology that simulates internet services, except as may be authorized pursuant to Section 4(B)(5) of this Compact.

## **SECTION 5. JURISDICTION**

### **A. In General.**

- 1. The State shall have criminal jurisdiction over offenses committed by or against Indians and non-Indians within the Gaming Facility and on Tribal trust land on which the Gaming Facility is located. The criminal laws of the State shall have the same force and effect at the gaming location as they have on non-Tribal lands within the State. The State and the Tribes will enter into a Memorandum of Understanding concerning the assignment of law enforcement officers for enforcement of criminal laws of the State.
- 2. If the Tribes authorizes the Tribal Court to hear criminal cases arising on Tribal lands, the Tribes and the State shall have concurrent criminal jurisdiction over offenses committed by Indians within the Gaming Facility and on the Tribal lands on which the Gaming Facility is located. The criminal laws of the State shall have

the same force and effect on the Tribal lands on which the Gaming Facility is located as they have on non-Tribal lands within the State. Once a Tribal Police Force is in operation on the Tribal lands, enforcement of criminal laws at the Gaming Facility shall be established pursuant to and by a Memorandum of Understanding to be executed by the Tribes and the Oregon State Police.

- B. Except as provided in a Memorandum of Understanding executed in accordance with the foregoing paragraph (2) of subsection A above, law enforcement officers of the State of Oregon, or officers designated by the State, shall have free access to anywhere within the Gaming Facility for the purpose of maintaining public order and public safety, conducting investigations related to possible criminal activity and enforcing applicable laws of the State with respect to non-Indians. Any law enforcement activities undertaken by law enforcement officers of the State shall be in compliance with this Compact, the Tribes' Law and Order Code and any Cross Deputization Agreement executed by the Klamath Tribes and the State. The Tribes, or individuals acting on their behalf, shall provide State law enforcement officers or officers designated by the State, access to locked and secure areas of the Gaming Facility in accordance with the regulations for the operation and management of the Gaming Operation.
- C. The Tribes agrees to provide appropriate training in Tribal culture and institutions to any officer with regular duties at the Gaming Facility.
- D. Nothing in this Compact shall be construed to affect the criminal or civil jurisdiction of the State under Public Law 280.

## **SECTION 6. PRINCIPLES GOVERNING GAMING OPERATIONS**

- A. The Tribes and the State agree that maintaining the honesty, integrity, fairness and security of the Tribes' Class III gaming activities is essential both to the success of the enterprise, and to satisfy the interests of the State and of the Tribes. The Tribes and the State agree that both of them have the responsibility to protect persons who patronize the Gaming Facility from any breach of integrity or security. Accordingly, all decisions by the Tribes, the Tribal Gaming Regulatory Commission and the management of the Tribal Gaming Operation, concerning regulation and operation of the Gaming Facility, including those decisions expressly retained within the Tribes' discretion under the terms of this Compact, shall be consistent with each of the following principles:
  - 1. Any and all decisions concerning regulation and operation of the Tribes' Class III gaming activities, whether made by the Tribes, the Tribal Gaming Regulatory Commission or the management of the Tribal Gaming Operation, shall reflect the particularly sensitive nature of a gaming operation.
  - 2. In order to maintain the honesty, integrity, fairness and security of the Tribes' Class III gaming activities, the Tribes, the Tribal Gaming Regulatory Commission and the management of the Tribal Gaming Operation shall work diligently and take

all reasonably necessary affirmative steps to prevent cheating and theft, and to protect the Tribes' Class III gaming activities from influence or control by any form of criminal activity or organization.

3. The honesty, integrity, fairness and security of the Tribes' Class III gaming activities shall be a paramount consideration in awarding contracts, licensing and hiring employees, and in making other business decisions concerning the operation of the Tribes' Class III gaming activities. The Tribes, the Tribal Gaming Regulatory Commission and the management of the Tribal Gaming Operation shall knowingly make no decisions that compromises the honesty, integrity, fairness or security of the Tribes' Class III gaming activities.
4. Regulation and operation of the Tribes' Class III gaming activities shall be, at a minimum, consistent with generally accepted industry standards and practices, in order to maintain tribal ordinances, federal law and the honesty, integrity, fairness and security of the Tribes' Class III gaming activities.

B. Procedure for Resolving Disputes Concerning Operational Decisions.

1. If the State, in good faith, believes that any decision by the Tribes relating to the employment or licensing of any employee, awarding of any contract or operation of the Class III gaming activities, is inconsistent with the principles set forth in subsection A of this section, or any other requirement of this section, the State may give written notice to the Tribes. The written notice shall describe the factual basis for the State's concern.
2. The parties shall meet and confer within 15 days after the Tribes receive the notice.
3.
  - a. If the State's concerns set forth in the written notice are not resolved informally, either party may initiate non-binding arbitration within 45 days after the service of the written notice.
  - b. An arbitrator shall be selected in the following manner:
    - (1) The parties shall obtain a list of qualified arbitrators from U.S. Arbitration and Mediation of Oregon, or any other arbitration panel agreed to by the parties.
    - (2) Each party, in turn, shall strike one name from the list, until one name remains. The parties shall draw lots to determine which party makes the first strike.
  - c. Upon agreement by both parties, the arbitration proceeding shall be binding.

- d. The parties shall divide the cost of the arbitration proceeding equally between them.
4. Upon conclusion of the arbitration proceeding, if the parties have not elected to be bound by that result, either party may initiate an action in the United States District Court for the District of Oregon as provided in Section 16 of this Compact.
  5. Expedited Procedure.
    - a. If the State, in good faith, believes that there is an immediate threat to the honesty, integrity, fairness and security of the Tribes' Class III gaming activities, and believes that substantial harm will result during the time that would pass if the procedure established in paragraphs (1) to (3) of this subsection is followed, the State may give written notice to the Tribal Gaming Regulatory Commission. The written notice shall describe the factual basis for the State's concern. The written notice shall describe the specific action the State believes is necessary to prevent substantial harm from occurring. The Tribes agree that it shall act according to the State's recommendation, unless the Tribal Gaming Commission determines that acting according to the State's recommendation would adversely affect the honesty, integrity, fairness and security of the Tribes' Class III gaming activities. Nothing in this subparagraph shall preclude the Tribes from invoking the dispute resolution procedures provided in this Compact after it implements the State's recommendation provided pursuant to this subparagraph. This subparagraph shall not apply to disputes raised by local officials, that do not otherwise implicate the concerns of this section, arising under Section 11(D) of this Compact.
    - b. The parties shall confer within five (5) days after the Tribes receive the notice.
    - c. If the State's concern is not resolved informally within ten days after the Tribes receive the notice, either party may initiate an action in the United States District Court for the District of Oregon as provided in Section 16 of this Compact.
    - d. An immediate threat to the honesty, integrity, fairness and security of the Tribes' Class III gaming activities includes but is not limited to the following examples:
      - (1) A criminal indictment is filed against any Class III Gaming Contractor, or Owner or Key Employee of a Class III Gaming Contractor, or against any Key Employee of the Tribal Gaming Operation;

- (2) A criminal organization or members of a criminal organization have obtained an ownership interest in a Class III Gaming Contractor, or a member of a criminal organization has become a Key Employee of a Class III Gaming Contractor;
  - (3) A malfunction of gaming equipment hardware or software causes patrons of the Gaming Facility to lose money improperly, and that loss is directly related to the equipment malfunction;
  - (4) The security of gaming equipment has been impaired by loss, theft, or tampering;
  - (5) The physical safety or security of patrons is seriously at risk in a way that requires immediate attention;
  - (6) A continuing pattern of failure by the Tribes, the Tribal Gaming Regulatory Commission or management of the Tribal Gaming Operation to enforce compliance with material provisions of this Compact; or the regulations and internal controls established pursuant to this Compact.
6. For purposes of this subsection 6(B), the State shall act through the Oregon State Police, or an official designated in the manner provided in Section 14 of this Compact.
- C. The provisions of this section shall provide the preferred method for resolving disputes as to the Tribes' decisions concerning hiring or contracting under Section 7 of this Compact, or concerning operation of the Tribes' Class III gaming activities.

**SECTION 7. LICENSING AND CONTRACTING**

**A. Licensing of Gaming Employees.**

- 1. All Primary Management Officials, High Security Employees and Low Security Employees employed in the Gaming Facility shall be licensed by the Tribal Gaming Regulatory Commission in accordance with the provisions of this Compact. --
- 2. All prospective employees -- whether High Security Employees, Low Security Employees or Primary Management Officials -- shall provide to the Tribal Gaming Regulatory Commission and the Oregon State Police any required application fees and at a minimum, the following information on forms provided or approved by the Oregon State Police:
  - a. Full name, including any aliases by which the applicant has been known;

- b. Social security number;
  - c. Date and place of birth;
  - d. Residential addresses for the past ten years;
  - e. Employment history for the past ten years;
  - f. Driver's license number;
  - g. All licenses issued and disciplinary actions taken by any federal, state or tribal gaming agency;
  - h. All criminal proceedings, except for minor traffic offenses, to which the applicant has been a party;
  - i. A current photograph;
  - j. Any other information required by the Tribes.
3. In addition to the requirements of paragraph 7(A)(2) above, prospective High Security Employees and Primary Management Officials shall provide two sets of fingerprints.
4. a. The Tribal Gaming Regulatory Commission shall forward the applicant information for each prospective High Security Employee and Primary Management Official to the Oregon State Police. The Oregon State Police may conduct a background investigation and provide a written report to the Tribal Gaming Regulatory Commission within a reasonable period of time, but in no event shall such background checks exceed sixty (60) days without notice to the Tribes. In the event that the Tribal Gaming Commission conducts a background investigation, it will submit the completed report to the Oregon State Police within 60 days. The Oregon State Police shall return to the Tribes copies of tribal documents related to background investigations within 60 days of obtaining the copies. The Oregon State Police shall be entitled to retain copies of the following: the Tribal Gaming Commission investigative report, a photograph of the applicant, and information release forms. The Oregon State Police will not retain records of information regarding applicants developed by the Tribal Gaming Commission solely from tribal records which are not accessible in any other manner.
- b. The Tribes may request the Oregon State Police to perform a background investigation on any prospective Low Security Employee. Upon such request, the Oregon State Police shall conduct a background check as provided in subparagraph (a) of this paragraph.

5. a. Except as provided in paragraph (6) of this subsection, the Tribal Gaming Regulatory Commission shall deny a gaming license to any High Security Employee or Primary Management Official who:
- (1) Has, within the ten-year period preceding the date of license application, committed any felony other than a traffic offense, whether or not the crime resulted in a conviction or any such conviction has been expunged, under the law of any federal, state or tribal jurisdiction, or is the subject of a civil judgment under the law of any federal, state or tribal jurisdiction that is based on facts that constitute the elements of a felony other than a traffic offense, in that jurisdiction;
  - (2) Has committed a crime involving unlawful gambling under the law of any federal, state or tribal jurisdiction, whether or not conviction of such a crime has been expunged, or is the subject of a civil judgment under the law of any federal, state or tribal jurisdiction that is based on facts that constitute the elements of a crime involving unlawful gambling in that jurisdiction;
  - (3) Has associated in a direct business relationship, whether as a partner, joint venturer, employer or employee, with any other person who has committed a felony other than a traffic offense, or a crime involving unlawful gambling, under the law of any federal, state or tribal jurisdiction within the last ten years, provided, that if a prospective High Security Employee or Primary Management Official was unaware of the offenses committed by such person, reported such activity to appropriate law enforcement officials when he or she became aware of the offenses or attempted to stop such offenses, or terminated his or her business relationship with such person within a reasonable time after discovering or learning of such offenses, the prohibition in this subsection will not apply; and
  - (4) Has been subject to convictions or judicial findings of offenses, other than a traffic offense, that demonstrates a pattern of disregard for the law, or if the Tribal Gaming Commission or the Oregon State Police determines that it has reasonably reliable information that the applicant has engaged in conduct that demonstrates a pattern of disregard for the law.
- b. The Tribal Gaming Regulatory Commission shall deny a gaming license to any prospective High Security Employee or Primary Management Official if:

- (1) The applicant fails to disclose any material fact to the Tribal Gaming Regulatory Commission or the Oregon State Police or their authorized agents during a background or security investigation; or
  - (2) The applicant misstates or falsifies a material fact to the Tribal Gaming Regulatory Commission or the Oregon State Police during a background or security investigation.
- c. The Tribal Gaming Regulatory Commission may deny a gaming license to any prospective High Security Employee or Primary Management Official for any reason the Tribal Gaming Regulatory Commission deems sufficient. Such decisions to grant or deny a gaming license shall be consistent with the principles set forth in subsection A of Section 6 of this Compact. In determining whether to deny a gaming license to any prospective High Security Employee or Primary Management Official, the factors to be considered by the Tribal Gaming Regulatory Commission shall include, but need not be limited to, the following:
- (1) The applicant has been convicted of any crime (other than a crime listed in subparagraph (a) of this paragraph) in any jurisdiction; or
  - (2) The applicant has associated with persons or businesses of known criminal background, or persons of disreputable character, that may adversely affect the general credibility, honesty, integrity, security, fairness or reputation of the Tribes' Class III gaming activities; or
  - (3) There is any aspect of the applicant's past conduct that the Tribal Gaming Regulatory Commission determines would adversely affect the honesty, integrity, security or fairness of the Tribes' Class III gaming activities.
- d. After this Compact becomes effective, the Tribal Gaming Regulatory Commission shall deny a gaming license to any prospective Low Security Employee who has committed a crime described in sub-subparagraphs (1) or (2) of subparagraph (a) of this paragraph. The Tribal Gaming Regulatory Commission may deny a gaming license to any Low Security Employee applicant who does not meet the criteria established in the remainder of this paragraph (5). Decisions to grant or deny a gaming license shall be consistent with the principles set forth in subsection A of Section 6 of this Compact.
- e. The Tribal Gaming Regulatory Commission may reject an application if the applicant has not provided all of the information requested in the application.

- f. Denial of a gaming license by the Tribal Gaming Regulatory Commission is final.
- g. No Primary Management Official or High Security Employee may be permanently licensed by the Tribal Gaming Regulatory Commission until all background checks required under paragraph 7(A)(4). of this section are completed, provided, that if the Oregon State Police do not complete the background check within the allotted sixty day period once OSP has full disclosure, the Tribal Gaming Regulatory Commission may issue a temporary license to such employee upon completing its own background check, until the State's background check is completed and the Oregon State Police have submitted a written report on their actions to the Tribal Gaming Regulatory Commission.

6. Waiver of Disqualifying Criteria.

- a. Notwithstanding the requirements of paragraph (5) of this subsection, if a prospective Primary Management Official, High Security Employee or Low Security Employee is disqualified for licensing under the provisions of paragraph (5) above, and the Tribal Gaming Regulatory Commission believes that there are mitigating circumstances that justify waiver of the disqualifying factor, the Tribal Gaming Regulatory Commission may give written notice to the Oregon State Police asking to meet and confer concerning waiver of the disqualification. The Tribal Gaming Regulatory Commission and the Oregon State Police shall meet within 15 days after written notice is given.
- b. In order to waive disqualification of licensing of any prospective Primary Management Official, High Security Employee or Low Security Employee, both the Tribal Gaming Regulatory Commission and the Oregon State Police must agree on the waiver.
- c. Waiver of disqualification of licensing may be based on one or more of the following circumstances:
  - (1) Passage of time since conviction of a crime;
  - (2) The applicant's age at the time of conviction;
  - (3) The severity of the offense committed;
  - (4) The overall criminal record of the applicant;
  - (5) The applicant's present reputation and standing in the community;

- (6) The nature of the position for which the application is made.
    - (7) The nature of a misstatement or omission made in the application.
  - d. The Oregon State Police may approve a waiver subject to conditions, such as a probationary period, restrictions on duties or specific kinds of supervision.
7. Background investigation during employment. The Tribal Gaming Regulatory Commission or the Oregon State Police may conduct additional background investigations of any gaming employee at any time during the term of employment. If, after investigation, the Oregon State Police determines there is cause for the revocation or suspension of an employee's gaming license under the criteria established in paragraph (5) of this subsection 7(A), it shall promptly so report to the Tribal Gaming Regulatory Commission and furnish the Tribal Gaming Regulatory Commission with copies of all relevant information pertaining to such determination. The Tribal Gaming Regulatory Commission shall review the Oregon State Police report and supporting materials and if it concludes that good cause for revocation or suspension of an employee's gaming license exists under the criteria established in this subsection 7(A), the subject employee shall have his gaming license suspended or revoked according to the procedures set forth in the Tribes' Gaming Ordinance.
8. Temporary licensing of employees.
- a. The Tribal Gaming Regulatory Commission may issue a temporary license to High Security Employees, Primary Management Officials or consultants seven working days after submission of the application to the Oregon State Police or upon completion of a review of the employee's application and completion of a computerized criminal history check and credit check by the Tribal Gaming Regulatory Commission, if the applicant would not be disqualified on the basis of the results of the application review and preliminary checks. The Temporary license shall expire and become void upon completion of the full background check by the Oregon State Police and submission of the results to the Tribal Gaming Regulatory Commission. If the employee does not qualify for a permanent license, the Tribal Gaming Regulatory Commission shall immediately revoke the temporary license.
  - b. The Tribal Gaming Regulatory Commission may issue a temporary license to a Low Security Employee upon submission of the application to the Oregon State Police, or upon completion of a review of the employee's application and completion of a computerized criminal history check and credit check by the Tribal Gaming Regulatory Commission, if the applicant would not be disqualified on the basis of the results of the application review and preliminary checks. Any Low Security Employee shall be subject to immediate license revocation if the Oregon State Police or the Tribal Gaming

Regulatory Commission determines that the employee does not meet the criteria established in subparagraph 7(A)(5)(d).

c. For purposes of this paragraph, if an application is forwarded by mail to the Oregon State Police or the results of a background check by the Oregon State Police are provided to the Tribes by mail, the material is deemed to be submitted three days after the date of mailing.

9. Duration of license and renewal. Any employee license shall be effective for not more than three (3) years from the date of issue except that a licensed employee who has applied for renewal may continue to be employed under the expired license until final action is taken on the renewal application in accordance with the provisions of paragraphs 7(A)(2) to 7(A)(5) above. Applicants for renewal shall provide the Tribal Gaming Regulatory Commission with updated information in a form provided or approved by the Oregon State Police but will not be required to resubmit historical data already provided. The Oregon State Police may perform a new background investigation for any employee whose license is renewed.

10. Revocation of license. The Tribal Gaming Regulatory Commission may revoke the license of any employee pursuant to policies set forth in the Tribes' Gaming Ordinance. The Tribal Gaming Regulatory Commission shall revoke the license of any employee upon determination that the employee does not meet the criteria described in paragraph 7(A)(5) above.

11. The Tribes shall maintain a procedural manual for employees of the Tribal Gaming Operation that includes rules and regulations of conduct and disciplinary standards for breach of procedures.

12. The Tribal Gaming Regulatory Commission agrees to provide to the Oregon State Police, on a monthly basis, a list of all current employees of the Gaming Facility and to give notice to the Oregon State Police of any disciplinary action or termination of an employee, related to the fairness, integrity, security or honesty of the Tribes' Class III gaming activities, and any suspension or revocation of an employee's gaming license.

B. Contracts With Manufacturers and Suppliers.

1. Major Procurements.

a. The Tribal Gaming Regulatory Commission shall submit any proposed Major Procurement to the State for review, comment and a background investigation of the proposed Class III Gaming Contractor.

- b. The Tribes agree not to execute or consummate any contract for a Major Procurement until a background investigation has been completed by the Oregon State Police on the proposed Class III Gaming Contractor.
- c. Except as provided in paragraph (3) below, the Oregon State Police shall conduct a background investigation and provide a written report to the Tribal Gaming Regulatory Commission within a reasonable period of time, but in no event shall the time for completion of such background investigations exceed sixty (60) days after the Oregon State Police receives from the proposed Class III Gaming Contractor both the Oregon State Police's fee for the background investigation under subsection C of this section, and full disclosure of all information requested by the Tribes and the Oregon State Police under paragraph (4) of this subsection, without written notice to and the Tribes.
- d. If the Tribes request, the Oregon State Police agrees to make its best efforts to complete a background investigation within less than sixty days. The Tribal Gaming Regulatory Commission and the Oregon State Police may also agree that if business necessity or the protection of the honesty, integrity, fairness and security require it, the State may perform an abbreviated review to enable the Tribes to execute a temporary contract while a complete background investigation is being performed. Any temporary contract executed under authority of this subparagraph, shall be rescinded immediately if the complete background investigation discloses that the Class III Gaming Contractor does not meet the criteria described in paragraph (6) of this subsection 7(B).

2. Sensitive Procurements.

- a. After a proposed Class III Gaming Contractor has submitted full disclosure of all information requested by the Tribes and the Oregon State Police under paragraph (4) of this subsection, and any necessary fee required by the Oregon State Police, the Tribes may execute or consummate a contract for a Sensitive Procurement before a background investigation has been completed by the Oregon State Police on the proposed Class III Gaming Contractor.
- b. The Tribal Gaming Regulatory Commission shall submit a proposed contract for a Sensitive Procurement, or if there is no written contract, a letter of intent to do business with the proposed Class III Gaming Contractor, to the Oregon State Police for a background investigation of the proposed Class III Gaming Contractor before execution of the contract.
- c. The Oregon State Police shall conduct a background investigation, if the Oregon State Police considers it necessary, and provide a written report to the Tribal Gaming Regulatory Commission. If the Class III Gaming Contractor

does not meet the criteria described in paragraph (6) of this subsection 7(B) for approval of a contract, the contract shall be terminated and the Tribes agree to discontinue doing business with the contractor so long as the contractor fails to meet the criteria for approval.

3. The Oregon State Police agrees to maintain a list of Class III Gaming Contractors that have been previously approved to do business in Oregon with any tribal gaming operation. If a Class III Gaming Contractor has been included in the list, the Tribes may execute or consummate a contract with the Class III Gaming Contractor for a Sensitive Procurement upon giving notice of the contract to the Oregon State Police. If a Class III Gaming Contractor has been included in the list for Major Procurement, the Oregon State Police shall complete any necessary background investigation required under paragraph (1) of this subsection within thirty (30) days after the fees and full disclosure have been submitted to the Oregon State Police by the contractor.
4. Class III Gaming Contractors, and any Owner or Key Employee of a Class III Gaming Contractor, shall provide all personal and business information required by the Oregon State Police to conduct its background investigation, before executing a contract or beginning to do business with the Tribes.
5. The Tribes shall not consummate any Class III Gaming Contract that does not grant the State or the Tribes access to the contractor's business and financial records.
6. Criteria for Contract Denial or Termination.
  - a. The Tribes shall not consummate any Major Procurement, and a contract for a Sensitive Procurement shall be immediately terminated, if the following conditions are either disclosed in the application materials or reported by the Oregon State Police relative to a particular Class III Gaming Contractor:
    - (1) A conviction of the Class III Gaming Contractor or any Owner or Key Employee of the Class III Gaming Contractor for any felony other than a traffic offense, in any jurisdiction within the ten year period preceding the date of the proposed Class III Gaming Contract;
    - (2) A conviction of the Class III Gaming Contractor or any Owner or Key Employee of the Class III Gaming Contractor for any gambling offense in any jurisdiction;

- (3) A civil judgment against the Class III Gaming Contractor or any Owner or Key Employee of the Class III Gaming Contractor, based in whole or in part upon conduct that would constitute a gambling offense, or a civil judgment entered within the ten year period preceding the date of the proposed Class III Gaming Contract against the Class III Gaming Contractor or any Owner or Key Employee of the Class III Gaming Contractor, based in whole or in part upon conduct that would constitute a felony other than a traffic offense;
  - (4) A failure by the Class III Gaming Contractor to disclose any material fact to the Oregon State Police or the Tribes or their authorized agents during initial or subsequent background or security investigations;
  - (5) A misstatement or untrue statement of material fact made by the Class III Gaming Contractor to the Oregon State Police or the Tribes or their authorized agents during initial or subsequent background or security investigations as determined by the Tribes or the Oregon State Police;
  - (6) An association of the Class III Gaming Contractor with persons or businesses of known criminal background, or persons of disreputable character, that may adversely affect the general credibility, security, integrity, honesty, fairness or reputation of the Gaming Facility;
  - (7) Any aspect of the Class III Gaming Contractor's past conduct that the Tribes or the Oregon State Police determines would adversely affect the integrity, security, honesty or fairness of the Gaming Facility;
  - (8) The Class III Gaming Contractor has engaged in a business transaction with a tribe that involved providing gaming devices for Class III gaming conducted by such tribe without a state-tribal Class III gaming compact; or
  - (9) A prospective Class III Gaming Contractor fails to provide any information requested by the Tribes or the Oregon State Police for the purpose of making any determination required by this subsection 6(B).
- b. The Tribes may choose not to consummate any Class III Gaming Contract for any reason the Tribes deem sufficient.
  - c. Other criteria the Tribes may use to decide not to consummate any Class III Contract include, but are not limited to, the Tribes' determination that:

- (1) A person who is otherwise qualified to be a Class III Gaming Contractor owns, is an agent of or has any other interest in any person or business that is unqualified or disqualified to be a Class III Gaming Contractor, regardless of the qualifications of the person seeking to consummate the Class III Gaming Contract;
  - (2) A prospective Class III Gaming Contractor demonstrates inadequate financing for the business anticipated under the proposed Class III Gaming Contract. In determining whether financing is adequate, the Tribes shall consider whether financing is from a source that meets the qualifications of paragraph (5) of subsection A of this section, or paragraph (6) of subsection B of this section and whether that financing is in an amount to ensure the likelihood of success in the performance of the contractor's duties and responsibilities; or
  - (3) A prospective Class III Gaming Contractor or its employees fail to demonstrate business ability and experience to establish, operate and maintain the business of the type of Class III Gaming Contract proposed.
- d. No Class III Gaming Contractor shall own, manufacture, possess, operate, own an interest in, or gain income or reimbursement in any manner from gaming activities or gaming devices in any jurisdiction unless the activities or devices are approved and certified by another state or tribal lottery, gambling or gaming control agency, or the National Indian Gaming Commission, and such ownership, manufacture, possession, operation, or income is disclosed to and approved by the Tribes and the Oregon State Police.
- e. Notwithstanding subparagraph (a) of this paragraph (6), if a prospective Class III Gaming Contract may not be consummated because of the requirements of this subsection 7(B), because a person previously associated with the Class III Gaming Contractor or an employee of the Class III Gaming Contractor has been convicted of a crime or a civil judgment entered against the Class III Gaming Contractor or its employee within the ten year period preceding the date of the proposed Class III Gaming Contract, based in whole or in part upon conduct that allegedly constitutes a felony other than a traffic offense, the Tribes may enter into the proposed Class III Gaming Contract if the Class III Gaming Contractor has severed its relationship with the convicted or liable person or employee. Before the Tribes may enter into a Class III Gaming Contract under this subparagraph, the Oregon State Police and the Tribes must agree that the relationship between the Class III Gaming Contractor and the convicted or liable person or employee has been severed.

For purposes of this subparagraph, a relationship is severed if the convicted or liable person or employee has no continuing connection with the direction or control of any aspect of the business of the Class III Gaming Contractor, and the convicted or liable person or employee is no longer employed by the Class III Gaming Contractor in any capacity. The burden of showing to the satisfaction of the Tribes and the Oregon State Police that a relationship has been severed is on the Class III Gaming Contractor.

7. Rescission or Termination of Class III Gaming Contracts.

- a. The Tribes may rescind or terminate any Class III Gaming Contract pursuant to policies and procedures determined by the Tribes.
- b. Class III Gaming Contracts shall be subject to rescission or termination for cause consistent with the criteria established by paragraph 7(B)(6) of this section. Class III Gaming Contractors consent to rescission or termination of any Class III Gaming Contract for cause consistent with the criteria established by paragraph 7(B)(6) of this section by virtue of entering into a Class III Gaming Contract.

8. Contractor Reporting Requirements.

- a. All Class III Gaming Contractors shall submit to the Tribes and the Oregon State Police any financial and operating data requested by the Tribes or the Oregon State Police.
- b. The Tribes and the State each may specify the frequency and a uniform format for the submission of such data on a case by case basis.
- c. The Tribes, the Oregon State Police or their agents reserve the right to examine Class III Gaming Contractor tax reports and filings and all records from which such tax reports are compiled.
- d. All Class III Gaming Contractors shall notify both the Tribes and the Oregon State Police of the transfer of a Controlling Interest in the ownership Class III Gaming Contractor.

9. Termination of Contract.

- a. No Class III Gaming Contract shall have a term longer than seven (7) years.
- b. A Class III Gaming Contract shall terminate immediately upon the occurrence of any of the following:

- (1) The Class III Gaming Contractor is discovered to have made any statement, representation, warranty, or certification in connection with the Class III Gaming Contract that is materially false, deceptive, incorrect, or incomplete;
  - (2) The Class III Gaming Contractor fails to perform any material requirements of the Class III Gaming Contract or is in violation of any material provision thereof, and fails to cure same within ten (10) days' written notice of such failure;
  - (3) The Class III Gaming Contractor, or any Owner, officer or key employee of the Class III Gaming Contractor is convicted of a felony or a gambling-related offense that reflects on the Class III Gaming Contractor's ability to perform honestly in carrying out the Class III Gaming Contract;
  - (4) The Class III Gaming Contractor jeopardizes the integrity, security, honesty, or fairness of the Gaming Facility; or
- b. A Class III Gaming Contract shall terminate if the Tribes determine satisfactory performance of the Class III Gaming Contract is substantially endangered or can reasonably anticipate such occurrence or default.
10. The Oregon State Police may at its sole election conduct an annual update background investigation of each Class III Gaming Contractor, the expense of which will be assessed to the Class III Gaming Contractor.

C. Fees For Background Investigations.

1. The Oregon State Police shall be reimbursed its costs performing background investigations made pursuant to this Compact as provided in Section 10 of this Compact, in accordance with the terms of this Compact.
2. The Oregon State Police will assess the cost of a background investigation of a Class III Gaming Contractor to such Class III Gaming Contractor. Class III Gaming Contractors are required to pay the investigation fee in full in advance. If the Class III Gaming Contractor refuses to prepay the investigation fee, the Oregon State Police shall notify the Tribes and the Tribes may pay the investigation cost or withdraw its request for the investigation.

D. Access to Contracts.

1. If a Primary Management Official is a corporation or other form of organization, such Primary Management Official shall provide the Oregon State Police at all times with

a current copy of any management agreement with the Tribes that allows it to conduct Class III gaming on Tribal trust land.

2. If a Primary Management Official is a corporation or other form of organization, such Primary Management Official shall furnish to the Tribes and the Oregon State Police complete information pertaining to any transfer of Controlling Interest in such corporation or organization at least 30 days before such transfer; or, if the Primary Management Official is not a party to the transfer of the Controlling Interest, immediately upon acquiring knowledge of any such change or any contemplated change.
3. The Tribes agree to provide the Oregon State Police access to all Class III gaming related contracts.
4. In order to assure the honesty, integrity, fairness and security of the Tribe's Class III gaming activities, the Tribes agree to provide the Oregon State Police, upon request, access to the contracts of all non-gaming contractors, suppliers and vendors doing business with the Gaming Operation twice annually, once during the annual compliance review described in Section 9(B)(1)(a) of this Compact and once at another time during the year selected by the Oregon State Police. At any other time if the Oregon State Police has reasonable grounds to suspect any criminal involvement with or infiltration of a non-gaming contractor, supplier or vendor, the Tribe agrees to give the Oregon State Police access to that non-gaming contract. Such documents shall remain the property of the Tribe. OSP will share with the Tribal Gaming Commission information relating to such suspicions, if in OSP's judgment disclosure will not jeopardize the integrity of the investigation or otherwise impair the fairness, integrity, security and honesty of the gaming operation. The Tribal Gaming Commission will keep the information confidential.
5. Nothing in this Compact shall grant any right to any person or entity having a contractual or employment relationship with the Tribe.
6. Nothing in this Compact is intended to preclude the Tribe from denying, suspending or terminating a license for other reasons consistent with tribal law.

#### **SECTION 8. REGULATIONS FOR OPERATION AND MANAGEMENT OF CLASS III GAMES**

- A. Gaming Regulations. Conduct of all Class III gaming activity authorized under this Compact shall be in accordance with tribal ordinance, federal law and the requirements of this Compact and with the minimum standards set forth in the Appendix to this Compact. The provisions of the Appendix, "Tribal/State Minimum Internal Control Standards," are hereby incorporated into and made a part of this Compact. The Tribes and the State agree that the

minimum standards set forth in the Appendix may be modified or supplemented by mutual agreement of the parties, and that subsequent amendment of this Compact shall not be necessary for any such modification or supplementation of the minimum standards set forth in the Appendix.

- B. Identification badges. The Tribes shall require all Gaming Facility employees to wear, in plain view, identification badges issued by the Tribal Gaming Regulatory Commission that include photo and name, with the exception of employees assigned to covert compliance duties, who shall only be required to have on their person an identification badge. Oregon State Police employees shall not be required to wear identification badges.
- C. No credit extended. All gaming shall be conducted on a cash basis. Except as provided herein, no person shall be extended credit for gaming nor shall the Tribes permit any person or organization to offer such credit for a fee. Cashing checks in the Class III gaming area constitutes extending credit under this subsection. This restriction shall not apply to credits won by players who activate play on video games of chance after inserting coins or currency into the games. This section shall not restrict the right of the Tribes or any other person to offer check cashing or install and accept bank card or credit card transactions in the same manner as is permitted at any retail business in the State.
- D. Prohibition on attendance and play of minors. No person under the age of twenty-one (21) shall participate in any Class III gaming authorized by this Compact. No person under the age of twenty-one (21) shall be allowed to play any Class III game operated under this Compact. If any person under the age of twenty-one (21) plays and otherwise qualifies to win any Class III game prize or compensation the prize or compensation shall not be paid. Employees under age twenty-one (21) whose non-gaming duties require may be present on the gaming floor. All employees of the Tribal Gaming Operation whose job duties require them to be present in areas where Class III gaming takes place shall be at least twenty-one (21) years of age, except that so long as the Tribes do not serve alcohol in areas where Class III gaming takes place, the Tribes may permit enrolled Indians to work on the Class III gaming floor who are at least eighteen (18) years of age. For purposes of this subsection, in the event the Tribes permit the sale of alcohol in the restaurant located in the casino, the activities of "Keno runners" taking bets from restaurant patrons shall not constitute the service of alcohol in areas where Class III gaming takes place.
- E. Prohibition of firearms. =
1. Except as provided in paragraphs (2) and (3) below, no person shall possess firearms within the Gaming Facility.
  2. Federal, State, Klamath County and tribal law enforcement agents or officers may possess firearms within the Gaming Facility while on official business.

3. Pursuant to a memorandum of understanding between the Oregon State Police and the Tribes, security supervisors at the Gaming Facility employed by the Tribes may possess firearms within the Gaming Facility. The memorandum of understanding shall provide for the policies, standards and training controls that will apply to armed security supervisors.
- F. Service of Alcohol. No alcohol shall be served in the Gaming Facility unless authorized by the Tribes as permitted by federal law. Currently, the Klamath Tribes does not legally permit the sale of alcohol on its Indian lands. If the sale of alcohol is authorized by the Tribes at the Gaming Facility, the Tribes shall notify the State. The Tribes and the State shall enter into a Memorandum of Understanding that will establish which State laws and Oregon Liquor Control Commission licensing regulations shall be applied to the sale or service of alcoholic beverages at the Gaming Facility. Nothing in this subsection shall permit the State to impose taxes on the sale of alcoholic beverages by the Tribes. If alcohol is served in the Gaming Facility, no alcoholic beverages may be served free or at a reduced price to any patron of the Gaming Facility as a direct inducement to participate in any gaming.
- G. Liability for damage to persons and property. During the term of this Compact, the Tribes shall maintain public liability insurance with limits of not less than \$250,000 for one person and \$2,000,000 for any one occurrence for any bodily injury or property damage. The insurance shall be for the purpose of protecting patrons of the Casino and shall not apply to employees, officials, or agents of the Casino. The Tribes' insurance policy shall have an endorsement providing that the insurer may not invoke tribal sovereign immunity up to the limits of the policy, including when the tribe or a tribal entity is the named defendant. All actions under the insurance policy shall be brought in the Klamath Tribal Courts, *provided*, that until such time as the Tribes begin operation of a Tribal Court with jurisdiction over claims covered by this Section, the Tribes agree that such claims shall be subject to arbitration pursuant to the rules of the American Arbitration Association and further enforcement of any arbitration award may occur in any court of competent jurisdiction pursuant to said rule. The arbitrator is to be chosen from Marion County, Oregon, and the proceedings are to take place in a location convenient for the parties. Once the Tribes announce in their tribal newsletter that the Klamath Tribal Court now has jurisdiction of claims filed pursuant to this Section, no new claims hereunder shall be brought in any other forum. The Tribes shall indemnify, defend and hold harmless the State, its officers, directors, employees and agents from and against any claims, damages, losses or expenses asserted against or suffered or incurred by the State or its officers, directors, employees and agents (except as may be the result of their own negligence) based upon or arising out of any bodily injury or property damage resulting or claimed to result in whole or in part from any act or omission of the Tribes relating to the inspection of any gaming or gaming related facility pursuant to this Compact.

## SECTION 9. INSPECTION AND ENFORCEMENT OF GAMING REGULATIONS

### A. Tribal Gaming Regulatory Commission.

1. The Tribes agree to establish a Tribal Gaming Regulatory Commission, to grant such Commission the independent authority to regulate gaming activities on Tribal lands, and to provide such Commission with adequate resources to perform its duties under Tribal law, federal law and this Compact. The Commission shall not participate in any way in the management of the Tribes' Class III gaming activities. Commission members may be removed only for cause by the Tribal Executive Board. In order to maintain the honesty, integrity, fairness and security of the Tribal Gaming Operation, as well as the primary regulatory licensing duties of the Tribal Gaming Commission, the Tribes shall abide by the principal that Commission members shall meet or exceed the licensing standards of high security employees in its appointment to the Commission under the Tribal Gaming Ordinance.
2. The primary responsibility for the regulation of the Gaming Operation authorized by this Compact, and for enforcement of this Compact within Klamath Tribes Indian lands, shall be that of the Tribal Gaming Regulatory Commission. The Tribal Gaming Regulatory Commission's role shall include the following functions:
  - a. Ensure compliance with all relevant laws, including Compact provisions, regulations, internal controls, policies and procedures that are applicable to the operation of gaming activities on tribal lands;
  - b. Ensure the physical safety of patrons in the Gaming Facility, and of personnel employed by the Tribal Gaming Operation;
  - c. Safeguard the assets transported to and from and within the Gaming Facility;
  - d. Protect Gaming Facility patrons and property from illegal activity;
  - e. Detain persons suspected of crimes for the purpose of notifying appropriate law enforcement authorities;
  - f. Record any and all unusual occurrences within the Gaming Facility in indelible ink in a bound notebook from which pages cannot be removed, and each side of each page of which is sequentially numbered, as follows:
    - (1) The assigned sequential number of the incident;
    - (2) The date;
    - (3) The time;

- (4) The nature of the incident;
  - (5) The person involved in the incident; and
  - (6) The security employee assigned.
- g. Maintain logs relating to surveillance, security, cashier's cage, credit, video lottery terminal (showing when video machines opened), and video lottery terminal location;
  - h. Establish and maintain an updated list of persons barred from the Gaming Facility either because of their criminal history or because their association with career offenders or career offender organizations poses a threat to the honesty, security and integrity of gaming operations, and furnish that list to the Oregon State Police;
  - i. Obtain an annual audit by a Certified Public Accountant;
  - j. Ensure that a closed circuit television system is maintained in the cash room of the Gaming Facility and that copies of floor plan and TV system are provided to the Oregon State Police;
  - k. Ensure that a cashier's cage is maintained in accordance with industry standards for security;
  - l. Ensure that sufficient security personnel are employed and trained;
  - m. Establish a method for resolving disputes with players subject to state review and approval, which approval will not be unreasonably withheld, and which will not unreasonably infringe on the Tribe's sovereign adjudicatory authority; and
  - n. Ensure that surveillance equipment and personnel are managed and controlled independently of management of the Gaming Facility.
3. Inspections.
- a. A Tribal representative of the Tribal Gaming Regulatory Commission or tribal designated agent shall inspect the Gaming Facility at random during all hours of Gaming Operation, and shall have immediate access to any and all areas of the Gaming Operation for the purpose of ensuring compliance with the provisions of this Compact and Tribal Ordinances. Any material violations of the provisions of this Compact, the Tribal Gaming Ordinance, Tribal Gaming Commission Regulations or applicable federal regulations governing Indian gaming by the Tribal Gaming Operation, a gaming

employee, or any person on the premises whether or not associated with the Tribal Gaming Operation, shall be reported immediately to the Tribal Gaming Regulatory Commission.

The Tribal Gaming Commission will report such violations that would materially affect the fairness, integrity, safety and honesty of the gaming operation to the Oregon State Police within seventy-two (72) hours of the time the violation was noted.

“Material” as used in this sub-paragraph includes but is not limited to reports of incidents, occurrences or violations that:

- (1) can affect the integrity, security, honesty or fairness of the gaming operation or the customer participation of the games;
  - (2) indicate potential or suspected criminal activity; or
  - (3) involve operational irregularities with a potential impact of \$500 or greater.
- b. The Tribal Gaming Commission may designate any individual or individuals to perform inspection duties, including Commission members, so long as each inspector performs those duties independently of the management of the Tribal Gaming Operation, and is supervised and evaluated by the Tribal Gaming Commission as to the performance of those duties.
- c. Inspections shall monitor compliance with the requirements of applicable law, this Compact, regulations, internal controls, policies and procedures that affect the fairness, integrity, security and honesty of the Tribal Gaming Operation, including but not limited to:
- (1) Observe for compliance, on a monthly basis or more frequently as determined by the Tribal Gaming Regulatory Commission, at least four of the following:
    - (a) Sensitive gaming inventories; =
    - (b) VLT or table game drop;
    - (c) Soft count;
    - (d) Security and surveillance logs;

- (e) Movement of cash within, into and outside the Gaming Facility;
  - (f) Surveillance procedures;
  - (g) Security procedures;
  - (h) Games controls;
  - (i) Integrity of VLT microprocessor or E-proms, CD-Rom, hard disk, or other decision-making technologies.
- (2) Investigate any potential violations of the provisions of this Compact, and applicable regulations, internal controls, policies and procedures.
  - (3) Investigate any cash variance greater than \$100, and report the findings to the Tribal Gaming Regulatory Commission, which shall report such variances to the Oregon State Police.
  - (4) Investigate customer disputes related to gaming that involve more than \$500 and that are not resolved by management of the Tribal Gaming Operation.
  - (5) Report to the Tribal Gaming Regulatory Commission, which shall report to the Oregon State Police, any criminal or regulatory issues that may affect the fairness, integrity, security and honesty of the Tribes' Class III gaming activities.
4. Investigations and Sanctions. The Tribal Gaming Regulatory Commission shall investigate any reported violation of the Compact provisions and shall require the Gaming Facility to correct actual violations upon such terms and conditions as the Tribal Gaming Regulatory Commission deems to be necessary. The Tribal Gaming Regulatory Commission shall be empowered by Tribal ordinance to impose fines and other sanctions within the jurisdiction of the Tribes against a gaming employee, or any other person directly or indirectly involved in, or benefiting from the Tribes' Class III gaming activities.
5. Reporting to State. The Tribal Gaming Regulatory Commission shall forward copies of all completed investigation reports and final dispositions to the Oregon State Police on a regular continuing basis. If requested by the Tribal Gaming Regulatory Commission, the Oregon State Police shall assist in any investigation initiated by the Tribal Gaming Regulatory Commission, and provide other requested services to ensure proper compliance with the provisions of this Compact, Tribal ordinances and regulations or applicable laws of the State or federal government.

B. State Enforcement of Compact Provisions.

1. Monitoring. The Oregon State Police is authorized hereby to independently monitor the Tribes' Class III gaming activities in the manner the State considers necessary to ensure that they are conducted in compliance with the provisions of this Compact. The Tribes may request removal of a State law enforcement officer or monitor on the basis of malfeasance, abuse of authority, or conduct disrespectful of Tribal institutions or culture. Effective performance of the officer's or monitor's duties shall not be a basis for disapproval. The Oregon State Police, and other state officers designated in writing as provided in Section 14 of this Compact, shall have free and unrestricted access to all areas of the Gaming Facility during normal operating hours without giving prior notice to the Tribal Gaming Operation. The Tribes agree that the Oregon State Police monitoring function includes at a minimum the activities identified in the Compact, any amendments hereto and any memorandum of understanding entered into pursuant to this Compact, and that the actual, reasonable and necessary cost of monitoring activities shall be assessed to the Tribes as provided in Section 10 of this Compact. In addition to the Oregon State Police's regular monitoring functions, the Tribes agree that the Oregon State Police may conduct the following activities, the cost of which shall also be assessed to the Tribes as provided in Section 10 of this Compact:
  - a. An annual comprehensive Compact compliance review, which shall be planned and conducted jointly with the Tribal Gaming Commission, of the Tribes' Class III gaming activities to verify compliance with the requirements of this Compact and with the regulations and internal controls adopted by the Tribal Gaming Commission, including at a minimum review in the following areas: administrative controls (gaming management internal controls), gaming operations controls, drop boxes, station inventories, surveillance department controls, cashier cage controls, count room controls (security and surveillance), accounting department controls (security), general controls (Compact regulatory requirements), blackjack controls, VLT controls, accounts payable, employee identification, gaming chip inventory for gaming floor and cage, physical examination of all class III gaming cards, chips, e-proms, paper stock, printers, keno balls, fill slips, video gaming devices, keno controls, off-track betting and security department controls;
  - b. Periodic review of any part of the Tribe's Class III gaming activities in order to verify compliance with the requirements of this Compact and with the regulations, internal controls and minimum standards;
  - c. Investigation of possible violations of this Compact or other Class III gaming regulatory matters whether discovered during the action, review, or inspection by the State during its monitoring activities, or otherwise;

- d. Investigation of possible criminal law violations that involve the conduct of gaming whether discovered during the action, review, or inspection by the State during its monitoring activities, or otherwise.
2. Notwithstanding Section 4(B)(2) above, the Tribes agree that if any Class III gaming activities are conducted or intermingled in such a way that they are inseparable from Class II gaming activities, such as surveillance of both Class III and Class II gaming operations by a single surveillance department, the Oregon State Police shall have full access to both for purposes of carrying out the duties of the Oregon State Police with respect to Class III gaming under this Compact.
3. Access to Records.
  - a. To fulfill the purposes of the Compact, the Tribes agree that the Oregon State Police shall have the right to inspect and copy, during normal business hours, and upon reasonable notice, any and all Tribal records pertaining to the operation, management, or regulation of Class III Gaming by the Tribes, whether those records are prepared or maintained by the Tribes, the Tribal Gaming Regulatory Commission or the Tribal Gaming Operation. Any records or copies removed from the premises shall be returned to the Tribes immediately after use except as provided in Section 7(A)(4). Only those State employees formally designated by will be authorized to access Tribal gaming records pursuant to this subsection. Upon tribal request, OSP will provide a list of persons approved by the State to have access.
  - b. The State acknowledges that records created and maintained by the Tribes, the Tribal Gaming Regulatory Commission or the Tribal Gaming Operation belong to the Tribes. The Tribes agree that, in order to facilitate the State's carrying out of its oversight functions, it shall require applicants for a Tribal Gaming license to consent to disclosure to the State of relevant Tribal records.
  - c. The Tribes acknowledge the State's position is that any records created or maintained by the State, including any records created or maintained in connection with the performance of the State's duties and functions under this Compact, belong to the State and are fully subject to the State Public Records Law, ORS 192.410 to 192.505. Any information concerning the Tribes' Class III gaming operation that is contained in state records may be subject to disclosure under ORS 192.410 to 192.505 unless the State would be permitted to withhold that information from disclosure under

ORS 192.410 to 192.505. Examples of the kind of information that may be withheld from disclosure by the State under appropriate circumstances include:

- (1) "Trade secrets" as defined in ORS 192.501(2).
  - (2) Investigatory information compiled for criminal law purposes as described in ORS 192.501(3).
  - (3) Information submitted in confidence, as provided in ORS 192.502(3).
  - (4) Any information the disclosure of which is specifically prohibited by state or federal law.
- d. Applications submitted to and retained by the Oregon State Police for Class III gaming licenses are State records and may be subject to disclosure under ORS 192.410 to 192.505 unless the State would be permitted to withhold that information from disclosure under ORS 192.410 to 192.505.
- e. Information about the Tribes' Class III gaming activities, whether obtained from the Tribes or from any other source, that is included in a document prepared, owned, used or retained by the State in connection with its duties and functions under this Compact may be subject to disclosure under ORS 192.410 to 192.505 unless the State would be permitted to withhold that information from disclosure under ORS 192.410 to 192.505.
- f. The Tribes have agreed to allow the Oregon State Police access to sensitive financial, security and surveillance information that the Tribes consider confidential. The State acknowledges that the Tribes have voluntarily given the State access to this information and that the Tribes would not otherwise be required by law to do so. The State acknowledges that this information should reasonably be considered confidential. To the extent such information is included in any State records that are subject to disclosure, the State hereby obliges itself not to disclose this information when the public interest, including the public interest in maintaining the honesty, integrity, fairness and security of the Tribes' Class III gaming activities, would suffer by such disclosure.
- g. The State agrees to notify the Tribes promptly of any request for disclosure of documents containing information about the Tribes' Class III gaming activities. If the State decides to release any documents that contain information about the Tribes' Class III gaming activities, the State will notify the Tribes at least five (5) working days before any disclosure is made.

- h. Any dispute as to the disclosure of documents under this subsection will be resolved according to the dispute resolution provisions of Section 16 of this Compact, but the parties agree that in any event the sole jurisdiction for the interpretation of the State Public Records law shall be the Oregon state courts.
  - i. Nothing in this subsection precludes the State or the Tribes from disclosing information pursuant to state, tribal or federal rules of civil procedure or evidence in connection with litigation, a prosecution or a criminal investigation.
4. Investigation Reports. After completion of any inspection or investigation report, the Oregon State Police shall provide a copy of the report to the Tribal Gaming Regulatory Commission.

#### **SECTION 10. STATE ASSESSMENT OF COSTS FOR OVERSIGHT**

##### **A. Assessment for State Monitoring, Oversight and Law Enforcement Costs.**

- 1. The Tribes agree that the Klamath Tribes have the responsibility to pay for their fair share of the cost of performance by OSP of its activities authorized pursuant to this Compact, including associated overhead. The Tribes agree to pay their fair share of the Oregon State Police costs pursuant to the formula set forth in this section within 30 days of billing.
- 2. During the development of its biennium budget, the Oregon State Police shall distribute a draft of the Tribal Gaming section portion of the budget to the Oregon Gaming tribes for their review and comment prior to submission of the budget to either the Governor or the Legislature. The Oregon State Police shall give full consideration to the Oregon Gaming Tribes' comments on the Tribal Gaming Section budget. Notwithstanding the right of the Oregon Gaming tribes to comment on the Tribal Gaming Section budget before it is finalized within the Oregon State Police, each Tribe retains the right to participate in any public review by either the governor or the Legislature on the Oregon State Police budget as well as before the Emergency Board for any increase in the Oregon State Police budget.
- 3. Because of the government-to-government relationship between the Tribes and the State, the parties recognize that the obligation of the Tribes to pay for the Oregon State Police costs as provided by this Compact is unique. Nothing in this Compact is intended to, nor shall be construed as, creating a responsibility for the Tribes to pay for any other governmental services rendered by or received from the State.

4. The Tribes' monthly payment to the Oregon State Police shall be computed as follows:

- a. The biennium budget for the Tribal Gaming Section shall be divided by 24 to determine the total monthly payment that must be made by the Oregon Gaming Tribes to the Oregon State Police for Compact related activities. This payment shall be referred to as the "OSP Monthly Payment."
- b. Amounts received by the Oregon State Police from Class III Gaming Contractor license applicants, or any other gaming vendor license applicant, and from the payment for the assignment of Tribal Gaming Section officers to non-tribal gaming duties, shall reduce the OSP Monthly Payment owed by the Oregon Gaming Tribes, which reduced amount shall be referred to as the "Adjusted OSP Monthly Payment." The reduction in the OSP Monthly owed by the Oregon Gaming Tribes shall occur in the month the Oregon State Police receives such payments from third party sources.
- c. The Tribes' monthly payment to the Oregon State Police shall be computed as follows:

$$\begin{array}{rcccl}
 \text{No. of direct Service Hours billed to} & & & & \\
 \text{Klamath Tribal Gaming Operations} & & & & \\
 \hline
 \text{Total No. of Direct Service Hours} & \times & \text{Adjusted} & = & \text{Tribes' Share of} \\
 \text{Billed to All Oregon Tribal Gaming} & & \text{OSP} & & \text{OSP Monthly} \\
 \text{Operation.} & & \text{Monthly} & & \text{Payment} \\
 & & \text{Payment} & & 
 \end{array}$$

d. Every six months, or biennium quarter, the Oregon State Police shall reconcile the total payments received from the Oregon Gaming Tribes and third party sources during the six month period. The total of these payment should equal one-fourth of the Oregon State Police/Tribal Gaming Section biennium budget. Any underpayment or overpayment shall adjust the amount owed by the Oregon Gaming Tribes the month following the reconciliation.

5. As used in this section

- a. "Oregon Gaming Tribes" means any federally recognized Indian Tribes in Oregon engaged in Class III gaming pursuant to a Tribal-State Compact.
- b. "Direct Service Hours" means the actual time spent by Oregon State Police personnel in performing employee background checks, performing

background checks on Class III Gaming Contractors or other gaming vendors (unless paid by the Class III Gaming Contractor or other gaming vendor), performing Compact monitoring functions (including the annual comprehensive compact compliance review), conducting an investigation, and traveling to and from the Gaming facility or the site of a Class III Gaming Contractor background investigation, for a particular Tribal Gaming Operation. This definition is in no way intended to limit OSP's activities authorized pursuant to this Compact. The Oregon State Police shall keep direct service hour billing records setting forth the date work is performed, a brief description of the work performed and the amount of time spent, which information will be provided upon request.

6. The methodology for the payment of Oregon State Police costs began on January 1, 1999.
7. If the Tribes dispute the amount of the assessment under this section, the Tribes shall timely pay the undisputed amount and within thirty (30) days of billing, shall notify OSP in writing of the specific nature of the dispute. If the parties have not resolved the dispute within 15 days, the Tribes shall pay the disputed amount into an off-reservation escrow, mutually agreeable to the parties, with escrow instructions providing that the funds are to be released only upon authorization by both the Tribes and the Oregon State Police. The parties shall share the reasonable costs of the escrow. The dispute shall then be resolved pursuant to the procedures set forth in Section 6(b)(3) of this compact.

If the Tribes fail to pay the disputed amount into escrow or timely pay the undisputed amount, the Oregon State Police may suspend any background checks that are in process or withhold authorization for the shipment of equipment, and/or pursue other remedies for compact violations available under this Compact.

B. Tribal Community Charitable Contributions.

1. Joint Recognitions.

- a. The Tribes and the State recognize that there may be both positive and negative impacts to the local community as a result of the presence of the Tribe's gaming operation, some of which may be difficult or impossible to quantify. The State acknowledges that the Tribe's Gaming Operation is not located within a specific community but that the nearest local community, the City of Chiloquin, is the historical center of tribal activity and is a distressed community, and that the Tribes have established good cause to direct any community charitable contributions to the Chiloquin community.

- b. The Tribes and the State recognize that a formal process for collaborative decision-making regarding contributions to charitable causes is a way to ameliorate negative impacts from the Tribes' Gaming Operation.
  - c. The Tribes and the State recognize that a formal community benefit fund allows specific benefits from this Compact to be identified by the community at large as stemming from the gaming operations conducted pursuant to this Compact.
2. Establishment of Fund. The Tribes agree to establish a charitable fund within ninety (90) days of engaging in any new Class III Games. The fund contribution shall be calculated as provided in Section 10(C)(5). Beginning in the first calendar quarter after the Tribes implement any new Class III Games, the Tribe will contribute to the fund, from the proceeds of the Gaming Operation, an amount calculated as provided in paragraph (6) below. For purposes of this section, the term Gaming Operation refers to Kla-Mo-Ya Casino. The Tribe, in its discretion, may choose to make its contributions under this section quarterly or annually. The Tribe will name the fund.
3. Fund administration.
- a. The assets of the fund will be expended for the benefit of the public within Klamath County, with a particular focus on community development projects within the community of Chiloquin including but not limited to community centers, education programs, gambling addiction, parks, schools and youth centers, the arts, health, public safety, the environment, cultural activities, historic preservation, and such other charitable purposes as may be established by the Tribe. These purposes shall not include governmental services or infrastructure already governmentally funded, or those associated with the presence of the Tribal Gaming Operation. The fund may also provide grants to Native American entities and activities located in the United States.
  - b. The fund will be administered by the Tribes and a board of trustees who will advise the Tribal Council on recommended charitable contributions. The final decision to award charitable monies from the fund will be the sole decision of the Tribes. The board of trustees shall solicit and review grant proposals, and will present recommendations for funding to the Tribal Council. Grants will be made on the basis of merit. The Tribal Council may reserve a portion of said funds in a single year to fund multi-year grants.
  - c. The board of trustees may adopt by-laws governing the conduct and discharge of their responsibilities under this section, subject to approval by the Tribal Council.

4. Qualifications, Term and Selection of Trustees. The board of trustees shall consist of six members, who shall have the following qualifications:
  - a. One member of the Klamath Tribe's Tribal Council, appointed by the Tribal Council;
  - b. One member of the Kla-Mo-Ya Board of Directors, appointed by the Tribal Council;
  - c. One member of the Klamath Tribes, appointed by the Tribal Council;
  - d. Two members who shall be members of the public at large, residing within Klamath County, appointed by the Tribal Council after consultation with the Governor, from a list of candidates submitted by the community or Tribes to the Tribal Council. One of these three members must be non-tribal members; and
  - e. One member of the public at large, residing within Klamath County, appointed by the Governor of the State.
5. Except for the initial board, trustees will serve three-year terms and may be removed before the end of their terms by the appointing authority only for cause. The initial board will serve as follows: Tribal Council member, and Governor's appointee – three years; the one of two members of the public at large and the Kla-Mo-Ya Board member – two years; the other of the two members of the public at large and the Klamath tribal member – one year. Trustees may be reappointed. Vacancies on the board of trustees will be filled within thirty days by the appropriate appointing authority. Any trustee whose term of office has expired will continue to serve until a successor has been appointed.
6. Calculation of Charitable Contribution Amount. The Tribes' annual contribution to the community charitable fund set out in this subsection will be based upon the Kla-Mo-Ya Casino's Excess Net Revenue as shown in the audited financial statement of the Gaming Facility for the calendar year ending before the contribution is made. "Kla-Mo-Ya Casino Net Income" means the net income of the Kla-Mo-Ya Casino operations, which includes Class III gaming, restaurant, bar, gift shop, bingo, pull tabs, and entertainment. "Excess Net Revenues" means the deduction from Kla-Mo-Ya Casino Net Income all loan principal payments made by the tribes on loans incurred only for the purpose of financing Kla-Mo-Ya Gaming Facility construction and equipment costs. "Kla-Mo-Ya Gaming Facility" means the building and structures located at the location specifically described in Exhibit 1 to the Compact,

which is hereby incorporated by reference, and is specifically used by the tribe in direct connection with Class III gaming operations and the generation of Kla-Mo-Ya Casino Net Income.

- a. The Tribes' annual charitable contribution amount will be calculated by multiplying the Excess Net Revenue of the Casino for each calendar year by four per cent. When the Tribes are authorized to have 700 Video Lottery Terminals pursuant to Section 4(D) of this compact, the annual charitable contribution amount will be calculated by multiplying the Excess Net Revenue for that calendar year (or portion thereof) by five percent.
  - b. For purposes of determining the Casino's excess net income from Class III gaming as described in subsection 6(a) above, the Tribal Gaming Operation will obtain an unqualified audit opinion that the financial statement fairly reflects the Gaming Facility's financial position from an independent public accounting firm. The firm must have recent casino experience with at least one other casino, must have at least one client with revenues in excess of \$50,000,000, and must have received an unqualified report on its most recent peer review.
  - c. The determination of the Excess Net Revenue of the Gaming Facility is subject to review by the State at its own expense. For purposes of this Section 10(B)(6), the State may act through the Oregon State Police or through an official designated as provided in Section 14 of this Compact. In the event the Gaming Operation has a qualified audit opinion, the State and the Tribe will confer on the materiality of the qualification.
  - d. Funds identified for charitable contribution under this section will be deposited in a segregated account or accounts. Any and all interest earned on such funds or increase in assets of the fund will be allocated to future charitable contributions as set out in this section.
7. Commencement, Termination, and Modification of Charitable Fund Contributions. Establishment of the charitable contribution fund set out in this section will occur within ninety (90) days of the date the Tribes initiate any of the new games authorized under Section 4(B)(2) of this Compact, and the fund will continue so long as the Tribes continue to offer any of the gaming activities authorized pursuant to that section. The Tribes may terminate the charitable contribution fund at any time after the Tribes discontinue operation of all gaming activities authorized by that section, provided, that the Tribes will remain responsible for charitable fund contributions for the calendar year in which gaming activities authorized pursuant to Section 4(B)(2) of this Compact were operated by the Tribes. The Tribes' contributions to the

charitable fund established in this subsection may be discontinued if the Oregon Constitution is amended to remove the prohibition of casinos in the State. The Tribes and the State agree that if the Tribes are prohibited for any reason from offering house-banked blackjack or any of the Class III games authorized in Section 4 of this Compact, the parties will enter into negotiations to establish how the charitable fund contribution provided for in this Section will be adjusted to reflect the discontinuation of those games on the excess net revenue of the Gaming Facility.

8. Annual Fund Report. The Tribes will provide a report to the Governor and the Oregon State Police detailing the amount contributed to the charitable fund for the calendar year, the grantees of the fund monies, and the amounts of the grants. The Tribes will provide the report within 120 days of the end of the calendar year. The State may at its discretion and expense perform an audit of the calculation of fund amounts due under this section.

## **SECTION 11. APPLICATION OF REGULATORY STANDARDS**

### **A. Health, Safety and Environmental Standards.**

1. Tribal Ordinances and Regulations governing health, safety and environmental standards applicable to the Gaming Facility shall be at least as rigorous as standards imposed by the laws and regulations of the State. The Tribes agree to cooperate with any State agency generally responsible for enforcement of such health, safety and environmental standards outside Indian lands in order to assure compliance with such standards within the Gaming Facility. However, the Tribes shall have the exclusive regulatory jurisdiction over the enforcement of health and safety standards applicable to the Gaming Facility. The Tribes shall use their regulatory jurisdiction to assure that health, safety and environmental standards are met and maintained. Tribal ordinances and regulations governing water discharges from the Gaming Facility will be at least as rigorous as standards generally imposed by the laws and regulations of the State relating to public facilities; provided, however, that to the extent that federal water discharge standards specifically applicable to the Tribe lands would preempt such State standards, then such federal standards will govern.
2. Upon request by the State, the Tribe agrees to provide evidence satisfactory to the State that any new construction, renovation or alteration of the Gaming Facility performed after the effective date of this Compact satisfies applicable Tribal health, safety and environmental standards. The Tribe may choose to demonstrate that it has satisfied this section by providing a certificate or other evidence of compliance from an appropriate federal, State, or local official responsible for enforcement of comparable standards.

3. As used in this subsection, "health, safety and environmental standards" include but are not limited to structural standards, fire and life safety standards, water quality and discharge standards, food handling standards, and any other health, safety and environmental standards that are generally applicable under state or federal law to a non-tribal facility that is open to the public for purposes of protecting the public within the Gaming Facility. Health, safety and environmental standards specifically do not include land use regulations or zoning laws.
4. The Tribes agree that the State may use state or local inspectors to verify compliance with this subsection. Such inspectors shall cooperate with Gaming Facility management to conduct such inspections in a manner that does not disrupt operations at the Gaming Facility, and shall be conducted only with advance notice to and permission of the Gaming Facility where practicable. If the State asserts that the Tribes are in breach of this subsection, and that the breach creates an immediate and substantial threat to the health or safety of the patrons or employees of the Gaming Facility, the Tribes agree to take steps as are necessary to protect the public or employees until the breach is remedied. Resolution of any dispute as to what steps are necessary shall be conducted in the same manner as and under the principles and procedure established for resolution of operating disputes in Section 6 of this Compact.

B. Transportation Issues.

1. The Tribes shall continue to comply with the conditions of ODOT approach permit number 11A35331. The Tribes shall continue to provide and maintain access from its Gaming Facility onto the highway that is adequate to meet the standards of the Oregon Department of Transportation, or shall enter into agreements with the Oregon Department of Transportation for the provision of such access by the State. The allocation of costs shall be as provided in Oregon Administrative Rules.
2. If the Tribes plans additional development of the Gaming Facility site, the Tribes shall advise the appropriate state or local transportation planning officials of the planned development by submitting a master plan. In planning street, road or highway improvements, the Tribes, state and local transportation planning officials shall use the master plan, consistent with applicable Oregon Administrative Rules. Construction of street, road or highway improvements may be completed in phases if practicable.
3. Traffic improvements shall be those necessary to maintain the level of service of the affected highway(s), road(s) or street(s) and to provide safe access to and from the Gaming Facility. For state highways, traffic improvements shall be consistent with the requirements of the State Highway Plan, including improvements necessary to mitigate traffic congestion and to conform to the Oregon Department of

Transportation access management policies. If the Oregon Department of Transportation determines that highway improvements are necessary, the department shall confer with the Tribes concerning the planning, design and construction of those improvements.

4. The Tribes shall pay the cost of street, road or highway improvements determined to be necessary on the basis of the traffic impact study and Oregon Department of Transportation requirements. If the Tribes disputes the amount of costs to be paid by the Tribes, the Tribes may initiate the dispute resolution procedure established under Section 16 of this compact.
- C. The Tribes shall report to the Oregon Department of Revenue gambling winnings paid to any person subject to Oregon Personal Income Tax on those winnings whenever the Tribes would be required to report those winnings to the Internal Revenue Service. The information shall be reported in the manner required by the Oregon Department of Revenue. The Tribes agree that the management of the Gaming Facility will withhold and remit personal income taxes from employee wages to the Oregon Department of Revenue in the manner prescribed by the Department of Revenue, to the extent such taxes apply by law.
- D. Public Safety Issues. If local government officials believe that an off-Indian land public safety problem has been created by the existence of the Gaming Facility, the Tribes, or its designated representative, shall agree to meet with a representative of the affected government to discuss whether a problem exists, and to develop mutually agreeable measures to alleviate the problem. The burden shall be on the affected government to meet with the Tribes and to demonstrate that the public safety problem is directly attributable to the existence of the Gaming Facility. If an off-Indian land public safety problem has been created by the existence of the Gaming Facility, the Tribes shall undertake to perform any mutually agreeable and reasonable measures to alleviate the problem. If the Tribes and local government officials are unable to agree on measures to alleviate the problem, the State may initiate the dispute resolution process established in Section 16 of this Compact. Any burden imposed on the Tribes under this subsection shall be reasonable and proportionate to the problem created.

## **SECTION 12. EFFECTIVE DATE; TERMINATION; AMENDMENTS**

- A. Effective Date. This Compact shall become effective upon execution by the State and by the Tribes and appropriate federal approval.
- B. Termination. This Compact shall remain in effect until such time as:
1. This Compact is terminated by written agreement of both parties;

2. The State amends its Constitution or laws to criminally prohibit, within the State, conduct of all of the Class III gaming authorized by this Compact, whether for profit or not for profit;
3. A court of competent authority makes a final determination that all of the Class III games authorized by this Compact are criminally prohibited under the law of the State and the determination has become final and enforceable;
4. The federal government amends or repeals IGRA so that a Compact is no longer required for the Tribes' exercise of Class III gaming; or
5. Either party materially breaches this Compact; but only after the dispute resolution process set forth in Section 16 of this Compact has been exhausted and the breach has continued for a period of sixty (60) days after written notice following the conclusion of the dispute resolution process.

C. Automatic Amendment.

1. If a type of Class III game authorized under Section 4 of this Compact is criminally prohibited for all purposes by all persons or entities by State statute or Constitution, this Compact shall no longer authorize the Tribes to engage in that type of Class III game and any provisions in this Compact authorizing such gaming shall be void and of no effect.
2. If a court decides that a Class III game authorized under this Compact is criminally prohibited as defined under IGRA, this Compact shall no longer authorize the Tribes to engage in that type of Class III game and any provisions in this Compact authorizing such gaming shall be void and of no effect, but the Tribes shall be required to cease operating that Class III game only if and under the same circumstances and conditions as the State or any other affected person must cease operating the corresponding game under the court's decision.

D. Amendments.

1. Except as provided in subsection C of this section, this Compact shall not be amended for a period of three years after the effective date of this Compact, unless one of the following conditions occur:
  - a. The State becomes a party to another Tribal-State Compact that authorizes a tribe other than the Klamath Tribes to engage in any Class III gaming activity or scope of gaming activity not permitted under the terms of Section 4 of this Compact;

- b. The State amends State statute or Constitution to expand the type of Class III gaming permitted in the State for any purpose by any person, organization or entity;
  - c. One year elapses after the effective date of this Compact; or
  - d. The parties to this Compact agree in writing to enter amendment negotiations.
2. Paragraph (1) of this subsection does not require the State to renegotiate those terms of this Compact that apply to the forms of gaming authorized by Section 4 of this Compact, except to the extent that the State voluntarily consents to such renegotiation or as is otherwise provided for in this Compact.
3. Pursuant to paragraph (1) of subsection D above, the State or the Tribes may, by appropriate and lawful means, request negotiations to amend, replace or repeal this Compact. In the event of a request for renegotiation or the negotiation of a new Compact, this Compact shall remain in effect until renegotiated or replaced, unless sooner terminated under subsection B of Section 12. Such request to renegotiate shall be in writing and shall be sent by certified mail to the Governor of the State or the Chairman of the Klamath Tribes at the appropriate office identified in Section 14 below. If a request is made by the Tribes, it shall be treated as a request to negotiate pursuant to IGRA. All procedures and remedies available under IGRA shall thereafter apply with the exception that the 180 day period for negotiation set forth at 25 U.S.C. § 2710(d) shall be 100 days.

### SECTION 13. DISCLAIMERS AND WAIVERS

- A. Gaming at Another Location or Facility. Except as provided in this Compact, The Tribes hereby waive any right it may have under IGRA to negotiate a Compact for Class III gaming at any different or additional location or facility for a period of five (5) years from the effective date of this Compact.
- B. Status of Class II Gaming. Nothing in this Compact shall be deemed to affect the operation by the Tribes of any Class II gaming as defined in the Act or to confer upon the State any jurisdiction over such Class II gaming conducted by the Tribes.
- C. Prohibition on Taxation by the State. Nothing in this Compact shall be deemed to authorize the State to impose any tax, fee, charge or assessment upon the Tribes or any Tribal Gaming Operation except for charges expressly authorized in accordance with this Compact.
- D. Preservation of Tribal Self-Government. Nothing in this Compact shall be deemed to authorize the State to regulate in any manner the government of the Tribes, including the

Tribal Gaming Regulatory Commission, or to interfere in any manner with the Tribes' selection of its governmental officers including members of the Tribal Gaming Regulatory Commission. No licensing or registration requirement contemplated by this Compact shall be applicable to such officers with respect to their capacity as officers of the Tribes.

- E. This Compact is exclusively for the benefit of and governs only the respective authorities of and the relationship between the Tribes and the State. Nothing in this Compact shall be construed as creating or granting any rights to any third party, or as establishing any objection or defense for any third party to any charge, offense or prosecution.
- F. The Tribes and State agree that any activities that must be performed under this amended and restated Compact to prepare for implementation of any new games authorized under Section 4 may be undertaken before the Secretary of the Interior approves this amended and restated Compact.

#### **SECTION 14. NOTICES**

All notices required or authorized to be served to the Oregon State Police shall be served by first class mail at the following address:

Captain  
Oregon State Police  
Gaming Enforcement Division  
Salem, OR 97310

All other notices required or authorized to be served shall be served by first class mail at the following addresses:

Legal Counsel to the Governor  
Office of the Governor  
254 State Capitol  
Salem, OR 97310

Chairman, Klamath Tribes  
P.O. Box 436  
Chiloquin, OR 97624

#### **SECTION 15. SEVERABILITY**

In the event that any section or provision of this Compact is held invalid, or its application to any particular activity is held invalid, it is the intent of the parties that the remaining sections of this Compact and the remaining applications of such section or provision shall continue in full force and effect.

## SECTION 16. DISPUTE RESOLUTION

- A. Except as specifically provided in Section 6 of this Compact, at the discretion of either party, in the event either party believes that the other party has failed to comply with any requirement of the Compact, that party may invoke the following dispute resolution procedure in order to foster cooperation and avoid the costs of litigation:
1. The party asserting noncompliance shall serve written notice on the other party in the manner provided in Section 14. The notice shall identify the specific provision of the Compact alleged to have been violated and shall specify the factual basis for the alleged noncompliance. The State and the Tribes shall thereafter meet within 30 days in an effort to resolve the dispute.
  2. In the event the dispute is not resolved to the satisfaction of the parties within 90 days after service of notice, either party may initiate an action against the other party in the United States District Court for the District of Oregon to interpret or enforce the provisions of this Compact. In the event that the federal court declines jurisdiction, an action can be filed in a State or Tribal court of competent jurisdiction to interpret or enforce the provisions of this Compact.
- B. Nothing in subsection A of this section shall be construed to waive, limit or restrict any remedy that is otherwise available to either party to enforce the provisions of this Compact or limit or restrict the ability of the parties to pursue, by mutual agreement, alternative methods of dispute resolution.
- C. With respect to gaming not authorized by this Compact, nothing in this Compact shall be construed to limit the authority of the state or the federal government to take immediate action to enforce and prosecute the gambling laws of the State and the United States pursuant to 18 USC § 1166 (Section 23 of IGRA).

**SECTION 17. INTEGRATION**

This Compact is the entire and complete expression of the parties' intent.

EXECUTED as of the date and year above-written.

STATE OF OREGON

KLAMATH TRIBES

\_\_\_\_\_  
John A. Kitzhaber, M.D.  
Governor

  
\_\_\_\_\_  
Allen Foreman, Chairman

\_\_\_\_\_  
Date

6-27-02  
\_\_\_\_\_  
Date

APPROVED BY THE ASSISTANT SECRETARY - INDIAN AFFAIRS

\_\_\_\_\_  
\_\_\_\_\_  
Date

APPROVED FOR LEGAL SUFFICIENCY

\_\_\_\_\_  
\_\_\_\_\_  
Date

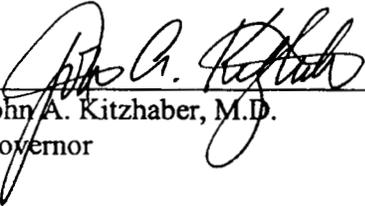
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STATE OF OREGON

KLAMATH TRIBES

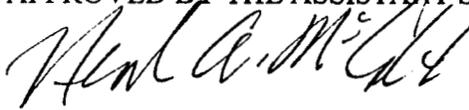
  
\_\_\_\_\_  
John A. Kitzhaber, M.D.  
Governor

\_\_\_\_\_  
Allen Foreman, Chairman

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

APPROVED BY THE ASSISTANT SECRETARY - INDIAN AFFAIRS

  
\_\_\_\_\_

**AUG 24 2002**

\_\_\_\_\_  
Date

APPROVED FOR LEGAL SUFFICIENCY

\_\_\_\_\_  
Date

Exhibit I

Legal Description

That portion of Government Lots 23 and 28 lying East of Highway 97 and that portion of Government Lot 22 lying West of Williamson River situated in the SE ¼ of Section 16, Township 35 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon.