



March 17, 2009

Via U.S. Mail and Facsimile

Honorable Marcelino Aguino  
Governor, Ohkay Owingeh Tribal Council  
P.O. Box 1099  
San Juan, NM 87566

RE: Ohkay Owingeh Tribal Gaming Ordinance Amendment

Dear Governor Aguino:

On December 11, 2008, your predecessor, Earl Salazar, on behalf of the Ohkay Owingeh (Tribe) requested that the National Indian Gaming Commission (NIGC) review and approve the Tribe's amended gaming ordinance approved by the tribal council on December 17, 2008, in Resolution 008-430.

The new gaming ordinance makes changes in compliance with the 2007 amendments to the gaming compact between the State of New Mexico and the Ohkay Owingeh Pueblo. The amended gaming ordinance also makes changes to the licensing and patron dispute resolution procedures and reflects the Pueblo's name change throughout.

This letter constitutes approval of the amended ordinance because nothing therein conflicts with IGRA's requirements and the NIGC's regulations.

Thank you for this submission. If you have any questions, please contact Staff Attorney Heather McMillan at (202) 632-7003.

Sincerely,

A handwritten signature in black ink, appearing to read "Philip N. Hogen". The signature is fluid and cursive, with a large loop at the end.

Philip N. Hogen  
Chairman



JAN - 6 2009

RESOLUTION OF THE TRIBAL COUNCIL OF OHKAY OWINGEH  
AMENDING GAMING ORDINANCE

RESOLUTION 2008- 43

The following Resolution was considered and adopted by the Tribal Council of Ohkay Owingeh at a meeting held on the 11<sup>th</sup> day of December, 2008, at which a quorum was present.

**WHEREAS**, the Tribal Council of the Ohkay Owingeh is the governing body of the Pueblo; and

**WHEREAS**, Congress has enacted the Indian Gaming Regulatory Act of 1988, 25 U.S.C. §§ 2701-2721 and 18 U.S.C. §§ 1166-1168 ("IGRA") to regulate Class I and Class II Gaming on Indian Lands subject to oversight by the National Indian Gaming Commission ("NIGC") and to authorize Class III Gaming on Indian Lands by Indian Tribes and states pursuant to tribal-state compacts; and

**WHEREAS**, the Tribal Council, pursuant to Tribal Council Resolution No. 2007-13 approved the 2007 compact amendments to the tribal-state compact that required certain changes to the Gaming Ordinance; and

**WHEREAS**, the Ohkay Owingeh Gaming Commission recommends additional changes to the Gaming Ordinance generally concerning the licensing and patron dispute resolution procedures as particularly described in the attached amended Gaming Ordinance.

**NOW, THEREFORE, BE IT RESOLVED** by the Tribal Council of Ohkay Owingeh that the 2008-02 Gaming Ordinance, a copy of which is attached hereto and made a part hereof, is adopted by Ohkay Owingeh and that the same be enacted by Ohkay Owingeh.

**BE IT FURTHER RESOLVED** that the Governor of Ohkay Owingeh is authorized and directed to forward this present resolution, together with other papers and documents deemed appropriate, to the National Indian Gaming Commission.

CERTIFICATION

The foregoing resolution was duly adopted by Ohkay Owingeh at a meeting held on the 17<sup>th</sup> day of December 2008, at which a quorum was established, by a vote of 13 in favor, 0 opposed, and 3 absent.

Earl N. Salazar  
Governor, Earl N. Salazar

Larry Phillips  
2<sup>nd</sup> Lt. Governor, Larry Phillips

[Signature]  
Councilman

[Signature]  
Councilman

[Signature]  
Councilman

Heiman Agoyo, I.  
Councilman

[Signature]  
Councilman

[Signature]  
Councilman

[Signature]  
Head War Chief

[Signature]  
1<sup>st</sup> Lt. Governor, Johnny Abeyta

[Signature]  
Tribal Sheriff, Roger Trujillo

[Signature]  
Councilman

[Signature]  
Councilman

[Signature]  
Councilman

[Signature]  
Councilman

[Signature]  
Councilman

[Signature]  
Councilman

[Signature]  
Head Fiscal

ATTEST:

Nancy Ortiz  
Secretary, Nancy Ortiz



**OHKAY OWINGEH  
GAMING ORDINANCE**

**2008-02**

**Effective On  
December 11, 2008**

**OHKAY OWINGEH**  
**GAMING ORDINANCE**

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**OHKAY OWINGEH  
GAMING ORDINANCE**

**PART I - Ohkay Owingeh Gaming Ordinance**

**1-1 PURPOSE AND INTENT.**

**1-1-1 Short Title.** This ordinance may be cited as the “Ohkay Owingeh Gaming Ordinance.”

**1-1-2 Purpose and Interpretation.** This ordinance shall be deemed as an exercise of the police power of the Pueblo for the protection of the public welfare, health, peace and morals of the people of the Pueblo and all provisions of this ordinance shall be liberally construed to accomplish the following purposes:

- A. To legalize and regulate the conduct of Gaming on Pueblo Lands;
- B. To maintain the highest standards of integrity in the conduct of Gaming on Pueblo Lands;
- C. To produce revenue to fund tribal governmental operations and programs;
- D. To promote the health education and welfare of the Pueblo and its members; and
- E. To promote tribal economic development.

**1-2 DEFINITIONS.** In this ordinance, unless the context otherwise requires:

**1-2-1 Act** means the Indian Gaming Regulatory Act of 1988, Pub. L. No. 100-497, 25 U.S.C. §§ 2701-2721 and 18 U.S.C. §§ 1166-1168, as amended, and all regulations promulgated thereunder.

**1-2-2 Bingo Game** means the Class II gaming activity commonly known as “bingo” wherein participants pay a sum of money for the use of one or more cards. When the games commence, numbers are drawn by chance, one by one, and announced. The players cover or mark those numbers on the cards which they have purchased until a player receives a given order of numbers in sequence that has been pre-announced for that particular game. The first player to call out “bingo” and be declared the winner will receive a predetermined prize.

**1-2-3 Class I Gaming** means Class I gaming as defined in the Act and as regulated by the customary law of the Ohkay Owingeh.

**1-2-4 Class II Gaming** means Class II gaming as defined in the Act.

**1-2-5 Class III Gaming** means Class III gaming as defined in the Act and 25 C.F.R. §502.4.

**1-2-6 Commission** means the Ohkay Owingeh Gaming Commission and its staff. The Commission is also known as the “Tribal Gaming Agency” under the Compact.

**1-2-7 Compact** means the Tribal-State Compact set out in Part II of this Ordinance, and entered into pursuant to the Act.

**1-2-8 Council** means the Tribal Council of the Pueblo.

**1-2-9 Engage in Business** means any of the following events occurring within the Pueblo: 1) a purchase order is issued for goods, services, or concessions by the Gaming enterprise, Management Contractor, or their respective agents, 2) a vendor begins performance of an agreement to provide goods or services, 3) the Gaming Enterprise or Management Contractor, or their respective agents, is in possession of goods or concessions intended to be or already purchased from a vendor, 4) money is exchanged for goods, services, or concessions, or 5) any other action that would reasonably indicate engaging in business with a vendor.

**1-2-10 Gaming Activity** means all forms of Class II Gaming and Class III Gaming conducted by a Gaming Enterprise on Pueblo lands.

**1-2-11 Gaming Device** means any gambling device as defined in 15 U.S.C.A. §1171(a).

**1-2-12 Gaming Employee** means a person who (a) is connected directly with the conduct of Class II or Class III Gaming, (b) handles the receipts or expenditures of proceeds thereof, or (c) handles any Gaming Machine. Gaming Employee includes, without limitation, Key Employees and Primary Management Officials.

**1-2-13 Gaming Enterprise** means the department, division, or section of any tribal entity created and designated by the Pueblo as having authority to operate Class II Gaming or Class III Gaming, receive the revenues therefrom, issue the prizes, and pay the expenses.

**1-2-14 Gaming Equipment** means any equipment, device, or contrivance used to conduct gaming.

**1-2-15 Gaming Facility** means all buildings or structures in which Class II or III Gaming is conducted on Pueblo Lands, subject to the limitations set forth in Section 2-4-3 of this Ordinance.

**1-2-16 Gaming Machine** means a mechanical, electromechanical or electronic contrivance or machine that, upon insertion of a coin, token or similar object, or upon

payment of any consideration, in any manner, is available to play or operate a game of chance in which the outcome depends to a material degree on an element of chance, notwithstanding that some skill may be a factor, whether the payoff is made automatically from the Gaming Machine or in any other manner; but Gaming Machine does not include a Table Game or any device utilized in Table Games. Additional clarification of this definition is set forth in an appendix to the Compact.

**1-2-17 Gaming-Related Contract** means a contract or agreement providing for any goods, services or concessions to the Pueblo, a Gaming Enterprise, or Management Contractor in connection with the conduct of Class II or Class III Gaming in a Gaming Facility in an amount in excess of \$25,000 annually, except for professional, legal or accounting services. No Gaming-Related Contract may be broken up into parts for the purpose of avoiding this definition and any requirement of licensure or certification.

**1-2-18 Gross Receipts** means, in relation to Class II Gaming, receipts from the sale of shares, tickets or rights in any manner connected with participation in a Bingo Game or the right to participate therein, including any admission fee or charge, the sale of equipment or supplies and all other income from any other Class II Gaming source.

**1-2-19 Key Employee** means that term as defined in 25 C.F.R. §502.14, or, if more comprehensive, a Person employed by a Gaming Enterprise or Management Contractor and

- A. Who performs one or more of the following functions:
  - 1. Bingo caller;
  - 2. Counting room supervisor;
  - 3. Chief of security;
  - 4. Custodian of gaming supplies or cash;
  - 5. Floor manager;
  - 6. Pit boss;
  - 7. Dealer;
  - 8. Croupier;
  - 9. Custodian of gambling devices, including Persons with access to cash and accounting records within such devices;
- B. If not otherwise included, any Person whose total cash compensation is in excess of \$50,000 per year; or
- C. If not otherwise included, the four most highly compensated Persons employed by a Gaming Enterprise or Management Contractor.

**1-2-20 Management Contract** means a contract as defined in 25 U.S.C. § 2710(d) (9) and 2711. It means any contract, subcontract, or collateral agreement between the Pueblo

and a Management Contractor or between a Management Contractor and a subcontractor if such contract or agreement provides for the management of all or part of a Gaming Enterprise.

**1-2-21 Management Contractor** means any Person who enters into a Management Contract with the Pueblo.

**1-2-22 Net Revenues** means gross revenues of any Gaming Activity less amounts paid out as, or paid for prizes and total operating expenses, but excluding management fees paid to a Management Contractor.

**1-2-23 Net Win** means Class III Gaming “net win” as that term is defined in the Compact set out in Part II of this Ordinance.

**1-2-24 N.I.G.C.** means National Indian Gaming Commission.

**1-2-25 Non-Gaming Employee** means any natural person who: (1) is not a Gaming Employee, (2) is employed by either a Gaming Enterprise or a Management Contractor; and (3) works in areas in which either (i) Gaming Activity is conducted, or (ii) cash or other valuable items or information relating to Gaming Activity or revenues from Gaming Activity are handled. Non-Gaming Employee includes bartenders, cocktail servers or other persons engaged solely in preparing or serving food or beverages; secretarial or janitorial personnel; stage, sound and light technicians; or other non-gaming personnel.

**1-2-26 Non-Gaming Vendor** means any person providing goods, services, or concessions, valued in excess of \$100,000 annually provided to the Gaming Enterprise directly in connection with the operation of a Gaming Facility, but that do not directly involve the operation of a Gaming Activity.

**1-2-27 Non-Profit Organization** means an organization not for profit, and operated for charitable, religious, educational or public purposes within Pueblo lands and which has been so engaged for two (2) years immediately prior to conducting or operating a bingo game.

**1-2-28 Occasion** means a gathering at which Class II games, including, but not limited to bingo, are played.

**1-2-29 Ordinance** means the Ohkay Owingeh Gaming Ordinance, as amended.

**1-2-30 Premises** means any room, hall, building, enclosure or outdoor area used for the purpose of playing a game of bingo.

**1-2-31 Person** means a natural person, firm association, corporation or other legal entity, except the Pueblo.

**1-2-32 Primary Management Official**” means that term as defined in 25 C.F.R. §502.19, or, if more comprehensive:

- A. Any person having management responsibility for a Management Contract; or
- B. Any person who has authority to:
  - 1. Hire and fire Gaming Employees;
  - 2. Set up working policy for a Gaming Enterprise;
  - 3. Exercise financial management responsibility for a Gaming Enterprise, including, but not limited to the chief financial officer.

**1-2-33 Pueblo** means Ohkay Owingeh, a federally recognized Indian Pueblo, its authorized officials, agents and representatives.

**1-2-34 Pueblo Lands** means (a) all land within the exterior boundaries of the Pueblo’s reservation and its confirmed grants from prior sovereigns, or (b) land over which the Pueblo exercises governmental power and that is either (i) held in trust by the United States for the benefit of the Pueblo or its members, or (ii) held by the Pueblo or its members subject to restrictions by the United States against alienation, but does not include any land within the boundaries of a municipality outside the boundaries of the Pueblo’s reservation or confirmed grants from prior sovereigns as those boundaries existed on October 17, 1988.

**1-2-35 Secretary** means the Secretary of the Interior or his duly authorized representative.

**1-2-36 State** means the State of New Mexico, its authorized officials, agents and representatives.

**1-2-37 Tribal Bingo Game** means a Bingo Game or other Class II Gaming conducted or operated by the Pueblo or a Management Contractor in accordance with the provisions of Part I of the Ordinance applicable to Class II Gaming.

### **1-3 NATURE AND SCOPE OF GAMING.**

**1-3-1 Authorized Gaming.** A Gaming Enterprise may conduct all forms of Class II or Class III Gaming in any Gaming Facility, subject to the provisions of the Compact and other applicable law.

**1-3-2 Forms of Payment.** All payment for wagers made in any Class II or III Gaming conducted by a Gaming Enterprise shall be made by cash, chips or tokens. A Gaming

Enterprise shall not extend credit including, but not limited to, the acceptance of IOUs or markers from patrons. Unless otherwise prohibited by applicable law or the Compact, chips or tokens may be purchased using cash, checks or credit card.

**1-3-3 Prohibition on Certain Financial Transactions with Patrons.** No Gaming Enterprise shall cash any paycheck or any type of government assistance check, including Social Security TANF, pension and other similar checks for any patron.

**1-3-4 Wagering Limitations.** The Commission may set by regulation the maximum wager for Class II or Class Gaming on Pueblo lands.

**1-3-5 Hours of Operation.** The Commission may set by regulation the days and hours of operation for any Class II or Class III Gaming on the Pueblo. The operation of any Class III Gaming is prohibited for at least four consecutive hours daily, Monday through Thursdays (except federal holidays).

**1-3-6 Prohibition of Minors.** No person under the age of 18 shall participate in any Class II Gaming. No person under the age of 21 shall participate in any Class III Gaming. However, a person under the age of 21 may be employed by a Gaming Enterprise or Management Contractor for positions excepted from the definition of Gaming Employee in this Ordinance.

**1-3-7 Operation of Games.**

A. Inspections.

1. The premises where any gaming is being held and any gaming facility, operated and conducted shall at all times be open to inspection by the Commission and its agents, Pueblo administration, Council, and upon authorization by the Pueblo governor or his designee, by the Pueblo's accounting manager, auditors, N.I.G.C. representatives, and Pueblo police chief.
2. Inspection of cash and cash counting activities must take place in the presence of a member of the Commission, Pueblo administration or a person with written authorization of the Pueblo governor or the Commission.
3. The State Gaming Representative shall have the right to inspect a Gaming Facility, Class III Gaming, including Gaming Machines and all records relating to Class III Gaming, as provided by the Compact. If there is any conflict between the State Gaming Representative's rights under Part I of this Ordinance and those provided under the Compact, the Compact terms shall prevail.

- B. Value of Prizes. When any merchandise prize is awarded, its value shall be its current retail price.

#### **1-4 COMPLIANCE WITH THE ACT.**

**1-4-1 Ordinance Consistent with Act.** This Ordinance shall be construed in a manner that conforms to the Act in all respects, and, if the Ordinance is inconsistent with the Act in any manner, the provisions of the Act shall govern.

**1-4-2 Proprietary Interest.** The Pueblo shall have the sole proprietary interest in and responsibility for the conduct of any Class III or Class II Gaming on Pueblo Lands; however, nothing in this Ordinance shall prevent the Pueblo from entering into a Management Contract.

#### **1-4-3 Use of Net Revenues.**

- A. From Class I Gaming. Any revenues derived from Class I Gaming, after payment of operating expenses, if any, and after provisions for reserves, investment in and improvement of Class I Gaming in accordance with the yearly gaming business plan and budget has been made, shall be used in accordance with Council directives. The business plan and budget shall be reviewed by the Commission and sent to the Governor and the Council for final approval.
- B. From Any Class II and III Gaming. Net Revenues from any Class II and III Gaming shall be used for the following purposes:
1. To fund the Pueblo's government operations or programs;
  2. To provide for the general welfare of the Pueblo and its members;
  3. To promote the Pueblo's economic development;
  4. To donate to charitable organizations;
  5. To help fund operations of local government agencies; or
  6. Any other purposes permitted under the Act.

**1-4-4 Annual Audit.** Each Gaming Enterprise shall be audited at least annually by a certified public accountant (CPA) selected by the Gaming Enterprise and approved by the Commission.

- A. Copies of the independent audit reports for each year will be provided to the governor of the Pueblo, the Commission, the state treasurer, and the Gaming Representative as required by the Compact within 120 days of the close of the Pueblo's fiscal year. A copy of each annual audit report of gaming activities shall be provided to the Council and then to the N.I.G.C.



- B. The scope of each audit shall include but not be limited to all Gaming Related Contracts and Non Gaming Vendors, as those terms are defined in this Ordinance.

**1-4-5 Public Safety Standards.** Each Gaming Facility shall be constructed and maintained in a manner that adequately protects the environment and public health and safety.

## **1-5 COMPLIANCE WITH THE COMPACT.**

**1-5-1** Any Gaming Enterprise and Management Contractor shall comply with standards and requirements equivalent to or more stringent than those contained in the federal Fair Labor Standards Act of 1938, the federal Occupational Safety and Health Act of 1970, and any other federal laws generally applicable to Indian tribes relating to wages, hours of work and conditions of work, and the regulations issued thereunder.

**1-5-2** Any construction project involving any Gaming Facility or related structure that is funded in whole or in part by federal funds, shall pay all workers wages meeting or exceeding the standards established for New Mexico under the Davis-Bacon Act.

**1-5-3** The Pueblo, the Gaming Enterprise and any Management Contractor are prohibited from discriminating in the employment of persons to work for the Gaming Enterprise or in the Gaming Facility on the grounds of race, color, national origin, gender, sexual orientation, age or handicap, provided however, that nothing herein shall be interpreted to prevent the Pueblo from granting preference in employment actions to Pueblo members or other Indians in accordance with established tribal laws and policies.

**1-5-4** All employees of a gaming establishment must be provided with employment benefits including, at a minimum, sick leave, life insurance, paid annual leave and medical and dental insurance as well as providing unemployment insurance and workers' compensation insurance through participation in programs offering benefits at least as favorable as those provided by comparable State programs, and which programs shall afford the employees due process of law and shall include an effective means for an employee to appeal an adverse determination by the issuer to an impartial forum, such as (but not limited to) the Pueblo's tribal court, which appeal shall be decided in a timely manner and in an administrative or judicial proceeding and as to which no defense of sovereign immunity would be available; and provided that to fulfill this requirement, the Pueblo may elect to participate in the State's programs upon execution of an appropriate agreement with the State.

**1-5-5** In cases of disciplinary or punitive action taken by the Gaming Enterprise or Management Contractor against an employee, the gaming employee must be permitted (1) a reasonable period of time to submit a grievance to the employee's immediate supervisor, and (2) a process for an appeal to persons of greater authority than the immediate supervisor of the employee. The Gaming Enterprise and any Management

Contractor, or other employer of employees in a gaming establishment shall provide a copy of their grievance process to the Commission for approval.

**1-5-6** No Gaming Facility shall prohibit or otherwise take action to prevent the state Department of Environment inspectors from inspecting the Gaming Facility's food service operations during normal Gaming Facility business hours to assure that standards and requirements equivalent to the State's Food Service Sanitation Act [Chapter 25, Article 1 NMSA 1978] are maintained.

**1-5-7** Each electronic or electromechanical gaming device in use at a Gaming Facility must pay out a mathematically demonstrable percentage of all amounts wagered which must not be less than eighty percent (80%), and the Gaming Enterprise shall prominently post in visible locations within the Gaming Facility notices stating that the Gaming Enterprise is in compliance with this requirement, and providing a comprehensible explanation of the meaning of this requirement.

**1-5-8** To the extent technically feasible, any automatic teller machines on Gaming Facility premises shall be programmed so that the machines will not accept cards issued by the State to TANF recipients for access to TANF benefits.

**1-5-9** All Gaming Machines on the premises of the Gaming Facility shall be connected to a central computerized reporting and auditing system on the Gaming Facility premises, which shall collect on a continual basis the unaltered activity of each Gaming Machine in use at the Gaming Facility, and that the wager and payout data of each machine electronically captured by the Gaming Enterprise's central computer, may be accessed and downloaded electronically by the State Gaming representative by a dedicated telecommunications connection, on a "read-only" basis, upon entry of appropriate security codes; but provided that in no event shall the State Gaming Representative be able to alter or affect the operations of any Gaming Machine or other device on the premises of the Gaming Facility, or the data provided to the central computer, and provided further that the system for electronic access to the machine and payout data collected by the Gaming Enterprise's central computer shall be constructed and installed at the State's cost, and shall be designed in conjunction with Gaming Enterprise technical staff so as to preserve the integrity of the system and the data contained therein, to minimize any access by the State Gaming Representative to information other than machine wager and payout data residing in the central reporting and auditing system.

**1-5-10** An employee of the Gaming Enterprise is prohibited from selling, serving, giving or delivering an alcoholic beverage to an intoxicated person or from procuring or aiding in the procurement of any alcoholic beverage for an intoxicated person at the Gaming Facility.

**1-5-11** All Gaming Enterprise employees that dispense, sell, serve or deliver alcoholic beverages must first attend Alcohol Server Education Classes similar to those classes provided for in the New Mexico Liquor Control Act.

**1-5-12** Any Gaming Enterprise that dispenses, sells, serves or delivers alcoholic beverages shall purchase and maintain a liquor liability insurance policy that will provide, at a minimum, personal injury coverage of one million dollars (\$1,000,000) per incident and two million dollars (\$2,000,000) aggregate per policy year.

**1-5-13** No Alcoholic Beverages shall be sold, served, delivered or consumed in that part of a Gaming Facility where Class III gaming is allowed.

**1-5-14** Each Gaming enterprise shall spend an amount that is no less than one-quarter of one percent (.25%) of its Net Win annually to fund or support programs for the treatment and assistance of compulsive gamblers in New Mexico or who patronize New Mexico gaming facilities, and for the prevention of compulsive gambling in New Mexico. A substantial portion of such funds shall be distributed to an organization that has expertise in and provides counseling, intervention or other services for compulsive gamblers in New Mexico and whose services are available to all persons without regard to race or tribal membership. Any information existing as a result of this section, not including information that may identify or contain information referring to any gaming patron, shall not be subject to the confidentiality provisions of section 2-5-6(D) of this Ordinance shall be made available for inspection and publication without restriction or limitation.

**1-5-15** Neither the Gaming Enterprise nor the Pueblo shall provide, allow, contract to provide nor arrange to provide alcoholic beverages for no charge or at reduced prices. Neither the Gaming Enterprise, nor the Pueblo shall provide or allow, contract to provide or arrange to provide food or lodging for no charge or at nominal prices, at a Gaming Facility or lodging facility as an incentive or enticement for patrons to game, except that this portion shall not apply to rewards received by patrons in exchange for points or credits accrued under any form of player's club program.

**1-5-16** The Pueblo, the Gaming Enterprise and the Management Contractor shall report to the Secretary of State, in the same manner and at the same times as are required of political committees under the provisions of the State's Campaign Reporting Act (NMSA 1978 §§ 1-19-25 through 1-19-36) any and all contributions, whether directly or through an agent, representative or employee, of any moneys derived from revenue from the Gaming Enterprise, or of anything of value acquired with that revenue, to a candidate, political committee or person holding an office elected or to be elected at an election covered by the State's Campaign Reporting Act. In the event any report required to be made hereunder is not made within the time specified herein, or is false or incomplete in any respect, the Pueblo shall be liable to pay to the Secretary of State a penalty in the amount of fifty dollars (\$50.00) for each working day after the day on which the report was due until the day on which the complete or true report is filed, up to a maximum of five thousand dollars (\$5,000), except that with respect to the report due on the Friday before an election the penalty shall be five hundred dollars (\$500) for the first working day after the due date and fifty dollars (\$50.00) per working day thereafter, up to a maximum of five thousand dollars (\$5,000).

**1-5-17** In the event that the Pueblo is held liable to pay the Secretary of State a penalty incurred as a result of the actions of the Gaming Enterprise or the Management Contractor, whether directly or through an agent, representative or employee, upon written notice from the Pueblo, the Gaming Enterprise or the Management Contractor shall pay to the Pueblo an amount equal to twice the penalty incurred by the Pueblo.

**1-5-18** The Pueblo, either through the Gaming Enterprise, the Management Contractor or the Commission shall maintain the following records for not less than five (5) years:

- A. Revenues, expenses, assets, liabilities and equity for each Gaming Enterprise;
- B. Daily cash transactions for each Class III Gaming activity at each Gaming Facility, including but not limited to transactions relating to each gaming table bank, game dropbox and gaming room bank;
- C. Individual and statistical game records, except for card games, to reflect statistical drop and statistical win; for electronic, computer, or other technologically assisted games, analytic reports which show the total amount of cash wagered and the total amount of prizes won;
- D. Contracts, correspondence and other transaction documents relating to all vendors and contractors;
- E. Records of all tribal gaming enforcement activities;
- F. Audits prepared by or on behalf of the Pueblo; and
- G. Personnel information on all Class II and Class III Gaming employees or agents, including rotation sheets, hours worked, employee profiles and background checks.

## **1-6 LICENSING.**

### **1-6-1 Class II and Class III License Requirement.**

- A. The Gaming Enterprise shall not employ any person in any Gaming or Non Gaming Employee position on Pueblo Lands, unless that person is licensed, or has applied for a license and has not had the application rejected by the Commission.
- B. The Gaming Enterprise is prohibited from purchasing, leasing, or otherwise engaging in business with any vendor required to be licensed herein, or from entering into any Management Contract with any Management Contractor, unless they are licensed by the commission.

## 1-6-2 Class II and Class III Licensing Classification.

- A. Gaming Employees. The Commission shall license each Gaming Employee, including, without limitation, Primary Management Official and Key Employee of a Gaming Enterprise and any Management Contractor.
- B. Management Contractor. The Commission shall license a Management Contractor and any Person having a direct or indirect financial interest in a Management Contract.
- C. Gaming Devices, Gaming Machines and Gaming Equipment. The Commission shall license each Class II or Class III Gaming Device, Gaming Machine, or other Gaming Equipment, or gaming supplies.
- D. Providers of Gaming Devices, Gaming Machines, and Gaming Equipment. The Commission shall license each provider of Class II or Class III Gaming Device, Gaming Machine, or Gaming Equipment.
- E. Gaming-Related Contractors. The Commission shall license each Person proposing to enter into a Gaming-Related contract.
- F. Gaming Facilities. Any Gaming Facility must be licensed by the Commission to conduct gaming activity. A separate license is required for each gaming facility.
- G. Non-Gaming Employees Employed by the Gaming Enterprise or Management Contractor. All Non-Gaming Employees employed by the Gaming Enterprise or Management Contractor and working within a Gaming Facility require licensure from the Commission. Until such employee receives a license that individual shall be considered on probation subject to dismissal with or without cause.
- H. Non-Gaming Vendors. The Commission may require a license for each Non-Gaming Vendor to the Gaming Facility, as it deems necessary to carry out the purposes of this Ordinance, unless the Commission determines that the Non-Gaming Vendor qualifies for an exemption.
- I. Exemptions. The following Persons are exempt from the requirements that apply to a Non-Gaming Vendor:
  - 1. Pueblo government, business, and tribal members;
  - 2. Automobile, truck, and motorcycle dealerships,
  - 3. Utility companies;

4. Federal, state and local governments;
5. Non-Profit Organizations;
6. Courier and shipping services;
7. Law and accounting firms;
8. Travel agencies, training, seminars and travel-related services;
9. Insurance companies;
10. Non-gaming publicly traded companies;
11. National or local entertainment acts;
12. Print media companies, including newspaper, magazine, and billboard companies;
13. Television and radio companies;
14. Petty cash fund purchases;
15. Banks,
16. Financial Institutions, or
15. Any other Person that is licensed by a federal or state entity.

**1-6-3 Effective Date, Conditions, Fees, and Status.**

- A. Effective Date. A license is valid after signature by the Commission.
- B. License Standards. The Commission may not issue a license to any person whose prior activities, criminal record, if any, or reputation, habits or associations pose a threat to the public interest or to the effective regulation of gaming on Pueblo Lands. No license shall be issued to any person who may create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming on Pueblo Lands.
- C. Term. A license issued to a Gaming Employee shall be valid for two (2) years. A license issue to a Non-Gaming Employee shall be valid for two (2) years. Any employee license will be automatically revoked upon termination of employment. An license issued to a gaming vendor shall be valid for one (1) year, and a license issued to a Non-Gaming Vendor shall be valid for two (2) years. A license issued to a Gaming Facility shall be valid for three (3) years. Any license for a Management Contractor shall be renewed automatically each year during the term of the Management Contract unless the Commission determines that the Management Contractor is in violation of applicable law. Any other licensee who has submitted the required application for renewal and any other information required by the Commission at least thirty (30) days before the expiration of his license may continue to be employed under the expired license or until final action is taken on the renewal application by

the Commission or, if required by the Act, the N.I.G.C. Such licensee shall provide updated material and information as requested on the appropriate renewal application, but shall not be required to resubmit historical data already provided or otherwise available to the Commission.

- D. Form. Each license issued by the Commission shall be in the form of an identification Card with a photograph, and the first and last name of the license holder, employee number, signature, the words OHKAY OWINGEH GAMING COMMISSION LICENSE clearly shown, and date of expiration.
- E. Must Be Worn. Every holder of a License must have their license clearly visible while they are working at any Gaming Facility. Representatives of licensed vendors, including officers, agents, and employees, must present proper identification upon request by the Commission.
- F. Fees for Licenses. The fees for licenses shall be set by the Commission. If the actual costs incurred by the Commission for a background investigation exceed the amount deposited by the applicant, those costs may be assessed to the applicant in the discretion of the Commission. In such cases, the Commission shall submit a detailed billing of the costs and an explanation as to why the excess costs were incurred.
- G. Revocable Privilege.
  - 1. Any license that is issued, or any approval given by the Commission, shall be deemed to be a revocable privilege and no person holding a license or approval shall be deemed to have acquired any vested rights or interests therein.
  - 2. An applicant for a license is seeking the granting of a privilege, and the burden of proving qualification to receive any license is at all times on the applicant. An applicant accepts any and all risk of adverse public notice, embarrassment, criticism, or other action or financial loss that may result from the application process and the applicant expressly waives any and all claim(s) for damages against the Commission, its owner, officers, agents and employees as a result thereof.
  - 3. An application for a license shall constitute a request to the Commission for a decision upon the applicant's general suitability, integrity, and ability to participate or engage in, or be associated with Gaming Activity in the manner or position sought by the applicant. By filing an application with the Commission and paying the required fee, the applicant specifically consents to the making of that decision by the Commission.

#### 1-6-4 Applications for Licenses.

- A. A Person applying for a Gaming Employee or Non-Gaming Employee license shall provide all the information required by this section of the Ordinance and the Act. At a minimum, the following information must be included on an application form adopted by the Commission for that purpose. The applicant shall pay any fees required by the Commission or the N.I.G.C.
1. Required Information. Each person applying for a license as a Gaming Employee or Non-Gaming Employee shall provide to the Commission the following information on an application form for that purpose:
    - a. Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);
    - b. Currently and for the previous ten (10) years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and drivers license numbers;
    - c. The names and current addresses of at least three (3) personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under paragraph B of this section;
    - d. Current business and residence telephone numbers;
    - e. A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;
    - f. A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;
    - g. The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;



- h. For each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition if any;
  - i. For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations), within ten (10) years of the date of the application, the name and address of the court involved and the date and disposition;
  - j. For each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is within ten (10) years of the date of the application and is not otherwise listed pursuant to paragraph H or I of this subsection, the criminal charge, the name and address of the court involved and the date and disposition;
  - k. The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;
  - l. current photograph;
  - m. Any other information the Commission deems relevant;  
and
  - n. Fingerprints consistent with procedures set out in this Ordinance.
- B. A Person applying for a license as a vendor to sell or lease a Gaming Device, Gaming Machine, Gaming Equipment, to enter a Gaming-Related Contract, or to become as a Non-Gaming Vendor (collectively referred to herein as “vendor license”) shall provide all the information required by this section of the Ordinance and the Act. At a minimum, the following information must be included on an application form adopted by the Commission for that purpose. The applicant shall pay any fees required by the Commission or the N.I.G.C.
- 1. Required Information. Each Person applying for a vendor license shall provide to the Commission the following information on an application form for that purpose:
    - a. Name of business, business address, business phone, federal tax ID number (or SSN if a sole proprietorship), main office address if different from business address, any

other names the applicant has done business under, type of service or goods applicant will provide.

- b. Whether the applicant is a partnership, corporation, limited liability company, sole proprietorship, or other entity;
- c. If the applicant is a corporation, the state of incorporation, and the qualification to do business in the State of New Mexico, if the gaming operation is in a different State than the State of incorporation;
- d. Trade name, other names ever used, names of any wholly owned subsidiaries or other businesses owned by the vendor or its principals;
- e. General description of the business and its activities;
- f. Whether the applicant will be investing in or loaning money to the gaming operation and, if so, how much;
- g. A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;
- h. A list of Indian tribes with which the vendor has an existing or previous business relationship, including ownership, financial, or management interests in non-gaming activities (list of up to 10 tribes with the ten biggest contracts);
- i. Name, addresses, and phone numbers of three business references with whom the company had regularly done business for the last five years;
- j. The name and address of any licensing or regulatory agency with which the business has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;
- k. If the business has ever had a license revoked for any reason, the circumstances involved;
- l. A list of lawsuits to which the business has been a defendant, including the name and address of the court involved, and the date and disposition, if any;

- m. List the businesses' funding sources and any liabilities of \$50,000 or more;
  - n. A list of the principals of the business, their social security numbers, addresses and telephone numbers, title, and percentage of ownership in the company; and
  - o. Any further information the Commission deems relevant.
- C. A person applying for a Gaming Facility license shall provide all the information required by this section of the Ordinance and the Act. At a minimum, the following information must be included on an application form adopted by the Commission for that purpose. The applicant shall pay any fees required by the Commission or the N.I.G.C.
  - 1. Required information. Each applicant for a Gaming Facility license shall provide to the Commission the following information on an application form approved for that purpose:
    - a. The name and address of the property,
    - b. A legal description of the property,
    - c. The tract number for the property as assigned by the Bureau of Indian Affairs, Land Title and Records Offices,
    - d. If not maintained by the Bureau of Indians Affairs, a copy of the trust or other deed(s) to the property or an explanation as to why such documentation does not exist and a documentation of the property's ownership,
    - e. Statement explaining how the construction and maintenance of the gaming facility, and the operation of that gaming will be conducted in a manner which will adequately protect the environment and the public health and safety, and
    - f. Any further information the Commission deems relevant, including but not limited to that needed to show compliance with applicable environmental, public health and safety laws and regulations.
- D. The Commission shall require each applicant seeking a license pursuant to this law to sign and submit a Privacy Act notice on an application form as required by the Act that consists of:

In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C.A. 2701 et seq. The purpose of the requested information is to determine either the eligibility of individuals to be employed in the Ohkay Owingeh gaming operation or the eligibility of the person to conduct business with the Gaming Enterprise. The information will be used by National Indian Gaming Commission members and staff who have need for the information in the performance of their official duties. The information may be disclosed to appropriate Federal, Tribal, State, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when pursuant to a requirement by Ohkay Owingeh or the National Indian Gaming Commission in connection with the hiring or firing of an employee, the issuance or revocation of a license, or investigations of activities while associated with a tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in the Gaming Enterprise or its management contractor being unable to hire you in an employment position or being unable to conduct in business with the vendor.

The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application.

- E. The Commission shall require each applicant seeking employment with the Gaming Enterprise to sign and submit a notice regarding false statements on an application form as required by the Act.

A false statement on any part of your application may be grounds for not hiring you, or for firing you after you begin work. Also, you may be punished by fine or imprisonment. (U.S. Code, title 18, section 1001.)

- F. The Commission shall require each applicant for a vendor license to sign and submit a notice regarding false statements on an application form as required by the Act:

Inclusion of false or misleading information in the vendor application may be grounds for denial or revocation of the vendor license.

- G. Compliance with Privacy Act and False Statements Notice. The Commission shall notify in writing each Person who is required to be licensed pursuant to Section 1-6-2 of this Ordinance, but who has not signed and submitted an application form containing the Privacy Act Notice or the False Statements Notice, to either complete a new application form that contains the Privacy Act Notice and the False Statements Notice; or sign a statement that contains the Privacy Act Notice and the False Statements Notice.
- H. Designation of Agent for Service of Process. On its application, a Gaming Enterprise or Management Contractor, or any person seeking a vendor license, shall designate an agent to accept service on its behalf of any official determination, order, subpoena or notice of violation that may be served by the Commission or N.I.G.C. pursuant to the Act.
- I. Release Form. The Commission shall obtain from each applicant a release form signed by the applicant authorizing the Commission and N.I.G.C. to obtain any information related to the applicant's activities, including

schools, property interests (real and personal), employment, criminal justice agencies, regulatory agencies, businesses, financial institutions, lending institutions, medical institutions, hospitals, and health care professionals.

**1-6-5 Background Investigations.** The Commission or its designee shall conduct a background investigation on each Person required to be licensed pursuant to Section 1-6-2 of this Ordinance.

**1-6-6 Procedures for Conducting Background Investigations.** The Commission or its designee shall conduct a background investigation on each Person required to be licensed pursuant to Section 1-6-2 of this Ordinance sufficient to enable the Commission to make a determination of suitability pursuant to the requirements of this Ordinance. At a minimum, the following classes of applicants shall be subject to the procedures described below:

- A. Gaming Employees, Non-Gaming Employees and Principals of a Gaming Vendor.
  - 1. The Commission or its designee, shall obtain copies of the applicant's birth certificate, social security card, driver's license, passport and other documents deemed necessary by the Commission, or its designee, to conduct a background investigation of the applicant.
  - 2. The Commission, or its designee, shall confirm, verify, and investigate the information provided by the applicant and obtain any additional information pursuant to the signed release form. In conducting a background investigation, the Commission's , or its designee, or its agent shall promise to keep confidential the identity of each person interviewed in the course of the investigation.
  - 3. Once the Commission, or its designee, has satisfied itself of the accuracy of the information provided by the applicant and other information obtained pursuant to a signed release form, the Commission shall issue a background investigative report to the Commission. The investigative report shall include, at a minimum, all of the following: a) steps taken in conducting a background investigation, b) results obtained, c) conclusions reached, and d) the bases for those conclusions. The Commission shall analyze such information to make the Suitability Determination. The Commission may conduct or cause to be conducted any further background investigation should the circumstances warrant.

B. Gaming Device, Machine and Equipment Vendors, and Gaming-Related Contractors and Non-Gaming Vendors.

1. The Commission or its designee shall verify the business' incorporation or organization status and qualification to do business in the State;
2. The Commission or its designee shall obtain a business credit report, if available, and conduct a Better Business Bureau check on the vendor;
3. The Commission or its designee shall conduct a check of the business' credit history;
4. The Commission or its designee shall call each of the references listed in the vendor application; and
5. The Commission or its designee shall conduct an investigation of the principals of the business, including a criminal history check, a credit report, and interviews with the personal references listed.
6. Once the Commission , or its designee, has satisfied itself of the accuracy of the information provided by the applicant and other information obtained pursuant to a signed release form, the Commission, or its designee, shall issue a background investigative report to the Commission. The investigative report shall include, at a minimum, all of the following: a) steps taken in conducting a background investigation, b) results obtained, c) conclusions reached, and d) the bases for those conclusions. The Commission shall analyze such information to make the Suitability Determination. The Commission may conduct, or cause to be conducted, any further background investigation should the circumstances warrant.

C. Gaming Facility License Applicants.

1. The Commission, or its designee, shall identify the environmental and public health and safety laws, regulations, polices, and procedures applicable to the gaming facility license.
2. The Commission, or its designee, shall verify whether the applicant is in compliance with those laws, regulations, policies, and procedures.
3. Once the Commission, or its designee, has satisfied itself of the accuracy of the information provided by the applicant and other

information obtained pursuant to a signed release form, the Commission, or its designee, shall issue a background investigative report to the Commission. The investigative report shall include, at a minimum, all of the following: a) steps taken in conducting a background investigation, b) results obtained, c) conclusions reached, and d) the bases for those conclusions. The Commission shall analyze such information to make the Suitability Determination. The Commission may conduct, or cause to be conducted, any further background investigation should the circumstances warrant.

**1-6-7 Procedure for Fingerprint Submissions.**

- A. The Commission is authorized to negotiate and enter into an agreement with the N.I.G.C. or a State or federal law enforcement agency for the purpose of processing fingerprint submissions to obtain criminal history record information ("CHRI") of Persons required to be licensed pursuant to Section 1-6-2 of this Ordinance and principals of vendor applicants required to be licensed under Section 1-6-2 of this Ordinance.
- B. The Commission, or other person designated by the Commission in writing, is responsible for obtaining fingerprints of applicants for licenses, including principals of vendor applicants. The Commission is also authorized to negotiate and enter into an agreement with a tribal, State or federal law enforcement agency to take such fingerprints. Such law enforcement agency shall designate an individual for the purpose of communicating with the Commission and the N.I.G.C. regarding the taking of fingerprints.
- C. The Commission shall impose a fee sufficient to cover the cost of the processing of the fingerprint submissions.

**1-6-8 Procedure for Processing Fingerprint Submissions.**

- A. Upon receipt of a completed application for a license and the payment arrangement of any required fees, the Commission or other designated entity, is authorized to obtain fingerprints. The Commission, or other designated entity, shall capture the applicant's fingerprints on an established live scan fingerprint processing machine. After obtaining the applicant's fingerprints, the Commission, or other designated entity, shall electronically submit the scans directly to the N.I.G.C. via VPN for an FBI fingerprint check.

- B. The Commission, or other designated entity, shall also send to the N.I.G.C. a check in an amount sufficient to cover the cost of processing each applicant's fingerprint submission.

**1-6-9 Criminal History Record Information.** The Commission may use the CHRI for the purpose of making a Suitability Determination and any other lawful purpose permitted by an agreement with the N.I.G.C. or a State or federal law enforcement agency. The Commission shall abide by all conditions or limitations imposed by such agreement on the release, dissemination or use of the CHRI. The Commission shall further ensure that the CHRI is restricted to the personnel directly involved in the licensing deliberations. The Commission shall maintain records of the identities of all personnel receiving access to the CHRI and shall furnish such records to the N.I.G.C. upon request.

**1-6-10 Suitability Determination.**

- A. Upon receipt of the background investigative report and CHRI information, the Commission shall apply the Licensing Standards, as defined under Section 1-6-3(B) of this Ordinance and as interpreted by the Regulations, to each application. In general, the Commission shall review a person's prior activities, criminal record, if any, reputation, habits and associations to make a finding concerning the eligibility of a an applicant, including, but not limited to an applicant for a key employee or primary management official for employment in a gaming operation.
- B. Denial of License. If the Commission determines that either the employment of the applicant or engaging in business with the applicant poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, the Gaming Enterprises shall not employ that person, or if the Person is seeking a vendor license, the Gaming Enterprises shall not engage in business with the applicant, and the commission shall proceed with denying the application. If the Commission denies the application, the commission shall give written notice to the applicant and to the gaming enterprise informing them of the action, setting forth the grounds for the action, revoking any temporary license, and advising the applicant of the right to a hearing before the Commission.
- C. Grant of License.
  - 1. Generally except for Key Employees and Primary Management Officials, if the Commission determines that either the employment of the applicant or engaging in business with the applicant does not pose a threat to the public interest or to the effective regulation of gaming, or does not create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming,



the Gaming Enterprise may employ that person, and if the Person is seeking a vendor license, the Gaming Enterprises may engage in business with the applicant, after the Commission issues a license. The commission shall issue a regular license to the applicant within 5 business days after approval by the Commission, at which time the temporary license (if any) shall expire, and the licensee must immediately surrender the temporary license to the Commission.

2. Grant of Temporary License. For Key Employees and Primary Management Officials only, if the Commission determines that the employment of the applicant does not pose a threat to the public interest or to the effective regulation of gaming, or does not create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, the Gaming Enterprise may employ that person, after the commission issues a temporary license. The Commission may issue or maintain a temporary license for a stated period of time, not to exceed 90 days from the date of application, within 5 business days after approval by the commission.

- D. Right to Hearing. An applicant who is denied a license by the commission may request a hearing before the commission by filing a written request for hearing with the commission within 7 business days after receiving the notice of denial of application. The commission shall set a hearing date, which shall be no later than 30 days after receipt of the request for hearing, unless the applicant for good cause requests an extension. The applicant shall be held in accordance with any Adjudicative Hearings procedure promulgated by the commission.

**1-6-11 Post Licensing Procedures: Forwarding Certain Information to the National Indian Gaming Commission.**

- A. If Key Employee and Primary Management Official's Temporary License is Granted.
  1. Unless otherwise directed by N.I.G.C., when a key employee or primary management official begins work at a Gaming Enterprise as authorized by this ordinance, the Commission shall forward to the N.I.G.C. a completed application for employment, an investigative report on the background investigation, and a suitability determination referred to in this Ordinance.
  2. The Commission shall forward the background investigative report referred to in this Ordinance to the N.I.G.C. within sixty (60) days after a key employee or primary management official begins work

or within sixty (60) days of the approval of this initial approval of the Ordinance by the chairman of the N.I.G.C., whichever is later.

3. A Gaming Enterprise shall not employ as a key employee or primary management official a person who does not have a license within ninety (90) days after applying for a Gaming License.
  4. If, within a thirty (30) day period after the N.I.G.C. receives a background investigative report, the N.I.G.C. notifies the Commission that it has no objection to the issuance of a license pursuant to a license application filed by a key employee or a primary management official the Commission may issue a regular license to such applicant.
  5. The Commission shall respond to a request for additional information from the Chairman of the N.I.G.C. concerning a key employee or a primary management official who is the subject of a background investigative report. Such a request shall suspend the thirty (30) day period under paragraph (A) of this section until the Chairman of the N.I.G.C. receives the additional information.
  6. If, within the thirty (30) day period described above, the N.I.G.C. provides the Commission with a statement itemizing objections to the issuance of a license to a key employee or to a primary management official, the Commission shall reconsider the application, taking into account the objections itemized by the N.I.G.C. The Commission shall make the final decision whether to issue a regular license to such applicant.
- B. If Key Employee and Primary Management Official's Temporary License is Denied.
1. If a temporary license is not issued to an applicant, the Commission:
    - a. Shall notify the N.I.G.C.; and
    - b. May forward copies of its suitability determination and investigative report (if any) to the N.I.G.C. for inclusion in the Indian Gaming Individuals Records System.
  2. With respect to key employees and primary management officials, the Commission shall retain applications for employment and reports (if any) of background investigations for inspection by the Chairman of the N.I.G.C. or his designee for no less than five (5) years, from the date of termination of employment.
- C. If Gaming Facility License is Approved

1. If a gaming facility license is issued to an applicant, the Commission shall submit to the Chairman of NIGC the following:
  - a. A copy of the gaming facility license,
  - b. An attestation certifying that by issuing the facility license:
    - i. The Pueblo has identified the environmental and public health and safety laws applicable to its gaming operation,
    - ii. The Pueblo is in compliance with those laws, and
    - iii. The Pueblo has ensured and is ensuring that the construction and maintenance of the gaming facility and the operation of that gaming is conducted in a manner which adequately protects the environment and the public health and safety.
  - c. Except as provided in paragraph (d) below, A document listing all laws, resolution, codes, policies or procedures identified by the Pueblo as applicable to its gaming operations, other than Federal laws, in the following areas:
    - i. Emergency preparedness, including but not limited to fire suppression, law enforcement, and security,
    - ii. Food and potable water,
    - iii. Construction and maintenance,
    - iv. Hazardous materials,
    - v. Sanitation (both solid waste and wastewater), and
    - vi. Other environmental or public health and safety standards adopted by the Pueblo in light of climate, geography, and other local conditions and applicable to its gaming facilities, places or locations.
  - d. For renewal licenses, upon reissuing a license to an existing gaming place, facility, or location, and in lieu of complying with the above paragraph, the Commission may certify to the Chairman of the NIGC that the Pueblo has not substantially modified its laws protecting the environment and public health and safety.

D. If Gaming Facility License is Denied.

4. The Commission shall notify the Chairman of NIGC within 30 days if a facility license is terminated or not renewed or if a gaming place, facility, or location closes or reopens.

#### **1-6-12 Additional License Requirements.**

- A. Generally the Commission shall require each licensee to comply with all applicable laws, regulations, and policies of the Commission and the Pueblo, and that failure to comply with such laws, regulations, and policies may be cause for suspension or revocation of the license. The Commission has the right to impose additional conditions of licensing. At a minimum, the Commission shall require the following conditions subsequent:
  - B. Non-Gaming Vendors. The Commission may impose conditions of licensure on the Non-Gaming Vendor, including, without limitation, requiring Non-Gaming Vendor to identify each of its employees working within the Gaming Facility. Non-Gaming Vendor shall identify such employees by name, address, social security number, and date of birth, and forward that list to the Commission. The Non-Gaming Vendor shall periodically update the list at least quarterly, and forward the updated list to the Commission. The Non-Gaming Vendor shall immediately inform the Commission of any such employee's change of employment status, including termination, suspension, or leave.

#### **1-6-13 License Suspension and Revocation.**

- A. Grounds for Suspension or Revocation.
  1. If, after the issuance of a license, the Commission obtains reliable information from the N.I.G.C. or other source indicating that a licensee is not eligible for a license under the standard set forth in Section 1-6-3(B) of this Ordinance or otherwise fails to comply with any conditions imposed on licensing, the Commission shall reopen the background investigation and notify the licensee of the proposed suspension and provide an opportunity to address the information received or basis for suspension. The background investigation shall be limited to the information received or basis for suspension with the intent of verifying the truthfulness of the information received. The Commission may promulgate regulations for reopening background investigations. If after the investigation, the Commission finds sufficient evidence that a licensee is no longer suitable for licensure based on the licensing standards and conditions imposed on the license, the Commission shall suspend such license and shall notify the licensee in writing of the suspension and the proposed revocation.

2. The notice of suspension and proposed revocation shall identify the information received or basis for suspension and explain why the Commission believes that the licensee is no longer suitable for licensure based on the license standards and/or conditions imposed on licensing.

B. Notice of Proposed Revocation Hearing: Administrative Hearing Procedures: The Commission shall notify the licensee of a time and a place for a hearing on the proposed revocation of a license. The Commission shall adopt procedural regulations to govern the procedures to be followed in administrative hearings pursuant to this section. At a minimum, the regulations shall provide:

1. For the hearings to be public;
2. Procedures for discovery;
3. Assurance that procedural due process requirements are satisfied;
4. For the maintenance of a record of the hearing proceedings and assessment of costs of any transcription of testimony that is required for judicial review purposes; and
5. For the hearing to be held on Pueblo Lands.

Such regulations may also govern notices, delegation of authority to hear a matter, hearing procedures, and any other conduct or activities reasonably related to meet the intent of the Ordinance.

C. Written Decision of the Commission. After a revocation hearing, the Commission shall issue a written decision on the proposed revocation supported with findings of fact and conclusions of law. The written decision shall be issued not more than thirty (30) days after the revocation hearing and shall be mailed by certified mail, return receipt requested, to the licensee, Gaming Enterprise, and all persons who have made a written request for notification of the action taken. The effective date of the decision of the Commission made under this section is the date the decision is received by the aggrieved party as reflected on the return receipt ("Effective Date"). The Commission shall notify the N.I.G.C. of its decision concerning each key employee or primary management official.

D. Suspension or Revocation for Cause Only. A license may be suspended or revoked for cause as described in the license standards and conditions imposed on licensing, and supported by substantial evidence in the whole record.

E. Appeal of Gaming Commission's Licensing Decisions to Tribal Court. A final decision of the Commission is subject to judicial review by the Tribal Court, if the aggrieved party files a petition for review with the Tribal

Court within ten (10) calendar days of the effective date. The Ohkay Owingeh Administrative Appeals Ordinance, as amended from time to time, shall apply.

**1-7 [RESERVED].**

**1-8 MANAGEMENT CONTRACTS.**

**1-8-1 Requirement for Review and Approval.** The Pueblo may enter into a Management Contract subject to approval of the Commission and the N.I.G.C.

**1-8-2 Required Provisions.**

- A. Governmental Authority. The Pueblo shall not enter into a Management Contract unless it provides that all Gaming Activity conducted by a Management Contractor be conducted in accordance with this Ordinance, as amended or restated, the Compact, the Act and all applicable federal regulations.
- B. Identification of Responsibilities. A Management Contract shall identify the responsibilities of each party for each identifiable function set forth in the Act, and Parts I and II of this Ordinance.
- C. Accounting and Record Keeping. A Management Contract shall provide for the establishment and maintenance of satisfactory accounting systems and procedures that shall include an adequate system of internal accounting controls and permit the preparation of financial statements in accordance with generally accepted accounting principles. The Management Contractor shall maintain adequate written records of bingo, and other Class II gaming activities on the premises for a period of at least four (4) years. Records for Class III gaming activities shall be maintained for a period of at least five (5) years. These records shall include:
  - 1. Gross Receipts.
  - 2. Records of prizes, maintain pursuant to paragraph E above.
  - 3. Any and all expenses.
  - 4. Capital expenditures
  - 5. Contract.
  - 6. Net profits.
  - 7. Payments to Pueblo's general fund.
  - 8. Documents and calculations required to be maintained to satisfy terms of the Compact.
- D. The Management Contract shall require the Management Contractor, at its own cost and expense to provide monthly verifiable financial reports to

the Pueblo, the Commission, and if required by the Act, the N.I.G.C., including any reports that the Compact requires the Management Contractor to make to the New Mexico Secretary of State or other State agencies or representatives.

E. Access.

1. A Management Contract shall require a Management Contractor to allow immediate access to a Gaming Facility or Enterprise, including its books and records, by authorized officials of the Pueblo, the Commission, or N.I.G.C. who shall have the right to verify the daily gross revenues and income from the Gaming Facility or Enterprise and agree to any other gaming-related information that such authorized officials deem appropriate.
2. A Management Contract shall provide that the State Gaming Representative shall have access to inspect all aspects of the gaming operations as provided by the Compact.

F. Guaranteed Payment. A Management Contract shall provide for a minimum guaranteed monthly payment in a sum certain to the Gaming Enterprise that has preference over the retirement of any development and construction costs.

G. Development and Construction Costs. A Management Contract shall provide for an agreed upon maximum dollar amount per month of revenues for the recoupment of development and construction costs.

H. Term. Pursuant to the Act, a Management Contract shall not be for a term exceeding five (5) years unless, upon request of the Pueblo, the N.I.G.C. authorizes a longer contract term not to exceed seven (7) years.

I. Compensation. Pursuant to the Act, a Management Contract shall not provide for more than thirty percent (30%) of the Net Revenues of a Gaming Enterprise to be paid to a Management Contractor unless, upon request of the Pueblo, the N.I.G.C. authorizes a higher percentage not to exceed forty percent (40%). The balance of any Net Revenues shall be paid to the Treasurer of the Pueblo or other Pueblo entity as set forth in a Management Contract.

J. Termination; Disputes. A Management Contract shall provide the grounds and mechanisms for modifying or terminating such contract and include a mechanism to resolve disputes between a Gaming Enterprise or Facility and Management Contractor, Management Contractor and patrons, and Management Contract and/or its employees. Such grounds and mechanisms must comply with applicable provisions of the Compact and

this Ordinance. In the event of any conflict, the provisions of the Compact shall prevail.

- K. Assignments and Subcontracting. A Management Contract shall provide to what extent contract assignments and subcontracting are permissible. A Management Contract shall also provide that any assignment or subcontract, assignee or subcontractor, must agree to comply with all provisions of the Act, applicable federal regulations, this Ordinance and the Compact.
- L. Ownership Interest. A Management Contract shall provide that changes in the ownership interest in such contract shall require the advance approval of the Pueblo, the Commission, and if required by the Act, the N.I.G.C.
- M. Prohibited provisions. A Management Contract shall not transfer or convey any interest in Pueblo Lands unless consistent with the Act and authorized by the Pueblo, federal law, including, but not limited to applicable federal regulations.

## **1-9 DISPUTE RESOLUTION.**

**1-9-1 Notice to Patrons.** The Commission shall promulgate regulations addressing the administrative handling of disputes between the patron and the Gaming Enterprise. Only when the administrative handling of dispute is exhausted will the dispute procedures provided herein become applicable.

**1-9-2 Patron Dispute Resolution Procedures Regarding Payouts.** If a Gaming Enterprise or Management Contractor refuses to pay alleged winnings to a patron engaged in Gaming Activity and a Gaming Enterprise or Management Contractor is unable to resolve the dispute after exhausting its internal process for resolving the dispute as described in the regulations, the following procedures shall be used:

- A. The Gaming Enterprise shall preserve all documents, including surveillance images, pertaining to each dispute until it is resolved.
- B. If the dispute involves at least \$1,200, the Gaming Enterprise or Management Contractor shall notify the Commission in writing of the dispute within five calendar days after exhausting the Gaming Enterprise process for handling the dispute as provided in the regulations, or the date of patron's written complaint to the Gaming Enterprise, whichever is earlier ("Notice of Dispute"), and shall provide a copy of this Section 1-9 of this Ordinance to the patron.
- C. Any patron has the right, within five (5) days of exhausting the Gaming Enterprise's process for resolving the dispute to make a written request to the Commission to conduct an investigation ("Request for Investigation").



The failure of a patron to make a Request for Investigation within the five-day period shall bar the claim to any money in dispute.

- D. Investigation and Hearing. Upon receipt of Notice of Dispute, Request for Investigation or written notice of a patron dispute submitted by a patron to the Commission, the Commission shall conduct whatever investigation it deems necessary to resolve the dispute. The Commission shall hold a hearing on the matter within a reasonable period of time following the conclusion of the investigation. The Commission may promulgate regulations concerning Adjudicative Hearings procedures consistent with this Ordinance. At a minimum, the regulations shall provide:
1. For the hearings to be public;
  2. Procedures for discovery;
  3. Assurance that procedural due process requirements are satisfied;
  4. For the maintenance of a record of the hearing proceedings and assessment of costs of any transcription of testimony that is required for judicial review purposes; and
  5. For the hearing to be held on Pueblo Lands.

Such regulations may also govern notices, delegation of authority to hear a matter, hearing procedures, and any other conduct or activities reasonably related to meet the intent of the Ordinance. At the hearing, the Gaming Enterprise or Management Contractor and patron may submit any documentation or other evidence to the Commission to support their respective positions.

- E. Decision. Within ten (10) calendar days after the hearing, the Commission shall issue a written decision and shall mail the written decision, by certified mail, return receipt requested, to the patron and the Gaming Enterprise or Management Contractor. The effective date of a decision of the Commission made under this Section is the date the decision is received by the aggrieved party as reflected on the return receipt ("Effective Date").
- F. Review of Decision. Any final decision of the Commission concerning this provision shall be subject to review by the Tribal Court, if the aggrieved party files a petition for review with the Tribal Court within 30 days of the Effective Date. The decision of the Tribal Court shall be final, and non-appealable.

**1-9-3 Other Patron Disputes.** All other patron disputes that are recognized in the Compact shall be resolved pursuant to the dispute resolution procedures set forth in the Compact.

## **1-10 GAMING COMMISSION.**

**1-10-1 Establishment of the Commission, Appointment, Term.** There is hereby established a commission to be known as the Ohkay Owingeh Gaming Commission, consisting of three (3) members appointed by the Council to serve staggered terms of three (3) years commencing on the date of their appointment.

**1-10-2 Compensation.** The Council shall establish the compensation, if any, for the members of the Commission.

**1-10-3 Removal.** The Council may remove any Commissioner for any reason at any time.

**1-10-4 Vacancies.** The Council may fill any vacancies in the Commission.

**1-10-5 Designation as Agent and Tribal Gaming Agency.** The Commission is hereby appointed as the agent for the Pueblo to accept on behalf of the Pueblo service of any official determination, order, notice of violation that may be served by the N.I.G.C. pursuant to the Act. The Commission is also designated as the Tribal Gaming Agency for purposes of the Compact.

**1-10-6 Powers and Duties.** The Commission shall have the following powers, including the authority to promulgate regulations in furtherance of the powers:

- A. To monitor and regulate any Gaming Activity except as provided by applicable law or the Compact;
- B. To inspect and examine all Gaming Enterprises, Facilities or Premises on Pueblo lands on which any Gaming Activity is conducted.
- C. To conduct background investigations as may be necessary and to conduct such other investigations to protect the public interest in the integrity of any Gaming Activity and to prevent improper or unlawful conduct in the course of any Gaming Activity.
- D. To demand access to, inspect, examine, photocopy, or audit or to cause an audit to be conducted on all papers, books, and records of any Gaming Enterprise or Management Contractor relating to any Gaming Activity and any matters necessary to carry out its duties pursuant to this Ordinance, the Compact, and applicable law.
- E. To compel any Person to appear before it and provide such information, documents or other materials as may be in such person's possession and to administer oaths or affirmations to witnesses appearing before it.
- F. To promulgate such regulations and guidelines as it deems appropriate to implement the provisions of this Ordinance, the Compact or other

applicable law. The Commission is authorized to issue procedures for seeking public comment on proposed regulations.

- G. To issue, deny, suspend and revoke licenses in accordance with this Ordinance.
- H. To enforce the health and safety standards applicable to any Gaming Facility.
- I. To levy and collect fees and to impose any penalties and fines for violations of this Ordinance.
- J. To adopt an annual operating budget subject to the approval of the Council, and, in accordance with such budget, to employ a staff as it deems necessary to fulfill its responsibilities under this Ordinance, and to retain legal counsel, consultants and other professional services, including investigative services, to assist it in carrying out its powers.
- K. To issue any order or make any decision which the Commission has the power to issue or make pursuant to applicable law and to take any action as may be required to protect the public interest in any Gaming Activity.
- L. To conduct any hearing, take testimony, and receive any evidence and to compel the production of any information or documents.
- M. To enter into such contracts and agreements with State, federal and private entities for activities necessary to the discharge of its duties.
- N. To take any other action necessary and proper to carry out its powers set forth in this Ordinance.

**1-10-7 Assuring Compliance with Compact.** In addition to the powers and duties set out in Section 1-10-6, the Commission will assure that the Pueblo will comply with all of the provisions set out in the Compact, and that the Pueblo shall adopt laws as set forth in the Compact.

**1-10-8 Executive Director.** The Commission may appoint and retain an individual to serve as executive director of the Commission to administer and execute its duties and responsibilities hereunder and other staff as the Commission may deem necessary to carry out such duties and responsibilities. The Executive Director shall be responsible for coordination of the functions with the N.I.G.C. and other federal, state, and local agencies as necessary.

**1-10-9 Certificate of Self-Regulation.** As provided in the Act, the Commission on behalf of the Pueblo may petition the N.I.G.C. for a certificate of self-regulation.

#### **1-10-10 Procedures of the Commission.**

- A. Regular Meetings. Regular meetings of the Commission may be held upon such notice, or without notice, and at such time and place as shall from time to time be fixed by the Commission. Unless otherwise specified by the Commission, no notice of such regular meetings shall be necessary.
- B. Special Meetings. Special meetings of the Commission may be called by the Chairman of the Commission or may be held by teleconference or by polling. The chairman of the Commission shall fix the time and place of the special meeting. Neither the business to be transacted at, nor the purposes of, any regular or special meeting of the Commission need to be specified in the notice of the meeting.
- C. Quorum. At any meeting of the Commission, a majority of the Commission members shall constitute a quorum for the transaction of business. The vote of a majority of the members present at a meeting at which a quorum is present shall be the act of the Commission. The chairman of the Commission shall preside at all meetings of the Commission unless the chairman of the Commission designates another member to preside in his absence. Approval of action telephonically or by polling is also authorized.
- D. Notice of Commission Action: Hearings. No action of the Commission taken pursuant to this Ordinance shall be valid unless the Person affected is given notice of the proposed action and the opportunity to appear and to be heard before the Commission and to submit such evidence as the Commission deems relevant to the matter at issue. Any hearing conducted may, at the direction of the Commission be conducted by the Executive Director or by one or members of the Commission designated by the Commission for that purpose.
- E. Rules and Procedures. The Commission may adopt such additional regulations or Bylaws, including a conflict of interest policy, as it deems necessary or convenient to govern its affairs consistent with applicable law.

**1-11 PROHIBITED ACTS.** It shall be a violation of this Ordinance for any Person to:

**1-11-1** Conduct or participate in any Gaming Activity on Pueblo Lands other than at a licensed Gaming Facility.

**1-11-2** Receive, distribute, apply or divert any property, funds, proceeds, or other assets of a Gaming Facility or Enterprise to the benefit of any Person except as authorized by this Ordinance, the Compact or other applicable law.

**1-11-3** Tamper with any Gaming Device, Machine or other Gaming Equipment used in the conduct of any Gaming Activity with the intent to cause any Person to win or lose any wager other than in accordance with the publicly-announced and approved rules of a Gaming Operation.

**1-11-4** Do any act in connection with the conduct of any Gaming Activity with the intent to affect the outcome of any wager other than in accordance with the publicly-announced and approved rules of a Gaming Facility or Gaming Enterprise.

**1-11-5** Alter or misrepresent the outcome of any event on which wagers have been made after the outcome is made sure but before it is revealed to the players.

**1-11-6** Place, increase or decrease a bet or to determine the course of play after acquiring knowledge, not available to all players, of the outcome of the game or any event that affects the outcome of the game or which is subject of the bet or to aid anyone in acquiring such knowledge for the purpose of placing, increasing or decreasing a bet or determining the course of play contingent upon that event or outcome.

**1-11-7** Claim, collect or take, or attempt to claim, collect or take, money or anything of value in or from a Gaming Device, Gaming Machine or other Gaming Equipment, with intent to defraud, without having made a wager thereon, or to claim, collect or take an amount greater than the amount won.

**1-11-8** Place or increase a wager or bet after acquiring knowledge of the outcome of the game or other event which is the subject of the bet, including post-posting and pressing bets.

**1-11-9** Reduce the amount wagered or cancel the bet after acquiring knowledge of the outcome of the game or other event which is the subject of the bet, including pinching bets.

**1-11-10** Manipulate, with the intent to cheat, any Gaming Device, Gaming Machine or Gaming Equipment, including but not limited to manipulating a Gaming Device, Gaming Machine or Gaming Equipment with knowledge that the manipulation affects the outcome of such device, machine or equipment.

**1-11-11** Knowingly use other than coins or tokens approved by the Commission or other lawful coin, legal tender of the United States of America, or to use a coin not of the same denomination as the coin intended to be used in the Gaming Device, Gaming Machine or Gaming Equipment.

**1-11-12** Possess, with the intent to use, any device to assist in projecting the outcome of the game, in keeping track of the cards played, in analyzing the probability of the occurrence of an event relating to Gaming Activity or in analyzing the strategy for playing or betting to be used in the Gaming Activity.

**1-11-13** Use any device or means to cheat, or to possess any such device or means while at a Gaming Facility.

**1-11-14** Knowingly entice or induce another to go to any place where Gaming Activity is being conducted or operated in violation of the provisions of this Ordinance, the Act, the Compact, or other applicable law with the intent that the other person play or participate in that Gaming Activity.

## **1-12 PENALTIES.**

**1-12-1** Any Person who violates any provision of this Ordinance shall be subject to civil penalties, termination of employment by, or contract with, the Gaming Facility, Gaming Enterprise or Management Contractor, denial, suspension or revocation of a license, exclusion from any Gaming Facility, or exclusion from Pueblo Lands. The Commission may impose a fine of not more than Five Thousand Dollars (\$5,000) for each violation. The Commission shall have the jurisdiction to impose any penalties on any Person within the jurisdiction of the Pueblo. The Commission may promulgate regulations governing its enforcement of the Ordinance and application of fines and penalties.

## **1-13 SEVERABILITY.**

**1-13-1** In the event that any section or provision of Part I of this Ordinance or its application to any particular activity is held to be invalid, the remaining sections and provisions of Part I of this Ordinance and the remaining applications of such section or provision shall continue in full force and effect.

## **1-14 SOVEREIGN IMMUNITY.**

**1-14-1** Unless required under the Compact or the Act, the Pueblo does not in any way waive its sovereign immunity from suit in any court. However, final decisions of the Commission may be appealed to and shall be subject to final appellate review only in the Tribal Court. No final decision of the Commission shall be reversed unless the Tribal Court finds that the Commission's action was arbitrary, capricious or not in accordance with the law. No compensatory, punitive, monetary or exemplary damages may be awarded against the Commission for any action taken or decision made by the Commission.

## **1-15 PROTECTION OF COMMISSION.**

**1-15-1** The Pueblo's sovereign immunity protects the Commission, and its members, employees, and agents against any suit arising from their official actions or employment.

The Pueblo will defend, protect, and indemnify the Commission, and its members, employees, and agents in any legal action arising from official actions set out in this Ordinance while serving the Commission.

**1-16 REPEAL.**

**1-16-1** To the extent inconsistent with this Ordinance, all prior ordinances, regulations or parts thereof adopted by the Council are hereby repealed. Nothing in this section is intended to repeal regulations adopted by the Commission unless inconsistent with the provisions of this Ordinance.

**1-17 AMENDMENTS.**

**1-17-1** Part I of this Ordinance may be amended by the Council.

## **PART II - Indian Gaming Compact**

### **2-1 INTRODUCTION.**

**2-1-1.** The State of New Mexico ("State") is a sovereign State of the United States of America, having been admitted to the Union pursuant to the Act of June 20, 1910, 36 Statutes at Large 557, Chapter 310, and is authorized by its constitution to enter into contracts and agreements, including this Compact, with the Tribe;

**2-1-2.** The Ohkay Owingeh ("Tribe") is a sovereign federally recognized Indian tribe and its governing body has authorized the officials of the Tribe to enter into contracts and agreements of every description, including this Compact, with the State;

**2-1-3.** The Congress of the United States has enacted the Indian Gaming Regulatory Act of 1988, 25 U.S.C. §§ 2701\_2721 (hereinafter "IGRA"), which permits Indian tribes to conduct Class III Gaming on Indian Lands pursuant to a tribal-state compact entered into for that purpose;

**2-1-4.** The 1999 State legislature has enacted SB 737, as 1999 N.M. Laws, Ch. 252, known as the "Compact Negotiation Act," creating a process whereby the State and the Tribe have engaged in negotiations leading to this Compact, with review by a joint legislative committee, and with final approval by a majority vote in each house of the legislature;

**2-1-5.** The Tribe owns or controls Indian Lands and by Ordinance has adopted rules and regulations governing Class III games played and related activities at any Gaming Facility; the State and the Tribe, in recognition of the sovereign rights of each party and in a spirit of cooperation to promote the best interests of the citizens of the State and the members of the Tribe, have engaged in good faith negotiations recognizing and respecting the interests of each party and have agreed to this Compact.

NOW, THEREFORE, the State and the Tribe agree as follows:

### **2-2 TERMS AND CONDITIONS SECTION.**

#### **2-2-1 Purpose and Objectives.**

The purpose and objectives of the State and the Tribe in making this Compact are as follows:

- A. To evidence the good will and cooperative spirit between the State and the Tribe;
- B. To continue the development of an effective government-to-government relationship between the State and the Tribe;



- C. To provide for the regulation of Class III Gaming on Indian Lands as required by the IGRA;
- D. To fulfill the purpose and intent of the IGRA by providing for tribal gaming as a means of generating tribal revenues, thereby promoting tribal economic development, tribal self-sufficiency, and strong tribal government;
- E. To provide revenues to fund tribal government operations or programs, to provide for the general welfare of the tribal members and for other purposes allowed under the IGRA;
- F. To provide for the effective regulation of Class III Gaming in which the Tribe shall have the sole proprietary interest and be the primary beneficiary; and
- G. To address the State's interest in the establishment, by the Tribe, of rules and procedures for ensuring that Class III Gaming is conducted fairly and honestly by the owners, operators, employees and patrons of any Class III Gaming enterprise on Indian Lands.
- H. To settle and resolve certain disputes that have arisen between the Tribe and the State under the provisions of the Predecessor Agreements.

**2-3 DEFINITIONS.** For purposes of this Compact, the following definitions pertain:

**2-3-1.** "Class III Gaming" means all forms of gaming as defined in 25 U.S.C. § 2703(8), and 25 C.F.R. § 502.4.

**2-3-2.** "Compact" means this compact between the State and the Tribe, and including the Appendix attached hereto.

**2-3-3.** "Gaming Employee" means a person connected directly with the conduct of Class III Gaming, or handling the proceeds thereof or handling any Gaming Machine; but "Gaming Employee" does not include:

- A. Bartenders, cocktail servers or other persons engaged solely in preparing or serving food or beverages;
- B. Secretarial or janitorial personnel;
- C. Stage, sound and light technicians; or
- D. Other nongaming personnel.

**2-3-4.** "Gaming Enterprise" means the tribal entity created and designated by the Tribe as having authority to conduct Class III Gaming pursuant to this Compact.

**2-3-5.** "Gaming Facility" means all buildings or structures in which Class III Gaming is conducted on the Tribe's Indian Lands, subject to the limitations set forth in Section 2-4-3 of the Compact.

**2-3-6.** "Gaming Machine" means a mechanical, electromechanical or electronic contrivance or machine that, upon insertion of a coin, token or similar object, or upon payment of any consideration, in any manner, is available to play or operate a game of chance in which the outcome depends to a material degree on an element of chance, notwithstanding that some skill may be a factor, whether the payoff is made automatically from the Gaming Machine or in any other manner; but Gaming Machine does not include a Table Game or any device utilized in Table Games. Additional clarification of this definition is set forth in the attached Appendix.

**2-3-7.** "Indian Lands" means:

- A. All lands within the exterior boundaries of the Tribe's reservation and its confirmed grants from prior sovereigns; or
- B. Any other lands title to which is either held in trust by the United States for the exclusive benefit of the Tribe or a member thereof or is held by the Tribe or a member thereof subject to restrictions against alienation imposed by the United States, and over which the Tribe exercises jurisdiction and governmental authority, but not including any land within the boundaries of a municipality that is outside of the boundaries of the tribe's reservation or confirmed Spanish grant, as those boundaries existed on October 17, 1988.

**2-3-8.** "Key Employee" means that term as defined in 25 C.F.R. Section 502.14.

**2-3-9.** "Management Contract" means a contract within the meaning of 25 U.S.C. §§ 2710(d)(9) and 2711.

**2-3-10.** "Management Contractor" means any person or entity that has entered into a Management Contract with the Tribe or the Gaming Enterprise.

**2-3-11.** "Ordinance" means the gaming ordinance and any amendments thereto adopted by the Tribal Council of the Tribe.

**2-3-12.** "Predecessor Agreements" means the tribal-state class III gaming compact and the accompanying revenue sharing agreement entered into between the Tribe and the State pursuant to 1997 Laws, Ch. 190, §§ 1, 2.

**2-3-13.** "Primary Management Official" means that term as defined in 25 C.F.R. Section 502.19.

**2-3-14.** "State" means the State of New Mexico.

**2-3-15.** "State Gaming Representative" means that person designated by the gaming control board pursuant to the Gaming Control Act [60-2E-1 to 60-2E-60 NMSA 1978] who will be responsible for actions of the State set out in the Compact. The State Legislature may enact legislation to establish an agency of the State to perform the duties of the State Gaming Representative.

**2-3-16.** "Tribal Gaming Agency" means the tribal governmental agency which will be identified to the State Gaming Representative as the agency responsible for actions of the Tribe set out in the Compact. It will be the single contact with the State and may be relied upon as such by the State.

**2-3-17.** "Tribe" means any Indian Tribe, Nation or Pueblo located within the State of New Mexico entering into this Compact as provided for herein.

**2-3-18.** "Table Games" means a Class III game of chance, in which the outcome depends to a material degree on an element of chance, notwithstanding that some skill may be a factor, that is played using a wheel, cards or dice, and that requires an attendant to initiate the game or to collect wagers or pay prizes. Additional clarification of this definition is set forth in the attached Appendix.

#### **2-4 AUTHORIZED CLASS III GAMING.**

**2-4-1** The Tribe may conduct, only on Indian Lands, subject to all of the terms and conditions of this Compact, any or all forms of Class III Gaming.

**2-4-2.** Subject to the foregoing, the Tribe shall establish, in its discretion, by tribal law, such limitations as it deems appropriate on the number and type of Class III Gaming conducted, the location of Class III Gaming on Indian Lands, the hours and days of operation, and betting and pot limits, applicable to such gaming.

**2-4-3.** In no event shall the Tribe's Gaming Facility consist of more than two separate physical buildings or structures on its Indian Lands; but provided that in addition to the two separate physical buildings or structures otherwise permitted by this Section 3(C), the Pueblo of Laguna is authorized to conduct gaming operations at the Route 66 Casino Express, subject to the limitations that (1) the Route 66 Casino Express shall not be moved from its location as of December 1, 2006, except as may be made necessary by improvements to the highway interchange with I-40; and (2) the gaming operations at the Route 66 Casino Express shall not be expanded beyond the level of gaming operations in existence on December 1, 2006, and the Pueblo of Laguna shall have an authorized representative sign a sworn affidavit that shall provide a detailed description of the gaming operations as of that date, including the hours and days of operation, the specific

number of Gaming Machines, and any other gaming activities, and shall submit said affidavit to the State Gaming Representative.

## **2-5 CONDUCT OF CLASS III GAMING.**

**2-5-1. Tribal Gaming Agency.** The Tribal Gaming Agency will assure that the Tribe will:

- A. Operate all Class III Gaming pursuant to this Compact, tribal law, the IGRA and other applicable Federal law;
- B. Provide for the physical safety of patrons in any Gaming Facility;
- C. Provide for the physical safety of personnel employed by the Gaming Enterprise;
- D. Provide for the physical safeguarding of assets transported to and from the Gaming Facility and cashier's cage department;
- E. Provide for the protection of the property of the patrons and the Gaming Enterprise from illegal activity;
- F. Participate in licensing of primary management officials and key employees of a Class III Gaming Enterprise;
- G. Detain persons who may be involved in illegal acts for the purpose of notifying law enforcement authorities; and
- H. Record and investigate any and all unusual occurrences related to Class III Gaming within the Gaming Facility.

**2-5-2. Regulations.** Without affecting the generality of the foregoing, the Tribe shall adopt laws:

- A. Prohibiting participation in any Class III Gaming by any person under the age of twenty-one (21);
- B. Prohibiting the employment of any person as a Gaming Employee who is under the age of twenty-one (21) or who has not been licensed in accordance with the applicable requirements of federal and tribal law;
- C. Requiring the Tribe to take all necessary action to impose on its gaming operation standards and requirements equivalent to or more stringent than those contained in the federal Fair Labor Standards Act of 1938, the federal Occupational Safety and Health Act of 1970, and any other federal

laws generally applicable to Indian tribes relating to wages, hours of work and conditions of work, and the regulations issued thereunder;

- D. Requiring that on any construction project involving any Gaming Facility or related structure that is funded in whole or in part by federal funds, all workers will be paid wages meeting or exceeding the standards established for New Mexico under the federal Davis-Bacon Act;
- E. Prohibiting the Tribe, the Gaming Enterprise and a Management Contractor from discriminating in the employment of persons to work for the gaming Enterprise or in the Gaming Facility on the grounds of race, color, national origin, gender, sexual orientation, age or handicap, provided, however, that nothing herein shall be interpreted to prevent the Tribe from granting preference in employment actions to tribal members or other Indians in accordance with established tribal laws and policies;
- F. Providing to all employees of a gaming establishment employment benefits, including, at a minimum, sick leave, life insurance, paid annual leave and medical and dental insurance as well as providing unemployment insurance and workers' compensation insurance through participation in programs offering benefits at least as favorable as those provided by comparable state programs, and which programs shall afford the employees due process of law and shall include an effective means for an employee to appeal an adverse determination by the insurer to an impartial forum, such as (but not limited to) the Tribe's tribal court, which appeal shall be decided in a timely manner and in an administrative or judicial proceeding; and provided that to fulfill this requirement the Tribe may elect to participate in the State's program upon execution of an appropriate agreement with the State;
- G. Providing a grievance process for an employee in cases of disciplinary or punitive action taken against an employee that includes a process for appeals to persons of greater authority than the immediate supervisor of the employee;
- H. Permitting State Department of Environment inspectors to inspect the Gaming Facility' food service operations during normal Gaming Facility business hours to assure that standards and requirements equivalent to the State's Food Service Sanitation Act [Chapter 25, Article 1 NMSA 1978] are maintained;
- I. Prohibiting a gaming enterprise from cashing any paycheck or any type of government assistance check, including Social Security, TANF, pension and other similar checks, for any patron;

- J. Prohibiting a gaming enterprise from extending credit by accepting IOUs or markers from its patrons;
- K. Requiring that automatic teller machines on Gaming Facility premises be programmed so that the machines will not accept cards issued by the State to TANF recipients for access to TANF benefits;
- L. Providing that each electronic or electromechanical gaming device in use at the Gaming Facility must pay out a mathematically demonstrable percentage of all amounts wagered, which must not be less than eighty percent (80%), and requiring the Gaming Enterprise to prominently post in visible locations within the Gaming Facility notices stating that the Gaming Enterprise is in compliance with this requirement, and providing a comprehensible explanation of the meaning of this requirement;
- M. Providing that all gaming machines on the premises of the Gaming Facility will be connected to a central computerized reporting and auditing system on the Gaming Facility premises, which shall collect on a continual basis the unaltered activity of each Gaming Machine in use at the Gaming Facility, and that the wager and payout data of each machine, electronically captured by the Gaming Enterprise's central computer, may be accessed and downloaded electronically by the State Gaming Representative by a dedicated telecommunications connection, on a "read-only" basis, upon entry of appropriate security codes; but provided that in no event shall the State Gaming Representative be able to alter or affect the operation of any Gaming Machine or other device on the premises of the Gaming Facility, or the data provided to the central computer, and provided further that the system for electronic access to the machine wager and payout data collected by the Gaming Enterprise's central computer shall be constructed and installed at the State's cost, and shall be designed in conjunction with Gaming Enterprise technical staff so as to preserve the integrity of the system and the data contained therein, to minimize any possibility of unauthorized access to the system or tampering with the data, and to minimize any access by the State Gaming Representative to information other than machine wager and payout data residing in the central reporting and auditing system;
- N. Enacting provisions that:
  - 1. Prohibit an employee of the Gaming Enterprise from selling, serving, giving or delivering an alcoholic beverage to an intoxicated person or from procuring or aiding in the procurement of any alcoholic beverage for an intoxicated person at the Gaming Facility;

2. Require Gaming Enterprise employees that dispense, sell, serve or deliver alcoholic beverages to attend Alcohol Server Education Classes similar to those classes provided for in the New Mexico Liquor Control Act; and
  3. Require the Gaming Enterprise to purchase and maintain a liquor liability insurance policy that will provide, at a minimum, personal injury coverage of one million dollars (\$1,000,000) per incident and two million dollars (\$2,000,000) aggregate per policy year;
- O. Prohibiting alcoholic beverages from being sold, served, delivered or consumed in that part of a Gaming Facility where gaming is allowed;
- P. Requiring the gaming enterprise to spend an amount that is no less than one-quarter of one percent (.25%) of its net win as that term is defined herein annually to fund or support programs for the treatment and assistance of compulsive gamblers in New Mexico or who patronize New Mexico gaming facilities, and for the prevention of compulsive gambling in New Mexico; and requiring that a substantial portion of such funds be distributed to an organization that has expertise in and provides counseling, intervention or other services for compulsive gamblers in New Mexico, and whose services are available to all persons without regard to race or tribal membership; and provided that any information existing as a result of this Section, not including information that may identify or contain information referring to any gaming patrons, shall not be subject to the confidentiality provisions of Section 4(E)(4) of this Compact and shall be made available for inspection and publication without restriction or limitation;
- Q. Governing any Management Contract regarding its Class III Gaming activity so that it conforms to the requirements of tribal law and the IGRA and the regulations issued thereunder;
- R. Prohibiting the operation of any Class III Gaming for at least four (4) consecutive hours daily, Mondays through Thursdays (except federal holidays);
- S. Prohibiting a Tribal Gaming Enterprise and the Tribe from providing, allowing, contracting to provide or arranging to provide alcoholic beverages for no charge or at reduced prices, or from providing, allowing, contracting to provide or arranging to provide food or lodging for no charge or at nominal prices, at a Gaming Facility or lodging facility as an incentive or enticement for patrons to game, except that this provision shall not apply to rewards received by patrons in exchange for points or credits accrued under any form of a players' club program; and

- T. Requiring the Tribe, the Tribal Gaming Enterprise or a Management Contractor to report to the secretary of state, in the same manner and at the same times as are required of political committees under the provisions of the State's Campaign Reporting Act (NMSA 1978 §§ 1-19-25 through 1-19-36) any and all contributions, whether directly or through an agent, representative or employee, of any moneys derived from revenue from the Gaming Enterprise, or of anything of value acquired with that revenue, to a candidate, political committee or person holding an office elected or to be elected at an election covered by the State's Campaign Reporting Act and provided that in the event any report required to be made hereunder is not made within the time specified herein, or is false or incomplete in any respect, the Tribe shall be liable to pay to the secretary of state a penalty in the amount of fifty dollars (\$50.00) for each working day after the day on which the report was due until the day on which the complete or true report is filed, up to a maximum of five thousand dollars (\$5000), except that with respect to the report due on the Friday before an election the penalty shall be five hundred dollars (\$500) for the first working day after the due date and fifty dollars (\$50.00) per working day thereafter, up to a maximum of five thousand dollars (\$5000).

**2-5-3** The Tribal Gaming Agency will provide true copies of all tribal laws and regulations affecting Class III Gaming conducted under the provisions of this Compact to the State Gaming Representative within thirty (30) days after the effective date of this Compact, and will provide true copies of any amendments thereto or additional laws or regulations affecting gaming within thirty (30) days after their enactment or approval, if any.

**2-5-4 Audit and Financial Statements.** The Tribal Gaming Agency shall require all books and records relating to Class III Gaming to be maintained in accordance with generally accepted accounting principles. All such books and records shall be retained for a period of at least five (5) years from the date of creation, as required by 25 C.F.R. § 571.7(c). Not less than annually, the Tribal Gaming Agency shall require an audit and a certified financial statement covering all financial activities of the gaming enterprise, including written verification of the accuracy of the quarterly Net Win calculation, by an independent certified public accountant licensed by the State. The financial statement shall be prepared in accordance with generally accepted accounting principles and shall specify that total amount wagered in Class III Gaming on all Gaming Machines at the Tribe's Gaming Facility for purposes of calculating "Net Win" under Section 11 of this Compact using the format specified therein. The financial statement and audit report shall be submitted to the Tribal Gaming Agency, the State Gaming Representative, and the State Treasurer, within one hundred twenty (120) days of the close of the Tribe's fiscal year. Such documents shall be subject to the provisions of § 4(E)(4) of this Compact. The Tribe will maintain the following records for not less than five (5) years:

- A. Revenues, expenses, assets, liabilities and equity for each Gaming Enterprise;



- B. Daily cash transactions for each Class III Gaming activity at each Gaming Facility, including but not limited to transactions relating to each gaming table bank, game dropbox and gaming room bank;
- C. Individual and statistical game records, except for card games, to reflect statistical drop and statistical win; for electronic, computer, or other technologically assisted games, analytic reports which show the total amount of cash wagered and the total amount of prizes won;
- D. Contracts, correspondence and other transaction documents relating to all vendors and contractors;
- E. Records of all tribal gaming enforcement activities;
- F. Audits prepared by or on behalf of the Tribe; and
- G. Personnel information on all Class III Gaming employees or agents, including rotation sheets, hours worked, employee profiles and background checks.

**2-5-5 Violations.** The agents of the Tribal Gaming Agency shall have unrestricted access to the Gaming Facility during all hours of Class III Gaming activity, and shall have immediate and unrestricted access to any and all areas of the Gaming Facility for the purpose of ensuring compliance with the provisions of this Compact and the Ordinance. The agents shall report immediately to the Tribal Gaming Agency any suspected violation of this Compact, the Ordinance, or regulations of the Tribal Gaming Agency by the gaming enterprise, Management Contractor, or any person, whether or not associated with Class III Gaming.

**2-5-6 State Gaming Representative.**

- A. Upon written request by the State to the Tribe, the Tribe will provide information on primary management officials, key employees and suppliers, sufficient to allow the State to conduct its own background investigations, as it may deem necessary, so that it may make an independent determination as to the suitability of such individuals, consistent with the standards set forth in Section 5 of this Compact. The Tribe shall consider any information or recommendations provided to it by the State as to any such person or entity, but the Tribe shall have the final say with respect to the hiring or licensing of any such person or entity.
- B. Notwithstanding that the Tribe has the primary responsibility to administer and enforce the regulatory requirements of this Compact, the Tribal Gaming Agency will certify annually to the State Gaming Representative

that the Tribe has met its obligations under this Compact in accordance with the instructions and form set forth in the attached Appendix.

- C. The State Gaming Representative shall have the right to inspect a Gaming Facility, Class III Gaming activity, including all Gaming Machines and all records relating to Class III Gaming of the Tribe, subject to the following conditions:
1. With respect to public areas of a Gaming Facility, at any time without prior notice during normal Gaming Facility business hours;
  2. With respect to private areas of a Gaming Facility not accessible to the public, at any time during normal Gaming Enterprise business hours, immediately after notifying the Tribal Gaming Agency and Gaming Enterprise of his or her presence on the premises and presenting proper identification, and requesting access to the non-public areas of the Gaming Facility. The Tribe, in its sole discretion, may require an employee of the Gaming Enterprise or the Tribal Gaming Agency to accompany the State Gaming Representative at all times that the State Gaming Representative is on the premises of a Gaming Facility, but if the Tribe imposes such a requirement, the Tribe shall require such an employee of the Gaming Enterprise or the Tribal Gaming Agency to be available at all times for such purpose;
  3. With respect to inspection and copying of all management records relating to Class III Gaming, at any time without prior notice between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding official holidays. The reasonable costs of copying will be borne by the State; and
  4. Whenever the State Gaming Representative, or his designee, enters the premises of the Gaming Facility for any such inspection, such Representative, or designee, shall identify himself to security or supervisory personnel of the Gaming Enterprise.
  5. In accordance with the additional requirements set forth in the attached Appendix.

The State Gaming Representative may contract with private persons, firms or other entities for the purpose of performing certain of his functions, but the State Gaming Representative will be the single contact with the Tribe and may be relied upon as such by the Tribe.

D. Documents and Communications.

1. Any information, documents or communications provided to the State Gaming Representative, his agents or contractors, or to any other official, agency or entity of the State (all of which are collectively hereinafter referred to as "the State entities") by the Tribe, the Tribal Gaming Agency or the Gaming Enterprise, or prepared from information obtained from the Tribe, the Tribal Gaming Agency or the Gaming Enterprise, or any information, documents or communications provided to the Tribe, the Tribal Gaming Agency, or the Gaming Enterprise by any State entity, or prepared from information obtained from any State entity, under the provisions of this Compact or under the provisions of the Predecessor Agreements, are confidential. Any State entity that has received any information, documents or communications from the Tribe, the Tribal Gaming Agency or the Gaming Enterprise: i) may release or disclose the same only with the prior written consent of the Tribe or pursuant to a lawful court order after timely notice of the proceeding has been given to the Tribe; ii) shall maintain all such information, documents and communications in a secure place accessible only to authorized officials and employees of the State entity that has received the same; and iii) shall adopt procedures and regulations to protect the confidentiality of the information, documents and communications provided by the Tribe, Tribal Gaming Agency or Gaming Enterprise.
2. These prohibitions shall not be construed to prohibit:
  - a. The furnishing of any information to a law enforcement or regulatory agency of the Federal Government;
  - b. The State from making known the names of persons, firms, or corporations conducting Class III Gaming pursuant to the terms of this Compact, locations at which such activities are conducted, or the dates on which such activities are conducted;
  - c. Publishing the terms of this Compact;
  - d. Disclosing information as necessary to audit, investigate, prosecute or arbitrate violations of this Compact or other applicable laws or to defend suits against the State; and
  - e. Complying with subpoenas or court orders issued by courts of competent jurisdiction.

3. Notwithstanding the foregoing, the Tribe agrees that:
  - a. The following documents and information may be released by a State entity to the public: the Tribe's gaming ordinance and regulations of the Tribal Gaming Agency; official rulings of the Tribal Gaming Agency in matters not subject to a confidentiality order imposed by the Agency; other information and documents of the Tribal Gaming Agency or the Gaming Enterprise ordinarily available to the public; quarterly Net Win figures used as the basis for computation of the Tribe's revenue sharing payment under the provisions of Section 11 of this Compact; and correspondence between the Tribe or a tribal entity and a State entity, unless such correspondence is specifically labeled "Confidential;"
  - b. A State entity may release to the public aggregate figures compiled by totaling comparable figures from the annual financial statements of all of the New Mexico gaming tribes; and
  - c. The report of the annual audit of the Gaming Enterprise that is provided by the Tribe to the State Gaming Representative shall be available to the public to the same extent that similar information that is required to be provided to the State by non-Indian gaming entities is available to the public, pursuant to the provisions of applicable law and the policies and regulations of the Gaming Control Board, at the time the request for the report of the annual audit is made.
4. To the fullest extent allowed by State law, the Tribe shall have the right to inspect State records concerning all Class III Gaming conducted by the Tribe; the Tribe shall have the right to copy such State records, with the Tribe bearing the reasonable cost of copying.
5. The Tribe shall reimburse the State for the costs the State incurs in carrying out any functions authorized by the terms of this Compact. The Tribe and the State agree that to require the State to keep track of and account to the Tribe for all such costs would be unreasonably burdensome, and that a fair estimate of the State's costs of such activity as of January 1, 2007 is one hundred sixteen thousand dollars (\$116,000) per year, and that those costs will increase over time. The Tribe therefore agrees to pay the State the sum of one hundred sixteen thousand dollars (\$116,000) per year

as reimbursement of the State's costs of regulation, which amount shall increase by five percent (5%) as of January 1 of 2012 and as of January 1 of every fifth year thereafter as long as this Compact remains in effect, such sum to be paid in quarterly payments of one-fourth of the annual amount due each, in advance. The Tribe and the State further agree that such amount fairly reflects the State's costs of regulation.

6. In the event the State believes that the Tribe is not administering and enforcing the regulatory requirements set forth herein, it may invoke the procedures set forth in Section 7 of this Compact.

**2-5-7 Compliance with Bank Secrecy Act.** The Tribe shall comply with all applicable provisions of the Bank Secrecy Act, P.L. 91-508, October 26, 1970, 31 U.S.C. §§ 5311-5314, and all reporting requirements of the Internal Revenue Service.

**2-5-8.** At least annually, appropriate representatives of the Tribe shall meet with one or more representatives of the Office of the Governor appointed by the Governor, one or more members of the House of Representatives appointed by the Speaker of the New Mexico House of Representatives, and one or more members of the Senate appointed by the President Pro Tempore of the New Mexico Senate, to discuss matters of mutual interest arising under the terms of this Compact and concerning Indian gaming in New Mexico. Such meeting shall be coordinated so as to involve the representatives of as many New Mexico gaming tribes as possible, and shall be conducted in the context of the government-to-government relationship between the State and the Tribe.

## **2-6 LICENSING REQUIREMENTS.**

**2-6-1 License Required.** The Gaming Facility operator, but not including the Tribe, including its principals, primary management officials, and key employees, the Management Contractor and its principals, primary management officials, and key employees (if the Tribe hires a Management Contractor); any person, corporation, or other entity that has supplied or proposes to supply any gaming device to the Tribe or the Management Contractor; and any person, corporation or other entity providing gaming services within or without a Gaming Facility, shall apply for and receive a license from the Tribal Gaming Agency before participating in any way in the operation or conduct of any Class III Gaming on Indian Lands. The Tribal Gaming Agency shall comply fully with the requirements of this Section and of the Indian Gaming Regulatory Act, especially at 25 U.S.C. §§ 2710-2711, and the regulations issued thereunder at 25 C.F.R. Parts 550-559, as well as the requirements of the Tribe's gaming ordinance and any regulations issued thereunder, in processing license applications and issuing licenses.

**2-6-2 License Application.** Each applicant for a license shall file with the Tribal Gaming Agency a written application in the form prescribed by the Tribal Gaming Agency, along with the applicant's fingerprint card, current photograph and the fee required by the Tribal Gaming Agency.

**2-6-3 Background Investigations.** Upon receipt of a completed application and required fee for licensing, the Tribal Gaming Agency shall conduct or cause to be conducted a background investigation to ensure that the applicant is qualified for licensing.

**2-6-4 Provision of Information to State Gaming Representative.** Whenever the Tribal Gaming Agency is required by federal or tribal law or regulations to provide to the National Indian Gaming Commission any information, document or notice relating to the licensing of any key employee or primary management official of the Gaming Enterprise, a copy of such information, document or notice shall also be provided to the State Gaming Representative. The State Gaming Representative shall be entitled to the same right to request additional information concerning an applicant licensee, to comment on the proposed licensing of any applicant licensee, and to supply the Tribal Gaming Agency with additional information concerning any applicant licensee, as is enjoyed by the Commission.

**2-7 PROVIDERS OF CLASS III GAMING EQUIPMENT OR DEVICES OR SUPPLIES.**

**2-7-1** Within thirty (30) days after the effective date of this Compact, if it has not already done so, the Tribal Gaming Agency will adopt standards for any and all Class III Gaming equipment, devices or supplies to be used in any Gaming Facility, which standards shall be at least as strict as the comparable standards applicable to Class III Gaming equipment, devices or supplies within the State of Nevada. Any and all Class III Gaming equipment, devices or supplies used by the Tribe shall meet or exceed the standards thereby adopted.

**2-7-2** Prior to entering into any future lease or purchase agreement for Class III Gaming equipment, devices or supplies, the Tribe shall obtain sufficient information and identification from the proposed seller or lessor and all persons holding any direct or indirect financial interest in the lessor or the lease/purchase agreement to permit the Tribe to license those persons in accordance with applicable federal and tribal law.

**2-7-3** The seller, lessor, manufacturer or distributor shall provide, assemble and install all Class III Gaming equipment, devices or supplies in a manner approved and licensed by the Tribe.

**2-8 DISPUTE RESOLUTION.**

**2-8-1** In the event either party believes that the other party has failed to comply with or has otherwise breached any provision of this Compact, such party may invoke the following procedure:

- A. The party asserting noncompliance shall serve written notice on the other party. The notice shall identify the specific Compact provision believed to have been violated and shall specify the factual and legal basis for the allegation of noncompliance. The notice shall specifically identify the date, time and nature of the alleged noncompliance.
- B. In the event an allegation by the complaining party is not resolved to the satisfaction of such party within twenty (20) days after service of the notice set forth in Paragraph A(1) of this section, the complaining party may serve upon the other party a notice to cease conduct of the particular game(s) or activities alleged by the complaining party to be in noncompliance. Upon receipt of such notice, the responding party may elect to stop the game(s) or activities specified in the notice or invoke arbitration and continue the game(s) or activities pending the results of arbitration. The responding party shall act upon one of the foregoing options within ten (10) days of receipt of notice from the complaining party, unless the parties agree to a longer period, but if the responding party takes neither action within such period the complaining party may invoke arbitration by written notice to the responding party within ten (10) days of the end of such period.
- C. The arbitrators shall be attorneys who are licensed members in good standing of the State Bar of New Mexico or of the bar of another state. The State will select one arbitrator, the Tribe a second arbitrator, and the two so chosen shall select a third arbitrator. If the third arbitrator is not chosen in this manner within ten (10) days after the second arbitrator is selected, the third arbitrator will be chosen by the American Arbitration Association. The arbitrators thereby selected shall permit the parties to engage in reasonable discovery, and shall establish other procedures to ensure a full, fair and expeditious hearing on the matters at issue. The arbitrators shall determine, after hearing from each party, whether the arbitration proceeding or any portions thereof shall be closed to the public, but in the absence of such determination the proceedings shall be open to the public. The arbitrators shall make determinations as to each issue presented by the parties, but the arbitrators shall have no authority to determine any question as to the validity or effectiveness of this Compact or of any provision hereof.
- D. All parties shall bear their own costs of arbitration and attorneys' fees.
- E. The results of arbitration shall be final and binding, and shall be enforceable by an action for injunctive or mandatory injunctive relief against the State and the Tribe in any court of competent jurisdiction. For purposes of any such action, the State and the Tribe acknowledge that any action or failure to act on the part of any agent or employee of the State or the Tribe, contrary to a decision of the arbitrators in an arbitration

proceeding conducted under the provisions of this section, occurring after such decision, shall be wholly unauthorized and ultra vires acts, not protected by the sovereign immunity of the State or the Tribe.

**2-8-2** Nothing in Section 2-7-1 [Subsection 7(A)] shall be construed to waive, limit or restrict any remedy that is otherwise available to either party to enforce or resolve disputes concerning the provisions of this Compact. Nothing in this Section shall be deemed a waiver of the Tribe's sovereign immunity. Nothing in this Section shall be deemed a waiver of the State's sovereign immunity.

## **2-9 PROTECTION OF VISITORS.**

**2-9-1 Policy Concerning Protection of Visitors.** The safety and protection of visitors to a Gaming Facility is a priority of the Tribe, and it is the purpose of this Section to assure that any such persons who suffer bodily injury or property damage proximately caused by the conduct of the Gaming Enterprise have an effective remedy for obtaining fair and just compensation. To that end, in this Section, and subject to its terms, the Tribe agrees to carry insurance that covers such injury or loss, agrees to a limited waiver of its immunity from suit, and agrees to proceed either in binding arbitration proceedings or in a court of competent jurisdiction, at the visitor's election, with respect to claims for bodily injury or property damage proximately caused by the conduct of the Gaming Enterprise. For purposes of this Section, any such claim may be brought in state district court, including claims arising on tribal land, unless it is finally determined by a state or federal court that IGRA does not permit the shifting of jurisdiction over visitors' personal injury suits to state court.

**2-9-2 Insurance Coverage for Claims Required.** The Gaming Enterprise shall maintain in effect policies of liability insurance insuring the Tribe, its agents and employees against claims, demands or liability for bodily injury and property damages by a visitor arising from an occurrence described in Paragraph A of this Section. The policies shall provide bodily injury and property damage coverage in an amount of at least ten million dollars (\$10,000,000) per occurrence and ten million dollars (\$10,000,000) annual aggregate. The Tribe shall provide the State Gaming Representative annually a certificate of insurance showing that the Tribe, its agents and employees are insured to the required extent and in the circumstances described in this Section.

**2-9-3 Limitation on Time to Bring Claim.** Claims brought pursuant to the provisions of this section must be commenced by filing an action in court or a demand for arbitration within three years of the date the claim accrues.

**2-9-4 Specific Waiver of Immunity and Choice of Law.** The Tribe, by entering into this Compact and agreeing to the provisions of this section, waives its defense of sovereign immunity in connection with any claims for compensatory damages for bodily injury or property damage up to the amount of ten million dollars (\$10,000,000) per occurrence asserted as provided in this section. This is a limited waiver and does not



waive the Tribe's immunity from suit for any other purpose. The Tribe shall ensure that a policy of insurance that it acquires to fulfill the requirements of this section shall include a provision under which the insurer agrees not to assert the defense of sovereign immunity on behalf of the insured, up to the limits of liability set forth in this Paragraph. The Tribe agrees that in any claim brought under the provisions of this Section, New Mexico law shall govern the substantive rights of the claimant, and shall be applied, as applicable, by the forum in which the claim is heard, except that the tribal court may but shall not be required to apply New Mexico law to a claim brought by a member of the Tribe.

**2-9-5 Election by Visitor.** A visitor having a claim described in this section may pursue that claim in any court of competent jurisdiction, or in binding arbitration. The visitor shall make a written election that is final and binding upon the visitor.

**2-9-6 Arbitration.** Arbitration pursuant to an election by a visitor as provided in Subsection E of this section shall be conducted as follows:

- A. The visitor shall submit a written demand for arbitration to the Gaming Enterprise, by certified mail, return receipt requested;
- B. The visitor and the Gaming Enterprise shall each designate an arbitrator within thirty (30) days of receipt of the demand, and the two arbitrators shall select a third arbitrator, but in the event the two arbitrators cannot agree on the selection of the third arbitrator within thirty (30) days of their appointment, they shall apply to the American Arbitration Association to appoint the third arbitrator;
- C. The arbitration panel shall permit the parties to engage in reasonable discovery, and shall establish other procedures to ensure a full, fair and expeditious hearing on the claim; and
- D. The award of the arbitration panel shall be final and binding, and may be enforced in a court of competent jurisdiction.

**2-9-7 Increase in Liability Limits.** As of the fifth anniversary of this Compact, and at five-year intervals thereafter, the liability insurance coverage requirements set forth in Paragraph B of this Section, and the limit on the Tribe's waiver of sovereign immunity set forth in Paragraph D of this Section, shall be increased by a percentage equal to the percentage increase in the CPI-U published by the Bureau of Labor Statistics of the United States Department of Labor, for the same period, rounded to the nearest one hundred thousand dollars (\$100,000).

**2-9-8 Public Health and Safety.** The Tribe shall establish for its Gaming Facility health, safety and construction standards that are at least as stringent as the current editions of the National Electrical Code, the Uniform Building Code, the Uniform Mechanical Code, the Uniform Fire Code and the Uniform Plumbing Code, and any and

all construction and maintenance of the Gaming Facility shall comply with such standards. Inspections shall be conducted with respect to these standards at least annually. If the State Gaming Representative requests sufficiently in advance of an annual inspection, the State Gaming Representative may be present during such inspection. The Tribe agrees to correct any deficiencies noted in such inspections within a time agreed upon between the State and Tribe. The Tribal Gaming Agency will provide copies of such inspection reports to the State Gaming Representative, if requested to do so in writing.

## **2-10 CONDITIONS FOR EXECUTION; EFFECTIVE DATE.**

**2-10-1** The parties acknowledge that they have been engaged in litigation, captioned *State of New Mexico v. Jicarilla Apache Tribe, et al.*, No. 00-0851 (D.N.M.) (the "Lawsuit"), that was initiated by the State in United States District Court on June 13, 2000, in which the State seeks an injunction against the Tribe's conduct of Class III gaming under the Predecessor Agreements unless the Tribe pays the State the full amount that the State claims it is owed under the revenue sharing provision of the Predecessor Agreements. The Tribe disputes the validity of such provision of the Predecessor Agreements, but the parties have agreed to settle the dispute addressed in the Lawsuit, and have agreed to enter into this new Compact.

**2-10-2** This Compact may not be executed by the Governor of the State unless and until it has been executed by the appropriate representative of the Tribe, and until the State Attorney General has certified to the Governor in writing that the Tribe and the State have negotiated a complete settlement of the issues in dispute in the Lawsuit (except that such settlement shall be contingent upon this Compact going into effect under the provisions of IGRA), and that the Tribe has either paid in full the amount agreed to by the terms of the settlement, into the registry of the federal court, or has entered into a binding and fully enforceable agreement for the payment of such amount that is acceptable to the Attorney General. Upon receiving such certification, the Governor shall execute the Compact and forward it to the Secretary of the Interior for approval. Upon the Secretary's affirmative approval of this Compact, as set forth in Paragraph C of this Section, such sum, plus interest, shall be immediately paid into the State General Fund. In the event the Secretary fails to affirmatively approve this Compact, such sum, plus interest, shall be immediately repaid to the Tribe.

**2-10-3** This Compact shall take effect upon publication of notice in the Federal Register of its approval by the Secretary of the Interior, or of the Secretary's failure to act on it within 45 days from the date on which it was submitted to him; provided, however, that notwithstanding its taking effect, the parties expressly agree that the provisions of this Compact shall remain suspended, and shall confer no rights or obligations on either party, and that the terms and provisions of the Predecessor Agreements shall remain fully in force and effect, subject to the Tribe's and the State's claims in the Lawsuit, unless and until the Secretary shall have affirmatively approved this Compact, pursuant to 25 U.S.C. § 2710(d)(8)(A).

**2-10-4** Upon the publication of notice of the Secretary's affirmative approval of this Compact in the Federal Register, the Predecessor Agreements shall be and become null and void, and of no further effect, and any and all actions as between the Tribe and the State arising out of the Predecessor Agreements, including dispute resolution proceedings, shall thereafter be dismissed with prejudice with no relief to either party, and the terms and provisions of this Compact shall go into full force and effect, fully supplanting and replacing the Predecessor Agreements.

## **2-11 CRIMINAL JURISDICTION.**

**2-11-1** The Tribe and the State acknowledge that under the provisions of § 23 of the IGRA, especially that portion codified at 18 U.S.C. § 1166(d), jurisdiction to prosecute violations of State gambling laws made applicable by that section to Indian country is vested exclusively within the United States, unless the Tribe and the State agree in a compact entered into pursuant to the IGRA to transfer such jurisdiction to the State.

**2-11-2** The Tribe and the State hereby agree that, in the event of any violation of any State gambling law on Indian Lands or any other crime against the Gaming Enterprise or any employee thereof or that occurs on the premises of the Tribe's Gaming Facility, that is committed by any person who is not a member of the Tribe, the State shall have and may exercise jurisdiction, concurrent with that of the United States, to prosecute such person, under its laws and in its courts.

**2-11-3** Immediately upon becoming aware of any such suspected crime by a nonmember of the Tribe the Gaming Enterprise or the Tribal Gaming Agency shall notify the state attorney general and the district attorney for the district in which the alleged crime occurred, supplying all particulars available to the tribal entity at the time. The Tribe agrees that its law enforcement and gaming agencies shall perform such additional investigation or take such other steps in furtherance of the investigation and prosecution of the violation as the district attorney may reasonably request, and otherwise cooperate fully with the district attorney and any state law enforcement agencies with respect to the matter, but once notice of a suspected violation has been given to the district attorney, the matter shall be deemed to be under the jurisdiction of the State; provided, however, that in the event of emergency circumstances involving a possible violation, the Tribe and its constituent agencies shall have the discretion to act as they see fit, and to call upon such other agencies or entities as they deem reasonable or necessary, in order to protect against any immediate threat to lives or property. The State may, in its discretion, refer the matter to federal authorities, but it shall notify the Tribal Gaming Agency upon doing so.

**2-11-4** The State agrees that no less frequently than annually it will provide the Tribal Gaming Agency with a written report of the status and disposition of each matter referred to it under the provisions of this section since the last report or that was still pending at the time of the last report. In the event the district attorney to whom a matter is referred under the provisions of this section decides not to prosecute such matter, the district attorney shall promptly notify the Tribal Gaming Agency of such decision in writing. The

Tribal Gaming Agency may in that event ask the attorney general of the state to pursue the matter.

**2-11-5** The district attorney for a district in which the Tribe conducts Class III Gaming may decline to accept referrals of cases under the provisions of this section unless and until the Tribe has entered into a Memorandum of Understanding with the office of the district attorney to which Memorandum of Understanding the United States Attorney for the District of New Mexico may also be a party addressing such matters as the specific procedures by which cases are to be referred, participation of the Tribal Gaming Agency and tribal law enforcement personnel in the investigation and prosecution of any such case, payments by the Tribe to the office of the district attorney to defray the costs of handling cases referred under the provisions of this section, and related matters.

## **2-12 REVENUE SHARING.**

**2-12-1 Consideration.** The Tribe shall pay to the State a portion of its Class III Gaming revenues identified in and under procedures of this Section, in return for which the State agrees that the Tribe has the exclusive right within the State to conduct all types of Class III Gaming described in this Compact, with the sole exception of the use of Gaming Machines, which the State may permit on a limited basis for racetracks and for veterans' and fraternal organizations as such organizations are described in 1997 Laws ch. 190, §5(FF).

**2-12-2 Revenue to State.** The parties agree that, after the effective date hereof, the Tribe shall make the quarterly payments provided for in Paragraph C of this Section. Each payment shall be made to the State Treasurer for deposit into the General Fund of the State.

### **2-12-3 Calculation of Payment Amounts.**

- A. As used in this Compact, "Net Win" means the total amount wagered in Class III Gaming at a Gaming Facility, on all Gaming Machines less:
1. The amount paid out in prizes, including the cost to the Tribe of noncash prizes, won on Gaming Machines. The phrase "won on Gaming Machines" means the patron has made a monetary wager, and as a result of that wager, has won a prize of any value. Any rewards, awards or prizes, in any form, received by or awarded to a patron under any form of a player's club program (however denominated) or as a result of patron-related activities, are not deductible. The value of any complimentary given to patrons, in any form, are not deductible;
  2. The amount paid to the State by the Tribe under the provisions of Section 4(E)(6) of this Compact; and

3. The sum of two hundred seventy-five thousand dollars (\$275,000) per year as an amount representing tribal regulatory costs, which amount shall increase by three percent (3%) each year beginning on the first day of January occurring after the Compact has been in effect for at least twelve months.

- B. The Tribe shall pay the State a percentage of its Net Win determined in accordance with this chart:

Annual Net Win (July 1 – June 30)	2007 – 2015	2015 – 2030	2030 - 2037
Under \$15 Million	3% of the first \$5 million, and 9.25% on the rest	3% of the first \$5 million, and 9.50% on the rest	3% of the first \$5 million, and 10.25% on the rest
\$15 - \$50 million	9.25%	9.50%	10.25%
More than \$50 million	9.75%	10.00%	10.75%

- C. Payments due pursuant to these terms shall be paid quarterly, no later than twenty-five (25) days after the last day of each calendar quarter, and shall be based upon the Net Win during the preceding quarter. The Tribe shall ascertain the applicable revenue sharing percentage in Section 11(C)(2) above and shall base its quarterly payments on the following factors: (1) the prior year's total "Net Win" amount and the applicable revenue sharing percentage; and (2) its best good faith estimate of its annual "Net Win" for the July 1 – June 30 period. In the event its total "Net Win" for any such period varies from such estimate, such that the amount due the State for the first three quarters as set forth in Section 11(C)(2), above, is different from the amount paid, the payment due for the fourth quarter shall include any additional amounts due for the first three quarters, or shall reflect a credit for any overpayment. Any payment or any portion thereof that is not made within ten (10) days of the due date shall accrue interest at the rate of ten percent (10%) per annum, from the original due date until paid. The Tribe shall accompany any payment to the State with a detailed breakdown of the particular obligation to which such payment applies, and the basis for the calculation of such payment on a form provided by the State Gaming Representative.
- D. For purposes of calculating "Net Win" the Tribe shall combine the total amount wagered on all Class III Gaming Machines at all of its gaming locations on its Indian Lands.

## 2-12-4 Limitations.

- A. The Tribe's obligation to make the payments provided for in Paragraphs B and C of this Section shall apply and continue only so long as this Compact remains in effect; and provided that obligation shall terminate altogether in the event the State:
1. Passes, amends, or repeals any law, or takes any other action, that would directly or indirectly attempt to restrict, or has the effect of restricting, the scope or extent of Indian gaming;
  2. Licenses, permits or otherwise allows any person or entity other than six licensed horse racetracks and veterans and fraternal organizations as described in 1997 Laws, Ch. 190, §5(FF) to operate Gaming Machines;
  3. Permits any licensed horse racetrack to operate a larger number of Gaming Machines, or to operate any Gaming Machines for longer hours, than is set forth in subsection (D)(2)(e), below, or to operate any Gaming Machines outside of its licensed premises, or to operate any Table Game;
  4. Licenses, permits or otherwise allows any non-Indian person or entity to engage in any other form of Class III gaming other than a state-sponsored lottery, pari-mutuel betting on horse racing and bicycle racing, operation of Gaming Machines, and limited fundraising by non-profit organizations, as set forth in subsection (D)(2), below.
- B. The parties agree that the State's allowance of the following forms of Class III Gaming, subject to the limitations expressly set forth herein, shall not be considered an expansion of nontribal Class III gaming for purposes of this agreement, and shall have no effect on the Tribe's obligation to make the payments provided for in Paragraphs B and C of this Section:
1. The operation of a State lottery;
  2. The operation of Gaming Machines by any fraternal or veterans organization as described in 1997 Laws Ch. 190, § 5(FF) but only for the benefit of such organization's members;
  3. Limited fundraising activities conducted by nonprofit tax exempt organizations;

4. The conduct by licensed horse racetracks and bicycle tracks of pari-mutuel betting on races at such tracks, and on simulcast races at other tracks elsewhere in the country; and
  5. The operation by a licensed horse racetrack of Gaming Machines on days on which live or simulcast horse racing occurs, provided that such operation is limited to no more than eighteen (18) hours in any one day, and to no more than a total of one hundred twelve (112) hours in any calendar week, and provided further that no licensed horse racetrack shall have more than six hundred (600) licensed Gaming Machines, nor be authorized to operate more than seven hundred and fifty (750) Gaming Machines.
- C. The limitations set forth in this Section shall not prohibit a horse racetrack from relocating, selling, transferring or assigning its operations in accordance with applicable procedures and authorizations set forth in New Mexico law.
- D. Prior to granting the approval of an application for a racing license for a horse racetrack other than the five horse racetracks holding such licenses as of January 1, 2007 or the approval of an application by a licensed horse racetrack or move its racing and gaming facilities to a new location after January 1, 2007, the State Racing Commission shall adopt, put into effect, and shall have substantially complied with regulations requiring the Commission to solicit and consider the Tribe's views on the application.

#### **2-12-5 Third-Party Beneficiaries.**

The provisions of this Section are not intended to create any third-party beneficiaries and are entered into solely for the benefit of the Tribe and the State.

#### **2-13 DURATION; TERMINATION FOR NON-PAYMENT.**

**2-13-1** This Compact shall have a term commencing on the date on which it goes into full force and effect as provided in Section 9, and ending at midnight on June 30, 2037.

**2-13-2.** Notwithstanding the provisions of Paragraph A of this Section, if the Tribe fails to comply with any of its payment obligations to the State under Sections 4(E)(5), 9(B) or 11 of this Compact, and persists in such failure for a period of thirty (30) days after receipt, by certified mail, of a Notice of Noncompliance sent by the State Gaming Representative, which Notice shall specify the amount due and the provision of the Compact under which such payment is required, this Compact, and the conduct of Class III Gaming by the Tribe hereunder, shall terminate automatically as of the end of the thirty (30)-day period, unless within such thirty (30)-day period the Tribe shall have invoked arbitration on a matter of fact as provided in Section 7(A)(2) of this Compact, and simultaneously shall have placed into escrow, in an institution that is unaffiliated

with either the Tribe or the State, a sum of money equal to the amount claimed due by the State with instructions to the escrow agent specifying that such sum shall not be released except by direction of the arbitration panel or pursuant to a settlement agreement of the parties. The Tribe shall give written notice to the State of the deposit of the amount in dispute into escrow, and of the escrow instructions. At the conclusion of the arbitration proceeding, or, in the event the parties reach a settlement, immediately after execution of the settlement agreement, the escrow agent shall disburse the sum deposited by the Tribe in accordance with the settlement agreement or arbitration award, as applicable. In the event the Tribe invokes arbitration, this Compact and the Tribe's right to conduct Class III gaming shall terminate automatically at the end of the thirtieth (30<sup>th</sup>) day after the entry of a final, nonappealable decision by the arbitrators or by a court having jurisdiction of the dispute, unless the full amount determined by the arbitrators or by such court to be due the State, if any, has been paid by such date. The Tribe shall not be entitled to avoid any pre-existing contractual obligations accruing to third parties under this Compact solely by virtue of the termination of the Compact.

#### **2-14 NOTICE TO PARTIES.**

**2-14-1** Unless otherwise indicated, all notices, payments, requests, reports, information or demand that any party hereto may desire or may be required to give to the other party hereto, shall be in writing and shall be personally delivered or sent by first-class mail sent to the other party at the address provided in writing by the other party. Every notice, payment, request, report, information or demand so given shall be deemed effective upon receipt or, if mailed, upon receipt or the expiration of the third day following the day of mailing, whichever occurs first, except that any notice of change of address shall be effective only upon receipt by the party to whom said notice is addressed.

#### **2-15 ENTIRE AGREEMENT.**

**2-15-1** This Compact is the entire agreement between the parties and supersedes all prior agreements, whether written or oral, with respect to the subject matter hereof. Neither this Compact nor any provision herein may be changed, waived, discharged or terminated orally, but only by an instrument, in writing, signed by the Tribe and the State and approved by the Secretary of the Interior. This Compact shall not be amended without the express approval of the Tribe, the Governor of the State and the State Legislature, as provided in the Compact Negotiation Act.

#### **2-16 FILING OF COMPACT WITH STATE RECORDS CENTER.**

**2-16-1** Upon the effective date of this Compact, a copy shall be filed by the Governor with the New Mexico Records Center. Any subsequent amendment or modification of this Compact shall be filed with the New Mexico Records Center.



## **2-17 COUNTERPARTS.**

**2-17-1** This Compact may be executed by the parties in any number of separate counterparts with the same effect as if the signatures were upon the same instrument. All such counterparts shall together constitute one and the same document.

## **2-18 SEVERABILITY.**

**2-18-1** Should any provision of this Compact be found to be invalid or unenforceable by any court, such determination shall have no effect upon the validity or enforceability of any other portion of this Compact, and all such other portions shall continue in full force and effect, except that this provision shall not apply to Sections 2-4, 2-5, 2-6, 2-9 and 2-11 hereof, or to any portions thereof, which the parties agree are nonseverable.

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