

THE TULALIP TRIBES
Resolution No. 2009- 208

Certifying Approval of the Eighth Amendment to the Tulalip Tribes Gaming Compact with the State of Washington and Authorizing the Chairman to Execute the Approved Amendment and Submit to the Washington State Governor for Execution.

WHEREAS the Board of Directors is the governing body of the Tulalip Tribes under the Constitution and Bylaws of the Tribe approved by the United States Commissioner of Indian Affairs and the Secretary of the Interior on January 24, 1936, pursuant to the Act of June 18, 1934 (48 Stat. 984, 25 U.S.C. §476); and

WHEREAS, pursuant to Art. VI. Section 1.A, the Board of Directors possesses the authority to negotiate with the Federal, State, and local governments on behalf of the Tribe; and

WHEREAS, pursuant to Art. VI. Section 1.F, the Board of Directors possesses the authority to manage all economic affairs and enterprises of the Tulalip Reservation; and

WHEREAS, in order to protect the Tulalip Gaming Organization and provide the most flexibility for its growth, it is necessary to amend the current Tulalip Tribes Gaming Compact; and

WHEREAS, the Tribes' have negotiated a Eighth Amendment to the existing Tulalip Tribes Gaming Compact with the State of Washington; and

WHEREAS, the Washington State Gambling Commission unanimously recommended the Eighth Amendment to the Washington State Governor; and

BE IT RESOLVED, the Board of Directors of the Tulalip Tribes certify that the Eighth Amendment to the Tribal-State Compact for Class III gaming between the Tulalip Tribes of Washington and the State of Washington as attached to this resolution, is hereby approved; and

BE IT FURTHER RESOLVED by the Board of Directors of the Tulalip Tribes that the Chairman is authorized to execute the Eighth Amendment to the Tribal-State Compact for Class III gaming between the Tulalip Tribes and the State of Washington; and

BE IT FURTHER RESOLVED that the staff is directed to submit the Eighth Amendment as attached to the Washington State Governor for execution.

BE IT FURTHER RESOLVED that the staff is directed to submit executed Eighth Amendment to the Secretary of Interior for approval.

ADOPTED by the Board of Directors of the Tulalip Tribes of Washington at a regular meeting assembled on the 10 of July, 2009, with a quorum present, by a vote of 10 for and 0 against.

THE TULALIP TRIBES OF WASHINGTON

Melvin R. Sheldon Jr.
Melvin R. Sheldon, Jr, Chairman

ATTEST:

Marlin Fryberg
Marlin Fryberg, Secretary

**EIGHTH AMENDMENT TO TRIBAL/STATE COMPACT
FOR CLASS III GAMING BETWEEN TULALIP TRIBES
OF WASHINGTON AND THE STATE OF WASHINGTON
INTRODUCTION**

The Tulalip Tribes of Washington ("Tribes") and the State of Washington ("State") entered into a Class III Gaming Compact on August 2, 1991, pursuant to the Indian Gaming Regulatory Act of 1988 ("IGRA"). The Tribe and State entered a First Amendment on May 29, 1992, a Second Amendment on September 21, 1993, a Third Amendment on December 26, 1994, a Fourth Amendment on November 25, 1998, a Fifth Amendment on June 7, 2002, a Sixth Amendment on January 21, 2003, and a Seventh Amendment on March 30, 2007. At the request of the Tribes, the Tribes and the State entered into negotiation for further amendments to the Compact. The parties have reached agreement on Compact amendments as set forth in this document. The parties believe the conduct of Class III gaming under the terms and conditions as set forth in this Eighth Amendment will, from a regulatory perspective, benefit the Tribes and the State and protect the members of the Tribes and the citizens of the State consistent with the objectives of IGRA and the Compact.

COMPACT AMENDMENTS

1. Section 3(m) is amended to read as follows:

(m) Financing. Any person, firm, corporation or entity extending financing, either directly or indirectly, to the gaming facilities or gaming operations shall be subject to the annual licensing requirements of the Tribal Gaming Agency and shall be required to obtain State certification prior to completion of the financing agreement, and annually thereafter; provided however, the foregoing licensing and certification requirements shall not apply to ~~any third party financing extended or guaranteed for the Class III operation and~~

~~facility from either an agency of the United States or a member institution of the FDIC or an institution regulated by the Comptroller of the Currency;~~

(i) The Tribe;

(ii) The United States;

(iii) Any financing extended or guaranteed by an agency or instrumentality of the United States; and/or

(iv) A Regulated Lending Institution as defined and subject to the requirements set forth below.

(A) A "Regulated Lending Institution" means any state or federally regulated organization or entity substantially engaged in the business of lending money or providing credit for commercial purposes.

(B) Regulated Lending Institutions must:

(I) Register with the Securities and Exchange Commission or any federal or state governmental banking or financial regulatory agency;

(II) Be actively regulated by the Securities and Exchange Commission or any federal or state governmental banking or financial regulatory agency. "Actively Regulated" means:

(aa) reporting annually on lending activities to the regulatory agency; and/or

_____ (bb) receiving regular audits or inspections by the regulatory agency.

_____ (III) Act as a Passive Investor in the gaming facilities or gaming operations. A "Passive Investor" means an investor who has no actual influence over a gaming facility or gaming operation. A Passive Investor does not:

_____ (aa) appoint or have the right to appoint officers, directors, consultants or other positions with the Gaming Facility or Gaming Operation;

_____ (bb) require the Gaming Facility or Gaming Operation to seek approval or authorization in making gaming business decisions;

_____ (cc) have full access to the records of the Gaming Facility or Gaming Operation, other than that access customary in the industry for a lender/debtor relationship;

_____ (dd) have the ability to convert debt into shares or interests which would result in the lender becoming a substantial interest holder in the Gaming Facility or Gaming Operation; or

_____ (ee) have any other influence or control over the Gaming Facility or Gaming Operation.

_____ (IV) Have non-gambling-related businesses as a majority of their outstanding loans receivable.

2. Section 4(a) is hereby amended to read as follows:

(a) Gaming Operation and Facility. The gaming operations and gaming facilities authorized by this Compact shall be licensed by the Tribal Gaming Agency in conformity with the requirements of this Compact prior to commencement of operation and ~~annually every third year thereafter.~~ Verification of this requirement shall be made by the State Gaming Agency and the Tribal Gaming Agency through a joint pre-operation inspection and letter of compliance. If a dispute arises during the inspection, it shall be resolved pursuant to Section 12(e) of this Compact.

3. Section 5(k) is hereby amended to read as follows:

(k) Temporary and Conditional Certification of Gaming Employees.

~~(i) Unless the background investigation undertaken by the State Gaming Agency within twenty (20) days of the receipt of a completed application discloses that the applicant has a criminal history, or unless other grounds sufficient to disqualify the applicant pursuant to sub-section (c) of this Section are apparent on the face of the application, the State Gaming Agency shall upon request of the Tribal Gaming Agency issue a temporary certification to the applicant. The temporary certification shall become void and be of no effect upon the issuance of intent to deny, in accordance with the provisions of this Compact. During the twelve month period immediately following the effective date of this Compact as provided herein, any applicant who has a current license issued by the State Gaming Agency, together with his or her completed application shall be immediately issued a temporary certification by the State Gaming Agency pending completion of the certification investigation.~~

(ii) The State Gaming Agency shall consult with the Tribal Gaming Agency prior to denying certification to an applicant who is an enrolled member of the Tribe that does not meet the criteria for certification. The State Gaming Agency may waive through a conditional certification certain criteria for those particular applicants if the waiver does not pose an appreciable risk to the public or the lawful operation of the Gaming Facilities. If the Tribe can show extenuating circumstances why the applicant should be considered for conditional certification and the Tribal Gaming Agency concurs, the State Gaming Agency may agree to a conditional certification. The conditional certification will be based on specific conditions and a further detailed review of the applicant. Additional fees may be required to obtain a conditional certification which the Tribe agrees to pay.

4. **Section 7(b) is amended to read as follows:**

(b) Access to Records. Agents of the State Gaming Agency shall have authority to review and copy, during normal business hours, all records (whether paper, electronic or otherwise) maintained by the Tribal gaming operation. Provided, that any copy thereof and any information derived therefrom, shall be deemed confidential, and proprietary financial information of the Tribe. The State Gaming Agency shall notify the Tribe of any requests for disclosure of such information and shall not disclose until the Tribe has had a reasonable opportunity to challenge the request. ~~Any records or copies removed from the premises shall be forthwith returned to the Tribe after use, unless otherwise permitted to be retained by the State Gaming Agency under this Compact. Provided further, t~~This public disclosure prohibition shall not apply to evidence used in any proceeding authorized by this Compact.

Any records or copies removed from the premises or otherwise provided to the State Gaming Agency shall be returned to the Tribe when the State Gaming Agency is no longer under any legal mandate to retain such records or no longer has any bonafide use or reason to retain such records.

5. Section 12 is amended to read as follows:

SECTION 12. REMEDIES FOR BREACH OF COMPACT PROVISIONS DISPUTE RESOLUTION.

(a) ~~Injunction Against the State.~~ If the Tribe believes the State, whether or not through the State Gaming Agency, is in breach or default or is otherwise acting contrary to, or failing to act in the manner required by, any of the provisions of this Compact, the Tribe may seek injunctive or other relief in a court of competent jurisdiction. Introduction. In recognition of, and consistent with, the government-to-government relationship of the Tribe and State, the parties shall make their best efforts to resolve disputes by good faith negotiations whenever possible. Therefore, the parties hereby establish a method of non-judicial dispute resolution in order to foster a spirit of cooperation and efficiency in the administration and monitoring of performance and compliance by each other with the terms, provisions and conditions of this Compact. However, the parties understand that informal and formal mediation may not always lead to satisfactory results. Therefore, in the event either party is dissatisfied with informal and/or formal mediation, they may seek judicial resolution of any disagreement or dispute relating to the administration, monitoring of performance and compliance with the terms, provisions and conditions of this Compact (“Dispute”); provided, however, the parties are free under this Compact to agree to other alternative dispute resolution mechanisms, such as, but not limited to, binding arbitration. The parties are aware that some sections of this Compact contain an explicit reference to Section 12 in the event a Dispute arises under that section.

Notwithstanding such explicit references, and with respect to all other sections of this Compact, it is the parties intent and agreement that any Dispute of whatever kind, type or nature arising under this Compact shall be subject to the provisions of Section 12.

(b) ~~Injunction Against the Tribe, the Tribal Gaming Operation, or any Individual.~~
~~The State Gaming Agency may bring an action to enjoin the Tribe, the Tribal gaming operation, or any individual, if the State determines that any gaming operation authorized by the provisions of this Compact is being conducted in violation of the provisions of this Compact. If any Class III activity is being conducted by others elsewhere on Tulalip Tribal Lands in violation of the provisions of this Compact, the State may also seek to enjoin that activity. Such action shall be brought in the U.S. District Court, pursuant to 25 U.S.C. §2710(d)(7)(ii). For the purpose of this remedy, the Tribe consents to such suit and waives any defense it may assert by way of its sovereign immunity.~~ Mediation. In the event of a Dispute between the parties, or otherwise by mutual agreement of the parties, Disputes shall be resolved as follows:

(i) Either party shall give the other, as soon as possible after the event giving rise to the concern, a written notice setting forth the nature of the Dispute (including reference to the relevant portions of this Compact), and the issues to be resolved.

(ii) The parties shall meet and confer in a good faith attempt to resolve the Dispute through negotiation not later than ten (10) business days from receipt of the notice.

(iii) If the Dispute is not resolved to the satisfaction of either party within twenty (20) business days of the first meeting, then the parties by agreement may seek and cause to have the Dispute resolved by formal mediation. The mediator shall be one chosen by the mutual agreement of the parties. If the parties cannot agree upon a mediator within ten (10)

business days, then each party shall within five (5) additional business days select a representative and those two shall then agree upon a mediator within the next five (5) business days following completion of the representative selection process. If the two persons so selected cannot mutually agree upon a mediator within the time allowed, then the parties shall each nominate a person to act as mediator within five (5) business days whereafter either or both parties may petition the Superior Court of Washington in and for Snohomish County to select one of the nominees to be the mediator pursuant to RCW 7.04A.110 or other applicable statute.

(iv) The formal mediation hearing, unless another date is stipulated to by the parties, shall occur no later than twenty (20) business days from the mediator's selection. The hearing shall occur in a manner and at a time, place, location and duration of mutual agreement, but if such cannot be agreed to, then as chosen by the mediator. Each party should bear its own mediation costs. However, if the parties incur any costs to select a mediator, the parties will share those costs equally.

~~(c) Dispute Resolution. In addition to the other remedies and enforcement provisions elsewhere in this Compact and without prejudice to either party to seek injunctive relief against the other, the parties hereby establish a method of non-judicial dispute resolution in order to foster a spirit of cooperation and efficiency in the administration and monitoring of performance and compliance by each with the terms, provisions and conditions of this Compact. Unless other procedures and time frames are elsewhere set forth in this Compact, then and in the event of a dispute or disagreement between the parties regarding the implementation and compliance with this Compact where referenced herein or otherwise by mutual agreement of the parties, such and same shall be redressed as follows:~~

~~(i) Either party shall give the other, as reasonably proximate to the event giving rise to the concern, a notice setting forth the issues to be resolved;~~

~~(ii) The parties shall meet and confer not later than ten (10) days from receipt of the notice;~~

~~(iii) If the dispute is not resolved to the satisfaction of either within twenty (20) days of the first meeting, then the party may seek and cause to have the dispute resolved by and in accordance with the policies and procedures of the Judicial Arbitration and Management Service of Seattle, Washington (JAMS);~~

~~(iv) The hearing, unless another date is stipulated to by the parties, shall occur no later than fourteen (14) days from Judge(s) selection before a JAMS judge or judges of agreed selection by the parties, but in the event no agreement is made, then as selected by JAMS;~~

~~(v) The hearing shall occur at a time, place and location of mutual selection, but if such cannot be agreed to, then as selected by JAMS;~~

~~(vi) The decision of JAMS shall be final and unappealable and if the party against whom sanctions are sought or curative or other conforming action is required and not paid or performed or expeditiously undertaken to effect cure if not capable of immediate remedy, then the failure to do so shall be deemed a default and breach of the provision(s) of the Compact at issue;~~

~~(vii) The rules of pleading and procedure of the American Arbitration Association—Seattle for commercial disputes shall supplement those of JAMS, unless the parties otherwise agree to other rules and procedures and document the same by an appendix to this Compact. Should JAMS cease to provide these functions, then the parties agree to substitute the services of the American Arbitration Association—Seattle Arbitration.~~

(i) In the event informal and/or formal mediation fails to resolve the Dispute between the parties, they may mutually choose, at their option, to resolve their disagreement by arbitration, but only after they have exhausted the procedures set forth in Section 12(b)(1) and (ii). If both the parties elect arbitration, it shall be conducted in accordance with the policies and procedures of the Commercial Rules of Arbitration of the American Arbitration Association (except as modified in Section 12), unless the parties agree to use different policies and procedures; provided, however, the arbitration itself shall not be administered by or proceed before the American Arbitration Association. Sites for such arbitrations shall alternate between Tulalip Tribal Lands and the State Gaming Agency offices, or in an appropriate case the Washington Horse Racing Commission or Washington's Lottery offices, after each arbitration dispute, as follows: the first arbitration Dispute, until completed, shall be held on Tulalip Tribal Lands; the next arbitration Dispute, until completed, shall be held at the State Gaming Agency or, if appropriate, the Washington Horse Racing Commission or Washington's Lottery offices; and so forth.

(ii) In the event arbitration is elected by both the parties, the Tribe and the State Gaming Agency shall meet not later than ten (10) business days from the election of arbitration and agree upon the selection of an arbitrator. In the event the parties cannot agree upon an arbitrator(s), then the arbitration shall be before and with an arbitrator selected in conformity with the process set forth above in (b)(iii) and (iv) for the selection of and hearing before a mediator. The arbitration hearing, unless another date is stipulated by the parties, shall occur not later than twenty (20) business days from the date an arbitrator is named.

(iii) The decision or award of the arbitrator shall be final for the purpose of concluding the non-judicial phase of the arbitration process, but the final decision or award of the

arbitrator shall be subject to judicial review pursuant to the provisions of Sections 12(c)(vii) or 12(d). The arbitrator shall render the decision or award within sixty (60) business days of the conclusion of the arbitration hearing.

(iv) The arbitrator shall, consistent with this Compact, also have the power to impose the fines as set forth in Section 12(f) and award equitable relief in his or her discretion and as the circumstances warrant. In no event may the arbitrator award monetary relief against the State or monetary relief against the Tribe, other than from revenue from the gaming facilities or from the sale of gaming-related assets and only with regard to the imposition of said fines or other monetary obligations provided for in the Compact.

(v) Nothing in this Section shall be construed to preclude, limit or restrict the ability of the parties to pursue, by mutual agreement, alternative methods of dispute resolution, including but not limited to utilization of a technical advisor to the Tribal Gaming Commission and/or the State Gaming Agency; provided that neither party is under any obligation to agree to such alternative method of Dispute resolution.

(vi) Each party to the arbitration shall bear its own costs and attorney fees, and the costs of the arbitrator(s) shall be borne equally by the parties.

(vii) In the event the parties mutually elect to conduct arbitration, either the Tribe or the State may bring any cause of action against the other authorized by the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-16, but only in any United States district court which has jurisdiction over the subject matter and the parties and is the proper venue for the cause. Such suits shall be limited to actions (aa) to compel arbitration, (bb) to confirm, vacate, modify or correct an arbitration award obtained under this Section in accordance with the FAA, (cc) to

enforce any judgment upon such confirmed, modified or corrected award, and (dd) any other action, if any, authorized by the FAA.

(d) Judicial Resolution of Disputes. In the event the parties have agreed to formal mediation, arbitration, or both, as set out in Section 12(b) and (c) and the parties have exhausted those procedures, or more than twenty (20) days have passed since the complaining party has properly notified the other party as required in Section 12(b), and either party is not satisfied with the results obtained through the informal mediation process set out in subsections 12(b)(i) and (ii), said party may initiate litigation in an appropriate United States district court seeking resolution of any Dispute, and for any other relief or remedy the United States district court is empowered to grant. However, in no event may the court award monetary relief against the State, or monetary relief against the Tribe, other than revenue from the gaming facilities or from the sale of gaming-related assets and only with regard to the imposition of the fines set forth in Section 12(f) or other monetary obligations provided for in the Compact.

(e) Limited Waiver of Sovereign Immunity. The Tribe and the State agree and understand that waivers of sovereign immunity defenses must be express and unambiguous, and are narrowly construed. Nothing contained in this Compact shall be construed or interpreted to be a consent, grant or waiver of any sovereign right or immunity either the Tribe and/or its members or the State enjoy, except as expressly provided hereinafter.

(i) The Tribe hereby agrees to a limited waiver of sovereign immunity for the sole purpose, and no other purpose, of consenting to the suits specified in Sections 12(b)(iii), 12(c)(ii), 12(c)(vii) and 12(d) of this Compact, such waiver and consent to be in effect only so long as this Compact is in effect. In no event shall the

limited waiver be construed to allow for monetary relief against the assets of the Tribe other than revenue from the Gaming Facility or from the sale of gaming related assets and only with regard to the fines set forth in Section 12(f) or other monetary obligations provided for in the Compact.

(ii) The State and the State Gaming Agency agree, represent and acknowledge that the State has waived its immunity from those suits set forth in RCW 4.92.010 and 9.46.36001. In addition to said statutory waivers of immunity, the State hereby further agrees to and makes a limited waiver of its sovereign immunity and its immunity to suit in federal court under the Eleventh Amendment to the U.S. Constitution, and consents to be sued for the sole purpose, and no other purpose, to the suits specified in Sections 12(b)(iii), 12(c)(ii), 12(c)(vii) and 12(d) of this Compact, such further waiver and consent to be in effect only so long as this Compact is in effect.

(df) Sanctions/Civil Fines. The following is a schedule of civil fines for any infraction of the provisions of the Compact Sections set forth below. These penalties are set forth as maximums to be set within the reasonable discretion of the State Gaming Agency and charged and levied against the Tribe. The event or circumstances occasioning the charge and the extent and amount of the penalty for the infraction, if contested by the Tribe, are subject to dispute resolution under Section 12(e). All such penalties are subject to disposition under Section 12(eg).

Violation of Terms, Conditions and Provisions of Section 3:

First and subsequent infractions: up to a maximum suspension of gaming operations within the facility not to exceed 5 calendar days of operation (100 hours) per violation or the dollar equivalent of the net win to the Tribe from operations for the number of days of suspension, all not to exceed 30 days.

Violation of Terms, Conditions and Provisions of Section 4 – Non-Certified or Non-Licensed Gaming Employee(s)/Manufacturer(s) and Supplier(s);

(a) Employees: First infraction: Fine equal to daily net win for each day of employment divided by the number of stations in play for each day of employment. Second infraction (same person): One calendar day's suspension (~~20 hours~~) of gaming operations for each day of employment or a fine equal to the net win for each day of employment:

(b) Manufacturers and suppliers: First infraction: Up to \$5,000.00; second infraction: Up to \$20,000.00.

Violation of Terms, Conditions and Provisions of Section 11 and Appendix A – Violation of Same Provision;

First infraction: written warning; second infraction: up to \$250.00; third infraction: up to \$500.00; any subsequent violation up to \$1,000.00, all to be charged and monitored on a per-violation basis on an actual basis dating from the issuance of the written warning. ~~Provided, during the first six (6) months of actual operation only written warnings will be issued.~~

(eg) Disposition of Civil Fines Collected. Any civil fines collected by the State Gaming Agency or the Tribal Gaming Agency pursuant to the provisions of this Compact shall be disbursed at the end of each fiscal year to the ~~Washington State~~ Evergreen Council on Problem Gambling, a bona fide nonprofit organization, or its successor agency. In the event the ~~Washington State~~ Evergreen Council on Problem Gambling ceases to exist or substantially changes its purpose, then the parties agree to meet and in good faith designate a successor recipient bona fide nonprofit organization whose primary purposes are related to addressing the ills of compulsive and/or problem gambling within the State, Tulalip Tribal Lands and

neighboring communities. Provided, in the event a dispute arises, it will be resolved pursuant to Section 12(e) of this Compact.

(h) Amendments to the Compact and Appendices Sections to Conform to the Amendment of Section 12.

The references and statements existing in the Compact and Appendices prior to the effective date of this Eighth Amendment that refer to "Section 12(c)," "arbitration," "dispute resolution," and like or similar words and phrases, are hereby amended to mean and refer to "Section 12."

6. **Section 15(c) is amended to read as follows:**

(c) Other Termination - Change of State Law.

(i) If the laws of the State authorizing the activities set forth herein as Class III gaming activities are repealed prohibiting such gaming for any purpose by any person, organization or entity, it is the State's position that the provisions of the Compact providing for such gaming would not be authorized and continued operation of such gaming would constitute a violation of the compact and the State may bring an action in Federal District court pursuant to 25 USC Section 2710(d)(7)(A)(ii).

(ii) The Tribe disagrees that such subsequent state legislation would have this effect under IGRA and the Compact, but does agree that such an action, if commenced in that forum, is the appropriate State recourse and for such purpose the Tribe consents to such a suit and waives any defense it may assert by way of its sovereign immunity.

(iii) Notwithstanding Section 12 or any other provision of this Compact, if the laws of the State authorizing any Class III gaming activities are so

repealed, the State may bring an action as set forth above in (i) only after it provides twenty-one (21) days written notice to the Tribe of the State's intention to bring such action and affords the Tribe a reasonable opportunity to meet and confer with the State in a good faith attempt to resolve the issue(s) intended to be addressed by such action.

7. **Section 16 is amended to read as follows:**

Notices. Unless either otherwise indicated by this Compact or by one party providing the other with notice of a new, different or additional address, all notices required or authorized to be served shall be served by first class mail at the following addresses:

Governor
State of Washington
State Capitol
Olympia WA 98504

Tribal Chairman
Tulalip Tribes of Washington
6700 Totem Beach Road
Marysville Tulalip WA 98270

Washington State Gambling Commission
P. O. Box 42400
Olympia WA 98504-2400

IN WITNESS WHEREOF, the Tulalip Tribes and the State of Washington have executed this compact amendment.

TULALIP TRIBES OF WASHINGTON

By: Melvin R. Sheldon, Jr.
Melvin R. Sheldon, Jr., Chairman

Dated: 1/10, 2009

STATE OF WASHINGTON

As required by 25 CFR Part 293.8, I hereby certify that, pursuant to RCW 9.46.360 and RCW 43.06.010(14), I am authorized to execute this Amendment to the Tulalip Tribes' Compact for Class III Gaming

By: Christine Gregoire
Christine O. Gregoire, Governor

Dated: July 31, 2009