



**City of Cascade Locks**

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Cascade Locks, OR 97014

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TTY 711

June 27, 2005

Stan Speaks  
Northwest Regional Director  
Bureau of Indian Affairs  
911 NE 11<sup>th</sup> Avenue  
Portland, OR 97232-4169

Re: Fee-to-Trust Transfer of 25 Acres in the Cascade Locks Industrial Park

Dear Mr. Speaks,

I received your June 15, letter concerning the request by the Confederated Tribes of the Warm Springs Reservation to purchase and put into trust for gaming a 25 acre parcel in the City of Cascade Locks. That parcel is owned by the Port of Cascade Locks in its 100+ acre Industrial Park. The parcel is inside the city limits of Cascade Locks. It is under the jurisdiction of our City Council. The Council and a majority of the residents of Cascade Locks strongly support this fee-to-trust application. It is our pleasure to assist the Secretary and the BIA in whatever way we can in making this decision. It is our hope that the decision will be favorable to the Warm Springs and that the property is put into trust for Class III gaming.

We believe that approving the fee-to-trust application will significantly enhance the economic development opportunities for both the City of Cascade Locks and the entire mid-Columbia Gorge region. We believe that approval will preserve and protect the Tribe's Hood River trust land and Hood River fee lands east of the City of Hood River. These scenic and important lands in the National Scenic Area will be preserved if this application is approved. If it is not, the potential damage to the Gorge and the National Scenic Area is enormous. The parcel in question is not in the National Scenic Area. It is in the Cascade Locks urban area which is designated by the National Scenic Act as the appropriate place for economic development to occur in the Gorge. We believe that denial of the Warm Spring application would be detrimental to our community. Approval would not.

Cascade Locks is a former mill town that is in desperate need of new jobs. It is an economically depressed town with chronic unemployment and a high welfare rate. It has been trying unsuccessfully for more than 30 years to convert to a tourism-based economy. Approval of this proposal will allow us to finally make the transition from a resource-based economy to a tourism economy. Finally, the terms of the compact with State of Oregon and the Tribe's agreement with

the City of Cascade Locks will provide opportunities to enhance funding for education, environmental protection of the Gorge, emergency services in Cascade Locks, and improve our access to the interstate freeway and remove a significant amount of truck and through traffic from our local streets. It will also improve the function, operation, and efficiency of the Interstate in and around Cascade Locks and provide much-needed direct access to the Interstate for our Industrial Park and other nearby commercial and industrial properties.

You requested information relating to the following questions:

- (1) **Evidence of environmental impacts and plans for mitigating adverse impacts:** The most important environmental consideration in the Columbia River Gorge National Scenic Area (NSA) is the preservation of the scenic qualities of the Gorge in its special protection areas. The pre-IGRA trust land owned by the Warm Springs east of the City of Hood River is in the NSA. It is in a special protection area adjacent to the Mark O. Hatfield Interpretive Center and near the Mosier Twin Tunnels trail area. The State of Oregon has spent more than \$14 million dollars developing these facilities. If the fee-to-trust application for the 25 acre parcel in Cascade Locks is not approved, we believe that the Warm Springs will build their casino on this other trust land. The parcel in Cascade Locks is not in the scenic area and it is not in a special protection area. It is in the Cascade Locks urban area, which is designated by the NSA as an appropriate place for economic development. It is an industrial park that is neither scenic nor environmentally sensitive. Preservation of the Hood River site is an important environmental reason that this fee-to-trust application should be approved to protect the NSA. Approval of this application is mitigation of potential devastating environmental impact that will result from any development of the sensitive Hood River site (even non-casino development).

If the Warm Springs casino is not approved, the City plans to market this property for light or heavy industrial uses, which will come with the “smokestacks”, trucks, and auto traffic that are associated with all industrial developments. We believe that the casino use, as a non-polluting “tourist” use of the land, would have less environmental impact on our community and the Gorge than this industrial alternative. Millions of tourists already visit Multnomah Falls, Bonneville Dam, and Hood River County. Having some of those existing tourists visit Cascade Locks will have no significant environmental impact on our community or the Gorge. The project is located in an industrial park near an existing interstate freeway with an average traffic count of more than 27,000 cars per day. Any net increase in traffic resulting from the casino project will be insignificant. The Warm Springs project won’t cause people to drive through the Gorge. They’re already here, both as tourists and interstate travelers. It will only result in some of those existing travelers spending time in Cascade Locks. The small number of new visitors who would not drive here “but for” the casino will have no significant environmental impact compared to the existing interstate traffic on I-84.

The construction of a \$20 million freeway interchange will improve the function, operation, and efficiency of the Interstate in and around Cascade Locks and provide much-needed direct access to the Interstate for our Industrial Park and other nearby

commercial and industrial property. It will also improve the function, operation, and efficiency of our city street system. Our agreement with the Warm Springs also includes a commitment to promote and develop energy efficient and environmentally sensitive mass transit systems in Cascade Locks and between the casino and urban areas outside the Gorge both for employees and tourists. The Warm Springs proposed compact with the State of Oregon includes pledges for environmental projects in the Gorge including air quality and fish enhancement. They have also agreed in the Compact to design, construct and operate the casino in harmony with the with the Gorge and to build a “green” and energy efficient building. All of these efficiencies and pledges will have the effect improving the environment in Cascade Locks and the surrounding Gorge. They are contained in Article XII (pages 56 to 59) of the Compact, a copy of which is attached to this letter. The entire Compact is available on the Governor’s website: [www.governor.oregon.gov](http://www.governor.oregon.gov).

In addition, the Compact establishes specific revenue sharing payments that will benefit the Gorge and the Gorge environment. The revenue sharing payments are established in Article XV of the Compact (pages 64 to 77). A copy of Article XV is attached to this letter.

**(2) Reasonably anticipated impact on the social structure, infrastructure, services, housing, community character, and land use patterns of the surrounding community:**

In the Fall of 1998, before the City Council approved a Resolution in support of the Warm Springs proposal for a casino in Cascade Locks, the City Administrator, Mike Bridges, and both the City Council and Port Commission did exhaustive research and held a series of very open and very public meetings about the proposal and what its impact might be on the City. The findings of that research and an analysis of all of these social and community issues was compiled. The report and findings fill two 3 inch binders. That material and a shorter summary entitled “Report on Impact of a Tribal Casino in the City of Cascade Locks” dated November 17, 1998 were made available to the public and all of the elected officials in the City. The conclusion in this report, which was adopted by the Council, was that the general impacts, traffic impact, housing impact, impact on the schools, police and crime impact, impact on local utilities, other social problems, and the cultural and political impact of a large Indian casino could be identified and satisfactorily mitigated in a Service Agreement and a Memorandum of Agreement (MOA) with the Tribes.

An MOA addressing all of these issues has been negotiated with the Warm Springs and has been signed by both parties. This MOA not only mitigates potential impacts in all these areas that result from the operation of the casino, but it also provides pledges and financial support for Cascade Locks to give us the resources to address long-standing, existing crime, traffic, fire and ambulance problems. Our community is satisfied that we have “reasonably anticipated” impact on our community in all of these areas. In addition, a draft housing study just being completed estimates that the casino will create a need for only about 110 additional housing units in Hood River County beyond what will be required if the casino is not built. The level of unemployment in the Gorge, our

proximity to other urban centers, and the existing work force in the Gorge will absorb this project without any significant strain on local housing.

Finally, the Industrial Park is vacant, undeveloped land, except for one pellet plant to the east of the parcel in question. This Industrial Park is physically separated by distance, a 60 foot basalt cliff, and Herman Creek from the rest of the community. It is physically isolated and its use for any commercial or industrial use will have no significant impact on land use patterns in the surrounding community. In fact, the community, at a well-attended Town Hall meeting in January 2002, was asked whether part of this land should be used for the casino project. Seventy percent of the people attending the meeting agreed that it is an appropriate and compatible use of the Industrial Park property.

**(3) Impact on the economic development, income, and employment of the surrounding community:**

We are a struggling former mill town that is trying to convert to a tourism-based economy. This casino project is an ideal project to jump-start the economy of the entire Gorge. By creating 1,400, or more, full time jobs on about half of the Industrial Park, other private investment will be stimulated from compatible uses. A study of the economic impact of the casino by ECONorthwest estimates that the average wage will be \$31,500. At least 800 full time jobs paying more than \$31,000 per year will be created by the casino project. The median household income in Cascade Locks is only \$29, 719. Most households have more than one wage earner. Most of our tourism jobs are currently minimum wage and seasonal. Sixty percent of our households are low to moderate income. There is nothing else we could put in our Industrial Park that would come close to the casino in providing jobs per acre or the average wages that it will provide. In addition, Cascade Locks has a reputation for having a work force that is more expensive to train and has a very poor work ethic. The Warm Springs have committed to a training program that will provide entry level jobs with a career path for those who want to break the cycle of poverty and unemployment that has existed here for many years. An Indian casino, because of the Tribes patience and the number of jobs that will be available in all wage and skill ranges, is ideally suited for our workforce and need for year-round tourism jobs.

**(4) Costs of impacts to the surrounding community and sources of revenue to accommodate them:**

This issue is discussed in number (2) above. We have reasonably anticipated what the impacts will be. Our MOA analyzes the cost. The Warm Springs Tribes have agreed to pledges and payments that will give us the financial resources to mitigate those impacts. In addition, the Port of Cascade Locks is negotiating its own agreement with the Tribes for the lease and purchase of property for the casino project. The lease and sale agreements will give the Port additional resources to help develop the community for tourism projects and events. The community will have the money to develop its Marine Park, downtown, and Industrial Park into venues that will attract tourists and visitors. The City and Port have plans and projects in place which contain the vision for making that happen. The casino will provide the financial resources to make it possible for the community to implement those visions.

Talk about a casino here has sparked interest in Cascade Locks by commercial and residential developers. For more than 30 years, the community has seen no growth in either population or personal income. It has been a dying town. If the casino is approved, that project will stimulate other private investment that will increase our tax base and resources, especially the commercial projects that it attracts. Finally, the increased number of tourists and visitors will increase our revenue from fees and charges. This includes motel taxes and ambulance revenues. As this revenue increases, it will provide the City with sufficient revenue to mitigate any cost of impacts not directly covered by the City's MOA or the Port's agreements with the Tribes.

Attached to this letter are three Power Point slides prepared for a May 5, 2005 Town Hall Meeting in Cascade Locks. The first slide summarizes the financial benefits to the Port, the City, the County and the School District from the MOA. The second slide summarizes the financial benefits to the City from the Community Benefit Fund (CBF) and the MOA. The first \$100,000 of the CBF is pledged to the City each year. A pledge for general services, which is an "in lieu of property taxes" pledge, will pay the City \$676,000 per year with an annual escalator of 3%. A pledge in the MOA to match the local motel tax will raise another \$407,000 per year for the City. Finally, the specific pledges for public safety are summarized. The third slide projects the total benefits to the City from the MOA.

The financial benefit to the City after the first year of operation of the casino is estimated at \$1,062,500. Since we are budgeting \$945,812 in our General Fund for the next fiscal year, this pledge in the first year more than doubles the resources available to the City for police, fire, parks, planning, and other general fund items. This contribution will increase over time with the escalator provision and increasing revenues at the casino. By the 6<sup>th</sup> year of operation, it is estimated that the Warm Springs will have contributed more than \$9 million dollars to the City. In addition, they will have paid a similar amount to the Port under its separate sale and lease agreements (The Port is sending a separate Sec. 20 letter which will summarize the financial benefits to them).

In Article XIII of the State Compact (pages 59 to 61), the Warm Springs Tribes have agreed to design any traffic improvements associated with the casino consistent with any federal highway standards, in compliance with the National Historic Preservation Act, and in compliance with the Gorge Act (NSA). These improvements, including access to the resort and a new freeway interchange will be fully funded by the Tribes. The Tribes agree in the Compact to work with the State to avoid any adverse impacts to the Historic Columbia River Highway and to work with ODOT to mitigate any traffic issues arising out of the construction of the casino. A copy of Article XIII is also attached to this letter.

- (5) **Proposed programs, if any, for compulsive gamblers and the source of funding:** Mike Bridge's research in 1998 included problem and pathological gambling. At that time, the cause of this behavior was unknown. Research available to Mike indicated that there was no single "root cause" and a variety of factors come into play. The

availability of gambling is only one of the factors. Pathological gambling is a very difficult disorder to treat. It is costly and time-consuming, often without quick results. There is also a high degree of re-occurrence even with treatment. Since we do not have any facilities or ability to treat this kind of disorder, we believe that this is not a “city problem.” There are already 9 Indian casinos in Oregon. If the Warm Springs relocate here, there will still only be 9 casinos. That number is not changing. Gambling is already available in Cascade Locks. The Salmon Row pub has video poker through the State Lottery. The Cascade Inn has video poker as well as all of the on-line games, including electronic slot machines.

There are no counselors, doctors, or clinics in our community. However, Hood River County does have a Health Department which treats addiction and compulsive behavior problems, including any compulsive gambling disorders that result from the existing State Lottery gambling that already exists in Cascade Locks. The County is also a party to our MOA with the Warm Springs. They will be receiving funds from the MOA which can be used for treatment of compulsive gambling disorders. The County is currently planning to build an office for its Health Department in Cascade Locks. The City believes that any compulsive gambling disorders that result from the location of a casino here can be adequately dealt with by the County Health Department and existing state programs. This is not a City issue. This is not an impact or an issue that we could measure or mitigate, since no one knows the root cause. It is a state and county issue and they will have the resources to deal with it.

- (6) **Any other information we wish to provide to the Secretary as to whether this fee-to-trust proposal might be detrimental to our community:** The property in question is not currently on the Hood River County tax rolls because it is owned by the Port. The Port is a public entity and its property is tax exempt. There are currently no special assessments on the parcel. As a result, there will be no negative impact if this property is removed from the tax rolls. On the other hand, we currently have sewer and water capacity that we are not using in our vacant Industrial Park. It will be beneficial to both our existing water and sewer utility rate payers, and the operation of our new sewer plant, to have a large new customer in the Industrial Park. We need new customers to help pay for the expensive sewer plant that was designed and built to provide sewer service to the Industrial Park. We also have had problems operating the plant properly because of low flows. The proposed casino would actually help balance out the plant as flows increase.

We anticipate that we will have adequate water and electric energy supplies to provide these services to the parcel. With the pledges by the Warm Springs in the MOA for monetary payments to the City to help pay for police, fire, and ambulance emergency services, and with increased ambulance revenues expected from the operation of the casino, we also anticipate that we can also provide these emergency services to the casino and improve them for the rest of the community.

The Hood River County School District operates the school in Cascade Locks. The District recently completed a projection of how many students would be added to the

local schools because of the casino. The estimate is a low of 76 students to a high of 168 new students directly resulting from the casino project. The District study concedes that an unknown number of these families, attracted by the casino, will live in communities other than Cascade Locks (Stevenson, North Bonneville, Camas, Washougal, Hood River, Troutdale, or the Portland metro area). Because of this, it is reasonable to assume that the impact on our school will be at the low end of the projection (50 to 100 new students).

The District has talked about closing the Cascade Locks High School because of declining enrollments here. At a recent School Board meeting in Cascade Locks on this subject, the District informed the community that at least 30 or 40 students need to be added back to the school to eliminate a subsidy by the rest of the District and keep the High School open. Schools receive state funding for operating the schools based upon the number of students enrolled in each school, so adding students can be a very positive thing. For us, an increase of 50 to 100 students is a very good thing and should ensure that our High School will remain open. The District estimates that at least 50 new students can be enrolled in Cascade Locks without needing any new facilities or construction. Adding more than that may require portable classrooms or new construction, which is not funded by the state.

With the casino, help can be sought for new school construction from the Community Benefit Fund (CBF) pledged by the Warm Springs in both our MOA and the proposed Compact with the State of Oregon. Approval of any CBF grant funds for our school will require approval of an independent board of directors. For our community, finding a place to educate a growing school is a more manageable problem than losing our high school. Getting more students into our school has been a very high priority for this community for a number of years. The CBF is created by both the State Compact and the MOA with the City. The Compact provisions are found in Article XVI (pages 77 to 79). A copy of Article XVI is attached to this letter.

We look forward to participating in this fee-to-trust process. If you need any further information from the City, please let us know. The comments and contents of this letter were approved by the full City Council at its regular meeting on June 27, 2005.

Sincerely,

Ralph M. Heggard  
Mayor

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r.f.

## Pledges For Local Services to Local Governments (Carol York)

- **Pledges for General Services (assuming \$250M project)**
  - Port: 0.0256 per \$1,000 appraised value (\$6,400/year)
  - County: 1.4169 per \$1,000 appraised value (\$354,225/year)
  - City: 2.705 per \$1,000 appraised value (\$676,250/year)
  - Rate Increases 3% Annually
  
- **Benefit to Schools**
  - School SDC (requires legislative change)
  - Increased Enrollment = Increased State Revenue
  - Direct Payments Would Reduce State Revenue
  - CBF Grants to Local Schools

## MOA Local Financial Benefits

- **Community Benefit Fund** (assumes \$50 million annual net revenues)
  - \$1.1 million annually
  - 1st \$100,000 pledged to City each year
- **Annual Pledges for General Services** (\$4.1475 per \$1,000 assessed value)
  - \$1,037,000 per year (assumes \$250 million investment)
    - City of Cascade Locks Share                     \$ 676,000 per year
    - Hood River County Share                         \$ 355,000 per year
    - Port of Cascade Locks Share                     \$   6,000 per year
  - 3% annual growth rate
- **Transient Room Tax** (assume 250 rooms, \$75 nightly rate, 85% occupancy)
  - \$407,000 annually
- **Public Safety**
  - \$432,000 annually (Fire, Police, Emergency Services)
  - \$95,000 start up costs (Before Casino Opens)
  - \$345,000 1<sup>st</sup> Year of Operation (EMS Bldg, Public Safety Needs)

# Financial Benefits Projections

	Start up	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
<i>Pledge for General Services:</i>	-	\$ 676,250	\$ 696,538	\$ 717,434	\$ 738,957	\$ 761,125	\$ 783,959
<i>CL Pledge from CBF</i>	-	45,000	100,000	100,000	100,000	100,000	100,000
<i>Transient Room Tax</i>	-	270,000	311,000	357,000	407,000	407,000	407,000
<i>Pledge for Police</i>	40,000	272,000	272,000	272,000	272,000	272,000	272,000
<i>Pledge for Fire &amp; Ambulance</i>	55,000	160,000	160,000	160,000	160,000	160,000	160,000
<b>Total</b>	<b>95,000</b>	<b>1,423,250</b>	<b>1,539,538</b>	<b>1,606,434</b>	<b>1,677,957</b>	<b>1,700,125</b>	<b>1,722,959</b>
<b>Running Total</b>	<b>\$ 95,000</b>	<b>\$ 1,518,250</b>	<b>\$ 3,057,788</b>	<b>\$ 4,664,221</b>	<b>\$ 6,342,178</b>	<b>\$ 8,042,303</b>	<b>\$ 9,765,262</b>
<b>Other Contributions</b>							
<i>Pledge for New Fire Hall</i>	-	\$ 300,000	-	-	-	-	-
<i>CBF (assuming \$50M by yr 6)</i>	-	-	-	\$ 400,000	\$ 600,000	\$ 700,000	\$ 1,000,000
<b>Total Assessed Property Value</b>		\$ 45,491,411					
<b>Property Tax Collected 2003-04</b>		\$ 119,688					
<b>Tribal Resort Contributions Year 6</b>		\$ 1,722,959					
<b>Transient Room Tax 2003-04</b>		\$ 96,405					
<b>Transient Room Tax w/ Resort</b>		\$ 407,000					

Attachments referenced within the above letter are shown in the following pages from the

**TRIBAL-STATE COMPACT  
FOR REGULATION OF CLASS III GAMING  
BETWEEN THE CONFEDERATED TRIBES OF THE  
WARM SPRINGS RESERVATION OF OREGON  
AND THE STATE OF OREGON**

## **ARTICLE XII – PROTECTION OF THE COLUMBIA RIVER GORGE NATIONAL SCENIC AREA**

### A. Consistency with Columbia River Gorge National Scenic Area Act.

The Tribe agrees that its activities pursuant to this Compact will be consistent with the Columbia River Gorge National Scenic Area Act, 16 USC § 544, *et seq.* (the “Gorge Act”).

### B. Design of the Resort.

1. The Tribe agrees that the design, construction and operation of the Resort will take into account the unique natural surroundings of the Cascade Locks Land, which is located within the Columbia River Gorge and Columbia River Gorge National Scenic Area. The parties agree that the Resort is intended to be of the highest architectural quality and constructed with appropriate materials that are compatible with the local environment and landscape.

2. The Tribe agrees to use appropriate energy efficient and other “green” building technologies and standards in the design and construction of the Resort in order to reduce environmental and energy consumption impacts of the Resort. The Tribe agrees to take into consideration the U.S. Green Building Council’s Leadership in Energy and Environmental Design (“LEED”) certification program and to incorporate appropriate elements from the LEED certification program into the design and construction of the Resort to the fullest extent practicable and economically feasible. Specifically, with respect to energy use, the Tribe agrees that it intends to design and build a facility that uses substantially less energy than a similar facility built to Oregon’s current building code. The State agrees that State of Oregon agencies and expertise will be made available to the Tribe, as appropriate, to facilitate the design and construction of an energy-efficient Resort.

3. The Tribe agrees to consult with the State regarding the design of the Resort and agrees to address adequately any reasonable concerns promptly raised by the State regarding the design. An outline of the footprint and a conceptual rendering of the Tribe’s current plans for the Resort, as contemplated by the parties at the time of the execution of this Compact, are attached as Exhibits G and H, respectively.

### C. Renewable Energy.

The State and the Tribe agree that the promotion of the use of renewable energy sources is good and mutually-beneficial public policy. To the extent practicable and economically feasible, the State and the Tribe agree to work together, in a government-to-government manner and in conjunction with appropriate local and federal government entities, to pursue the use of renewable energy as a source of some or all of the Resort’s energy needs or to pursue the development and use of renewable energy offsite in an effort to offset some or all of the energy use of the Resort, or both. Such efforts could

include some or all of the following: the direct use of renewable energy sources by the Resort (such as use of solar panels or fuel cells), the indirect use of renewable energy sources by the Resort (such as the promotion and use of additional renewable energy sources by the local utility provider, which may be indirectly provided to the Resort), the development and use of renewable energy offsite by the Tribe or a tribal partner in an effort to offset some or all of the energy use of the Resort, or the purchase of renewable energy credits.

D. Traffic and Air Quality Impacts within the Columbia River Gorge National Scenic Area.

In an effort to protect air quality in the Columbia River Gorge and limit the emission of greenhouse gases, the Tribe shall develop a traffic management plan intended to minimize emissions caused by vehicular traffic to and from the Resort. The Tribe agrees to consult with the State in the development of such a plan and will address adequately any reasonable concerns raised by the State regarding the plan. Implementation of the traffic management plan must begin within one year following commencement of Class III Gaming at the Gaming Facility. The plan may include such initiatives as the promotion of the use of shuttles and modes of public transportation by patrons of the Resort, the use of alternative fuel vehicles or biofuels, or both, and the development or purchase of carbon offsets. These efforts shall be in addition to transportation planning efforts described in Article XIII.

E. Historic Columbia River Highway.

The Tribe and the State agree to work together to avoid adverse impacts on the Historic Columbia River Highway that may be caused by the Resort. The Tribe agrees to pay the reasonable costs of any necessary improvements to the Historic Columbia River Highway as provided in Article XIII, Section H.

F. Impacts on Recreational Uses in the Columbia River Gorge National Scenic Area.

The Tribe is sensitive to and mindful of the recreational uses of the surrounding Columbia River Gorge National Scenic Area and shall conduct its activities in such a manner so as to not unreasonably interfere with such uses.

G. Participation in Local Planning Discussions.

The Tribe agrees to participate with the Oregon Department of Land Conservation and Development, the City of Cascade Locks and Hood River County in any local planning processes involving the impact of the Resort on the City and local area.

H. Settlement of Hood River County Land Issues.

1. As part of the negotiated agreement authorizing Class III Gaming on the Cascade Locks Land, the Tribe and the State have agreed to settle a land dispute between the Tribe and the State and have agreed to the transfer of certain real

property rights and interests by the Tribe to the State, as more fully described in this Section H. The Tribe agrees to forego and waive any future claim of legal right to conduct gaming on the Hood River Trust Land. The settlement of the land dispute, the Tribe's waiver of any right to conduct gaming on the Hood River Trust Land and the recording of the conveyance documents required by this Section H are conditions precedent to authorization of Class III Gaming on the Cascade Locks Land contained in this Compact. The Tribe shall execute and record all conveyance documents required by this Section H no later than thirty (30) calendar days following the date on which the decision to take the Cascade Locks Land into trust by the United States for gaming purposes becomes final and unappealable.

2. Hood River Fee Lands. As more fully described in a memorandum of understanding to be executed by the parties, the Tribe agrees to execute and record all documents necessary to:

a. Grant to the State a perpetual conservation easement to the Hood River Fee Lands that prohibits gaming on or the future development (except limited recreational development as agreed to by the parties in the terms of the easement) of such lands, and

b. Transfer to the State the greatest ownership interest in the Hood River Fee Lands that the Tribe can lawfully transfer. The transfer shall be to the State of Oregon, through the Oregon Parks and Recreation Department, and shall be in a form acceptable to the State.

3. Hood River Trust Land. The Tribe agrees to seek and obtain the execution and the recording of any and all documents necessary to grant to the State a perpetual conservation easement to the Hood River Trust Land that prohibits the future development (except limited recreational development as agreed to by the parties in the terms of the easement) of such land. The parties agree that the granting of a conservation easement to trust land requires action by the Secretary of the Interior. The Tribe agrees to seek immediately all necessary action by the Secretary of Interior to accomplish such conveyance.

4. Historic Columbia River Highway. The Tribe contends that the State's asserted title to a portion of the Historic Columbia River Highway (also known as the Historic Columbia River Highway Scenic Trail) and its buffer property may be defective and that such portion of the trail and buffer property may instead be part of land held in trust for the benefit of the Tribe. The State disagrees with the Tribe's legal assertion, and believes the State has full and clear legal title to such portion of the trail and buffer property. In order to settle this dispute, the Tribe agrees to waive and release all claims regarding the Historic Columbia River Highway and agrees to apply to the Secretary of Interior for approval of the grant to the State of an exclusive right of way through the purported trust property, mirroring the dimensions of the Historic Columbia River Highway and buffer property. The State's acceptance of this right of way shall not be deemed either

an admission that the Tribe has any interest in such trail and buffer property or a waiver of the State's legal position that the State has full and clear title to such trail and buffer property.

5. The State shall have no obligation to accept any easement, deed or other property right to any property if the State determines it does not desire to accept such property; however, in such event, the State retains the right to direct the transfer to a third party if the State so chooses.

6. The Tribe shall not grant any additional property rights or interests (e.g. easements, mortgages, liens, rights of way), or seek approval by the Secretary of the Interior for the transfer of additional property rights or interests, to either the Hood River Fee Lands or Hood River Trust Land without the prior written consent of the State.

### **ARTICLE XIII - TRANSPORTATION ISSUES.**

A. The Tribe shall provide to the Oregon Department of Transportation ("ODOT") and the City of Cascade Locks a traffic impact study prepared by a qualified traffic engineer registered in the State of Oregon using methodologies approved by ODOT. The study shall evaluate the effect of the proposed Resort on the state highway system, including the Historic Columbia River Highway and Interstate 84, and on any city street or county road that may be used by customers as access to the Resort. The traffic impact study shall determine the impacts of the proposed Resort on the level of service of the affected highway(s), road(s) street(s), and affected railroad crossings.

B. A determination whether the Resort is to be served directly by a state highway or by a city street or county road shall be made by the State and appropriate local officials in consultation with the Tribe on a basis consistent with other proposed developments.

1. If access to the Resort is to be directly from a state highway, the Tribe shall apply for and obtain a road approach permit under Oregon Administrative Rules, Chapter 734, Division 51, and shall construct the approach and any other necessary improvements in accordance with that permit. A road approach permit shall not be denied because of the proposed use of the Tribe's land. The Tribe shall provide and maintain access from its Resort onto the highway that is adequate to meet standards of ODOT (freeway interchange spacing standards shall be addressed as provided in Section D of this Article), or shall enter into agreements with ODOT for the provision of such access by the State. The allocation of costs of constructing the road approach shall be as provided in Oregon Administrative Rule 734-051-0205, which provides that the costs of constructing the road approach shall be borne by the permit applicant.

2. If access to the Resort is to be directly from a city street or county road, and indirectly from a state highway, the Tribe shall comply with applicable city or

county street or road improvement requirements and satisfy any requirements the State imposes on the county or city relating to access to a state highway.

C. Before any City Plan Amendments necessitated by transportation improvement plans related to the Resort, or in any event, before site plan approval, unless the Tribe and State agree otherwise, the Tribe and ODOT shall enter into a memorandum of understanding regarding Resort access, traffic improvements, maintenance of transportation infrastructure, cooperation regarding managing the effects of inclement weather on traffic safety in the vicinity of the Resort and any other transportation-related issues that may arise.

D. Traffic improvements shall be those improvements necessary to maintain the level of service of the affected highway(s), road(s) or street(s) as they existed prior to opening the Resort, and to provide safe access to and from the Resort. For highways, traffic improvements shall be consistent with the requirements of the State Highway Plan, including improvements necessary to mitigate traffic congestion, and to conform to ODOT access management policies, and Oregon Highway Plan Volume to Capacity Ratios (Table 6). With respect to the Oregon Highway Plan Interchange Spacing Standards (Tables 12 and 16), if it is determined that design exceptions to such standards must be pursued through ODOT and the Federal Highway Administration, ODOT agrees to facilitate, and support if appropriate, the application process by the Tribe or the City of Cascade Locks, or both, to secure approval of such design exceptions. The Tribe will confer with ODOT, the Oregon Department of Land Conservation and Development and local government on an Interchange Area Management Plan.

E. Traffic improvements shall also be consistent with other applicable laws, including the following:

1. Federal Highway Administration standards related to Interstate 84.
2. The National Historic Preservation Act, 16 USC § 470 *et seq.*
3. The Gorge Act.

F. If ODOT determines that highway improvements are necessary, ODOT shall confer with the Tribe concerning the planning, design and construction of those improvements. ODOT shall confer with the Tribe concerning impacts to Interstate 84 and the need for traffic improvements to provide a visually cohesive appearance that embodies the aesthetic goals of the Columbia River Gorge National Scenic Area. The Tribe shall plan, design and construct any such improvements in accordance with ODOT's Interstate 84 Corridor Strategy Features Design Guideline.

G. The Tribe shall pay the reasonable cost of street, road and highway improvements determined to be necessary on the basis of the traffic impact study and ODOT requirements. If the Tribe disputes the amount of costs to be paid by the Tribe, the Tribe may initiate the dispute resolution procedure established under Article XVII.

H. The Tribe and the State agree to work together to avoid any adverse impacts on the Historic Columbia River Highway that may be caused by the Resort. The Tribe agrees to pay the reasonable cost for any improvements to the Historic Columbia River Highway determined to be necessary on the basis of the traffic impact study, and ODOT requirements. In accordance with Section 106 of the National Historic Preservation Act, the Tribe will confer with ODOT and the Oregon State Historic Preservation Officer to mitigate project impacts that may adversely affect the Columbia River Highway Historic District. If the Tribe disputes the amount of costs to be paid by the Tribe, the Tribe may initiate the dispute resolution procedure established under Article XVII.

I. If the Tribe plans additional development of the Resort, the Tribe shall advise the appropriate state and local transportation planning officials of the planned development by submitting a master plan. In planning street, road and highway improvements, the Tribe, state and local transportation planning officials shall plan for improvements using the master plan. Construction of street, road and highway improvements may be completed in phases if practicable, and shall be consistent with this Article XIII.

J. The Tribe agrees to consult and cooperate with ODOT regarding any traffic issues arising out of the Resort and vehicles that patronize the Resort. The Tribe agrees to negotiate and execute an agreement with the governmental entity with jurisdiction over the impacted roads that covers the Tribe's contribution toward mitigating any traffic impacts on surrounding city, county or state roads.

#### **ARTICLE XIV - TRIBAL LABOR RELATIONS ORDINANCE**

A. Within six months following approval of this Compact by the Secretary of Interior the Tribe shall adopt and enforce an ordinance regulating labor-management relations at the Resort ("Tribal Labor Ordinance"). The Tribal Labor Ordinance shall contain the provisions set out in Section C of this Article.

B. The Tribal Labor Ordinance shall be an exclusive alternative to the National Labor Relations Act (29 USC §§ 151 through 169). Any union, union representative or labor organization that seeks to invoke the jurisdiction of the National Labor Relations Board (NLRB) may, at the Tribe's discretion, be barred by the Tribe from utilizing the processes and procedures set out in the Tribal Labor Ordinance. If a union or labor organization seeks to utilize the processes and procedures set out in the Tribal Labor Ordinance, such union or labor organization is encouraged to, and the Tribal Gaming Operation agrees to, enter into a recognition and neutrality agreement containing the provisions of the Tribal Labor Ordinance and any other provisions mutually agreed upon, in order to assist in enforcement of the Tribal Labor Ordinance by providing federal court jurisdiction under 29 USC § 185(a).

- C. The following provisions shall be contained in the Tribal Labor Ordinance:
1. Recognition of any bargaining unit by a standard card check process (meaning the signing of cards by a majority of eligible workers), overseen by a neutral arbitrator. Standards for organizing, forming a bargaining unit and determining validity of the card check recognition process shall be consistent with those of the NLRB.
  2. An eight month grace period following the commencement of Class III Gaming at the Gaming Facility, during which there shall be no union organizing efforts, and during which the Tribe shall maintain employer neutrality regarding organization.
  3. Resolution of all collective bargaining issues that reach impasse by binding interest arbitration, based on either the labor organization's or management's last best offer.
  4. Provision for exclusion of the following issues from collective bargaining: Tribe's employment preferences policy (see Tribal Council Resolution No. 8363 (Feb. 25, 1992)) and Tribe's Drug and Alcohol Free Workplace policy (see Tribal Council Resolution No. 7716 (Nov. 15, 1988)).
  5. Provision for issues that may be considered by an arbitrator in the resolution of a collective bargaining impasse include:
    - a. wages, hours and other terms and conditions of employment of the Tribal Gaming Operation's competitors, or other businesses in Oregon and other states;
    - b. size and type of the Resort's operations;
    - c. ability of management to pay, if placed at issue by management (provided, however, that the labor organization shall be required to keep such information confidential);
    - d. regional and local market conditions;
    - e. ability of employees, through a combination of wages, hours and benefits to sustain themselves and their families;
    - f. cost of living based on statewide index;
    - g. factors uniquely applicable to the security needs of a gaming facility; and
    - h. any stipulations of the parties.

6. Prohibition of strikes (including boycotts, pickets, corporate campaigns, etc.) and lockouts.
7. Reasonable provision for access within the Resort to lunch rooms and break rooms for a reasonable number of union organizers, after providing notice. If a labor organization seeks such access within the Resort, then the Tribal Gaming Commission may require the labor organization and union organizers to be subject to the same licensing rules that apply to Low Security Employees with similar levels of access within the Resort; provided, however, that such licensing requirements are reasonable, non-discriminatory and are not designed to impede access and any fees charged for such licensing are commensurate with fees charged to other individuals or organizations.
8. The Tribe may exclude the following classes of employees from the bargaining unit: security employees, commissioners and employees of the Tribal Gaming Commission, tribal government employees, handlers of cash related to Class III Gaming, cage personnel, dealers, auditors, supervisors (as defined in 29 USC § 152(11)), and any employees excluded under the NLRA.
9. After a grace period of eight months from the commencement of Class III Gaming at the Gaming Facility, and upon written request of a labor organization, provision for the Tribe to provide a labor organization with names, addresses and work classifications of eligible employees.
10. Provision that enrolled members of the Tribe may choose to not join a union or to pay dues or fair share fees to a union.
11. Provision for Unfair Labor Practices (ULPs) that are the same as those provided under the NLRA. Procedures regarding rules of evidence, statute of limitations, burden of proof and standards for determining the validity of ULP charges shall be based on the procedures and standards of the NLRB.
12. Provision for the award of fines by an arbitrator against either the Tribe or a labor organization of up to \$20,000 for ULPs and provision for the award of fines by an arbitrator against the Tribe of up to \$20,000 for violation of the employer neutrality described in Section C(2) of this Article.
13. Provision for decertification according to the procedures provided in the NLRA.
14. A process mutually agreeable to the parties for enforcement of an arbitrator's award or order and a process to challenge the legality of an arbitrator's decision; such processes must include ultimate recourse to a federal court, or if a federal court declines jurisdiction, to another court of competent jurisdiction.

15. Other provisions mutually agreed to by the Tribe and the State.

D. The Tribal Labor Ordinance shall not contain provisions that are unlawful under the NLRA. The Tribe shall revise any provisions of the Tribal Labor Ordinance that are determined by a court or administrative body of competent jurisdiction to be unlawful under the NLRA to assure compatibility with the NLRA. The Tribal Labor Ordinance shall always provide for union recognition through card check to the fullest extent permissible under the NLRA, to the extent the NLRA applies to the Tribal Gaming Operation, or other applicable law.

E. Nothing in this Compact or in the Tribal Labor Ordinance shall be interpreted as expressing the Tribe's consent to application of the NLRA. If it is determined by a court or administrative body of competent jurisdiction that the NLRA does not apply to the Gaming Complex or does not apply to the Resort, or if federal law is amended to exempt either the Gaming Complex or the Resort, or portion(s) thereof, from the NLRA, the terms of the Tribal Labor Ordinance and the requirements of this Article XIV shall remain in effect nonetheless.

F. The Tribe shall consult with the State regarding the development of the Tribal Labor Ordinance. Class III Gaming at the Gaming Facility may not commence until the Tribe has adopted a Tribal Labor Ordinance and the Tribe and State have mutually agreed that the Tribal Labor Ordinance is in compliance with this Compact. The State's agreement shall not be unreasonably withheld. Failure of the State to object to the terms of a proposed Tribal Gaming Ordinance within 30 calendar days following presentation to the State by the Tribe of the final Tribal Gaming Ordinance shall be deemed agreement.

#### **ARTICLE XV – TRIBAL REVENUE SHARING PAYMENTS**

A. In consideration for the economic benefits and exclusive rights provided by this Compact, for the right to conduct Class III Gaming on the Cascade Locks Land with the requested scope of Class III Gaming, for the perpetual nature of this Compact, for the resolution of issues regarding the Tribe's right to conduct Class III Gaming on the environmentally-sensitive Hood River Trust Land and the ownership of the portion of the Historic Columbia River Highway passing through the Hood River Trust Land without costly or prolonged litigation, for a compact that authorizes Class III Gaming at an economically-desirable location, and for the other meaningful concessions offered by the State in the course of good faith negotiations, the Tribe has agreed to share, on a sovereign government-to-government basis, a portion of its revenues from the Gaming Facility, as more fully described in this Article.

B. So long as the conditions described in Section C of this Article are satisfied, the Tribe shall make payments in the amounts provided in Section D of this Article.

C. Conditions.

1. The payments required by this Article are required only so long as there is a binding Class III Gaming compact in effect between the State and Tribe that allows for Class III Gaming on the Cascade Locks Land.

2. The payments required by this Article are required only so long as no non-Indian casino is operated in the State pursuant to a change in the Oregon Constitution that allows the operation of such a non-Indian casino in the State. However, this condition does not apply to an expansion of the Oregon State Lottery unless such expansion is accomplished through a constitutional amendment that permits the operation of a casino.

3. If any other federally-recognized Indian tribes are allowed to operate gaming facilities pursuant to 25 USC § 2719(b)(1)(A) within the State of Oregon, then, in each instance, all future Revenue Share payments required by this Article shall be subject to modification as described below:

a. A testing period shall be established which shall be the twenty-four (24) month period following the opening of any such other facility(ies) (the "Testing Period"), subject to Sections C(3)(f) and (g) of this Article. The base period for calculation purposes described below (the "Base Period") shall be the most recent Fiscal Year prior to the start of the Testing Period.

b. If, at the end of the Testing Period, the Tribe can demonstrate consistent with Section G of this Article, that the annual Net Win of the Gaming Facility was reduced by twenty-five percent (25%) or more from the annual Net Win of the Base Period, then the Tribe's Revenue Share payment obligation under Section D(1) of this Article will be reduced by the same percentage that Net Win was reduced during the Testing Period. Such reduction shall apply to all Revenue Share payments due thereafter.

c. If the Revenue Share amount that was paid for any of the Fiscal Years during the Testing Period was greater than the amount that should have been paid based on the modified rate calculated pursuant to Section C(3)(b) of this Article, then the Tribe shall receive a credit equal to such excess amount that shall be applied to any future Revenue Share payments required by this Article.

d. If Section C(3)(b) of this Article is triggered and it is determined at the end of the Testing Period that the annual Net Win from the Gaming Facility was reduced by fifty percent (50%) or more from the annual Net Win of the Base Period, then the Revenue Share payment obligation under Section D(1) of this Article shall be adjusted as follows:

- i. If such Testing Period and reduction occurs during the first seven Fiscal Years following commencement of Class III Gaming at the Gaming Facility, then the Revenue Share payment obligations shall be suspended and forgiven through the ninth (9th) Fiscal Year;
  - ii. If such Testing Period and reduction occurs after the first seven Fiscal Years following commencement of Class III Gaming at the Gaming Facility, then the Revenue Share payment obligations for the next two (2) Fiscal Years shall be half of the amount that would otherwise be due after giving effect to the reduction under Section C(3)(b) of this Article; and
  - iii. After giving effect to the suspensions as described in Sections C(3)(d)(i) and (ii) of this Article, the Revenue Share payment obligations shall recommence as modified pursuant to Section C(3)(b) of this Article.
- e. For purposes of Sections C(3)(b) and (d) of this Article, a direct causal connection between the new facility(ies) and the decline in Net Win of the Facility shall be presumed, but the State may invoke the dispute resolution procedure established under Article XVII to present evidence that other unrelated factors contributed to the decline. However, any material increase from the Base Period to the Testing Period in the payment of Participation Fees (meaning an increase of more than ten percent (10%) of the total amount of Participation Fees paid) shall be disregarded for purposes of demonstrating a decline in annual Net Win.
- f. If, during any Testing Period, another federally-recognized Indian tribe commences operation of a gaming facility pursuant to 25 USC § 2719(b)(1)(A) within the State of Oregon, then the Testing Period shall be extended to cover the 24-month period following the opening of such other facility(ies).
- g. If, during any Testing Period, a tribal gaming facility that has been authorized under 25 USC § 2719(b)(1)(A) undergoes a material expansion (meaning an increase in the number of VLTs either by more than 500 or by more than fifty percent (50%) of the number of VLTs before the increase, whichever is less), then the Testing Period shall be extended to cover the 24-month period following such expansion.
- h. If the Testing Period is extended pursuant to Section C(3)(g) of this Article, then on any Revenue Share Payment Date that occurs prior to the end of the expanded Testing Period, the Tribe may make an interim reduction of its payment obligation as provided in Section C(3)(b) or (d) of this Article as if the Testing Period were deemed concluded as of such date. If the State proves that the Revenue Share amount that was paid for

any Fiscal Years during the Testing Period was less than the amount that should have been paid based on the modified rate calculated pursuant to Section C(3)(b) of this Article, then the Tribe shall pay such excess amount over the next five (5) Fiscal Years.

i. If another federally-recognized Indian tribe commences operation of a gaming facility pursuant to 25 USC § 2719(b)(1)(A) within the State of Oregon prior to establishment of a Base Period, then the State and the Tribe shall negotiate in good faith, based on financial information considered by the parties during the negotiating of this Compact and any additional relevant information provided by the parties, to reach agreement on what the annual Net Win of the Gaming Facility could reasonably have been projected to be for the one-year period in question prior to opening of the competing facility (the “Assumed Net Win”). The Tribe may reduce its Revenue Share payments in the manner described in Sections C(3)(b) and (d) of this Article using the Assumed Net Win (rather than the actual Net Win) measured against a 24-month testing period that begins on the date Class III Gaming commences at the Gaming Facility.

D. Amount of Revenue Share.

1. Except as otherwise provided in this Article, the Tribe shall pay the following amounts:

a. Fiscal Years One through Seven. For each of the first seven Fiscal Years following commencement of Class III Gaming at the Gaming Facility, the Tribe shall pay annually:

i. Six percent (6%) of Net Win for the first one dollar (\$1) to one hundred sixty million dollars (\$160 million) of Net Win;

ii. Twelve percent (12%) of Net Win for the next one dollar (\$1) to forty million dollars (\$40 million) of Net Win; and

iii. Seventeen percent (17%) of all Net Win in excess of two hundred million dollars (\$200 million).

b. Fiscal Years Eight and beyond. Beginning with the eighth Fiscal Year following commencement of Class III Gaming at the Gaming Facility and for each Fiscal Year thereafter, the Tribe shall pay annually an amount equal to seventeen percent (17%) of all Net Win.

2. Deferral Option.

a. If the amount due and payable under this Article for any of the first seven Fiscal Years following commencement of Class III Gaming at the Gaming Facility exceeds fifty percent (50%) of Cash From Operations

Less Debt Service, the Tribe may defer payment of the amount due that is in excess of fifty percent (50%) of Cash From Operations Less Debt Service. For purposes of this section, "Cash From Operations Less Debt Service" means, for the period in question, the net cash flows from the Gaming Complex less payments of debt service on long-term indebtedness and capital lease obligations during such period, all as reflected on the audited financial statements of the Gaming Complex prepared in accordance with Section G of this Article.

b. Any amount deferred under Section D(2)(a) of this Article shall be due and payable when the amount for the tenth Fiscal Year is due and payable.

c. If, during the first seven Fiscal Years following commencement of Class III Gaming at the Gaming Facility, any other federally-recognized Indian tribe is able to operate a gaming facility pursuant to 25 USC § 2719(b)(1)(A) within the State, then any amounts deferred under this Section D(2) shall be forgiven and no longer be due or payable.

3. Credit Option.

a. The Tribe shall have the option of reducing any Revenue Share obligations payable at a level of seventeen percent (17%) of Net Win, as described in Section D of this Article, by as much as two percent (2%) (*i.e.*, from seventeen percent (17%) down to fifteen percent (15%)) by committing amounts to specified purposes mutually agreed upon in advance between the Tribe and State. Such purposes may include social, economic, and environmental/natural resource programs that enable the Tribe to provide a desired quality of life, family wage jobs, or mitigation of social and cultural problems on the Tribe's Warm Springs Indian Reservation or elsewhere within the State.

b. On or before ninety (90) calendar days prior to the beginning of each Fiscal Year, the Tribe may deliver a written notice to the State identifying the particular purposes for which the Tribe shall seek a credit under Section D(3)(a) of this Article. Prior State approval of such purposes is necessary, but such approval may not be unreasonably withheld so long as the purposes are consistent with those identified in Section D(3)(a) of this Article.

c. The Tribe shall provide the State, upon the State's request, reasonable access to all documents, papers, plans, and other records pertinent to the specified purposes for which a credit option is claimed. If the State determines that the Tribe did not use the funds for the mutually agreed-upon purposes, then the Tribe shall immediately pay the amount of Revenue Share reduction made available for those needs but not used for those needs.

4. Credit for Hood River Fee Lands.

Provided that full fee title to the Hood River Fee Lands has been transferred to the State as required by Article XII, Section H(2), and provided that such title has not reverted to the Tribe for any reason, then the Tribe's Revenue Share due under this Article for the tenth one-year period following commencement of Class III Gaming at the Gaming Facility shall be reduced by one million five hundred forty-five thousand dollars (\$1,545,000), which is equal to the Tribe's purchase price for the Hood River Fee Lands. If one million five hundred forty-five thousand dollars (\$1,545,000) exceeds the amount due in that year, then the excess amount shall carry forward to subsequent years until satisfied. If, after the Tribe receives this credit for the purchase price of the Hood River Fee Lands, the transfer to the State is subsequently voided for any reason, then the credit shall revert back and such amount shall be repaid with the next Revenue Share payment.

E. Payments.

1. Not later than the annual Payment Date, the Tribe shall pay the total Revenue Share amount due as provided in Section D of this Article for the most recent Fiscal Year.

2. Revenue Share Purposes. The Tribe shall contribute, pay, and distribute the Revenue Share for each fiscal year as follows:

a. To an Oregon public benefit non-profit charitable corporation, organized under ORS chapter 65 (or its successors or predecessors), that is qualified as exempt from income taxation under Internal Revenue Code ("IRC") section 501(c)(3) or the corresponding section of any future federal tax code; or to a statutorily-established fund in the State Treasury, separate from the General Fund; both for the purposes and under the circumstances described further below (the "Foundation"). After receipt by the Foundation, the Revenue Share payments, plus any interest and other earnings derived therefrom ("income"), will be called the Warm Springs Tribes-Oregon Benefit Fund ("WST-OBF").

b. The Foundation shall expend moneys from the WST-OBF for the following purposes, provided that in no event shall the Foundation expend any funds for a purpose that will jeopardize the Foundation's IRC section 501(c)(3) exemption (if a non-profit corporation):

i. Not less than five percent (5%) nor more than ten percent (10%) of the Revenue Share received each Fiscal Year, plus any income derived therefrom, shall be set aside and expended for the purposes of preserving, protecting or enhancing natural and cultural resources within the Columbia River Gorge National

Scenic Area; educating residents and visitors to the Columbia River Gorge National Scenic Area about the natural and cultural resources of the area; for the acquisition of land within the Columbia River Gorge National Scenic Area by governmental entities or charitable organizations for preservation purposes; or for any combination of the foregoing. This portion of the Revenue Share is not intended to fund an endowment, but rather is intended to be expended for qualifying purposes generally within three years of receipt. Notwithstanding the foregoing, the directors of the Foundation may decide to accumulate this portion of the Revenue Share from multiple years in their discretion, if they deem such an accumulation to be necessary or appropriate to fund a proposed or potential qualifying major expenditure. The directors of the Foundation may decide in their discretion to set aside any amount ranging from five percent (5%) to ten percent (10%) of a Revenue Share for a Fiscal Year for such charitable Columbia Gorge-related purposes.

ii. Up to but not exceeding Five (5%) of the Revenue Share received each Fiscal Year, plus any income derived therefrom, may be set aside and expended for economic development assistance that is targeted (1) to aid an economically depressed or blighted area; (2) to benefit a disadvantaged group, such as the unemployed or underemployed; and (3) to aid businesses that have actually experienced difficulty in obtaining conventional financing (a) because of the deteriorated nature of the area in which they were or would be located or (b) to aid businesses that would locate or remain in the economically depressed or blighted area and provide jobs and training to the unemployed or underemployed from such area only if the Foundation's assistance was available. This portion of the Revenue Share is not intended to fund an endowment, but rather is intended to be expended for qualifying purposes generally within three years of receipt. Notwithstanding the foregoing, the directors of the Foundation may decide to accumulate this portion of the Revenue Share from multiple years in their discretion, if they deem such an accumulation to be necessary or appropriate to fund a proposed or potential qualifying major expenditure. The directors of the Foundation may decide in their discretion to set aside any amount ranging from zero to five percent (5%) of a Revenue Share for a Fiscal Year for such charitable economic development purposes.

iii. A reasonable portion of the Revenue Share not allocated above, or any income derived therefrom, may be used to pay the reasonable overhead, administrative, and investment expenses of

the Foundation attributable to the management, investment, and distribution of the WST-OBF.

iv. The remainder of the Revenue Share received each Fiscal Year shall be used (1) to provide direct financial assistance to residents of Oregon in pursuing a post-secondary education at public or private community colleges, colleges, or universities organized and located in Oregon; (2) to build an endowment fund, the income of which shall be used to provide direct financial assistance to residents of Oregon in pursuing a post-secondary education at public or private, community colleges, colleges, or universities organized and located in Oregon; or (3) to any combination of options (1) and (2) above, at the directors' discretion. The Foundation may cooperate with and provide support to the Oregon Student Assistance Commission or its successors in identifying appropriate individual recipients and in disbursing such financial assistance. The requirement that such financial assistance be "direct" does not preclude the Foundation, the Oregon Student Assistance Commission or any cooperating disbursing entity from making joint payments to a recipient and an educational institution.

3. Initial Foundation. Either before or within ninety days after the commencement of Class III Gaming at the Gaming Facility, the Tribe shall incorporate an Oregon public benefit non-profit charitable corporation under ORS chapter 65 (the "Initial Foundation").

a. The Initial Foundation shall be structured so as to qualify for an exemption from income taxation under IRC 501(c)(3), and it shall promptly seek such an exemption from the Internal Revenue Service.

b. The Tribe shall pay all costs of incorporating the Initial Foundation and of seeking and obtaining its IRC 501(c)(3) exemption, as well as all other expenses ordinarily associated with the establishment of an entity of that nature and preparing it to begin lawful operations.

c. The purposes of the Initial Foundation shall be to carry out the Revenue Share purposes described above. In the event that the Initial Foundation does not obtain an IRC 501(1)(c)(3) exemption due to the proposed charitable economic development purpose, then the purposes of the Initial Foundation may be amended to delete the charitable economic development purpose. In no event shall the Initial Foundation amend the purposes stated in its Articles of Incorporation without providing sixty (60) days advance notice to the Tribe and to the Governor.

d. The Initial Foundation shall have no members.

e. The Initial Foundation shall be managed by a board of directors (the "Board"). The Board shall consist of an odd number of at least nine and not more than thirteen directors. The actual number of directors shall be determined from time to time by the Board. The initial and successor directors shall be chosen in the following categories:

i. Category I: At least one and not more than three shall be chosen from among civic, charitable or public service leaders as follows: if the Board has nine directors, then one or two from Category I, if the Board has eleven directors, then two from Category I, and if the Board has thirteen directors, then two or three from Category I;

ii. Category II: At least four and not more than six shall be chosen from among persons in the business community with extensive experience making major investment decisions, as follows: if the Board has nine directors, then four or five from Category II, if the Board has eleven directors then five from Category II, and if the Board has thirteen directors, then five or six from Category I;

iii. Category III: At least two and not more than four shall be chosen from among persons knowledgeable in post-secondary education or financial assistance as follows: if the Board has nine directors then two or three from Category III, if the Board has eleven directors then three from Category III, and if the Board has thirteen directors, then three or four from Category III; and

iv. Category IV: At least one and not more than two shall be chosen from among enrolled members of the Confederated Tribes of the Warm Springs Reservation, provided that such individuals are not officers or employees of the Tribal Gaming Commission or Tribal Gaming Operation, as follows: if the Board has nine or eleven directors then one from Category IV, and if the Board has thirteen directors, then two from Category IV.

f. The Board shall establish an advisory committee from persons with demonstrated interest or experience in Columbia Gorge issues to assist the Board in making decisions about Foundation expenditures related to the Columbia River Gorge National Scenic Area.

g. Although the Governor and the Tribe shall confer about and agree upon the initial directors, neither the Tribe nor the Governor shall control or direct the operations of the Foundation, and any replacement directors shall be elected by the Board. The directors shall serve in their individual

capacities and not at the pleasure or direction of the Governor or the Tribe, and their actions shall not constitute the actions of the Governor, the State, or the Tribe. The initial directors shall serve an initial term of one year, and thereafter, the directors shall serve a defined term in years, which terms shall be staggered. Except for directors who are elected to terms of one, two, or three years, the term of each director shall be four years. A director shall not be eligible for more than two consecutive full four-year terms. Representatives of banks or trust or other companies that serve the corporation, and attorneys, accountants, or other professionals who serve the corporation for compensation may not serve as directors.

h. The directors may receive reimbursement for reasonable expenses incurred in connection with the performance of their duties, pursuant to policies approved by the Board.

i. The Board shall provide an annual report to the Tribe and the Governor listing the grantees of the Foundation and the amounts granted during the previous Fiscal Year. The Board shall deliver the report to the Tribe and the Governor no later than one hundred fifty (150) calendar days following the end of each Fiscal Year.

4. Alternative Foundation. In the event that the Initial Foundation does not obtain an exemption from income taxation under IRS 501(c)(3) or loses that exemption, or the Governor and the Tribe cannot agree upon at least nine initial directors for the Initial Foundation, or the Initial Foundation alters its purposes so that they are no longer consistent with Section E(2)(b) and Section E(3) of this Article, or the parties to this Compact otherwise agree, then the Revenue Share shall be paid to a then-existing Oregon non-profit charitable corporation that is exempt from income taxation under IRC section 501(c)(3) and that is willing and able to manage the WST-OBF in accordance with the terms of the Compact (“Alternative Foundation”).

a. The Governor and the Tribe shall confer about and agree upon the selection of such an Alternative Foundation.

b. The Alternative Foundation must be willing to form advisory committees of individuals with an interest or background in the particular area of expenditure (i.e., Columbia River Gorge and financial assistance for post-secondary education) to inform the Alternative Foundation’s decisions in those areas, recognizing that the Alternative Foundation will have the ultimate responsibility for decisions about individual expenditures.

c. If the Initial Foundation does not obtain an IRC 501(1)(c)(3) exemption due to the proposed charitable economic development purpose, or if an otherwise acceptable Alternative Foundation is not willing or able

to carry out the charitable economic development purposes of the Foundation, then such purposes may be deleted, and the Alternative Foundation will not be expected or required to carry out or consider such purposes.

5. Statutory Foundation. In the event that an Initial Foundation is not formed, the Initial Foundation does not obtain an exemption from income taxation under IRS 501(c)(3) or loses that exemption, or the Governor and the Tribe cannot agree upon the initial directors for the Initial Foundation, and the Governor and the Tribe cannot agree upon an Alternative Foundation or the Alternative Foundation loses its IRC section 501(c)(3) exemption or the Initial or Alternative Foundation cannot or are not maintained for any other reason, then the State shall have three years from the commencement of Class III Gaming at the Gaming Facility or three years from the date that the Initial Foundation or the Alternative Foundation loses its IRC section 501(c)(3) exemption, whichever date is later, to enact laws that establish the Foundation as a dedicated fund or dedicated funds in the State Treasury, provided that the shares and uses of such funds must be consistent with the terms of this Compact.

a. The statutorily-established fund or funds must be separate and distinct from the General Fund.

b. The fund or funds may be invested as provided by ORS 293.701 to 293.820. Any income generated by such a fund must be credited to that fund.

c. The fund or funds must be managed by a board of directors appointed and subject to removal by the Governor.

d. If legislation providing for such statutorily-established funds is not enacted and effective within such a three-year period, then the Tribe is relieved of making any Revenue Share payments to any foundation under this Compact, provided that the Tribe shall contribute such amounts to its Community Benefit Fund. In that event the Tribe and the State agree that they shall reopen compact negotiations for the limited purpose of renegotiating the purposes of the Community Benefit Fund and the structure and membership of the Community Benefit Fund Board to provide greater state representation on the Board.

6. Not a Tax. The parties agree that the Revenue Share payments contributed and delivered as provided in this Article XV are not intended to be considered or deemed a tax to be received directly by the General Fund of the State.

7. No Third Party Rights. Notwithstanding the purposes of the Revenue Share payments, nothing herein shall be deemed to provide any third parties either

expressly or impliedly with any rights under this Compact or rights to the Revenue Share.

8. Partial Fiscal Year. For timing purposes, any partial Fiscal Year consisting of six full calendar months or more shall be treated as a complete Fiscal Year, and any partial Fiscal Year consisting of less than six full calendar months shall not be counted as a Fiscal Year. If the year in which the Gaming Facility opens for business is not long enough to be deemed a “Fiscal Year,” then for that period: (a) the Tribe shall pay a prorated amount based upon Net Win annualized for the period in question, and (b) such payment shall be made on the date that would otherwise be deemed the Payment Date if such period had been a full Fiscal Year.

9. Payment Escrow – Pre-Foundation Revenue Shares. If a Revenue Share payment is due before the Initial Foundation has been incorporated and its initial directors appointed, before the Initial Foundation has received its IRC section 501(c)(3) exemption, before an Alternative Foundation has been selected (if applicable), or before the State, for any reason, has statutorily established a fund or funds as contemplated by Section E(5) of this Article (if applicable), then the Tribe shall deposit any Revenue Share amounts that become due (or relevant portion(s) thereof) into an interest-bearing escrow account, at a bank insured by the FDIC, that is separate and distinct from other Tribal accounts. Upon receiving notice that the Initial Foundation has been incorporated, its initial directors appointed, and that it has an IRC section 501(c)(3) exemption; an Alternative Foundation has been selected; or a dedicated statutory fund has been established; as is appropriate under the circumstances, the Tribe shall cause the escrowed Revenue Share amounts, plus accrued earnings, to be paid to the appropriate entity or fund.

10. Payment Escrow – Litigation. In the event litigation is commenced concerning the lawfulness of Revenue Share payments to any fund or entity designated hereunder to receive the Revenue Share, then, during the pendency of any such litigation, the Tribe shall deposit the accruing Revenue Share payments associated with such litigation only into an interest-bearing escrow account, at a bank insured by the FDIC, that is separate and distinct from other tribal accounts. If a court of competent jurisdiction enters a final, non-appealable order that upholds the lawfulness of the contested payment or payments, the Tribe shall promptly pay, but in any event within thirty (30) days, the balance of the escrow account, including accrued interest, to the then-appropriate fund(s) or entity(ies). In the event that a court of competent jurisdiction enters a final, non-appealable judgment that determines that the contested payment or payments is or are not lawful, then the State shall have three years from the date that the determination becomes final (i.e., after all appeals are exhausted or the time to petition for reconsideration or for further judicial review expires) to create an alternative payment arrangement that is consistent with any such judicial ruling and with this Compact. The Tribe shall continue to pay the Revenue Share payment portion(s) into the escrow account during such three year period, and upon the timely

establishment of such an alternative arrangement, the Tribe shall promptly pay, but in any event within thirty (30) days, the balance of the escrow account, including accrued interest, to the recipient designated by the State as the alternative recipient. In the event that the State fails to establish timely an alternative payment arrangement, then the then-existing escrow account balance shall be released and paid to the Tribe, provided that the Tribe shall contribute such amounts to its Community Benefit Fund. In that event the Tribe and the State agree that they shall reopen compact negotiations for the limited purpose of renegotiating the purposes of the Community Benefit Fund and the structure and membership of the Community Benefit Fund Board to provide greater state representation on the Board.

11. Non-displacement. In agreeing to make the Revenue Share payments, the Tribe intends that such payments should be enhancements to the otherwise existing resources of such public funds or entities that may receive the benefit of such payments and desires that the payments not be used as a basis to decrease, offset or displace the funds currently being used to support such activities.

F. If, during the term of this Compact, a State court finds that Oregon State Lottery operations have been expanded in violation of Article XV, Section 4 of the Oregon Constitution, then the Tribe may elect to deposit ten percent (10%) of its future Revenue Share payments into an interest-bearing escrow account at a bank insured by the FDIC, that is separate and distinct from other accounts of the Tribe, pending exhaustion of any appeals. If the State court finding is ultimately sustained, the Tribe may recover the escrowed amounts (and interest). If the State court finding is ultimately denied, the Tribe shall pay promptly the escrowed amounts (and interest) in accordance with Section E of this Article.

G. The Tribe will maintain for its Tribal Gaming Operation a system of accounting established and administered in accordance with GAAP, and shall furnish to the State within 120 calendar days after the close of each Fiscal Year audit reports of the Tribal Gaming Operation certified by independent certified public accountants selected by the Tribe and not unreasonably objected to by the State. To the extent permitted under ORS 192.502(4), the State will treat such audit reports and other confidential information obtained under the terms of this Compact as confidential information and not disclose them to any persons without the Tribe's express written authorization to do so.

H. Annual Revenue Share Report. Within one hundred fifty (150) calendar days after the end of any Fiscal Year, the Tribe shall provide a report to the State that details the Revenue Share amount contributed by the Tribe for that preceding Fiscal Year.

I. The State acknowledges that its claim that payment of any Revenue Share amount be made shall be subordinate to any claim on revenues from Tribal Gaming Operations by a senior lien holder providing financing for the Resort and infrastructure relating thereto; provided, however, that any such claim shall not be subordinate to any lien holder providing financing for off-site, functionally-unrelated facilities. Notwithstanding

the foregoing, the Tribe' obligation to pay the Revenue Share amounts shall not be extinguished by such subordination.

## **ARTICLE XVI – COMMUNITY BENEFIT FUND**

### **A. Establishment of Fund.**

1. The Tribe agrees to establish a Community Benefit Fund, pursuant to tribal law, within ninety (90) calendar days of the commencement of Class III Gaming at the Gaming Facility. The Community Benefit Fund Board of Trustees, created pursuant to Section C of this Article, shall establish by-laws and any other charter documents that may be appropriate to govern the operation of the Fund. Such charter documents must be consistent with the requirements of this Article.

2. Not later than the Payment Date, the Tribe shall contribute to the Fund an amount calculated as provided in Section D of this Article. The Tribe, in its discretion, may choose to make early payments to the Fund, subject to reconciliation within 150 calendar days after the end of the appropriate Fiscal Year. The monies of the Fund shall be maintained at a bank insured by the FDIC, in an account separate and distinct from other accounts of the Tribe. Any and all interest on such monies or increase in the assets of the Fund shall be allocated to future charitable contributions as set out in this Article.

### **B. Fund Administration.**

1. The assets of the Fund shall be expended for the benefit of the public primarily within Hood River, Wasco, Jefferson, Sherman, Gilliam, Wheeler, Deschutes, Crook, Clackamas, Multnomah and Washington Counties and, as determined by the Board of Trustees created pursuant to Section C of this Article, elsewhere within the State of Oregon. Grants from the Fund may be made to charitable organizations that qualify as 501(c)(3) entities under the Internal Revenue Code or to governmental bodies, including the Tribe and the Columbia River Gorge Commission, for any of the following purposes: education; health; public safety; gambling addiction prevention, education and treatment; the arts; the environment; cultural activities; historic preservation; and such other charitable purposes as may be provided in the by-laws of the Fund, including for the purposes of preserving, protecting and enhancing natural and cultural resources within the Columbia River Gorge National Scenic Area. However, except for pledges specifically authorized in Section B(2)(b) of this Article, grants from the Fund may not be used to satisfy obligations of the Tribe that arise elsewhere in this Compact.

2. The Tribe may enter into an agreement with the City of Cascade Locks (the "City") to pledge the following amounts from the Community Benefit Fund:

a. From the contribution to the Community Benefit Fund for the first Fiscal Year of operation, up to \$700,000 may be pledged to the City for law enforcement, fire and emergency response services or infrastructure or for other community benefit purposes agreed to between the Tribe and the City. From the contribution to the Community Benefit Fund for subsequent Fiscal Years, the total amount of such pledges may increase up to three percent (3%) per annum.

b. From the contribution to the Community Benefit Fund for the first Fiscal Year of operation, a one-time pledge of up to \$500,000 may be made to the City for immediate enhancements to the law enforcement, fire and emergency responses services or infrastructure of the City. This pledge is in addition to the pledge permissible under Section B(2)(a) of this Article, but may not recur. If such a pledge is made but cannot be satisfied in full from the contribution to the Community Benefit Fund for the first Fiscal Year of operation, the unsatisfied portion of such pledge may be carried forward to subsequent Fiscal Years until satisfied.

c. Pledges agreed to by the Tribe and the City may be paid at any time mutually agreed to between the Tribe and the City and credited against the contribution to the Community Benefit Fund for the appropriate Fiscal Year.

3. Reasonable administrative costs of the Community Benefit Fund, including the retention of accountants and other professionals as necessary, may be made from the Fund, as long as such costs do not exceed the average percentage of overhead costs of similar-sized charitable foundations in the State of Oregon. However, members of the Community Benefit Fund Board of Trustees shall serve without salary or other compensation.

4. The Board of Trustees created pursuant to Section C of this Article may reserve a portion of the Fund in a single year to fund a multi-year grant or grants.

C. Community Benefit Fund Board of Trustees.

1. The Fund will be administered by a board of nine (9) trustees (“Board of Trustees”). Each trustee shall have an equal vote on actions of the Board of Trustees. Each trustee shall owe a fiduciary obligation to the Fund.

2. The members of the Board of Trustees must be citizens of the State of Oregon and shall be appointed as follows:

a. Three (3) enrolled members of the Tribe, appointed by the Tribal Council;

- b. One (1) representative of the Tribal Gaming Operation Board of Directors, appointed by the Tribal Council;
- c. Two (2) members, who are not affiliated with the Tribe, appointed by the City Council of Cascade Locks;
- d. One (1) member, who is not affiliated with the Tribe, appointed by the Hood River County Board of Commissioners;
- e. One (1) member with a unique interest in the protection and conservation of the Columbia River Gorge, appointed by the Governor; and
- f. One (1) member appointed by agreement of the other eight members.

D. Calculation of Fund Contribution. The Tribe's annual charitable contribution amount shall be calculated by multiplying the Net Income of the Gaming Complex from the previous Fiscal Year by six percent (6%). For purposes of this Section D, "Net Income" means the amount of total net income indicated on the audited financial statement for the Gaming Complex that has been prepared in accordance with Generally Accepted Accounting Principles ("GAAP"). (For purposes of this Section D, the audited financial statements for the Gaming Complex may include the adjacent parking facilities, Interstate 84 interchange, and related road construction, not located on the Cascade Locks Land.)

E. Termination of Fund Contributions. The Tribe's contributions to the Community Benefit Fund established in this Article are required only so long as no non-Indian casino is operated in the State pursuant to a change in the Oregon Constitution that allows the operation of such a non-Indian casino in the State. This condition does not apply to an expansion of the Oregon State Lottery unless such expansion is accomplished through a constitutional amendment that permits the operation of a casino.

F. Annual Fund Report. The bylaws and other charter documents of the Fund shall provide that, within 150 calendar days of the end of any Fiscal Year, the Board of Trustees shall provide a report to the Governor detailing the amount contributed to the Fund during the Fiscal Year, detailing the calculation of the amount contributed to the Fund, and listing the grantees of the Fund and the amounts of the grants since the last report. The State may at its discretion and expense perform an audit of the calculation of the Tribe's contribution to the Fund.

G. The Board of Trustees shall provide a copy of the Fund's bylaws and any other charter documents and amendments thereto to the Governor and OSP. The Board of Trustees shall address adequately any reasonable concerns raised by the State regarding the bylaws and charter documents.