

AGREEMENT BETWEEN OWNER AND OWNER'S REPRESENTATIVE

THIS AGREEMENT BETWEEN OWNER AND OWNER'S REPRESENTATIVE (this "**Agreement**") is entered into as of July [REDACTED], 2021 by and between the Tule River Tribe Gaming Authority ("**Owner**") and [INSERT PARTY] ("**Owner's Representative**") (Owner and Owner's Representative are individually referred to herein as a "**Party**" and collectively referred to herein as the "**Parties**"). Subject to and in accordance with the terms and provisions of this Agreement, Owner's Representative shall perform the pre-development, development and construction management services described in this Agreement or reasonably inferable from such description in connection with the development and construction of the Project (defined below).

IT IS MUTUALLY AGREED between the parties as follows:

ARTICLE 1

GENERAL INTENT

- 1.1 Owner is a wholly owned subsidiary and instrumentality of the Tule River Indian Tribe of the Tule River Reservation, California, a federally recognized Indian tribe (the "**Tribe**") located within the County of Tulare, California, and is duly authorized to enter into this Agreement.
- 1.2 The Owner is proposing to relocate its existing casino (i.e. the Eagle Mountain Casino) to approximately 40 acres of land within the City of Porterville (the "**Site**") and develop an approximately 189,000 square foot casino, food and beverage facilities (including a tap house) with administrative space; a 29,000 square foot multi-purpose events center; associated parking and on-site and off-site infrastructure including but not limited to a connection to the City of Porterville's municipal water supply and wastewater facilities; retrofitting of existing buildings on the project site to house a tribal fire station (or the construction of a new fire station, at the Owner's discretion); all required off-site road improvement projects including road improvements required pursuant to the memorandum of understandings with the local City and County governments; and off-site construction of a tertiary wastewater treatment facility and stormwater detention basin to be constructed on land owned by the City of Porterville (the "**Project**").
- 1.3 On or about June 8, 2021, Owner issued a Request for Proposals for Owner's Representative Services, RFP No. TRTC-25-2021, in connection with the Project ("**RFP**"), attached as Exhibit A to this Agreement. Owner's Representative submitted a Proposal to Owner in response to the RFP, attached as Exhibit B to this Agreement. Owner has selected Owner's Representative to provide the Construction Phase 3 services as described in Section 3.5 of this Agreement.
- 1.4 Owner has entered into agreements with a licensed an (the "**Architect**") and potentially other design professionals to provide the design for the construction of the Project. The Architect, in turn, may enter into an agreement or agreements with other design professionals to provide portions of the design for the construction of the Project (the Architect and all such design professionals are collectively referred to as the "**Design Team**").
- 1.5 Owner has entered into agreements with a third party for the construction of the Project (the "**Contractor**"). It is anticipated that the Contractor will directly enter into agreements with subcontractors and material suppliers to furnish the labor, materials, services and equipment required for the construction of the Project.
- 1.6 By entering into this Agreement, Owner and Owner's Representative generally intend that Owner's Representative shall act as Owner's advisor and provide construction management services for all aspects of the construction of the Project.

ARTICLE 2

OWNER'S REPRESENTATIVE'S DUTIES AND STATUS

- 2.1 Owner's Representative accepts the relationship of trust and confidence established between it and Owner by this Agreement. Owner's Representative covenants with Owner to furnish its best skill and judgment and to cooperate with and seek the input of Owner, any consultants hired by Owner, Contractor, and the Design Team (collectively, the "**Project Team**") in furthering the interests of Owner. Owner's Representative acknowledges that Owner desires to participate in all meetings with the Project Team and accordingly agrees to provide Project Manager (as identified in Section 4.2) with advance notice of all such meetings so that she or he has a reasonable opportunity to attend. Owner's Representative shall also copy Project Manager on all electronic or other communications generated or received by Owner's Representative regarding the Project, and shall advise other members of the Project Team to likewise copy Project Manager on all electronic or other communications they generate or receive regarding the Project. Owner's Representative agrees to furnish efficient business administration, leadership and advice in an expeditious and economical manner to complete its consulting services consistent with the interests of Owner.
- 2.2 Subject to Section 1.3, Owner's Representative acknowledges and agrees that the Services (as defined herein) include construction oversight, evaluation, management, on-site supervision, contract administration, communications, advice and recommendations enumerated in this agreement, required for the complete pre-development, development, design, and construction of the Project, as may be reasonable inferred in this Agreement or in the RFP.

ARTICLE 3

OWNER'S REPRESENTATIVE'S SERVICES

Owner's Representative will perform the following services (the "**Services**"):

3.1 DEVELOPMENT OF OWNER'S PROGRAM

To the extent not already completed, the Owner's Representative shall assist Owner with the preparation and development of the Project requirements, including, without limitation, budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems and site requirements, and any other objectives, schedule information, constraints and criteria reasonably required by the Contractor to perform its obligations to Owner (the "**Owner's Program**").

3.2 ESTIMATING AND BUDGET CONTROL SERVICES

Owner's Representative shall assist Owner and Contractor in achieving the existing Project budget; reviewing and evaluating design drawings and specifications prepared by the Design Team during development; selecting materials, building systems, equipment and methods of Project delivery; providing recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction, and factors related to cost including, but not limited to, costs of alternative designs or materials, unit pricing, preliminary budgets and possible economies, and provide consultation during Project development by scheduling and attending regular meetings and/or telephone conference calls with Owner and other members of the Project Team.

- 3.2.1 Owner's Representative shall assist Owner with evaluating cost saving mechanisms for the Project to optimize and minimize the total cost of the Project, to be consistent with Owner's budget.
- 3.2.2 Owner's Representative shall work with the Project Team to update and refine the Project budget as necessary, incorporating all value engineering recommendations and decisions that have been approved by Owner such that the total construction cost is consistent with Owner's budget and schedule for construction.

- 3.2.3 Owner's Representative shall analyze and advise Owner on the detailed and itemized estimate of construction cost prepared by the Contractor during the final preparation of the construction drawings and specifications (the "**Construction Estimate**"). The Construction Estimate shall be subject to the review and approval of Owner. The Construction Estimate shall be developed using estimating techniques which anticipate the various elements of the construction and shall be based upon a complete and detailed quantity survey of the drawings and specifications. Owner's Representative shall review the construction drawings and specifications for constructability and shall oversee the identification of alternative systems and/or materials and performance of value engineering studies by the Contractor, and take such other actions as are necessary or desirable to conform the budget and scope of the Project with Owner's total budget and schedule goals for construction.
- 3.2.4 Owner's Representative shall prepare its own Construction Estimate based on the final construction drawings and specifications prepared by the Design Team, for Owner's review and approval.
- 3.2.5 Owner's Representative shall update and advise Owner on the appropriate contingency to include in Owner's budget for construction.
- 3.2.6 Owner's Representative shall research, develop and expand on the list of contractors and subcontractors qualified to submit bids for all or portions of the Project. As part of those efforts, Owner's Representative shall take all reasonable steps to develop interest in the Project and maximize the number of competitive bids received.
- 3.2.7 Owner's Representative shall direct the Project Team to prepare and publish addenda as necessary to clarify the intent of the bid documents before the receipt of bids.
- 3.2.8 Owner's Representative shall (i) create a bid sheet matrix to record bids received, (ii) assess the responsiveness and responsibility (qualifications) of bidders to participate in the Project, and (iii) make recommendations to Owner relative to the acceptance of bids.
- 3.2.9 Owner's Representative shall negotiate pricing and make recommendations to Owner regarding proposed agreements (including, without limitation, the General Conditions and Special Conditions to any such agreements, Change Orders or RFIs) between Owner, Contractor, subcontractors, and other members of the Project Team, compatible with Project goals.
- 3.2.10 When requested by Owner, Owner's Representative shall review and advise Owner on the following: cash flow projections; descriptions, quantities and costs of work, materials, labor and equipment; Contractor's general conditions costs and fee, if any; and Contractor's proposed subcontract costs.
- 3.2.11 Owner's Representative shall advise Owner on updates to the Construction Estimate as required for Owner's approval, incorporating all value engineering recommendations and decisions approved by Owner and showing all variances between actual costs and budgeted or estimated costs.

3.3 **PROJECT SCHEDULING SERVICES**

- 3.3.1 Owner's Representative shall oversee the preparation, and periodic updating, by the Contractor, for Owner's review and approval, a comprehensive (i) critical path method or (ii) PERT schedule which is prepared for the Construction to ensure that such schedule properly integrates pre-construction, design and permitting activities, the contract negotiation process and procurement activities with the overall construction activities for the Project (the "**Construction Schedule**"). The Schedule shall contain projected commencement and completion dates for the Project, including all interim completion and milestone dates and the dates for specified deliverables, and shall be subject to the review and approval of Owner. Additionally, Owner's Representative shall prepare a

Schedule integrating key construction milestones with all Owner direct activities, including permitting, low voltage FFE and OSE procurement and Owner fit up activities necessary to achieve complete Project fit up ("**Project Schedule**"). Owner's Representative shall review and advise Owner with respect to any monthly updates of the Construction and Project Schedules. The Schedule shall be developed using precedent network techniques and a computerized scheduling software system acceptable to Owner.

3.4 **PLANNING AND COORDINATION SERVICES**

3.4.1 Owner's Representative shall communicate with Owner and other members of the Project Team regarding drawings and specifications as they are being prepared and recommend alternative solutions whenever design details adversely affect construction feasibility cost or the Schedule.

3.5 **CONSTRUCTION SERVICES – ADMINISTRATION OF THE CONSTRUCTION CONTRACT**

3.5.1 Owner's Representative shall provide administration of all contracts for construction in accordance with the terms and conditions (including all general conditions) of those contracts and all plans, specifications, drawings, addenda, modifications and other documents identified in or incorporated by reference in such contracts (collectively, the "**Contract Documents**"). Owner's Representative shall organize the Contract Documents for distribution to the Project Team and to others who require such Contract Documents for the labor, materials, services or equipment to be furnished to the Project.

3.5.2 Owner's Representative shall provide administrative, management and related services to coordinate with scheduled activities and responsibilities of the Contractor, subcontractors and other members of the Project Team to endeavor to manage the Project in accordance with the latest approved Construction Estimate, Schedule and Contract Documents.

3.5.3 Owner's Representative shall oversee the receipt and review, by the Architect, for completeness and responsiveness the Contractor's submittals (including, without limitation, shop drawings, product data and samples) and coordinate the delivery of such submittals to Owner with Owner's Representative's comments and recommendations.

3.5.4 Owner's Representative shall schedule and conduct regular meetings between and among Owner, Contractor and other members of the Project Team to discuss such matters as procedures, progress and scheduling. The Owner's Representative shall prepare and promptly distribute written minutes of all such meetings to Owner, Contractor and other members of the Project Team and shall develop and implement a follow-up system to support timely completion of action items discussed at the meetings.

3.5.5 Utilizing the construction schedules provided by the Contractor, Owner's Representative shall update the Project Schedule incorporating the activities of all contractors and subcontractors and suppliers of any tier on the Project, including activity sequences and durations, allocation of labor and materials, and delivery of products requiring long lead time and procurement. The Project Schedule shall include the Owner's occupancy requirements showing portions of the Project having occupancy priority. Owner's Representative shall update and reissue the Project Schedule as required to show current conditions. If an update indicates that the previously approved Project Schedule may not be met, Owner's Representative shall recommend corrective action to Owner and Contractor.

3.5.6 Owner's Representative shall endeavor to obtain satisfactory performance from the Contractor and shall recommend courses of action to Owner when requirements of the Contract Documents are not being fulfilled.

- 3.5.7 Owner's Representative shall monitor the approved Construction Estimate and shall develop cash flow reports and forecasts for the Project and advise Owner as to variances between actual and budgeted or estimated costs.
- 3.5.8 Owner's Representative shall maintain accounting records on authorized work performed under unit costs, additional work performed on the basis of actual costs of labor and materials, and other work requiring accounting records. Owner's Representative shall review Owner's existing accounting system and provide recommendations to Owner to improve Owner's ability to record and monitor such items as Project accounts, budgets, payment schedules and contingencies.
- 3.5.9 Owner's Representative shall develop and implement procedures for the review and processing of applications by Contractor and subcontractors for progress and final payments and for submittal of change orders. Owner's Representative shall determine the impact of any requested change orders on the Project Budget and Schedule and shall present to the Owner for approval together with the Owner's Representative's independent cost estimate for work requested under the Change Order.
- 3.5.10 Based on Owner's Representative's observations and evaluations of the Contractor's applications for payment, Owner's Representative shall review, revise as required and coordinate certification by the Architect, for the amounts due to the Contractor.
- 3.5.11 Owner's Representative's review of, and Architect's certification, of payment application shall constitute a representation to Owner, based on Owner's Representative's determinations at the site and on the data comprising the Contractor's applications for payment, that, to the best of Owner's Representative's knowledge, information and belief, all work shown on, described in or reasonably inferable from the Contract Documents and needed to complete the Project (the "**Work**") has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents. The foregoing representations include an evaluation of the Work for conformance with the Contract Documents upon substantial completion. The issuance of such certificate for payment shall further constitute a representation that the Contractor is entitled to payment in the amount certified.
- 3.5.12 Owner's Representative shall review and report to Owner on the safety programs developed by the Contractor. However, Owner's Representative's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractor or their subcontractors, agents, or employees.
- 3.5.13 Owner's Representative shall determine in general that the Work of each contractor and subcontractor and supplier of any tier is being performed in accordance with the requirements of the Contract Documents, endeavoring to guard Owner against defects and deficiencies in the Work. As appropriate, Owner's Representative shall have authority, upon written authorization from Owner, to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed.
- 3.5.14 Owner's Representative shall advise Owner with respect to any testing or inspections necessary or desirable to ensure the completion of Work in compliance with the Contract Documents; shall coordinate with Contractor and the inspectors on all inspections and shall attend regular meetings with inspectors.
- 3.5.15 Owner's Representative shall require that Contractor schedule and coordinate the sequence of construction in accordance with the Contract Documents and the latest approved Schedule (Means and Methods).

- 3.5.16 Owner's Representative shall require that Architect receive and review requests for clarification and requests for information and provide recommendations to Owner within 48 hours of receipt, unless otherwise agreed by Owner.
- 3.5.17 Owner's Representative shall receive and review requests for change orders within forty-eight (48) hours of receipt, and provide recommendations to Owner regarding such requests unless otherwise agreed by Owner. Owner's Representative shall assist in negotiating Contractor's and subcontractors' proposals and shall coordinate the preparation of change orders and construction change directives which incorporate the Owner's authorized modifications to the Contract Documents. Owner's Representative shall take all reasonable steps necessary to ensure that approved change order work is performed in accordance with the terms of the change order and in compliance with the Contract Documents.
- 3.5.18 Owner's Representative shall assist Owner in the review, evaluation, negotiation and documentation of claims; shall make written recommendations to Owner regarding any such claims and shall attend and participate in all dispute resolution meetings and proceedings regarding such claims.
- 3.5.19 Owner's Representative shall receive certificates of insurance from the Contractor and its subcontractors and suppliers of any tier, and forward them to Owner.
- 3.5.20 Owner's Representative shall record the progress of the Project. Owner's Representative shall submit monthly written progress reports to Owner including information on the Project, showing percentages of completion of the Project. Owner's Representative shall keep a daily log containing a record of weather, the Work performed on the Project site, the number of workers, identification of equipment, Work accomplished, problems encountered, and other similar relevant data as Owner may require. Throughout the construction phase Owner's Representative shall monitor and make recommendations to Owner regarding the adequacy of Contractor's workforce and equipment to complete the Project in accordance with the Owner's schedule.
- 3.5.21 Owner's Representative shall maintain at the Project site for Owner one record copy of all contracts, drawings, specifications, addenda, change orders and other modifications, in good order and marked currently to record changes and selections made during construction. Owner's Representative shall direct Contractor to maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations certified by a qualified surveyor or a professional engineer. Upon completion of the Project, Owner's Representative shall deliver all such records to Owner.
- 3.5.22 Owner's Representative shall arrange for the delivery, storage, protection and security of Owner-purchased materials, systems and equipment that are a part of the Project until such items are incorporated into the Project.
- 3.5.23 With the Contractor's and Owner's maintenance personnel, Owner's Representative shall observe the Contractor's final testing and start-up of utilities, operational systems and equipment.
- 3.5.24 When Owner's Representative considers the Contractor's Work or a designated portion thereof, substantially complete, Owner's Representative shall, jointly with Contractor and Architect, prepare a list of incomplete or unsatisfactory items and a schedule for their completion.
- 3.5.25 Owner's Representative shall coordinate the correction and completion of all Work. Following the issuance of a certificate of substantial completion of the Work, or a designated portion thereof, Owner's Representative shall evaluate the completion of the Work and make recommendations to Owner when the Work is ready for final inspection. Owner's Representative shall participate in conducting the final inspection.

- 3.5.26 Owner's Representative shall secure and transmit to Owner warranties and similar submittals required by the Contract Documents, and deliver all keys, manuals, record drawings and maintenance stacks to Owner. Owner's Representative shall forward to Owner a final project application for payment upon compliance with the requirements of the Contract Documents.
- 3.5.27 Owner's Representative shall communicate and take such other actions with Contractor and subcontractors as necessary to secure the completion or correction of any Work during any warranty periods applicable to such Work (which periods shall not be shorter than twelve (12) months after Substantial Completion of the Project).

3.6 GENERAL SERVICES

- 3.6.1 Owner's Representative shall advise and make recommendations to Owner with respect to the appropriate services to be provided for investigations, appraisals or evaluations of existing conditions, facilities or equipment, and shall review the existing drawings or other information furnished by Owner and other members of the Project Team as needed to advise Owner on the constructability of the Project. Any errors, inconsistencies or omissions discovered by Owner's Representative shall be reported promptly to Owner.
- 3.6.2 Owner's Representative shall recommend and assist in the selection of Project consultants. Owner's Representative shall assist Owner in selecting, retaining and coordinating the professional services of surveyors, special consultants and testing laboratories required for the Project.
- 3.6.3 Owner's Representative shall cooperate and coordinate its Services with the Work and services performed by other members of the Project Team and, when appropriate, attend Project coordination meetings.
- 3.6.4 Owner's Representative shall review all designs to seek to verify that the designs are complete and conform with the Owner's Program and other Owner requirements. Owner's Representative shall promptly notify Owner of any incomplete or nonconforming designs which Owner's Representative discovers.
- 3.6.5 Owner's Representative shall analyze proposals and advise Owner on acceptability of subcontractors and material suppliers.
- 3.6.6 Owner's Representative shall assist Owner in identifying, applying/filing for and obtaining necessary governmental approvals and permits, including without limitation federal, state and local building permits and special permits for the construction of permanent improvements and associated activities; temporary and permanent certificates of occupancy, and any documents which must be filed for approvals by the Division of the State Architect ("**DSA**").
- 3.6.7 Owner's Representative shall research, develop and implement management and administrative systems, procedures and reports required for the completion of the Project in accordance with the Owner's budget and schedule, and shall provide Owner with on-site and off-site training relative to such systems, procedures and reports.
- 3.6.8 Owner's Representative shall provide Owner with assistance in the proper performance of the Services described in this Agreement, and shall make recommendations to Owner with respect to the staffing and procedures that would be required by Owner to properly perform such Services with its own personnel.
- 3.6.9 Owner's Representative shall provide Owner with the names and qualifications of Owner's Representative's representatives who are proposed by Owner's Representative to be assigned to the Project, as well as the specific responsibilities and Services to be performed by each. At least one (1) such person, to be approved by Owner, shall spend at least forty (40) hours per week at

the Project site and shall devote all such time to the performance of the Services described in this Agreement. Once such persons are approved by Owner and assigned to the Project, they shall not be re-assigned or removed without Owner's written consent.

- 3.6.10 Owner's Representative shall attend meetings as directed by Owner throughout the term of this Agreement, as necessary to provide updates and respond to questions regarding the status of the Project.
- 3.6.11 Owner's Representative shall support compliance with all federal, state and local statutes, codes, ordinances and regulations applicable to the Project, including without limitation any pertaining to environmental requirements and storm water protection programs ("**Applicable Laws**").
- 3.6.12 Owner's Representative shall perform its Services under this Agreement in such a way as to minimize any adverse impact of such Services or of the construction on Owner's other operations or on the surrounding community.

ARTICLE 4

OWNER'S RESPONSIBILITIES

- 4.1 Owner shall reasonably cooperate with Owner's Representative to provide the information required to establish the Owner's Program, as outlined in Section 3.1.
- 4.2 Owner shall designate from time to time a representative authorized to act on Owner's behalf with respect to the Project. Owner hereby designates Ralene Clower as its representative, unless otherwise designated by the Owner in writing ("**Project Manager**").
- 4.3 Owner reserves the right to perform construction and operations related to the Project with Owner's personnel, separate contractors and consultants, and to award contracts in connection with the Project which are not part of the Owner's Representative's responsibilities under this Agreement. Owner's Representative shall notify Owner if any such independent action will interfere with Owner's Representative's responsibilities under this Agreement.
- 4.4 Information or services under Owner's control shall be furnished by Owner to Owner's Representative with reasonable promptness to avoid delay in the orderly progress of Owner's Representative's services and the progress of the Work.

ARTICLE 5

COMPENSATION

- 5.1 In consideration of the performance of the Services in accordance with the terms hereof, Owner's Representative shall be paid [TBD], shall not exceed \$[TBD] without prior written approval of the Owner.
 - 5.1.1 Owner's Representative shall submit detailed invoices monthly for Services rendered and the invoices shall contain a description of the Services rendered reflecting tasks and time expended and any actual and reasonable Reimbursable Expenses. Terms of payment are net thirty (30) days from date of invoice.
 - 5.1.2 Owner may withhold the whole or part of any progress payment to Owner's Representative as may be necessary to cover the damages, liabilities, claims, costs or similar matters which, as determined by a court of competent jurisdiction, are Owner's Representative's responsibility or result from Owner's Representative's acts or omissions under this Agreement.

ARTICLE 6

TERM

- 6.1 This Agreement commences as of the date hereof and unless earlier terminated by Owner as provided herein ends sixty (60) days after final completion of construction and Owner's occupancy of the Project. Notwithstanding the foregoing, this Agreement may be terminated by Owner, with or without cause, upon fifteen (15) days written notice to Owner's Representative. In the event of such termination, but subject to Owner's right to offset any amounts resulting from Owner's Representative's breach of its obligations hereunder, Owner's Representative's sole compensation shall be to receive from Owner a pro rata portion of the compensation earned for that portion of the current month for which Owner's Representative provided Services prior to the termination of this Agreement, together with any unpaid Reimbursable Expenses incurred prior to the termination.

ARTICLE 7

INDEMNITY

- 7.1 To the fullest extent permitted by law, Owner's Representative shall indemnify, defend (with counsel acceptable to Indemnitees), and hold Owner, the Tule River Gaming Authority Board ("**Gaming Authority Board**"), the Tribe, the Tribe's Tribal Council, and their respective partners, members, managers, officers, directors, shareholders, agents, employees, board members, attorneys, insurers and lender(s) (collectively, "**Indemnitees**") harmless from and against any and all liabilities, demands, actions, losses or claims for damages for personal injury, bodily injury, death, property damage, or other costs and charges, including, without limitation, attorneys' fees (collectively referred to herein as "**Claims**") to the extent arising out of the negligence or willful misconduct of Owner's Representative in the performance of the Services under this Agreement; provided, Owner's Representative shall not be required to indemnify Indemnitees for Claims arising in whole or in part from the gross negligence or willful misconduct of the Indemnitee sought to be indemnified. This obligation to indemnify includes any attorney's fees and costs incurred by any Indemnitee to defend against such Claims, whether the same proceed to judgment. Additionally, nothing in this Section 7.1 shall be construed to impose on Owner's Representative, or relieve Owner from, liability to the extent of the active negligence of the Owner, including that of its employees. Payment shall not be a condition precedent to enforcing any Indemnitee's right to indemnification. This indemnity shall survive the expiration or termination of this Agreement.

ARTICLE 8

INSURANCE

- 8.1 Before commencing any Services on the Project, Owner's Representative shall procure, maintain and provide Owner with fully executed Certificates of Insurance evidencing insurance coverage as follows:
- 8.1.1 Commercial General Liability Insurance with limits not less than One Million Dollars (\$1,000,000.00) per occurrence, and Two Million Dollars (\$2,000,000.00) in the aggregate, written on an occurrence basis,
- 8.1.2 Automobile Liability insurance with limits not less than One Million Dollars (\$1,000,000.00) per occurrence,
- 8.1.3 Workers' Compensation Insurance that satisfies the limits, coverages and other requirements of the state of California, and
- 8.1.3 Professional Liability Insurance with limits not less than Two Million Dollars (\$2,000,000.00) per occurrence and in the aggregate.
- 8.2 Owner's Representative's Commercial General Liability and Automobile Liability insurance policy shall (i) by endorsement CG 2010 07 04 and CG 2037 07 04, or equivalent acceptable to Owner,

name, by endorsement, as additional insureds, Owner, Owner's Tribal Council, the Gaming Authority Board, the agents, officers, directors and employees of each of them, and such other individuals or entities as Owner may designate, and (ii) state, by endorsement, that Owner's Representative's insurance is primary insurance and any insurance carried by Owner and any individual or entity Owner may designate is excess and non-contributory to such primary insurance. Owner's Representative shall immediately provide written notice to Owner if any of its insurance coverage is to be non-renewed, terminated, canceled, materially reduced or materially modified. If any such Certificate of Insurance is cancelled or reduced, Owner's Representative shall procure and furnish to Owner before the effective date of such cancellation, new Certificates of Insurance conforming to the above requirements.

- 8.2.1 By appropriate language in Owner's written agreements with its trade contractors, and to the fullest extent permitted by law, Owner agrees to use commercially reasonable efforts to require all trade contractors to (i) defend and hold harmless Owner's Representative for the negligent acts and omissions of such trade contractors, and (ii) cause Owner's Representative to be named as an additional insured on the policies of insurance to be provided by such trade contractors pursuant to their agreements, and require that such policies of insurance be primary and non-contributory to the insurance provided by Owner's Representative.
- 8.3 The workers' compensation/employer's liability policy shall, by endorsement, include a waiver of subrogation as to Owner and provide that such waiver shall not invalidate or prejudice the coverage available to Owner's Representative or Owner. The commercial general liability and auto liability policies shall provide for severability of interests (separation of insureds) such that Owner's rights under the policy are separate from and independent of Owner's Representative's and such policies shall contain no insured versus insured exclusion.
- 8.4 The foregoing insurance shall be written with insurance carriers duly licensed to do business in the state of California, and have a Best's insurance guide rating of A, with financial size category of at least VII or better. All insurance documentation, certificates and endorsements should be forwarded to Owner at the address set forth in this Agreement.
- 8.5 The insurance requirements set forth in this Article 8 are independent of Owner's Representative's indemnification obligations and other obligations to Owner, and shall not be construed or interpreted to restrict, limit or modify Owner's Representative's indemnification obligations or any other obligations to Owner hereunder.

ARTICLE 9

MISCELLANEOUS

- 9.1 In the event of any construction dispute arising out of the work performed on the Project, Owner may require, in its sole discretion, that Owner's Representative participate as a party or witness in any mediation, arbitration or litigation commenced as a result of the dispute, as necessary to afford the parties complete relief or to avoid inconsistent results.
- 9.2 All of Owner's Representative's records of expenses and costs pertaining to Services performed shall be kept in accordance with generally accepted accounting principles and shall be available to Owner or Owner's authorized representative upon request by Owner.
- 9.3 This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns; provided, however, that Owner's Representative may not assign any rights or benefits or delegate any of Owner's Representative's obligations hereunder without obtaining the prior written consent of Owner (which shall be in Owner's sole and absolute discretion).
- 9.4 In performing its Services under this Agreement, Owner's Representative shall be deemed an independent contractor and not an agent, employee or partner of Owner. Owner's Representative

shall not enter into any agreements in the name of Owner, purport to bind Owner to any agreements or otherwise create any liability for Owner without first obtaining Owner's written consent. No federal, state or local income or payroll taxes of any kind shall be withheld or paid by Owner on behalf of Owner's Representative or any employee of Owner's Representative. Owner's Representative is responsible to pay Owner's Representative's income and all other taxes applicable to the Services.

- 9.5 The methods and means of performance of all Services provided under this Agreement shall be at Owner's Representative's discretion. Owner's Representative shall provide, at its sole expense, all equipment, tools, materials and/or supplies to accomplish the Services. Owner's Representative understands and acknowledges that time is of the essence in its performance of all Services provided under this Agreement.
- 9.6 All services provided by Owner's Representative will be in accordance with the reasonable standard of care exhibited by consultants performing a comparable scope of services in the region being served.
- 9.7 Owner's Representative will comply with all applicable federal, state, tribal, and local laws and regulations, in force at the time this Agreement is executed, in the performance of work pursuant to this Agreement and will indemnify Owner for failure to comply with any such laws.
- 9.8 Each Party shall obtain and shall during the term of this Agreement, at all times maintain in good standing and effect all necessary and proper business licenses and other licenses and permits, including approvals by gaming authorities, relating to its business operations in connection with this Agreement, and shall comply with the applicable laws and regulations of the governing state. A breach of this obligation shall be a material breach hereunder. Owner's Representative acknowledges that Owner and its affiliated companies conduct a business that is subject to and exists because of privileged licenses issued by governmental authorities. Owner's Representative therefore, agrees that in the event that Owner shall in good faith determine, in its reasonable judgment, that Owner's Representative is or may be, engaged in, or about to be engaged in, any activity or activities that may adversely impact or affect directly or indirectly Owner's suitability or gaming license or the gaming license (or business or operations related in any manner to gaming) of any subsidiary or affiliated Owner, or Owner's relationship with Owner's Representative or any other person does or could have this effect, Owner shall have the right to terminate this Agreement immediately upon written notice to Owner's Representative with no further liability to Owner's Representative except for payment for unpaid services which have been provided prior to such termination.
- 9.9 All notices required by this Agreement or other communications to either party by the other shall be deemed to have been properly given in writing and delivered either (a) by hand in person, (b) by registered or certified mail, return receipt requested, (c) by overnight courier delivery service that provides a return receipt, or (d) by facsimile or electronic mail followed up by mailing or delivery of such notice by any of the methods described in (a), (b) or (c) addressed to the Owner and the Owner's Representative, respectively, at their respective addresses below. Any such notice shall constitute service of notice hereunder three (3) days after the mailing thereof by certified mail; one (1) day after the sending thereof by overnight courier; and on the same day as the sending of a facsimile, electronic mail or hand delivery pursuant to the terms of this Section (unless the sending occurs on a Saturday, Sunday or legal holiday, in which event service will be deemed to have occurred on the next business day). Addresses for notices may be changed by notice to the other party given in the manner provided herein. Rejection or refusal to accept or inability to deliver because of a change in address of which no notice has been given shall constitute receipt.

To Owner:

Tule River Tribe Gaming Authority
P.O. Box 589

To Owner's Representative:

[Name]

Porterville, CA 93257
Attn: Chairman Neil Peyron
Ph: (559) 781-4271

[Address]
Attn: [Insert]
Ph: [Insert]
Email: [Insert]

With a copy to:

Procopio, Cory, Hargreaves & Savitch
LLP
525 B Street, Suite 2200
San Diego, CA 92101
Attn: Kerry Patterson, Esq.

- 9.10 This Agreement contains the entire agreement between the Parties respecting the subject matter of this Agreement and supersedes all prior understandings and agreements, whether oral or in writing, between the Parties respecting the subject matter of this Agreement.
- 9.11 This Agreement shall be interpreted and construed in accordance with Tribal law, applicable federal law, to the extent there is no applicable tribal or federal law, California law shall apply.
- 9.12 If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstances, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- 9.13 The waiver by one Party of the performance of any covenant or condition under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by it of any other covenant or condition under this Agreement.
- 9.14 Owner's Representative shall regard all information relating to the Project and all information supplied to Owner's Representative by Owner or other members of the Project Team as confidential and proprietary information of Owner, and shall not permit its release to other parties without Owner's prior written authorization. Owner's Representative shall also require its consultants and contractors, if any, to comply with this requirement.
- 9.15 In performing the Services, Owner's Representative shall ascertain the applicability of, and shall comply with, all laws, codes, rules and regulations affecting the Project, including any prevailing wage requirements.
- 9.16 This Agreement may be executed in counterparts and, if so executed each such counterpart shall have the force and effect of an original. A facsimile, scanned, and/or photographic signature shall have the same force and effect as an original signature. This Agreement may be amended only by written instrument signed by both Owner and Owner's Representative.
- 9.17 Owner's Representative represents and warrants that it holds all necessary licenses and permits to perform the Services included in this Agreement, and shall keep and maintain all such licenses and permits in good standing and in full force and effect at all times while Owner's Representative is performing Services under this Agreement.
- 9.18 All drawings, specifications, work product, reports and any other written documents prepared by or for Owner's Representative in connection with the Services, and all rights thereto in the nature of copyright, trademark, patent and rights to ideas (collectively, "**Work Product**") will be assigned to and will become the property of Owner whether or not the Work or Services are completed. Owner's Representative covenants, warrants and represents to Owner that Owner's Representative has the right to assign such copyright and the Work Product. Owner's

Representative shall refrain from disclosing any and all versions of the Work Product to any third party without first obtaining the written consent of Owner. Owner's Representative shall provide Owner with updated copies of all Work Product on a monthly basis either in reproducible form or computer disk, as requested by Owner.

- 9.19 Owner's Representative will not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40), sex or sexual orientation. Owner's Representative will comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et. seq.) and applicable regulations promulgated thereunder (California Administrative Code, Title 2, Sections 7285.0 et. seq.). Owner's Representative will include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform Services under this Agreement.
- 9.20 Owner's Representative agrees that Owner or its designated representative shall have the right to review and copy any records and supporting documentation pertaining to the performance of this Agreement. Owner's Representative agrees to maintain such records for possible audit for a minimum of three (3) years after completion of the Project, unless a longer period of time is stipulated or required by law. Owner's Representative agrees to allow Owner's auditors access to such records during normal business hours and to allow interviews of any employees, contractors, or agents of Owner's Representative who might reasonably have information related to such records. Further, Owner's Representative agrees to include a similar right of audit in all of its subcontracts.
- 9.21 The Owner grants to Owner's Representative a limited waiver of the Owner's sovereign immunity, solely for actions brought by Owner's Representative, in accordance with Section 9.22 provided herein; provided, however, that any award shall be limited to actual damages and shall specifically exclude punitive, consequential, incidental, expectancy and all other special damages. This limited waiver of sovereign immunity does not extend to any action or proceeding brought against any Board Member of Owner, Tribal employee, Tribal agent, Tribal member, or any other individual acting on behalf of the Owner. The Tribe does not waive, limit or modify its sovereign immunity. Nothing herein shall be construed to constitute a waiver of the sovereign immunity of the Tribe or Owner with respect to any third party.
- 9.22 Any controversy(ies) or claim(s) arising out of or relating to this Agreement, shall be exclusively resolved in the Tule River Tribal Court and Owner's Representative hereby consents to the sole and exclusive jurisdiction of the Tule River Tribal Court. This Agreement shall be construed in accordance with applicable Tribal law, federal law, to the extent there is no applicable tribal or federal law, California law.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF the parties have entered into this Agreement as of the date written above.

OWNER:

Tule River Tribe Gaming Authority

OWNER'S REPRESENTATIVE:

[Insert]

By: William Garfield, Chairman

By: [Name, Title]

Exhibit A

RFP

[see attached]

Exhibit B

Owner's Representative Proposal

[see attached]