

## INTERGOVERNMENTAL MUNICIPAL SERVICES AGREEMENT

This Intergovernmental Municipal Services Agreement ("Agreement") is made this \_\_\_ day of \_\_\_\_\_ 2007, by and between the Town of Middleborough ("Town"), a municipal corporation of the Commonwealth of Massachusetts ("Commonwealth"), and the Mashpee Wampanoag Tribe, a federally-recognized Indian Tribe ("Tribe") (collectively referred to as the "Parties"), and is founded on the recitations and contents hereof.

**WHEREAS:** the Tribe has obtained rights to land in the Town which are more fully described below in Section 1 (the "Project Site"); and

**WHEREAS:** the Tribe plans to have the Project Site accepted into trust for the Tribe by the United States for the purposes, *inter alia*, of developing a Class II and/or Class III casino ("Gaming Facility") pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. § 2701, *et seq.* ("IGRA"), a hotel and ancillary facilities thereon (all of the developments on the Project Site are collectively referred to here in as "Project"); and

**WHEREAS:** the Town agrees to formally support the Tribe's application to have the Project Site accepted into trust status by submitting a letter endorsing the tribal application to the United States Department of the Interior in form and content substantially similar to the letter attached hereto as Exhibit A; and

**WHEREAS:** the Tribe intends to request the Governor of the Commonwealth to negotiate and execute a Tribal-State Class III Gaming Compact between the Tribe and the Commonwealth consistent with IGRA, a request which the Town will join and fully support; and

**WHEREAS:** the Town has experienced reductions in financial aid from the Commonwealth and several years of economic hardship, resulting in significant reduction in revenues to the Town as a result of which the Town has been compelled to make reductions in both personnel throughout its departments and the level of the very municipal and related services which will be required by the Tribe for development of the Project Site and the Project; and

**WHEREAS:** the Tribe acknowledges that it is in the interests of the Parties to work together to fund municipal services at levels which permit the delivery of those services to the Project Site at the levels required by the Tribe over the life of the Project; and

**WHEREAS:** the Tribe desires to pay the Town for the related municipal services that will be required at the Project Site, and the Town desires to provide those required services, including, but not limited to, transportation, water, sewer, electricity, natural gas, police protection, fire protection, emergency medical response services improvements and other municipal services set forth in this Agreement at the levels of services required at the Project Site, as well as in the Town generally as a consequential impact of the Project; and

**WHEREAS:** the Parties agree that the Gaming Facility and other development at the Project Site will substantially impact the Town, and the Tribe desires to mitigate such impacts of the Gaming Facility through payments to the Town as described herein; and

**WHEREAS:** the Tribe desires to have the support and cooperation of the Town in the development of the Project Site; and

**WHEREAS:** consistent with federal law and the Tribe's Resolution of Limited Waiver of Sovereign Immunity, attached hereto as Exhibit B, the Tribe has agreed to execute this Agreement; and

**WHEREAS:** the Town believes the Gaming Facility and other development at the Project Site will bring economic development to the Town, creating new jobs and new sources of revenue for the Town and neighboring local governments; and

**WHEREAS:** the Parties desire to establish a long-term, cooperative relationship between them that will serve the best interests of the Tribe and its members and the Town and its residents; and

**WHEREAS:** the Town agrees to support the Tribe in the development of the Project Site for these reasons.

**NOW THEREFORE,** in consideration of the foregoing, the covenants and agreements contained herein and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties enter into this Agreement upon the following terms.

**Section 1. Gaming Facility and the Project Site.**

The Tribe intends to develop the Project at the Project Site.

It is anticipated that the Project ultimately will consist of the Gaming Facility, a hotel, parking facilities, supporting operational facilities, and infrastructure improvements such as roadway improvements and utilities to support the Project. In addition, the Parties realize that the ultimate Project development will include other resort activities such as a golf course.

The Project Site is generally situated within the Town on the north side of Route 44 between the Plymouth and Plympton Street intersections, and abuts Precinct Street to the North. Attached as Exhibit C is a map depicting the Project Site and the legal description of the lands constituting the Project Site.

**Section 2. Cooperative Undertakings by the Town.**

In consideration for the mitigation measures to be undertaken by the Tribe in this Agreement, and in further recognition of the many benefits the Project will bring to the Town, the Town shall do the following.

**A.** The Town will provide the services identified in this Agreement and all Addendum Agreements hereto. Except as otherwise provided for herein, the Town will provide normal and customary general municipal services to the Project as are available to residents and other commercial entities situated in the Town.

**B.** The Town will support the Project and agrees to actively work with and assist the Tribe and its contractors and agents to obtain any and all approvals, legislation, or other enactments required for the Project from governmental entities and officials of the United States, the Commonwealth and the Town.

**C.** The Town will reasonably assist the Tribe in responding to negative comments about the Project, reiterating the Town's formal support and the basis therefore.

**D.** The Town will defend, intervene in or participate as *amicus curiae* in any lawsuit challenging any Town, Commonwealth or federal approvals necessary for gaming to occur on the Project Site including, but not limited to, an appeal of or legal challenge to, this Agreement, *provided*, however, that the Tribe shall be solely

responsible for the payment of all costs to the Town incurred in defending, intervening, assisting in the defense of the Tribe's efforts to obtain approvals necessary for gaming to occur at the Project Site, or participating as *amicus curiae* (such costs to include disbursements and fees for outside attorneys and consultants).

**E.** The Town shall prepare and forward letters of support for the Tribe's request to have the Project Site or any portion thereof accepted into trust status to the United States Department of the Interior, the Governor of Massachusetts, key members of the State Legislature as jointly identified by the Parties, the Massachusetts Congressional delegation, and other key Congressional leaders when requested by the Tribe. As stated in the recitations above, the Town's letters of support for Project Site trust status shall be in substantially similar form and content to the Exhibit A letter.

**F.** The Town shall prepare and forward letters of support for the Tribe's request that the Governor negotiate and execute a Class III Gaming Compact to the Governor of the Commonwealth, United States Department of the Interior, key members of the State Legislature as jointly identified by the Parties, the Massachusetts Congressional delegation, and other key Congressional leaders when requested by the Tribe. The Town's letters of support shall be in substantially similar form and content as the letter attached hereto as Exhibit D.

**Section 3. Environmental Review.**

The Tribe shall consult with the Town during Project and related infrastructure design and the preparation of an environmental impact statement ("EIS") pursuant to the National Environmental Policy Act, 42 U.S.C. § 4321, *et seq.* ("NEPA"), and other environmental and traffic impact analyses prepared for submission to state or federal

governments. The Tribe shall provide 10 copies of the EIS and other traffic and environmental documents and calculations to the Town at the time of submission to state or federal governments.

The Tribe shall consult and cooperate with the Town in its development of site- and Project-specific terms and conditions, and shall act both in compliance with the environmental reports and in a manner to identify, analyze and mitigate the impacts attributable to the Project.

Finally, the Tribe will reimburse the Town for reasonable Project environmental review costs incurred by the Town, reimbursement of costs not contested by the Tribe shall be made within 30 days of invoice receipt by the Tribe.

**Section 4. Future Land Acquisitions.**

The scope of this Agreement covers only the Project and the Project Site. Should the Tribe undertake the acquisition of any additional land within the Town, the Tribe will negotiate and execute an Amended Agreement concerning the land to be acquired and development thereof prior to undertaking such land acquisition.

**Section 5. Tribal Payments to the Town.**

**A. Tribal Payments in Lieu of Taxes.**

1. Real Property Taxes. Prior to the Project Site or any portion thereof being accepted into trust for the Tribe by the United States, the Tribe shall pay the Town the taxes assessed in accordance with all other real property assessments within the Town. Within 30 days of the Project Site or any portion thereof being accepted into trust, the Tribe shall pay the Town annual payments in lieu of taxes ("PILOT Payments") equal to the trust lands' then-assessed value multiplied by a rate of

\$15 per \$1,000 of assessed valuation. Said \$15 assessment amount shall be reassessed every five years and adjusted by the same percent change of the commercial property tax rate over the same period. This sum shall be paid to the Town in equal quarterly amounts.

2. Motor Vehicle Excise Tax. The Tribe agrees to make PILOT Payments to the Town for all tribal vehicles equal to the Motor Vehicle Excise Tax. which would be assessed for the vehicles if owned by an entity other than the Tribe.

**B. Collection of Sales and Use and Personal Property Taxes.**

The Tribe Agrees to collect the local taxes identified in this Section 5.B from non-tribal entities operating on the Project Site which normally would be assessed and collected by the Town if they were operating on land not held in trust. Payment of these collections shall be made quarterly to the Town. The taxes covered by this provision are as follows:

1. Sales and Use Taxes. The Town currently levies, or may in the future be authorized by the Commonwealth to levy, local sales and use taxes on patrons. Currently the Town assesses such a levy at the rate of four percent (4%) of the rents of hotels, motels and lodging houses with the Town. In addition, the Commonwealth is investigating allowing local towns to collect a meal tax and although the Town does not levy that tax at this time, it may do so in the future.

2. Personal Property Taxes. The Town collects personal property taxes which otherwise would be collected from non-tribal entities, including vendors, on the Project Site. These taxes are calculated in accordance with the Town's "Personal

Property Taxpayer Information Guide" and Chapter 59, Section 18 of the Massachusetts General Laws.

**C. Tribal Payments for Infrastructure Improvements.**

As discussed in detail below, the Tribe shall identify and pay the Town for all improvements to infrastructure required by the Project.

The Tribe agrees to pay the Town for any additional improvements to the Town's infrastructure that may be required by future expansion of the Project otherwise not identified herein through environmental and review procedures in Section 3 and in accordance with an Amended Agreement between the Parties.

**D. Tribal Payments for Use of Municipal Services.**

The Parties agree that the Tribe shall make customary monthly payments to the Town for the Town's provision of municipal services delivered to the Project Site and Project as provided in this Agreement..

**E. Tribal Payments for Town Planning Staff Services.**

The Parties agree that the design and construction of the Project and related infrastructure will have significant impacts on the Town. Said impacts will include, but not be limited to, traffic, drainage, site design, environment and light, noise and local neighborhood impacts. The Town desires to work with the Tribe to satisfactorily address the mitigation needs of the Parties, but it is acknowledged that the Project will impose a significant demand on the Town's planning staff and will require the Town to provide dedicated and expeditious service to the Project particularly during the design and construction phases. To provide these services the Town Planning Department anticipates the need to hire (1) one full-time staff planner which, in turn, would allow the

Town Planner to be dedicated to working with the Tribe and (2) the replacement of one full-time clerk. The Tribe agrees to fund these positions at a cost of \$101,653 as explained in detail in the memorandum from the Town Planner dated June 22, 2007, attached here to Exhibit M. This funding would commence 45 days after the date on which the Project Site is accepted into trust and would continue for a period of five years, or until one year after the commencement of business operations at the Project, whichever occurs later.

**F. Tribal Payments for Town Permitting and Inspection Staff Services.**

Other departments of the Town – including the Conservation Commission, Building and Health Departments – will be involved in the permitting of site infrastructure such as roadways, water, sewer, gas and electric utilities, as well as other inspectional services. However, due to the Town's fiscal condition, these offices are understaffed and in need of vehicles and equipment upgrades. The Tribe shall provide the Town with an advancement on the Town's first-year Tribal Impact Payment in the sum of \$\_\_\_\_\_, to be subtracted from the first year Tribal Impact Payment to allow the Town to augment the staff necessary to service the Project at all critical times.

**G. Tribal Impact Payments.**

In addition to the tribal payments provided for in this Agreement and in recognition of the past financial shortfalls and concomitant reductions in personnel throughout the departments of Town government, the Tribe agrees that additional financial support is appropriate to insure that the Town is able to better maintain its current level of municipal services while expanding those same services to meet the needs of the Project. Accordingly, the Tribe agrees to pay to the Town the annual sum

of \$7 million ("Annual Sum"), payable quarterly in equal quarterly amounts within 15 days following the end of each calendar quarter, commencing upon the opening of the Gaming Facility. In addition to the Annual Sum, the Tribe agrees to pay to the Town a sum equal to two percent (2 %) of the Net Win from Class II and Class III gaming which is generated at the Gaming Facility. For the purposes of this Agreement, "Net Win" means the total amount of money wagered at the Gaming Facility, minus prizes paid or the cost of prizes paid. The Tribe will provide the Town with a copy of an audit that verifies the Net Win and corresponding Tribal Impact Payment.

**H. Offsets for Payments Received from the Commonwealth.**

The Tribe proposes to negotiate a Class III Gaming Compact with the Commonwealth pursuant to IGRA. In the event that the Compact provides for payments to the Commonwealth based on a percentage of the Tribe's gaming revenues, the Tribe intends to seek agreement that the Commonwealth will pay to the Town a portion of that percentage payment, which shall be memorialized in the Compact. Any payments received by the Town pursuant to such Compact provision shall be applied as a dollar-for-dollar offset against the Tribal Impact Payments received by the Town in accordance with the provisions of Section 5.G.

**Section 6. Traffic, Transportation and Highways.**

The Tribe agrees to pay for identified improvements to transportation infrastructure including, but not limited to, road construction, bridges, highway maintenance, and new traffic signals. The objective is to construct a road system by which traffic to and from the Project can have direct access to Route 44 and Interstate 495 without having to navigate surface roads within the Town and to provide an

integrated road system that will allow the free and safe flow of traffic from Interstate 495 along Route 44 servicing the Project and other state and local roads without adverse impact to the Town. The Route 44 improvements required to service the Project and the Project Site have been carefully studied by the Town as part of a more than 10 year effort known as the "Route 44 Reconstruction Project." A summary of the necessary design concepts are reported in an attachment hereto identified as Exhibit E, and it documents the total estimated construction costs for the requisite highway improvements will be \$171,812,000. This estimate does not include unusual construction costs which may be incurred because highway and Project construction will be occurring simultaneously.

The Tribe agrees that it is directly responsible for funding the improvements identified at Exhibit E, although it anticipates seeking all or a portion of the highway funding from the state and federal governments. The Tribe and the Town agree to work together to modify and finalize the improvements identified at Exhibit E to satisfactorily address the transportation needs of both the Tribe and the Town.

Access to the Project shall be via the Route 44 project only and no other roads adjacent to the Project Site. All other entries to the Project Site shall be secured and may only be used for ingress and egress under emergency conditions which shall be presented and agreed to the Town Police and Fire Departments in advance of their use.

As part of the environmental review process to be conducted pursuant to Section 3 of this Agreement, the Tribe, at its sole expense, will cause to be conducted a traffic impact analysis ("TIA") to determine the traffic impacts of the Tribe's proposed development(s) and use(s) of the Project Site. The Tribe will mitigate traffic and

circulation impacts identified in the TIA in conformity with standards as agreed to by the Town.

**Section 7. Utilities – Middleborough Gas and Electric Department.**

The Tribe shall exclusively contract at retail with the Middleborough Gas and Electric Department ("MGED") for electricity and gas as follows and as more fully explained in a letter dated June 25, 2007, from MGED to the Town Planner, a copy of which is Exhibit F to this Agreement:

**A. Electricity.** The Tribe shall pay for electric power supply and the actual costs incurred by MGED to upgrade existing electric facilities in order to provide electric power to the Project Site. It is agreed that this upgrade shall require a new Electric Substation which will be equipped with two 60 MVA ("mega volt amps") transformers. The Tribe understands that the lead time for the electrical installation is approximately two years prior to commencement of business operations at the Project, and this requires two distinct phases: (1) securing approvals from the National Grid ("NGRID"), Independent System Operator ("ISO"), the Middleborough Conservation Commission and other necessary permits, and (2) ordering, receiving delivery of and installing the transformers. The second step will require approximately 15 months of the 24 month time line. The estimated cost for this installation and equipment is \$8 million.

Second, based on the installations at the two major Indian casinos in Connecticut, it is assumed that the Project will require underground electrical distribution; the estimated cost for this installation is \$5 million.

Finally, the project will require installation of pad mount transformers, the cost for which will be established at the time of purchase.

Thus, the total estimated cost for MGED to upgrade existing electric facilities in order to provide electric power to the Project Site is \$13 million, plus the cost of the pad mount transformers. This cost must be paid in advance so that MGED can, in turn, order and install the required equipment and facilities. The rates to be charged for electricity will be negotiated between the Tribe and MGED, and it is anticipated that those rates will be favorable to the Tribe and the Town..

**B. Natural Gas.** The Tribe shall pay the actual costs incurred by MGED to upgrade existing gas transmission facilities – including pipeline – in order to provide 200-250 psi natural gas to the Project Site. It is agreed that this upgrade shall include construction of an approximately 10 mile pipeline to connect the Project Site to the Algonquin Gas Transmission line in South Middleborough, a new meter station, distribution mains, odorization, heater, regulators, pressure and temperature transmitters, SCADA ("System Control Data Acquisition") system and other components as required. Other requirements will include securing easements for the pipeline route, permitting (including environmental, Federal Energy Regulatory Commission, Department of Public Utilities and other necessary permits) for the pipeline installation and participation in appropriate public meetings. In addition, MGED will have to prepare construction and bidding documents, conduct inspections of the construction, purge and start-up of the new facilities, prepare and promulgate operating and maintenance manuals, training manuals, and operator qualifications.

The total estimated cost for MGED to upgrade existing facilities in order to provide gas to the Project Site is \$12.4 million. This cost must be paid in advance so that MGED can, in turn, order and install the required equipment and facilities. The

rates to be charged for natural gas will be negotiated between the Tribe and MGED, and it is anticipated that those rates will be favorable to the Tribe and the town..

**Section 8. Water Service.**

Based upon the reported water supply amount currently required by a comparable casino and resort in Connecticut, it is estimated that the Project will consume an average daily volume of 750,000 gallons of water, with a maximum 24-hour usage available of 1.5 million gallons. The following discussion is based on those requirements.

No use shall occur on or off the Project Site until water service is completed, inspected and approved by inspectors designated by the Town. Any approvals by the Town required to implement this Section shall not be unreasonably withheld, and the standards referred to in this Section shall be substantially identical to those applied by the Town to other similar users.

The Tribe shall pay all water connection fees and monthly water service charges, and assume all costs to the Town required to construct water system infrastructure improvements required to reliably expand the water system to accommodate the anticipated water needs (including fire protection) of the Project. The Town shall provide an allotted maximum water volume of up to an average daily volume of 750,000 gallons, with a maximum 24-hour usage of 1.5 million gallons to the Project.

No use shall occur on or off the Project Site until water service is completed, inspected and approved by inspectors designated by the Town. Any approvals by the Town required to implement this Section shall not be unreasonably withheld, and the

standards referred to in this Section shall be substantially identical to those applied by the Town to other similar users.

As explained in a June 20, 2007 letter from Tighe & Bond to the Town Manager, a copy of which is Exhibit G to this Agreement, the following will be required to meet the anticipated water needs of the Project:

(1) 16 inch diameter water main extension loop to serve the Project Site, which will be approximately 26,400 feet in length, at an estimated cost of \$7.9 million;

(2) optimize the supply capacity of Tispaquin Wells 1 and 2 by adding satellite wells and new pumping equipment, at an estimated cost of \$400,000;

(3) optimize the supply capacity of East Main Street Wells 1 and 2 by adding satellite wells and new pumping equipment, at an estimated cost of \$400,000;

(4) optimize the supply capacity of Rocks Wells 1 and 2 by adding a second production well and new pumping equipment and re-permitting of the Mass DEP approved yield and the Water Management Act Withdrawal Permit, at an estimated cost of \$400,000;

(5) optimize the supply capacity of Spruce Street Well by adding satellite wells and new pumping equipment re-permitting of the Mass DEP approved yield and the Water Management Act Withdrawal Permit, at an estimated cost of \$600,000;

(6) Tispaquin Wells water treatment plant, at an estimated cost of \$3.6 million;

(7) East Main Street Wells water treatment plant, at an estimated cost of \$3.6 million;

(8) replace the old Fire Tower Hill 500,000 gallon water storage tank with a new 1.5 million gallon elevated water storage tank, at an estimated cost of \$3 million;

(9) develop a new well and pumping station at the Cross Street/Route 44 site, at an estimated cost of \$3 million; and

(10) develop a new well and pumping station at the Cherry Street/Walnut Streets (Wilbur) site, at an estimated cost of \$3 million.

The total estimated cost of the water infrastructure capital improvements required is \$26.1 million, of which the Tribe's allocation would be an estimated \$22.5 million.

**Section 9. Sewer and Wastewater Service.**

Based upon the reported water supply amount currently required by a comparable casino and resort in Connecticut and discussions with TetraTech Rizzo Associates, consultant to the Tribe, it is estimated that the Project will generate wastewater at an average daily volume of 500,000 gallons, with a maximum 24-hour volume of one million gallons. The following discussion is based on those requirements.

The Tribe shall provide for sewage disposal generated at the Project Site by connection to the Town's existing sewer collection system. The Town shall provide an allotted maximum wastewater volume of up to an average daily volume of 500,000 gallons, with a maximum 24-hour volume of one million gallons to the Project. The Tribe shall pay all sewer connection fees and monthly sewer service charges, obtain

required easements for sewer infrastructure within the Project Site (if needed), construct to the Town's sewer infrastructure standards and pay all costs of constructing sewer infrastructure necessary to connect the Project to existing sewer services.

No use shall occur on or off the Project Site until sewer service is completed, inspected and approved by inspectors designated by the Town. Any approvals by the Town required to implement this Section shall not be unreasonably withheld, and the standards referred to in this Section shall be substantially identical to those applied by the Town to other similar users.

The Tribe shall assume all costs to the Town required to construct sewer system infrastructure improvements required to reliably expand the sewer system to accommodate the anticipated wastewater needs of the Project.

As explained in a June 20, 2007 letter from Tighe & Bond to the Town Manager, a copy of which is attached hereto as Exhibit H, in order to meet the anticipated wastewater requirements of the Project, the following development will be required.:

(1) sewer connection from the Project Site to the wastewater treatment plant, including 11, 000 feet of pipe and a Route 44 bridge crossing, at an estimated cost of \$4 million;

(2) re-use treated effluent transmission pipe from the wastewater treatment plant to the development site, including 11,000 feet of six inch diameter PVC pipe and a Route 44 bridge crossing, at an estimated cost of \$2.3 million; and

(3) rehabilitation and upgrades to the wastewater treatment plant to reliably produce effluent quality meeting Mass DEP standards for re-use, at an estimated cost of \$20 million.

The total estimated cost of the wastewater infrastructure capital improvements required to meet the needs of the Project is \$26.3 million, all of which would be allocated to the Project.

**Section 10. Solid Waste Disposal.**

The Tribe shall contract with a private waste hauler for disposal of solid waste and recycled materials generated by the Project and pay all fees associated therewith, and the Town shall have no obligation to provide solid waste disposal services to the Tribe.

**Section 11. Police Protection.**

It is anticipated that the Tribe's provision of police protection to the Project Site will be addressed in the Class III Gaming Compact between the Tribe and the Commonwealth. In any event, the Tribe plans to establish a tribal police force for the Project Site, and the Parties will meet and negotiate in good faith for a cross-deputization and mutual aid agreement identifying the respective jurisdictional activities of the tribal police force and the Town Police Department. The Town will assist the Tribe in its establishment of a tribal police force, including working cooperatively to seek federal funds available to recognized Indian Tribes for public safety and police services.

Prior to assuming police duties at the Project Site, all tribal police personnel must have satisfactorily completed police training equal to the training for the Town Police Department, such as is available through the Commonwealth police academy or federal police academies.

Notwithstanding the Tribe's intention to establish its own police force, the Parties recognize and agree that the Project will require an increased presence of Town police

personnel as a result of the Police Department's legal obligation to provide police protection services which cannot be reduced by this Agreement.

Consistent with federal law, police services shall include the authority to enforce any and all state and local criminal laws and ordinances on the Project Site, which shall include, but not be limited to, 24-hour patrol services and response to emergency 911 calls, and general investigations for major crimes as the Middleborough Police Department deems necessary.

As of the first day of Project operations, the Town agrees to provide police services to the Project Site consistent with the provisions of this Agreement and in recognition of the current personnel and equipment shortfalls within the Middleborough Police Department, as detailed in the letter from the Police Department to the Town Manager attached hereto as Exhibit I. It is reported in Exhibit I and understood by the Tribe that the Town's financial shortfalls and current budget restrictions have required the Town to maintain its police force at personnel levels below those recommended for municipalities with the Town's population by the United States Department of Justice. Because of the current understaffing, the Town currently is able to maintain only three patrol units on the streets of this 72 square mile Town and is similarly understaffed in every area of the Police Department. Yet, police personnel will be required to respond to calls from, and make arrests at, the Project Site because non-Indians will not be subject to arrest by Project security personnel or tribal police.

In order to insure that adequate law enforcement is available for the Project, the Tribe will fund an additional police unit consisting of one new police cruiser and annual funding of the standard four policemen per cruiser. The current cost per cruiser is

\$29,984 and the Tribe shall fund replacement cruisers covered by this Agreement every five years with inflation adjustments to reflect actual costs of replacement. The cost for an entry level police officer is \$67,465.37 per year (entry level salary - \$41,182.44, 15 percent career incentive - \$6,177.37, six percent night shift differential - \$2,841.59, holiday pay - \$791.97; health and other benefits - \$16,472), and the first year cost to the Tribe for the four officer staffing per cruiser is \$269,861.48 per four officer unit. The lead time for hiring and training officers is 12 months and the Tribe agrees to fund the hiring of the officers so that they will be trained and on duty as of the first day of commercial operations at the Project.

In addition, the anticipated scope of the Project suggests that a second additional police cruiser unit will be necessary within six months of the opening date. If the Town determines that the additional unit is necessitated by the Project's operations, it will provide notice of this determination pursuant to Section 24 of this Agreement. Upon receipt of such notice, the Tribe agrees to negotiate with the Town for financing a second cruiser and four-person staffing with the same provisions as for the first unit. Failure to reach agreement on this matter shall give rise to invocation of the Dispute Resolution provisions of Section 20 of this Agreement.

When practical in responding to calls for police assistance at the Project Site, the Town Police Department will attempt to notify the Tribe's designated public safety or security director and shall coordinate and cooperate with designated casino security force personnel, except when, in the judgment of the law enforcement officers involved, their safety, the safety of the public, or the integrity of an investigation or enforcement action, would be compromised by doing so.

All persons employed in the performance of law enforcement pursuant to this Agreement shall be employees of the Town when responding to any calls associated with the Project Site or Project.

Finally, the Town Police Department already has a serious need for a new central police station and that need likely will become critical with the increased demands imposed because of the presence of the Project within the Town. The current estimated cost for this station is \$6-8 million, and the Tribe will fund \_\_\_ percent of such construction.

Whenever the Tribe schedules a Special Event on the Project Site which is anticipated to require law enforcement personnel above the level of staffing called for in this Agreement – such as a need for an increase in the amount, scope or level of on-duty police, traffic control and crowd control – the Parties will negotiate separate agreements for each event to provide adequate police staffing and reasonable compensation to the Town for coverage of such events.

**Section 12. Fire Protection and Emergency Medical Services.**

It is anticipated that fire protection to the Project Site will be provided by the Tribe. However, it is also recognized that the Town Fire Department is required by law to provide fire protection and first responder emergency medical services at the Project Site. To meet this obligation while respecting the Tribe's objective of self sufficiency, the Town Fire Department will work cooperatively with the tribal fire department to insure that the Project Site has the required level of fire protection and emergency medical services at all times. In this regard, the Town will assist the Tribe in its establishment of a tribal fire department, including working cooperatively to seek federal

funds available to recognized Indian Tribes for public safety, including police, fire and emergency medical services. The Tribe agrees that its fire personnel must have completed training equal to that required for the Town Fire Department which is available through both Commonwealth and federal fire academies.

Notwithstanding the Tribe's intention to establish its own fire department, the Parties recognize and agree that the Town will always be legally required to serve as the first responder for fire protection and emergency response services at the Project Site. To accommodate the anticipated added burdens to be imposed on the Fire Department by the presence of the Project, it is critical for the Town to address the fact that budget shortfalls over the past several years have caused reductions in Fire Department personnel and equipment replacement. As a result of these reductions, the Department's staffing levels are at an all time low. The major threats to the community – and to the Project – are (a) the risk of injury from fire and (b) life safety risks, especially risk of death due to a delayed response to sudden cardiac arrest. These threats will be particularly acute with the development of the Gaming Facility since it is documented that a great percentage of casino patrons are elder citizens who cannot easily escape fire scenes and also require emergency medical treatment much more frequently than other population groups. The budget issues and staffing problems are detailed in the undated report from the Headquarters of the Fire Department, attached hereto as Exhibit J.

Although there is a critical need to hire additional firefighting personnel, there is an even greater crisis in the Department's ability to provide emergency medical services to the Project. The Town currently contracts with a private company for its EMS service

which means that the Town is relying on a private company to meet this important first response requirement. The problem is particularly acute – and will be exacerbated by the opening of the Project – since the nearest hospital is at least a 20 minute drive from the Project Site. Thus, any call for medical service requiring hospital care would necessitate at least a 60-minute ambulance response – a minimum of 20 minutes to drive from the Town to the hospital, an estimated 20 minutes for intake processing at the hospital and an estimated 20 minute return trip to the Town. The only possible solution to this problem is that the Town must purchase and staff two ambulances in order to have a reliable EMS capability. All of this is explained in both Exhibit J and the June 21, 2007, memorandum from the Town Fire Chief Robert W. Silva to the Town Manager which is attached hereto as Exhibit K. The latter memorandum explains that the cost of one ambulance completely stocked at the Advance Life Support Level ("ALS") is \$180,000, and a detailed breakdown of this figure is provided at the Exhibit. In addition, it will be necessary to hire and train paramedic personnel to staff the ambulances.

In order to insure a safe level of fire and EMS services, the Tribe agrees to fund the purchase of two ALS ambulances. In addition, the Tribe agrees that additional Fire Department personnel will be required as a result of development of the Project and agrees to fund the training of an additional 16 firefighter/paramedics and pay the salary for those personnel for one year.

The cost for a new paramedic/firefighter is \$65,299.42 per year (including \$2,600 for education, \$3,330.60 night differential, \$975.00 clothing allowance and \$18,656.98 for health and welfare benefits). The current annual cost of for staffing to address the

Project's impact upon the Town's EMS service is \$1,044,790.72. The lead time for hiring and training paramedic/firefighter is 12 months and the Tribe agrees to fund the hiring of the paramedic/firefighters so that they will be trained and on duty as of the first day of commercial operations at the Project.

**Section 13. Compliance with State and Local Building Construction and Fire Protection Codes.**

The Tribe shall adopt codes applicable to the Project relating to building construction and fire protection standards ("Tribal Building Code") that are no less rigorous than the Massachusetts Uniform Building and Fire Prevention Code, as the same shall be amended from time to time. Enforcement of the Tribal Building Code shall be by a Tribal Code Enforcement Officer appointed by the Tribal Council. Additionally, independent consultants shall be engaged by the Tribe to periodically review construction activity at the Project Site, to conduct inspections and ensure compliance with the Tribal Building Code.

The Tribe shall provide the Town written certification from the Project's architect of record that all Project structures have been constructed in accordance with said standards and code provisions. To ensure compliance with the applicable codes, including those pertaining to building standards, the Tribe agrees to contract with the Town to provide planning, building and safety, fire prevention, and public works personnel to review any and all construction plans and inspect construction of all improvements on or off the Project Site. The Town shall, to the extent consistent with Commonwealth law, keep such construction plans confidential in light of the interest of the Parties in maintaining the security of the Gaming Facility.

**Section 14. Employment of Middleborough Residents.**

Subject to tribal employment preferences relating to tribal members and members of other federally-recognized Indian tribes, the Tribe shall work in good faith with the Town to employ Middleborough residents or children of Middleborough residents at the Project to the extent permitted by state or federal law.

**Section 15. Compulsive Behavior.**

The Tribe shall make a one-time payment to an entity already dealing with treatment for compulsive behavior, including problem gambling, to be chosen by the Tribal Town Advisory Committee established pursuant to Section 18 below, in the sum of \$40,000. Thereafter, the Tribe will make annual contributions in the amount of \$20,000 for this purpose.

**Section 16. Prohibited Activities.**

The Tribe agrees that the following activities shall not be permitted at any time at the Project Site, and will adopt an ordinance prohibiting them and providing for the enforcement of these prohibitions.

**A.** Persons under the age of 21 shall not be allowed to gamble or remain in any room or area in which gaming activities are being conducted. Individuals under the age of 21 may pass through gaming rooms or areas only if they are *en route* to a non-gaming room or area of the Gaming Facility.

**B.** Persons under the age of 21 shall not be allowed to purchase, consume, or otherwise possess alcoholic beverages. All alcohol beverage service shall be subject to applicable State Liquor Laws.

**C.** Nude entertainment, nude dancing, or venues containing nudity or sexually oriented business activities shall not be permitted at the Project Site.

D. Fuel dispensing or fuel storage facilities for motor vehicles shall not be operated at the Project Site.

**Section 17. Tribal Town Advisory Committee.**

In matters other than issues appropriately arising under the Dispute Resolution provisions of Section 20 of this Agreement, the Town and the Tribe agree to establish a permanent committee, to be known as the Tribal-Town Advisory Committee, consisting of nine (9) members. The jurisdiction of the Committee shall encompass any matter within the scope of this Agreement including questions related to implementation. The Committee shall be organized within 90 days of execution of this Agreement.

**A. Composition of the Advisory Committee.**

The Committee shall be composed as follows: [1-2] two members of the Middleborough Board of Selectmen or their designees, [3] the Town Manager or his/her designee, [4] one representative of a community organization established to address the local impacts of gaming as designated by the Board of Selectmen, [5-8] four representatives of the Tribe, and [9] a member who shall be selected by the other eight members of the Committee.

**B. Open Meetings.**

Advisory Committee meetings shall constitute public meetings subject to the requirements and provisions of the Open Meeting Law (G.L. c.39, ss.23A-23C, 24).

**C. Meeting Times and Locations.**

The Advisory Committee shall meet on not less than a quarterly basis, or more frequently as needed, according to procedures established by the Advisory Committee and at locations within the Town of Middleborough.

**D. Authority of the Advisory Committee.**

The Advisory Committee may make recommendations to the Tribe and the Town, including amendments to this Agreement, which both Parties shall consider before taking any action on an Advisory Committee recommendation. In addition, the Advisory Committee will work with the Tribe and the appropriate departments of the Town to develop local tourist attractions and the marketing thereof for the mutual benefit of the Parties and enhancement of the Tribe's intention to create a travel destination for its customers, including the attractions of the Project and the historical properties and facilities within the Town as are discussed in detail at Section 25.L below.

**Section 18. Civil Jurisdiction.**

The Tribe, in the exercise of its sovereign authority, will not exercise its civil jurisdiction over persons who are not members of any Indian tribe at the Project Site or on any other lands within the Town.

**Section 19. Law Enforcement/Criminal Prosecution.**

The Parties agree that the safety and well-being of all who reside on, work on or visit the Project Site is of utmost importance, and, as such, that comprehensive law enforcement coverage is a crucial element in achieving this objective. To the extent that this is not otherwise covered by this Agreement, the Tribe agrees to diligently uphold and carry out its duties relating to law enforcement and criminal jurisdiction and to cooperate with the Town Police Department to ensure comprehensive law enforcement coverage over activities at the Project Site.

Prosecutions for violations of law by persons who are not members of any Indian tribe at the Project Site shall be conducted by the District Attorney for Plymouth County

except for those committed against an Indian person for which the federal government has jurisdiction to prosecute: murder, manslaughter, kidnapping, maiming, sexual abuse, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, assault against an individual who has not attained the age of 16. arson, burglary, robbery embezzlement and theft.. See 18 U.S.C. § 1153.

**Section 20. Dispute Resolution.**

The Town and the Tribe agree to the following dispute resolution procedures.

**A. Meet and Confer.**

In the event that the Town or the Tribe believes that the other has committed a possible violation of this Agreement, it may request in writing that the Parties meet and confer in good faith for the purpose of attempting to reach a mutually satisfactory resolution of the problem within 15 days of the date of service of said request.

**B. Notice of Disagreement.**

If the complaining party is not satisfied with the result of the meet and confer process, the complaining party may provide written notice to the other identifying and describing any alleged violation of this Agreement ("Notice of Disagreement"), with particularity, if available, and setting forth the action required to remedy the alleged violation.

**C. Response to Notice of Disagreement.**

Within five days of service of a Notice of Disagreement, the recipient party shall provide a written response denying or admitting the allegations set forth in the Notice of Disagreement, and, if the truth of the allegations is admitted, setting forth in detail the

steps it has taken and/or will take to cure the violations. Failure to serve a timely response shall entitle the complaining party to proceed directly to arbitration as provided below.

**D. Binding Arbitration Procedure.**

Subject to prior compliance with the Meet and Confer process and the Notice and Response process as described above, either Party has the right to initiate binding arbitration to resolve any dispute arising under this Agreement. The arbitration shall be conducted in accordance with the following procedures:

The arbitration shall be administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. The arbitrator shall be selected pursuant to such rules; provided that he/she must be a licensed attorney, knowledgeable in federal Indian law and federal Indian gaming law. The parties and the arbitrator shall maintain strict confidentiality with respect to the arbitration.

The arbitration shall be held in Plymouth County, Massachusetts, unless otherwise agreed to by the Parties in writing. The arbitrator shall be empowered to grant equitable and injunctive relief and specific performance of the terms and conditions of this Agreement. The arbitrator shall not have the power to award punitive damages. The provisions of applicable state law are incorporated into, and made part of this Agreement; provided that no discovery authorized by said section may be conducted without leave of the arbitrator, who shall decide to grant leave based on the need of the requesting party and the burden of such discovery in light of the nature and complexity of the dispute.

No depositions shall be allowed without the mutual consent of both parties, and the provisions of Rule 26 of the Federal Rules of Civil Procedure shall apply, as well as all limitations on discovery. Summary disposition of those disputes ripe for such treatment shall be encouraged. The terms of this Agreement shall be strictly construed in a manner consistent with the intent of the parties.

If either party requests a hearing, the arbitrator shall set the matter for hearing. Otherwise, the arbitrator shall decide whether to set the matter for hearing.

The resulting award shall be in writing and give the reasons for the decision. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The costs and expenses of the American Arbitration Association and the arbitrator shall be shared equally by and between the Parties unless the arbitrator rules otherwise.

**E. Expedited Procedure for Threats to Public Health or Safety.**

If the Town or the Tribe reasonably believes that in violation of this Agreement the other's conduct has caused or will cause a significant threat to public health or safety, resolution of which cannot be delayed for the time periods otherwise specified in this Section, the complaining Party may proceed with litigation consistent with the Judicial Review Provisions contained in Section 21.

**Section 21. Judicial Review.**

The Parties consent to an action for (a) declaratory and injunctive relief pursuant to the provisions of Section 20, or (b) enforcement of any award in arbitration pursuant to the provisions of Section 20.D, which actions shall be in the United States District Court for the District of Massachusetts or Superior Court for Plymouth County. Service

of process in any such judicial proceeding is waived in favor of delivery of court documents by Certified Mail - Return Receipt Requested to the individuals or offices designated for Notices at Section 24 below.

**Section 22. Limited Waiver of Tribal Sovereign Immunity.**

The Tribe agrees to waive its sovereign immunity exclusively in favor of the Town as to any dispute that arises out of this Agreement pursuant to the terms set forth herein for enforcement. With respect to the enforcement of an award of money and/or damages, the arbitrator(s) and/or court will have no authority or jurisdiction to order the execution against any assets or revenues of the Tribe except Project income as defined by Generally Accepted Accounting Principles. The Tribe's governing body shall execute a formal Resolution of Limited Waiver of Sovereign Immunity substantially identical to the attached Exhibit B, and the executed Limited Waiver is a condition for the Town's execution of this Agreement and shall be made a part hereof.

**Section 23. Indemnification.**

The Tribe agrees to and shall indemnify, defend, protect, and hold harmless the Town from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs and expenses (including reasonable attorneys' fees), arising from or in connection with, or caused by any act, omission or negligence of the Tribe or its contractors, licensees, invitees, agents, lessees, servants or employees, related to or in connection with any obligations on the Tribe's part to be performed under the terms of this Agreement, or arising from any negligence of the Tribe, or any such claim or any action or proceeding brought thereon or any action or proceeding filed against the Town which challenges the Town's approval, execution or delivery of this Agreement on the

basis of claims related to state laws, and in case any action or proceeding be brought against the Town (or the Town's Representatives) by reason of any such claim, the Tribe upon notice from the Town shall have the option to defend the same at the Tribe's expense by counsel reasonably satisfactory to the Town. However, in the event that the Tribe does not elect to defend the action or proceeding, the Town shall defend the same, at the Tribe's expense, and shall consult with the Tribe during the pendency of the action or proceeding.

The Town agrees to and shall indemnify, defend, protect, and hold harmless the Tribe from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs and expenses (including reasonable attorneys' fees) arising from or in connection with, or caused by any act, omission or negligence of the Town or its contractors, licensees, invitees, agents, lessees, servants or employees, related to or in connection with any obligations on the Town's part to be performed under the terms of this Agreement, or arising from gross negligence of the Town, and in case any action or proceeding be brought against the Tribe (or the Tribe's agents, employees, contractors, subcontractors or legal counsel) by reason of any such claim, the Town upon notice from the Tribe shall have the option to defend the same at the Town's expense by counsel reasonably satisfactory to the Tribe. However, in the event that the Town does not elect to defend the action or proceeding, the Tribe shall defend the same, at the Town's expense, and shall consult with the Town during the pendency of the action or proceeding.

**Section 24. Notices.**

Any notices, consents, demands, requests, approvals, and other communications to be given under this Agreement by any party to the other shall be deemed to have been duly given if given in writing and personally delivered, or sent by nationally recognized overnight courier, or sent by certified mail, postage prepaid with return receipt requested, at the following addresses:

**If to the Tribe:**

The Honorable Glenn Marshall  
Tribal Chairman  
483 Great Neck Road South  
P.O. Box 1048  
Mashpee, MA 02649

**With a copy to:**

William A. McDermott, Jr., Esquire  
Sullivan & McDermott  
1990 Centre Street  
West Roxbury, MA 02132

**If to the Town:**

Town of Middleborough  
*Attn:* Town Manager  
Town Hall  
10 Nickerson Avenue  
Middleborough, MA 02346

**With a copy to:**

Daniel F. Murray, Esquire  
Middleborough Town Counsel  
Decas, Murray & Decas  
132 North Main  
P.O. Box 201  
Middleborough, MA 02346

Notices delivered personally or by courier shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of 10:00 am on the third business day after mailing. Any party may change its address for notice hereunder by giving notice of such change in the manner provided in this Section.

## **Section 25. Additional Problems Resulting from Project.**

### **A. Light Pollution, Noise and Rural Character; Site Buffers.**

As part of the environmental review discussed in Section 3, The Tribe will work with the Town Planning Department to develop at tribal expense a comprehensive plan to minimize impacts upon the areas adjacent to the Project Site of light pollution and noise, and will use the best available technology to achieve these objectives. Additionally the site is adjacent to historic agricultural neighborhoods including but not limited to the Thompson Street area. The comprehensive plan shall include, but not be limited to, the maintenance or placement of site buffers or other effective forms of screening as necessary to visually screen the Project's developed site (such as buildings, structures and parking areas) from residential and historic areas of the Town. The plan shall be approved by the Tribe and the Town through the Town's Planning Board, and shall be implemented at tribal expense prior to the commencement of Project construction.

### **B. Schools.**

It is impossible to predict the impact upon the Town schools as a result of the Project employment. However, development of affordable housing within the Town for Project employees and their families would insure such an impact which would have to be addressed. This impact would include both increased enrollment in the school system which already is distressed due to funding reductions and forced reductions in the teaching force. In addition, the experience of the communities adjacent to the large Connecticut casinos shows that there is a dramatic increase in the need for teachers with foreign language skills as determined by the specific national origins of various

workers. In one such town, there now are 35 languages represented by students in the school system. The Middleborough School Superintendent has identified the current deficiencies within the school system and they are explained in detail at a letter dated June 29, 2007, from Dr. Robert M. Sullivan, Superintendent of Schools, attached hereto as Exhibit L.

**C. Housing.**

It is documented that employees at tribal casinos and hotels are often unable to secure housing within the immediate vicinity because affordable housing is simply not available to them. The Tribe acknowledges that this is a major problem for its Project development and will work with the Town to confront this issue on both short- and long-term bases. Accordingly, the Town will examine the development of affordable housing, and if housing development is pursued then the Middleborough Housing Authority assisted by the Town's Office of Economic and Community Development will seek funding for such projects and commence housing construction once the Tribe secures the necessary governmental Project approvals at the state and federal levels. However, the Tribe agrees to work with the Town on these housing projects and will assist the Town in both securing funding or providing direct funding as necessary to allow the Town to meet the increased housing demands from the Project.

**D. Other Town Departments.**

It is understood by the Tribe that the Town's financial shortfalls and current budget restrictions have required the Town to reduce and/or maintain all of its departments at personnel and equipment levels below those necessary to provide the Town with adequate community services. Town Departments have identified impacts

that they anticipate with the opening of the Project within the Town, including but not limited to, the need for increased snow and ice removal services by the Department of Public Works. It is the Town's intention to utilize a portion of the Tribal Impact Payments to restore these departments to appropriate levels of staffing and equipment and to increase that staffing as necessary to respond to the increase in service needs in response to the project. Exhibit M hereto explains these needs.

**E. Health and Safety Inspections.**

The Town is responsible for training food workers and the Tribe agrees to fund such training for all such workers within the Project. In addition, the Tribe consents to having all customary health and safety inspections at the Project conducted by the Town Health Department and to pay the fees customarily assessed by the Town for such services.

**F. Shuttle Services Required by the Project.**

The Tribe anticipates that it will require the use of off-Project Site parking for employees which would be served by shuttle busses. In addition, it is anticipated that the Tribe will offer shuttle services to the MBTA commuter rail station in Middleborough and to various communities and residential developments so that customers can be transported to the Project. The Tribe recognizes the local concerns over increased vehicular emissions and agrees to consider the use of low emission, compressed natural gas (CNG) and/or hybrid vehicles for these shuttle services. In addition, the Tribe will work with the Town Police and Planning Departments and traffic consultants to develop shuttle bus routes in order to minimize the traffic impacts upon

local residents and to use state highways such as Routes 44 and I-495 whenever possible.

**G. Local Vendors.**

To the fullest extent feasible, the Tribe will contract with local vendors for food and services required at the Project.

**H. Decline in Property Values Within the Town.**

Town residents living near the Project Site are concerned that their property values will decline because of the Project development. The Town believes that it is critical to protect affected residents from such decline and proposes to establish a Project Impact Fund which would provide financial relief to those residents who can demonstrate that they in fact have been negatively impacted by the Project's presence within the Town after commencement of business operations.

**I. Funding for Project Impact Fund.**

The Town proposes to fund the Project Impact Fund for the purposes of insulating its residents from being financially harmed by the Project's presence within the community and mitigating other unanticipated community impacts. The Tribe shall make annual payments to the Town for five years upon initial opening of the Project as follows: \_\_\_\_\_. The Town will disperse monies from the fund for a period of 10 years from initial project opening. All funds remaining in the Fund after the 10 year period shall be returned to the Tribe.

**J. Project Buildings and Facilities To Be Green Construction.**

The Tribe has stated its intention to build environmentally friendly buildings and agrees that all Project construction shall be LEED certified projects as

defined by the US Green Build Council, and designed to reduce the impacts of greenhouse gasses, groundwater discharge, runoff, lighting, etc. See [www.usgbc.org/DisplayPlage.aspx?Category ID=19](http://www.usgbc.org/DisplayPlage.aspx?Category ID=19).

**K. Height Restrictions on Project Buildings.**

No Project building will be higher than the Town's water towers, or approximately 345 feet NGVD 1927 (National Geodetic Vertical Datum 1927).

**L. Other Town Priorities.**

The Town is rich in historic heritage which is valued by both the Tribe and Town residents. Several of these historic areas are located near the Project and are identified below. However, the list should not be considered all inclusive.

Muttock, Oliver Mill Park, and the Oliver and Washburn houses are of important historic significance to the Town and are part of the Muttock National Register Historic District. The Town also desires to protect the undeveloped portions of these areas and develop them or portions of them for tourism with the support and assistance of the Tribe.

The Picone Farm is a significant natural resource of the Town and the Town has long worked for its preservation as protected open space. If the Tribe were to acquire this property, it is the Town's desire to see it preserved as open space, a living museum or golf course as free of permanent buildings or structures as possible.

Thompson Street is the Town's historic agricultural neighborhood and the Commonwealth has studied it as a Heritage Landscape. The Town has planned to designate Thompson Street a Historic District but has not completed this designation of this date. The Town desires that the Tribe be sensitive with the Project's development

where it abuts Thompson Street or as it is visible from Thompson Street as to not adversely impact this area.

The Robbins Museum of Archaeology is an important part of the Town and Downtown Middleborough. The Town desires to have the Tribe and the Massachusetts Archaeological Society work together in a mutual and respectful way to enhance one another's museum efforts. Similarly Middleborough Historical Association Museum known as the "Tom Thumb Museum" is an important part of the Town and the Middleborough Downtown. It is again the Town's desire to have the Tribe and Middleborough Historical Association work together to in a mutual and respectful way to enhance one another's museum efforts.

**Section 26. Miscellaneous Provisions.**

**A. Effective Date and Term.**

This Agreement shall become effective upon its execution by the Parties hereto and shall continue during the period of time that business operations related to the Project are conducted at the Project Site, provided that, if the Tribe is informed by the Secretary of the Interior that the United States will not take the land into trust for the purposes of allowing the Tribe to conduct gaming activities thereon then this Agreement shall terminate 30 days after all appeals related to such a decision have been exhausted.

Prior to the termination of Project operations at the Project Site, either Party may request the other Party to enter into good faith negotiations to extend this Agreement or enter into a new Agreement. If the Parties have not agreed to extend the date of this Agreement nor entered into a new Agreement by the termination of Project

operations at the Project Site, this Agreement will automatically be extended for one additional year, provided the Parties agree to submit to binding arbitration for the purposes of securing a new Agreement.

**B. Termination.**

Notwithstanding anything to the contrary set forth herein, this Agreement shall terminate in the event the Project permanently ceases to offer all commercial gaming (including Class II and Class III) to the public, *provided*; however, that the obligation to make payment of any payment pursuant to the final calendar quarter of Gaming Facility operations survives, along with the dispute resolution and waiver of sovereign immunity provisions of this Agreement shall survive the termination of this Agreement.

Further, in the event that the Tribe is informed by the Secretary of the Interior that the United States will not take the Project Site into trust for the purposes of allowing the Tribe to conduct gaming activities thereon, than this Agreement shall terminate 30 days after all appeals related to such a decision by the United States have been exhausted.

**C. Authorization.**

The Tribe and the Town each represent and warrant that each has performed all acts required by its own laws for the validity of adoption of this Agreement, including, but not limited to, matters of procedure and notice, and each has the full power and authority to execute this Agreement and to perform its obligations in accordance with the terms and conditions thereof, and that the representative executing this Agreement on behalf of such party is duly and fully authorized to so execute and deliver this Agreement.

The Town has approved this Agreement at a duly noticed Town Meeting held on July \_\_, 2007, and a certified copy of the proceeding of the Board is attached hereto as Exhibit N.

**D. Interpretation.**

The general rule of contract construction that any ambiguity in a contract will be construed against the party drafting such contract shall not apply to this Agreement. Instead, this Agreement shall be interpreted as if drafted jointly by the Parties.

**E. Severability.**

Except for a determination by the United States government or a court of competent jurisdiction that the Project Site does not qualify for gaming under IGRA – in which case this Agreement is void – if any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of the Agreement, or by a decision of the United States Secretary of the Interior, Bureau of Indian Affairs or agency charged with review of Agreements entered into with Indian tribes, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision never comprised a part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance there from. Furthermore, in lieu of such illegal, invalid, or unenforceable provision, there shall be added automatically as part of this Agreement, a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

**F. Good Faith and Fair Dealing.**

The Parties to this Agreement agree that this Agreement imposes on them a duty of good faith and fair dealing.

**G. Amendment or Modifications.**

This Agreement may not be modified or amended except by a writing of equal formality signed by both Parties.

**H. Survival – Change in Town's Charter.**

Notwithstanding the possibility that during the term of this Agreement the Town may amend its governing charter and change its form of government to a City with a City Council, the Parties agree that this Agreement shall survive such change to the governing charter and form of government without amendment and be of full force and effect. All references to "Town" shall then mean "City" and all references to the "Board of Selectmen" shall then mean "City Council."

**I. Complete Agreement.**

This Agreement represents the entire integrated agreement between the Parties and supersedes all past agreements and all negotiations, representations, promises or agreements, either written or oral, made during the course of negotiations leading to this Agreement.

**J. No Third Party Beneficiaries**

This Agreement does not create, and shall not be construed as creating, any right enforceable by any person not a party to this Agreement. Any covenant or agreement contained in this Agreement shall be only for the benefit of the signatories hereto and their respective successors.

**K. No Counterparts**

This Agreement may not be executed in counterparts but is effective only as of signature by the Parties.

**Section 27. Section 81 Review by the Department of the Interior.**

The Parties will submit this Agreement to the U.S. Department of the Interior for either (a) approval pursuant to 25 U.S.C. § 81, or (b) a written response from the Department of the Interior that this Agreement does not require approval under 25 U.S.C. § 81 to be enforceable.

**IN WITNESS HEREOF**, the Town and the Tribe have respectfully signed this Agreement and caused their seals to be affixed and attested as of the date above written.

**Attest:**

**TOWN OF MIDDLEBOROUGH**

\_\_\_\_\_

By: \_\_\_\_\_

**Attest:**

**MASHPEE WAMPANOAG TRIBE**

\_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_, Chairperson