



# PUEBLO OF POJOAQUE

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June 28, 2015

Honorable Damon Martinez  
United States Attorney  
District of New Mexico  
P.O. Box 607  
Albuquerque, New Mexico 97103

*Re: Pueblo of Pojoaque Compact Expiration*

Dear U.S. Attorney Martinez:

The Pueblo of Pojoaque ("Pueblo") requests that the United States Attorneys Office forego initiating any civil or criminal enforcement actions against the Pueblo, its political subsidiary the Buffalo Thunder Development Authority (BTDA), or their agents or contractors, concerning its gaming operations, during the pendency of the appeal in *State of New Mexico v. Department of the Interior, Nos. 14-2219 and 14-2222* (10<sup>th</sup> Cir.). In consideration for this request, the Pueblo commits to maintain the status quo of the gaming operations, including regulatory and auditing procedures, as set forth in the 2001 Class III Gaming Compact between the Pueblo and the State, during the pendency of that litigation. In addition, because the State's regulatory and revenue sharing authority lapses at the expiration of the Compact, the Pueblo commits to additional procedures and assurances as described below.

## **I. Status Quo of Gaming Operations**

The Pueblo commits to maintaining its Class III gaming activities at the levels provided for under the 2001 Compact. In addition, it will not materially increase the number of electronic gaming machines<sup>1</sup> or gaming tables presently in operation at its gaming facilities, expand the hours of operation, change any bet limits, or add any additional types of Class III games inconsistent with the 2001 Compact. During the course of normal operations, and as provided for in the 2001 Compact, the Pueblo periodically acquires and tests new video machines to update and eventually

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<sup>1</sup> The term "gaming machines" is defined here as it is in the 2001 Compact.

replace those currently in operation. It is understood that this practice may continue, so long as it does not result in a material increase in the total number of gaming machines in operation. Upon request, the Pueblo will provide the U.S. Attorneys Office ("USAO") with any and all information pertaining to its gaming operations that may be required to evaluate the Pueblo's compliance with these commitments.

## **II. Regulation and Auditing of Gaming Operations**

The Pueblo commits to continue to operate its gaming facilities in strict compliance with federal law, federal regulations, and the regulatory requirements of the 2001 Compact. This includes compliance with the Pueblo's Gaming Ordinance, approved by the National Indian Gaming Commission, a copy of which is attached to this correspondence. The Gaming Ordinance created the Pueblo of Pojoaque Gaming Commission ("PPGC"), and establishes the Commission's authority to govern, regulate, and control all authorized gaming activities on Pueblo lands. The PPGC has issued Rules and Regulations for the gaming operations. A copy of those Rules and Regulations are also attached to this letter. The Pueblo commits to continued compliance with all these Rules and Regulations, as may be amended from time to time as provided for by the Gaming Ordinance.

As part of its regulatory oversight functions, the PPGC has established Minimum Internal Control Standards ("MICS"), which ensure compliance with Federal and industry standards for the operation of gaming facilities. The Pueblo commits to continued compliance with these already-established MICS, as they may be amended from time to time, consistent with industry standards and as provided for by the Gaming Ordinance. To assure this compliance, the Pueblo will continue to retain the services of an independent accounting firm to provide a report on the Pueblo's compliance with MICS. Those reports will be performed at the end of each fiscal year; the first one will be for the fiscal year ending September 30, 2015. The Pueblo commits to make such independent reports available for review and inspection by the USAO.

The Pueblo currently obtains quarterly review reports and annual audited financial statements from an independent auditor. The Pueblo commits to continuing this practice, and making such reviews and financial statements available for review and inspection by the USAO.

The Pueblo is making both the MICS reports and the financial reports and statements described above available for inspection with the understanding that they are proprietary information of the Pueblo, and are being provided to the USAO solely for the purpose of monitoring the Pueblo's compliance with these representations, and are not subject to public disclosure or release under the provisions of the Freedom of Information Act.



### **III. Establishment and Funding of a Trust**

The Pueblo commits to establish a Trust which will hold an account at an appropriate financial institution, for the purposes set forth below. The Pueblo commits to using all efforts to finalize the Trust as soon as possible, but in any event no later than the due date for the Pueblo's first contribution to the Trust. The material provisions of the Trust will include:

1. The Trust will be an independent legal entity, created for the purpose of receiving, holding, and disbursing funds contributed by the Pueblo. An independent Trustee will be appointed to control the trust and its assets. The Pueblo will have no control over the Trust or funds placed in Trust.

2. The Pueblo will contribute to the Trust an amount equivalent to the amount the Pueblo would pay to the State as revenue sharing, were the 2001 Compact still in effect. Specifically, the Pueblo will contribute an amount equal to 8% of its "net win," as that term is defined in the 2001 Compact. The Pueblo will make these contributions on a monthly basis, based on a calculation of its "net win." The first such payment will be made not later than August 25, 2015, and will be based on a calculation of the "net win" for July, 2015.

3. Disbursements from the Trust will be permitted for the limited purposes of paying expenses arising as a result of the lapse in the Compact or expenses authorized by federal law. Those permitted expenses are limited to the following:

a. Costs of operating the Trust, including reasonable compensation of the Trustee and ordinary business expenses of operating the Trust;

b. Costs of obtaining independent financial reviews of Trust deposits, but only to the extent such expenses are in addition to accounting expenses already being paid by the Pueblo;

c. Costs of compensating any local law enforcement, life-safety, or local government entity, for services actually provided, for the purpose of mitigating impacts of and providing municipal services to the gaming facility, but only to the extent that such payments are set forth in a formal agreement executed by the appropriate local authority and the Pueblo. No payment under this provision may go to the Pueblo or any of its affiliates or subsidiaries.

4. Aside from these expenses, all other funds contributed to the Trust shall remain in Trust unless and until one of the following occurs:

- a. The state of New Mexico and the Pueblo enter into a new Compact and an agreement for disbursement of Trust funds;
- b. The Department of the Interior is permitted to exercise its regulatory authority under 25 C.F.R. Part 291 and that results in an agreement between the Department and the Pueblo for disbursement of funds; or
- c. A court of competent jurisdiction orders disbursement of the funds.

5. The Trustee will provide monthly statements of account for the Trust account to the Pueblo and the USAO, and with online or other immediate access to financial records of the Trust Account.

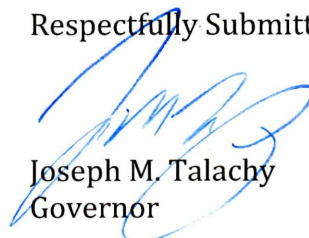
6. The Pueblo will retain the services of an independent accounting firm to verify the amount of the Pueblo's deposits into the Trust. A report from that firm will be provided to the USAO on a quarterly basis, within five (5) days of the quarter-ending trust deposit.

#### **IV. Duration of these Commitments**

The Pueblo commitments set forth herein will terminate 30 days after the receipt of the mandate from the United States Court of Appeals for the Tenth Circuit in *State of New Mexico v. Department of the Interior, Nos. 14-2219 and 14-2222*. The Trust will remain in existence until such time as there is a final disbursement and accounting of all funds contributed to the Trust.

We understand that if our request is granted, you will rely upon the truth and accuracy of certain representations and assurances made by the Pueblo. We commit to fulfilling our obligations and to promptly providing such information as may be requested by your Office from time to time. Thank you for the time and attention needed to consider our request.

Respectfully Submitted,



Joseph M. Talachy  
Governor