

RCRC/CNACA Compromise Agreement Language

120028. Memoranda of Understanding with Local Governments; Mitigation of Impacts Outside Indian Country; Information Sharing

(a) The tribe shall provide the following written notices to each local government whose geographical boundaries contain all or part of Indian country within the tribe's jurisdiction:

(1) A first notice no less than ten days prior to commencing negotiations with the Governor or their delegate regarding entry into an Agreement under this Chapter.

(2) A second notice no less than forty-five days prior to days before commencement of commercial cannabis activities. The second notice shall contain the following information:

(i) A description of the proposed commercial cannabis activities within the tribe's jurisdiction;

(ii) The location of the proposed commercial cannabis activities shown on a detailed map, preferably topographical, and on a regional map; and

(iii) A brief outline of the probable off-reservation environmental effects of the proposed commercial cannabis activities to the best of the tribe's knowledge.

(b) The tribe shall enter into an enforceable written agreement (hereinafter "memorandum of understanding" or "MOU") with each local government whose geographical boundaries contain all or part of Indian country within the tribe's jurisdiction. The memorandum of understanding shall include, but not be limited to, the matters set forth below:

(1) Reasonable and timely mitigation of the significant effects, if any, upon the off-reservation environment as identified by the tribe and the local jurisdiction (which effects may include, but are not limited to, aesthetics, agricultural resources, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, water resources, land use, mineral resources, traffic, noise, utilities and service systems, and cumulative effects), where such effect is attributable, in whole or in part, to the commercial cannabis activity unless the particular mitigation is infeasible, taking into account economic, environmental, social, technological, or other considerations. The reference to "timely mitigation" should be interpreted in a manner consistent with general principles of environmental law in the specific factual context.

(2) Reasonable compensation for law enforcement, fire protection, emergency medical services and any other public services, to the extent such services are provided by the local governments and special districts to the tribe as a consequence of the commercial cannabis activity. Such compensation shall not exceed the actual costs incurred by the local government in providing the services unless otherwise agreed to by the tribe and the local government.

(3) Reasonable and feasible mitigation of any significant effect on public safety attributable to the commercial cannabis activity, including any reasonable compensation to the local government for the actual costs incurred as a consequence thereof, to the extent such effects are not mitigated pursuant to subdivision (b)(1) or (b)(2) above.

(4) Mutual sharing of information between the tribe and the local government concerning all licenses applied for, issued, or renewed under their respective cannabis regulatory programs, including information concerning disciplinary actions against licensees under those programs.

(5) Reporting by the local government, if any, regarding the expenditure of any funds provided pursuant to the MOU.

(6) Any other matters related to commercial cannabis activity proposed by the tribe or local government.

(c) No later than four months after the commencement of commercial cannabis activities within the jurisdiction of the tribe, the tribe shall provide a written offer to commence MOU negotiations with the local governments with respect to the matters set forth in subdivision (b).

(d) If the tribe and the local government (for purposes of this section the “parties”) have met and conferred in good faith for no less than 90 days following receipt of the written offer provided pursuant to subdivision (c), or another period of time by the written agreement of the parties, without reaching a MOU, or if either the tribe or local jurisdiction fails to meet and confer in good faith at any time, any unresolved issues shall be submitted to binding arbitration as provided in this section. Any party may demand binding arbitration before a JAMS arbitrator pursuant to JAMS Comprehensive Arbitration Rules with respect to any remaining disputes arising from, connected with, or related to the negotiation.

(e) The arbitration shall be conducted as follows: Each party shall exchange with each other within five (5) days of the demand for arbitration its last, best written offer made during the negotiation pursuant to subdivision (d). The arbitrator shall schedule a hearing to be heard within thirty (30) days of his or her appointment unless the parties agree to a longer period. The arbitrator shall be limited to awarding only one (1) of the offers submitted, without modification, based upon that proposal which best provides feasible mitigation of the matters described in subdivision (b) and most reasonably compensates the parties for such matters, without unduly interfering with the principal objectives of this Chapter or imposing environmental mitigation measures which are different in nature or scale from the type of measures that have been required to mitigate impacts of a similar scale in the surrounding area, to the extent there are any such impacts. If the respondent does not participate in the arbitration, the arbitrator shall nonetheless conduct the arbitration and issue an award, and the claimant shall submit such evidence as the arbitrator may require therefore. Review of the resulting arbitration award is waived.

(f) To effectuate this section, and in the exercise of its sovereignty, the tribe and the local government shall each agree to expressly waive, and to waive its right to assert, sovereign immunity in connection with the arbitrator’s jurisdiction and in any action to (A) enforce the other party’s obligation to arbitrate, (B) enforce or confirm any arbitral award rendered in the arbitration, or (C) enforce or execute a judgment based upon the award.

(g) The arbitral award shall become part of the MOU required under this section.

(h) The tribe will require all tribally-licensed commercial cannabis businesses within its jurisdiction to comply with the terms of each MOU executed under this section, and the tribe will

investigate and discipline tribal licensees for violations of the MOU, including through suspension or revocation of the licensee's tribal cannabis license or licenses.

(i) Each local government that enters into a MOU under this section shall investigate violations of the MOU by persons or entities authorized by the local government to engage in commercial cannabis activities. The local government shall discipline persons or entities who are authorized by the local government to engage commercial cannabis activity and who are determined to have violated the MOU, including through suspension or revocation of the authorization to conduct commercial cannabis activity within the local government's jurisdiction.