SHINGLE SPRINGS BAND OF MIWOK INDIANS

Shingle Springs Rancheria, (Verona) Tract, California
5281 Honpie Road, Placerville CA 95667
P.O. Box 1340, Shingle Springs CA 95682
(530) 676-8010 office; (530) 676-8033 fax

RESOLUTION 2016-72

SUBJECT: APPROVAL OF AMENDMENTS TO THE PER CAPITA POLICY.

WHEREAS, the Shingle Springs Band of Miwok Indians (the "Tribe") is a federally recognized Indian tribe eligible for the special programs and services provided by the United States to Indians because of their status as Indians and is recognized as possessing powers of self-government; and

WHEREAS, the Shingle Springs Tribal Council is the duly-elected governing body of the Tribe and is authorized to act on behalf of the Tribe; and

WHEREAS, Article IV, Section (1) (i) of the Articles of Association grants the Tribal Council the power to administer Tribal assets and to manage all economic affairs and enterprises of the Band; and

WHEREAS, the Tribe adopted a Shingle Springs Revenue Allocation Plan ("RAP") that was approved by the Bureau of Indian Affairs ("BIA") in accordance with the Indian Gaming Regulatory Act of 1988, as amended ("IGRA"); and

WHEREAS, the Tribal Council adopted a Per Capita Policy that sets forth the procedures and practices of the Tribe related to distributing per capita payments to Tribal Members and is intended to help facilitate the fair and efficient administration of the per capita process in the manner consistent with applicable controlling law; and

WHEREAS, the Per Capita Policy allows the Tribe to automatically garnish $500 of a member's per capita payment upon placing the member's child in out-of-home care; and

WHEREAS, the Tribal Council desires to amend the aforementioned Per Capita Payment Policy so that Tribal members whose child is placed in out-of-home care will not have their per capita garnished if the out-of-home caretaker is receiving more than $600 per month from the County; and

WHEREAS; the Tribal Council has reviewed the attached proposed amendments to the "Per Capita Payment Policy" and has determined that it is consistent with the Tribe's goals and supports amendment of the Policy.

NOW THEREFORE, BE IT RESOLVED that the Tribal Council hereby approves amendments to the attached "Per Capita Payment Policy" as described above, and authorizes the Chairman or his designee to execute any and all documents and agreements necessary as may be required to give effect to the transactions, herein contemplated, and to take such other actions as may hereby be necessary and appropriate to carry out the obligations there under.

BE IT FURTHER RESOLVED, that this resolution shall take effect immediately.

CERTIFICATION

As a duly-elected official of the Shingle Springs Band of Miwok Indians, I do hereby certify that, at a meeting duly called, noticed, and convened on the 20th day of October, 2016 at which time a quorum of 7 *was present, this resolution was duly adopted by a vote of* 7 *FOR,* 0 *AGAINST,* 0 *ABSTAINED, and said resolution has not been rescinded or amended in any form.*

Chairperson — October 20, 2016 Date

ATTEST:

Secretary — October 20, 2016 Date

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PER CAPITA PAYMENT POLICY

SECTION 1. AUTHORITY, PURPOSE, AMENDMENT, AND DEFINITIONS

1.1 Authority.

1.1.1 Article IV, Section (1) (i) of the Articles of Association grants the Shingle Springs Tribal Council the power to administer Tribal assets and to manage all economic affairs and enterprises of the Tribe.

1.1.2 Article IV, Section (2) of the Articles of Association states any rights and powers vested in the Shingle Springs Band of Miwok Indians ("Tribe"), but not expressly referred to in the Article, shall not be lost by reason of their omission but may be exercised through the adoption of appropriate amendments and ordinances.

1.1.3 Section (2) of the Shingle Springs Revenue Allocation Plan ("RAP") authorizes the Tribe to use net gaming revenues to promote Tribal economic development, self-sufficiency and tribal government, and to provide for the general welfare of members of the Tribe.

1.2 Purpose and Scope. The purpose of this Policy is to provide the Tribal Council and Tribal staff guidance and direction in carrying out the provisions of the Tribe's Gaming Ordinance and RAP. This Policy sets forth the procedures and practices of the Tribe relating to distributing per capita payments to Tribal members, and it is intended to help facilitate the fair and efficient administration of the per capita process in the manner consistent with applicable controlling law. This Policy is not intended, nor shall it be interpreted, to create a right or entitlement to any specific Tribal government service or to create a right to any specified payment to Tribal members.

1.3 Controlling Law. Per capita payments that are subject to the requirements of the Indian Gaming Regulatory Act ("IGRA") and made under this Policy shall comply with the IGRA requirements, including the approved Gaming Ordinance and the RAP, as each may be amended. In the event this Policy is in conflict with the IGRA requirements, including the approved Gaming Ordinance and RAP, the IGRA requirements shall control.

1.4 Amendment and Repeal. This Policy may be amended or repealed by resolution of the Tribal Council.

1.5 Definitions. The defined terms set forth in Section 3 of the RAP apply to this Policy. The definitions of some terms defined in the RAP are clarified and additional terms are defined:

(a) The term "Gaming Ordinance" shall mean the most recent gaming ordinance of the Tribe as submitted to and approved by the National Indian Gaming Commission.

(b) The term "Conservator" shall mean an individual(s) at least eighteen (18) years old who is appointed by the Tribal Court to manage the per capita payments of a Legally Incompetent Member.

(c) The term "Conservator Review Hearing" shall mean a hearing before the Tribal Court to determine the fitness of a Conservator.

(d) The term "Legally Incompetent Member" shall mean a Tribal member at least eighteen (18) years old who has been declared incompetent by the Tribal Court, because he or she is temporarily or permanently impaired to the extent that the he/she lacks sufficient understanding to make or communicate responsible personal decisions.

(e) The term "Minor member" shall mean a Tribal member who has not reached the age of 18 and whose date of birth and birth certificate are on file with the Tribal Enrollment Department, or in the event that the Minor member has not graduated from high school or obtained a GED or the equivalent, the member has not reached the age of 21.

(f) The term "net gaming revenues" shall mean the gross revenues from the Tribe's gaming facility less amounts paid out as, or paid for, prizes, total operating expenses, and required payments on any capital advance or loan and excluding management fees.

(g) The term "payment date" shall mean the date or day of the month (e.g. last Friday) established by this Policy or by resolution or practice of the Tribal Council for making a per capita payment.

(h) The term "per capita payment" shall mean any payment from net gaming revenues made to a Qualified Tribal Member and/or Minor Member as part of the RAP, including payments made through an intermediary, such as an escrow account, trust fund, federally administered fund, or the like. Per capita payments shall be equal in the amount for each Tribal member entitled to a payment, unless differing payment amounts for identified groups or members are established consistent with applicable law and policy as defined in Section 2.2.

(i) The term "Revenue Allocation Plan" or "RAP" shall mean the most recent revenue allocation plan of the Tribe as submitted to and approved by the Secretary, which as of the date of this Policy is March 11, 2009, as amended.

(j) The term "Tribe" shall mean the Shingle Springs Band of Miwok Indians.

SECTION 2. ELIGIBILITY

2.1 Enrolled for Thirty (30) Days. The RAP provides that an enrolled Tribal member becomes eligible for per capita distributions once they have been a member of the Tribe for thirty (30) days.

2.2 Qualified Tribal Member. Individuals enrolled in the Tribe become Qualified Tribal Members, eligible for one whole share of the per capita distribution automatically upon turning the age of 21. Additionally, an individual enrolled in the Tribe may become a Qualified Tribal Member, eligible for one whole share of the per capita distribution on or at any time after the age of eighteen (18) if they have graduated from high school, received their GED, or the equivalent. It is the Tribal member's responsibility to provide documentation of a high school diploma, GED, or the equivalent, to the Enrollment Office by the 20th of the month to receive a whole share for that month.

2.3 Death of a Qualified Tribal Member or Legally Incompetent Member. In the event of the death of a Qualified Tribal Member or Legally Incompetent Member, a final per capita payment shall be made to the deceased person's estate equal in amount to the per capita payment made to all other Qualified Tribal Members for the per capita payment period in which that person's death occurred.

2.4 Legal Incompetence. The Tribal Court may declare a Tribal member legally incompetent for purposes of this policy if:

1. The Tribe or a family member of a Tribal member files a petition in Tribal Court to have the individual deemed Legally Incompetent; and

    a. Family members in this policy means; parents, grandparents, children and siblings over the age of eighteen (18).

2. The Tribal member is temporarily or permanently incapable of managing his/her financial affairs due to mental deficiency or physical disability, as evidenced by a doctor's recommendation; and

3. All known family members of the Tribal member are given notice that a hearing is being held on the individual's competency. It shall be the duty of the Tribal Services Coordinator to ascertain the names and contact information of each family member prior to the hearing.

    a. A request to waive this requirement may be made, in writing, to the Tribal Court Judge. If the Tribal Court Judge finds good cause not to notify any/all family members then this requirement shall be waived.

2.4.1 Termination of Legal Incompetence. The Tribal Court has authority to terminate the Legal Incompetence status of a Tribal member when it is deemed necessary. Any person may make a termination request, in writing, to the Tribal Court.

2.4.2 Conservator. The Tribal Court will appoint a Conservator for the Legally Incompetent Member for the sole purpose of managing per capita payments. The Tribal Court may remove/replace a Conservator when it is deemed necessary.

2.4.2.1 Disclosures. Any individuals desiring to be a Conservator for a Legally Incompetent Member must disclose their; age, occupation, relationship to the Legally Incompetent Member, and criminal history of fraud, theft or embezzlement.

2.4.2.2 **Conservator Review Hearing.** Any individual having reason to believe a Conservator is not acting in the best interest of the Legally Incompetent Member may petition the Tribal Court for a Conservator Review Hearing. The process of a Conservator Review Hearing shall be;

1. Upon the filing of the petition, the Court shall schedule a hearing and send notice to the Tribe, Tribal Services Coordinator, and all known family members of the Legally Incompetent Member.

2. Prior to the hearing, the Tribal Services Coordinator shall conduct an investigation into the allegations.

3. At the Conservator Review Hearing the Tribal Court Judge shall review the case and make a determination of the fitness of the Conservator. The Judge shall hear evidence from the petitioner, Conservator, Tribal Services Coordinator, family members of the Legally Incompetent Member, and any other individual with relevant information.

4. If the Judge finds that the Conservator is not acting in the best interest of the Legally Incompetent Member then the Judge may remove the Conservator and appoint the Legally Incompetent Member a new Conservator.

SECTION 3. PER CAPITA PAYMENTS

3.1 **Per Capita Distribution Percentage.** The total amount of per capita distributions to Tribal members from net gaming revenues is subject to the proportional percentage amount set forth in Section 4(D) of the RAP, as amended. It is the policy of the Tribe, consistent with the RAP, that total per capita distributions to Tribal members do not exceed 50% of net gaming revenues, unless the per capita allocation percentage set forth in the RAP is amended, in which case total per capita distributions to Tribal Members will not exceed the amended percentage.

3.2 **Monthly Per Capita Payments.** Unless subsequently modified or terminated, the practice and policy of the Tribe is to make monthly per capita payments of net gaming revenues based on the percentage for per capita payments established in the RAP.

3.2.1 Qualified Adult Members. Living adult Tribal members are eligible to receive one whole share of the monthly per capita payment, subject to the eligibility requirements set forth in Section 3.1 (and for legally incompetent adult members as described in Section 1.5, subject to the trust and related requirements set forth in the RAP).

3.2.2 Distribution Date. Unless otherwise fixed by resolution or equivalent action of the Tribal Council, the date for the monthly per capita distributions to Tribal members will be the last Friday of each month.

3.3 Formula for Determining Per Capita Payments. The amount of the individual payments made to eligible Tribal members is determined by dividing the total funds available for distribution by the number of Tribal members eligible to receive a per capita payment. (Per capita payments shall be equal in amount for each Tribal member entitled to a payment, unless differing payment amounts for identified groups of members are established consistent with applicable law and policy.)

3.4 Per Capita Payments to Tribal Members Only. It is the policy of the Tribe to make per capita payments only to Tribal members.

3.5 Form of Payment. On the last Friday of each month, the Tribe's Finance Office will directly deposit all per capita payments into each Qualified Tribal Member's account on file.

If for any reason a Qualified Tribal Member does not have a bank account to use for direct deposit, or chooses not to utilize direct deposit, the Finance Office will provide a pre-paid debit card to the requesting member and automatically fill the card each time per capita payments are distributed.

Alternatively, the Tribe's Finance Office will mail out a check payable to the Qualified Tribal Member. It is the preference of the Finance Office for members to use direct deposit or the pre-paid debit card in order to avoid potential fraud.

3.6 Responsibility of Tribal Members to Provide Contact Information. It is the responsibility of each Tribal member or Conservator of a Legally Incompetent Member to inform the Tribe, through the Enrollment Office, of his or her current mailing address for the purpose of receiving per capita payments, preferred method to receive the payments, either through direct deposit or pre-paid debit card, and high school graduation or GED status. An Annual Change of Information Form must be filled out by every adult

member by January 20th of each year, whether information has changed or not, in order to maintain correct contact information and to ensure payment will be received in a timely manner. Failure to update the Annual Change of Information Form will result in the member not receiving per capita until the form is received. Amounts not received by members due to non-compliance with this requirement will be automatically be applied to amounts to future per capita distributions made to all Tribal members, they will not be retroactively paid back to the member from which they were withheld.

3.6.1 Requests for Change of Information. Any requests for change of address, disbursement instructions, or proof of high school graduation or obtainment of a GED by a Tribal member must be made on or before the 20th of each month in order to apply to the current month's disbursement. Changes of Information Forms are located in the Enrollment Office.

3.6.1.1 Limit on Changes to Disbursement Instructions. With the exception of the Annual Change of Information Form, a Tribal member is only allowed to change their disbursement instructions twice a year in order to reduce costs of the Finance Department. A Conservator of a Legally Incompetent Member may change their disbursement instructions three times a year to accommodate any hardships.

3.6.1.2 Change of Information Requests for Incarcerated Tribal Members. Incarcerated Tribal members may request a change of information <u>only</u> through a signed written letter post-marked directly from the location of incarceration. Any requests for change of information by family members of the incarcerated will not be honored.

3.6.2 Notice of Enrollment in Tribe. The Tribe's Enrollment Department will inform the Finance Office in writing by the 20th of each month if there are any changes to the Tribal Enrollment, including new enrollments, Legally Incompetent Members, deaths, and disenrollments.

3.6.3 Contacting the Tribal Member.

a. If one or more of a Tribal member's per capita payments are returned to the Tribe or not deposited, the Tribe will, in its

discretion, make efforts to contact the Tribal member regarding the returned or non-deposited payment(s). The contact efforts may include sending a letter to the Tribal member's last address on file with the Tribe and contacting another member of the Tribe who may know the Tribal member's whereabouts and up-to-date contact information. The Tribal member will be notified at the address given but any future payments will not be issued until notification is received from the Tribal member confirming his or her current address.

b. If one or more of a Legally Incompetent Member's per capita payments are returned to the Tribe or not deposited, the Tribe shall send a letter to the Conservator's last address on file with the Tribe. The Tribe shall also notify the Tribal Services Coordinator, Family of the Legally Incompetent, and the Tribal Court that a payment has not been deposited. It shall be the duty of the Tribal Services Coordinator to investigate the location of the Conservator and why the per capita payments have not been deposited. If after investigating the situation the Tribal Services Coordinator determines that the Conservator needs to be replaced, the Tribe shall file a petition for a Conservator Review Hearing. The Tribe may withhold issuing per capita payments while the Conservator is missing. However, all withheld per capita payments must be paid after the ruling of the Conservator Review Hearing.

3.6.4 Canceling Payments.

a. If after a period of six (6) months, one or more per capita payments have not been deposited by a Tribal member, the Tribe, upon giving thirty (30) days' written notice sent to the Tribal member's last known mailing address, may, with the consent of the Tribal Council, cancel such per capita payments and apply the non-deposited amounts to future per capita distributions made to all Tribal members.

The Tribe may not cancel the per capita payments of a Legally Incompetent Member until after there has been a Conservator Review Hearing.

SECTION 4. WITHHOLDING OR DELAYING OF PER CAPITA PAYMENT

4.1 The Tribe may withhold or delay a Tribal member's full or partial per capita payment(s) at the approval of the Tribal Council for any reason, including, but

not limited to, recouping outstanding debts or fines with the Tribe or delaying a Tribal member's per capita payment until resolution of enrollment issues.

4.2 All requests for withholding or delaying of per capita payments must be formalized by a vote of the Tribal Council as evidenced in writing either in Tribal Council minutes or by a phone vote sheet and submitted to the Finance Office before the 20th of each month. Likewise, termination of the withholding or payment of delayed per capita payments must be formalized in the same manner as described able and submitted to the Finance Office before the 20th of each month.

4.2 Prior to the withholding of the full per capita payment by the Tribal Council for the purpose of repayment of debts owed to the Tribe, the Tribal member must have failed to make two or more payments in his or her agreed upon repayment schedule with the Tribe's Finance Officer.

SECTION 5. MISCELLANEOUS

5.1 **Advances.** It is the policy of the Tribe to discourage advances of per capita payments. However, the Tribal Council has the authority to approve advances of per capita payments for emergency purposes only. Advances of per capita payments must be authorized by Tribal Council resolution. Advances will only be made up to a three (3) month per capita payment period and will be scheduled to be repaid within a three (3) month time-period. If advances are not paid back within a three (3) month time-period, per capita payments will be withheld from the Tribal member as described in Section 4.

5.1.1. Advances will be made only in emergency situations and are only to be used for the health, education, and welfare of a Tribal member. The Tribal member is responsible for requesting the advance from the Tribal Council, either in writing or in person, providing proof of the emergency situation which requires the advance, and proof that funds will be used for his or her health, education, and welfare only.

5.1.2. Advances are limited to one advance of per capita payments per person per year.

5.2 **No Interest.** The Tribe will not make interest payments with respect to per capita payments, and per capita payments withheld or delayed for any reason shall, if due and owing, be paid without interest.

5.3 **Garnishment.** It is the policy of the Tribe to recognize, give effect, and comply with state child support orders and federal orders garnishing per capita payments and applicable federal law requiring such garnishment. All

garnishments of any Tribal member's per capita payments must comply with the Tribal Court Ordinance and accompanying rules regarding garnishments.

5.3.1 Notice of Tribal Court Orders. Only Tribal Court garnishment orders received on or before the 20th of each month will be applied to the current month's per capita distribution. It will be the responsibility of the Tribal Court Clerk to transfer a copy of the Tribal Court order to the Finance Office.

5.4 No Rights or Entitlement Created. This policy is not intended, nor shall it be interpreted, to create a right or entitlement of Tribal members (or others) to any specific Tribal government service or to create a right to any specified payments.

5.5 Member Declining Payment.

a. A member may decline to receive one or more per capita payments and likewise a member may request to receive an amount less than the amount of the designated per capita payment. Any such request should be in writing, signed by the member, and notarized by a certified notary public, should specify the per capita payments to which the request applies, and should be acknowledged in writing by the Tribe's Finance Officer or his or her designee. All requests must be made by the 20th of each month in order to be honored that month. Any declined amount will be redistributed for authorized purposes under the RAP.

b. Conservators may not decline to receive or request a reduction of the per capita payments of a Legally Incompetent Member. If a Conservator does decline to receive or request a reduction, the Tribe shall notify the Tribal Services Coordinator, Family of the Legally Incompetent, and the Tribal Court. It shall be the duty of the Tribal Services Coordinator to investigate the location of the Conservator and why the per capita payments have not been deposited. If after investigating the situation the Tribal Services Coordinator determines that the Conservator needs to be replaced, the Tribe shall file a petition for a Conservator Review Hearing.

5.6 Taxation and Federal Withholdings. Per capita payments shall be subject to applicable taxation and withholding requirements. Per capita payments are subject to federal taxation and the Tribe will so notify Tribal members when per capita payments are made. The Tribe shall deduct and withhold tax from per capita payments to the extent and in the amounts required by 26 U.S.C. Section 3402(r) or any successor statute. In addition, the Tribe may, in its discretion, withhold such greater amount of tax from per capita payments to a Tribal member as such member may voluntarily request.

5.7 Support for Children in Out-of-Home Care. A Member whose child has been placed in out-of-home care by the Tribal Services Department or Tribal Court, will automatically have 1/3 of his/her monthly Per capita payments withheld and paid to the out-of-home caretaker to be used for the child. If multiple children of the same parent are in out-of-home care then the 1/3 withholding shall be evenly distributed to each child. A Member shall be taxed as if they received the withheld amount. If the out-of-home caretaker is receiving more than $600 per month from the County to care for the child, then the parent's per capita shall not be withheld. Upon placing a child in out-of-home care the Tribe shall one-time automatically garnish from the Tribe member's next per capita up to $500, issued to Tribal Services. The amount garnished will not exceed the amount needed to assist the child. Tribal Services shall spend the garnishment in furtherance of transferring and placing the child in out-of-home care. Such garnishment shall be taken for each child placed. If there is no per capita then there will be no garnishment.

CERTIFICATION

As a duly-elected official of the Shingle Springs Band of Miwok Indians, I do hereby certify that, at a Tribal Council meeting duly called, noticed, and convened on this 20th day of October, 2016 at which time a quorum of 7 FOR, 0 AGAINST, 0 ABSTAINED, and said policy has not been rescinded or amended in any form.

Tribal Chairperson — October 20, 2016 Date

ATTEST:

Tribal Secretary — October 20, 2016 Date