

MEMORANDUM OF UNDERSTANDING
BETWEEN THE COUNTY OF KINGS
AND THE SANTA ROSA RANCHERIA CONCERNING
MITIGATION OF SIGNIFICANT PUBLIC SERVICE IMPACTS

This Agreement (“Agreement”) is entered into this 9th day of September, 2003, between the County of Kings, a political subdivision of the State of California (“County”), and the Santa Rosa Rancheria, a federally recognized Indian Tribe located in the County of Kings, State of California (“Tribe”).

RECITALS

A. The Board of Supervisors of the County of Kings and the Tribal Council of the Santa Rosa Rancheria recognize that each is a governmental entity with responsibility for the health, safety and general welfare of its people.

B. In 1988, Congress enacted the Indian Gaming Regulatory Act (“IGRA”) to govern gaming on Indian lands in the United States. IGRA provides a statutory basis for the operation of gaming by Indian tribes as a means, among other things, of promoting tribal economic development, self-sufficiency, and strong tribal government.

C. The Tribe and the Governor of California entered into a tribal-state gaming compact (the “Compact”) to permit the Tribe to conduct Class III gaming activities on the reservation in compliance with the IGRA.

D. Pursuant to the IGRA and the Compact, the Tribe operates a Class III gaming facility at the Palace Indian Gaming Center (the “Facility”) on its reservation in Kings County.

E. The Tribe has consulted with the County to discuss mitigation of significant impacts to public services provided by County both on and off the Rancheria and inside and outside of the Facility which result from the Tribe’s development and operation of the Tribe’s Facility.

F. The County intends to provide additional services related to the Tribe’s Facility, and the Tribe intends to contribute additional funding to the County for (1) the improvement and maintenance of County-maintained roads, (2) the provision by County of law enforcement services, and (3) the provision by County of fire protection services and emergency medical services by the County Fire Department (all 3 areas referred to collectively as “Public Services”).

G. County and Tribe wish to set forth in this Agreement the understandings under which these Public Services shall be provided by the County and shall be funded by the Tribe.

H. The Tribe is willing to enter into this Agreement as a responsible exercise of its sovereignty and in recognition of the fact that the Tribe's long-term governmental and business interests are best served by this Agreement.

I. This Agreement represents a concerted effort on the part of the County and the Tribe to achieve a positive and constructive resolution of significant issues that could have otherwise obscured the long-term government-to-government relationship between the Tribe and the County to the detriment of both Parties. Instead, this Agreement reflects an enhancement of that positive relationship and a continuing desire by the Tribe and the County to take an enlightened approach to issues that have proven divisive elsewhere in the State.

NOW, THEREFORE, the County and the Tribe enter into this Agreement for the purposes of: (1) establishing a mechanism for the County to provide additional Public Services relating to the Facility; (2) providing a mechanism for the Tribe to contribute additional funding to the County for the provision of such Public Services; and (3) strengthening the government-to government relationship between the County and the Tribe.

1. Law Enforcement Operations. The Tribe and the Sheriff respectively shall provide security and law enforcement on the Rancheria as follows.

a. Law Enforcement Responsibilities. The Parties recognize that the Tribe's development and operation of the Facility has created and will continue to create added burdens on the criminal justice departments, including the County Sheriff, District Attorney, Probation Departments and the County's defense of the accused system, for law enforcement and prosecution operations. In order to meet such added burdens, County shall provide additional law enforcement and criminal justice operations to the extent that staffing and resources allows for such operations as dispersed by the County Board of Supervisors from the funds provided by the Tribe under Section 4, below. County and Tribe agree that under Public Law 280 (18 U.S.C. § 1162), the County, the County Sheriff and the County District Attorney have jurisdiction over offenses committed on the Rancheria or in the Facility by or against all persons, including, but not limited to, members of the Tribe and other Indians. The Tribe and the County shall cooperate with and work with each other to enhance general law enforcement operations on the Rancheria.

b. Security. The Tribe shall, at its sole cost and expense, have responsibility for maintaining security in the Facility and on the Rancheria generally and for special events as appropriate for the particular event. The Tribe acknowledges that security efforts may lead to the apprehension and arrest of persons engaged in suspected criminal activity and that assistance from the County Sheriff, District Attorney and Probation Departments may be required from time to time with respect thereto. Protocols

shall be developed by the parties to cover the procedures for turnover of persons apprehended and arrested for criminal activity by the Tribe's security personnel. The County Sheriff shall assist with training in basic security subjects (i.e., turnover procedures, report writing, use of force, etc), provided that staffing and resources at the Sheriff's Department allows for such assistance.

c. Federal Law Enforcement Funds. In the normal course of operations, the Tribe may become eligible for and may seek Federal law enforcement funds. The Tribe shall use its best efforts to continue to seek and obtain such Federal funds for eligible law enforcement operations in the vicinity of the Rancheria. Any funds obtained hereunder may be used to fund law enforcement operations described herein.

2. Fire Protection Operations.

a. Responsibilities for Fire Protection Operations. The Parties recognize that the Tribe's development and operation of the Facility has created and will continue to create added burdens on the Fire Department to provide fire prevention, protection, suppression operations and emergency medical services operations (collectively referred to as "Fire Protection Operations") on the Rancheria. In order to meet such added burdens, County shall provide additional Fire Protection Operations to the extent that staffing and resources at the Fire Department allows for such operations as dispersed by the County Board of Supervisors from the funds provided by the Tribe under Section 4, below. The Tribe and the County recognize the Tribe's establishment, maintenance and operation of the Tribe's Facility's Emergency Response Team, which provides some of the same services at the Facility that the County Fire Department performs. The County and the Tribe Emergency Response Team shall cooperate with and work with each other to enhance general Fire Protection Operations on the Rancheria.

b. Fire Protection Operations Funds. In the normal course of operations, the Tribe may become eligible for and may seek Federal fire protection funds. The Tribe shall use its best efforts to continue to seek and obtain such Federal funds for eligible fire protection funds operations in the vicinity of the Rancheria. Any funds obtained hereunder may be used to fund fire protection funds operations described herein.

3. Road Construction and Maintenance. The County shall provide road reconstruction and maintenance operations ("Road Operations") through its Public Works Department as follows.

a. Road Construction. The Parties recognize that the Tribe's development and operation of the Facility has created and will continue to create increased traffic and added burdens on the County roads located on, and in the vicinity of, the Rancheria. In order to meet such added burdens, County shall provide road reconstruction and maintenance operations to the extent that staffing and resources at the

Public Works Department allows for such operations as dispersed by the County Board of Supervisors from the funds provided by the Tribe under Section 4, below.

b. State and Federal Road Funds. In the normal course of operations, the County and the Tribe may become eligible for and may seek Federal or State road funds for County roads. The County and the Tribe shall use its best efforts to continue to seek and obtain such Federal or State road funds for eligible Road Projects in the vicinity of the Rancheria. Any funds obtained hereunder shall be used to fund Road Operations described herein.

4. Funding.

a. Payment. In consideration of the foregoing, the Tribe shall pay to the County the sum of Fifteen Million Three Hundred Thousand Dollars (\$15,300,000.00) for the Public Services contemplated under this Agreement, payable in seventeen (17) installments of Nine Hundred Thousand Dollars (\$900,000.00) each, the first installment due and payable on or before December 31, 2003, the second installment due and payable on or before December 31, 2004, and the remaining installments due and payable on or before December 31st of each year thereafter. Quarterly payments by the Tribe shall be deemed acceptable to the County.

b. Fund for Inflation. The Parties recognize that in order to provide a reasonably level amount and quality of Public Services over the entire 17-year term of this Agreement, increasing costs due to inflation, cost of living, and other factors, must be taken into account. The County shall establish a sinking fund with the County Auditor and each year estimate the appropriate amount from each yearly payment, as required by subsection a., above, to place in the sinking fund necessary to account for such increases.

c. Capital Improvements Fund. The Parties have heretofore identified capital improvement projects that would be desirable enhancements for providing Public Services on the Rancheria, such as a new on-site fire station, a ladder fire truck, an on-site Sheriff's sub-station, and specific road reconstruction projects. The Parties recognize that these and other capital improvements that may be recommended by the Advisory Committee will frequently cost more up-front than can reasonably be allocated from each yearly payment without detrimentally affecting the on-going operations of the other Public Services. The County may establish a separate fund for capital improvement projects with the County Auditor after estimating the appropriate amount from each yearly payment to place in the fund necessary to accumulate sufficient funds to pay for the capital improvements.

d. Income. Interest or other income, if any, earned by the County on the funds described in subsections a., b., or c., above, shall only be used for the Public Services contemplated under this Agreement.

e. Overhead. In providing the Public Services contemplated under this Agreement, the County will incur overhead support expenses including, but not necessarily limited to, administration, legal, engineering, accounting, computer, fiscal management and human resources, which may be accounted and paid for from funds provided under this Section 4. Charges by County for support services shall be based on the cost computation known as "A-87 actuals", which is the cost methodology contained in Federal Office of Management and Budget (OMB) Circular A-87 - "Cost Principles for State, Local, and Indian Tribal Governments" for the applicable year of claiming and adjusted positively and/or negatively upon mutual agreement of the Parties by any known additional or reduced service levels and other cost anomalies that may be identified or negotiated. In the event that the County establishes internal service funds, the charge rate, levels of service and method of payment for external support costs in future years shall be negotiated by the Parties and added by addendum to this Agreement.

f. Reimbursement/Credits for Grants From Special Distribution Fund. The Tribe is providing the funding outside of the Special Distribution Fund established by the Compact. The County will apply for grants from the Special Distribution Fund established by the Compact for the purpose of reducing the need for direct payments from the Tribe pursuant to this Agreement. Any funds received by the County from the Special Distribution Fund shall be credited against the funds required to be paid by the Tribe under this Agreement up to \$900,000.00 per year.

g. Future Agreements. Nothing in this Agreement shall be construed to prevent the County and the Tribe from agreeing under separate contract for additional, enhanced or augmented Public Services and for the funding thereof.

5. County Advisory Committee.

a. Formation. The County shall form a Santa Rosa Rancheria Advisory Committee ("Advisory Committee") to advise the Kings County Board of Supervisors on identifying and setting priorities for the funding of the Public Services. The Committee shall be composed of five members, two appointed by the Board of Supervisors, two by the Tribe, and one member by mutual agreement of the Parties. The Committee shall serve without pay, shall meet at least four times per year and shall be subject to the California Open Meeting Law (Government Code Section 54950 et seq.). Each member shall serve a two year term of office until his/her successor shall be appointed and qualified. The advice and recommendation of the Committee shall be advisory only.

b. Purpose. The County and the Tribe acknowledge that it is impossible to provide sufficient funding for every level of Public Services that the Parties may desire, that choices have to be made to stay within funding provided by the Tribe under Section 4, above, that priorities need to be articulated and may change over time, and that proper budgeting, scheduling, contracting for, and execution of each Public Service is complex and not always exact. The purpose of the Advisory Committee is to study various

proposed Public Services, estimated costs over time, and determine when funds are available within funding provided by the Tribe under Section 4, above. The Committee shall weigh the relative importance, priority and service level of each proposed Public Service, and to thereafter make recommendations to the County for the expenditures for Public Services from the funds made available to the County by the Tribe under this Agreement.

c. Assistance for the Committee. The County shall exercise its best efforts to provide information, expertise and financial data from the Sheriffs Department, Fire Department, Public Works Department, the County Auditor and from other appropriate sources to aid the Committee in making knowledgeable recommendations. Likewise, the Tribe shall exercise its best efforts to provide information, expertise and financial data from appropriate sources to aid the Committee in making knowledgeable recommendations.

d. Meet and Confer Obligations. Additionally, the Tribe and County shall meet and confer in good faith on a regular basis to prepare and update procedures to enable both entities to respect and assist each other in fulfilling their respective responsibilities so that the Public Services are provided as efficiently and effectively as possible.

6. Dispute Resolution Provisions.

a. Voluntary Resolution. In recognition of the government-to-government relationship of the Tribe and the County, the parties will make their best efforts to resolve disputes that occur under this Agreement by good faith negotiations whenever possible. Therefore, without prejudice to the right of either party to seek injunctive relief against the other when circumstances are deemed to require immediate relief, the parties hereby establish a threshold requirement that disputes between the Tribe and the County first be subjected to a process of meeting and conferring in good faith in order to foster a spirit of cooperation and efficiency in the administration and monitoring of performance and compliance by each other with the terms, provisions, and conditions of this Agreement, as follows:

(1) Either Party will give the other Party, as soon as possible after the event giving rise to the concern, a written notice setting forth, with specificity, the issues to be resolved.

(2) The Parties will meet and confer in a good faith attempt to resolve the dispute through negotiation not later than 10 days after receipt of the notice, unless both Parties agree in writing to an extension of time.

(3) If the dispute is not resolved to the satisfaction of the Parties within 30 calendar days after the first meeting, then either Party may seek

to have the dispute resolved by a mediator in accordance with this Section, but neither Party will be required to agree to submit to mediation.

(4) Disagreements that are not otherwise resolved by mediation or other mutually acceptable means as provided in this Section may be resolved in the Superior Court of the State of California, County of Kings. The disputes to be submitted to court action include, but are not limited to, claims of breach or violation of this Agreement. In no event may the Tribe be precluded from pursuing any arbitration or judicial remedy against the County on the grounds that the Tribe has failed to exhaust its administrative remedies. The Parties agree that, except in the case of imminent threat to the public health or safety, reasonable efforts will be made to explore alternative dispute resolution avenues prior to resorting to judicial process.

b. No Waiver or Preclusion of Other Means of Dispute Resolution.

This Section 6 may not be construed to preclude, limit, or restrict the ability of the Parties to pursue, by mutual agreement, any other method of dispute resolution, including, but not limited to, non-binding arbitration, provided that neither party is under any obligation to agree to such alternative method of dispute resolution.

c. Waiver of Sovereign Immunity.

(1) The Tribe expressly and irrevocably waives its sovereign immunity (and any defense based thereon) in favor of the County as to any dispute which arises out of or relates to this Agreement. The Tribe consents hereby to the jurisdiction of the Superior Court of the State of California, County of Kings (hereinafter "Superior Court"), for the purpose of adjudicating any dispute arising out of this Agreement and enforcing any order or judgment. Tribe agrees that the venue of any action arising in any way out of the obligations of the parties under this Agreement shall be, if in State Court, in the Superior Court and, if in Federal Court, in the Eastern District Court in Fresno, California. This waiver shall commence as of the date of execution of this Agreement and shall continue for one year following the expiration, termination or cancellation hereof, and for the duration of any litigation or dispute resolution proceeding then pending, all appeals therefrom, and the satisfaction or enforcement of any awards or judgment that may issue from any such proceedings, whichever is later.

(2) Without in any way limiting the generality of the foregoing, the Tribe expressly authorizes any governmental authorities who have the right and duty under applicable law to take any action authorized or ordered by any court, to take such action or otherwise give effect to any judgment entered by the court. In no instance shall this waiver be construed to extend to allow enforcement of any kind against assets of the Tribe other than the revenue stream from the Facility. Specifically, this waiver shall not extend to any other accounts of the Tribe, the source of which includes distributions from accounts directly related to the Facility.

(3) The Tribe does not waive any aspect of its sovereign immunity with respect to actions by third parties. This waiver is granted only to the County and not to any other individual or entity.

d. Damages and Attorneys Fees. In the event of termination or default in this Agreement, any damages awarded or arising under this Agreement shall be exclusively limited to actual or compensatory damages incurred. In no instance shall the County or the Tribe be entitled to consequential or punitive damages, lost profits, or attorney's fees. By acceptance and execution of this Agreement, the parties agree that they are precluded from asserting or claiming any additional damages, and that the only damages contemplated as arising from this Agreement are actual or compensatory damages.

7. Tribal-State Compact

The County and the Tribe agree that the Tribe's contributions to the County pursuant to this Agreement are not exactions of fees imposed as a condition of development, and therefore are not subject to the Mitigation Fee Act (California Government Code §§66000, et seq.). The County and the Tribe agree that all Class III gaming facilities on tribal land are regulated by the Compact and that the County has no permitting authority over the construction of improvements to the Tribe's Facility. The voluntary contributions contemplated by this Agreement are being made by the Tribe pursuant to section 10.8 of the Compact.

8. Notice.

Any notices required or permitted hereunder shall be in writing and may be personally delivered; or by mail by depositing such notice in the United States mail, first class postage prepaid; or by reputable overnight delivery service (such as Federal Express, UPS or DHL); addressed as follows or to such other place as each Party may designate by subsequent written notice to each other.

For the Tribe:

Chairperson
Santa Rosa Rancheria
P.O. Box 8
16835 Alkali Drive
Lemoore, CA 93245

For the County:

Kings County Administrative Officer
Kings County Government Center
1400 West Lacey Boulevard
Hanford, CA 93230

With a Copy To:

Robert Rosette
Monteau and Peebles, LLP
1001 Second Street
Sacramento, CA 95814-3201

Kings County Counsel
Kings County Government Center
1400 West Lacey Boulevard
Hanford, CA 93230

9. Miscellaneous Provisions.

a. Term of Agreement. The term of this Agreement commences on September 9, 2003 and expires on September 9, 2020.

b. No Third Party Beneficiaries. This Agreement is not intended to, and will not be construed to, confer a benefit or create any right on a third party, or the power or right of a third party to bring an action to enforce any of its terms.

c. Amendments. This Agreement may be amended only by written instrument signed by the County and the Tribe.

d. Waiver. The waiver by either Party or any of its officers, agents or employees, or the failure of either Party or its officers, agents or employees to take action with respect to any right conferred by, or any breach of any obligation or responsibility of this Agreement, will not be deemed to be a waiver of such obligation or responsibility, or subsequent breach of same, or of any terms, covenants or conditions of this Agreement, unless such waiver is expressly set forth in writing in a document signed by the appropriate authority of the County or of the Tribe.

e. Authorized Representatives. The persons executing this Agreement on behalf of the Parties hereto affirmatively represent that each has the requisite legal authority to enter into this Agreement on behalf of their respective Party and to bind their respective Party to the terms and conditions of this Agreement. The persons executing this Agreement on behalf of their respective Party understand that both Parties are relying on these representations in entering into this Agreement.

f. Successors in Interest. The terms of this Agreement will be binding on all successors in interest of each Party.

g. Severability. The provisions of this Agreement are severable, and the adjudicated invalidity of any provision or portion of this Agreement shall not in and of itself affect the validity of any other provision or portion of this Agreement, and the remaining provisions of the Agreement shall remain in full force and effect, except to the extent that the invalidity of the severed provisions would result in a failure of consideration. If a court of competent jurisdiction were to determine that a provision of

this Agreement is invalid or unenforceable and results in a failure of consideration, then the parties agree to promptly discuss entering into an amendment to this Agreement to cure the legal defect. Except for this obligation to discuss amending this Agreement, neither Party is obligated to agree to a new agreement.

h. Construction of Agreement. This Agreement shall be construed and enforced in accordance with the laws of the United States and the State of California.

i. Force Majeure. In the event of a forced delay in performance by either the Tribe or the County due to causes beyond the reasonable control of that Party, including but not limited to fire, floods, catastrophic weather events or other natural disasters, epidemics, embargoes, war, acts of war (whether or not war is declared), insurrections, riots, civil commotion, strikes, lockouts or other labor disturbances, acts of God, acts or inaction by the other Party its employees or agents, unusual delay in transportation, unavailability of materials, the time for performance shall be extended for the period of the forced delay.

10. Entire Agreement.

a. This Agreement constitutes the entire agreement between the County and the Tribe and supersedes all prior negotiations, representations, or other agreements, whether written or oral.

b. In the event of a dispute between the Parties as to the language of this Agreement or the construction or meaning of any term hereof, this Agreement will be deemed to have been drafted by the Parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any Party to this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year above set forth.

SANTA ROSA RANCHERIA

COUNTY OF KINGS

By /s/ Clarence Atwell
Clarence Atwell, Chairperson
Santa Rosa Rancheria Tribal Council

By /s/ Joe Neves
Joe Neves, Chairman
Kings County Board of Supervisors

Approved as to Form:
/s/ Robert A Rosette
Robert A. Rosette
Monteau and Peebles LLP
Attorneys for Tribe
h\Agreement\sntrosa9-2003

Approved as to Form:
/s/ Denis A Eymil
Denis A. Eymil
County Counsel
Attorneys for County