

## OPENING STATEMENT

This arbitration results from negotiations between the Quechan Tribe of the Fort Yuma Indian Reservation (“Tribe”) and the County of Imperial (“County”). These negotiations are required pursuant to an Amended Tribal-State Gaming Compact (“Compact”) signed by the Tribe and the State of California. A specific requirement of the Compact is that the Tribe offer to negotiate an Intergovernmental Agreement (“IGA”) with the County which addresses impacts that may occur off the Tribe’s reservation as a result of any new gaming facilities constructed by the Tribe. The requirement also provides for compensation to the County for programs and services provided to the Tribe as a consequence of the opening of a new Tribal gaming operation.

While these negotiations have been lengthy and often delayed, the Tribe and the County have reached agreement on all issues but one. As further explained in this brief, the parties disagree whether the Compact requires the Tribe to negotiate and include language in the IGA that requires the Tribe to follow State law in enforcing State court ordered earnings withholding and assignment support orders (“support orders”). The Tribe’s position is that the Compact contains no such mandate or requirement.

### **A. History of the Tribe**

The Fort Yuma Reservation of the Quechan Tribe was originally established in 1884, with additional parcels being added subsequent to that date. The Quechan Tribe’s Reservation currently comprises 45,000 acres and spans the California-Arizona border along the Colorado River, as well as bordering Mexico. The majority of the Tribe’s 45,000-acre Reservation is desert terrain and is located along the Colorado River at the point where the Colorado and Gila Rivers converge. The Colorado River is a major source of water for the Tribe.

The Fort Yuma Reservation borders the City of Yuma, Arizona and the town of Winterhaven, California. The City of Yuma's primary industry is agriculture, tourism and the military. The City of Yuma is one of the fastest growing areas in the United States and currently has a population of approximately 83,722. The town of Winterhaven is a small town with a population of approximately 525. The primary industry in Winterhaven is agriculture. The closest California city is El Centro, which is approximately 55 miles west of the Fort Yuma Reservation. The area between the Fort Yuma Reservation and El Centro is mostly undeveloped desert.

The Quechan Tribe currently has 3,230 members and these numbers are continually increasing. Sixty-eight percent (68%) of the Tribe's currently enrolled members are adults, thirty-two percent (32%) are children and six point two percent (6.2%) are elders. Forty-six percent (46%) of the currently enrolled members live on the Fort Yuma Reservation with a large portion of the remaining membership in close proximity. According to the Tribe's internal data, sixty-seven percent (67%) of its total adult population is unemployed, compared to forty-five percent (45%) unemployment of members living on the reservation in the 2000 U.S. Census an increase of 22%. Among families with children under 5 years of age, forty-eight percent (48%) live below the poverty line according to the 2000 U.S. census.

The Tribe adopted its Constitution in 1936. The Tribe's current government consists of fifty departments and ten committees to assist its members with housing, education, and healthcare issues. Government operations include Tribal operations, Tribal enterprises, and government departments. The Tribe performs various governmental functions such as law enforcement, developing utilities and infrastructure projects, providing health services and planning economic development in addition to providing members with general welfare assistance and per capita payments from the Tribe's economic development projects. Average annual per capita payments over the seven years in which the Tribe has been able to make payments have been two thousand, four hundred and fifty-one dollars (\$2, 451) per year, per member. This figure is much lower than many other gaming Tribes in California, many having a much smaller population.

The economy of the communities directly surrounding the Fort Yuma Reservation (Winterhaven and Yuma) relies mainly on agriculture and tourism. As a result, there are limited employment opportunities in the local area, making it difficult for the 1,485 members of the Quechan Tribe who live on or near the Fort Yuma Reservation to obtain gainful and steady employment. The Tribe has been able to employ approximately twenty-one percent (21%) of its adult members who live on the Reservation through either the tribal government or the casinos, but that still does not account for the remaining adult members who are lacking employment. This is why the new casino is a vital economic development project for the Tribe.

It is important to remember that Indian gaming has been the one economic development program able to overcome the poor quality and remote location of most Indian lands in California with lasting success. The Tribe's existing casino facilities straddle the border of Arizona and California within the heart of the reservation's administrative and residential areas. Both casinos are managed directly by the Quechan Tribe through a tribal member acting as General Manager. The Tribe's Arizona casino has 475 slot machines and employs 404 individuals. On the California side, the Tribe's casino has 349 slot machines and 20 table games and employs 198 individuals.

The Tribe engaged in marketing studies which indicated that a new location would provide greater cash-flow and would vastly improve upon the existing casino, especially in regard to zoning and development on the reservation. The new location will front Interstate 8 providing the casino increased visibility and generating more customers traveling along the interstate.

## **B. Background of Indian Gaming**

The history of Indian Tribes in the United States is one of the most widely known, but little understood, aspects of the Country's past. Tribes were moved from their homelands, sometimes thousands of miles, and put on "reserves" which were typically in the harshest and most remote geographical regions of the Country. Left to languish in these remote environments, American Indians were, and in many instances still are, the poorest of the poor in this Country, with life expectancies of a little over half of that of the general population. The history of the Tribes in California is no different, and in some ways worse.

As a result of the Mission systems instituted by the Spaniards and the various assimilation policies of the United States Federal government, California Tribes lost millions of acres of tribal lands, and at times, their federally-recognized tribal identities. Much of this was exacerbated in California by the Gold Rush, and California's subsequent entry into Statehood. California's new non-Indian citizens were interested in either the fertile agricultural lands or the prime mining lands and pressured local and State officials to do something about the "Indian problem." The series of actions taken by the State and Federal governments, including 18 unratified treaties, resulted in many, if not most, California Indians being left landless and homeless and the remainder in poor circumstances.

In the 1970s and 1980s, several Indian Tribes across the Country began running high stakes bingo operations on their reservations. These bingo operations were one way for Tribes to bring in much needed money for both governmental functions and to assist their members in merely getting by. The states, however, were opposed to these operations and tried to shut them down under state law. California, in particular, attempted to assert it had jurisdiction to enforce its laws under P.L. 280 which grants some states criminal jurisdiction over Indian lands. The Tribes responded by filing suit against the State in federal court. *California v. Cabazon Band* was decided by the Supreme Court in 1987<sup>1</sup>. In this pivotal case, the Court ruled that if a state law criminally prohibits a particular form of gambling, then the Tribes within that state cannot engage in that form of gambling. If, however, a state merely regulates a particular form of gambling, then the Tribes within that state may engage in that form without any state control<sup>2</sup>.

Spurred on by this decision, Congress enacted the Indian Gaming Regulatory Act in 1988. This legislation requires Tribes to have compacts with their state governments which address which types of games would be conducted on the reservation. By the late 1990s, some California Tribes had expanded their bingo operations to include some slot machines. Negotiations with then Governor Wilson got nowhere and the Tribes instituted an initiative which was placed on the ballot of November 1998 called Proposition 5, the "Tribal Government Gaming and Economic Self-Sufficiency Act of 1998." This was passed by the California voters, but ultimately struck down as unconstitutional by the California Supreme Court. In response to

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<sup>1</sup> *California v. Cabazon Band of Mission Indians, et al.*, 480 U.S. 202 (1987).

<sup>2</sup> *Id.*

this, Governor Gray Davis and many of the California Tribes negotiated tribal-state compacts which would allow the Tribes to operate Nevada-style gambling in California. These Tribal-State Gaming Compacts, or the 1999 Compacts as they are widely known, however, had a limitation on the total number of slot machines allowed in the State. The result of the 1999 Compacts was a licensing pool of slot machines which was soon exhausted by many of the Tribes which had been running gaming operations since the 1980s.

The Quechan Tribe entered into one of the 1999 Compacts and thereafter ran a small casino in California. When the Tribe decided that it was both prudent and beneficial to try to expand its gaming operations, however, it found that there were no more slot machines left to license under its current compact. It therefore determined that it would have to negotiate a new compact or an amendment to its compact in order to obtain more machines for an expanded operation.

The Tribe's new Casino facilities will consist of a Casino, which will offer table games and eventually up to 1100 slot machines. In conjunction with the Casino facility, the Tribe will be building a 200-room hotel with pool and water park, an events center, recreation facilities and the associated infrastructure to support such improvements.

### **C. Chronology of Negotiations between Tribe and County.**

In anticipation of successfully negotiating an amendment to its 1999 Gaming Compact with the State of California, the Tribe began preparing an environmental evaluation (called a tribal environmental impact report (TEIR) in the Compact) that mirrored the requirements that were included in the proposed Amended Compact and complied with the requirements of its current Compact. The Tribe contacted the County and requested that the County work with the Tribe in evaluating the potential off-reservation impacts of the proposed new gaming facility (Project) and began discussions concerning an IGA.

The negotiations for the Compact concluded with the State of California in January 2005 and the Draft TEIR was also published that month. The Final TEIR was completed and published in March of 2005. Throughout that time and up until August of 2005, the Tribe and County continued to have meetings and discussions regarding the proposed IGA. In July 2005, the parties arrived at a draft agreement and circulated it for review with the Tribal Council and

the County Board of Supervisors. This proposal did not contain any language related to the enforcement of support orders and the Tribe was under the impression that an agreement had been reached on all issues with the only detail remaining for review being actual cost figures from certain County Departments. Because of delays in the ratification of the Compact by the California Legislature, no further action was taken to finalize the IGA until May of 2006.

During May 2006, the Tribe contacted the County in hopes of finalizing the IGA. While several contacts were made and a final proposed IGA was submitted to the County in July and August of 2006, no response was received from the County until January 2007. At that time additional County Departmental information was received, but the Tribe was unable to have any additional meetings or discussions with County staff. As a result the Tribal Council sent the Board of Supervisors a letter indicating the Tribe was forwarding the Tribe's last, best offer. The Tribal Council further indicated it intended to proceed to arbitration, as required in its Compact, if the County did not promptly respond. This action resulted in the County responding with additional drafts and discussion of the IGA terms. None of these "final" drafts contained any language related to the enforcement of support orders.

On June 20, 2007, the County placed the IGA on the Board of Supervisors' meeting agenda for review and discussion on July 3, 2007. A final version of the IGA was approved by the Tribal Council and presented to the County for inclusion on the Board of Supervisors' meeting agenda for July 3, 2007. As in the past, this "final" draft did not contain any language related to the enforcement of support orders.

At the July 3, 2007 Supervisors' meeting, several questions were raised by the Board concerning public safety, patron disputes and problem gambling. After the discussion, the approval of the IGA was continued until the July 24, 2007 Board meeting. Shortly before the scheduled meeting, the County requested an amendment to the IGA which modified the baseline amount for law enforcement costs. This amendment was accepted by the Tribe and resulted in what the Tribe considers to be the final IGA. [See Exhibit A]. The approval of the IGA, however, was again continued until August 14, 2007. At approximately 5:00 p.m. on August 13, 2007, the day before the scheduled Board hearing, the County forwarded a request for an additional provision to be added to the IGA. The provision required the Tribe to enforce state court child and support orders under California law; effectively requiring the Tribe to submit to

California State jurisdiction and waive its sovereign immunity. The Tribe refused to do so. Despite a comment from one of the County Supervisors that the request for the additional language was coming “at the 11<sup>th</sup> hour,” the Board of Supervisors approved the IGA with the additional language requiring enforcement of support orders language at the August 14, 2007 hearing. [See Exhibit B]. Shortly thereafter the Tribe filed its demand for arbitration.

## ARGUMENT

### **THE TRIBE’S PROPOSED INTERGOVERNMENTAL AGREEMENT BEST MEETS THE REQUIREMENTS OF ITS AMENDED GAMING COMPACT.**

Pursuant to Section 10.8.1 of the Tribe’s Amended Gaming Compact, the Tribe was required to prepare a TEIR to analyze the potential significant off-reservation environmental impacts resulting from the Tribe’s proposed gaming facility. The Tribe was also required to provide a Notice of Preparation of the Draft TEIR (Section 10.8.2) and a Notice of Completion of the Draft TEIR (Section 10.8.3) to the State, County and other interested parties.<sup>3</sup> There is a 45-day comment period for the Draft TEIR (Section 10.8.3. (a)(iv)). Once the 45-day comment period expired, the Tribe was required to prepare, certify and make available a Final TEIR (Section 10.8.4).<sup>4</sup> No later than the issuance of the Final TEIR and before the commencement of the Project, the Tribe was also required to offer to commence negotiations with the County with respect to four (4) specific areas of concern (identified as “matters” in the Compact).<sup>5</sup> The four areas or matters are spelled out in Section 10.8.8 (a) (i)-(iv) of the Amended Compact:

- (i) Timely mitigation of any Significant Effect on the Off-Reservation Environment (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,

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<sup>3</sup> As noted previously, the Draft TEIR was completed in January of 2005.

<sup>4</sup> Again, as noted previously, this was published in March of 2005.

<sup>5</sup> The Tribe began such negotiations with the County prior to the publication of the Final TEIR.

traffic noise, utilities and service systems and cumulative effects,) where such effect is attributable, in whole or in part, to the Project unless the parties agree that the particular mitigation is infeasible, taking into account economic, environmental, social technological or other considerations.

- (ii) Compensation for law enforcement, fire protection, emergency medical services and any other public services to be provided by the County to the Tribe for the purposes of the Tribe's Gaming Operation as a consequence of the Project.
- (iii) Reasonable compensation for programs designed to address gambling addiction.
- (iv) Mitigation of any effect on public safety attributable to the Project, including any compensation to the County as a consequence thereof.

If no agreement is reached within fifty-five (55) days of the submission of the Final TEIR, either the County or the Tribe may request binding arbitration pursuant to Section 10.8.9. This process, often referred to as "baseball arbitration," requires both parties to exchange their last, best written offers and limits the arbitrator to awarding only one or the other of the two offers submitted without any modification. The arbitrator must base his/her decision upon a determination that the chosen offer best provides feasible mitigation of the significant environmental off-reservation impacts and most reasonably compensates the County for services provided by the County to the Tribal gaming operation as a consequence of the new facilities. Review of the arbitrator's decision is waived.

A review of the last, best offers submitted by the County and the Tribe shows that there is only one issue in dispute. As previously mentioned, the County added additional language to the Intergovernmental Agreement (IGA) that would require the Tribe to comply with state court ordered earnings withholding and assignments support orders effectively requiring the Tribe to submit to the jurisdiction of California Courts. It's the Tribe's position that the County cannot require the Tribe to include this language since enforcement of these orders is not a matter for negotiation mandated by the Tribe's Compact.



The specific language added to the IGA by the County is located at Article 1, Section 10 of the County's last, best offer and reads as follows:

The Tribe shall, with respect to the earnings of any person employed at the Gaming Facility, comply with all earnings withholdings orders for support of a child, spouse or former spouse and all other orders by which the earnings of an employce are required to be withheld by an employer pursuant to Chapter 5 (commencing with Section 706.010) of Division 1 of Title 9 of Part 2 of the California Code of Civil Procedure, and with all earnings assignment orders for support made pursuant to Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the California Family Code or Section 3088 of the Probate Code.

The question presented in this arbitration, therefore, is whether the language added by the County concerning enforcement of earnings withholding and assignment orders can be interpreted to be a matter subject to negotiation as required by Section 10.8.8 of the Tribe's Compact. For the reasons stated below, the Tribe contends that the enforcement of these orders is not a matter mandated for negotiation by the Tribe's Gaming Compact.

The first matter subject to negotiation pursuant to the Compact addresses the mitigation of Significant Effects on the Off-Reservation Environment (10.8.8 (a) (i)). The Tribe's TEIR addressed all the areas required by the Checklist which was attached as an appendix to the Tribe's Gaming Compact. This Checklist follows the CEQA Checklist closely and requires the Tribe to assess areas such as Land Use, Traffic and Circulation, Water Resources, and Air Quality among other things. The enforcement of support orders has nothing to do with effects or impacts on the off-reservation environment and was thus not analyzed in the TEIR. Further, in its comments on the TEIR, the County did not raise the issue of such enforcement. Enforcement of the support orders does not mitigate any Significant Effect as that term is defined at Section 10.8.7 (b) of the Amended Compact.

The next matter mandated for negotiations addresses compensation to the County for public services provided by the County to the Tribe's Gaming Operation as a consequence of the commencement of the new operation (10.8.8 (a) (ii)). Such public services provided to the

Tribe's Gaming Operation would include law enforcement and fire protection. Enforcement of support orders is not a service provided by the County to the new facilities and cannot in any way be considered a service to the Gaming Operation. The proposed enforcement language therefore cannot be required pursuant to this subsection.

Section 10.8.8 (a) (iii) describes the third matter mandated for negotiations. This subsection requires the Tribe to negotiate reasonable compensation to be paid to the County for programs addressing gambling addiction. It cannot be seriously argued that enforcement of support orders is in any way related to funding of gambling addiction programs.

The last mandated matter for negotiations addresses the mitigation of public safety issues attributable to the new gaming operation and includes negotiations for any compensation to the County for costs incurred as a consequence of the new operation (Section 10.8.8 (a) (iv)). While "public safety" is not specifically defined in this subsection, it is difficult, if not impossible, to see a connection between enforcement of support orders and compensation to the County for public safety concerns arising off-reservation as a result of the Tribe's new gaming operation. It was certainly not considered a public safety issue by the County in the over two years spent in negotiation of the IGA since the County did not raise the issue of enforcement of support orders until just before the Board was to approve the IGA. Further, as noted above, enforcement of such support orders was not even an issue required to be analyzed by the TEIR and thus the State must not have considered enforcement of support orders to be a "public safety issue" when negotiating the Compact terms with the Tribe. Moreover, the County is not itself requesting compensation for costs incurred from enforcement of such support orders, but is requesting that the Tribe submit to California state jurisdiction in order for the Tribe to enforce such support orders. Once again, the Tribe contends that there is no connection between enforcement of support orders and compensation for public safety concerns. Therefore, this subsection cannot be used by the County to require the Tribe to include the enforcement language in the Intergovernmental Agreement.

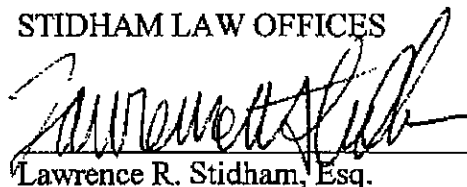
## CONCLUSION

The Tribe spent over two years negotiating the IGA with the County in good faith and addressed all of the issues requested by the County. It was not until the day before the County Board of Supervisors was to approve the IGA that the County proposed the enforcement language to the Tribe. While the Tribe recognizes the importance, as a matter of public policy, of enforcing state orders related to earnings withholding and assignment, it does not believe that its Gaming Compact requires it to negotiate this issue with the County. The Compact requires negotiations concerning four (4) specific matters – none of which can be interpreted to include enforcement of earnings withholding and assignment orders.

The Tribe therefore requests an award finding that its offer submitted to the County and filed in this arbitration best meets the requirements and intent of the Tribe's Amended Gaming Compact.

The Tribe withdraws its request to be awarded all costs and attorneys fees.

STIDHAM LAW OFFICES



Lawrence R. Stidham, Esq.  
Attorney for the Quechan Tribe

TOMARAS & OGAS LLP

Brenda L. Tomaras  
Attorney for the Quechan Tribe

**AMERICAN ARBITRATION ASSOCIATION**

**CASE NO. 73 181 00395 07**

**QUECHAN TRIBE and IMPERIAL COUNTY**

**PROOF OF SERVICE**

I, Sparrow Recio Daenitz, declare that I am 18 years of age, not a party to this action, and I am a resident of or employed in the County of San Diego where the mailing took place.

My business address is 210 5<sup>th</sup> Street, Ramona, California, 92065.

I caused to be served a copy of the following document(s): OPENING BRIEF to the parties in this matter by email and by enclosing them in an envelope AND depositing the sealed envelopes with the United States Postal Service with the postage fully prepaid.

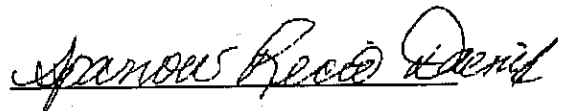
The envelopes were addressed and mailed as follows:

Ralph Cordova, Jr.  
Imperial County Counsel Office  
940 Main St., Ste. 205  
El Centro, CA 92243

Robertta J. Burns  
County Executive Officer  
Imperial County - Admin. Center  
940 W. Main St., Ste. 208  
El Centro, CA 92243

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 11/01/07

  
Sparrow Recio Daenitz

# **EXHIBIT A**

**QUECHAN INDIAN TRIBE'S LAST BEST  
OFFER**

## INTERGOVERNMENTAL AGREEMENT

The Quechan Tribe of the Fort Yuma Indian Reservation, a federally-recognized Indian tribe, (hereafter referred to as "Tribe") enters into this Intergovernmental Memorandum of Understanding (hereinafter referred to as "MOU") with Imperial County, California (hereinafter referred to as "County") to confirm the inter-governmental understanding of the Tribe, and County (hereinafter referred to as "Parties") regarding the mitigation of potential off-reservation impacts of the Tribe's development within the California portion of the Fort Yuma Indian Reservation ("Quechan Reservation") of a Tribal Gaming Facility and hotel (hereinafter referred to collectively as the "Gaming Facility").

### RECITALS

- A. The Tribe is a federally-recognized Indian tribe which occupies a federal Indian Reservation within the geographic boundaries of the County.
- B. Pursuant to the Indian Gaming Regulatory Act, ("IGRA"), and other federal law, the Tribe may engage in development of its lands as a means of raising tribal revenues and achieving self-sufficiency.
- C. IGRA allows tribes to conduct Class III gaming activities on the lands of federally-recognized Indian tribes if such activities are conducted in conformity with a tribal-state compact entered into between the Tribe and Governor of the State.
- D. The Tribe originally entered into a Tribal-State Gaming Compact with the Governor of the State in 1999, and has negotiated an Amendment to that Compact with the Governor.
- E. The Amendment to the Compact contains a provision (Section 10.8.8) requiring the Tribe to negotiate with the County, and to enter into an agreement with the County with respect to:
  - i. Mitigation of any significant effect on the off-reservation environment, where such effect is attributable, in whole or in part, to the development of the Gaming Facility, unless the parties agree that the particular mitigation is infeasible, taking into account economic, environmental, social, technological, or other considerations.
  - ii. Compensation for law enforcement, fire protection, emergency medical services and any other public services to be provided by the County to the Tribe for the purposes of the Tribe's Gaming Operation as a consequence of the development of the Gaming Facility.
- F. The Tribe intends to develop a casino and hotel complex. The proposed 166-room, five-story hotel and 30,000 square foot two-story casino will include three restaurants, three bars, a 22,000 square foot events center, and recreation facilities on a site which is within a 494.7 acre parcel.

- G. The Tribe's Compact-related activities are not subject to the California Environmental Quality Act ("CEQA"). Pursuant to the Amendment to the Compact, the Tribe has adopted an Environmental Ordinance concerning the Project on the California portion of the Reservation that requires the preparation of environmental studies, public notice, consultation with the County and mitigation of significant off-reservation impacts.
- H. Prior to the Amendment to the Compact being ratified, the Tribe voluntarily agreed to abide by the environmental provisions, and prepared Draft and Final Environmental Evaluations, dated January, 2005 and May, 2005 respectively, which have identified certain off-Reservation impacts stemming from the Gaming Facility. The County and the public reviewed and commented on the Notice of Preparation and Draft Environmental Evaluation.
- I. Prior to ratification of the Amendment to the Compact, the Tribe commenced negotiations with the County of Imperial to arrive at agreement concerning any significant off-reservation impacts which may occur as a result of the development of its Gaming Facility.
- J. The Tribe and County acknowledge that the specific impacts of the Gaming Facility are not subject to precise measurement and that the measures agreed upon are intended as good faith approximate mitigation of identified impacts.
- K. The Tribe and the County acknowledge that the Tribe's development of the Gaming Facility is not subject to the discretionary approval or jurisdiction of the County as it is located on sovereign reservation property.

**NOW THEREFORE**, the parties agree to the following:

**I. MITIGATION MEASURES**

- 1. Security and Law Enforcement. The Tribe and Sheriff respectively shall provide security and law enforcement at the Gaming Facility as set forth below.
  - a. Security. The Tribe shall have the responsibility for maintaining security in the Gaming Facility and for special events as appropriate for the particular event through its security and Tribal police forces. The Tribe agrees to provide an adequate level of on-site security in the Gaming Facility during all hours of Gaming Facility operation. The Tribe acknowledges that assistance from the County Sheriff may be required from time to time with respect to the apprehension and arrest of persons engaged in suspected criminal activity. Procedures shall be developed by the Parties to cover turnover of persons apprehended for criminal activity by the Tribe's security personnel or Tribal police to the Sheriff's Department.

b. Law Enforcement Responsibilities. County and Tribe agree that under Public Law 280 (18 U.S.C. § 1162), the County and the County Sheriff have jurisdiction over offenses committed on the reservation or in the Facility by or against all persons, including, but not limited to, members of the Tribe and other Indians.

e. Funding. The Tribe shall pay to the County at the beginning of each County fiscal year (July 1) to mitigate the expense to the County of additional direct law enforcement expenses expected to be or that may be incurred by the County Sheriff's Department and stemming from the operation of the casino the amounts as set forth:

i. The Tribe agrees to provide funding for actual costs not to exceed \$214,065.26 on an annual basis for total payroll and fringe benefits for the hiring and retention of three (3) Sheriff deputies.

ii. Fifty percent (50%) of the first annual payment shall be made no later than nine (9) months prior to the Tribe's estimated date for the opening of the Gaming Facility to the General Public.

iii. Along with the initial fifty (50%) percent payment, the Tribe shall pay a one time amount of \$75,536.00 for the equipment needs of the three (3) deputies to be hired.

It is understood and agreed that the funding for the three (3) Sheriff deputies will be utilized by the Sheriff to establish appropriate procedures and beats for said deputies which will assure adequate law enforcement services will be provided to the Gaming Facility.

In addition, should the Tribe wish to hire Sheriff Deputies to assist with security and/or traffic for gaming facility special events, the Tribe will negotiate a separate rate with the Sheriff's Department to provide such assistance.

For those indirect costs of law enforcement which may be considered to stem from the operations of the casino such as detention, prosecution, public defense and probation services, the County and the Tribe agree to negotiate to derive a final dollar amount to be placed into a fund each year by the Tribe. This fund shall be used by the County to mitigate expenses for the indirect costs of law enforcement which can be fairly said to have derived from the Casino operations. Should the parties be unable to agree on a specific dollar amount within six months of initially starting negotiations, but no later than May of 2008, the parties may choose to continue negotiations further, or may utilize the Dispute Resolution Procedure of this MOU.

d. Reassessment of needs. Eighteen months after the first day of operation of the casino in the first year, and beginning the following year, thereafter in the last month of each year of the casino's operation, the County shall provide a report to the Tribe containing the compiled data regarding total numbers of calls, arrests and prosecutions arising out of the operation of the casino, in order for the Parties to evaluate the appropriateness of current year funding, including equipment needs and any change in the pay and/or fringe benefits of Sheriff deputies as detailed in any labor agreement. In the event of any disagreements on the amounts to be paid in future years, the Dispute Resolution procedures of this MOU shall apply; but the Tribe shall continue to pay at



least the payments due during the preceding year during the pendency of any such dispute resolution, and the resolution(s) thereof shall be fully retroactive. However, the Tribe has agreed, given the constraints on hiring of deputy sheriffs, that regardless of the reassessed numbers, it will not pay to the County less than two-thirds (66%) of the dollar amount set forth in paragraph 1.c.i. of this section in the Agreement.

e. Cross-Deputization. The parties agree that they will continue to consider the option of cross-deputization of tribal police.

2. Fire Protection Services.

a. Fire Protection. The Tribe will provide fire protection services for the casino with a combination of an agreement (or agreements) with the Imperial County Fire District and/or Winterhaven Fire District in order to supplement the services of the Winterhaven Fire District. The Imperial County Fire District and the Winterhaven Fire District have mutual aid agreements with the City of Yuma which would allow for additional coverage of the area in times of extraordinary emergency. The combination of those services will meet the standards of the NFPA fire codes. Copies of agreements confirming all potential responders for standard and second alarm response levels shall be provided to County by the Tribe prior to opening of the Facility.

3. Public Health and Safety

a. Emergency Medical Response for Casino Facility. The Tribe will provide emergency medical response for the Casino by contracting with an Ambulance Service. The Ambulance Service shall provide all normal and necessary ambulance and emergency medical services to the Facility. A copy of the agreement with the Ambulance Service shall be provided to County by the Tribe prior to opening the Facility.

b. Evacuation Plan. The Tribe shall provide a copy of its Emergency Evacuation Plan to the County Office of Emergency Services (OES) and Sheriff's Department, at least three (3) months prior to commencing operation of the Facility, and ensure any updates or modifications to the plan are provided to County OES and the Sheriff's Department upon implementation.

4. Air Quality.

a. Construction Emissions. Standard techniques for dust suppression, such as watering of all haul roads, active construction areas, and exposed soil piles; prewatering the grading site at least 48 hours prior to grubbing; maintaining at least two feet of freeboard for loads of all trucks hauling soil and other loose material; sweeping as needed and at the end of each work day (with water sweepers) all paved access roads, parking areas and staging areas at the construction site; apply soil stabilizers to construction areas which are inactive 10 or more days; limit traffic speeds on unpaved roads to 15 miles per hour; limit the area subject to excavation, grading and other dust-generating construction activity on any given day to no more than five acres; and ensure that all mobile and

stationary internal combustion engine equipment is properly maintained and well-tuned according to manufacturer's specifications.

b. Operational Emissions. Standard techniques for limiting operational admissions will be undertaken and may include such methods as a subsidized van pool; park and ride programs for employees and customers from Yuma and certain areas in County including El Centro, Calexico and Brawley; improved access to public transit to encourage use of available public transit system; designing on-site circulation elements in parking lots to reduce vehicle queuing; ensure that all mobile and stationary internal combustion engine equipment is properly maintained and well-tuned according to manufacturer's specifications; and properly maintain overflow parking lots of either gravel or recycled concrete.

c. Other.

i. The Tribe will provide a list of auxiliary equipment and notice of installation to the County within thirty (30) days of said installation.

ii. The Tribe will provide notice of any future development on that gaming parcel that may emit or control an air contaminant.

5. Road/Traffic. Pursuant to the Tribe's Amended Compact, it will enter into an MOU with Caltrans to address any potential traffic impacts.

6. Stormwater/Drainage.

a. SWPPP. A site drainage and grading study shall be prepared, a copy of which shall be provided to the County for review. A storm-water management system utilizing bioretention ponds, a detention basin, and other features will be utilized where feasible to attenuate the effects of stormwater flow from the site. Offsite drainage facilities, including improvements constructed by the Tribe and facilities impacted by the Tribe's improvements, shall be evaluated in the site drainage and grading report for condition and capacity. If necessary, the Tribe shall upgrade, replace, or provide mitigation.

b. Best management practices. Best management practices shall minimize drainage concentration from impervious surfaces, construction management techniques, erosion protection at culvert outfall locations, erosion prevention and sediment control.

c. General Permit. The Tribe will obtain coverage under the General Permit for Stormwater Discharges from Construction Sites issued by the U.S. EPA, in accordance with the National Pollutant Discharge Elimination System (NPDES). The Tribe shall comply with the conditions of the General Permit.

7. Wastewater Treatment. Wastewater will be handled by a private infrastructure improvement, and all design, construction and operation will be in accordance with EPA and other federal guidelines. The Tribe will coordinate any responses to off-reservation complaints concerning odors with the County.

8. Solid Waste. Solid waste generated by the Facility that is not diverted for recycling/reuse will be disposed of only at permitted off-Reservation landfills. Solid waste management will be handled through contract with a licensed private waste management company or by the Tribe itself. Prior to construction, the Tribe shall provide County with proof that the Tribe has entered into a contract with a permitted solid waste landfill for disposal of the Facility's solid waste.
9. Problem Gambling. Pursuant to the terms of the Amended Compact, should the County establish a program designed to address gambling addiction, the Tribe and the County agree to discuss reasonable compensation for said programs.

## II. MISCELLANEOUS PROVISIONS

1. No Third Party Beneficiaries. This MOU 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 to bring an action to enforce any of its terms.
2. Amendments. This MOU may be amended only by written instrument duly signed and executed by the County and the Tribe.
3. 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 MOU, will not be deemed to be a waiver of such obligation or responsibility, or subsequent breach of same, or any terms, covenants or conditions of this MOU, unless such waiver is expressly set forth in writing in a document signed and executed by the appropriate authority of the County or of the Tribe.
4. Severability. The provisions of this MOU are severable, and the adjudicated invalidity of any provision or portion of this MOU shall not in and of itself affect the validity of any other provision or portion of this MOU, and the remaining provisions of the MOU shall remain in full force and effect. If a court of competent jurisdiction were to determine that a provision of this MOU is invalid or unenforceable, then the parties agree to promptly use good faith efforts to amend this MOU to reflect the original intent of the parties in accordance with applicable law and consistent with the Amendment to the Compact between the Tribe and the State of California. If the parties are unable to reach agreement, the parties will resolve the dispute in accordance with the Dispute Resolution Section of this MOU.
5. Construction of MOU. This MOU shall be construed and enforced in accordance with the laws of the United States, the Tribe and the State of California.
6. 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 earthquake, flood, fire, other natural disaster, changes in law, regulation or governmental policy that has a material adverse effect on the Gaming Facility, 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, and unavailability of materials, the time for performance shall be extended for the period of the forced delay.

7. Acknowledgement. The Parties acknowledge that the matters addressed herein are off-reservation environmental impacts requiring mitigation by the Tribe in connection with the Tribe's development of the Gaming Facility and its obligations under the Amendment to the Compact.

8. Entire MOU.

a. This MOU 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 MOU or the construction or meaning of any term hereof, this MOU will be deemed to have been drafted by the parties in equal parts so that no presumption or inferences concerning its terms or interpretation may be construed against any party to this MOU.

9. Term.

a. Effective Date. This MOU shall not be effective unless and until the following events have occurred:

i. This MOU has been approved or ratified by the County Board of Supervisors, approved as to form by the County Counsel, and executed and delivered by the County; and

ii. This MOU has been approved or ratified by the Tribal Council, approved as to form by legal counsel to the Tribe, and executed and delivered by the Tribe.

iii. The Amendment to the Compact has been approved by the United States Department of Interior.

iv. The Tribe has commenced operation of the Gaming Facility.

b. Expiration Date. Subject to the early termination provision of this MOU, this MOU shall expire on the date of the expiration date of the Tribal-State Compact and Amendment thereto.

10. Termination Events. Unless otherwise agreed by the Tribe and the County, this MOU shall automatically terminate in the event, and on the date, that the Tribe ceases gaming operations at the Gaming Facility.

11. Suspension Events. If, due to Force Majeure (as hereinbefore defined), an act of God, valid business considerations, or the events listed in Section 6, the gaming operations

conducted by the Tribe at the Gaming Facility are suspended or terminated, the Parties' obligations under this MOU shall be suspended as of the date of such suspension or termination until such time as such operations are resumed. Nothing in this Section shall reduce the Tribe's liability for contributions or other payments which become due and payable prior to the date such gaming operations are suspended or terminated.

13. Renegotiation Provisions.

a. Tribal Renegotiation Events. At the Tribe's request, the County shall renegotiate one or more of the provisions of this MOU if there is a change in law, or other circumstances, which has a significant and adverse financial impact on the Gaming Facility. Such changes shall include, but not be limited to, the following:

i. Any change in State or Federal constitutions, laws, rules or regulations, guidelines, bulletins or policies, or the construction or interpretation thereof, relating to IGRA or gaming on Indian lands, or ending the prohibition on Class III gaming (as defined in IGRA) or the operation of gaming devices by non-Indians in the State.

ii. A reduction in the scope of gaming permitted at the Gaming Facility, whether pursuant to a change in Federal, State or local constitutions, laws, rules or regulations, the Tribal-State Compact or otherwise.

b. Renegotiation Procedures. All requests by either party to renegotiate or amend this MOU shall be by written notice addressed to the other party and shall identify the provisions of this MOU to be negotiated. Upon receipt of such notice, the Parties shall be obligated to renegotiate this MOU in good faith. The Parties shall confer promptly and determine a schedule for commencing negotiations within fifteen (15) days of receipt of notice. The Parties are hereby authorized to designate the person or agency responsible for conducting the negotiations, and shall execute any documents necessary to do so. The purpose of the negotiations will be to renegotiate the specified provisions of this MOU in good faith so that the Parties will retain substantially the same rights and economic benefits, in the aggregate, as contemplated on the date of execution of this MOU.

III. **DISPUTE RESOLUTION**

1. Dispute Resolution Process. The Tribe and the County shall make their best efforts to resolve disputes that occur under this Agreement by good faith negotiations whenever possible. Disputes between the Tribe and the County shall first be subjected to a process of meeting and conferring in good faith in order to foster the government-to-government relationship in a spirit of cooperation and efficiency in the administration of the terms, provisions, and conditions of this Agreement as follows:

a. Either party shall give the other, as soon as possible after the event giving rise to the concern, a written notice setting forth, with specificity, the issues to be resolved.

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

c. In the event of any dispute between the parties hereto arising under this Agreement which cannot be resolved through the meet and confer process, such dispute shall be submitted to mandatory binding arbitration pursuant to the Commercial Rules of American Arbitration Association. Each party shall initially pay its own arbitration costs and expenses, but the arbitrator may, in his or her discretion, include such costs and expenses, together with reasonable attorneys' fees, as part of the award to the prevailing party. Any award of the arbitrators may be submitted for enforcement to a court of competent jurisdiction located in Imperial County, California. The disputes to be submitted to arbitration shall be limited to claims of breach or violation of this Agreement. The arbitrator shall reach decisions concerning resolutions of any disputes pursuant to this Agreement within ninety (90) days of the disputes or issues being first submitted to him or her.

2. No Waiver or Preclusion of Other Means of Dispute Resolution. This Dispute Resolution section may not be construed to waive, limit or restrict any remedy that is otherwise available to either party, nor may this section 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, mediation or utilization of a technical advisor to the Tribal and State Gaming Agencies; provided that neither party is under any obligation to agree to such alternative method of dispute resolution.

3. Judicial Enforcement. Either party may seek judicial enforcement of the arbitration decision. Such enforcement actions shall be brought in the United States District Court for the Southern District of California, the United States Court of Appeals for the Ninth Circuit, and the United States Supreme Court. The County and the Tribe expressly consent to be sued in such courts, pursuant to the terms and conditions of this section, for the purposes of conformation of the arbitration award. If the United States District Court for the Southern District of California determines that it lacks jurisdiction, the parties shall be entitled to file in the appropriate trial court for the State of California. The awards of any arbitration if brought in Federal Court shall be governed by the Federal Arbitration Act codified in Title 9 of the United States Code except as the same may be changed or limited by the provisions of this Agreement.

a. The appropriate Court shall have the authority not only to confirm any order or decision of the arbitrator, but to issue all orders necessary, including, but not limited to, the issuance of temporary or permanent injunctions to prohibit the parties from engaging in conduct that violates the provisions of this Agreement; compelling the parties to comply with the provisions of this Agreement; or any decision or order of any arbitrator selected under this Agreement.

b. Judicial remedies are specifically limited to the following:

- i. The enforcement of an award of money damages by arbitration pursuant to this Agreement; provided that the arbitrator(s) and/or Court shall have no authority or jurisdiction to execute against any assets of the Tribe except assets and undistributed net revenues derived from its California Paradise Casino operations and to award the prevailing party the costs of arbitration, court costs to enforce the arbitration decision and legal fees incurred during arbitration and any subsequent court proceedings to enforce the arbitration decision.
- ii. The enforcement of a determination by an arbitrator pursuant to this Agreement that mandates either party to specifically perform any obligation under this Agreement (other than an obligation to pay money which is provided for in Paragraph i. above).
- iii. In any court action brought pursuant to this Agreement, neither party shall be entitled to recover attorney fees and costs except as otherwise provided in this Agreement or by law.
- iv. In no instance shall the parties to this Agreement be entitled to punitive damages.

4. Limited Waiver.

a. The parties acknowledge that the Tribe is a federally-recognized Indian tribe and, as such, it possesses sovereign immunity from suit. Nothing in this Agreement is or shall be deemed to be a waiver of the Tribe's sovereign immunity from suit, which immunity is expressly asserted, except that the Tribe agrees to waive its immunity for the limited and sole purpose of compelling arbitration and of enforcing an arbitration decision rendered pursuant to the terms and conditions of this Agreement. The Tribe's limited waiver of its sovereign immunity as provided herein in favor of the County extends only to an arbitration, action to compel arbitration and action to confirm or enforce arbitration awards by the Tribe for money damages, specific performance, injunctive relief, and/or declaratory relief for the Tribe's breach of this Agreement. The Tribe does not waive any aspect of its sovereign immunity with respect to actions by third parties. This limited waiver is granted only to the County and not to any other individual or entity.

b. The County agrees that exhaustion, by the Tribe, of County claims or other administrative processes is not required in order to initiate the arbitration process contemplated by this Agreement.

IMPERIAL COUNTY'S LAST BEST OFFER

# EXHIBIT B



**INTERGOVERNMENTAL AGREEMENT**

The Quechan Tribe of the Fort Yuma Indian Reservation, a federally-recognized Indian tribe, (hereafter referred to as "Tribe") enters into this Intergovernmental Memorandum of Understanding (hereinafter referred to as "MOU") with Imperial County, California (hereinafter referred to as "County") to confirm the inter-governmental understanding of the Tribe, and County (hereinafter referred to as "Parties") regarding the mitigation of potential off-reservation impacts of the Tribe's development within the California portion of the Fort Yuma Indian Reservation ("Quechan Reservation") of a Tribal Gaming Facility and hotel (hereinafter referred to collectively as the "Gaming Facility").

**RECITALS**

- A. The Tribe is a federally-recognized Indian tribe which occupies a federal Indian Reservation within the geographic boundaries of the County.
- B. Pursuant to the Indian Gaming Regulatory Act, ("IGRA"), and other federal law, the Tribe may engage in development of its lands as a means of raising tribal revenues and achieving self-sufficiency.
- C. IGRA allows tribes to conduct Class III gaming activities on the lands of federally-recognized Indian tribes if such activities are conducted in conformity with a tribal-state compact entered into between the Tribe and Governor of the State.
- D. The Tribe originally entered into a Tribal-State Gaming Compact with the Governor of the State in 1999, and has negotiated an Amendment to that Compact with the Governor.
- E. The Amendment to the Compact contains a provision (Section 10.8.8) requiring the Tribe to negotiate with the County, and to enter into an agreement with the County with respect to:
  - i. Mitigation of any significant effect on the off-reservation environment, where such effect is attributable, in whole or in part, to the development of the Gaming Facility, unless the parties agree that the particular mitigation is infeasible, taking into account economic, environmental, social, technological, or other considerations.
  - ii. Compensation for law enforcement, fire protection, emergency medical services and any other public services to be provided by the County to the Tribe for the purposes of the Tribe's Gaming Operation as a consequence of the development of the Gaming Facility.
- F. The Tribe intends to develop a casino and hotel complex. The proposed 166-room, five-story hotel and 30,000 square foot two-story casino will include three restaurants, three bars, a 22,000 square foot events center, and recreation facilities on a site which is within a 494.7 acre parcel.

- G. The Tribe's Compact-related activities are not subject to the California Environmental Quality Act ("CEQA"). Pursuant to the Amendment to the Compact, the Tribe has adopted an Environmental Ordinance concerning the Project on the California portion of the Reservation that requires the preparation of environmental studies, public notice, consultation with the County and mitigation of significant off-reservation impacts.
- H. Prior to the Amendment to the Compact being ratified, the Tribe voluntarily agreed to abide by the environmental provisions, and prepared Draft and Final Environmental Evaluations, dated January, 2005 and May, 2005 respectively, which have identified certain off-Reservation impacts stemming from the Gaming Facility. The County and the public reviewed and commented on the Notice of Preparation and Draft Environmental Evaluation.
- I. Prior to ratification of the Amendment to the Compact, the Tribe commenced negotiations with the County of Imperial to arrive at agreement concerning any significant off-reservation impacts which may occur as a result of the development of its Gaming Facility.
- J. The Tribe and County acknowledge that the specific impacts of the Gaming Facility are not subject to precise measurement and that the measures agreed upon are intended as good faith approximate mitigation of identified impacts.
- K. The Tribe and the County acknowledge that the Tribe's development of the Gaming Facility is not subject to the discretionary approval or jurisdiction of the County as it is located on sovereign reservation property.

**NOW THEREFORE**, the parties agree to the following:

**I. MITIGATION MEASURES**

- 1. Security and Law Enforcement. The Tribe and Sheriff respectively shall provide security and law enforcement at the Gaming Facility as set forth below.
  - a. Security. The Tribe shall have the responsibility for maintaining security in the Gaming Facility and for special events as appropriate for the particular event through its security and Tribal police forces. The Tribe agrees to provide an adequate level of on-site security in the Gaming Facility during all hours of Gaming Facility operation. The Tribe acknowledges that assistance from the County Sheriff may be required from time to time with respect to the apprehension and arrest of persons engaged in suspected criminal activity. Procedures shall be developed by the Parties to cover turnover of persons apprehended for criminal activity by the Tribe's security personnel or Tribal police to the Sheriff's Department.

b. Law Enforcement Responsibilities. County and Tribe agree that under Public Law 280 (18 U.S.C. § 1162), the County and the County Sheriff have jurisdiction over offenses committed on the reservation or in the Facility by or against all persons, including, but not limited to, members of the Tribe and other Indians.

e. Funding. The Tribe shall pay to the County at the beginning of each County fiscal year (July 1) to mitigate the expense to the County of additional direct law enforcement expenses expected to be or that may be incurred by the County Sheriff's Department and stemming from the operation of the casino the amounts as set forth:

i. The Tribe agrees to provide funding for actual costs not to exceed \$214,065.26 on an annual basis for total payroll and fringe benefits for the hiring and retention of three (3) Sheriff deputies.

ii. Fifty percent (50%) of the first annual payment shall be made no later than nine (9) months prior to the Tribe's estimated date for the opening of the Gaming Facility to the General Public.

iii. Along with the initial fifty (50%) percent payment, the Tribe shall pay a one time amount of \$75,536.00 for the equipment needs of the three (3) deputies to be hired.

It is understood and agreed that the funding for the three (3) Sheriff deputies will be utilized by the Sheriff to establish appropriate procedures and beats for deputies which will assure adequate law enforcement services will be provided to the Gaming Facility.

In addition, should the Tribe wish to hire Sheriff Deputies to assist with security and/or traffic for gaming facility special events, the Tribe will negotiate a separate rate with the Sheriff's Department to provide such assistance.

For those indirect costs of law enforcement which may be considered to stem from the operations of the casino such as detention, prosecution, public defense and probation services, the County and the Tribe agree to negotiate to derive a final dollar amount to be placed into a fund each year by the Tribe. This fund shall be used by the County to mitigate expenses for the indirect costs of law enforcement which can be fairly said to have derived from the Casino operations. Should the parties be unable to agree on a specific dollar amount within six months of initially starting negotiations, but no later than May of 2008, the parties may choose to continue negotiations further, or may utilize the Dispute Resolution Procedure of this MOU.

d. Reassessment of needs. Eighteen months after the first day of operation of the casino in the first year, and beginning the following year, thereafter in the last month of each year of the casino's operation, the County shall provide a report to the Tribe containing the compiled data regarding total numbers of calls, arrests and prosecutions arising out of the operation of the casino, in order for the Parties to evaluate the appropriateness of current year funding, including equipment needs and any change in the pay and/or fringe benefits of Sheriff deputies as detailed in any labor agreement. In the event of any disagreements on the amounts to be paid in future years, the Dispute Resolution procedures of this MOU shall apply; but the Tribe shall continue to pay at least the payments due during the preceding year during the pendency of any such dispute

Final – County – includes language re childsupport withholding orders 8.14.07  
resolution, and the resolution(s) thereof shall be fully retroactive. However, the Tribe has agreed, given the constraints on hiring of deputy sheriffs, that regardless of the reassessed numbers, it will not pay to the County less than two-thirds (66%) of the dollar amount set forth in paragraph 1.c.i. of this section in the Agreement.

e. Cross-Deputization. The parties agree that they will continue to consider the option of cross-deputization of tribal police.

2. Fire Protection Services.

a. Fire Protection. The Tribe will provide fire protection services for the casino with a combination of an agreement (or agreements) with the Imperial County Fire District and/or Winterhaven Fire District in order to supplement the services of the Winterhaven Fire District. The Imperial County Fire District and the Winterhaven Fire District have mutual aid agreements with the City of Yuma which would allow for additional coverage of the area in times of extraordinary emergency. The combination of those services will meet the standards of the NFPA fire codes. Copies of agreements confirming all potential responders for standard and second alarm response levels shall be provided to County by the Tribe prior to opening of the Facility.

3. Public Health and Safety

a. Emergency Medical Response for Casino Facility. The Tribe will provide emergency medical response for the Casino by contracting with an Ambulance Service. The Ambulance Service shall provide all normal and necessary ambulance and emergency medical services to the Facility. A copy of the agreement with the Ambulance Service shall be provided to County by the Tribe prior to opening the Facility.

b. Evacuation Plan. The Tribe shall provide a copy of its Emergency Evacuation Plan to the County Office of Emergency Services (OES) and Sheriff's Department, at least three (3) months prior to commencing operation of the Facility, and ensure any updates or modifications to the plan are provided to County OES and the Sheriff's Department upon implementation.

4. Air Quality.

a. Construction Emissions. Standard techniques for dust suppression, such as watering of all haul roads, active construction areas, and exposed soil piles; prewatering the grading site at least 48 hours prior to grubbing; maintaining at least two feet of freeboard for loads of all trucks hauling soil and other loose material; sweeping as needed and at the end of each work day (with water sweepers) all paved access roads, parking areas and staging areas at the construction site; apply soil stabilizers to construction areas which are inactive 10 or more days; limit traffic speeds on unpaved roads to 15 miles per hour; limit the area subject to excavation, grading and other dust-generating construction activity on any given day to no more than five acres; and ensure that all mobile and stationary internal combustion engine equipment is properly maintained and well-tuned according to manufacturer's specifications.

- b. Operational Emissions. Standard techniques for limiting operational admissions will be undertaken and may include such methods as a subsidized van pool; park and ride programs for employees and customers from Yuma and certain areas in County including El Centro, Calexico and Brawley; improved access to public transit to encourage use of available public transit system; designing on-site circulation elements in parking lots to reduce vehicle queuing; ensure that all mobile and stationary internal combustion engine equipment is properly maintained and well-tuned according to manufacturer's specifications; and properly maintain overflow parking lots of either gravel or recycled concrete.
- c. Other.
- i. The Tribe will provide a list of auxiliary equipment and notice of installation to the County within thirty (30) days of said installation.
  - ii. The Tribe will provide notice of any future development on that gaming parcel that may emit or control an air contaminant.
5. Road/Traffic. Pursuant to the Tribe's Amended Compact, it will enter into an MOU with Caltrans to address any potential traffic impacts.
6. Stormwater/Drainage.
- a. SWPPP. A site drainage and grading study shall be prepared, a copy of which shall be provided to the County for review. A storm-water management system utilizing bioretention ponds, a detention basin, and other features will be utilized where feasible to attenuate the effects of stormwater flow from the site. Offsite drainage facilities, including improvements constructed by the Tribe and facilities impacted by the Tribe's improvements, shall be evaluated in the site drainage and grading report for condition and capacity. If necessary, the Tribe shall upgrade, replace, or provide mitigation.
  - b. Best management practices. Best management practices shall minimize drainage concentration from impervious surfaces, construction management techniques, erosion protection at culvert outfall locations, erosion prevention and sediment control.
  - c. General Permit. The Tribe will obtain coverage under the General Permit for Stormwater Discharges from Construction Sites issued by the U.S. EPA, in accordance with the National Pollutant Discharge Elimination System (NPDES). The Tribe shall comply with the conditions of the General Permit.
7. Wastewater Treatment. Wastewater will be handled by a private infrastructure improvement, and all design, construction and operation will be in accordance with EPA and other federal guidelines. The Tribe will coordinate any responses to off-reservation complaints concerning odors with the County.

8. Solid Waste. Solid waste generated by the Facility that is not diverted for recycling/reuse will be disposed of only at permitted off-Reservation landfills. Solid waste management will be handled through contract with a licensed private waste management company or by the Tribe itself. Prior to construction, the Tribe shall provide County with proof that the Tribe has entered into a contract with a permitted solid waste landfill for disposal of the Facility's solid waste.
9. Problem Gambling. Pursuant to the terms of the Amended Compact, should the County establish a program designed to address gambling addiction, the Tribe and the County agree to discuss reasonable compensation for said programs.
10. *The Tribe shall, with respect to the earnings of any person employed at the Gaming Facility, comply with all earnings withholding orders for support of a child, or spouse or former spouse, and all other orders by which the earnings of an employee are required to be withheld by an employer pursuant to Chapter 5 (commencing with section 706.010) of Division 1 of Title 9 of Part 2 of the California Code of Civil Procedure, and with all earnings assignment orders for support made pursuant to Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the California Family Code or section 3088 of the Probate Code.*

## II. MISCELLANEOUS PROVISIONS

1. No Third Party Beneficiaries. This MOU 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 to bring an action to enforce any of its terms.
2. Amendments. This MOU may be amended only by written instrument duly signed and executed by the County and the Tribe.
3. 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 MOU, will not be deemed to be a waiver of such obligation or responsibility, or subsequent breach of same, or any terms, covenants or conditions of this MOU, unless such waiver is expressly set forth in writing in a document signed and executed by the appropriate authority of the County or of the Tribe.
4. Severability. The provisions of this MOU are severable, and the adjudicated invalidity of any provision or portion of this MOU shall not in and of itself affect the validity of any other provision or portion of this MOU, and the remaining provisions of the MOU shall remain in full force and effect. If a court of competent jurisdiction were to determine that a provision of this MOU is invalid or unenforceable, then the parties agree to promptly use good faith efforts to amend this MOU to reflect the original intent of the parties in accordance with applicable law and consistent with the Amendment to the Compact between the Tribe and the State of California. If the parties are unable to reach agreement, the parties will resolve the dispute in accordance with the Dispute Resolution Section of this MOU.

5. Construction of MOU. This MOU shall be construed and enforced in accordance with the laws of the United States, the Tribe and the State of California.
6. 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 earthquake, flood, fire, other natural disaster, changes in law, regulation or governmental policy that has a material adverse effect on the Gaming Facility, 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, and unavailability of materials, the time for performance shall be extended for the period of the forced delay.
7. Acknowledgement. The Parties acknowledge that the matters addressed herein are off-reservation environmental impacts requiring mitigation by the Tribe in connection with the Tribe's development of the Gaming Facility and its obligations under the Amendment to the Compact.
8. Entire MOU.
  - a. This MOU 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 MOU or the construction or meaning of any term hereof, this MOU will be deemed to have been drafted by the parties in equal parts so that no presumption or inferences concerning its terms or interpretation may be construed against any party to this MOU.
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  - a. Effective Date. This MOU shall not be effective unless and until the following events have occurred:
    - i. This MOU has been approved or ratified by the County Board of Supervisors, approved as to form by the County Counsel, and executed and delivered by the County; and
    - ii. This MOU has been approved or ratified by the Tribal Council, approved as to form by legal counsel to the Tribe, and executed and delivered by the Tribe.
    - iii. The Amendment to the Compact has been approved by the United States Department of Interior.
    - iv. The Tribe has commenced operation of the Gaming Facility.

- b. Expiration Date. Subject to the early termination provision of this MOU, this MOU shall expire on the date of the expiration date of the Tribal-State Compact and Amendment thereto.
10. Termination Events. Unless otherwise agreed by the Tribe and the County, this MOU shall automatically terminate in the event, and on the date, that the Tribe ceases gaming operations at the Gaming Facility.
11. Suspension Events. If, due to Force Majeure (as hereinbefore defined), an act of God, valid business considerations, or the events listed in Section 6, the gaming operations conducted by the Tribe at the Gaming Facility are suspended or terminated, the Parties' obligations under this MOU shall be suspended as of the date of such suspension or termination until such time as such operations are resumed. Nothing in this Section shall reduce the Tribe's liability for contributions or other payments which become due and payable prior to the date such gaming operations are suspended or terminated.
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- a. Tribal Renegotiation Events. At the Tribe's request, the County shall renegotiate one or more of the provisions of this MOU if there is a change in law, or other circumstances, which has a significant and adverse financial impact on the Gaming Facility. Such changes shall include, but not be limited to, the following:
- i. Any change in State or Federal constitutions, laws, rules or regulations, guidelines, bulletins or policies, or the construction or interpretation thereof, relating to IGRA or gaming on Indian lands, or ending the prohibition on Class III gaming (as defined in IGRA) or the operation of gaming devices by non-Indians in the State.
- ii. A reduction in the scope of gaming permitted at the Gaming Facility, whether pursuant to a change in Federal, State or local constitutions, laws, rules or regulations, the Tribal-State Compact or otherwise.
- b. Renegotiation Procedures. All requests by either party to renegotiate or amend this MOU shall be by written notice addressed to the other party and shall identify the provisions of this MOU to be negotiated. Upon receipt of such notice, the Parties shall be obligated to renegotiate this MOU in good faith. The Parties shall confer promptly and determine a schedule for commencing negotiations within fifteen (15) days of receipt of notice. The Parties are hereby authorized to designate the person or agency responsible for conducting the negotiations, and shall execute any documents necessary to do so. The purpose of the negotiations will be to renegotiate the specified provisions of this MOU in good faith so that the Parties will retain substantially the same rights and economic benefits, in the aggregate, as contemplated on the date of execution of this MOU.

### III. DISPUTE RESOLUTION



1. Dispute Resolution Process. The Tribe and the County shall make their best efforts to resolve disputes that occur under this Agreement by good faith negotiations whenever possible. Disputes between the Tribe and the County shall first be subjected to a process of meeting and conferring in good faith in order to foster the government-to-government relationship in a spirit of cooperation and efficiency in the administration of the terms, provisions, and conditions of this Agreement as follows:
  - a. Either party shall give the other, as soon as possible after the event giving rise to the concern, a written notice setting forth, with specificity, the issues to be resolved.
  - b. The parties shall meet and confer in a good faith attempt to resolve the dispute through negotiation not later than ten (10) days after receipt of the notice, unless both parties agree in writing to an extension of time.
  - c. In the event of any dispute between the parties hereto arising under this Agreement which cannot be resolved through the meet and confer process, such dispute shall be submitted to mandatory binding arbitration pursuant to the Commercial Rules of American Arbitration Association. Each party shall initially pay its own arbitration costs and expenses, but the arbitrator may, in his or her discretion, include such costs and expenses, together with reasonable attorneys' fees, as part of the award to the prevailing party. Any award of the arbitrators may be submitted for enforcement to a court of competent jurisdiction located in Imperial County, California. The disputes to be submitted to arbitration shall be limited to claims of breach or violation of this Agreement. The arbitrator shall reach decisions concerning resolutions of any disputes pursuant to this Agreement within ninety (90) days of the disputes or issues being first submitted to him or her.
2. No Waiver or Preclusion of Other Means of Dispute Resolution. This Dispute Resolution section may not be construed to waive, limit or restrict any remedy that is otherwise available to either party, nor may this section 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, mediation or utilization of a technical advisor to the Tribal and State Gaming Agencies; provided that neither party is under any obligation to agree to such alternative method of dispute resolution.
3. Judicial Enforcement. Either party may seek judicial enforcement of the arbitration decision. Such enforcement actions shall be brought in the United States District Court for the Southern District of California, the United States Court of Appeals for the Ninth Circuit, and the United States Supreme Court. The County and the Tribe expressly consent to be sued in such courts, pursuant to the terms and conditions of this section, for the purposes of conformation of the arbitration award. If the United States District Court for the Southern District of California determines that it lacks jurisdiction, the parties shall be entitled to file in the appropriate trial court for the State of California. The awards of any arbitration if brought in Federal Court shall be governed by the Federal Arbitration Act codified in Title 9 of the United States Code except as the same may be changed or limited by the provisions of this Agreement.

- a. The appropriate Court shall have the authority not only to confirm any order or decision of the arbitrator, but to issue all orders necessary, including, but not limited to, the issuance of temporary or permanent injunctions to prohibit the parties from engaging in conduct that violates the provisions of this Agreement; compelling the parties to comply with the provisions of this Agreement; or any decision or order of any arbitrator selected under this Agreement.
- b. Judicial remedies are specifically limited to the following:
  - i. The enforcement of an award of money damages by arbitration pursuant to this Agreement; provided that the arbitrator(s) and/or Court shall have no authority or jurisdiction to execute against any assets of the Tribe except assets and undistributed net revenues derived from its California Paradise Casino operations and to award the prevailing party the costs of arbitration, court costs to enforce the arbitration decision and legal fees incurred during arbitration and any subsequent court proceedings to enforce the arbitration decision.
  - ii. The enforcement of a determination by an arbitrator pursuant to this Agreement that mandates either party to specifically perform any obligation under this Agreement (other than an obligation to pay money which is provided for in Paragraph i. above).
  - iii. In any court action brought pursuant to this Agreement, neither party shall be entitled to recover attorney fees and costs except as otherwise provided in this Agreement or by law.
  - iv. In no instance shall the parties to this Agreement be entitled to punitive damages.

4. Limited Waiver.

- a. The parties acknowledge that the Tribe is a federally-recognized Indian tribe and, as such, it possesses sovereign immunity from suit. Nothing in this Agreement is or shall be deemed to be a waiver of the Tribe's sovereign immunity from suit, which immunity is expressly asserted, except that the Tribe agrees to waive its immunity for the limited and sole purpose of compelling arbitration and of enforcing an arbitration decision rendered pursuant to the terms and conditions of this Agreement. The Tribe's limited waiver of its sovereign immunity as provided herein in favor of the County extends only to an arbitration, action to compel arbitration and action to confirm or enforce arbitration awards by the Tribe for money damages, specific performance, injunctive relief, and/or declaratory relief for the Tribe's breach of this Agreement. The Tribe does not waive any aspect of its sovereign immunity with respect to actions by third parties. This limited waiver is granted only to the County and not to any other individual or entity.