

INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE COUNTY OF SAN DIEGO  
AND THE SANTA YSABEL BAND OF DIEGUENO MISSION INDIANS  
PURSUANT TO SECTION 10.8  
OF SANTA YSABEL'S TRIBAL-STATE GAMING COMPACT

This Agreement ("Agreement") is entered into this twelfth day of January, 2005, between the County of San Diego, a political subdivision of the State of California ("County"), and the Santa Ysabel Band of Diegueno Mission Indians, a federally recognized Indian Tribe located in the County of San Diego, State of California ("Tribe"). The County and the Tribe shall be collectively referred to as the "Parties".

RECITALS

- A. The Board of Supervisors of the County of San Diego and the General Council of the Santa Ysabel Band of Diegueno Mission Indians recognize that each is a governmental entity with mutual responsibility for the welfare of its people.
- B. The County recognizes that all lands title to which are held in trust by the United States for the Tribe in San Diego County (the "Reservation") are subject to federal and tribal laws and regulatory authority. The Tribe recognizes that non-trust unincorporated lands located in San Diego County are subject to State law and County regulatory authority.
- C. The County and the Tribe recognize that residents of the Reservation and the residents of San Diego County are neighbors with legitimate concerns over safety, development, and the character of life in San Diego County.
- D. In 1988, Congress enacted the Indian Gaming Regulatory Act (P.L. 100-497, codified at 18 U.S.C. § 1166 *et seq.* and 25 U.S.C. § 2701, *et seq.*) ("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.
- E. IGRA allocates regulatory authority over gaming among the federal government, the state in which a tribe has Indian land, and the tribe itself. IGRA makes Class III gaming activities lawful on the lands of federally-recognized Indian tribes only if such activities are, among other things, conducted in conformity with a tribal-state compact entered into between the Indian tribe and the state and approved by the Secretary of the Interior.

F. 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 its trust lands in compliance with IGRA. The Compact was ratified by the California State Legislature on September 12, 2003, and approved by the Bureau of Indian Affairs on November 21, 2003 and published in the Federal Register on December 22, 2003.

G. The Compact contains a provision (Section 10.8.1.1) requiring the Tribe to consult with the County of San Diego and to enter into agreements to develop site or project specific terms and conditions addressing implementation of feasible mitigation measures and feasible project alternatives concerning problem and pathological gambling and significant off-reservation environmental effects stemming from the Gaming Facility.

H. Pursuant to IGRA and the Compact, the Tribe intends to develop a 70,000 square foot Class III gaming casino of no more than 350 gaming devices, support offices and restaurant/food areas (the "Facility"); three outbuildings of 2,000 to 3,500 square feet each for service and support, including a wastewater treatment plant; and parking for approximately 600 cars, on approximately six acres of the Tribe's trust lands in San Diego County. The Tribe's intent in developing the Facility is to promote and support tribal economic development, tribal self-sufficiency and strong self-government.

I. The Parties acknowledge that the Tribe's on-Reservation compact-related activities are not subject to the California Environmental Quality Act ("CEQA"). Under the Tribal-State Compact the Tribe is required to adopt an ordinance providing for environmental review of potential off-Reservation environmental impacts of any project commenced after the effective date of the Compact. The Tribal-State Compact requires the Tribe, in fashioning this ordinance, to "make a good faith effort to incorporate the policies and purposes of the National Environmental Policy Act and the California Environmental Quality Act consistent with the Tribe's governmental interests." The Tribe adopted an ordinance that requires protection of the environment through the preparation of environmental studies, public notice, consultation with the County and mitigation of off-reservation impacts consistent with the policies and purposes of CEQA.

J. The Draft and Final Environmental Evaluation For the Santa Ysabel Casino, dated June 14, 2004 and September 14, 2004 respectively, identified certain off-Reservation impacts stemming from the Gaming Facility. The County and the public reviewed and commented on the Draft Environmental Evaluation.

K. The Tribe has consulted with the County to discuss the mitigation of significant adverse off-Reservation environmental impacts which may result from the Tribe's development and operation of the Facility. The County acknowledges and agrees that the matters addressed herein are the only off-reservation environmental impacts requiring mitigation by the Tribe in connection with the Tribe's development of the Facility and its obligations under the Compact.

L. The Tribe and County acknowledge the need for treatment of Problem and Pathological Gambling and acknowledge and agree that the matters addressed herein are the only Problem and Pathological Gambling impacts requiring mitigation by the Tribe in connection with the Tribe's development of the Facility and its obligations under the Compact.

**NOW, THEREFORE,** the County and the Tribe agree to enter into this Agreement for the purposes of: (1) setting forth the respective obligations of the Tribe and the County in providing the Mitigation Measures which will be necessitated by the Tribe's development and operation of the Facility; (2) providing a mechanism for the Tribe to contribute funding to the County for the provision of such Mitigation Measures; and (3) strengthening the government-to-government relationship between the County and the Tribe. To achieve these purposes, the County and the Tribe agree as set forth herein.

#### **A. MITIGATION MEASURES**

**1. Security and Law Enforcement.** The Tribe and the Sheriff respectively shall provide security and law enforcement on the Reservation as set forth below.

- a) **Security.** The Tribe shall have responsibility for maintaining security in the Facility, on the Reservation generally and for special events as appropriate for the particular event. The Tribe agrees to provide an adequate level of on-site security in the Facility during all hours of Facility operations. 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 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).
- 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. To the extent that the Tribe has established and maintains a Tribal Police Department, the Tribe and the County have concurrent jurisdiction. The parties recognize that the Tribe's development and operation of the Facility will create added burdens on the County Sheriff for law enforcement operations. In order to meet such added burdens, the Tribe will pay the County for law enforcement support beginning no later than the date the Facility commences operations.

- c) Funding. Law enforcement support shall consist of one deputy sheriff unit, 42.5 hours per week. Payments by the Tribe to the County shall become due and payable from the first day the Facility commences operations and paid in quarterly installments. The first payment shall be prorated if the opening date of the Facility is not on the first day of the quarter (January 1, March 1, July 1, or October 1), but will include a fixed start-up cost of \$24,361 in addition to the prorated quarterly service level charge. The quarterly service level charge shall be as follows:

January 1, 2005 - June 30, 2005	\$43,116 each quarter (\$172,464 annually)
July 1, 2005 – June 30, 2006	\$45,697 each quarter (\$182,788 annually)
July 1, 2006 – June 30, 2007	\$47,497 each quarter (\$189,988 annually)
July 1, 2007 – June 30, 2008	\$49,577 each quarter (\$198,308 annually)

Beginning July 1<sup>st</sup>, 2008, the quarterly amount the Tribe will pay to the County will be increased by the Consumer Price Index for All Urban Consumers in the San Diego, California area (CPI Index) over the quarterly amount paid for July 1, 2007 – June 30, 2008 (the base year). Thereafter, throughout the remaining term of this Agreement, the quarterly amount paid in the previous County fiscal year (July 1 – June 30) will be increased annually consistent with the increases in the CPI Index, but in no event shall the amount of the percentage increase applied pursuant to this section be less than five percent.

The Tribe shall purchase one patrol vehicle to be used by the Deputy Sheriff personnel and on a recurring basis, Tribe shall purchase a replacement patrol vehicle to replace the vehicle prior to the vehicle reaching 90,000 miles of usage or if the vehicle is damaged beyond repair in the performance of law enforcement services, but in no event shall more than one replacement vehicle be required per year. The initial vehicle and necessary equipment shall be specified by the County of San Diego and the cost for the equipped vehicle shall not exceed \$47,000. Cost of future replacement vehicles will be increased not more than that which is consistent with increases in the CPI Index. Costs of fuel, maintenance and repair of the vehicles shall be paid by the Tribe and are included in the quarterly service level charges described above.

- d) County of San Diego District Attorney Tribal Liaison Project. The Tribe shall annually pay \$10,000 to County for fair-share cost of the District Attorney's Office – Tribal Liaison Project that consists of dedicated District Attorney Staff who work closely with Tribes in the San Diego region to prosecute Indian gaming-related crime. First payment shall be paid before the casino commences operation. Subsequent payments shall be paid prior to the anniversary of the casino operational start date and increased by the Consumer Price Index for All Urban Consumers in the San Diego, California area (CPI Index) but no less than 5% each year.

- e) Criminal Prosecution Caseload. The Tribe shall annually pay County for costs of processing additional Criminal Prosecution Caseload. The Tribe shall pay County one-half percent (0.5%) of its Net Win or \$100,000 annually, whichever is greater. Procedures for payments calculated as a percentage of Net Win shall be in accordance with Section B of this Agreement.

**2. Fire Protection Services**

- a) Fire Protection. The Tribe will provide fire protection services for the casino with a combination of the existing fire station on the reservation and contract mutual aid agreements with off reservation fire fighting companies. 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, including a report from the Tribe identifying the applicable NFPA response standards and how the standards are being met, 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 an Ambulance Service 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. Those services will meet the standards of the Tribe's Emergency Medical Services Plan. These standards will be utilized by the Tribe and will be consistent with the standards of County's Emergency Medical Services Plan. A report identifying applicable standards and how the Ambulance Service contract meets those standards shall be provided to County by the Tribe prior to opening the Facility.
- b) Emergency Medical Response for Traffic Accidents. The Tribe shall annually pay \$7,000 (Seven – Thousand dollars) to the County of San Diego to provide services for Emergency Medical Response for traffic accidents in and/or around the facility area. First payment shall be paid no later than six months after the casino commences operation. Subsequent payments shall be paid prior to the anniversary of the casino operational start date and increased by the Consumer Price Index for All Urban Consumers in the San Diego, California area (CPI Index) but no less than 5% each year.
- c) Evacuation Plan. Tribe shall provide a copy of its Emergency Evacuation Plan to the County Office of Emergency Services and County Sheriff Department, prior to commencing operations of the Facility, and ensure any updates or modifications to the plan are provided to County OES and County Sheriff Department upon implementation.

d) Fire Safety Features.

- 1) Casino will be constructed of non-combustible materials and will be equipped with fire sprinklers.
- 2) Paved access will be provided to the building for use by emergency personnel. Fire hydrants will be installed within the parking lot for use by fire fighters.
- 3) Vegetation within a 300 foot zone around all structures will be thinned or irrigated to provide defensible space. The brush management/landscaping zone will transition from brush thinning at the greatest distances from the structure to hardscape and irrigated landscaping featuring plant species with a low fire hazard.
- 4) A 200,000 gallon water storage facility will be located to provide 50-60 psi water pressure at the casino.

e) Food Safety. The Tribe agrees to obtain inspection of food and beverage handling standards by an Agency of the United States Government to ensure compliance with the Tribe's Public Health Standards. These standards will be adopted by the Tribe and will be no less stringent than the State of California standards for Food and Beverage Handling. Upon written request by County the Tribe will provide evidence of such inspections. In the event of a significant public health issue, the Tribe agrees to work in a cooperative manner with County to resolve that issue.

f) Water Quality. The Tribe agrees to obtain inspection of the Water Quality by an Agency of the United States Government to ensure compliance with the Tribe's Water Quality and safe drinking water standards. These standards will be adopted by the Tribe and will be no less stringent than Federal Water Quality and safe drinking water standards applicable in the State of California. Upon written request by County the Tribe will provide evidence of such inspections. In the event of a significant public health issue, the Tribe agrees to work in a cooperative manner with the County to resolve that issue.

**4. Solid Waste**

- a) Solid waste generated by the Facility that is not diverted for recycling/reuse will be disposed of only at permitted off-Reservation landfills. Prior to construction, the Tribe shall provide County with proof that the Tribe has entered into a contract with a County-franchised solid waste hauler to transport the Facility's solid waste.
- b) To minimize impacts to off-Reservation landfills, the Tribe will implement procedures to separate and divert solid waste generated by the Facility to reuse or recycling including at a minimum all wastes consisting of cardboard, glass,

aluminum, tin, paper, white goods and green waste resulting from landscaping activities. The goal of this activity is to separate or divert 50% of the solid waste of the facility.

- c) During construction of the facility, to the extent feasible, all inert waste materials from construction activities shall be recycled or diverted for reuse. The goal of this activity is that 70% of non-inert wastes shall be recycled or diverted for reuse.

## **5. Hazardous Waste Management**

The Tribe will contract with the County Office of Emergency Services (OES), Hazardous Incident Response Team (HIRT), for hazardous materials emergency response services, beginning no later than Facility construction commencement. Scope of HIRT services to be obtained from OES is provided as Appendix A. The Tribe will annually provide reimbursement for costs estimated to be no greater than \$ 5,000.

## **6. Groundwater/Water Supply**

Groundwater will be used as the source of water for the Facility and will be taken solely from the Carrista Creek Basin aquifer. To ensure that the safe-yield for the basin is not exceeded, the Tribe will implement the Santa Ysabel Tribal Casino Groundwater Monitoring and Mitigation Plan (GMMP), Appendix B, prior to commencement of construction activities. The parties acknowledge that nothing in this Agreement, affects or in any way impacts the Federal Reserve Water rights of the Tribe.

## **7. Impacts During and Of Construction**

- a) After-Hours Construction. Tribe shall limit hours of construction to 7:00 am through 7:00 pm Monday through Saturday, and no construction will take place at night, or on Sundays or holidays.
- b) Driveway Construction. During construction of the lower one-third of the Facility driveway, Tribe shall monitor noise levels at the construction site boundary along State Route 79 for work involving rock drills, hoe rams, pile drivers, or other such equipment. No such equipment, or combination of equipment regardless of age, or date of acquisition, shall be operated so as to cause noise at a level in excess of seventy-five (75) decibels for more than 8 hours during any twenty-four (24) hour period when measured at the construction site boundary.
- c) Contour Grading/Revegetation. To minimize potentially adverse visual impacts associated with grading for the casino site and access road, site work will utilize contour grading for manufactured slopes and extensive use of native vegetation to revegetate disturbed areas not planned for development, including most of the cut and fill slopes.

- d) Light Pollution. The proposed Facility is located within 15 miles of the Mount Laguna Observatory. Exterior lighting will be designed and constructed so as to satisfy the Tribe's Light Pollution Code. These standards will be utilized by the Tribe and will be consistent with the policies of County's Light Pollution Code. Upon written request by County the Tribe will provide evidence of such compliance.
- e) Noise. Wastewater treatment plant and HVAC units will be shielded to minimize propagation of noise beyond the project site.

## **8. Wastewater Treatment**

- a) For sewage/wastewater resulting from the Facility, the Tribe shall construct an on-Reservation package wastewater treatment plant with effluent disposed of via on-Reservation landscape and percolation ponds. The wastewater treatment facility and landscape and percolation ponds shall be constructed and operated to effectively accommodate all flows that will result from operations of the Facility. Treatment will be performed to fully satisfy requirements of the federal Safe Drinking Water Act and shall comply with Region IX EPA requirements. Samples of the effluent from the wastewater treatment plant will be taken on a regular basis and reported quarterly to the EPA for their records and to establish water quality conformance. Sludge will be disposed of off-Reservation in accordance with applicable federal, state and local laws.
- b) The Tribe agrees to obtain inspection of the effluent by an Agency of the United States Government to ensure compliance with the Tribe's Water Quality and safe drinking water standards. These standards will be adopted by the Tribe and will be no less stringent than Federal Water Quality and safe drinking water standards applicable in the State of California. Upon written request by County the Tribe will provide evidence of such inspections.

## **9. Storm water**

- a) The Tribe shall obtain a NPDES permit from US EPA for construction site runoff during the construction phase of the project in compliance with federal Clean Water requirements. In addition, a Storm Water Pollution Prevention Plan will be prepared, and maintained/implemented throughout construction of the Facility, in accordance with State Water Resource Control Board General Permit requirements, that will detail the best management practices to be implemented during construction and post-construction operation of the proposed project. Appendix C provides details for the Tribe's Storm water Pollution Prevention Plan and a Storm water Sampling and Analysis Strategy.



## 10. Air Quality

- a) Dust suppression. Standard techniques for dust suppression, such as watering of access roads and active construction areas, application of surfactants to exposed soils, limiting of truck speeds on unpaved surfaces, and prohibiting grading activities if wind speeds exceed 25 miles per hour shall be required of the contractor to minimize contribution of PM<sub>10</sub> to the atmosphere. Tribe shall utilize whatever means are necessary to prevent nuisance to off-Reservation residents and motorists on State Route 79.
- b) Buses/Shuttles. Tribe shall routinely evaluate location of origin of casino patrons and use of buses/shuttles to transport them to and from the casino.
- c) Employee Carpooling. Tribe shall encourage employees to carpool or rideshare.

## 11. Traffic

- a) Access. Access to the Facility is via State Road 79 (SR79), a California Department of Transportation (Caltrans) highway.
- b) State Road Impacts. The Tribe agrees to consult with Caltrans, and to complete construction of operational improvements as required by Caltrans, to SR79 before the Facility commences operations. Such required improvements may include, but are not limited to the following:
  - For the driveway/entrance from SR 79 to the Casino, full intersection improvements from both directions including turn lanes
  - Turn lanes shall be 3.6 meters in width
  - Transition, deceleration and storage for 55 mph. 265 meters in length is needed for bay taper, deceleration, and storage
  - Improve shoulders on SR 79 throughout the length of Santa Ysabel property
  - Tribe shall provide improvement plans for construction within Caltrans right of way which include typical cross sections, adequate structural section, traffic handling plans and signing and striping plans stamped by a professional engineer
  - Should traffic to and from the Facility cause level-of-service thresholds as set in 2004 to be exceeded at intersections of SR79/SR76 and SR79/SR78, Tribe shall negotiate in good faith with Caltrans regarding contributions for improvements to the intersections to address only the traffic increases caused by the Facility at the intersection(s). Tribe shall evaluate potential environmental impacts associated with the proposed

improvements within Caltrans right of way to facilitate Caltrans environmental review necessary for encroachment permit application process

- All work proposed within Caltrans right of way requires land and shoulder closure charts
- Tribe shall provide (1) traffic control plan consistent with the Caltrans Manual of Traffic Controls for Construction and Maintenance Work Zones [1996 (Revision 2) edition]
- Tribe shall provide a positive barrier between the public traffic and construction
- Tribe shall provide cross sections of construction phases
- Tribe shall not use cones/delineators as lane lines between traffic
- Tribe shall utilize paint as temporary traffic control
- Slopes shall be 4:1 or flatter
- Tribe shall provide dike along roadway as needed for drainage
- Tribe shall protect, maintain and/or restore all roadway features (signs, pavement, delineation, roadway surface, etc.)
- Work performed within Caltrans right of way requires an encroachment permit. Portions of project within Department right of way permit application shall be stated in both metric and English units (Metric first, with English in parentheses).

## **12. Impacts of Problem and Pathological Gambling**

- a) The Tribe and the County of San Diego acknowledge the need for treatment of Problem and Pathological Gambling. For costs of County Problem/Pathological Gambling treatment services, Tribe shall pay County One and One-Half percent (1.5%) of its Net Win or \$300,000 annually, whichever is greater. Procedures for payments calculated as a percentage of Net Win shall be in accordance with Section B of this Agreement.
- b) Tribe shall implement a Responsible Gaming Program consisting of the following:
  - 1) Tribe shall provide responsible gaming signage on the casino floor and back-of-house so that employees always know where to refer customers requesting assistance.
  - 2) Tribe shall provide responsible gaming information in brochures and on-hold messages. Helpline phone numbers will be provided on all websites, player cards, and hotel directories.
  - 3) Tribe will offer self-ban agreements to guests upon request.

- 4) Tribe will become member of California Council on Problem Gaming (CCPG), Inc, 121 S Palm Canyon drive, Suite 225, Palm Springs, CA 92262 which:
  - i. conducts responsible Gambling workshops for employees of the Tribe's casino
  - ii. staffs 24 hour/day, 7 days/week "Problem Gambling Help Line" with live professional counselors who can provide first contact crisis intervention
  - iii. trains and certifies California Certified Gambling Counselors (CCGC)
  - iv. provides information about cost accessible programs nationwide for those who have a compulsive gambling problem
  - v. maintains a "Speakers Bureau" made up of volunteers to help educate children and adults at schools and community service forums
  - vi. plans to develop prevention education for all levels of schools including cable video and children's workbook
- c) As set forth in 28 U.S.C. section 1738B, the Tribe shall enforce any child support orders for payment of child support by Casino employees.
- d) The Tribe shall prohibit the cashing in the Facility of any state issued check, provided it is clearly distinguishable, for child support payments.

## **B. PROCEDURES FOR PAYMENTS CALCULATED AS A PERCENTAGE OF NET WIN**

Certain Section A Mitigation Measures payments are agreed to be a set dollar amount or a specific percentage of Net Win, whichever is greater. Procedures for payments calculated as a percentage of Net Win shall be as follows:

- 1) The term "Net Win", defined above is "as defined by American Institute of Certified Public Accounts", refers to the AICPA Audit and Accounting Guide, Audits of Casinos, Appendix F, definition of "gross gaming revenue (win)", which reads, "The net win from gaming activities, which is the difference between gaming wins and losses before deducting costs and expenses."
- 2) Payments shall be made on a quarterly basis and shall be determined and made not later than the thirtieth (30<sup>th</sup>) day following the end of each calendar quarter. The first payment shall be made at the conclusion of the first full calendar quarter following the first day of operation of its Gaming Facility.
- 3) Any quarterly payment not paid on or before the date on which such amount is due shall be deemed overdue. If any quarterly payment is overdue, the Tribe shall pay, in addition to the overdue quarterly payment, interest on such

- amount from the date such quarterly payment was due until the date such quarterly payment (together with interest thereon) was actually paid at the rate of 1.0% per month or the maximum rate permitted by state law, whichever is less.
- 4) This payment shall be calculated from the same report (the "Quarterly Net Win Payment Report") used in determining the amount payable to the California Gambling Control Commission, or such other State entity as may be designated by the Governor, certified by an authorized representative of the Tribe reflecting the Net Win. Tribe agrees to authorize County to have access to the Tribe's Quarterly Net Win Payment Report that the Tribe submits to the State and will provide copies to County with each quarterly payment.
  - 5) If the California Gambling Control Commission, or such other State entity as may be designated by the Governor, causes an audit to be made by or on behalf of the State of the Quarterly Net Win Payment Report submitted pursuant to subsection (d) of the Compact, and if the quarterly Net Win payment for any quarter as reflected on such quarter's Quarterly Net Win Payment Report is found to be understated, the State will promptly notify the Tribe, and the Tribe will either accept the difference or provide a reconciliation satisfactory to the State. If the Tribe accepts the difference or does not provide a reconciliation satisfactory to the State within sixty (60) days of receipt of the notice, the Tribe must immediately pay the amount of the resulting deficiencies in the quarterly payment plus interest on such amounts from the date they were due at the rate of 1.0% per month or the maximum rate permitted by state law, whichever is less. Should the Tribe make additional payment to the State to reconcile previous understated Net Win payments, Tribe shall concurrently, automatically make appropriate reconciliation payment to County.

### **C. DISPUTE RESOLUTION**

1. In an effort to foster good government-government relationships, and to assure that the Santa Ysabel Tribe is not unreasonably prevented from engaging in activities authorized under the Compact and benefiting therefrom, the County and the Tribe agree to the following:
  - a) 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 a spirit of cooperation and efficiency in the administration of the terms, provisions, and conditions of this Agreement as follows:
    - (i) 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.

(ii) 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.

(iii) If the dispute is not resolved to the satisfaction of the parties within thirty (30) calendar days after the first meeting, then upon the request of either party in writing, the dispute shall be submitted to binding arbitration in accordance with this section. The Tribe and the County will submit to any arbitration proceeding as described in this section, and consent to the jurisdiction of the United States District Court for the Southern District of California and, if the United States District Court for the Southern District of California finds that it lacks jurisdiction, to the jurisdiction of the Superior Court for the County of San Diego, State of California, in each case for the purpose of compelling arbitration in the event either party refuses to arbitrate any arbitral dispute as contemplated herein, and for the enforcement of any decision and collection of any award of the arbitrator as contemplated herein. The disputes to be submitted to arbitration shall be limited to the inability to reach and conclude the agreements listed in section 10.8.1.1 of the Compact and claims of breach or violation of this Agreement. The arbitrator shall reach decisions including providing the substance of outstanding and unresolved portions of such agreements to make possible their conclusion and resolutions of any disputes pursuant to this Agreement, within ninety (90) days of the disputes or issues being first submitted to him or her.

- b) Arbitration Rules. Any dispute between the Tribe and the County arising out of or relating to this Agreement, or the breach thereof, shall be settled in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be held on the Santa Ysabel Tribe's land or, if unreasonably inconvenient under the circumstances, at such other location mutually agreeable to the parties. Each side shall bear its own costs, attorneys' fees, and one-half the costs and expenses of the American Arbitration Association and the arbitrator, unless the arbitrator rules otherwise. The arbitration shall be administered by a single neutral arbitrator. The provisions of Section 1283.05 of the California Code of Civil Procedure shall apply; provided that no discovery authorized by that section may be conducted without leave of the arbitrator. The decision of the arbitrator shall be in writing, give reasons for the decision, and shall be binding.
- c) 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.

#### **D. CONSENT TO JURISDICTION: LIMITED EXPRESS WAIVER OF SOVEREIGN IMMUNITY**

1. Any party to an arbitration in which an award has been made pursuant to this Agreement may petition any federal or state court of competent jurisdiction to confirm the award. The County and the Tribe expressly consent to be sued in such courts for the purposes of confirmation of such an award and the Tribe expressly and irrevocably waives its sovereign immunity specifically and exclusively to the County for the limited purposes set forth in Paragraphs 2 through 6 of this Section D. Additionally, the Tribe does hereby unconditionally waive any claim or defense of exhaustion of tribal administrative or judicial remedies. This waiver shall commence as of the date of execution of this Agreement. An award shall be confirmed, provided that:

a. The award is limited to the purposes of arbitration stated in this Agreement.

b. No monetary damages are awarded other than decisions requiring the payment of sums pursuant to obligations of the parties under this Agreement. (Awards may be made by the arbitrator for only such payments, for injunctive relief, for creation or enforcement of provisions of such agreements, and for declaratory relief, all in respect only to this Agreement).

c. If an award is confirmed, judgment shall be entered in conformity therewith. The judgment so entered has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in civil action; and may be enforced like any other judgment of the court in which it is entered.

2. The express waivers and consents provided for under this Section shall extend to civil actions authorized by this Agreement, including, but not limited to, actions to compel arbitration, any arbitration proceeding herein, any action to confirm or enforce any judgment or arbitration award as provided herein, and any appellate proceedings emanating from a matter in which an immunity waiver has been granted. Except as stated herein or elsewhere in this Agreement, no other waivers or consents to be sued, either express or implied, are granted by either party.

3. Notwithstanding any other provision of this Agreement, the Tribe's waiver of sovereign immunity shall not extend to any assets of the Tribe other than the revenue stream from the Facility.

4. 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.

5. In any court action brought pursuant to this Agreement, neither party shall be entitled to recover attorney fees and costs except as otherwise provided by law.

6. In no instance shall the Parties to this Agreement be entitled to consequential damages, punitive damages, or lost profits.

#### **E. INDEMNIFICATION**

The Tribe will indemnify and hold harmless the County, its elected representatives, officers, agents, and employees against any claim brought or filed by any third party which challenges the validity of this Agreement, and/or the authority of the County to enter into this Agreement.

The amount of this indemnification shall not exceed \$150,000 annually, following the execution date of this Agreement. The Tribe shall not be liable for costs in excess of \$150,000 in any one year, and any costs in excess of that amount shall not be carried over to a subsequent year. The County shall consult with the Tribe prior to retention of any outside legal counsel to defend the County in a matter within the provisions of this Agreement. To the extent the Tribe is required to pay any sums pursuant to this Agreement, the County shall obtain the Tribe's approval prior to any final settlement.

The Tribe's obligations to indemnify the County, its elected representatives, officers, agents, and employees shall include:

a) the costs of any judgments or awards against the County for damages, losses, litigation costs, and/or attorneys' fees arising out of, or in any regard connected with, a suit or challenge which challenges the validity of this Agreement, and/or the authority of the County to enter into this Agreement;

b) the costs of any settlement for damages, litigation costs and attorneys' fees to be paid to other parties which challenges the validity of this Agreement, and/or the authority of the County to enter into this Agreement.

In the event that a claim, action, or proceeding is filed against the County regarding this Agreement, County shall promptly notify the Tribe in writing. Upon receipt of such notification, Tribe shall promptly pay any and all fees and costs associated with defense of the claim, action or proceeding within 30 days of receiving an itemized billing, but no later than six months after the commencement of Facility operations.

The obligations of this indemnity Agreement shall be binding on the parties and all successors and assigns of the Tribe and Tribe shall so obligate all transferees and assigns.

## F. NOTICE

a) All notices required by this Agreement will be deemed to have been given when made in writing and delivered or mailed to the respective representatives of County and Tribe at their respective addresses as follows:

For the Tribe:

Chairperson Johnny Hernandez  
Santa Ysabel Band of Diegueno  
Mission Indians  
PO Box 130  
Santa Ysabel, CA 92070

With a Copy To:

Santa Ysabel Legal Department  
Santa Ysabel Band of Diegueno  
Mission Indians  
PO Box 130  
Santa Ysabel, CA 92070

For the County:

County of San Diego  
Attn: Chantal Saipe, Tribal Liaison, MS A6  
1600 Pacific Highway, Room 212  
San Diego, CA 92101

With a Copy to:

Claudia Anzures, Senior Deputy County Counsel  
1600 Pacific Highway, Suite 355  
San Diego, CA 92101

John Snyder, Director  
Dept of Public Works  
5555 Overland Ave, Suite 2156  
San Diego, CA 92123

In lieu of written notice to the above addresses, any party may provide notices through the use of facsimile machines provided confirmation of delivery is obtained at the time of transmission of the notices and provided the following facsimile telephone numbers are used:

To Tribe: Santa Ysabel Band of Diegueno Mission Indians  
Fax: 1-760-765-0320

To County: Chief Administrative Office, Fax: 619-531-5476  
County Counsel, Fax: 619-531-6005  
Public Works, Fax: 858-268-0461

Any party may change the address or facsimile number to which such communications are to be given by providing the other parties with written notice of such change at least fifteen (15) calendar days prior to the effective date of the change.



All notices will be effective upon receipt and will be deemed received through delivery if personally served or served using facsimile machines, or on the fifth (5th) day following deposit in the mail if sent by first class mail.

## G. MISCELLANEOUS PROVISIONS

a. Term of Agreement. The term of this Agreement commences on the date of execution and runs concurrent with the term of the Compact.

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 to bring an action to enforce any of its terms.

c. Amendments. This Agreement may be amended only by written instrument duly signed and executed 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 and executed 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. If a court of competent jurisdiction were to determine that a provision of this Agreement is invalid or unenforceable, then the parties agree to promptly use good faith efforts to amend this Agreement to reflect the original intent of the parties in accordance with applicable law and consistent with 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 Agreement.

APPROVED AND/OR AUTHORIZED BY THE BOARD  
OF SUPERVISORS OF THE COUNTY OF SAN DIEGO  
DATE: 01.12.09 MINUTE ORDER NO: 11  
THOMAS J. PASTUSZKA  
CLERK OF THE BOARD OF SUPERVISORS  
BY Claire Tosh  
DEPUTY CLERK

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

j. Acknowledgement. The County acknowledges and agrees that the matters addressed herein are the only off-reservation environmental impacts requiring mitigation by the Tribe in connection with the Tribe's development of the Facility and its obligations under the Compact.

k. Entire Agreement.

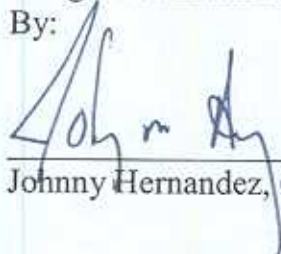
- (1) This Agreement constitutes the entire agreement between the County and the Tribe and supersedes all prior negotiations, representations, or other agreements, whether written or oral.
- (2) In the event of a dispute between the parties as to the language of this Agreement or the construction or 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.

**TRIBE:**

SANTA YSABEL BAND OF  
DIEGUENO MISSION INDIANS, a federally  
recognized Indian Tribe

By:

  
\_\_\_\_\_  
Johnny Hernandez, Chairperson

**COUNTY:**

COUNTY OF SAN DIEGO  
a political subdivision of the State  
of California

By:

  
\_\_\_\_\_  
Thomas J. Pastuszka  
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY  
COUNTY COUNSEL

BY   
\_\_\_\_\_  
County Counsel

## Appendices

- A HIRT Contract
- B Groundwater Monitoring and Mitigation Plan (GMMP)
- C Stormwater Pollution Prevention Plan

**Appendix A**  
**Form/Scope of future Santa Ysabel Tribal Casino Contract for HIRT Services**

The Unified San Diego County Emergency Services Organization proposes to provide Hazardous Materials Emergency Response Services to the Santa Ysabel Reservation. This response would be on an as needed basis and be available on a twenty-four (24) hour/seven (7) day a week basis. The Hazardous Materials Incident Response Team (HIRT) will provide the actual response when requested. Provider response standards will be in accordance with Section 100.0 "HIRT Provider Response Standards" of the HIRT Policy and Procedures Manual. Section 100.0 has been provided as Attachment A.

Santa Ysabel Tribal Fire Department will function as the Incident Commander (IC) for all hazardous materials responses on the Santa Ysabel Reservation. The HIRT will not act as the Incident Commander for any reason. Other responsibilities of the responsible Fire Department include the safeguarding of personnel at the scene by restricting access to the scene, initiating containment (if it can be done safely) and isolating persons and materials until the arrival of HIRT. To ensure the most effective and safest possible response, all first responder personnel should be trained to First Responder Operational (FRO) standards.

HIRT will normally be requested through the San Diego Fire Department's dispatch center.

HIRT response will consist of one hazardous materials vehicle and four trained Hazmat Specialists from the San Diego Fire-Rescue Department (SDFD) as well as two hazardous materials specialists and one response vehicle from the San Diego County Department of Environmental Health Services, Hazardous Materials Division (HMD). Depending upon the severity of the incident, other resources from SDFD and HMMD may be called upon to augment the initial response.

The Santa Ysabel Tribal Fire Department will be a non-voting member of the HIRT Policy Committee and voting members of the HIRT Operations Committee. Any training offered by the HIRT program would be made available to them at no additional cost.

The cost for these response services will be a flat fee of \$\_\_\_\_\_ per year. Future costs for the program will be negotiated annually as the contract expires.

This contract will run from \_\_\_\_\_ through \_\_\_\_\_.

Accepted By \_\_\_\_\_

Accepted By \_\_\_\_\_

POLICY AND PROCEDURES MANUAL

**UNIFIED SAN DIEGO COUNTY  
HAZMAT INCIDENT  
RESPONSE  
TEAM (HIRT)**

**SUBJECT:  
HIRT PROVIDER RESPONSE  
STANDARDS**

SECTION 100.0

ADOPTED: 8/17/93

REVISED:

**HIRT RESPONSE STANDARDS**

**I. TRAINING STANDARDS**

All HIRT providers will:

- A. Be trained to NFPA standards.
- B. Meet all operational requirements of CCR Title 8 Section 5192 and 29 CFR 1910.120.
- C. Be trained to perform entry in both level A and level B protective equipment.

**II. OPERATING STANDARDS**

**A. Mitigation/Control Capabilities**

The HIRT Provider responsible for mitigation/control actions will be able to:

- 1. Respond to reported incidents and advise the Incident Commander (IC) on additional local, State, Federal and private resources required to manage and/or mitigate the problem.
- 2. Perform technical response procedures in accordance with established standard operating procedures (SOPs), personal protection guidelines and all applicable State regulations.
- 3. Request use of the State of California Emergency reserve Account (ERA) for emergency cleanup.
- 4. Provide technical expertise, assistance and equipment at the incident.

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SECTION 100.0

ADOPTED: 8/17/93

REVISED:

5. Perform duties as directed by the IC.
6. Act as the IC's agent in the management of cleanup operations.

**B. Public Health and Safety Capabilities**

The HIRT Provider responsible for Public health and Safety issues will be able to:

1. Identify, or assist in the identification of, unknown spilled material at the scene.
2. Act as technical advisor on characteristics and direct health and environmental effects of the hazardous materials at the scene.
3. Assist the IC in determining the necessity for evacuation and establishing reentry criteria.
4. Sample contaminated soil, water or air to determine the extent of contamination and identify any public health concerns.
5. Provide analytical laboratory support as needed.
6. Assist the IC in identifying potential sources of hazardous materials release.
7. Provide information on proper protective actions at the scene.
8. Recommend cleanup levels and advise on the adequacy of cleanup both during and after the emergency.
9. Assist the IC in obtaining financial and other resources necessary for any required cleanup.

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SECTION 100.0

ADOPTED: 8/17/93

REVISED:

10. Assist the agency having jurisdiction in obtaining appropriate enforcement action against any responsible party.
11. Provide on-scene liaison with Poison Control, Emergency Medical Services (EMS) and State and Federal agencies.

**C. Capabilities Required of All Providers**

All HIRT Providers will be able to perform the following functions:

1. Understand what hazardous materials are, the risks associated with them at an incident, and the potential outcomes associated with a hazmat emergency.
2. Recognize the presence of hazardous materials in an emergency situation.
3. Identify hazardous materials.
4. Understand the role of the individual trained to the first responder awareness level as well as the role of the DOT Emergency Response Guidebook.
5. Recognize the need for additional resources and advise the IC to make the appropriate notifications.
6. Basic hazard and risk assessment.
7. Select and use proper specialized chemical protective equipment.
8. Understand basic hazmat terms.
9. Basic and advanced control, containment and/or confinement operations within the capabilities of the resources and PPE

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SECTION 100.0

ADOPTED: 8/17/93

REVISED:

- available within the unit.
10. Understand and implement decontamination procedures.
  11. Understand the relevant SOPs and termination procedures.
  12. Implement an employers (business) emergency response plan.
  13. Classify, identify and verify known and unknown materials using field survey instruments and equipment.
  14. Function within an assigned role in the Incident Command System.
  15. Understand basic chemical and toxicological terminology and behavior.
  16. Understand hazmat medical management protocols as established by the California Emergency Medical Services Authority (EMSA).
  17. Rescue/Evacuation.
  18. Isolation/Deny entry.
  19. Contain/Control.
  20. Exposure protection.
  21. Communicate with the IC, first responder agencies, dispatch centers and State and Federal regulatory agencies.



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HAZMAT INCIDENT  
RESPONSE  
TEAM (HIRT)**

**SUBJECT:  
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STANDARDS**

SECTION 100.0

ADOPTED: 8/17/93

REVISED:

**III. BACKUP TEAMS**

A backup team must be provided as a rescue team for the personnel working in the hot zone. The backup team shall:

- A. Be protected at the same level of protection as the team working in the hot zone.
- B. Maintain line of sight contact among personnel operating in the hot zone.
- C. Visually monitor personnel operating within the hot zone.

**IV. RESPONSE TIMES**

- A. Each HIRT provider will meet a maximum response time of sixty minutes for ninety percent of all hazardous materials incidents dispatched.
- B. A second, simultaneous, response will require a maximum response time of ninety minutes.
- C. Response time begins at the time of dispatch and ends when the unit arrives on scene.

## Appendix B

### Santa Ysabel Tribal Casino Groundwater Monitoring and Mitigation Plan (GMMP)

- 1) The production well (GW2) and any other wells that are used for sources of water for the gaming facility shall be outfitted with a cumulative groundwater volume flow meter that measures cumulative volume of water extracted.
- 2) Unless the requirement is waived by the County, one monitoring well shall be constructed for every production well utilized for the gaming facility. The Tribe will select the precise location and depth of all monitoring wells based on recommendations of a California Registered Geologist or Engineer according to generally accepted geological and hydrological standards.
- 3) A reference "drought factor" monitoring well shall be established in the general Santa Ysabel area outside the influence of groundwater production wells. The purpose of this well is to allow the differentiation between normal seasonal and annual groundwater level fluctuations versus groundwater level fluctuations caused by groundwater production. The Tribe will select the precise location and depth of the "drought factor" well based on recommendations of a California Registered Geologist or Engineer according to generally accepted geological and hydrological standards.
- 4) Monthly groundwater levels within the production and monitoring wells and the "drought factor" well shall be measured and recorded monthly throughout the gaming facility construction period and the first year of casino operation, then quarterly thereafter.
- 5) Well production volumes shall be measured and recorded monthly.
- 6) All data collection, as well as report preparation, shall occur under the direction of a California Registered Geologist or Engineer. All data and reports must include a statement by a California Registered Geologist or Engineer that affirms the completeness and accuracy of the data.
- 7) All data shall be submitted on a quarterly basis to the Tribe and the County concurrently.
- 8) Should production volumes from the production well(s) cause significant impacts to off-reservation groundwater wells, Tribe shall consult in good faith with the County regarding proper mitigation measures and shall implement measures which may include but are not limited to reductions in the Facility's water use from production well(s) as recommended by the County.

## APPENDIX C

### STORM WATER POLLUTION PREVENTION PLAN AND STORM WATER SAMPLING AND ANALYSIS STRATEGY Proposed Santa Ysabel Indian Reservation Casino

In Order to comply with Section 10.8.1.1 of the California State Gaming Compact between the Santa Ysabel Band of Diegueno Mission Indians (Tribe) and the State of California (State), the Santa Ysabel Tribe Agrees to complete and comply with a Storm Water Pollution Prevention Plan (SWPPP) and Storm Water Sampling and Analysis Strategy (SWSAS).

#### STORM WATER POLLUTION PREVENTION PLAN

1. The Santa Ysabel Tribe will submit the Notice of Intent (NOI) to the Environmental Protection Agency (EPA).
2. The Santa Ysabel Tribe will prepare a Storm Water Pollution Prevention Plan (SWPPP) This SWPPP will include:
  - a. Topographic base map of site and off-site areas approximately one-hundred feet beyond project boundaries. For this item, approved grading plans will be utilized to complete the base map.
  - b. Exhibit showing existing and/or proposed grading, on-site erosion control measures, areas of cuts and fills, major drainage patters, points of discharge, existing and ultimate impervious areas, vegetated areas (existing), post-construction Best Management Practices (BMPs).
  - c. Narrative description of project size, areas by percent of impervious surfaces prior to and after completion of construction, corresponding runoff coefficients, potential pollutants, construction practices to reduce pollutants, soils stabilization practices, desilting practices, post-construction BMPs.
  - d. Copy of NOI.
  - e. Procedures to monitor, maintain, and when necessary, repair erosion and sediment control structures and post-construction BMPs.
  - f. Guidelines to train personnel to monitor and conduct inspections, as provided by the permit's Monitoring and Reporting Requirements.

- g. A form on which to list companies, contractors, and/or personnel responsible for the implementation of the SWPPP.
- h. Copy of NPDES General Permit.
- i. Erosion control plan.

#### Storm Water Sampling and Analysis Strategy (SWSAS)

Prepare a Storm Water Sampling and Analysis Strategy (SWSAS) in accordance with the California State Water Resources Control Board Resolution No. 2001-046 (adopted April 26, 2001), entitled, "Modification of Water Quality Order No. 99-08-DWQ State Water Resources Control Board (SWRCB) National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction Activity," hereinafter "the modifications".

The SWSAS will be developed based on interpretation and guidance provide by the Building Industry Association of San Diego and the California Storm Water Quality Task Force's (SWQTF) document entitled, "Construction Storm Water Sampling and Analysis Guidance Document," dated October 2001. Please be advised, however, that interpretation of "the modifications" is subject to change by the Environmental Protection Agency (EPA), and as the EPA commences enforcement of the regulations, the SWSAS may be subject to revisions. Revisions to the SWSAS, may be necessary, based on interpretation of "the modifications" by the EPA.

The Storm Water Sampling and Analysis Strategy will include the following:

1. List of objectives and narrative description regarding methods to meet objectives.
2. List and description of sampling locations (included in the SWSAS Location Map).
3. List of monitoring analytes and specific sampling requirements for the monitoring of the analytes.
4. Description of field sample collection methods.
5. Description of possible visual observation of sample and source.
6. Recommendations for quality assurance and quality control of samples.
7. Description of reporting requirements.
8. Sample collection record-keeping worksheets that include:
  - a. Sampling event records

- b. Checklist of sampling equipment.
  - c. Visual observation checklist.
9. Identification of storm water monitoring locations from grading/improvement plans/drainage study map (monitoring locations will be site-verified during an on-site meeting). If revisions to the monitoring locations are warranted due to field conditions, the SWSAS Location Map will be modified in the field during the on-site meeting.