

***DRAFT – Tuesday, February 22, 2005***

**INTERGOVERNMENTAL AGREEMENT**

**THIS INTERGOVERNMENTAL AGREEMENT** (this “**Agreement**”) is entered into effective for all purposes the \_\_\_\_ day of \_\_\_\_\_, 2005 in the Santa Barbara County offices in \_\_\_\_\_, California, by and between the **SANTA YNEZ BAND OF CHUMASH MISSION INDIANS OF THE SANTA YNEZ RESERVATION, CALIFORNIA**, a federally recognized Indian tribe (the “**Band**”); and the **COUNTY OF SANTA BARBARA** (the “**County**”), in the State of California. The Band and the County may hereafter be referred to individually as a “**Party**” and collectively as the “**Parties.**”

**WHEREAS**, on [January 14, 2005,] the Bureau of Indian Affairs (the “**BIA**”) made a final agency determination (the “**Decision**”) to acquire approximately 6.9 acres of land into trust for the Band, the legal description of which is set forth on **Exhibit “A”** attached hereto, (the “**Land**”) for purposes of [constructing] a cultural center, museum and retail building;

**WHEREAS**, the County has expressed concerns over this loss of its jurisdiction over the Land, including its civil regulatory authority to control the use the Land, the loss to its tax base resulting from the removal of the Land from the County tax rolls, and the potential use of the Land for gaming or gaming-related purposes ;

**WHEREAS**, the general public and citizens’ organizations in the County have expressed concerns over the effect of the BIA decision on the same issues, the overall quality-of-life in the Santa Ynez Valley, and the potential for such trust acquisitions by the Band.

**WHEREAS**, on [February 22, 2005,] the Santa Ynez Valley concerned citizens and other organizations appealed the Decision to the Interior Board of Indian Appeals (the “**Appeal**”);

**WHEREAS**, the Parties desire to fully and finally settle and resolve all claims and counterclaims which are the subject of the Appeal in accordance with the terms and conditions of this Agreement; and

**WHEREAS**, the Parties are motivated to enter into this Agreement in part by their desire to avoid the further expense and inconvenience of litigation and to work together in good faith for the common good of both Parties.

**NOW, THEREFORE**, in consideration of the foregoing, the covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, covenant and agree as follows:

**1. Effective Date and Term.** The terms of this Agreement shall become effective upon the approval by resolution of the governing bodies of the County and the Band, its execution by the appropriate officers of the Parties, the approval of the BIA pursuant to 25 U.S.C. § 81, and the withdrawal of any and all appeals of the Decision. This Agreement shall remain in effect for so

long as the Land remains in federal trust, unless otherwise terminated by the mutual written consent of the Parties.

**2. Commitments of the County.**

**A. Support Federal Trust Application.** In consideration for the benefits accruing to the County under this Agreement, the County agrees to use its best efforts to secure the withdrawal, or other resolution, of the Appeal.

**B. No County Enactments to Impair Agreement.** The County shall not enact any ordinance that impairs the obligations of this Agreement without the written consent of the Band.

**3. Commitments of the Band.**

**A. Land Use.** The Band covenants and agrees that the Land shall be used solely for a cultural center, museum and retail building, as specified in greater detail in the Decision. Any change in such use must be approved in writing by the County, after full public notice and comment. In no event shall the Band utilize the Land for any gaming or gaming-related activities, including but not limited to overflow parking and/or administrative and support services of any kind. The Band further agrees to adhere to the terms and conditions of the Santa Ynez Valley Community Plan, the Santa Barbara County General Plan, County of Santa Barbara Inland Zoning Ordinance, Article 3 of Chapter 35 of the Santa Barbara County Code; and the Santa Barbara County Land Use Policies. As provided in Section 6, the provisions of this section shall survive any termination of this Agreement. In addition, the provisions of this section shall constitute an encumbrance on and a covenant running with the land requiring the approval of the Secretary pursuant to 25 U.S.C. § 81. In addition, the Parties shall cause the this Agreement and the land use restrictions in this Section 3.A. to be referenced in any notice or decision relating to the Land. The County shall have the right to enforce this provision by means of any and all legal and/or equitable actions, including without limitation specific performance or other injunctive relief, to the fullest extent as provided in Sections 5 and 6.

**B. Taxation.** The Band shall make in lieu payments to the County in the amount of the property taxes that would otherwise be due and owing on the Land, but for the Land's status as tribal trust land. Such payments shall be due within 90 days of the end of any calendar year. The Band further covenants and agrees that it shall maintain the same sales tax structure and impose the same sales taxes on transactions occurring on the Land as those transactions taking place elsewhere within Santa Barbara County. The County and the Band shall enter into a tax compact to divide such sales taxes between the Parties in amounts to be determined by the Parties. In general, the Band shall not utilize the trust status of the Land as a means to gain a tax advantage over transactions located elsewhere in Santa Barbara County.

**C. No Tribal Enactments to Impair Agreement.** The Band shall enact no law nor shall any tribal official or employee act in any manner to impair the obligations of this Agreement without the written consent of the County.

**4. Commitments of Both Parties.**

**A. Future Economic Development.** The County and the Band covenant and agree that both Parties shall meet regularly to discuss potential future tribal economic developments within Santa Barbara County. Such meetings will be open to public participation. Without limiting the generality of the foregoing, the County and Band shall meet within thirty (30) days of a request by either Party for such a meeting. The Party requesting such a meeting shall provide a notice to the other Party of the proposed topics to be discussed at the meeting. The public may request that the County shall request such a meeting, and the County will forward such request to the Band absent good cause shown.

**B. VPAC Participation.** The Parties agree that the Band shall have the right to appoint a representative to the Valley Plan Advisory Committee (“**VPAC**”), the successor to the General Plan Advisory Committee, who shall have the authority to participate in the VPAC as a non-voting member.

**C. Architectural Review.** In addition to the restrictions set forth in Section 3.A. hereof, the Parties agree that any developments on the Land will be subject to a non-binding architectural review by the County Board of Architectural Review or the Santa Barbara County Planning Commission to ensure architectural and aesthetic continuity with surrounding areas and to attempt to avoid potential development problems in an good faith effort on the part of both Parties to incorporate reasonable recommendations into the Project. The County shall provide the public with access to all information provided by the Band pursuant to this section.

**D. Long-Term Agreement.** Within 30 days of the effective date of this agreement, the County shall convene a public meeting to solicit comments on issues and concerns associated with future development initiatives of the Band. Based upon the input received at such meeting, the County and the Band agree to meet within 30 days thereafter to discuss the potential for a long-term agreement regarding such development plans. The County and the Band shall make all reasonable efforts to pursue such an agreement, with a completion goal of one year after the initial meeting. All such meetings shall be open to public participation.

**5. Claims and Disputes.**

**A. Meet and Confer.** Any claim or dispute arising out of or related to this Agreement, shall be resolved, whenever possible, by meeting and conferring. A Party may request such a meeting by giving written notice to the other, and the Parties shall meet within 15 days of the notice. If a claim or dispute cannot be resolved to the mutual satisfaction of the Parties within 30 days after the meeting, then the Parties shall undertake arbitration in accordance with the then current rules and supervision of the American Arbitration Association (“**AAA**”). The arbitration shall be conducted before a single arbitrator. The arbitrator’s decision and award shall be final and binding and may be entered in any federal or state court with jurisdiction. The arbitration will be held at a neutral location in Santa Barbara County. The Band and the County shall each bear their own attorneys’ fees associated with the arbitration. All other costs and expenses of the arbitration shall be paid as provided in the then current rules of the AAA.

**B. Injunctive or Declaratory Relief.** The Parties shall not arbitrate claims or disputes involving injunctive or declaratory relief and may, at the discretion of either Party, litigate such matters in a court of competent jurisdiction as set forth in Section 5.C. below.

**C. Jurisdiction; Limited Waiver of Sovereign Immunity; Limitation of Remedies.** Subject to the terms of this section, the Band and the County hereby covenant and agree that they each may sue or be sued by the other to enforce or interpret the terms, covenants and conditions of this Agreement or implementing legislation or to enforce the obligations or rights of the Parties in accordance with the terms and conditions set forth in this Agreement. The County consents to be sued by any third party to compel the County to seek enforcement of this Agreement. The Band and the County hereby expressly waive any right to proceed before, or require the other to proceed before, any tribal court or authority, and agree that any action with regard to a claim or dispute between the Band and the County arising under this Agreement shall be brought before (i) the United States District Court for the Southern District of California with the right of appeal to appropriate federal appellate courts, or (ii) in the appropriate State court, with the right of appeal to appropriate State and federal appellate courts, in the event that the federal court determines that it is without jurisdiction in the matter or chooses not to exercise its jurisdiction for any reason. The Band further expressly waives any right which the Band may possess to require the County to exhaust tribal remedies or any right of comity prior to invoking federal or state jurisdiction hereunder.

Solely as to the County and its successors and assigns as provided herein, the Band hereby specifically, expressly and irrevocably waives the sovereign immunity of the Band, and its officers and agents, from suit to enforce or interpret this Agreement or any implementing legislation, as well as any other actions to enforce the County's rights under this Agreement, and agrees that it shall not raise sovereign immunity as a defense with regard to such actions, including without limitation the right to obtain injunctive or declaratory relief in a court of competent jurisdiction as provided herein. As provided in Section 6, the provisions of this section shall survive any termination of this Agreement.

**6. Survivability and Assignment.** All of the terms, conditions, provisions, and representations contained in this Agreement shall survive and transcend the execution of this Agreement. The County and the Band hereby agree to abide by the terms of this Agreement. The Band further agrees that it shall secure from any management company, consultant, developer or any other entity that works or contracts with the Band in the development and operation of the Property a written and signed agreement to abide by the terms and conditions of this Agreement. Any failure of the Band to comply with the herein paragraph shall constitute a breach of this Agreement. A copy of the Band's agreement with any management company, consultant, developer or any other entity to abide by the terms of the Agreement shall be delivered to the County by the Band upon execution. This Agreement between the Band and any management company, consultant, developer or any other entity to abide by the Agreement shall be binding upon any and all successors and assigns of any management company, consultant, developer or any other entity.

**7. Termination.** No breach or violation of any of the terms of this Agreement by either Party shall operate to void or terminate or provide grounds for termination of this Agreement, it being the intent of the Parties that the provisions of this Agreement shall be subject to specific

performance, and injunctive relief shall be provided to cure any breaches prospectively, and that damages shall be awarded to redress any harm occasioned by a breach.

**8. Governing Law.** This Agreement shall be governed by the laws of the United States of America and of the State of California.

**9. Authorization.** The Band and the County each represent and warrant that each has performed all acts precedent to adoption of this Agreement, including, but not limited to, matters of procedure and notice, and each has the full power and authority to execute this Agreement and to perform its obligations in accordance with the terms and conditions thereof, and that the representative executing this Agreement on behalf of such Party is duly and fully authorized to so execute and deliver this Agreement.

**A. Approval of the Band.** The Band has authorized its officers to execute this Agreement by the adoption of Resolution No. [\_\_\_\_] adopted on [\_\_\_\_, 2005] \_\_\_\_\_, a copy of which is attached hereto as **Exhibit "B."**

**B. Approval of the County.** The Board of Supervisors of the County has approved this Agreement at a duly noticed meeting of the Board of Supervisors held on [\_\_\_\_, 2005,] and a certified copy of the proceedings of the Board of Supervisors is attached as **Exhibit "C."**

**10. Notices.** All notices hereunder shall be in writing and shall be deemed to have been given or made when (i) delivered by hand; (ii) delivered by facsimile or overnight delivery service; or (iii) delivered or mailed by registered or certified mail, postage prepaid, addressed as follows, until notice of another address and/or facsimile number shall have been received by the other Party.

If to the Band:

[ADD NOTICE INFORMATION]

If to the County:

[ADD NOTICE INFORMATION]

**11. Interpretation.** This Agreement has been the subject of mutual negotiations between the Parties and their respective counsel. This Agreement has been and shall be construed to have been jointly drafted by the Parties in order to preclude the application of any rule of construction against a Party's interest as the sole drafter of this Agreement. In all cases, the language in all parts of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any Party.

**12. No Challenges to this Agreement.** The Band and the County hereby waive any right each may have to commence or maintain any civil action or other proceeding to contest, invalidate or challenge this Agreement, any procedure or proceeding undertaken to adopt this Agreement or any of the actions required or contemplated by this Agreement, or to take any actions, either directly or indirectly, to oppose or in any other way, to initiate, promote or support the opposition of approvals required under this Agreement or to hinder, obstruct or unduly delay

any of the actions required or contemplated by this Agreement. This section shall not be construed to prevent a Party from commencing a declaratory judgment action regarding the interpretation of this Agreement. In the event of a challenge to the validity of this Agreement by any third party, the Band and the County shall each defend the validity and enforceability of this Agreement in any administrative or judicial proceeding.

**13. Severability.** If any court of competent jurisdiction determines that any provision of this Agreement is invalid or unenforceable, then such invalidity or unenforceability shall have no effect on the other provisions hereof, which shall remain valid, binding and enforceable and in full force and effect. In the event, however, the Band's waiver of sovereign immunity in section 5.C. is invalidated or deemed unenforceable, the County shall be released from its obligations under this Agreement. In the event of such a determination by such court, the Parties shall promptly meet to discuss how they might satisfy the terms of this Agreement by alternative means. The Parties shall use their best efforts to find, design and implement a means of successfully effectuating the terms of this Agreement. If necessary, Parties shall negotiate appropriate amendments of this Agreement to maintain, as closely as possible, the original terms, intent and balance of benefits, and burdens of this Agreement. In the event the Parties are not able to reach agreement in such situation, the dispute resolution procedures of Section 5 of this Agreement shall apply.

**14. Good Faith and Fair Dealing.** The Parties agree that this Agreement imposes on them a duty of good faith and fair dealing.

**15. No Liability for Acts Prior to Agreement.** Except as subject to a specific, written agreement, no Party shall incur any liability for any acts undertaken during the discussion, negotiation, execution or the processes undertaken to secure any approval required to effectuate this Agreement, whether or not all necessary approvals to make this Agreement effective are obtained.

**16. Captions.** The captions contained in this Agreement are inserted only as matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provisions hereof.

**17. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument. Any such counterpart may be executed by facsimile signature with only verbal confirmation, and when so executed and delivered shall be deemed an original and such counterpart(s) together shall constitute only one original.

**18. Amendment.** This Agreement may only be amended by written instrument executed by the Parties.

**19. Complete Agreement.** This Agreement represents the entire integrated agreement between the Parties and supersedes all past agreements and all negotiations, representations, promises or agreements, either written or oral, made during the course of negotiations leading to this Agreement.

**20. Submission of Agreement to the Secretary of the Interior.** The Band shall submit this Agreement to the Secretary of the Interior under 25 U.S.C. § 81 for approval pursuant to that statute or any other applicable federal statute a determination. The Band shall also request that this Agreement shall be referenced in, and made a part of, the trust land transfer documentation. Any such approval by the Secretary or any other federal agency under this section shall be transmitted to the County. In the event that the Secretary fails to make the approval contemplated under this section, the Parties shall meet to determine how to achieve such a determination.

**21. Force Majeure.** In the event that either Party shall be delayed or hindered in or prevented from the performance of any act required under this Agreement by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, governmental moratorium or other governmental action or inaction by any governmental entity other than the Parties (including failure, refusal or delay in issuing permits, approvals and/or authorizations) injunction or court order, riots, insurrection, war, fire, earthquake, flood or other natural disaster or other reason of a like nature not the fault of the Party delaying in performing work or doing acts required under this Agreement (but excluding delays due to financial inability), then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

**22. No Third-Party Beneficiary.** This Agreement is personal to the Parties and is not intended for the benefit of any other party not executing this Agreement.

**23. Benefit and Assignment.** This Agreement shall be binding upon and inure to the benefit of the Parties, and their successors and assignees. Except with respect to successors, neither this Agreement, nor any of the rights or interests of the Parties, may be assigned, transferred or conveyed in any manner without the prior written consent of the other Party.

**24. Incorporation of Whereas Clauses.** The “whereas clauses” of this Agreement are incorporated herein and are to be construed as part of the binding provisions of this Agreement.

**IN WITNESS WHEREOF**, the Band and the County have respectively signed this Agreement and caused their seals to be affixed and attested as of the date shown.

**COUNTY OF SANTA BARBARA,  
CALIFORNIA**

By: \_\_\_\_\_  
[\_\_\_\_\_,] [County Executive]

Date: [\_\_\_\_\_, 2005]

**SANTA YNEZ BAND OF CHUMASH  
MISSION INDIANS OF THE SANTA YNEZ  
RESERVATION, CALIFORNIA**

By: \_\_\_\_\_  
[\_\_\_\_\_,] [Chairperson]

Date: [\_\_\_\_\_, 2005]