

**COOPERATIVE AGREEMENT BETWEEN THE COUNTY OF SAN DIEGO
AND THE SAN PASQUAL BAND OF MISSION INDIANS
FOR ROAD IMPROVEMENTS ASSOCIATED WITH
THE EXPANSION OF VALLEY VIEW CASINO**

This Cooperative Agreement (hereinafter "Agreement") is made this 11th day of May, 2005, by and between the County of San Diego, ("County") and the San Pasqual Band of Mission Indians ("San Pasqual Band"), hereinafter collectively referred to as the Parties.

WHEREAS, San Pasqual Band has signed a Tribal State Gaming Compact ("Compact") with the State of California that will allow San Pasqual Band to develop up to two Class III casinos on its tribal lands; and

WHEREAS, San Pasqual Band has tribal lands which are located within the unincorporated area of San Diego County; and

WHEREAS, in 2001, San Pasqual Band developed a temporary Class III casino (hereinafter referred to as "Phase 1 Casino") on its tribal lands near the north end of North Lake Wohlford Road and had planned to develop the tribe's permanent Class III casino at a separate location close to the Escondido end of South Lake Wohlford Road on its tribal lands; and

WHEREAS, San Pasqual Band and County entered into a Cooperative Agreement on June 19, 2001 addressing the mitigation of off-reservation road impacts associated with its casino development plans at that time; and

WHEREAS, the June 19, 2001 Agreement states that in case of a change to San Pasqual Band's casino plans, the Parties will renegotiate government-to-government, in good faith, a new Agreement; and

WHEREAS, since June 19, 2001, San Pasqual Band has changed its casino plans, and the Parties desire to enter into a new Agreement to mitigate the off-reservation road impacts of the Casino project; and

WHEREAS, San Pasqual Band now plans to expand its Phase 1 Casino by an additional approximately 56,360 square feet including approximately 31,640 square feet of additional gaming space (the "Proposed Expansion" with the resulting expanded casino hereinafter referred to as "Phase 2 Casino"); and

WHEREAS, in connection with that proposed expansion, the San Pasqual Band and the National Indian Gaming Commission ("NIGC") have performed environmental analyses to determine the scope of potential off-reservation environmental impacts resulting from the Proposed Expansion; and

WHEREAS, the County commented on the Draft Environmental Analyses and the San Pasqual Band responded to the County's comments; and

WHEREAS, access to the tribal lands and existing Phase 1 Casino and proposed Phase 2 Casino is via County-maintained roads located within the unincorporated area of San Diego County; and

WHEREAS, this agreement is between San Pasqual Band and County and does not address the mitigation of traffic impacts in the City of Escondido. However, in order to mitigate specific traffic impacts in the City of Escondido identified in the recent traffic impact study done for San Pasqual Band by Linscott, Law, and Greenspan, and included in the environmental assessment for the Proposed Expansion, San Pasqual Band may make a separate fair share contribution to the City of Escondido of \$206,850.00; and

WHEREAS, in an effort to work cooperatively with the County in order to effectively mitigate off-reservation environmental impacts of its casino projects, the San Pasqual Band has agreed to contribute funding toward the improvement of such County maintained roads. San Pasqual Band is not obligated to seek the County's approval before constructing its Class III casino project, however, San Pasqual is obligated to make good faith efforts to mitigate the off-reservation impacts caused by the construction and operation of its casino. It is therefore in the County's best interest to enter into this Cooperative Agreement so that the County-maintained roads in the vicinity of the Class III casino may be improved so as to benefit the County, and the San Pasqual Band; and

WHEREAS, by its execution of this Agreement, the County acknowledges the San Pasqual Band's compliance with its obligations to mitigate off-reservation road impacts.

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

I. EFFECTIVE DATE AND CONDITIONS TO EFFECTIVENESS OF AGREEMENT

1. This Agreement shall become effective on the latest of the dates upon which each of the following conditions precedent shall be met:
 - a) approval of this Agreement by the County of San Diego Board of Supervisors and the General Council of the San Pasqual Band; and

- b) the closing of a financing transaction by the San Pasqual Band sufficient to finance the cost of the Proposed Expansion and to make the mitigation payments required under this Agreement.
2. Upon the satisfaction of all of the conditions precedent to effectiveness set forth in subsection 1, above, the parties shall execute an addendum to this Agreement memorializing the effective date of this Agreement in the form attached hereto as Attachment A.
3. The San Pasqual Band shall not commence, or authorize the commencement of, the construction of the Phase 2 Casino under the Proposed Expansion until the effective date of this Agreement.
4. The San Pasqual Band shall make a good faith effort to secure the financing for the Proposed Expansion by December 31, 2005.

II. FRONTAGE IMPROVEMENTS

5. County shall be solely responsible for the planning, design, construction and financing of any additional County-required frontage improvements as County determines are needed for the Proposed Expansion, including the installation of a traffic signal, if and when warranted.

III. OFF-RESERVATION IMPROVEMENTS FOR COUNTY ROADS

6. Agreed Improvements and Payments:

In order to mitigate off-reservation road impacts of the Proposed Expansion, the Parties agree as follows:

- a) San Pasqual Band agrees to pay the sum of \$5,995,000 directed specifically towards the following Valley Center Road Phase II improvements:
 - 1) Widening of Valley Center Road from 2 lanes to 4 lanes, from end of Valley Center Road Phase I improvements (approximately 1.5 miles north of City of Escondido) to Cole Grade Road intersection.
 - 2) Intersection improvements at intersections of Valley Center Road with Lilac Road, Cole Grade Road, and North Lake Wohlford Road, with North Lake Wohlford Road improvements scheduled at the beginning of Phase II construction work.

- b) County and San Pasqual Band recognize and agree that final scope of Valley Center Road Phase II improvements shall be dependent on total funding available from County, developers, and various tribal contributions.
- c) County shall be solely responsible for the planning, design, environmental review, right of way acquisition and construction of roadway improvements identified in this Section 6 of the Agreement.
- d) County agrees to schedule work as early as feasible. County shall negotiate in good faith with the San Pasqual Band to construct such improvements so as to minimize any disruption of traffic flow to the casino.
- e) San Pasqual Band will provide the contribution described above within ninety (90) days after the effective date of this Agreement.

7. Acknowledgement of Additional Impacts.

San Pasqual Band and County acknowledge and agree that in consideration for San Pasqual Band's contributions to Valley Center Road improvements identified in this section, any additional impacts to County roads will be mitigated solely by County sponsored improvement projects at no additional cost to San Pasqual Band.

8. Adjustment of Payments for Inflation or Cost Increases.

- a) San Pasqual Band shall not be responsible for any construction cost overruns or any project cost increases caused by inflation, labor, or material cost increases or any other reason if San Pasqual Band makes full payment within 90 days of the effective date of this Agreement.
- b) Notwithstanding the foregoing, if the payment set forth in Section III. 6(a) becomes due after December 31, 2005, then the payment amount shall be adjusted by the increase or decrease in the Engineering News Record Costs of Construction Index, published by McGraw-Hill Publishing Company, for the period January 1, 2006 to the payment date.

9. Contingency for Change in Casino Expansion Project or County's Phase II Valley Center Road Improvement Project.

In the event that the specific elements of County's Valley Center Road Phase II improvements described in subsection 6a, above, are not constructed or in the event that San Pasqual Band does not proceed with the Proposed Expansion of Valley View Casino, the parties shall negotiate in good faith as to how much, if any, of the contribution made by San Pasqual Band under this Agreement shall be returned to the Band and how much, if any, of the contribution made by San Pasqual Band shall be retained by County as

payment for mitigation of impacts of the existing Phase 1 Valley View Casino. If the parties are unable to reach agreement on these issues, that dispute will be resolved under the dispute resolution procedures included in this Agreement.

10. Adjustments to Payments.

In the event that size of the Phase 2 Casino gaming area is materially reduced from or materially expanded beyond the planned 31,640 square feet in the Proposed Expansion, San Pasqual Band's financial obligation shall be adjusted based on the proportional change in estimated average daily traffic trips generated. The trip generation factors on which this Agreement is based are 100 trips per 1,000 square feet of gaming area.

11. Reimbursements/credits for contributions from third party sources.

County agrees to reimburse or credit San Pasqual Band as follows:

- a) In the event that San Pasqual Band receives funding from state or federal sources, and directs those monies to be paid directly to County, County shall accept 100% of such payment as if it were a payment paid directly by San Pasqual Band.
- b) In the event County receives funding from the Special Distribution Fund created under the Compact, earmarked for mitigation of off-reservation road impacts resulting from the San Pasqual Casino Project, County shall accept 100% of such payment as if it were a payment paid directly by San Pasqual Band.
- c) In the event County receives funding from the Special Distribution Fund, earmarked for road improvement projects to mitigate off-reservation road impacts from Indian casinos in "North County," a credit shall be made to the payment obligation of San Pasqual Band in an amount calculated by the following formula:

(Total number of gaming devices operated by San Pasqual Band as of date of funds disbursed to County divided by the total number of gaming devices operated by San Pasqual Band, Pala Band, Rincon Band, Pauma Band, and La Jolla Band).
- d) In the event County receives funding from the Special Distribution Fund, earmarked for road improvement projects to mitigate off-reservation road impacts from Indian casinos a credit shall be made to the payment obligation of San Pasqual Band in an amount calculated by the following formula:

(Total number of gaming devices operated by San Pasqual Band as of date of funds disbursed to County divided by the total number of gaming devices operated on Indian lands as of same date within the external boundaries of County).

- e) In the event County receives funding from the Special Distribution Fund, earmarked only for mitigation of off-reservation impacts other than road improvements, no credit shall be made to San Pasqual Band under this Agreement.
- f) For purposes of calculating the formulas set forth in subsections 10(c) and 10(d) above, in the event County is unable to verify the number of devices, it shall be assumed that each gaming tribe operating within San Diego County is operating an equal number of devices.
- g) If during the course of negotiation of comparable agreements with other gaming tribes operating under comparable compacts within San Diego County, County notifies San Pasqual Band that the agreements, collectively, are inconsistent, burdensome or unfair, San Pasqual Band and County shall renegotiate government-to-government, in good faith, the provisions set forth in this section 10.
- h) To the extent that County is responsible for the balance of project costs beyond the amounts to be paid by San Pasqual Band under this Agreement, County will rely upon and will obtain those funds from typical County capital project funding sources, such as contributions from new development projects, Federal Highway Administration (FHWA), TRANSNET and Gas Tax. San Pasqual Band will receive no credit for such funding.
- i) County shall use its best efforts to secure funds from the Special Distribution Fund for road improvements needed to mitigate off-reservation impacts of the San Pasqual Casino Project.
- j) Any credits towards San Pasqual Band's payment obligation pursuant to this section 10 shall be treated as the next payments in time to be paid by San Pasqual Band.
- k) In the event funds identified in subsections 10a-d are received by the County after the payment from San Pasqual Band has already been paid to the County, the County shall reimburse San Pasqual Band within 30 days from receipt of such funds.

IV. MISCELLANEOUS

12. Other Studies.

County shall be solely responsible for the preparation of any studies, environmental review, right-of-way acquisition, and construction needed to complete the off-reservation road improvements as identified in this Agreement. San Pasqual Band's contributions for road improvements include the costs of studies, environmental review, right of way acquisition, construction and other related costs.

13. Encouraging Valley Center Road as Preferred Route to Valley View Casino.

In its advertisements, signage, website, brochures, etc., San Pasqual Band shall not promote Lake Wohlford Road for access to its Casino, other than the approximately one mile segment north of the Casino (between the Casino and Valley Center Road); provided, however, that for customers who choose to use Lake Wohlford Road, San Pasqual Band may have two directional signs on tribal property south of the Casino on Lake Wohlford Road directing patrons to the Casino.

14. Tribal-State Compact.

County and San Pasqual Band agree that San Pasqual Band's contributions to County pursuant to this Agreement are not exactions or fees imposed as a condition of development, and therefore are not subject to the Mitigation Fee Act (California Government Code Section 66000 and following). County and San Pasqual Band agree that Class III gaming facilities on reservation land are regulated by the Compact and that the County has no permitting authority over the Proposed Expansion. The contributions contemplated by this Agreement are being made by San Pasqual Band pursuant to Section 10.8 of the Compact and the parties agree that this Cooperative Agreement shall not serve as a model or precedent with respect to other forms of commercial development on San Pasqual lands that are not regulated by the Compact.

15. Notices.

All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the principal offices of the County and San Pasqual Band. Notice shall be effective on the date delivered in person, or on the date when the postal authorities indicated that the mailing was delivered to the address of the receiving party indicated below:

Notice to San Pasqual Band:

San Pasqual Band of Mission Indians
Attn: Tribal Spokesman
27458 Lake Wohlford Road
P.O. Box 365
Valley Center, CA 92082

and

San Pasqual Casino Development Group, Inc.
16300 Nyemii Road
Valley Center, CA 92082

Notice to County:

County of San Diego
5555 Overland Avenue,
Bldg. 2, Room 156-
San Diego, CA 92123-1295
Attn: Director of Public Works

Such written notices, demands, correspondence and communications may be sent in the same manner to such other persons and addresses as either party may from time to time designate by mail as provided in this section. A party may change its address by giving notice in writing to other Party and thereafter notices shall be delivered or sent to such new address.

16. Applicable Laws.

This Agreement shall be construed and enforced in accordance with the laws of the United States and to the extent not inconsistent therewith, the laws of the State of California.

17. Consent To Jurisdiction: Limited Waiver of Sovereign Immunity and Exhaustion Of Tribal Remedies.

- a) San Pasqual Band grants a limited waiver of sovereign immunity from suit exclusively to County, and to no other entity or person, for the sole purpose of enforcing this Agreement. For this limited purpose, San Pasqual Band (i) agrees that any suit, action or other legal proceeding arising out of or relating to this Agreement may be brought in the federal courts of the United States, or in the event the federal courts refuse to hear such case for lack of jurisdiction, the State courts of the State of California (including any courts to which appeals there from are available); and (ii) waives its sovereign immunity in any such suit, action or legal proceeding by County for money damages, specific performance, injunctive relief and/or declaratory relief for San Pasqual Band's breach of this Agreement. San Pasqual Band does hereby

unconditionally waive any claim or defense of exhaustion of tribal administrative or judicial remedies. In no instance shall any enforcement or judgment of any kind whatsoever be allowed or levied against any assets of San Pasqual Band other than the limited assets of the San Pasqual Band's distributed share of the revenue stream of the Valley View Casino and physical assets of the Valley View Casino, subject however, to prior existing liens or encumbrances on such assets. Specifically, this waiver shall not extend to any other accounts of San Pasqual Band, the source of which includes distributions from accounts directly related to the Valley View Casino, so long as such distributions are in the ordinary course of business when the Agreement is not in default and are not done for the purpose of frustrating the County's remedies hereunder. San Pasqual Band does not waive the defense of sovereign immunity with respect to any action by third parties, or extend its waiver to reach any assets of San Pasqual Band other than those specifically set forth herein.

- b) County acknowledges and agrees that San Pasqual Band may bring an action in the State Courts of California to enforce the terms of this Agreement as against San Diego County for money damages, specific performance, injunctive relief and/or declaratory relief for County's breach of this Agreement. County acknowledges and agrees that State Courts with proper venue have jurisdiction to hear such disputes. For purposes of the Agreement, County hereby waives any immunity it may have from suit in order to permit San Pasqual Band to enforce the provisions of the Agreement.

18. Entire Agreement, Waivers.

This Agreement constitutes the entire understanding and agreement of the Parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreement between the Parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the County or of San Pasqual Band.

19. Amendments.

This Agreement may be amended by mutual written agreement of the Parties duly executed by the lawfully authorized officers or officials of each party.

IN WITNESS WHEREOF, the Agreement has been executed by the Parties as of the day and year first set forth above,

TRIBE:

SAN PASQUAL BAND OF MISSION INDIANS, a federally recognized Indian tribe

By:



Allen E. Lawson
Tribal Spokesman



Angelina Martinez
Tribal Secretary - Treasurer

COUNTY:

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

By:



Clerk of the Board of Supervisors

Approved and/or authorized by the Board of Supervisors of the County of San Diego
Date 05.11.10 Minute Order No. 5
THOMAS J. PASTUSZKA
Clerk of the Board of Supervisors
By Clarie Tesh
Deputy Clerk

F:\USERS\GMF\San Pasqual\Cooperative Agmt-SD County-road improvements-GMF 3.doc

ATTORNEY AT LAW AND LEGALITY
COUNTY COUNSEL

BY Claudia Anzures
SENIOR DEPUTY

ATTACHMENT A

All of the conditions precedent to the effectiveness of this Cooperative Agreement under Section 1 having been satisfied, the effective date of this Cooperative Agreement is

TRIBE:

SAN PASQUAL BAND OF MISSION
INDIANS, a federally recognized Indian tribe

By:

Tribal Spokesman

Tribal Secretary – Treasurer

COUNTY:

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

By:

John L. Snyder, Director
Department of Public Works