

INTERGOVERNMENTAL AGREEMENT
BETWEEN THE COUNTY OF SAN DIEGO AND THE VIEJAS BAND OF
KUMEYAAY INDIANS
PURSUANT TO SECTION 10.8 OF VIEJAS' TRIBAL-STATE GAMING COMPACT

This Agreement ("Agreement") is entered into this fourteenth day of December, 2005, between the County of San Diego, a political subdivision of the State of California ("County"), and the Viejas Band of Kumeyaay Indians, a federally recognized Indian Tribe located within the geographical boundaries of 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 Tribal Council of the Viejas Band of Kumeyaay Indians recognize that each is a sovereign governmental entity with 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 within the geographical boundaries of San Diego County (the "Reservation") are subject to Viejas Tribal and applicable federal 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 regulate certain gaming on Indian lands in the United States. IGRA provides a regulatory framework 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. On September 10, 1999, 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. A Compact Amendment was approved by the Governor on June 21, 2004, ratified by the California State Legislature on July 1, 2004, and approved by the Bureau of Indian Affairs on August 20, 2004.

G. Pursuant to IGRA and the Compact as amended, the Tribe intends to develop a two-story 45,000 square foot expansion of the existing Viejas Casino, on a currently paved area at the northwest corner of the existing casino ("the Project"). Approximately 18,000 square feet is to be devoted to gambling consisting of 250 slot machines and six gaming tables, and 27,000 square feet is to contain food service facilities and indoor storage areas.

H. The Parties acknowledge that the Tribe's on-Reservation compact-related activities are not subject to the California Environmental Quality Act ("CEQA"). Pursuant to Section 10.8.1 of the Compact as amended, the Tribe caused to be prepared a Tribal Environmental Impact Report before the commencement of any planned expansion of its Gaming Facility. The Tribe issued a Notice of Preparation of a Draft TEIR on July 5, 2005 and subsequently issued the Draft TEIR on August 10, 2005. Public Notice was provided pursuant to the Compact. The County and the public reviewed and commented on both the Notice of Preparation and the Draft TEIR.

I. Section 10.8.8 of the Compact as amended requires the Tribe to negotiate with the County of San Diego and to enter into agreements providing for the timely mitigation of any significant effect on the off-reservation environment where such effect is attributable in whole or in part to the Project unless the parties agree the particular mitigation is infeasible; relating to compensation for law enforcement, fire protection, emergency medical services and any other public services to be provided by the County to the Tribe as a consequence of the Project; providing for reasonable compensation for programs designed to address gambling addiction; and providing for mitigation of any effect on public safety attributable to the Project.

J. The Tribe and the County have a longstanding, government-to-government relationship based on mutual respect and consideration of their respective jurisdiction, laws, regulations and duties to their citizens.

NOW, THEREFORE, the Parties hereby agree that this Agreement shall satisfy the requirements of Section 10.8.8 of the Amended Compact and sets forth (1) the County and Tribe's obligations in providing Mitigation Measures for any potentially Significant Effect on the Off-Reservation Environment; (2) the provisions relating to compensation for law enforcement, fire protection, emergency medical services and any other public services to be provided by the County to the Tribe as a consequence of the Project; (3) provisions providing for reasonable compensation for programs designed to

address gambling addiction; (4) provisions providing for mitigation of any effect on public safety attributable to the Project; and (5) a continued strengthening of the government-to-government relationship between the County and the Tribe.

A. MITIGATION MEASURES ASSOCIATED WITH THE PROJECT

In preparing the Final Tribal Environmental Impact Report, the Tribe and the County met numerous times, including meetings between technical staff, to analyze the impacts of the Project on the off-reservation environment. In compliance with the Compact as amended, the parties analyzed each of the matters set forth in Section 10.8.1 of the Off-Reservation Environmental Impact Analysis Checklist under the categories of aesthetics, agricultural resources, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, water resources, land use and planning, mineral resources, noise, population and housing, public services, recreation, transportation/traffic, utilities and service systems, and cumulative effects.

The parties agree with implementation of the following mitigation measures and recognize the Tribe's ongoing policies, procedures, and programs that alleviate the need for other mitigation measures. The Project will have no impact on aesthetics, agricultural resources, biological resources, cultural resources, geology and soils, land use and planning, mineral resources, population and housing, recreation, and utilities and service systems. The Project will have less than a significant impact on air quality, hazards and hazardous materials, water resources, noise, public services and transportation/traffic, and the cumulative effects thereof.

1. Aesthetics

The proposed Project is located more than 15 miles from the Mount Laguna Observatory; however, the Project will not add any new outdoor lighting or sources of light pollution that could contribute to sky glow.

2. Air Quality

- a) Dust suppression. During construction of the Project, 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 PM₁₀ to the atmosphere. Tribe shall utilize whatever means are necessary to prevent nuisance to off-Reservation residents and motorists on Willows Road and Interstate 8.
- b) Low-emission construction equipment. During construction, whenever feasible, low-sulfur diesel equipment and electric equipment will be utilized.

- c) Buses/Shuttles. The Tribe will continue to actively seek to expand the availability of van/bus services to reduce individual vehicular traffic levels, and implement, where feasible, the use of alternative fueled vehicles.
- d) Employee Carpooling. Tribe shall encourage employees to carpool, vanpool or rideshare.

3. Hazardous Materials

The Tribe will contract with the County Office of Emergency Services (OES), Hazardous Incident Response Team (HIRT), within 120 days of commencement of Project construction for hazardous materials emergency response services. The Tribe will annually compensate County for costs of not more than \$5,000. Tribe may obtain Hazardous Incident Response coverage from Tribal resources or others if same or better Hazardous Incident Response capability as County's HIRT is achieved.

4. Water Resources

- a) Groundwater. Sufficient groundwater resources exist within the Viejas Basin to meet current use on the Viejas Reservation, the Project, and current and expected Off-Reservation uses. To avoid unnecessary impacts to the Viejas Basin, the Tribe will make reasonable best efforts to continue to use wastewater treatment plant tertiary treated effluent for landscaping irrigation purposes.
- b) Storm Water. Tribe will assure appropriate construction best-management-practices (BMPs) are available and deployed at the Project construction site to prevent Off-Reservation water quality impacts throughout the construction duration. The Tribe will assure that the construction contractor has prepared a storm water pollution prevention plan (SWPPP) to meet State of California NPDES requirements.

5. Noise

- a) Air Conditioning Equipment. New air conditioning units for the Project will be shielded to minimize propagation of noise Off-Reservation.
- b) Traffic Noise. The tribe shall complete an analysis of environmental noise conditions associated with transportation-related noise on Willows Road and any other local roadway improvements associated with the expansion. This analysis shall be completed using a 60 dB CNEL threshold for noise-sensitive areas in cases where the pre-expansion noise levels are at or below 58 dB CNEL. For noise-sensitive areas where the pre-expansion noise levels exceed 58 dB CNEL, a 3 dB net increase threshold shall be used. Where this noise analysis shows that the

expansion will have impacts in excess of these thresholds, the tribe shall identify and install feasible mitigation measures to reduce the noise levels to below the threshold levels. Feasibility shall be determined as agreed upon by the Parties. A copy of this report and an analysis of the feasibility and adequacy of any necessary mitigation measures shall be filed with the County within 6 months of the date of signing of this agreement and no later than the opening of the expansion facility. Any mitigation measures needed shall be installed within 1 year of the opening of the expansion.

- c) Temporary noise impacts from construction to off-Reservation residences will be limited to the hours between 7 am and 7 pm during the week, in compliance with the operational hours included in Section 36.410 of the County Noise Ordinance.

6. Traffic

- a) Willows Road/Viejas Grade Road Intersection Improvements. The Tribal Government has budgeted a Fiscal Year 2006 Tribal Project for \$500,000 to accomplish improvements to the Willows Road/Viejas Grade Road intersection to accommodate an eastbound left turn pocket at the intersection. County will be responsible for any design, environmental review, right-of-way acquisition, utility relocation and construction of the improvements. A sketch depicting the extent of the proposed intersection improvements will be presented by the County to the Tribe for their concurrence prior to construction.
- b) Willows Road Shoulder Improvements. Tribe recently sponsored the County's application for \$600,000 grant from the Indian Gaming Local Community Benefit Committee for a payment of \$600,000 to County towards shoulder widening along Willows Road between the I-8 freeway ramps and the Viejas Casino. County will be responsible for any design, environmental review, right-of-way acquisition, utility relocation and construction of the improvements. A list or map showing the locations where shoulder widening will be installed will be presented by the County to the Tribe for their concurrence prior to construction. This funding was provided to County at the Tribe's request from the Indian Gaming Distribution Fund (Viejas Tribal Casino Account) in July 2005.
- c) Willows Road Guardrail. Tribe agrees to pay an amount not to exceed \$100,000 towards the installation of guardrail on the north side of Willows Road approximately west of the Interstate 8 westbound off ramps. County will be responsible for any studies, design, environmental review, right-of-way acquisition, utility relocation and construction of the improvements. A sketch showing the location and extent of the proposed guardrail will be presented by the County to the Tribe for their concurrence prior to construction.

- d) Cooperation with Caltrans for Interstate 8 Ramp/Willows Road Intersection Improvements. Tribe will meet with Caltrans to discuss improvements at the intersection of the Interstate 8 freeway ramps and Willows Road. These intersection improvements may include a traffic signal. The Tribe will cooperate with Caltrans to reach an Agreement on improvements, if needed. A copy of any agreement entered into between the Tribe and Caltrans will be provided to County.
- e) Freeway Interchange Value Analysis. Tribe agrees to accomplish a Value Analysis to determine a preferred alternative for future interchange access to the Viejas Casino/Reservation and the Alpine Community. The Value Analysis may include consideration of 1) expansion of the West Willows Road interchange, 2) expansion of the East Willows Road interchange and/or 3) construction of a new interchange for Viejas Reservation access. Tribe and County will participate with Caltrans on preparation of the Value Analysis.

7. Wastewater Treatment

Tribe's existing 300,000 gallon-per-day wastewater treatment facility will handle sewage generated by the Project. The On-Reservation wastewater treatment facility, including On-Reservation effluent disposal, is permitted by the U.S. Environmental Protection Agency. Sludge will be disposed of off-Reservation in accordance with applicable federal, state and local laws.

8. Solid Waste

- a) Solid waste generated by the Project that is not diverted for recycling/reuse will be disposed of only at permitted off-Reservation landfills.
- b) To minimize impacts to off-Reservation landfills, the Tribe will continue to separate and divert solid waste generated by the Project to reuse or recycling including at a minimum all wastes consisting of cardboard, mixed paper, glass, plastic, copper, aluminum, tin, 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.

9. Security and Law Enforcement

The Tribe and the Sheriff respectively shall provide security and law enforcement as set forth below.

- a) Security. The Tribe agrees to provide an adequate level of on-site security in the Project during all hours of 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.
- 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 concurrent jurisdiction with the Tribe over prohibitory crimes committed on the Reservation.
- c) Viejas Compensation to County. Law enforcement workload demand resulting from the Project is expected to be less than what could be handled by one full-time deputy sheriff unit. The Tribe agrees to provide compensation for the equivalent of one-half of the cost of one full-time deputy sheriff, 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)., The quarterly service level charge shall be \$23,748 during the July 1, 2006 – June 30, 2007 period and \$24,788 during the July 1, 2007 – June 30, 2008 period.

Beginning July 1st, 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 increases in the CPI Index.

- d) County of San Diego District Attorney Tribal Liaison Project. The Tribe shall annually compensate County for a portion of the 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 annual payment shall be \$5,800 and be paid before the Project commences operation. Subsequent payments shall be paid prior to the anniversary of the Project operational start date and increased by the CPI Index.
- e) Criminal Prosecution Caseload. The Tribe shall annually compensate County for costs of processing additional Criminal Prosecution Caseload. First annual payment shall be \$12,519 and be paid before the Project commences operation. Subsequent payments shall be paid prior to the anniversary of the Project operational start date and increased by the CPI Index.

10. Public Health and Safety

- a) Fire and Life Safety Services: The Viejas Fire Department, which is staffed by professional firefighters certified as emergency medical technicians, equipped

with two fire engines and two ambulances, provides full-time fire protection and emergency medical services to the reservation, as well as to the surrounding non-reservation rural area. In addition to providing service to the local area, the Viejas Fire Department also provides mutual aid service to other departments in San Diego County, as well as to the California Department of Forestry and U.S. Forest Service fire departments.

- b) Emergency Plan. Tribe will coordinate with the County's emergency services programs to help assure public safety in the event of an emergency and will exchange emergency response policies and procedures, as needed and agreed upon by the Parties.

11. Impacts of Gambling Addiction

- a) Viejas and County agree that it is in the best interest of the two governments to work cooperatively together to develop a plan to identify and address the impacts of problem gambling within San Diego County. Within the next 12 months, the Parties shall jointly research existing programs, quantify the needs within the County, design an appropriate County-wide program, identify funding requirements, and locate and acquire funding for the program. Viejas and County will each appoint a representative to lead the cooperative effort. The representatives will meet periodically to develop the plan. Viejas and County agree to cooperate in efforts to reach out to other gaming and health service providers for funding assistance for the program; such sources include, but are not limited to, the State of California, tribal gaming operations, card rooms, racetracks, lotteries, public agencies, grants, and private funding.
- b) Tribe shall extend Tribe's extensive, existing Responsible Gaming programs to the Project area. Existing programs consist of the following:
 - 1) Voluntary exclusion program
 - 2) Involuntary exclusion program
 - 3) In-casino responsible gaming signage
 - 4) Responsible gaming communications including brochures
 - 5) Limits on types of checks the Facility will cash
 - 6) Training programs to educate staff on problem gaming including trained counselors
 - 7) Active support for the California Council on Problem Gambling (as of date of this agreement, Viejas Band representative serves on the CCPG Board of Directors) which provides the following throughout California:
 - i. Conducts Responsible Gambling workshops for Casino employees
 - ii. Staffs a 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
- iv. Provides information on cost accessible programs for those with compulsive gambling program
- v. Maintains a "Speakers Bureau" of volunteers to help educate children and adults at schools and community service forums

B. DISPUTE RESOLUTION

1. In an effort to foster good government-government relationships, and to assure that the Viejas 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 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 Viejas 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.

C. 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 C. 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.

D. 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:

Diana Aguilar, Tribal Secretary
Viejas Band of Kumeyaay Indians
1 Viejas Grade Road
Alpine, CA 91901

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:

Wendy Parnell
Tribal Government Manager
Viejas Band of Kumeyaay Indians
1 Viejas Grade Road
Alpine, CA 91901

Diane Vitols, General Counsel
Viejas Enterprises
5000 Willows Road
Alpine, CA 91901

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: Viejas Band of Kumeyaay Indians
Fax: 1-619-659-2315
1-619-659-1970

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.

E. 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.

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 issues required of the Tribe in connection with the Tribe's development of the Project 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.

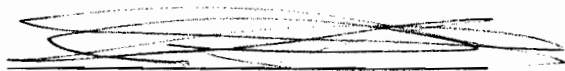
(2) In the event of a dispute between the parties as to the language of this Agreement or the construction or meaning of any term hereof, this Agreement will be deemed to have been drafted by the parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be 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:

VIEJAS BAND OF
KUMEYAAY INDIANS, a federally
recognized Indian Tribe

By:



Anthony R. Pico, Chairperson

COUNTY:

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

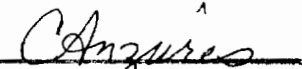
By:



Clerk of the Board of Supervisors
Thomas J. Pastuszka

APPROVED AND ORDERED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN DIEGO
DATE 12-14-05 MINUTE ORDER NO. 13
Kelli C. Kellogg AT

COUNTY OF SAN DIEGO
COUNTY CLERK

BY 
DEPUTY

Waiver of Time Frame for Completion of Negotiations

This Waiver is made by the County of San Diego, a political subdivision of the State of California ("County") with respect to the Issuance of the Final Tribal Environmental Impact Report (TEIR) by the Viejas Band of Kumeyaay Indians, (Viejas) a federally recognized Indian Tribe located in the County of San Diego, State of California.

Recitals

Pursuant to the Compact between the State of California and Viejas, a Draft Tribal Environmental Impact Report has been prepared to address the off-reservation environmental impacts of a proposed Casino expansion;

Section 10.8.4 of the Compact provides, in pertinent part, as follows: "Issuance of Final TEIR. The Tribe shall prepare, certify and make available to the County at least fifty-five (55) days before the completion of negotiations pursuant to Section 10.8.8 a Final TEIR. . . ." The purpose of this provision is to benefit the County and provide an opportunity for the County and Viejas to negotiate the terms of an Intergovernmental Agreement;

The County and Viejas have completed the negotiations referred to in Section 10.8.8 of the Compact and have reached agreement on the terms of an Intergovernmental Agreement;

A Final TEIR was prepared, certified and made available to the County on December 5, 2005;

There is no need to delay approval of the Intergovernmental Agreement for the fifty-five days set forth in the Compact.

NOW, THEREFORE, the County agrees to waive the fifty-five day time frame set forth in the Compact for completion of negotiations.

IN WITNESS WHEREOF, the County has executed this Waiver as of the day and year set forth below:

Dated: December 14, 2005

APPROVED AND/OR AUTHORIZED BY THE BOARD
OF SUPERVISORS OF THE COUNTY OF SAN DIEGO
DATE: 12-14-05 MINUTE ORDER NO: 13
THOMAS J. PASTUSZKA
CLERK OF THE BOARD OF SUPERVISORS
BY: Kerrie C. Kellogg
DEPUTY CLERK

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

By:

Thomas J. Pastuszka

Clerk of the Board of Supervisors
Thomas J. Pastuszka

BY: Conzuras
DEPUTY