

**MEMORANDUM OF UNDERSTANDING
AND INTERGOVERNMENTAL AGREEMENT
BETWEEN THE TULE RIVER INDIAN TRIBE,
THE TULE RIVER TRIBE GAMING AUTHORITY
AND
THE COUNTY OF TULARE**

This Memorandum of Understanding and Intergovernmental Agreement (hereinafter "Agreement") is entered into this 7th day of January, 2020 ("Effective Date"), between the **County of Tulare**, a political subdivision of the State of California ("County"), the **Tule River Indian Tribe**, a federally recognized Indian tribe ("Tribe"), and the **Tule River Tribe Gaming Authority**, a wholly owned subsidiary and instrumentality of the Tribe ("Gaming Authority"). The Tribe, Gaming Authority, and the County are individually referred to as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, the Tribe is the sovereign governmental entity with inherent sovereign authority over the Tule River Indian Reservation and all other lands held in trust by the United States for the benefit of the Tribe ("Reservation"), located within the geographical boundaries of the County of Tulare, State of California. The Gaming Authority is a tribally-chartered corporation created to own and operate any gaming operation of the Tribe for the benefit of the Tribe. The Tribe and the Gaming Authority are collectively referred to as the "Tribal Parties".

WHEREAS, the Board of Supervisors of Tulare County and the Tribal Council of the Tribe recognize that each is a governmental entity with responsibility for the health and general welfare of its people.

WHEREAS, the County recognizes that all Reservation lands, title to which is held in trust by the United States for the Tribe in Tulare County, are subject to certain federal and tribal laws and regulatory authority.

WHEREAS, in 1988 Congress enacted the Indian Gaming Regulatory Act, 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, to promote tribal economic development, self-sufficiency, and strong tribal government and to generally protect the welfare of tribal members.

WHEREAS, the 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 where the Indian tribe is located and approved by the Secretary of the Interior.

WHEREAS, since 1996, the Tribal Parties have owned and operated the Eagle Mountain Casino on the Reservation.

WHEREAS, on August 31, 2017, the Tribe and the Governor of California entered into an Amended Tribal-State Gaming Compact (the "2017 Compact") that permits the Tribal Parties to conduct Class III gaming activities on its trust lands in compliance with IGRA. The Tribal Parties currently operate Class II and Class III gaming activities at Eagle Mountain Casino under the authority of IGRA and the 2017 Compact.

WHEREAS, the Tribal Parties desire and have developed plans to relocate the Eagle Mountain Casino ("Relocation Project") to a 40 acre parcel (the "Project Land") owned by the Tribe since 1988. The Project Land is located within the geographical boundaries of the City of Porterville ("City") in the County of Tulare, California. Relocation of the Eagle Mountain Casino will allow the Tribe to develop its water resources on the Reservation for domestic purposes; to resolve traffic safety issues on the Reservation; to improve the Tribal Parties' position in the market; to improve the socioeconomic status of the Tribe by providing an augmented revenue source that could be used to strengthen the tribal government; to provide new tribal housing; to fund a variety of social, governmental, administrative, educational, health, and welfare services to improve the quality of life of tribal members; and, to provide capital for other economic development and investment opportunities.

WHEREAS, the Tribe expects to enter into a new Class III gaming compact with the State of California for the Relocation Project ("New Compact").

WHEREAS, in order to conduct gaming on the Project Land, the Tribe submitted in September of 2016, a fee-to-trust application to the United States Department of the Interior Bureau of Indian Affairs ("BIA") to transfer the Project Land from fee status into federal trust for gaming purposes for the benefit of the Tribe.

WHEREAS, in September 2018, the Tribe submitted an application requesting that the BIA issue a Secretarial Determination pursuant to IGRA, determining whether the Project Land is eligible for gaming.

WHEREAS, the BIA is required to comply with the National Environmental Policy Act ("NEPA") in conducting its environmental review for the land-into-trust application filed by the Tribe related to the Project Land.

WHEREAS, on May 31, 2019, the BIA issued a Final Environmental Impact Statement ("FEIS") for the Relocation Project. The FEIS identified several potentially significant off-reservation impacts and recommended mitigation measures to address such impacts.

WHEREAS, in September 2019, the BIA issued its Record of Decision ("ROD") announcing the Secretary's determination that a gaming establishment located on the Project Land (1) would be in the best interest of the Tribe and its members, and (2) would not be detrimental to the surrounding community pursuant to 25 U.S.C. § 2719(b)(1)(A).

WHEREAS, in October 2019, the BIA requested that California Governor Gavin Newsom (the "Governor") concur, pursuant to 25 U.S.C. § 2719(b)(1)(A), in the BIA's determination that the Tribe's proposed gaming establishment is in the best interest of the Tribe and its members and that it would not be detrimental to the surrounding community.

WHEREAS, by virtue of the FEIS, the 2017 Compact, the terms of the ROD, the anticipated terms of the New Compact, and this Agreement, the Tribal Parties have agreed to implement identified mitigation measures designed to eliminate or reduce to a less than significant level any potentially significant impacts to the off-reservation environment resulting from the Relocation Project.

WHEREAS, the County and the Tribe have discussed the mutual benefits that could be derived from entering a mutually enforceable agreement with respect to the Relocation Project, and the County appreciates the Tribal Parties' desire to operate its Relocation Project in a manner that benefits the Tribe and the community as a whole.

WHEREAS, by this Agreement, the County is not approving or disapproving the Relocation Project, and, pursuant to the California Environmental Quality Act and its implementing regulations ("CEQA"), entry into this Agreement does not constitute the approval of a "project" for CEQA purposes because it involves the creation of a funding mechanism and/or other government fiscal activity.

WHEREAS, the Board of Supervisors believes that it is in the best interests of the County to enter into this Agreement in order to clarify the County's role and ensure implementation of mitigation measures identified in the FEIS and this Agreement.

WHEREAS, the Tribe is willing to enter into this Agreement as a responsible exercise of its sovereignty and in recognition of the fact that the Tribal Parties' long-term governmental and business interests are best served by accommodating the legitimate needs of neighboring governments.

WHEREAS, the County and the Tribal Parties recognize that applicable law does not obligate the Tribal Parties to pay any taxes that would otherwise be applicable to the Project Land if it were not transferred into trust for the benefit of the Tribe. The County and the Tribal Parties further recognize that the Tribal Parties are not otherwise obligated to pay such taxes, except as may be expressly provided herein.

WHEREAS, this Agreement represents a concerted effort on the part of the County and the Tribe to achieve a positive and constructive government-to-government relationship between the Tribe and the County, and this Agreement reflects an enhancement of that relationship.

WHEREAS, this Agreement represents a concerted effort on the part of the County and the Tribe to achieve a positive and constructive resolution of significant issues that could otherwise adversely impact the development of a long-term government-to-government relationship between the Tribe and the County. Instead, this Agreement reflects a desire by the Tribe and the County to take an enlightened approach to issues that have proven divisive elsewhere in the State.

WHEREAS, this Agreement satisfies the Tribal Parties' obligations to the County under the 2017 Compact, the ROD, and the anticipated terms of the New Compact with respect to the Relocation Project.

NOW, THEREFORE, in consideration of the above and of the mutual promises herein contained, the sufficiency of which is acknowledged, the Parties hereby agree as follows:

1. Land to Be Taken Into Trust.

1.1. This Agreement solely concerns the Project Land, anticipated to be developed and used for the Relocation Project, as described as Alternative A in the FEIS. The Project Land is more specifically identified by the legal description and graphic depiction attached as **Exhibit A**. This Agreement is not intended to apply, and shall not be construed to apply, to any other real property.

1.2. The County, by approving this Agreement, provides its support of the Tribe's applications submitted to the BIA pursuant to 25 CFR Part 151 and 25 CFR Part 292. The County hereby agrees that the Relocation Project, as its impacts are to be mitigated pursuant to this Agreement, will not be detrimental to the County. The County agrees to communicate such support as reasonably requested by the Tribal Parties. The County further agrees not to oppose any efforts by the Tribal Parties to obtain the Governor's concurrence pursuant to 25 CFR Part 292. Finally, the County agrees not to oppose any efforts by the Tribal Parties to negotiate and obtain a New Compact for the Relocation Project.

2. Local Law Matters.

The County acknowledges and agrees that:

2.1. The County does not have authority or jurisdiction over the Tribal Parties, the Project Land, the Relocation Project, the Reservation, or gaming or other activities conducted thereon before or after the date the Project Land is taken into trust for gaming purposes by the BIA for the benefit of the Tribe ("Trust Acquisition Date").

2.2. There is no approval, permit, license, certificate, or other entitlement for use within the Project Land which the Tribal Parties would be required to obtain from the County in connection with the Relocation Project prior to or after the Trust Acquisition Date.

2.3. Neither the Relocation Project nor the Tribe's fee-to-trust application are subject to CEQA or any state or county law, rule, or regulation.

2.4. The Relocation Project is not subject to County environmental review, design, land use or land development ordinances, plans, manuals, or standards.

2.5. The County does not have legal authority to deliberate on, approve, disapprove, or otherwise exercise decision-making authority regarding the Relocation Project.

2.6. The County is not deliberating on, approving, disapproving or otherwise exercising decision-making authority regarding the Relocation Project by entering into this Agreement.

3. Tribal Parties' Commitments, Obligations, and Responsibilities.

3.1. **Traffic Impacts Mitigation.** Should the Tribal Parties carry out and complete the Relocation Project, it shall do so in full compliance with the terms set forth in this Agreement.

3.1.1. **Traffic Study.** Prior to commencement of construction of the Relocation Project, the Tribal Parties shall undertake a transportation impact study (TIS) of those roadways located contiguous to, and those impacted by, the Relocation Project. The results of such study

will be used to prepare a traffic management plan that addresses traffic mitigation measures during construction of the Relocation Project in accordance with standards set forth in the Manual on Uniform Traffic Control Devices (MUTCD) for Streets and Highways (FHWA, 2003). The traffic management plan shall be submitted to the County for review and comment. The Tribal Parties shall ensure that prior to commencement of construction, the contractor responsible for such mitigation measures coordinates with emergency service providers to avoid obstructing emergency response service during construction. Police, fire, ambulance, and other emergency response providers shall be notified in advance of the details of the construction schedule, location of construction activities, duration of the construction period, and any access restrictions that could impact emergency response services. The traffic management plan shall include details regarding emergency service coordination. Copies of the traffic management plan shall be provided to all affected emergency service providers.

3.1.2. **Intersection and Roadway Improvements.** The FEIS for the Relocation Project identifies certain off-reservation traffic-related impacts on State Routes 65, 137, 190, and 198, and certain County and City roads and intersections. These traffic-related impacts shall be mitigated through required road and intersection improvements as identified in the FEIS, ROD, and this Agreement. Except as otherwise provided below, the Tribal Parties will either construct, or pay their pro rata fair share of the total costs of, the traffic mitigation measures required by the ROD and within the jurisdiction of the County. Any mitigation measures required by the ROD, and within the jurisdiction of the City, shall be subject to an agreement between the Tribal Parties and the City. A list of the measures is attached as **Exhibit B** for convenience.

3.1.2.1. **Teapot Dome Avenue.** The Parties agree that the County shall design, obtain approvals for, and construct the road reconstruction to Teapot Dome Avenue between Westwood Street (Road 224) to approximately 550 feet west of Newcomb Street, as specified by the FEIS ("Teapot Dome Improvements"), all within the existing 50 foot right of way width and within the jurisdiction of the County. The County shall complete said improvements prior to the day the Tribal Parties offer class III gaming to the public on the Project Land ("Opening Day"). Consistent with the FEIS, the Tribal Parties agree to pay its fair share contribution of 59.5% of the actual cost of the Teapot Dome Improvements. Within thirty (30) days of the Tribal Parties' receipt of written notice from the County of the County's intent to construct the Teapot Dome Improvements, which notice shall include an estimate of costs, the Tribal Parties shall deposit its estimated pro rata share of the actual cost for the Teapot Dome Improvements (59.5% of the total cost) in an escrow account to be established by the Parties; provided, however, in no event shall the Tribal Parties be obligated to pay its pro-rata share of the Teapot Dome Improvements until after the Trust Acquisition Date. Such funds may be drawn upon and used by the County or its designee to pay, on a pro-rata basis, the actual costs of design and construction of the Teapot Dome Improvements. Should the Tribal Parties disagree with the estimated costs to construct the Teapot Dome Improvements, the Parties agree to utilize the dispute resolution provisions in Section 5 to resolve such dispute. Upon completion of the Teapot Dome Improvements, any remaining funds in the escrow account shall be promptly reimbursed to the Tribal Parties.

3.1.2.2. **Avenue 256/Spruce Road Intersection.** The County will install a traffic signal or roundabout at the intersection of Avenue 256 and Spruce Road ("Intersection Improvements"). The construction will be completed by the County by 2040. The Tribal Parties will contribute its pro rata fair share (7% of the total costs) for the Intersection Improvements and the County will pay the remaining cost. Within thirty (30) days of the Tribal Parties' receipt of written notice from the County of the County's intent to construct the Intersection Improvements, which notice shall include an estimate of costs or actual costs (as applicable), the Tribal Parties shall deposit its estimated pro rata share of the actual cost for the Intersection Improvements (7% of the total cost) in an escrow account to be established by the Parties; provided, however, in no event shall the Tribal Parties be obligated to pay its pro-rata share of the Intersection Improvements until after the Trust Acquisition Date. Such funds may be drawn upon and used by the County or its designee to pay, on a pro-rata basis, the actual costs of design and construction of the Intersection Improvements. Should the Tribal Parties disagree with the estimated costs to construct the Intersection Improvements, the Parties agree to utilize the dispute resolution provisions in Section 5 to resolve such dispute. Upon completion of the Intersection Improvements, any remaining funds in the escrow account shall be promptly reimbursed to the Tribal Parties.

3.1.2.3. **Scranton/West Intersection.** If the City and/or Tribal Parties undertake to design and install a traffic signal and widen the northbound approach to accommodate a left-turn lane at this location, as required by the ROD, then the County will contribute its pro rata fair share (4.8%) of the total costs for the segment improvements to the entity undertaking the improvements and the Tribal Parties and/or City shall pay the remaining cost of the improvements. The County will pay its pro rata fair share of project costs within thirty (30) days of its receipt of written notice from the entity undertaking the project of its intent to construct the identified improvements, which notice shall include an estimate of costs. The County shall deposit its estimated pro rata fair share of the actual cost for the improvements in an escrow account to be established by the entity undertaking the improvements, however, provided in no event shall the County be obligated to pay its pro-rata share of any of said improvements until after the Trust Acquisition Date. Such funds may be drawn upon and used by the entity undertaking the improvements or its designee to pay, on a pro-rata basis, the actual costs of design and construction of said improvements. Should the County disagree with the estimated costs to construct said improvements, the Parties agree to utilize the dispute resolution provisions in Section 5 to resolve such dispute. Such funds may be drawn upon and used by the entity undertaking the improvements to pay the County's pro rata fair share of the actual costs of the improvements.

3.1.2.4. **Rockford/SR 190 Intersection.** The FEIS for the Relocation Project identified potential traffic-related impacts to the intersection at State Route 190 and Rockford Road (the "State Route 190 Improvements"), which is within the jurisdiction of Caltrans. The FEIS contemplates that Caltrans will conduct an Intersection Control Evaluation ("ICE") and then install either a traffic signal or roundabout, depending on the outcome of the ICE. The Tribal Parties shall, consistent with the FEIS, pay to Caltrans its pro-rata share of 28.2% of the cost of the State Route 190 Improvements.

3.1.3. **Summaries of Improvements and Cost Estimates.** Summaries of the scope of improvements and current estimated total costs of the traffic mitigation measures identified in subsections 3.1.2.1, 3.1.2.2, 3.1.2.3, and 3.2.1, 3.2.2, and 3.2.3 are attached as **Exhibit C**. The cost estimates include the applicable costs of design, right-of-way acquisition, utility relocation, environmental mitigation, construction management, materials testing, inspections, construction engineering, contingency, permits, and construction of each of the improvements.

3.1.4. **Renegotiation of Traffic Impacts and Required Improvements.** The Parties understand and agree that the traffic mitigation measures identified in the FEIS, ROD, and Sections 3.1 and 3.2 of this Agreement, are based on the size and scope of the proposed project described in the FEIS. To the extent the construction of the Relocation Project is phased and/or the size and scope of the Relocation Project is significantly reduced or increased, the Parties acknowledge the impacts to traffic may also be reduced or be increased. Such a change in the size and scope of the Relocation Project meets the requirements of Section 6 with respect to the requirements of Sections 3.1 and 3.2.

3.1.5. **Cooperation of County.** The Tribal Parties have entered into an agreement with the City of Porterville to address traffic mitigation measures and to the extent necessary, the County agrees to cooperate with the Tribal Parties in obtaining any approvals necessary to construct such improvements.

3.2. **Additional Segment Improvements.** The County has expressed its interest in improving certain roadways not specified in the FEIS, and for which the FEIS determined the Tribal Parties have no obligation to mitigate, which are adjacent to, or near, the Project Land. The Tribal Parties recognize that such improvements may benefit the surrounding Community and the Relocation Project. Therefore the Parties agree to undertake the improvements to certain roadway segments as provided in this Section 3.2.

3.2.1. **West St.** The County will undertake construction of the improvements on West Street from Teapot Dome Avenue to 1300 feet north of Teapot Dome Avenue (City limits). These improvements will consist of a cold plane and overlay of the existing pavement, or other similar treatment as deemed appropriate by the County for a 20-year design life, within the existing 32-foot right of way width. The County will assume 100% of the costs related to these improvements and complete the construction by Opening Day.

3.2.2. **Teapot Dome Avenue.** The County will undertake reconstruction of the segment improvements outside of the City limits, from West Street to approximately ¼ mile east of West Street, within the existing 50 foot right of way width. The construction will be completed by the County prior to Opening Day. The County will assume 100% of the costs related to these improvements and complete the construction by Opening Day.

3.2.3. **Westwood Street.** The Tribal Parties will undertake construction of the segment improvements for Westwood Street from S.R. 190 to approximately 1,300 feet south of S.R. 190. These improvements will consist of removing decayed or aged asphalt as determined by the County, placing a 0.20-foot hot asphalt mix overlay on the existing pavement, widening the existing shoulders, and installing edgeline rumble strips, all within the existing right of way width. The Tribal Parties will assume 100% of the cost of the described improvements. The

Parties agree that the cost to complete the Westwood St. Improvements is in excess of required mitigation under the FEIS. Therefore, for any costs incurred to complete the Westwood St. Improvements, the Tribal Parties shall be seeking credit against its payment obligations under a New Compact and County shall communicate its support for such credit to the Governor.

3.2.4. Encroachment Permit and Project Design. For the improvements identified in subsection 3.2.3 above (Westwood Street), the Tribe will be required to obtain the County's advanced written approval of the improvement plans and specifications, which shall be consistent with the County's then-current road improvement standards, and an encroachment permit permitting the Tribe, through its construction contractor, to undertake construction of the identified improvements within County's road right-of-way.

3.3. Law Enforcement.

3.3.1. In lieu of making annual payments for law enforcement services, the Tribal Parties elect to make a lump sum payment to the County for law enforcement in the total amount of \$3,500,000. To meet this obligation, the Tribal Parties shall, within 30 days of the day the Tribal Parties offer class III gaming to the public on the Project Land ("Opening Day"), make an initial payment of one-million dollars (\$1,000,000), and shall thereafter pay the balance of two-million five hundred thousand (\$2,500,000) to the County in twelve (12) equal quarterly payments commencing on the second anniversary of Opening Day, such that the total amount shall be paid over a four-year period.

3.3.2. Compact Credits. Because the City, pursuant to its agreement with the Tribal Parties, has agreed to apportion Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) of its annual payment received from the Tribal Parties to address impacts to law enforcement resulting from the Relocation Project, the Parties agree that the lump-sum payment set forth in Section 3.3.1 is in excess of required mitigation for law enforcement under the FEIS. Therefore, for any payment amounts made under Section 3.3.1, the Tribal Parties shall be seeking credit against its payment obligations under a New Compact and County shall communicate its support for such credit to the Governor.

3.3.3. Tribal security officers and/or tribal law enforcement officers shall work in conjunction with the Sheriff's Office and the City's Police Department to ensure effective, professional and safe administration of law enforcement, and the Tribal Parties will implement proactive crime reduction policies and practices (e.g., lighting, patrols).

3.4. Fire Service / Emergency Medical Services ("EMS").

3.4.1. Tribal Fire Department and Fire Station. The Tribal Parties intend to establish, construct, and operate an on-site fire department and fire station which will have trained personnel and the necessary equipment to provide fire suppression and emergency medical aid for the Relocation Project.

3.4.2. Mutual Aid, Automatic Aid, and Dispatching Agreement. The Parties have entered into a "Cooperative Fire Protection Agreement for Mutual Aid, Use of Radio Frequencies, and Emergency Dispatch & Communications Services" on November 1, 2019 (the "Mutual Aid Agreement") that is consistent with similar agreements entered into between fire

departments, fire agencies and fire protection districts located in the County. In furtherance of improved fire service and emergency medical services for the Relocation Project and surrounding area, the Parties: (a) acknowledge that the terms of said Mutual Aid Agreement include the Project Land and the Relocation Project, and all of the territory within a five-mile radius of said Project Land (illustrated on the attached **Exhibit D**), within its scope and operation; and (b) agree to include and, with respect to any disputes arising from the Mutual Aid Agreement, be subject to the terms of Section 5 ("Dispute Resolution Provisions") of this Agreement, all without the necessity of amending said Mutual Aid Agreement, and notwithstanding anything to the contrary in said Mutual Aid Agreement.

3.4.3. Payment for Fire and Emergency Medical Services. The Tribal Parties agrees to make a total non-recurring payment of One Hundred Ninety-Six Thousand and No/100 Dollars (\$196,000.00), payable in quarterly installments over the course of two (2) years, with the first quarterly payment due upon the commencement of construction of the Relocation Project. In exchange, the County Fire Department will provide fire services to the Tribal Parties during construction of the Relocation Project and prior to Opening Day, including but not limited to regular fire safety inspections of the construction site, emergency medical aid and fire suppression during the construction phase. In addition, if requested by the Tribal Parties, the County Fire Department will perform inspections of fire safety systems for the Relocation Project before opening.

3.4.4. Annual Payments. The Parties acknowledge that the FEIS findings regarding any required mitigation for fire services are, in part, premised on the Tribal Parties' establishment, construction, and continued operation of a fire department and fire station on or about the Project Land. If for any reason the Tribal Parties (a) do not establish, staff, train the employees of, and operate such a fire department and construct, equip, and operate such a fire station, all beginning within two (2) years of Opening Day, or (b) for any reason after doing so ceases to so staff, train, or operate said fire department or fire station, then the Tribal Parties shall immediately begin making annual payments to County in the amount of \$48,667.00 per year as mitigation for any impacts on the County's fire and emergency medical services to the Relocation Project. At the Tribal Parties' option, the Tribal Parties may pay said amounts in equal quarterly payments. This payment obligation shall remain in effect until the end of the term of this Agreement, or until and unless the Tribal Parties fulfill the intentions expressed in Section 3.4.1 above, whichever occurs first. At the Tribal Parties' option, the Parties shall enter into a separate agreement to identify the standards, service levels, and any reporting requirements for the fire and emergency medical services that the County provides to the Relocation Project while the Tribal Parties are making the annual payment set forth in this Subsection 3.4.4.

3.5. General County Services Payment in Lieu of Taxes ("PILT"). The Parties recognize and agree that once the Project Land is placed into trust the Tribal Parties and the Project Land will be exempt from County taxation, and the County will lose its share of the annual property tax revenue derived from the Project Land.

3.5.1. In recognition of the County's loss of tax revenue from the Project Land, and in lieu of such taxes, and in recognition of the County's obligations under this Agreement,

the Tribal Parties agree to pay to the County on or about January 1 of each year an annual payment of Five Hundred Fifty Thousand and No/100 Dollars (\$550,000.00) beginning one (1) year from Opening Day. At the Tribal Parties' option, the Tribal Parties may pay such amount in equal quarterly payments.

3.5.2. The Parties agree that PILT payments will be spent on services and/or equipment related to the Relocation Project and surrounding community, and to public safety serving the Relocation Project and surrounding community, including, for example, the following: public safety equipment and maintenance costs, road maintenance, traffic control costs, mental health services and justice services such as the district attorney, public defender and probation departments, and other projects or purposes that will benefit the Relocation Project and the community surrounding the Relocation Project. All expenditures of the PILT payments shall be first reviewed by the Joint Committee. The Joint Committee shall review and make timely recommendations to the County for the use of the PILT payments. In making their recommendations, the Joint Committee will consider whether expenditures will benefit the Relocation Project and the community surrounding the Relocation Project.

3.5.3. **Joint Committee.** The Parties agree to form a Joint Committee consisting of two members appointed by the County Board of Supervisors and two members appointed by the Tribal Council. The Parties shall select one additional, neutral member chosen by mutual agreement of the County's and Tribe's appointees. The Committee shall be chaired by one of the members chosen by a majority vote of the members.

3.5.3.1. The Joint Committee shall hold regularly scheduled meetings to discuss the use of the PILT payment funds. These meetings will occur no less than quarterly and will be held in a place accessible to the public. To the extent that the Joint Committee receives private, confidential or proprietary information from the Tribal Parties, it will undertake all efforts to keep such information private and inaccessible to the public. Otherwise, all Brown Act requirements for public meetings (found at California Government Code section 54950 et seq.) will apply to these meetings.

3.5.3.2. The purpose of the Joint Committee and its meetings is to review and make recommendations regarding the County's use of the PILT payments. Staff and advisors for each respective government may be invited to attend as deemed appropriate.

3.5.4. **Compact Credits.** The Parties agree that the annual payment set forth in Section 3.5.1 is in excess of required mitigation under the FEIS. Therefore, for the PILT payment made under Section 3.5.1, the Tribal Parties shall be seeking a credit against its payment obligations under a New Compact, and County shall communicate its support for such credit to the Governor.

3.6. **Employment.** The Tribal Parties will work with County employment agencies and businesses to promote local job training and hiring with respect to the Relocation Project.

4. **County Commitments, Obligations, and Responsibilities.**

4.1. **Acknowledgement of Complete Mitigation.** Subject to the other terms and conditions of this Agreement, the County agrees that the mitigation measures described in

Section 3.1 above, when and if fully implemented, will fully address and mitigate any and all direct impacts of the Relocation Project to the County and County services.

4.2. **CEQA Compliance.**

4.2.1. The County acknowledges that it will fully comply with CEQA before funding, approving, or authorizing, or undertaking any discretionary action described in this Agreement that affects the physical environment. Nothing in this Agreement shall be construed in a manner that constitutes funding, approval, or authorization of any particular action or to otherwise limit the County's full discretion to fund, approve, authorize, disapprove, or modify any proposed projects.

4.2.2. The County acknowledges it will promptly comply with CEQA to the extent applicable before it exercises its discretion and commits to any particular course of action that may directly or indirectly affect the physical environment so as to minimize any delay with the County's obligations to the Tribal Parties by this Agreement.

4.2.3. With respect to the County, this Agreement is not a project under CEQA because this Agreement creates a governmental funding mechanism that can be used for traffic or other mitigation programs should the County undertake such actions after compliance with CEQA to the extent applicable.

4.2.4. With respect to any CEQA obligation required of the County by this Agreement, no action or failure to act by the County is to be construed as a default of any obligation undertaken by the Tribal Parties under this Agreement.

5. **Dispute Resolution Provisions.**

This Section shall govern the resolution of all controversies or claims between the Parties that arise from this Agreement and any modifications hereto (collectively, "Arbitrable Disputes"). Wherever this Agreement makes reference to any means of resolving Arbitrable Disputes between the Parties, the Parties agree to follow the meet and confer and mediation procedure described below prior to initiating the arbitration procedures. Pending the resolution of any dispute hereunder, each Party shall continue to perform or otherwise fulfill its obligations under the Agreement.

5.1. **Opportunity to Cure.** Notwithstanding any other provision in this Agreement, no Party may terminate or pursue any remedy for any breach of this Agreement without first giving the other Party written notice of such breach and a reasonable time, not less than thirty (30) days, within which to cure such breach.

5.2. **Voluntary Resolution, Meet and Confer Obligation.** In recognition of the government-to-government relationship of the Tribe and the County, the Parties will make their best efforts to resolve disputes that occur under this Agreement by good faith negotiations whenever possible. Therefore, without prejudice to the right of either Party to seek injunctive relief against the other pursuant to this Section 5 when circumstances are deemed to require injunctive relief, the Parties hereby establish a threshold requirement that disputes between the Parties first be subject to a process of meeting and conferring in good faith in order to allow the opportunity to cure any breach of contract issue between the Parties, and to foster a spirit of

cooperation and efficiency in the administration and monitoring of performance and compliance by each other with the terms, provisions, and conditions of this Agreement, as follows:

5.2.1. Either Party shall give the other, as soon as possible after the event giving rise to the concern, written notice setting forth, with specificity, the issues to be resolved. Notice shall be provided consistent with Section 7. Said notice shall suggest a date, time and place for the meeting. The Parties may jointly decide to meet at another time and place; provided, however, the Parties agree that such meeting shall commence within fifteen (15) calendar days after the date that the original notice was given to the applicable Party, unless the Parties agree that there is good cause to extend this time limit.

5.2.2. The Parties agree that the meet and confer, including proceedings or discussions concerning the proposed meet and confer, is to be considered a confidential settlement negotiation for the purpose of all state and federal rules protecting disclosures made during such conferences from later discovery or use in evidence. All conduct, statements, promises, offers, views and opinions, oral or written, made during a meet and confer by any Party or a Party's agent, employee, or attorney shall be deemed to be confidential and shall not be subject to discovery or be admissible for any purpose, including impeachment, in any litigation or other proceeding, including mediation and non-binding arbitration, involving the Parties; provided, however, that evidence otherwise subject to discovery or otherwise admissible is not excluded from discovery or admission into evidence simply as a result of it having been used in connection with the meet and confer.

5.2.3. Absent mutual consent of the Parties, if a noticed meeting fails to commence within the fifteen (15) calendar day period, or if a reasonable attempt to schedule or reschedule the meeting has not been made within those fifteen (15) calendar days, then the meet and confer obligation imposed under this Section shall be deemed to have been satisfied and the Parties shall be free to pursue their rights and remedies under this Section 5, unless the reason for such failure to meet and confer is the refusal of the Party asserting a claim to participate in the meet and confer, in which event said claim will be deemed to have been waived.

5.2.4. If the dispute is not resolved to the satisfaction of the Parties within thirty (30) calendar days after the first meeting, then upon the written request of either Party, the dispute may be submitted to non-binding mediation in accordance with Subsection 5.3 ("Mediation Request"). The disputes submitted to non-binding mediation shall be limited to claims that this Agreement has been breached by either the Tribal Parties or the County.

5.3. **Mediation.** In the event a dispute arising under this Agreement is not resolved through the above-described meet and confer process, then within thirty (30) days after notice is provided through a Mediation Request, the Parties agree to participate in non-binding mediation administered by a mediator, mutually agreed to by the Parties, to help mediate and settle the dispute as soon as practicable. The mediation shall proceed as follows:

5.3.1. The mediation shall be held at a mutually agreeable location within Tulare County, California.

5.3.2. The Parties shall work together to select a single mediator, but if the Parties cannot agree on a mediator within forty-five (45) calendar days of the Mediation Request, then each Party will provide the other with seven (7) names of proposed mediators based on substantive and procedural knowledge, availability, and location. Each Party will have an opportunity to strike three (3) names from the list provided by the other Party and rank the remaining four (4) names 1-4, with one (1) being the most favorable. The Parties shall then exchange lists of proposed mediators and the ranking numbers from each Party will be added together; the proposed mediator whose combined ranking number is the lowest, which is most favorable, will be deemed to have been chosen to serve as mediator for the particular dispute (the "Mediator"). If either Party fails to act within the forty-five (45) calendar day period, then the mediator shall be appointed by Fresno, California office of the American Arbitration Association ("AAA") in accordance with applicable AAA Commercial Arbitration Rules for large, complex commercial disputes.

5.3.3. The Mediator shall meet with and hear presentations by the Parties as soon as practicable after appointment.

5.3.4. Mediation will be conducted consistent with California Evidence Code Sections 1115-1129, this Section 5, and, to the extent practicable, the Commercial Mediation Procedures of the American Arbitration Association ("AAA"). The Mediator shall owe a professional duty to both the Tribal Parties and the County, and shall be barred from testifying in any litigation or arbitration concerning any information obtained or disclosed in the course of the mediation.

5.3.5. Each side shall bear its own costs and attorneys' fees, and one-half of all fees and expenses of the Mediator.

5.3.6. Unless otherwise agreed upon by the Parties in writing, the mediation shall be completed within ninety (90) days of the selection of the Mediator.

5.3.7. The Mediator's recommendations shall not be binding on or admissible against either Party. The Arbitrable Dispute shall be resolved in accordance with the arbitration provisions set forth in Subsection 5.4 if: (1) a Party elects to reject the Mediator's recommendations; (2) either Party refuses to participate in the mediation process after mediation filing; or (3) the Mediator does not meet with the Parties.

5.3.8. The Parties agree that the mediation, including proceedings or discussions concerning the mediation, is to be considered a confidential settlement negotiation for the purpose of all state and federal rules protecting disclosures made during such conferences from later discovery or use in evidence. All conduct, statements, promises, offers, views and opinions, oral or written, made during the mediation by any Party or a Party's agent, employee, or attorney shall be deemed to be confidential and shall not be subject to discovery or admissible for any purpose, including impeachment, in any litigation or other proceeding, including and non-binding arbitration, involving the Parties; provided, however, that evidence otherwise subject to discovery or admissible is not excluded from discovery or admission into evidence simply as a result of it having been used in connection with the mediation.

5.4. **Arbitration.** Following the satisfaction of the meet and confer and mediation requirements, any controversy(ies) or claim(s) arising out of or relating to this Agreement that was not resolved during the meet and confer or mediation process (as applicable) must be resolved through binding arbitration. The arbitration shall be held only in accordance with the following procedures:

5.4.1. Either Party may initiate the applicable arbitration by delivering a written notice to the other Party that states the specific issue(s) in dispute, the relevant provision(s) of the Agreement, and the relief requested (an "Arbitration Request").

5.4.2. The Parties shall work together to select a single arbitrator, but if the Parties cannot agree on an arbitrator within twenty-one (21) days of the Arbitration Request, then each Party will provide the other with five (5) names of proposed arbitrators based on substantive and procedural knowledge, availability, and location. Each proposed arbitrator shall have experience in California law and Federal Indian law, and whose law firm, if applicable, has at no time represented or acted on behalf of either of the Parties or any person with control over either of the Parties. Each Party will have an opportunity to strike two (2) names from the list provided by the other Party and rank the remaining three (3) names 1-3, with 1 being the most favorable. The Parties shall then exchange lists of proposed arbitrators and the ranking numbers will be added together; the proposed arbitrator whose rank is the lowest, which is most favorable, will be deemed to have been chosen to serve as arbitrator for the particular dispute (the "Arbitrator"). If either Party fails to act within the twenty-one (21) calendar day period, then the arbitrator shall be appointed by Fresno, California office of the AAA in accordance with applicable AAA Commercial Arbitration Rules for large, complex commercial disputes; provided such arbitrator meets the requirements of this Section, including experience in California law and Federal Indian law.

5.4.3. In the event of any subsequent vacancy or inability to perform, the Arbitrator who resigns or becomes unable to perform shall be replaced in accordance with the provision of this Section as if such replacement were an initial appointment to be made hereunder.

5.4.4. Each Party shall have the right to conduct discovery in connection with the arbitration proceedings, but such discovery shall be limited to the pre-hearing production of relevant documents and to such depositions, limited both in number of depositions and duration, as the Arbitrator may approve.

5.4.5. The Arbitrator shall hear any and all issues of law and of fact properly raised pursuant to the procedures herein. Subject to the terms of this Section 5, the arbitration shall be conducted as nearly as practicable in accordance with the AAA Commercial Arbitration Rules for large, complex commercial disputes. The Arbitrator shall make its decision within thirty (30) calendar days after the close of evidence and briefing in the arbitration. The decision shall be issued in writing and include findings of fact, conclusions of law, and the reasons on which the decision is based.

5.4.6. The Arbitrator shall have no power to vary or modify any terms of this Agreement, or to decline or fail to follow applicable state or federal statutory or common law.

5.4.7. Each Party to the arbitration shall pay its own attorneys' and expert witness fees and any other costs associated with the arbitration. The Arbitrator shall determine who shall bear the fees and expenses of the Arbitrator or whether the fees and expenses of the Arbitrator shall be shared by the Parties, and if so, in what proportions. The Arbitrator's determination as to the allocation of the fees and expenses of the arbitration shall be binding on the Parties.

5.4.8. The arbitration shall be held at a mutually agreeable location within Tulare County, California.

5.5. **Jurisdiction of Courts.** A Party that has participated in arbitration as set forth in Subsection 5.4 (or who has made a good faith effort to do so despite the other's failure to participate) may initiate judicial proceedings to confirm, enforce or vacate the applicable arbitration award in the United States District Court for the Eastern District of California. If the United States District Court for the Eastern District of California determines that it is without jurisdiction, then the Parties consent to be sued in the Superior Court of the State of California for the County of Tulare, but solely to compel, enforce, modify or vacate any arbitration award.

5.6. **Applicable Law.** This Agreement shall be interpreted and construed in accordance with applicable California State or federal law.

5.7. **Expedited Procedure for Threats to Public Safety.**

5.7.1. **Judicial Litigation.** If the County or the Tribal Parties reasonably believes that the other's violation of this Agreement has caused or will cause an imminent and significant threat to public health or safety, resolution of which cannot be delayed for time periods otherwise specified in this Section 5, the complaining Party may proceed with judicial litigation consistent with the provisions of this Section 5.

5.7.2. The Parties consent to the jurisdiction of the courts identified in this Section 5 for purposes of obtaining declaratory relief and specific performance under this Section.

5.8. **Intervention.** Nothing in this Agreement shall be construed to constitute a waiver of the sovereign immunity of the Tribal Parties with respect to intervention by any additional party not deemed an indispensable party to the proceedings.

5.9. **Confidentiality.** Unless otherwise agreed to by the Parties, any dispute resolution meetings or communications, or mediation, shall be in the context of a settlement discussion to potential litigation and remain confidential to the extent not prohibited by applicable law.

5.10. **Limited Waiver of Sovereign Immunity.** The Parties expressly and irrevocably waive their respective sovereign/governmental immunity (and any defense based thereon) only in favor of the other Party as to any dispute that arises out of this Agreement and resolved in accordance with the dispute resolution provisions provided herein. The Tribal Parties hereby consent only to the jurisdiction of the United States District Court for the Eastern District of California (and all relevant courts of appeal), for the limited purpose of hearing any dispute arising out of this Agreement. The Parties agree that jurisdiction and venue for any such dispute

will be in (and the Tribal Parties' limited waiver of sovereign immunity will only extend to) the United States District Court for the Eastern District of California; however, if the United States District Court for the Eastern District of California determines that it is without jurisdiction to hear any such dispute, then the Tribal Parties consent to be sued in the Superior Court of the State of California for the County of Tulare (and all relevant courts of appeal) over such matter and its limited waiver of sovereign immunity is extended to such courts and such matters for those purposes. The Tribal Parties' waiver of sovereign immunity from suit is specifically limited to permitting, and does permit, the following actions and judicial remedies:

5.10.1. The enforcement of a judgment of specific performance or injunctive relief requiring the Tribal Parties to perform an obligation under this Agreement or enjoining the Tribal Parties from conduct deemed by a court to constitute a breach of this Agreement.

5.10.2. The enforcement of a judgment awarding money and/or damages. The waiver is limited to amounts due under the terms of this Agreement, and in no instance shall the waiver be read to allow judicial enforcement of any kind against the assets of the Tribal Parties, other than the revenue stream of its Relocation Project. In addition, enforcement may not be levied against any Indian land or structures located thereon over which the Tribe exercises governmental control.

5.10.3. Actions that seek and obtain, or seek to enforce the terms of, judgments of declaratory relief and/or specific performance pursuant to Section 5.7 above.

5.10.4. The Tribal Parties do not waive any aspect of its sovereign immunity with respect to actions by any third parties or any disputes between the Tribal Parties and the County that do not specifically arise out of or from this Agreement.

5.11. **Damages.** The Parties hereby agree that, in the event of any default, any damages awarded or arising under this Agreement shall be exclusively limited to actual direct damages incurred and which have been demonstrated with substantial certainty. In no instance shall the Parties to this Agreement be entitled to special, incidental, indirect, consequential, or punitive damages or lost profits.

5.12. **Attorney Fees.** In any court action brought pursuant to this Agreement to enforce this Section 5, the prevailing party will be entitled to recover actual and reasonable attorney fees and costs as are determined by the court.

6. Reopener Provisions.

Either Party may request that the other Party renegotiate one or more provisions of this Agreement if: (1) there is a significant change that directly or indirectly relates to a Party's expectations under this Agreement; (2) that change materially impacts that Party; and (3) that change could not have been reasonably anticipated at the time of entering into this Agreement. Such changes may include, but are not limited to: (1) a change in State or federal law that extends gaming to non-Indians or non-Indian lands; (2) a change in the financial obligations of the Tribal Parties to the State under the New Compact; (3) a reduction in the scope of gaming on Indian lands mandated by federal or State law; (4) a change in State law or in the State manner of doing business that substantially and materially increases the County's responsibility

regarding: (a) law enforcement services related to the Relocation Project and/or Project Land; (b) fire or emergency medical services related to the Relocation Project and/or Project Land; or (c) general governmental services and/or those services identified in Section 3.4.2 above, related to the Relocation Project and/or Project Land; or (5) a transfer of jurisdiction of any intersections and/or roadways identified in Section 3.1 or Section 3.2.

6.1. A request to renegotiate one or more terms of this Agreement under this Section 6 will be made in writing, addressed to the other Party. The request will specify the basis for the request.

6.2. If a request for renegotiation is made by either Party under this Section 6, then the Parties will meet within thirty (30) days from the receipt of the request and will commence to renegotiate in good faith. The sole purpose of the renegotiation will be to determine if there are other provisions for inclusion in the Agreement that would more effectively fulfill the intent of the concerned Party without significantly detracting from the purposes of the original Agreement.

6.3. Notwithstanding Subsection 6.1, in an effort to foster the government-to-government relationship of the Tribe and the County, the Parties agree to meet at least once every five (5) years to discuss whether the terms of this Agreement still are effective to carry out the intent of the Parties in entering into this Agreement. If there exists concern by either Party that the intent of that Party in entering into this Agreement is no longer being fulfilled, then the Parties will commence to renegotiate in good faith. The purpose of this renegotiation will be to determine if there are other provisions for inclusion in the Agreement that would more effectively fulfill the intent of the concerned Party without significantly detracting from the purposes of the original Agreement.

6.4. Except for the obligations to renegotiate as set forth in this Section 6 above, neither Party is obligated to agree to a new agreement or any new term(s) as a result of the renegotiation process authorized by this Section 6. Further, the provisions of this Section 6 shall not be operative until the date that is four (4) years after Opening Day; provided if the County transfers jurisdiction of the intersections and/or roadways identified in Section 3.1 or 3.2, either party may request the renegotiation of Sections 3.1 or 3.2 at such time.

7. Notice.

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

For the Tribal Parties:
Chairperson
Tule River Indian Tribe
340 N. Reservation Road
Porterville, CA 93257

For the County:
County Administrative Officer
County of Tulare
2800 W. Burrel Avenue
Visalia, CA 93291

With Copies To:

With Copies To:

General Counsel
Tule River Indian Tribe
340 N. Reservation Road
Porterville, CA 93257

County Counsel
County of Tulare
2900 W. Burrel Avenue
Visalia, CA 93291

7.2 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 the Tribal Parties:

Tule River Indian Tribe
Fax (559) 791-2121

General Counsel
Tule River Indian Tribe
Fax (559) 791-2121

To the County:

County Administrative Officer
Fax (559) 733-6318

County Counsel
Fax (559) 737-4319

7.3 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.

7.4 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.

8. Miscellaneous Provisions.

8.1 **Term of Agreement.** This Agreement will take effect immediately upon the Effective Date, and will remain in effect until the expiration of (1) the term of the Tribe's current 2017 Compact, as amended or extended, or (2) a New Compact entered into between the Tribe and the State and approved or deemed approved by the federal government that immediately follows the termination of the 2017 Compact, whichever is later; provided, however, should the Project Land not be taken into trust for the benefit of the Tribe, this Agreement shall be null and void in its entirety.

8.2 **No Third Party Beneficiaries and No Assignment.** This Agreement is not intended to, and will not be construed to, confer a benefit or create any right for any person or entity that is not a Party. The Parties agree that this Agreement and any of the obligations of the Parties under this Agreement may not be assigned to any third party and that no third party possesses the right or power to bring an action to enforce any of the terms of this Agreement.

8.3 **Confidentiality.** Unless required to do so by law, including but not limited to, the Ralph M. Brown Act or the California Public Records Act, the County may not disclose to third parties any information it receives from the Tribal Parties that the Tribal Parties have identified as confidential ("Confidential Information"). If the County determines that it must disclose any information that the Tribal Parties have identified as Confidential Information, then it shall promptly give the Tribal Parties written notice of its intention to disclose such information and the authority for such disclosure. The Tribal Parties shall have a period of ten (10) business days thereafter within which to seek a protective court order to prevent such disclosure or to notify the County that it will not seek such an order. The County shall cooperate with the Tribal Parties in any efforts to seek such a court order. The County shall not disclose the information until the ten (10) day period has expired without a response from the Tribal Parties, or the Tribal Parties have notified the County that it will not seek such an order, or the Tribal Parties have sought and a court has declined to issue a protective order for such information. Upon termination of this Agreement, and to the extent permitted by applicable law, the County shall immediately, upon the Tribal Parties' request, return to the Tribal Parties any and all Confidential Information, including copies thereof. Unless required to do so by law, the Tribal Parties may not use or disclose any information it receives from the County under this Agreement that the County has identified as Confidential Information or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Agreement or as authorized in advance by the County. This duties and obligations of the Parties in this Section 8.3 shall survive termination of this Agreement.

8.4 **Indemnification and Insurance.**

8.4.1 The Tribal Parties will indemnify and hold harmless the County, its elected representatives, officers, agents, and employees against any claim brought or filed by a third party, including federal, State or local agencies, that challenges the validity or performance by the County under this Agreement, the authority of County to enter into this Agreement, or any approval called for in this Agreement, except for a claim based on or caused by the sole, gross negligence of the County, its elected representatives, officers, agents, and employees, including willful misconduct and intentional wrongdoing. The amount of this indemnification will be equal to the County's costs, expenses (including reasonable attorneys' fees), liability of any kind or nature, or losses.

8.4.2 The County will consult with the Tribal Parties prior to retention of any outside legal counsel to defend the County with respect to any matter within the provisions of this indemnification.

8.4.3 The Tribal Parties will obtain and maintain a policy of commercial general liability insurance with limits of not less than Ten Million Dollars (\$10,000,000) per occurrence and in the aggregate covering bodily injury and property damage, including volunteer excess medical coverage. The policy shall include endorsements for the following coverages: premises, personal injury, blanket contractual coverage, and contractual indemnity. The policy shall be on an occurrence form and not on a claims made or modified occurrence form. The policy shall be endorsed to name the County of Tulare, its officers, officials,

employees, and volunteers as additional insureds, but only insofar as the indemnity obligations contained herein are concerned.

8.5 **Amendments.** This Agreement may be amended only by written instrument signed by the Parties.

8.6 **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, shall 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.

8.7 **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.

8.8 **Successors in Interest.** The terms of this Agreement will be binding on all successors in interest of each Party.

8.9 **Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable, this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. The Parties shall endeavor in good faith negotiations to replace the prohibited or unenforceable provision with a valid provision, with the economic effect of which comes as close as possible to that of the prohibited or unenforceable provision. Such negotiations shall be conducted pursuant to the provisions of Section 6.

8.10 **Entire Agreement.**

8.10.1 This Agreement constitutes the entire agreement between the Parties with respect to the subject matter, and supersedes all prior negotiations, representations, or other agreements, whether written or oral.

8.10.2 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.

8.10.3 Headings contained in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

8.11 **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of California.

9. Counterparts.

The Parties may sign this Agreement in counterparts, each of which is an original and all of which taken together form one single document.

10. Tribal Parties' Commitment to Protect the Environment.

10.1 **Mitigation of Physical Impacts to the Off-Site Environment.** Consistent with the terms of the FEIS, the 2017 Compact, the anticipated terms of a New Compact, and this Agreement, the Tribal Parties are committed to the required mitigation measures identified in the FEIS and ROD for the Project alternative finally selected and built. Specifically, the Tribal Parties agree to implement the required mitigation measures summarized in Table ES-1 and set forth in Section 5 of the FEIS for the Project alternative finally selected and built, which identify measures covering geology and soils, water resources, air quality, biological resources, cultural and paleontological resources, socioeconomics, traffic, public services, noise, hazardous materials, aesthetics, indirect and growth-inducing effects, and cumulative impacts.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the Parties hereby enter and execute this Memorandum of Understanding and Intergovernmental Agreement with the intent to be bound thereby through their authorized representatives whose signatures are affixed below as of the day and year above set forth.

TULE RIVER INDIAN TRIBE

COUNTY OF TULARE

By _____
Chairman
Tribal Council

By _____
Chairman
Board of Supervisors

**TULE RIVER TRIBE GAMING
AUTHORITY**

ATTEST: JASON T. BRITT,
County Administrative Officer/Clerk of the
Board of Supervisors

By _____
Chairman
Board of Directors

By _____
Deputy

Approved as to Form:
County Counsel

Deputy

Attorneys for the County
Matter # 20161562

Exhibits:

- Exhibit A = Legal Description and Graphic Depiction of Project Land
- Exhibit B = ROD Traffic Measures Summary
- Exhibit C = Road Improvements Scope and Cost Summary
- Exhibit D = Map of Fire Mutual Aid territory

Exhibit A
Legal Description and Graphic Depiction of Project Land

Parcels No. 1 through 17 inclusive, PARCEL MAP NO. 4343, in the City of Porterville, County, State of California, according to the map thereof recorded in Book 44, Page 47 of Parcel Map, in the Office of the County Recorder of said County and by certificates of correction recorded, June 1, 1999 as Instrument No. 99-0041612 and August 12, 1999 as Instrument No. 99-0061851.

The 40-acre Airpark Site is located in a portion of Southwest 1/4 Quarter of the Northeast 1/4 Quarter of Section 8, Township 22 South, Range 27 East, of the Mt. Diablo Base and Meridian, Tulare County, California. The Airpark Site is located within the city limits of Porterville, adjacent to the Porterville Municipal Airport.

Excepting therefrom all oil, gas, minerals and other hydrocarbon substances in, on, or under said land, as reserved by the City of Porterville, a Municipal Corporation, in a Deed recorded October 29, 1990 as file No. 71536 of Official Records.

APN: 302-400-002 THRU 017.



Exhibit B
ROD Traffic Measures Summary

Section	No.	Mitigation Measure
6.7.1	A	A traffic management plan shall be prepared in accordance with standards set forth in the Manual on Uniform Traffic Control Devices (MUTCD) for Streets and Highways (FHWA, 2003). The traffic management plan shall be submitted to each affected local jurisdiction and/or agency. Also, prior to construction, the contractor shall coordinate with emergency service providers to avoid obstructing emergency response service. Police, fire, ambulance, and other emergency response providers shall be notified in advance of the details of the construction schedule, location of construction activities, duration of the construction period, and any access restrictions that could impact emergency response services. Traffic management plans shall include details regarding emergency service coordination. Copies of the traffic management plans shall be provided to all affected emergency service providers.
6.7.2		The Tribe shall make fair share contributions to the traffic mitigation measures identified below prior to initiation of project construction. Funds shall either be paid directly to the jurisdictional agency, or be placed in an escrow account for use by the governmental entity with jurisdiction over the road to be improved so that the entity may design (funding shall be for design standards consistent with those required for similar facilities in the region, unless a deviation is approved by the entity with jurisdiction), obtain approvals/permits for, and construct the recommended road improvement. While the timing for the off-site roadway improvements is not within the Tribe's jurisdiction or ability to control, the Tribe shall make good faith efforts to assist the County and City with implementation of the improvements prior to opening day.
6.7.2	B	The Tribe shall notify the City of Porterville of special events scheduled at the events center, and the Tribe shall meet with local agencies charged with traffic enforcement (including but not limited to the CHP, City of Porterville, and Tulare County) to obtain necessary permits and identify any necessary traffic control measures to be implemented. If determined to be necessary, a Traffic Management Plan (TMP) shall be prepared.
6.7.2	C	SR-190/Rockford Road (Road 208). Conduct an Intersection Control Evaluation (ICE), and install a traffic signal or roundabout, pending the outcome of the ICE. Prorata share: 28.2 percent.
6.7.2	D	Scranton Avenue/West Street. Install a traffic signal and widen northbound approach to accommodate left-turn lane or install a roundabout. Pro rata share: 85.6 percent.
6.7.2	E	Scranton Avenue/Westwood Street. Install a traffic signal or a roundabout. Pro-rata share: 55.8 percent.

Section	No.	Mitigation Measure
6.7.2	F	<p>The Tribe shall offer to enter into an agreement with the appropriate jurisdiction(s) regarding financial responsibility for improving the current conditions of West Street between Scranton Avenue and Yowlumne Avenue, Teapot Dome Avenue between Westwood Street (Road 224) and Newcomb Street, and Westwood Street between Scranton Avenue and approximately one half mile north of Scranton Avenue. The Tribe's one-time fair share towards these improvements would take into consideration other regional projects that contribute to traffic on these roadways, including the County's jail project. Based on the pro-rata fair share calculations provided in the TIS (Appendix I of the Final EIS) for Alternative A, the Tribe would be responsible for: 1) 100 percent of the cost of 1/3 mile of road pavement overlay on West Street between Scranton Avenue and Yowlumne Avenue, 2) 59.5 percent of the cost of one mile of road reconstruction on Teapot Dome Avenue between Westwood Street (Road 224) and Newcomb Street, and 3) 65.2 percent of the cost of 1/2 mile of road reconstruction immediately north of Scranton Avenue on Westwood Street.</p>
6.7.3		<p>The Tribe shall make fair share contributions available for mitigation recommended for cumulative impacts prior to construction of the improvement. The timing for construction of each improvement will be at the discretion of the applicable jurisdictional agency. Funds shall be placed in an escrow account for use by the governmental entity with jurisdiction over the road to be improved so that the entity may design (funding shall be for design standards consistent with those required for similar facilities in the region, unless a deviation is approved by the entity with jurisdiction), obtain approvals/permits for, and construct the recommended road improvement. While the timing for the off-site roadway improvements is not within the Tribe's jurisdiction or ability to control, the Tribe shall make good faith efforts to assist the County and City with implementation of improvements prior to 2040.</p>
6.7.3	G	<p>SR-65 from Pioneer Avenue to SR-190: Upgrade facility to include auxiliary lanes between interchanges per Caltrans standards. Pro-rata share: 15.9 percent.</p>
6.7.3	H	<p>SR-137/SR-63. Conduct an ICE if necessary. Widen northbound approach to accommodate an additional dedicated left turn lane, an additional dedicated thru lane and a dedicated right turn lane. Widen southbound approach to accommodate an additional thru lane. Widen eastbound approach to accommodate an additional dedicated left turn lane. Widen westbound approach to accommodate an additional dedicated thru lane and a dedicated right turn lane. Pro-rata share: 8.6 percent.</p>
6.7.3	I	<p>SR-137/SR-65. Conduct an ICE if necessary, and widen eastbound approach to accommodate a dedicated thru lane with a shared thru/right turn lane. Pro rata share: 4.7 percent.</p>

Section	No.	Mitigation Measure
6.7.3	J	SR-137/Road 204 (Spruce). Conduct an ICE if necessary, and widen westbound approach to accommodate two thru lanes and one free right turn-lane; widen southbound approach to accommodate dual-left turn lanes and shared thru-right lane; widen eastbound approach to provide a thru and thru-right lane. Pro rata share: 4.6 percent.
6.7.3	K	SR-190/Road 192. Conduct an ICE if necessary, and install a traffic signal or roundabout. Pro rata share: 31.0 percent.
6.7.3	L	SR-190/Road 216. Conduct an ICE if necessary, and install a traffic signal or roundabout. Pro rata share: 14.7 percent.
6.7.3	M	SR-198/Spruce Road (Road 204). Conduct an ICE if necessary. Traffic signal modifications to accommodate dual northbound left turn lanes and a shared thru/right lane. Eastbound approach, widen to accommodate dedicated right/thru/left lanes. Eastbound approach channelize right turn lane. Pro-rata share: 4.7 percent.
6.7.3	N	Avenue 256/Spruce Road (Road 204). Install traffic signal or a roundabout. Pro-rata share: 7.0 percent.

Exhibit C
Road Improvements Scope and Cost Summary

Summary of Road Improvements and Cost Estimates for Road Segments and Additional Segments

1. **Teapot Dome Avenue:** Between Westwood (Road 224) to approximately 550 feet west of Newcomb (City of Porterville Limits)
 - a. **Scope:** County to design and construct road maintenance/reconstruction project between Road 224 and City of Porterville limits. Project to include reconstructing/maintaining roadway for minimum 20 year design life. Assumed Traffic Index (TI) of 8.5 and R value of 20. Assumed design includes 28' wide road way with section of 0.45' HMA over 1.05' Class 2 Aggregate Base or similar. Maintain existing 50' Right of way. Segment length of approximately 4,850' (including transitions).
 - b. **Preliminary Estimate:** \$2.2m
 - c. **Project Pro-Rata Share:** Tribal Parties = 59.5%; County = Remainder

2. **Teapot Dome Avenue:** West Street to approximately 0.25 mile east of West Street (limits of maintenance agreement with City of Porterville)
 - a. **Scope:** County to Design and Construct road maintenance/reconstruction project between the intersection of West Street and approximately 0.25 mile east of West street to the limits of pre-existing maintenance agreement with City of Porterville. Project to include reconstructing/maintaining roadway for minimum 20 year design life. Assumed Traffic Index (TI) of 8.5 and R value of 20. Assumed design includes 28' wide road way with section of 0.45' HMA over 1.05' Class 2 Aggregate Base or similar. Maintain existing 50' Right of way. Segment length approximately 1,400' (including transitions).
 - b. **Preliminary Estimate:** \$640,000
 - c. **Project Pro-Rata Share:** Tribal Parties = 0%; County = Remainder

3. **West Street:** Teapot Dome Avenue to approximately 1,300 feet north of Teapot Dome Avenue (City of Porterville Limits)
 - a. **Scope:** County to design and construct road maintenance/reconstruction project between the intersection of Teapot Dome Avenue and the City of Porterville limits (approximately 1,300' north of intersection). Project to include removing 0.20' existing asphalt surfacing and placing 0.30' Hot Mix Asphalt over geotextile pavement fabric. Maintain existing 60' Right of Way. Segment length approximately 1,300'.
 - b. **Preliminary Estimate:** \$326,000
 - c. **Project Pro-Rata Share:** Tribal Parties = 0%; County = Remainder

4. **Westwood Street:** From State Route 190 to approximately 0.5 mile south of State Route 190 (City of Porterville Limits)

- a. **Scope:** Tribal parties to design and construct road maintenance/reconstruction project between State Route 190 and City of Porterville limits (approximately 0.5 miles south). Tribal Parties to obtain encroachment permit from County for construction activities. Tribal parties shall be responsible for utility relocation as necessary, obtaining environmental clearances, preparing engineered plans and specifications prior to construction, and construction engineering and inspection services. Project to include removing and replacing aged or decayed asphalt as determined by the County, placing a 0.20' Hot Mix Asphalt overlay over geotextile pavement fabric, widening shoulders for total roadway width of 32' with assumed widening structural section of 0.45' Hot Mix Asphalt over 1.05' Class 2 Aggregate Base (assumed 20 year design life, TI 8.5 and R-value of 20), installation of edgeline rumble strips, and transition to roadway at termini. Tribal parties shall consult with Caltrans and City for transition details. Maintain existing 50' Right of Way. Segment Length approximately 2,500 feet. Note that Caltrans is currently progressing with an intersection project at Westwood and SR 190 (roundabout). Caltrans project approaches will extend south along Westwood. Tribal Parties shall coordinate with Caltrans and adjust design accordingly.
- b. **Preliminary Estimate:** \$790,000
- c. **Project Pro-Rata Share:** Tribal Parties = 100%; County = 0%

Notes:

- 1) Estimates are for total project cost and include design, right of way acquisition, utility relocation, environmental mitigation, construction management, materials testing, inspection, construction engineering, contingency, permits, and construction of each of the improvements.
- 2) Project details and cost subject to change during preliminary engineering.
- 3) Not all project improvements, fair share contributions or mitigations required by ROD, FEIS, MOU or other documents are listed above.

Eagle Feather Trading Post Property



Five-Mile Radius Around Project Land

