

ORIGINAL

TAX SHARING AGREEMENT BETWEEN THE SHINGLE SPRINGS BAND OF MIWOK INDIANS AND EL DORADO COUNTY

This Tax Sharing Agreement between the Shingle Springs Band of Miwok Indians and El Dorado County (“Agreement”) is dated 12/18/2018, 2018, and is made between El Dorado County (“County”) and the Shingle Springs Band of Miwok Indians, a federally-recognized Indian tribe (the “Tribe”).

RECITALS

A. WHEREAS, the County and the Tribe are parties to that certain Memorandum of Understanding and Intergovernmental Agreement between El Dorado County and the Shingle Springs Band of Miwok Indians dated September 28, 2006 (the “Casino MOU”); and

B. WHEREAS, the County and the Tribe have amended the Casino MOU twice since 2006 to address specific issues, including on October 20, 2012 (the “First Amendment”) and again in 2017 (the “Second Amendment”); and

C. WHEREAS, since execution of the Casino MOU, the Shingle Springs Band of Miwok Indians Development Corporation developed and operates a gas station on tribal trust land and operation of the gas station was not addressed in the Casino MOU;

D. WHEREAS, in an effort to continue to build cooperative government relationships and a desire to protect and preserve the health, safety, and welfare of all citizens in the County and Tribal members, the Tribe and the County have reached an agreement to address the financial impacts to the County from operation of the gas station and to provide for the County’s support of the Tribe’s effort to amend its Compact with the state; and

E. WHEREAS, the County and the Tribe desire to enter into a separate agreement from the Casino MOU to address the loss of tax or other revenues to the County that would otherwise be due to or received by the County based on the sale of gasoline, car washes, and any other products, services, and goods at the gas station if the gas station was not located on Indian lands;

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the County and the Tribe agree as follows:

1. Term. This Agreement shall become effective upon execution and remain in effect for an initial term of ten years. Intermittent closures of the gas station for maintenance, repairs, emergencies, or other circumstances shall not affect this Agreement or the automatic renewals provided for in paragraph 11. If the gas station closes for any duration, payments would not accrue for that time because sales would not be occurring, but payments would accrue immediately upon the gas station reopening and commencing sales.

2. Support of Amended Compact with Credits. The County agrees to support the Tribe's effort to obtain an amended compact with the State that provides for the Tribe to receive a credit for payments made under this Agreement that would otherwise be due by the Tribe to the Revenue Sharing Trust Fund or the Tribal Nation Grant Fund. At a minimum, the County will submit a written letter in support of the amendment and will consider in good faith a request by the Tribe for an authorized County official or employee to appear in person when the amended compact is considered by the state Legislature. The County is not required to support any amendment to the Compact that would provide for increased or expanded gaming machines or operations or a limitation in the environmental review for any other Tribal projects.
3. State Taxes. The Tribe agrees to either: (1) provide the County with sufficient documentation confirming that the Tribe, the tribal development corporation managing the gas station, or the distributor from which gas was purchased has paid all California state taxes that a non-tribal gas station would pay to the state, either directly or indirectly through the purchase of gas from a California distributor, for the sale of gas purchased from a California distributor and sold within California and for the sale of other tangible personal property at the gas station; or (2) remit to the County 0.75% of all gross receipts for all sales of gasoline and other tangible personal property sold to non-tribal members, including food and beverages at the gas station. Cigarette sales are not included in the calculation of gross receipts under this paragraph. The payment will be placed in the County's general fund and available for use as set forth in paragraph 5 below. Gross receipts shall have the same meaning as set forth in California Revenue and Taxation Code section 6012.
4. Local Taxes. The Tribe agrees to either (1) provide the County with sufficient documentation confirming that it has paid all applicable local taxes that a non-tribal gas station would pay for the sale of gas and other tangible personal property in the County; or (2) remit to the County 1.25% of all gross receipts for all sales of gasoline and other tangible personal property sold to non-tribal members, including food and beverages at the gas station. Cigarette sales are not included in the calculation of gross receipts under this paragraph. The payment will be placed in the County's general fund and available for use as set forth in paragraph 5 below. Gross receipts shall have the same meaning as set forth in California Revenue and Taxation Code section 6012.
5. Use of Funds and Recognition of Tribe. The funds paid to the County under paragraph 4 (1.25%) will be expended on road maintenance, infrastructure development, tribal cultural site protection, and public safety. The funds paid to the County under paragraph 3 (0.75%) may be expended on any general fund expenditures. The Tribe may propose that certain County projects be funded with payments under this Agreement and the County agrees to consider those proposals in good faith; however, the decision on how to utilize County general funds, including all funds generated pursuant to this Agreement, rests in the sole and complete discretion of the County. For any use of the funds provided for in this Agreement,

the County agrees to recognize that the funds were provided from the Tribe. When applicable, the Tribe may provide signage and request that it is displayed at the site of a project to highlight the Tribe's contribution to the project. The Tribe and the County agree to work in good faith to resolve the content, size, and location of any such sign.

6. Sales to Tribal Members. The County and Tribe agree that this Agreement does not extend to any sales made to members of the Tribe and that sales made to members of the Tribe shall not be included in the gross receipts used to calculate payments under this Agreement.
7. Timing of Payments. The Tribe agrees that, annually by August 15 based on sales in the prior fiscal year (July 1 to June 30), it will (1) submit to the County sufficient documentation demonstrating the payment of state and/or local taxes; or (2) submit to the County payments provided for in this Agreement. If state and/or local taxes were only paid for a portion of the fiscal year, the Tribe agrees to submit the payments provided for in this Agreement for any portion of that fiscal year for which state and/or local taxes were not paid to the state. For payments not made within this time, interest shall accrue at the rate of 10 percent per annum.
8. Accounting. The Tribe agrees to keep records sufficient to verify its gross receipts at the gas station and payment of state and/or local taxes to the state. Upon request, the Tribe agrees to provide the County a copy of records verifying its gross receipts and payments of state and/or local taxes within forty-five days of a request, provided that the Tribe may redact any propriety information.
9. Dispute Resolution.
 - a. Meet and Confer. In recognition of the government-to-government relationship of the Tribe and the County, the Parties hereby agree to use their best efforts to resolve any disputes that may arise under this Agreement through good faith negotiations whenever possible. Therefore, without prejudice to the right of either Party to seek injunctive relief against the other when circumstances reasonably warrant, the Parties hereby agree to work to resolve any disputes informally first, through a process of meeting and conferring in good faith. The Parties agree that such a process would foster cooperation and efficiency in the administration and compliance by each other with the terms of this Agreement. The dispute resolution process will proceed as follows:
 - i. Either Party will give to the other Party, as soon as possible after the event giving rise to the concern, a written notice specifically detailing the concern and issue needing resolution;
 - ii. The Parties will meet and confer in a good faith attempt to resolve the dispute through negotiation no later than 10 days after the notice is

actually received, unless both Parties agree in writing to extend the time;

iii. If any dispute is not resolved to the Parties' mutual satisfaction within 30 calendar days of the first meeting, then either Party may seek to have the dispute resolved by a mediator, but neither Party is required to agree to submit to such mediation.

b. Judicial Resolution. Disputes that arise under this Agreement and that are not resolved through informal negotiation or mediation may be resolved in U.S. District Court for the Eastern District of California (and all relevant courts of appeal), assuming the existence of jurisdiction, or the Superior Court of the State of California, County of Sacramento or other Superior Court as described in Section 9 below. The Parties nonetheless agree that, except in the case of imminent threat to the public health or safety, they will take reasonable efforts to explore alternative dispute resolution before resorting to the judicial process. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

c. Alternative Methods of Resolution. The above provisions may not be construed to preclude, limit, or restrict the Parties' ability to pursue, by mutual agreement, other methods of dispute resolution, including, without limitation, binding or non-binding arbitration.

d. Attorneys' Fees. If suit is brought to enforce or interpret any part of this Agreement, or the rights or obligations of any Party, including, but not limited to, an action to recover damages for the breach of this Agreement or to secure specific performance of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, expenses, and costs.

10. Limited Waiver of Sovereign Immunity. The Tribe hereby agrees to waive its sovereign immunity (and any requirement of exhaustion of tribal remedies) in connection with any dispute vis-à-vis the County that may arise under this Agreement, and consents to the jurisdiction of certain courts solely for purposes of enforcing the terms of this Agreement. To that end, the Tribe consents only to the jurisdiction of the U.S. District Court in the Eastern District of California (and all relevant courts of appeal), or alternatively, to the jurisdiction of the Superior Court of California (and all relevant courts of appeal), for judicial resolution of disputes with the County over this Agreement. Notwithstanding the foregoing, the County and the Tribe agree that jurisdiction and venue for any such dispute shall be in (and the Tribe's waiver of sovereign immunity shall extend to) any superior court other than El Dorado County Superior Court unless it is determined by another superior court, sua sponte and without motion or suggestion by the County, that the action must be heard in El

Dorado County Superior Court. The County agrees to jurisdiction and venue in Sacramento County Superior Court and will not assert that jurisdiction and venue lie in El Dorado County Superior Court unless there is no other superior court that will accept jurisdiction and venue for the matter. The waiver is also limited to amounts due under the terms of this MOU, and in no instance shall the waiver be read to extend to allow judicial enforcement of any kind against any assets of the Tribe, other than the Revenue Stream of its gas station. (Revenue Stream is defined as net profits due and owing to the Tribe that are derived from the operation of the gas station after all costs of operation, repayment of debt service, payments to the State under any Compact, and payments to the Tribe for any necessary governmental functions associated with the operation of the gas station have been made.) The Tribe also does not agree to waive any aspect of its sovereign immunity with respect to actions by parties other than the County.

11. Automatic Renewals. This Agreement shall automatically renew for additional ten-year terms at the expiration of each ten-year term under the same terms and conditions provided herein unless and until both parties agree in writing that the Agreement shall not automatically renew. The Tribe and the County agree that either party may request, and the other will consider in good faith, any request to discuss the terms of this Agreement.
12. Notices. The County officer or employee with responsibility for administering this Agreement is the Chief Administrative Officer. Any notices required or permitted hereunder shall be in writing and may be personally delivered, or delivered via the U.S. Postal Service, first class postage prepaid, or by a reputable overnight delivery service (such as U.S. Express Mail, Priority Mail, Federal Express, UPS, or DHL), addressed as follows or to such other place as each Party may designate by subsequent written notice to each other:

For the Tribe:

Chairperson
Shingle Springs Rancheria Band of Indians
5281 Honpie Road
Placerville, CA 95667

For the County:

County of El Dorado
Chief Administrative Officer
330 Fair Lane
Placerville, CA 95667

With a copy to:


County of El Dorado
Office of the County Counsel
330 Fair Lane
Placerville, CA 95667

13. No Third Party Beneficiaries. This Agreement is not intended to, and will not be construed to, confer a benefit or create any right for a third party. The Parties agree no third party possesses the right or power to bring an action to enforce any of the terms of this Agreement.
14. No Presumption Against Drafter. This Agreement shall be interpreted as if drafted by all Parties. No provision of this Agreement shall be interpreted or construed against any Party because such Party or its counsel was the sole or principal drafter of the Agreement or any provision thereof.
15. Severability. If any provision, part, sentence, or word of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions, parts, sentences, or words will continue in full force and effect without being impaired or invalidated in any way.
16. Signed in Counterparts. This Agreement may be signed in counterparts and shall be effective on the date fully executed by all Parties and shall remain in effect until terminated by the County as set forth herein.
17. No Other Agreements; Written Amendments. This Agreement and any exhibits thereto are the entire agreement between the Parties and it supersedes all prior written or oral agreements or understandings between the Parties. This Agreement may only be modified by mutual consent of the Parties in writing fully executed by duly authorized officers of the Parties.
18. Effective Date. This Agreement shall become effective immediately upon the date of the last required signature.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date written above.

Dated: 12/10/18

SHINGLE SPRINGS RANCHERIA BAND

By: 
 Regina Cuellar, Tribal Chairperson
 Shingle Springs Band of Miwok Indians

Dated: 12/18/2018

EL DORADO COUNTY

By: 
 Michael Ranalli
 Board of Supervisors, Chair

ATTEST: James S. Mitrison
 Clerk of the Board of Supervisors

By: 
 Kim Dawson, Sr. Deputy Clerk

APPROVED AS TO FORM:

Date: 12/18/18

By: Bre Moebius

Michael J. Ciccozzi, County Counsel
Breann M. Moebius, Deputy County Counsel
Counsel for El Dorado County

Date: 12/10/18

By: Michelle LaPen

Michelle LaPena, Counsel
Shingle Springs Band of Miwok Indians