

**MEMORANDUM OF UNDERSTANDING AND INTERGOVERNMENTAL
AGREEMENT BETWEEN THE COUNTY OF EL DORADO AND
SHINGLE SPRINGS BAND OF MIWOK INDIANS**

This Memorandum of Understanding and Intergovernmental Agreement (hereinafter "Agreement") is entered on this 28th day of September, 2006, between the County of El Dorado, a political subdivision of the State of California and the Shingle Springs Band of Miwok Indians, a federally-recognized Indian tribe (individually "Party" and collectively "Parties"). This Agreement will be effective upon the date the last Party signs.

RECITALS

1. Shingle Springs Band of Miwok Indians is a federally-recognized Indian tribe ("the Tribe"), which is the beneficiary of trust land that is owned by the United States, entitled Shingle Springs Rancheria and located within the geographical boundaries of the County of El Dorado.

2. The Tribe, as a federally-recognized Indian tribe, may engage in particular types of gaming on its Rancheria under the Indian Gaming Regulatory Act ("IGRA") as a means to promote tribal economic development and self-sufficiency and to generally protect the health and welfare of its members (25 U.S.C. § 2701 *et. seq.*).

3. The Tribe intends to operate a gaming facility pursuant to IGRA, which state and federal agencies have evaluated under applicable state and federal environmental laws ("Gaming Project"). The Tribe entered a compact in 1999 with the State of California, and has received the needed approval from the National Indian Gaming Commission ("NIGC").

4. The Tribe's Rancheria currently lacks direct access to any public roadway as would be needed for any economic enterprise, and the Tribe has proposed, and received (or will receive) the needed approval from the Bureau of Indian Affairs ("BIA"), California Department of Transportation ("Caltrans"), and the California Transportation Commission ("CTC"), to construct, at its own expense, an interchange and access road connecting its Rancheria to U.S. Highway 50 (hereinafter "Interchange Project").

5. The County of El Dorado ("County") is a political subdivision of the State of California that has challenged the Tribe's Gaming and Interchange Projects (hereinafter collectively "Projects") in federal and state courts under various state and federal statutes, and such litigation remains pending.

6. The County and the Tribe, through their respective governing bodies, recognize that both are governmental entities with responsibility for the health, safety and general welfare of their respective communities.

7. The Tribe and the County have discussed the mutual benefits that could be derived from entering a mutually enforceable Agreement with respect to the Tribe's Projects, and the County appreciates the Tribe's desire to operate its Gaming Project in a manner that benefits the Tribe and the community as a whole.

8. The Tribe is willing to enter this Agreement as a responsible exercise of its sovereignty and in recognition of the fact that the Tribe's long-term governmental and business interests are best served by this Agreement. The County likewise recognizes that benefits will be drawn from this Agreement, such as the provision of funding for the construction of High Occupancy Vehicle ("HOV") lanes on Highway 50, as well as the provision of funds the County can use, in its own discretion, to further address the County's concerns regarding the Tribe's Projects.

9. The County and the Tribe recognize that through greater cooperation between themselves and other local agencies such as the El Dorado Irrigation District, some of the Tribe's operational needs may be addressed in ways more beneficial for the Tribe and the County. The County for its part acknowledges that public water and sewer services are superior to transport on and off-site.

10. The County and the Tribe acknowledge that Caltrans has conducted an environmental review of the Interchange Project and that the BIA and NIGC have conducted an environmental review of the Gaming and Interchange Projects pursuant to applicable law.

11. The County and the Tribe recognize that, absent any Tribal agreement providing otherwise, applicable law does not obligate the Tribe to pay many taxes that would be applicable to non-Tribal commercial interests. The County and the Tribe further recognize that the Tribe is not otherwise obligated to pay such taxes, except as may be expressly provided for herein.

12. This Agreement represents the Parties' concerted effort to achieve a positive and constructive resolution of significant issues that have otherwise obstructed their government-to-government relationship to their collective and respective detriment. This Agreement will enhance that government-to-government relationship and effectuate a desire to maintain a continuing relationship that is both positive and responsive to the Parties' respective needs and desires.

NOW THEREFORE, the Parties hereby agree as follows:

A. Funding of HOV Project. The Tribe has agreed to fund the construction of a portion of a programmed HOV Project for Highway 50, entitled "U.S. 50 High Occupancy Vehicle Lanes Project – El Dorado Boulevard to South Shingle Road/Ponderosa Road KP 0.25/R14.67 (PM 0.16/R9.11)," and specifically that 5.3 mile portion of eastbound and westbound lanes from Bass Lake Road to South Shingle/Ponderosa Road that Caltrans already has approved (after having conducted an environmental review under the California Environmental Quality Act) but for which no

funding is available or anticipated within at least the next ten years ("HOV Project"). To that end, the Tribe agrees to pay the County \$5.2 million annually for 20 years. The Tribe agrees to begin such payments beginning on the 365th day after the Tribe's Gaming Project is open to the public. By separate agreement Caltrans has agreed to act as lead and implementing agency for the HOV Project. Caltrans already had conducted and approved an environmental analysis for the HOV Project that is the subject of this Agreement. Caltrans also has programmed the construction of the HOV Project. This Agreement only contemplates and provides a funding mechanism.

B. Compensation for Public Safety/Law Enforcement. The Tribe will pay the County \$500,000 (in quarterly payments of \$125,000 per quarter) annually for law enforcement. The County may generally allocate the funds as it desires, however, the first \$500,000 will be devoted to the purchase of police vehicles, the hiring of additional law enforcement officers and other tangibles the County's Board concludes are needed to protect the safety of the residents of El Dorado County. The Tribe agrees to make an advance payment of \$250,000 six months before the Gaming Project opens to the public to allow the County to purchase equipment and hire officers. This advance payment would then be offset by the Tribe not making payments for the first two quarters of operation. The Tribe will negotiate separate agreements for fire protection and emergency medical services with the appropriate entities.

C. County Revenue Tax. The Tribe agrees to collect a sales and hotel tax akin to that being charged by other such entities in El Dorado County, so as not to place such private businesses at a competitive disadvantage. Accordingly, the Tribe will pay the County an additional \$500,000 annually for 20 years or the life of the Tribe's Compact with the State (whichever is longer), beginning on the 365th day the Tribe's Gaming Project is open to the public, in recognition of the fact that the Gaming Project is not subject to the same taxes to which other businesses in the County are subject.

D. General Discretionary Funds. The Tribe also agrees to pay the County additional funds to be used at the County's discretion to fully address the Tribe's Projects, as follows:

1. The Tribe will pay the County \$2 million annually during the first seven years of the Gaming Project's operation, beginning on the 365th day the Gaming Project is open to the public, with the remaining payments due on the same date for each of the following years.

2. The Tribe will pay the County \$1.3 million annually during the eighth through twentieth year of the Gaming Project's operation or through the life of the Tribe's Compact with the State (whichever is longer), beginning on the last day of the eighth year the Gaming Project is open to the public, with the remaining payments due on the same date for each of the following years.

3. The Tribe further agrees to pay the County an additional \$2.5 million per year, beginning on the last day of the Gaming Project's eighth year in

operation and through the life of the Tribe's Compact with the State or for 20 years (whichever is longer). Such payment shall be subject to a 2% escalator every year, beginning with the ninth year of the Gaming Project's operation to account for annual cost of living increases.

E. Additional Payments For Gaming Project With Increased Slot Machines. In the event the Tribe renegotiates and amends its compact (whether that be its 1999 compact or an amended compact) with the State, and thereby secures the right to operate over 2,000 ("Class III") machines, the Tribe will pay the County an additional annual payment of \$100,000 for every 100 additional machines in operation.

F. Payment Obligations Contingent Upon Gaming Operation for 365 Days And Compact With the State. The Parties further agree that, with the exception of the payments the Tribe has agreed to make under Section B set forth above, none of the Tribe's payment obligations in this Agreement is triggered unless and until the Tribe has operated and opened to the public a Gaming Project for 365 days. The Parties further agree that any payment obligations under Section B are not triggered until six months before the Tribe's Gaming Project is scheduled to be open to the public.

G. Compliance with County Ordinances. Although the Parties recognize the County lacks any regulatory jurisdiction over the Tribe and its activities on the Shingle Springs Rancheria, the Tribe has agreed to construct and operate its Gaming Project, as well as the planned hotel facility, in a manner that is generally consistent with relevant County ordinances, and in particular, with County Ordinance 15.14.020-760 (addressing grading, erosion and sediments control); Chapter 8.44 of Title 8 of the County Ordinance Code (concerning asbestos and dust protection during grading, excavation and construction); Ordinance 17.14.170 (addressing outdoor lighting and signage). To facilitate and ensure compliance, the Tribe will hire its own building and health inspectors to observe construction and issue the requisite certificates of occupancy and/or compliance.

H. Local Employment. The Tribe is committed to complying with standards no less stringent than federal and state employment laws forbidding employers generally from discriminating in the employment of persons on the basis of race, color, religion, national origin, gender, sexual orientation, age or disability. However, the Tribe will give hiring preference to Native Americans and to residents of the County in that order pursuant to a duly adopted tribal ordinance and consistent with applicable law.

I. Problem Gambling. The Tribe, in consultation with the County, agrees to address problem gambling pursuant to a Compact with the State.

J. TEIR. The County agrees that the foregoing measures in paragraphs A through H will further and fully address any and all impacts of the Tribe's Gaming and Interchange Projects to the environment and County services as described in the environmental review documents prepared by Caltrans, the BIA, and NIGC, as well as under any Tribal Environmental Impact Report or other environmental document the

Tribe must prepare for the Gaming and Interchange Projects under any Compact with the State of California.

K. County's Commitments. In exchange for the above-described consideration to be provided by the Tribe, the County hereby agrees to cease any and all efforts to oppose, delay or derail the Tribe's Gaming and Interchange Projects in any forum or before any agency or governmental body whatsoever, whether federal, state, regional or municipal. The County also hereby agrees to refrain from assisting, encouraging, or aiding any other party from the foregoing. The County further specifically agrees it will timely undertake the following steps:

1. Within 20 days of this Agreement's execution, the County will seek dismissal of its pending appeal in the Ninth Circuit Court of Appeal and likewise seek a dismissal with prejudice of the federal lawsuit entitled *El Dorado County v. Norton, et al.*, Ninth Circuit Case No. 05-15224, currently on appeal from U.S. District Court Case No. CIV S-02-1818 (GEB). The County and the Tribe agree that each will bear its own attorneys fees and costs in connection with both the trial court and appeals court proceedings.

2. The County stipulates to the legitimacy of the Tribe as a federally-recognized Indian tribe entitled to game under IGRA, and further stipulates to the legitimacy of the Tribe's Rancheria as "Indian lands" upon which it may game under that same statutory authority.

3. The County will appear before the Sacramento County Superior Court in, and any appellate court with jurisdiction over, the action styled *El Dorado County and Voices for Rural Living, et al. v. California Department of Transportation, et al.*, Sacramento County Superior Court Case Nos. 03CS000003 and 03CS000018 (Consolidated Cases) and *Voices for Rural Living v. California Department of Transportation*, Sacramento County Superior Court Case No. 06CS01324), by submitting timely-filed brief(s) and participating in any and all hearings pertaining to the adequacy of Caltrans' Environmental Impact Report (as supplemented) concerning the Tribe's Projects. Specifically, the County agrees that, from its perspective, the Tribe's willingness to fund an approved and programmed HOV Project that Caltrans has already subjected to CEQA review, in addition to the Tribe's above-detailed annual payments to the County, will fully address any and all of the County's concerns with respect to the Tribe's Gaming and Interchange Projects as described herein. The County and the Tribe agree that each will bear its own attorneys fees and costs in connection with both the trial court and appeals court proceedings. Notwithstanding the foregoing, the County is relieved from participating in the above action(s) if the court with jurisdiction over the action(s) determines, *sua sponte*, that the County may not participate. However, the County agrees that it will not affirmatively seek or move any court with jurisdiction over the above actions to prohibit the County from participating in the above actions as set forth above.

4. The County agrees not only to not oppose, but to affirmatively support, the Tribe's Interchange Project's inclusion in any Metropolitan Transportation Improvement Plan and Program, and to further affirmatively support the issuance of any construction permit by Caltrans for the construction of the Interchange Project. The County agrees to consider, in its discretion, to join the Tribe, at the Tribe's expense, to affirmatively oppose any effort by any party to enjoin the construction and/or opening of the Tribe's Gaming and Interchange Projects. The County agrees that it would be appropriate for construction to begin pending any judicial determination. The County further agrees that the harm to the Tribe from any injunction against construction or opening of the Tribe's Gaming and Interchange Projects would outweigh any harm to the environment.

5. The County will support any efforts by the Tribe to renegotiate and amend the compact it entered with the State of California in 1999. The Tribe agrees to undertake environmental reviews for projects commenced after, and pursuant to the terms of, any renegotiated or amended Compact. Regardless, the County acknowledges the payments provided herein will fully address the impacts the County perceives to be associated with the Gaming and Interchange Projects described herein. The Tribe consents to the inclusion in any future Compact with the State of California of a provision permitting the State of California to enforce this Agreement on behalf of the County.

L. Term/Due Dates. Both Parties' obligations to honor this Agreement take effect immediately upon its execution. With the exception of Section A, this Agreement shall have a term of 20 years or the life of the Tribe's Compact with the State of California (whichever is longer). However, the Tribe's annual payment obligations to the State and the County are due on the 365th day of the Gaming Project's operation (unless otherwise stated), and shall be made to the State and County on that same day every year for 20 years or the life of the Compact (whichever is longer), or in the case of the HOV Project, for 20 years.

M. Monitoring, Re-opener and Continued Relations.

1. For purposes of ensuring the County is receiving the compensation to which it is entitled under this Agreement, the County will monitor the number of gaming devices the Tribe has in operation through the State of California's oversight of the Tribe's gaming facility, which tracks the number of gaming devices in connection with the Tribal-State Compact.

2. In an effort to foster the government-to-government relationship between the County and the Tribe, representatives of the County and the Tribe agree to meet on a regular basis, and no less than annually, to discuss any issues or concerns either or both may possess with respect to their respective communities, whether in connection with the Tribe's Gaming Project, impacts associated with the Gaming Project, this Agreement or otherwise.

3. After the Gaming Project's seventh year in operation, the Parties agree that either Party may request, and the other will consider in good faith, any request to discuss the terms of this Agreement. Neither Party is hereby legally bound to submit to such renegotiation, however.

N. Dispute Resolution.

1. 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:

(a) 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;

(b) 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;

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

2. 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 in 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 O 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.

3. 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.

O. 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 Agreement, 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 Gaming Project. (Revenue Stream is defined as net profits due and owing to the Tribe that are derived from the operation of the Gaming Project 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 Gaming Project 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.

P. 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.

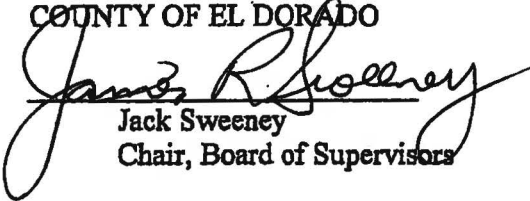
Q. Notices. Any notices required or permitted hereunder shall be in writing and may be personally delivered, or delivered vi the U.S. Postal Service, first class postage prepaid, or by a reputable overnight delivery service (such as U.S. Express Mail, Priority Mail, Federal Express, UPS, or DHL), addressed 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 Administrative Officer
El Dorado County
330 Fair Lane
Placerville, CA 95667

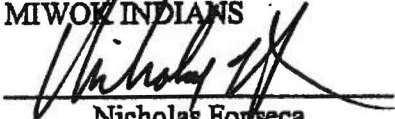
WHEREFORE, IN WITNESS THEREOF, the parties hereby execute and enter this Agreement with the intent to be bound thereby through their authorized representatives whose signatures are affixed below.

COUNTY OF EL DORADO


Jack Sweeney
Chair, Board of Supervisors

September 28, 2006
Date

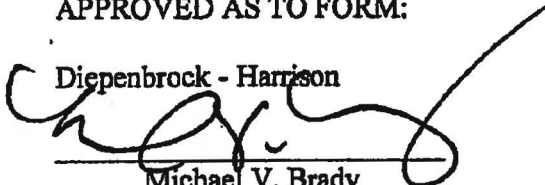
SHINGLE SPRINGS BAND OF
MIWOK INDIANS


Nicholas Fonseca
Tribal Chairman

September 27, 2006
Date

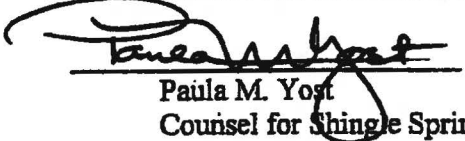
APPROVED AS TO FORM:

Diepenbrock - Harrison


Michael V. Brady
Counsel for El Dorado County

September 27, 2006
Date

Sonnenschein Nath & Rosenthal


Paula M. Yost
Counsel for Shingle Springs
Band of Miwok Indians

September 27, 2006
Date