

**Draft Provided to County
by Tribe 2011**

COOPERATIVE AGREEMENT

This Cooperative Agreement (“Agreement”) is effective as of _____, 2011 by and between the County of Santa Barbara (the “County”) and the Santa Ynez Band of Chumash Indians (the “Tribe” or “Santa Ynez Band”) (referred to herein as collectively as “the Parties” and as to each as a “Party”). The terms “County,” “Tribe,” and “Santa Ynez Band” as used herein shall include the Parties’ governmental entities, departments and officials unless otherwise stated.

RECITALS

WHEREAS, the Tribe is a federally-recognized Indian Tribe and which is within the geographic boundaries of the County; and

WHEREAS, the Tribe desires to expand Tribal housing opportunities and operate Tribal economic development projects in a manner that benefits the Tribe, its members, and the community as a whole, and the County recognizes the mutual benefit that can be derived if those goals are achieved; and

WHEREAS, proposed and future Tribal development are not County projects and are not subject to the discretionary approval of the County and absent this Agreement the County has limited opportunity to influence mitigation measures or seek compensation for adverse environmental impacts; and

WHEREAS, the Parties acknowledge that given the scope of the proposed Tribal housing and economic development projects, specific impacts are not always subject to precise measurement and that the mitigation measures agreed upon below are intended as good faith approximate mitigation of identified impacts; and

WHEREAS, the Parties recognize that this Agreement is an important step in furthering a government-to-government relationship and building trust, and mutual respect

BACKGROUND

After Mexico took over California from the Spanish and the secularization of Mission Santa Ynez in 1834, the Santa Ynez Chumash neophytes at Mission Santa Ynez settled in the creek bed of the Zanja de Cota Creek;

The U.S. Congress adopted the Mission Indian Relief Act of 1891 which established the Smiley Commission to report on the status of the Mission Indians of California;

The 1891 Report of the Smiley Commission verified such occupation of the Zanja de Cota Creek by the Santa Ynez Chumash from before California Statehood in 1835 and verified the status of the Santa Ynez Chumash as a tribe of Mission Indians as of 1891;

Then President Benjamin Harrison by Executive Order adopted the conclusions of the 1891 Smiley Commission on December 29, 1891;

After such report, the Indian Agent from the Tule River Agency began negotiation with the Catholic Church, to establish a permanent reservation for the Santa Ynez Band of Chumash;

Such negotiations resulted in the 1901 settlement agreement between the Church and the federal government;

As part of such negotiation, the Indian Agent agreed on behalf of the Tribe to waive the rights of the neophytes to the entire 36,000 acre Canada de los Pinos Rancho (College Rancho) which the Church claimed to own in common with the neophytes in exchange for the conveyance by the Church of all of its right title and interest in Zanja de Cota Creek to the Tribe as the Santa Ynez Reservation;

To finalize the waiver of the claim by the Tribe to the College Rancho, the Church filed a quiet title action against the federal government, the then members of the Tribe and the entire world in *The Roman Catholic Bishop of Monterey v. Salmon Cota, et al .*, Case no. 3926 (1897);

Upon the conclusion of such litigation, the 99 acre Santa Ynez Reservation was conveyed to the United States in trust for the Tribe the size of which Reservation which was later increased by 26.89 acres in 1979 and 12.73 acres in 2004 (collectively the "Reservation");

The original 99 acre Reservation as extended consists of the Zanja de Cota creek and flood plain with the last third of the Reservation being covered in wetlands unable to adequately house the Members of the Tribe and their children, grandchildren and great grandchildren;

On or about April 1, 2011, the Tribe acquired approximately 1,400 acres of real property east of Highway 154 and north of Highway 246/Armour Ranch Road from Fess Parker Ranch, LLC (the "Property");

The "Property" is within the historic boundaries of the College Rancho and is specifically within the boundaries of the quiet title action filed against the Tribe by the Church;

The Tribe desires to annex the Property by fee-to-trust transfer by either federal legislation or through the administrative process, and this Agreement is intended by the Parties to resolve the inter-governmental jurisdictional and other issues between the Parties;

**I. EFFECTIVE DATE AND CONDITIONS TO
EFFECTIVENESS OF AGREEMENT**

1. This Agreement shall become effective on the latest of the dates upon which each of the following conditions precedent shall be met:

- a) approval of this Agreement by the County of Santa Barbara Board of Supervisors and the General Council of the Santa Ynez Band; and
- b) conveyance of the Property to the United States of America to hold in trust for the Tribe; and
- c) Any other conditions precedent mutually agreed by the Parties.

2. Upon the satisfaction of all of the conditions precedent to effectiveness set forth in subsection 1, above, the parties shall execute an addendum to this Agreement memorializing the effective date of this Agreement in the form attached hereto as Attachment A.

II. FEE-TO-TRUST ANNEXATION OF THE PROPERTY

3. The County shall not oppose the fee-to-trust annexation of the Property to the Reservation by the administrative process by federal agencies **III. PAYMENTS IN LIEU OF TAXES**

4. Agreed Payments:

- a) In addition to the promises and covenants otherwise contained in this Agreement, the Parties acknowledge that annexation of the Property may, in some cases, result in lost revenues **and/or fees to the County.**
- b) The Parties agree that the County does not have permitting authority over development on Trust Lands and that the payments made under this agreement do not constitute taxes, exactions, or fees.
- c) The payments agreed to below are approximate off-sets to the above-mentioned potential losses and impacts to the County and are intended to support an approximate level of County services to the Reservation, the Property, and affected communities.
- d) The amount of such Payments by the Tribe shall be as follows: Tribe to pay County flat annual fee in lieu of property taxes in the amount of \$ _____ which amount shall be due in four (4) equal quarterly payments beginning on the first day of the Calendar quarter and continuing each quarter thereafter. Such payments shall begin the first

day of the next calendar quarter after the effective date of this Agreement and shall expire in full on December 31, 2020.

5. Acknowledgement of Additional Impacts.

The Santa Ynez Band and County acknowledge and agree that in consideration for Santa Ynez Band's Agreed Payments above, any additional impacts to the County, including, without limitation, law enforcement, fire, and traffic/roads, will be mitigated solely by the County at no additional cost to Santa Ynez Band.

6. Adjustment of Payments.

- a) Santa Ynez Band shall not be responsible for any construction cost overruns or any cost increases from any source, including, without limitation, those caused by inflation, labor, or material cost increases.
- b) In the event that the Santa Ynez Band does not successfully annex such Property to the Reservation by fee-to-trust transfer to the federal government within two (2) years after the effective date of this Agreement, the parties shall negotiate in good faith as to how much, if any, of the contribution made by Santa Ynez Band under this Agreement shall be returned to the Band. If the parties are unable to reach agreement on these issues, that dispute will be resolved under the dispute resolution procedures included in this Agreement.

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

County agrees to reimburse or credit Santa Ynez Band as follows:

- a) In the event that Santa Ynez Band receives funding from state or federal sources, and directs those monies to be paid directly to County, County shall accept 100% of such payment as if it were a payment paid directly by Santa Ynez Band.
- b) In the event County receives funding from the Special Distribution Fund or any other fund created under the current or any future Tribal-Compact, earmarked for mitigation of off-reservation impacts resulting from the Santa Ynez Casino, County shall accept 100% of such payment as if it were a payment paid directly by Santa Ynez Band.
- c) Any credits towards Santa Ynez Band's payment obligations pursuant to this Agreement shall be treated as the next payments in time to be paid by Santa Ynez Band.
- d) In the event funds identified in this section are received by the County after the payment from Santa Ynez Band has already been paid to the County, the County shall reimburse Santa Ynez Band within 90 days from receipt of such funds.

IV. MISCELLANEOUS

8. Tribal-State Compact.

County and Santa Ynez Band agree that Santa Ynez Band's contributions to County pursuant to this Agreement are not exactions or fees imposed as a condition of development, and therefore are not subject to the Mitigation Fee Act (California Government Code Section 66000 and following). County and Santa Ynez Band agree that Class III gaming facilities on reservation land are regulated by the Compact and that the County has no permitting authority over the Chumash Casino.

9. Notices.

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

Notice to Santa Ynez Band:

Santa Ynez Band of Chumash Indians
Attn: Tribal Chairman
P.O. Box 517
Santa Ynez, CA 93460

Notice to County:

County of Santa Barbara
Attn. Chief Executive Officer
105 East Anapamu Street
Santa Barbara, CA 93101
Attn: CEO

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

10. Applicable Laws.

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

11. Consent To Jurisdiction: Limited Waiver of Sovereign Immunity and Exhaustion Of Tribal Remedies.
 - a) Santa Ynez Band grants a limited waiver of sovereign immunity from suit exclusively to County, and to no other entity or person, for the sole purpose of enforcing this Agreement. For this limited purpose, Santa Ynez Band (i) agrees that any suit, action or other legal proceeding arising out of or relating to this Agreement may be brought in the federal courts of the United States, or in the event the federal courts refuse to hear such case for lack of jurisdiction, the State courts of the State of California (including any courts to which appeals there from are available); and (ii) waives its sovereign immunity in any such suit, action or legal proceeding by County for money damages, specific performance, injunctive relief and/or declaratory relief for Santa Ynez Band's breach of this Agreement. Santa Ynez Band does hereby unconditionally waive any claim or defense of exhaustion of tribal administrative or judicial remedies. In no instance shall any enforcement or judgment of any kind whatsoever be allowed or levied against any assets of Santa Ynez Band other than the limited assets of the Santa Ynez Band's distributed share of the revenue stream of the Chumash Casino and physical assets of the Chumash Casino, subject however, to prior existing liens or encumbrances on such assets. Specifically, this waiver shall not extend to any other accounts of Santa Ynez Band, the source of which includes distributions from accounts directly related to the Chumash Casino, so long as such distributions are in the ordinary course of business when the Agreement is not in default and are not done for the purpose of frustrating the County's remedies hereunder. Santa Ynez Band does not waive the defense of sovereign immunity with respect to any action by third parties, or extend its waiver to reach any assets of Santa Ynez Band other than those specifically set forth herein.
 - b) County acknowledges and agrees that Santa Ynez Band may bring an action in the State Courts of California to enforce the terms of this Agreement as against Santa Barbara County for money damages, specific performance, injunctive relief and/or declaratory relief for County's breach of this Agreement. County acknowledges and agrees that State Courts with proper venue have jurisdiction to hear such disputes. For purposes of the Agreement, County hereby waives any immunity it may have from suit in order to permit Santa Ynez Band to enforce the provisions of the Agreement.
12. Entire Agreement, Waivers.

This Agreement constitutes the entire understanding and agreement of the Parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental

hereto, and supersedes all negotiations or previous agreement between the Parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the County or of the Santa Ynez Band.

13. Amendments.

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

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

TRIBE:

SANTA YNEZ BAND OF CHUMASH
INDIANS, a federally recognized Indian tribe

By:

Vincent P. Armenta
Tribal Chairman

COUNTY:

COUNTY OF SANTA BARBARA, a
political subdivision of the State of
California

By:
