

MUNICIPAL SERVICES AGREEMENT

This Municipal Services Agreement (hereinafter "Agreement") is made this _____ day of April, 2016, by and between the City of Ridgecrest (hereinafter "City"), on one hand, and the Timbisha Shoshone Tribe (hereinafter "Tribe"), on the other hand. City and Tribe shall hereinafter collectively be referred to as "Parties."

RECITALS

WHEREAS, the historical occupation of the Timbisha Shoshone Tribe of the area in and surrounding the City has been documented; and

WHEREAS, the United States Congress has authorized the Secretary of the Interior to acquire land in trust for the Tribe in order for the Tribe to achieve economic self-sufficiency; and

WHEREAS, in 1978, Congress enacted the Indian Self-Determination Act, 25 U.S.C. §450, *et seq.* to encourage tribal self-sufficiency and self-determination, and in 1988 Congress enacted the Indian Gaming Regulatory Act, 25 U.S.C. 2701, *et seq.* (the "IGRA") to provide for tribal gaming, again emphasizing the federal priority of tribes becoming self-sufficient; and

WHEREAS, following consultations with federal, state and City officials for the purpose of identifying potential new reservation locations that would meet the community, economic development and residential needs of the Tribe, while being compatible with surrounding land uses and minimizing adverse impacts on City services and residents, the Tribe has selected and will acquire a parcel of land in the City; and

WHEREAS, the Tribe intends to ask the Bureau of Indian Affairs to initiate the federal environmental review process necessary to comply with the National Environmental Policy Act ("NEPA"), as a first step to taking said parcels into trust; and

WHEREAS, the Tribe has now requested that the City support the Tribe's request to the Bureau of Indian Affairs to take a parcel into trust, and in consideration for such support, the Tribe has offered to enter into an agreement with the City before any land goes into trust, which agreement will provide for the Tribe to make certain payments to the City to mitigate potential impacts of the Tribe's development and use of the Trust Lands (as defined below), as well as reimbursing the City for expenses to be incurred by the City in association with this Agreement; and

WHEREAS, the proposed action of the Tribe is not a City project and is not a project subject to the discretionary approval of the City and, therefore, is not subject to otherwise applicable California laws; and

WHEREAS, the City would not otherwise have any authority or input with regard to the Tribe's Trust Lands nor receive any compensation as mitigation for the impacts the Tribe's use of the Trust Lands would cause; and

WHEREAS, the City is capable of, and willing to, provide a full range of municipal services for uses of the Tribe's trust lands and, subject to future agreement between the City and the Tribe, may provide certain municipal services for the Tribe's use of the Trust Lands; and

WHEREAS, the City is prepared to support the Tribe's trust acquisition request to the United States if the Tribe enters into an enforceable agreement to comprehensively mitigate all impacts of this acquisition by taking several steps, including, but not limited to: (a) conforming to certain specific land use restrictions identified in City ordinances; (b) mitigating any environmental impacts of its planned use of the trust land that are identified in the environmental assessment to be conducted pursuant to NEPA; and (c) conforming to certain building and design standards set out in City ordinances.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

1. Land to be Taken into Trust. The Tribe will request that the United States take into trust for its benefit the parcel identified in Exhibit A appended hereto. The Tribe agrees to request the United States to take into trust within the limits of the City only the parcel detailed in Exhibit A appended hereto (hereinafter "Trust Lands"), unless and until this Agreement is amended as provided herein to authorize any other trust acquisition. The Tribe further agrees to use said parcel exclusively (a) for the operation of a facility for Class II and Class III Gaming in conformity with the requirements of the federal Indian Gaming Regulatory Act, 25 U.S.C. 2701, *et seq.*, with the requirements of this Agreement and with the requirements of all other applicable State or federal laws; and (b) for other gaming related uses, as described in Exhibit B appended hereto, so long as such related uses are intended primarily to facilitate the operation of the gaming facility (all improvements on the Trust Lands collectively hereinafter referred to as the "Gaming Facility"), unless and until this Agreement is amended as provided herein.

2. Compliance with City Ordinances. The Tribe shall enact laws applicable to the Trust Lands and shall require that the Trust Lands be used and developed in a manner that complies with all applicable City general, specific and community plans, zoning ordinances, and design guidelines in effect at the time of development, to the extent that compliance with such laws does not impermissibly infringe upon the internal self-government of the Tribe. The Tribe shall adopt the building standards set out in the City's adopted building codes, and prior to the use of any structure constructed on the Trust Lands, provide the City, at the Tribe's expense, with written certification from the project architect that said structures have been constructed in accordance with said standards. To ensure that tribal laws are adequately enforced, the Tribe agrees to contract with the City to provide, planning, building and safety, fire prevention, and public works personnel to review construction plans and inspect construction of improvements on the Trust Lands, to insure compliance with adopted codes. Said review and inspection services shall be provided at the City's normal rates for such services. In the event the City's reviewers and inspectors are unable to complete such services within a time frame substantially similar to the time frame in which the city would complete such services for a commercial development, the Tribe may contract for alternative inspection services, provided that the Tribe shall provide the City with an opportunity to timely provide inspection services prior to contracting with an alternative inspection service.

3. Environmental Review. The Tribe's application to have land taken into trust is not governed by State laws, and the Tribe does not agree to submit its projects to the City for discretionary approvals. The Tribe does agree, however, to submit its development plan for development review and comment by the City staff and to substantially comply with City ordinances in effect at the time of development. Nothing in this Agreement constitutes a commitment by the City to develop, construct, or improve any facilities or to issue any permit or entitlement for use and the parties specifically acknowledge that no such permit or entitlement is necessary for the Tribe to build improvements on the Trust Lands..

4. Payments to City. The parties agree that the Tribe will treat all fees in this agreement as "operating expenses." The parties further agree that a standard method of payment to the City will be beneficial for all. The following method shall be used to make payments to the City. This section shall not apply to Litigation Expenses as defined in Section 18.

A. The Tribe agrees to pay the City all service fees and impact fees established by City resolution prior to the service being provided or the impact realized, provided that such fees are established on a City-wide or area-wide basis, equal to at least 20.0% of the area of the City, and not applicable solely to the Tribe.

B. The Tribe will pay the City, on a monthly basis, within thirty (30) days of billing, for the actual cost of all City expenses related to providing any of the services performed by the City, their consultants or contract services, as set forth in Sections 2 and 3 of this Agreement.

C. Where payments are to be made quarterly, the Tribe will pay the City on the City's first business day after the first day of January, April, July, and October following any quarterly period, or part thereof, during which the Gaming Facility is in operation. The first payment will be paid for the pro-rated number of days the Gaming Facility was in operation during its first quarter, divided by the actual number of days in that quarter, multiplied by the quarterly amounts stated in this Agreement.

D. Where payments are to be made annually, the Tribe will pay the City on the City's first business day after July first following any quarterly period, or part thereof, during which the gaming facility is in operation. The first payment will be paid for the pro-rated number of days the Gaming Facility was in operation during its first year, divided by 365 days, multiplied by the annual amounts stated in this Agreement.

E. Fifty percent (50%) of funds received by the City from the State of California pursuant to the Class III gaming compact between the Tribe and the State or from the State Special Distribution Fund shall be credited against the mitigation payments to be paid by the Tribe to the City pursuant to this Agreement and any subsequent agreements entered into by the Parties.

F. One-time fees will be paid as described elsewhere in this Agreement.

G. All payments, by the Tribe shall be made payable to the City of Ridgecrest and delivered to the City Manager, or his designee.

5. Quarterly Mitigation Payments. The Tribe and the City agree that, because of the status of the Trust Lands, the City will lose potential tax revenues from the land and the improvements thereon and from certain commercial activities that the Tribe may conduct on the Trust Lands. In order to mitigate this loss of revenue, and to compensate the City for the

provision of law enforcement and fire protection services to the Trust Lands, as well as to contribute to the provision of problem gambling support services by the City, the Tribe shall pay to the City a Mitigation Payment in the sum of \$100,000.00 each quarter. This sum shall be adjusted to the amount of one quarter of Two Percent (2%) of the appraised value of the land and Gaming Facility after the completion of construction. The Parties shall mutually agree upon and appoint an independent appraiser to conduct the appraisal, at the Tribe's expense. The appraiser shall assess the appraised value based on the construction cost of the Gaming Facility, because there are no comparable properties. The City shall allocate this Mitigation Payment to the needs of law enforcement, fire protection, problem gambling programs, and other needs as the City so determines in its sole discretion.

6. Payment for Critical Municipal Services. The Parties recognize that the gaming facility to be developed and operated by the Tribe will necessitate an increase of critical municipal services in the area surrounding the Trust Lands. The Parties have agreed that, based on the size of the Tribe's proposed gaming facility and the projected number of patrons and employees, Tribe shall make the following payments to City:

A. A one-time payment of \$80,000 to City to be used by City for a new police patrol car, which shall be used by City at its sole discretion in and surrounding the City of Ridgecrest and in the area surrounding the Trust Lands; and

B. Annual fees of \$128,000 for additional critical municipal services, which shall be paid to City in quarterly installments. This sum shall be increased annually in accordance with the Consumer Price Index. The sum may exceed the Consumer Price Index by mutual consent, to be consistent with then current costs to the City of providing these services. This figure shall not be reduced unless such reduction is agreed to by City.

7. Emergency Medical Services. The Tribe shall contract with a private ambulance provider to provide emergency medical services to the Gaming Facility.

8. Criminal Jurisdiction on Trust Lands. The City shall have authority to enforce State laws on the Trust Lands to the extent authorized by Public Law 280. The City shall also have the authority to enforce City Municipal Codes on Trust Lands. The City will attempt to notify the Gaming Facility's security director and/or general manager before taking extraordinary action (over and above usual patrols and response to calls for service) at the Gaming Facility, except when, in the good faith and reasonable judgment of the City law

enforcement officers involved, doing so would compromise officer safety or the integrity of a criminal investigation. City law enforcement and the Gaming Facility security agree to cooperate and work together in matters concerning violations of the law. Gaming Facility security will allow City law enforcement access to security video recordings and Trust Lands when conducting criminal investigations.

9. Roads and Traffic Circulation. The Tribe will cause a traffic study to be conducted to determine the traffic impacts of its proposed uses of the Trust Lands. The Tribe will mitigate traffic and circulation issues in conformity to the applicable law. The Tribe agrees to pay all required traffic mitigation fees consistent with City fee programs and ordinances.

10. Sewer and Water Service.

A. The Tribe shall provide for the treatment and disposal of sewage generated on the Trust Lands. If the Tribe connects to the City's sewer collection system, the Tribe will pay fees, obtain required easements for sewer infrastructure, construct to City sewer infrastructure standards, and dedicate to the City such sewer infrastructure. No use shall occur on the Trust Lands, other than the construction of the Gaming Facility, until sewer service is completed and inspected pursuant to this Agreement. Any approvals by the City required to implement this section shall not unreasonably be withheld, and the standards and fees referred to in this section shall be substantially identical to those applied to similarly situated users.

B. The Tribe shall provide for a water supply for the Trust Lands and may apply for water service with the local water district. No use, other than the construction of the Gaming Facility, shall occur on the Trust Lands until water service is completed and inspected pursuant to this Section and Sections 2 and 3 of this Agreement.

C. The Tribe shall acquire the Trust Lands subject to all existing City rights-of-way and easements for the provision of sewer and water.

11. Solid Waste Disposal. The Tribe shall contract for solid waste disposal with the City's franchised waste hauler at their usual commercial rates.

12. Employment of City Residents. The Tribe shall work in good faith with the City, to employ qualified residents at the Gaming Facility to the extent permitted by applicable law. The Tribe shall offer training programs to assist City residents to become qualified for positions at the Gaming Facility to the extent permitted by applicable law. Nothing in this Section 10 shall

be interpreted to limit or modify in any way the Tribe's policy of Indian preference in employment.

13. Allowed Gambling Age in Casino. The City has requested, and the Tribe agrees, that the Tribe will restrict the age for gambling, in the casino, to 21 years of age, or older. No one under the age of 21 years will be allowed to gamble.

14. Payment for Future Development. The Tribe and the City recognize that additional development may occur on Tribal land within the jurisdiction of the City. The Tribe agrees to negotiate in good faith with the City to mitigate the off-reservation impacts of any future development. If in the future the Tribe constructs a hotel, the Tribe will join the "District Association" and make quarterly payments to the City in the sum of the equivalent of a Ten Percent (10%) transient occupancy tax ("TOT").

15. Dispute Resolution.

A. Meet and Confer Process. In the event the City or the Tribe believes that the other has committed a possible violation of this Agreement, it may request in writing that the Parties meet and confer in good faith for the purpose of attempting to reach a mutually satisfactory resolution of the problem within fifteen (15) days of the date of service of said request, provided that if the complaining Party believes that the problem identified creates a threat to public health or safety, the complaining Party may proceed directly to arbitration as provided in Subsection E below.

B. Notice of Disagreement. If either Party is not satisfied with the result of the meet and confer process, such Party may provide written notice to the other, identifying and describing any alleged violation of this Agreement ("Notice of Disagreement"), with particularity, if available, and setting forth the action required to remedy the alleged violation.

C. Response to Notice of Disagreement. Within fifteen (15) business days of service of a Notice of Disagreement, the recipient Party shall provide a written response either denying or admitting the allegation(s) set forth in the Notice of Disagreement, and, if the truth of the allegations are admitted, setting forth in detail the steps it has taken and/or will take to cure the violations. The failure of the recipient Party to serve a timely response shall entitle the complaining Party to proceed directly to arbitration, as provided in Subsection E below.

D. Expedited Procedure for Threats to Public Safety. If the City or the Tribe reasonably believes that the other's violation of this Agreement has caused or will cause a

significant threat to public health or safety, resolution of which cannot be delayed for the time periods otherwise specified in this Section 16, the complaining Party may proceed directly to the arbitration Procedures set out in Subsection E below, without reference to the processes set out in Subsections A, B, and C above, and seek immediate equitable relief. At least twenty-four (24) hours before proceeding in this manner, the complaining Party shall provide to the other a written request for correction and notice of intent to exercise its rights under this Subsection D, setting out the legal and/or factual basis for its reasonable belief that there is a present or an imminent threat to public health or safety.

E. Binding Arbitration Procedures. Subject to prior compliance with the meet and confer process set out above in Subsection A, and the Notice and Response process in Subsections B and C, and except as provided in Subsection D, either Party may initiate binding arbitration to resolve any dispute arising under this Agreement. The arbitration shall be conducted in accordance with the following procedures:

(1) The arbitration shall be administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules.

(2) The arbitration shall be held in the City of Ridgecrest, California, unless otherwise agreed. The arbitrator shall be empowered to grant compensatory, equitable and declaratory relief.

(3) If either Party requests an oral hearing, the arbitrator shall set the matter for hearing. Otherwise, the arbitrator shall decide whether to set the matter for hearing.

(4) The resulting award shall be in writing and give the reasons for the decision. Judgment on the award rendered by the arbitrator may be entered in the United States District Court for the Eastern District of California. The costs and expenses of the American Arbitration Association and the arbitrator shall be shared equally by and between the Parties unless the arbitrator rules otherwise.

16. Judicial Review. The Parties consent to judicial enforcement of any award in arbitration, which enforcement shall be in the United States District Court for the Eastern District of California. Service of process in any such judicial proceeding is waived in favor of delivery of court documents by Certified Mail -Return Receipt Requested to the following:

FOR THE TRIBE:

FOR THE CITY:

Tribal Chairperson
Timbisha Shoshone Tribe
621 West Line St., Suite 108

Bishop, CA 93514
Telephone: (760) 872-3614

Mayor
City of Ridgecrest
100 W. California Ave.
Ridgecrest, CA 93555-4054

Telephone: (760) 499-5000
Facsimile: (760) 499-1500

17. Limited Waiver of Tribal and City Sovereign Immunity. The Tribe agrees to waive its sovereign immunity in favor of the City as to any dispute that arises out of this Municipal Services Agreement or the activities undertaken by the Tribe on the Trust Lands, pursuant to the terms set forth herein for enforcement. The Tribe's governing body shall execute a formal Resolution of Limited Waiver of Sovereign Immunity substantially identical to attached Exhibit C. The City agrees that it has waived its sovereign immunity for purposes of the enforcement of the terms of this Agreement.

18. Attorneys' Fees. In the event either party commences an Action (as defined herein) against the other party which arises out of a Default of, breach of, failure to perform this Agreement or otherwise related to this Agreement, then the Prevailing Party in the Action shall be entitled to recover its Litigation Expenses (as defined herein) from the other party in addition to whatever relief to which the Prevailing Party may be entitled. For the purposes of this section, the term "Action" means any lawsuit, court or administrative proceeding (whether of a legal or equitable nature), arbitration or mediation (whether binding or non-binding), or any other alternative dispute resolution procedure, and the filing, recording, or service of any process, notice, claim, lien, or other instrument which is a prerequisite to commencement of the Action. For the purposes of this section, the term "Litigation Expenses" means all costs and expenses, to the extent such are reasonable in amount, that are actually and necessarily incurred in good faith by the Prevailing Party directly related to the Action, including, but not limited to, court costs, filing, recording, and service fees, copying costs, exhibit production costs, special media rental costs, attorneys' fees, consultant fees, fees for investigators, witness fees (both lay and expert), travel expenses, deposition and transcript costs, and any other cost or expense reasonably and necessarily incurred by the prevailing party in good faith and directly related to the Action. For the purposes of this Section, the term "Prevailing Party," shall have the meaning ascribed in California Code of Civil Procedure §1032(a)(4).

19. Indemnification. Except as to the sole negligence, active negligence, or willful misconduct of the City, the Tribe expressly agrees to and shall indemnify, defend, release, and hold the City, their officials, agents, servants, employees, attorneys and contractors harmless from and against, any claim, liability, loss, damage, entry, cost, or expense (including, but not limited to, attorneys' fees expert fees, and court costs) which arises out of or is in any way connected with the Tribe's performance under this Agreement. This indemnification provision shall apply to any act or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of the employees, agents, servants, or subcontractors of the Tribe or its tenants. The Parties expressly agree that the obligations of the Tribe under this Section shall survive the expiration or early termination of the Agreement.

20. Support for Trust Application. In consideration for the obligations undertaken by the Tribe herein, the City shall provide the correspondence attached as Exhibit D to the United States Department of Interior, Bureau of Indian Affairs, in support of the application of the Tribe to the United States, and shall request the United States to take the lands identified in Exhibit A into trust for the benefit of the Tribe, and respond to inquiries about the Tribe's trust application from the Bureau of Indian Affairs in a manner that is consistent with Exhibit D.

21. Tribal-City Advisory Committee. The City and the Tribe agree to establish a permanent committee, to be known as the Tribal-City Advisory Committee. The jurisdiction of the Committee shall include questions related to implementation of this Agreement, proposals for the amendment of this Agreement, and concerns over any matter within the scope of this Agreement.

A. Composition of Committee. The Committee shall be composed of three members designated by the City Manager of the City of Ridgecrest, or his designees, and three members designated by the Tribe, for the purpose of addressing any issues arising under or relating to this Agreement.

B. Open Meetings. Committee meetings shall be open to the public, and Committee members may invite staff and associates as they deem appropriate to participate.

C. Meeting Times. The Committee shall meet on a quarterly basis, or more frequently, according to procedures established by the Committee.

D. Authority of Committee. The Committee may make recommendations to the Tribe and the City, including recommended amendments to this Agreement, which both

Parties shall consider before implementing any actions concerning the subject matter of this Agreement.

22. Other Development Projects. The Parties understand and agree that the Tribe may in the future undertake other development projects on the Trust Lands. In order to preserve their good relations and in the best interests of the surrounding community, the Tribe and the City agree that the Tribe shall undertake no new development that would be inconsistent with the moral climate of the community, including but not limited to adult entertainment and sexually oriented businesses as defined in the City's Development Code. If the Tribe should undertake new development projects, it will notify the City at least three months prior to the commencement of construction of the new project and will negotiate in good faith with the City concerning an agreement for the protection of the Parties' interests and the well-being of the surrounding community.

23. Amendments. This Agreement may be amended by mutual agreement of the Parties and must be amended prior to the acquisition of any land in trust by the Tribe not identified in Exhibit A. The parties will meet annually to review this Agreement and the Parties' performance of their obligations under it. To the extent that either of the Parties believes that the Agreement should be amended, the Parties agree to negotiate on such amendments in good faith in order to further the objectives of this Agreement.

24. No Third Party Beneficiaries. This Agreement is not intended to, and shall not be construed to, create any right on the part of a third party to bring an action to enforce any of its terms.

25. Term. This Agreement shall become effective upon its execution by the parties hereto and shall continue in effect for a period of twenty (20) years from the opening date of the Gaming Facility, provided that, if the Tribe is informed by the Secretary of the Interior that the United States will not take the land into trust or that the Tribe may not conduct gaming activities thereon, then this Agreement shall terminate thirty (30) days after the Tribe is so informed. No sooner than eighteen (18) months prior to the aforementioned termination date, either party may request the other party to enter into negotiations to extend this Agreement or enter into a new agreement. If the parties have not agreed to extend the date of this Agreement nor entered into a new Agreement by the termination date, this Agreement will automatically be extended for not more than five (5) years, unless the parties have agreed to an earlier termination date.

26. Approval by the Department of the Interior. The parties will submit this Agreement to the Department of the Interior for either (a) approval pursuant to 25 U.S.C. Section 81, or (b) a written response from the Department of the Interior that this Agreement does not require approval under 25 U.S.C. Section 81 to be enforceable.

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

DATED: _____

TIMBISHA SHOSHONE TRIBE

By: _____

Its: _____

DATED: _____

CITY OF RIDGECREST

By: Margaret Breeden

Its: Mayor

Seal