

MEMORANDUM OF UNDERSTANDING
CONCERNING INVESTIGATION AND PROSECUTION OF
VIOLATIONS OF CERTAIN STATE LAWS
ON SANTA ANA PUEBLO LANDS

This Memorandum of Understanding ("MOU") is made by and between the Pueblo of Santa Ana ("the Pueblo") and the District Attorney for the Thirteenth Judicial District of the State of New Mexico ("the District Attorney"), pursuant to Section 10(E) of the Tribal-State Class III Gaming Compact entered into between the Pueblo and the State of New Mexico ("the State"), which went into effect on or about November 5, 1997 ("the Compact").

I. RECITALS, PURPOSE AND GOALS

WHEREAS the Pueblo is a federally recognized Indian tribe that operates a Gaming Enterprise on its lands, which lands are located within the exterior boundaries of the Thirteenth Judicial District of the State ("the District"); and

WHEREAS the District Attorney is the State official given authority and responsibility for enforcement and prosecution of the State's laws within the District; and

WHEREAS the State and the Pueblo have entered into the Compact, so as to establish the means by which class III gaming on the Pueblo's lands shall be regulated; and

WHEREAS, Section 10 of the Compact provides that the State is to have jurisdiction over violations of state gambling laws and other crimes occurring on the premises of a tribal gaming facility or committed against the gaming enterprise or its employees, but that the local

district attorney will accept such cases only after an MOU has been entered into to provide the procedures by which such cases are to handled; and

WHEREAS, the Pueblo and the District Attorney have negotiated the following terms so as to implement that provision of the Compact, and to provide an expeditious means whereby criminal matters within the State's jurisdiction under the provisions of the Compact can be transferred to the District Attorney for investigation and prosecution; and

WHEREAS the goal of this Memorandum of Understanding ("MOU") is to protect and provide for the safety of the public of the Pueblo and the State, through the provision of additional law enforcement services on the Pueblo's lands;

NOW THEREFORE, the Pueblo and the District Attorney, consistent with the provisions of the Compact and in accordance with the laws of the State and the Pueblo, agree as follows:

II. DEFINITIONS

For purposes of this MOU, the following terms shall have the following meanings:

- A. "Commission" means the Santa Ana Gaming Regulatory Commission.
- B. "Covered Offense" means any violation of any State gambling law that occurs on Pueblo land, or any other violation of any State criminal law involving the Enterprise or any employee thereof, or that occurs on the premises of the Enterprise, that is committed by any person who is not a member of the Pueblo.
- C. "District Attorney Resources" means those human and other resources utilized by the District Attorney for the purpose of handling Covered Offenses and performing other functions of the District Attorney under the provisions of this Agreement.
- D. "Enterprise" means the Santa Ana Star Casino, its Pueblo-owned operator, Santa Ana

Non-Profit Enterprise (“SANE”), and any other gaming enterprise owned, operated and permitted by the Pueblo on Pueblo land.

- E. “Liaison” means one or more individuals or staff positions within the office of the District Attorney, identified from time to time by the District Attorney to the Pueblo, who shall be the 24-hour-a-day contact point for the Pueblo and its various agencies and entities with the District Attorney for purposes relative to this MOU.
- F. “SAPD” means the Santa Ana Police Department, the law enforcement agency operated and maintained by the Pueblo.
- G. “SLEA” means a State law enforcement agency, including the Sandoval County Sheriff’s Office, the New Mexico State Police, or any other law enforcement agency providing services near the Pueblo that might be called upon to assist with a Covered Offense. Should the Pueblo enter into a cross-commissioning agreement with the State pursuant to 1978 NMSA § 29-1-11, SLEA also shall include any officers of the SAPD who are cross-commissioned by the State under that agreement.

III. NOTICE OF COVERED OFFENSES

- A. In general, and subject to the following principles and procedures, whenever the SAPD, the Enterprise or the Commission (which are sometimes collectively referred to herein as “the Pueblo Entities”) becomes aware of information indicating that a Covered Offense has occurred or is occurring, notice thereof shall be given to an available SLEA, to the Liaison, and to the Attorney General of the State, at the earliest practicable time consistent with prudent law enforcement practices and the

interest of protecting the safety and welfare of employees and patrons of the Enterprise.

- B. If a Covered Offense is occurring at the time the notice to the Liaison is given, the parties agree that the SAPD and/or the security personnel of the Enterprise may, both before and after the giving of notice to an SLEA and the Liaison, take such steps as they reasonably deem appropriate to assure the safety of employees and patrons of the Enterprise, and of their property, and secondarily to detain the suspected offenders, and to do such other things consistent with sound law enforcement practices as the circumstances shall call for. To the extent feasible an SLEA and the Liaison shall be notified of any and all such measures that have been taken or may be taken by either agency. Upon the arrival of SLEA personnel on the scene and their contact with the senior SAPD official on the scene, control and supervision of the situation shall be turned over to the senior SLEA official present. SAPD and Enterprise personnel shall continue to assist as requested by the senior SLEA official present.
- C. The Pueblo Entities and the District Attorney may establish a system for electronic notification to the District Attorney and to an SLEA that a Covered Offense is occurring under circumstances amounting to an emergency at the gaming facility. Activation of such system shall constitute notice of a Covered Offense for purposes of this MOU, but the agency or office receiving such notice shall immediately attempt to confirm the occurrence of a Covered Offense by voice communication with the Enterprise or the SAPD before dispatching law enforcement resources to

the scene. If such communication or confirmation cannot be established, the agency shall without delay dispatch such resources as are available.

- D. In all other cases involving a possible Covered Offense, the SAPD shall conduct a sufficient investigation to determine that a Covered Offense has probably occurred, and shall thereupon give notice to the Liaison, an SLEA and the state Attorney General thereof, and shall transmit to the Liaison a complete copy of the entire investigative file on such matter.
- E. Once notice has been given to the Liaison of the possible occurrence of a Covered Offense, the matter shall be deemed transferred to the jurisdiction of the District Attorney, but the Pueblo Entities shall cooperate with and assist the District Attorney and State and local law enforcement agencies as requested in any further investigative or other functions with respect to the matter.

IV PROSECUTION

A. District Attorney Responsibilities

(1) Initial Determination - Reference to United States Attorney. As soon as practicable after receiving notice of a possible Covered Offense, the District Attorney, in consultation with the Pueblo Entities, shall determine whether the matter is one that should be referred to the United States Attorney for the District of New Mexico ("U.S. Attorney") for prosecution. If a decision is made to make such referral, the District Attorney shall provide written notice thereof to the Pueblo Entities as soon as practicable, but in no event later than ten (10) days after such referral occurs.

(2) Exercise of Prosecutorial Discretion. If the District Attorney

determines not to refer the matter to the U.S. Attorney, the District Attorney shall determine whether to prosecute the matter, and shall give written notice of such determination no later than thirty (30) days after the District Attorney first received notice of the matter from the Pueblo agency, unless additional time is required to conduct a sufficient investigation on which to base such decision, in which case the District Attorney shall notify the Pueblo Entities of the need for such additional time, and shall give the notice of the decision whether to prosecute within the additional time agreed to. In the event the District Attorney determines not to prosecute, copies of all investigative materials developed by the District Attorney, all evidence and other documents and things relevant to the case shall be returned by the District Attorney to the SAPD.

(3) District Attorney Reports. The District Attorney shall provide the Pueblo Entities with a written report within thirty (30) days after the end of each calendar quarter as to the status of each matter referred to the District Attorney pursuant to this MOU that was pending in the District Attorney's office at any time during that quarter.

B. Pueblo Responsibilities The Pueblo Entities shall cooperate with the relevant SLEA and the District Attorney in all matters relative to the investigation and prosecution of a Covered Offense. Where the District Attorney declines prosecution of a Covered Offense, the Pueblo shall thereafter determine whether to request prosecution by the State Attorney General or the U.S. Attorney.

V. PUEBLO'S PAYMENT OF COSTS FOR DISTRICT ATTORNEY RESOURCES

A. The District Attorney shall assign such personnel and other resources as he shall deem necessary to prosecute Covered Offenses referred to his office under the provisions of this

Agreement, and under any similar agreement with any other Pueblo, which resources constitute the District Attorney Resources. The parties agree that the annual cost of the District Attorney Resources is no less than one hundred seventy-five thousand dollars (\$175,000), and that that sum should be paid by the Indian tribes that have entered into agreements such as this one with the District Attorney, on an equal basis. The District Attorney shall annually provide the Pueblo with a report setting forth the costs incurred by the District Attorney to maintain the District Attorney Resources. In the event such costs exceed two hundred thousand dollars (\$200,000) in any year, the parties agree that they will renegotiate the amount of the Pueblo's payments hereunder (and the District Attorney agrees that he will renegotiate the payment requirements in any similar agreement with any other Indian tribe) so as to assure that such payments fully cover such costs.

B. Payments to the District Attorney by the Pueblo to cover the costs of the District Attorney Resources shall be made at the beginning of each calendar quarter, beginning with the first calendar quarter to begin after this Agreement is entered into. The amount of each such payment shall be \$43,750 (unless such amount is renegotiated, as set forth above), multiplied by a fraction whose numerator is one and whose denominator is the number of Indian tribes that have entered into agreement such as this one, pursuant to Section 10(E) of the Compact, with the District Attorney (including the Pueblo). Any payment not made within fifteen (15) days after the beginning of a calendar quarter shall bear interest at ten percent (10%) from the original due date until paid.

VI. GENERAL PROVISIONS

A. Review By Pueblo and District Attorney. Upon the request of either party, and at least annually, the Pueblo Entities and the District Attorney will meet to review the performance and

effectiveness of the MOU, and discuss matters of concern to either party.

B. Amendments. This agreement may be amended by written agreement of the Pueblo and the District Attorney.

C. Interpretation. This agreement is to be interpreted in such a manner as to be consistent with the provisions of the IGRA, the Compact, and the federal principles governing agreements with Indian tribes.

D. Dispute Resolution. In the event that a dispute arises between the District Attorney and the Pueblo over interpretation of, and performance under, this MOU, that the parties are unable to resolve themselves after good faith effort, the parties agree to undergo a mediated dispute resolution process, utilizing a mediator selected by the parties, or if the parties are unable to agree, by the chairperson of the New Mexico State Bar Committee on Alternative Methods of Dispute Resolution. In the event the mediated process fails, the parties shall use the Dispute Resolution provisions of the Compact to resolve the dispute.

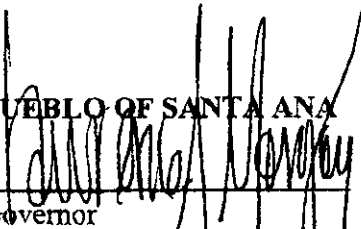
E. Effective Date. This MOU shall be effective upon its signing by the parties.

F. Applicability to Subsequent Compacts. In the event the State and the Pueblo enter into a new tribal-state class III gaming compact, replacing the Compact under which this Agreement is entered into, this Agreement shall continue uninterrupted, unless the terms or provisions of the new compact require a change in the terms of this Agreement, in which case the parties agree to negotiate such modifications to the terms hereof as may be required.

VII. TERM AND TERMINATION

A. Term. This Agreement shall have a term of one (1) year, but shall automatically renew for subsequent one-year terms unless terminated as set forth herein .

B. Termination. Either party may terminate this MOU at any time, upon thirty (30) days written notice to the other, except that no such termination shall affect the District Attorney's responsibility with respect to matters referred to the District Attorney's office, or the District Attorney's obligation to report to the Pueblo on all such matters as set forth in paragraph IV(A)(3), as long as any such matters remain pending, nor shall such termination affect the obligation of the Pueblo Entities to cooperate with the District Attorney on all such matters. In the event any such termination becomes effective after the beginning of a calendar quarter but before the midpoint of such quarter, the Pueblo shall be entitled to a refund by the District Attorney of an amount equal to one-half of the payment made by the Pueblo at the beginning of that quarter.

PUEBLO OF SANTA ANA

Governor

Date: 3/9/2000

STATE OF NEW MEXICO
OFFICE OF THE DISTRICT ATTORNEY
THIRTEENTH JUDICIAL DISTRICT


Michael Runnels, District Attorney

Date: March 9, 2000