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PUEBLO OF ACOMA
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**MEMORANDUM OF UNDERSTANDING
CONCERNING INVESTIGATION AND PROSECUTION OF
VIOLATIONS OF THE STATE OF NEW MEXICO GAMING LAWS
ON ACOMA PUEBLO LANDS BY
THE DISTRICT ATTORNEY FOR THE THIRTEENTH JUDICIAL DISTRICT**

This Memorandum of Understanding ("MOU") is made by the Pueblo of Acoma ("the Pueblo") and the District Attorney for the Thirteenth Judicial District of the State of New Mexico ("the District Attorney") and concerns the investigation and prosecution of violations of New Mexico Gaming Laws on Pueblo lands involving alleged violations by persons who are not members of the Pueblo.

I. RECITALS, PURPOSE AND GOALS

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

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

WHEREAS the State enacted into law a form of compact to be entered into with any Indian Tribes located within the boundaries of the State, pursuant to the Indian Gaming Regulatory Act, to conduct "Class III" gaming on tribal lands, N.M.S.A. 1978 §§11-13-1, et seq. (1997 Supp.);

WHEREAS the Pueblo and the State entered into a Compact pursuant to the provisions of the Indian Gaming Regulatory Act, 25 U.S.C. §§2701, et seq.;

WHEREAS the Indian Gaming Compact between the Pueblo and the State became effective on August 29, 1997;

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WHEREAS, the Section 23 of the IGRA, as codified at 18 U.S.C. §1166(d), an act of the United States' Congress, pursuant to its exclusive and plenary power over relations with Indian tribes, explicitly states, as to Class III gaming on tribal lands:

The United States shall have exclusive jurisdiction over criminal prosecutions of violations of State gambling laws that are made applicable under this section to Indian Country [state laws pertaining to the licensing, regulation or prohibition of gambling, including, but not limited to criminal sanctions applicable thereto], unless an Indian Tribe pursuant to a tribal state compact approved by the Secretary of the Interior under Section 11(d)(8) of the Indian Gaming Regulatory Act, or under any other provision of federal law, has consented to the transfer to the State of criminal jurisdiction with respect to gambling on lands of the Indian Tribe.

WHEREAS, Section 11 of the IGRA, as codified at 25 U.S.C.A. §2710 (d)(3)(C), establishes that the United States' Congress, pursuant to its exclusive and plenary power over relations with Indian tribes, explicitly intended for Indian tribes and States to be able to reach agreements, without requiring the participation of the appropriate United States Attorney, to modify exclusive federal prosecutorial and enforcement authority concerning the following:

- (i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity;
- (ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations; [and]
- (iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity.

WHEREAS, pursuant to Section 23 of the IGRA, Section 10 of the Compact between the Pueblo and the State provides, in part:

(B) The Tribe and the State hereby agree that, in the event of any violation of any State gambling law on Indian Lands or any other crime against the Gaming Enterprise or any employee thereof or that occurs on the premises of the Tribal Gaming Facility, that is committed by any person who is not a member of the Tribe, the State shall have and may exercise jurisdiction concurrent with that of the United States, to prosecute such person, under its laws and in its

courts.

(C) Immediately upon becoming aware of any such suspected crime by a nonmember of the Tribe, the Gaming Enterprise or the Tribal Gaming Agency shall notify the state attorney general and the district attorney for the district in which the Gaming Facility is located, supplying all particulars available to the tribal entity at the time. The Tribe agrees that its law enforcement and gaming agencies shall perform such additional investigation or take such other steps in furtherance of the investigation and prosecution of the violation as the district attorney may reasonably request, and otherwise cooperate fully with the district attorney and any state law enforcement agencies with respect to the matter, but once notice of a suspected violation has been given to the district attorney, the matter shall be deemed to be under the jurisdiction of the State (except that in the event of emergency circumstances involving a possible violation, the Tribe and its constituent agencies shall have the discretion to act as they see fit, and to call upon such other agencies or entities as they deem reasonable or necessary, in order to protect against any immediate threat to lives or property). The State may, in its discretion, refer the matter to federal authorities, but it shall notify the Tribal Gaming Agency upon doing so.

(D) * * * In the event the district attorney to whom a matter is referred under the provisions of this section decides not to prosecute such matter, the district attorney shall promptly notify the Tribal Gaming Agency of such decision in writing. The Tribal Gaming Agency may in that event ask the attorney general of the state to pursue the matter.

(E) * * * The district attorney for the district in which the Gaming Facility is situated may decline to accept referrals of cases under the provision of this section unless and until the Tribe has entered into a Memorandum of Understanding with the office of the district attorney * * * addressing such matters as the specific procedures by which cases are to be referred, participation of the Tribal Gaming Agency and payments by the Tribe to the office of the district attorney to defray the costs of handling cases referred under the provision of this section, and related matters.

WHEREAS the goal of this Memorandum of Understanding is to protect and provide for the

the public of the Pueblo and the State, through additional law enforcement on Acoma Pueblo lands;

NOW THEREFORE, the Pueblo and District Attorney, consistent with the provisions of the IGRA and in accordance with the laws of the State and the Pueblo, enter into this MOU which sets out written investigative and prosecutorial guidelines for violations of criminal laws of the State of New Mexico by persons other than members of the Pueblo that take place on Pueblo lands.

II. DEFINITIONS

- A. "Pueblo Gaming Agency" means the Pueblo of Acoma Gaming Commission.
- B. "Pueblo Gaming Enterprise" means the Sky City casino and any other gaming enterprise owned, operated and permitted by the Pueblo on the lands of the Pueblo.

III. INVESTIGATIONS

A. Responsibilities of the Pueblo

- (1) Pueblo Gaming Agency is initial lead agency for investigations.

The Pueblo Gaming Agency is primarily responsible for the investigation of all suspected violations of State gaming laws on Pueblo lands. Consistent with the provisions of the Gaming Compact between the Pueblo and the State, the Pueblo Gaming Agency, with the assistance of the Pueblo through its various governmental agencies and through federal governmental agents who act on behalf of the Pueblo, including, but not limited to the Bureau of Indian Affairs Southern Pueblos Agency, Laguna Pueblo Agency and Albuquerque Area Office Law Enforcement personnel, shall investigate all suspected violations of the relevant State laws taking place on Pueblo lands.

- (2) Pueblo Gaming Agency - Initial Investigation: Notification.

(a) An initial investigation shall be conducted to determine whether, under the terms of the Compact, and consistent with federal law, it appears that the case is appropriate for referral to the District Attorney for prosecution of an alleged violation.

(b) When it appears from the known facts that the District Attorney may prosecute the alleged violation under the terms of the compact, the Pueblo Gaming Agency shall provide written notice of the alleged violation and the suspected perpetrator to the Attorney General of the State and to the District Attorney. Written notice shall be given as soon as practicable, but no more than five working days after it appears that a suspected violation could be prosecuted by the District Attorney. In addition to written notice, oral notice shall be given to the District Attorney.

Oral notice should be given in person or by telephone to the person(s) designated by the District Attorney to be the liaison for enforcement of state gaming laws on Indian Lands.

(3) Pueblo Gaming Agency - Post Notification Investigation Activities;

(a) After notification to the District Attorney and the State Attorney General under the provisions of sub-paragraph III.A(2), the Pueblo Gaming Agency or other agency of the Pueblo which has been delegated the power to act on behalf of the Pueblo Gaming Agency shall coordinate investigative activities with the District Attorney and other law enforcement agencies as appropriate to facilitate the completion of the investigation at the direction of the District Attorney and effective prosecution of the suspected violation. Coordination shall include, but not be limited to, (1) determination of which investigative agency shall act as lead agency after completion of the initial investigation; and (2) status reports to the Pueblo Gaming Agency or its designee, the District Attorney, and where appropriate, the United States Attorney for the District of New Mexico.

(b) Where post-notification investigation causes the Pueblo Gaming Agency, with the District Attorney, to determine that additional violations have taken place and that only the Pueblo and/or the United States have authority to prosecute such violations, the Pueblo Gaming Agency shall, as soon as practicable, but within five working days, give written and oral notice to the Southern Pueblos Bureau of Indian Affairs Agency Law Enforcement, the Federal Bureau of Investigation and United States Attorney for the District of New Mexico.

B. District Attorney Responsibilities

(1) Scope of Prosecution. The District Attorney determines that the criminal laws of the State of New Mexico are within the subject matter of this MOU.

(2) District Attorney Liaison.

(a) Upon receiving Notification pursuant to sub-paragraph III.A(2), the District Attorney will designate one member of the staff to act as the liaison with the Pueblo for enforcement of state gaming laws (Liaison).

(b) The Liaison shall arrange a meeting with the Pueblo Gaming Agency as soon as practicable, but no later than five working days after receipt of either oral or written notification from the Pueblo Gaming Agency.

(c) The Liaison shall be responsible for providing to the Pueblo Gaming Agency all notice, whether oral or written, required under this MOU and the Compact.

(d) The Liaison shall be responsible for requesting investigative assistance from the Pueblo Gaming Agency and responding to Pueblo Gaming Agency requests for assistance as permitted by the Compact.

IV. PROSECUTION

A. District Attorney Responsibilities

(1) Initial Determination - Reference to United States Attorney. As soon as practicable after notification is received from the Pueblo Gaming Agency, the District Attorney, in consultation with the Pueblo Gaming Agency shall determine whether a suspected violation should be referred to the United States Attorney for the District of New Mexico for prosecution. The District Attorney shall provide notice of his decision to the Pueblo in writing prior to referring the suspected violation to the United States Attorney for prosecution.

(2) Exercise of Prosecutorial Discretion. If the District Attorney initially determines that reference to the United States is not appropriate, the District Attorney, after consultation with the Pueblo Gaming Agency, shall then determine whether to prosecute the suspected violation.

(a) Where the District Attorney declines to prosecute the suspected violation, he shall provide written notice to the Pueblo as soon as practicable, but in no event more than five working days, after making the decision to decline prosecution, oral notice shall be given as soon as practicable, but in no event more than seventy-two hours after the decision is made.

(b) Where the District Attorney decides to prosecute the suspected violation, he shall provide written notice to the Pueblo as soon as practicable, but in no event more than five working days, after making the decision to prosecute. Oral notice shall be given as soon as practicable, but in no event more than seventy-two hours after the decision is made. Thereafter the District Attorney staff shall become the lead agency for investigation of the suspected violation.

(3) State Reporting. The District Attorney shall be responsible for providing the Pueblo with a written and oral report within thirty days after the end of each fiscal quarter which sets out the status and disposition of each matter referred to the District Attorney pursuant to this MOU. The quarterly meetings will discuss matters of mutual interest, as well.

B. Pueblo Responsibilities

(1) Initial Determination. The Pueblo Gaming Agency shall cooperate with the District Attorney in determining whether a suspected violation should be referred to the United States for prosecution. Where the determination is made to refer the suspected violation for federal

prosecution, the Pueblo Gaming Agency shall notify the BIA Southern Pueblos Agency Law Enforcement of the referral, and meet with federal investigators to bring about an orderly transfer of any remaining investigative responsibilities.

(2) Prosecutorial Discretion. The Pueblo Gaming Agency shall cooperate with the District Attorney in determining whether he should prosecute the suspected violation. Where, after consultation, the District Attorney declines prosecution and provides written and oral notice to the Pueblo Gaming Agency, the Pueblo Gaming Agency shall thereafter determine whether to request prosecution by the State Attorney General or the United States Attorney for the District of New Mexico. Written notification of any such request will be provided to the District Attorney.

V. COSTS OF THE DISTRICT ATTORNEY

A. Pueblo Payments to the District Attorney.

(1) Pueblo contributions to actual costs of Prosecution. Except as provided in subparagraphs V(A)(2) below, in consideration for the District Attorney's agreement to prosecute violations of state criminal laws that impact the safety of the casino, its employees and the public as set out above, the Pueblo through the Pueblo Gaming Agency hereby agrees to pay to the District Attorney the total sum of ONE HUNDRED SEVENTY FIVE THOUSAND DOLLARS. Payment shall be made within twenty-five days of the beginning of each fiscal quarter. Quarterly payments shall be the sum of FORTY THREE THOUSAND SEVEN HUNDRED FIFTY dollars (\$ 43,750.00). The initial budget is attachment A to this MOU. The purpose of the payments made pursuant to this MOU are to fund a prosecution team consisting of an experienced attorney, an investigator, and a secretary, with necessary operating costs. Line items may be adjusted by the District Attorney, and reported at least quarterly to the Pueblo. The intent is for this prosecution unit to be funded by Pueblo payments. Extraordinary costs of litigation may be negotiated separately.

(2) When District Attorney has MOU with other pueblos. When the District Attorney enters into a MOU with another pueblo for the same purpose of this MOU, the payment set out in paragraph V(A)(1) shall be reduced to reflect the Pueblo's pro rata share of the District Attorney's actual costs of prosecution shown on Attachment A (budget). District Attorney shall consult with Pueblo Gaming Agency before signing a MOU on this subject with any other Pueblo.

B. District Attorney Accountability to the Pueblo.

(1) Funding of Liaison. It is the intent of the parties that the monies paid by the Pueblo to the District Attorney shall be used to fund the Liaison and necessary staff to assist the Liaison, and where necessary to cover additional expenses to the District Attorney's Office in prosecuting state law violations pursuant to this MOU.

(2) Financial reports and Pueblo choice. The District Attorney shall submit to the Pueblo verified statements of actual costs with supporting documentation on the twenty-fifth (25th) day of the month following the end of each calendar quarter. Within one month after the end of the District Attorney's fiscal year, the District Attorney shall provide to the Pueblo a statement of the actual costs incurred by the District Attorney in complying with this MOU. Where the payments made by the Pueblo exceed the actual costs, the Pueblo can elect to deduct the excess from any subsequent payment due to the District Attorney under the MOU or request return to the Pueblo of the amounts paid in excess of the District Attorney's actual costs. District Attorney will meet with Pueblo at least annually, in February.

(3) Inspection of Records. The Pueblo can inspect all records concerning expenditures incurred within the scope of this Agreement, during normal business hours, at any time.

VI. GENERAL PROVISIONS

A. **Review By Pueblo and District Attorney.** Upon the request of either party, and at least annually in February, the Pueblo and the District Attorney will meet to review the performance and effectiveness of this MOU, and discuss matters of concern to either party.

B. **Amendment.** This agreement may be amended by written agreement of the Pueblo, ^{and} the District Attorney, ~~and the State of New Mexico Department of Finance and Administration.~~ ML/RP

C. **Interpretation.** This agreement is to be interpreted in such a manner as to be consistent with the provisions of the Indian Gaming Regulatory Act, the New Mexico- Pueblo Gaming 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, the parties shall use the Dispute Resolution provisions of the State-Pueblo Gaming Compact to resolve the dispute.

F. **Emergencies.** Nothing in this MOU is intended to alter the power of the Pueblo, pursuant to its inherent power and the power recognized in the Pueblo by the State in the Compact Section 10(E), in emergency situations to act as the Pueblo sees fit, and to call on any other agency as reasonable and necessary to protect against harm to lives or property.

G. **Effective Date.** This MOU shall be effective upon its signing by the parties, ~~and approval by the New Mexico Department of Finance and Administration.~~ ML/RP

VII. TERM AND TERMINATION

A. **Start Date.** The term of this Agreement shall begin April 1, 1998 or on the effective

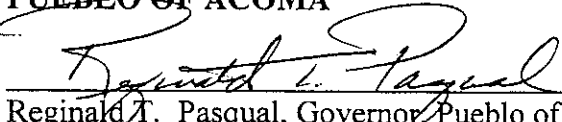
date provided in paragraph V.G. (above), whichever is later.

B. End Date, Extension Possible. This MOU has a one year term, ending March 31, 1999. It can be renewed, renegotiated, or revised as the PUEBLO and DISTRICT ATTORNEY agree together.

C. Pueblo Property. All property purchased with funds paid by the PUEBLO shall be the property of the PUEBLO. District Attorney shall create a list of all property purchased with MOU funds. All property purchased with MOU funds shall be returned to the Pueblo by District Attorney, upon request or at the end of the MOU, whichever happens later.

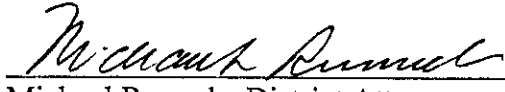
D. Unspent Funds. Pueblo funds unspent at the end of this MOU shall be returned to the Pueblo by the District Attorney.

PUEBLO OF ACOMA


Reginald T. Pasqual, Governor, Pueblo of Acoma

4/16/98
Date

**STATE OF NEW MEXICO
THIRTEENTH JUDICIAL DISTRICT**


Michael Runnels, District Attorney

April 14, 1998
Date

Note: The State of New Mexico, Department of Finance and Administration declined to review and/or sign this MOU. The Department of Finance and Administration (DFA) stated that it only reviewed documents labeled "Joint Powers Agreement", and not documents labeled Memorandum of Understanding (MOU).

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