

# CALIFORNIA INDIAN LEGAL SERVICES

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## MEMORANDUM

To:	Chairman Harvey Angle and Enterprise Tribal Council
From:	Jim Cohen
Subject:	Gaming update
Date:	March 7, 2003

This memorandum is to update Tribal Council on all issues relating to our economic development project - gaming land acquisition.

### HERE Agreement

Alan Waskin has agreed to the text changes discussed at the Council meeting February 16 and YCE will sign on to the agreement. Harvey has already signed this; I will send it on to the other parties for their signatures.

### Amendment to Memorandum of Agreement with YCE

Last month, Tribal Council authorized me to negotiate the amendment to our MOA with YCE for development and management of the gaming facility. The issues requiring re-negotiation were:

1. Clarify status of the \$50,000 paid to Roger Stone (*this has been agreed to*)
2. Architectural services **This requires a Council decision:** I discovered that Alan made a mistake to the Tribe's advantage when we negotiated our original MOA. He is now requesting that Council correct it. The MOA specifies that the Tribe is responsible for all payments to the architect "Following the Execution Date" (that is, February 6, 2002, when we signed the MOA). Alan did not tell me that at that time, YCE had already paid the architect some \$26,270 for the initial design drawings of the casino and hotel. YCE is now stuck paying for this unless Council agrees to forgive the error and add them to the Tribe's tab. My recommendation is to agree to this, since it was clearly work for the Tribe and a mistake by YCE. However, I also recommend we insist that YCE agree to a demand of ours, listed at number 6, below. If you agree to pay this additional money, the total architect's bill so far will be \$49,642.52.
3. Increasing the maximum that can be advanced to the Tribe for legal and other expenditures. We had projected \$150,000 as the new cap, but this should actually be raised higher because we are nearly at this amount with current CILS billings and the

\$20,000 pending reimbursement for Tribal Council expenses related to the fee to trust application. Also, the cap should be made to include the \$22,500 advanced to the Tribe during our negotiating period with YCE from September, 2001 through February, 2002. This should be included simply to make the accounting clearer – it's not a new charge to the Tribe. Alan and I are still working on a final figure for this item.

4. Tribe agrees to repay amounts paid to date by YCE, (for the political consultants, the environmental consultant, etc.), and requires YCE to get written approval from Tribe for new expenses from now on. Third party fees already paid and going on the Tribe's account will be listed on Exhibit A. At this time, this figure breaks down as follows:

Political Consultants:

Barnes Mosher Whitehurst Lauter:	\$222,716.78
Chesapeake Enterprises:	\$163,236.38
<u>Ross Consulting:</u>	<u>\$61,406.51</u>
Total:	\$447,359.67

Other:

AES (Environmental expert):	\$25,000.00
Marysville Elks Lodge	\$405.00

Please note that these figures represent amounts YCE has already paid. Current bills from each of the consultants are now awaiting payment, and I am waiting for totals from Alan to be inserted in the Amendment.

5. Commits YCE to advance money for any costs of the indemnity agreement with Yuba County. (*Agreed to*)
6. **Requires Council decision:** I also want to propose adding language to clarify that the Minimum Guaranteed Monthly Payment to the Tribe after the opening of the casino (which is \$100,000 per month – in case for whatever reason the casino does not do enough business to be bringing in a profit for the Tribe, this is essentially a loan that YCE will be obligated to make, giving the Tribe spending money •  
 each month during their management period) take precedence over the payments to the County. In other words, even if the casino doesn't perform well, you should receive the money and not have to pay your fee to the County out of it. I believe YCE will have to agree to this because NIGC may not approve the management agreement if they do not agree. However, I would rather get it agreed to now, before it becomes an issue. Please let me know if I have your approval to request this from YCE.

Political and Public Relations

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On Tuesday, I will be having a phone conference with Alan Waskin, Roger Stone and John Fluharty about our strategy. At this point, we are still being advised **not** to approach the governor, due to the Compact re-negotiations. Roger Stone will give us an update and advice on whether we should try to get language into a technical corrections bill being introduced in the Senate this spring which might allow us to bypass the governor altogether. I am working on possible language that would accomplish our goal without being a red flag as to the Tribe's plans, which might attract opposition from Congressman Herger. I also expect to be discussing the roles of the various consultants and their costs – Council has approved their current contracts through April 15, and it may be possible to save some of the money now being spent in the following months.

#### Negotiations with Bill Graham (Clear Channel Communications)

Alan has floated our idea about the lifting of the restriction on musical performances with the attorney for Clear Channel Communications, which bought out Bill Graham Entertainment. As you will recall, this is because there is a covenant on all land within the Sports and Entertainment Zone restricting the ability of landowners to hold musical performances for which tickets are sold. Clear Channel's response so far has been that they would be willing to lift the covenant in return for a contract with two main provisions:

- 1) maximum 1000 seat capacity
- 2) they be given the option to be the promoter for 30% of gross ticket sales

My suggestion at this point is that we respond by offering that they be given the option to be the promoter, for 30% of gross, only on concerts intended to seat **more than** 1000 people. We are unlikely to get this, but I think their terms at this point are too restrictive for the Tribe. While they are in litigation with YCE, we still should have some leverage. Please let me know if you are in agreement with taking this position.

#### Environmental Assessment

There was a delay with a sub-consultant, but the "final" draft should be at the printer's today, and I should have a copy next Tuesday. I will plan to read it closely, discuss it with Alan, and report to you. I do not expect to be through reviewing it before your meeting on Wednesday, but I will try, and I will let you know as soon as I get through it.

I hope this memorandum is helpful to you. Please do not hesitate to call me if I can answer any further questions, and please let me know what you decide on the action items as soon as you can.