

22-0778

AMENDMENT TO ESCROW AGREEMENT

This Amendment to Escrow Agreement ("Amendment"), dated September 6, 2022 ("Effective Date"), is entered into by and between Table Mountain Rancheria Band of Indians, a federally recognized sovereign Indian tribe ("Tribe"), the County of Fresno, a Political Subdivision of the State of California ("County") and Wells Fargo Bank, National Association ("Escrow Agent"). The Tribe, the County and the Escrow Agent are each a "Party" and are collectively the "Parties" to this Amendment. This Amendment amends that certain Escrow Agreement ("Agreement"), entered into on April 2, 2010 by the Parties.

RECITALS

A. The Parties entered into the Agreement on April 2, 2010, under which the Tribe would deposit the "Escrow Property" (as defined in the Agreement) with the Escrow Agent to ensure that the Tribe pays for the "Underground Work" (as defined in the Agreement) to be installed pursuant to the "Security Agreement" (as defined in the Agreement).

B. The Tribe represents that it deposited the Escrow Property in compliance with the Agreement, that it has completed the Underground Work in compliance with the terms of the Security Agreement, and that it is entitled under the "Separate Agreement" (as defined in the Agreement) to the return of the Escrow Property.

C. The Parties wish to amend the Agreement to include a provision allowing for the termination of the Agreement in circumstances where the Escrow Property has not been fully disbursed but is no longer needed by the County.

In exchange for the mutual promises expressed in this Amendment, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The following Section 1.6 shall be inserted following Section 1.5, entitled "Termination," of the Agreement:

Section 1.6. Termination With Remaining Escrow Property.

If the County, in its determination, gives the Escrow Agent and the Tribe notice that the Escrow Property is no longer needed by the County, then the Escrow Agent shall, within ten (10) business days of such notice having been provided (and after making any deduction for the payment of any tax liability under Section 1.4(c), herein, to the extent of any remaining Escrow Property) deliver to the Tribe the remaining Escrow Property, and any remaining investment earnings and income, or provide notice to the Applicant that there is no remaining Escrow Property due to deduction for the payment of any tax liability under Section 1.4(c), and then this Escrow Agreement shall then terminate and be of no further force and effect except that the provisions of Sections 1.4(c), 3.1 and 3.2 hereof shall survive such termination.

The County's notice to the Escrow Agent described in this Section 1.6 shall be substantially in the form provided by Exhibit E hereto and be subscribed by an officer identified in Exhibit B-3 hereto.


The Escrow Agent shall be entitled to conclusively rely on the County's notice to the Escrow Agent described in this Section 1.6 without further investigation.

2. Exhibit B-3, Certificate as to Authorized Signatures, a true and correct copy of which is attached to this Amendment, shall be attached to the Agreement.
3. Exhibit E, Form of Release, a true and correct copy of which is attached to this Amendment, shall be attached to the Agreement.
4. The Tribe represents and warrants to the County that it has completed the Underground Work in conformity with the terms of the Security Agreement and that it is entitled under the Separate Agreement to the return of the Escrow Property.
5. Based solely upon the Tribe's representations and warranties in section 2 of this Amendment, the County shall, within fifteen (15) business days of the Effective Date, provide notice pursuant to section 1.6 of the Escrow Agreement (as amended by this Amendment) to the Escrow Agent and the Tribe that the Escrow Property is no longer needed by the County. Upon such notice from the County that the Escrow Property (and any investment earnings and income) is no longer needed by the County, the Escrow Agent is hereby authorized and directed to release the Escrow Property (and any investment earnings and income) to the Tribe in accordance with the Tribe's wire instructions set forth in Section 6 of this Amendment.

Notwithstanding anything to the contrary in the Agreement or this Amendment, (i) the County's direction to the Escrow Agent relative to the disposition of the Escrow Property (and any investment earnings and income) under this Section 5 is not, and shall not be considered as, the County exercising any ownership interest in the Escrow Property (and any investment earnings and income), (ii) the County makes no representation, covenant, or warranty to the Escrow Agent or the Tribe as to such funds, and (iii) the County is not responsible for any deficiency concerning, or whether there are any claims that may be asserted by any third parties against, the Escrow Property (and any investment earnings and income).

6. The Tribe represents and warrants to the County and the Escrow Agent that the Tribe's wiring instructions are:

Receiving Bank: Wells Fargo Bank, N.A.
ABA#: 121000248
Wire Payee: Table Mountain Rancheria
Account No: 4087268223
Notify: ~~Dan Casas~~ Rosalyn Jamili
Email Address: ~~dcasas@tmr.org~~ rjamili@tmr.org
Memo: Escrow Funds from Underground Work


Dawn P. Lovell
Tribe of the Mountain People

7. Upon the Effective Date, the Agreement and this Amendment shall together constitute the Agreement. Unless expressly modified by the terms of this Amendment, all terms of the Agreement remain in full force and effect.

8. Each Party represents and warrants to the other Party that such Party is duly authorized and empowered to execute, enter into, and perform its obligations set forth in this Amendment, and that the individual signing this Amendment on behalf of such Party has been duly authorized to execute this Amendment on behalf of such Party, and will, by signing this Amendment on such Party's behalf, legally bind such Party to the terms, covenants, and conditions of this Amendment. Each Party further represents and warrants to the other Party that no other person or entity is required to give its approval or consent to this Amendment in order for such Party to authorize, enter into, and perform its obligations under this Amendment, or that if such approval or consent to this Amendment is required, that such approval or consent has been obtained.

IN WITNESS WHEREOF, the Parties hereby execute this Amendment as of the Effective Date.

TABLE MOUNTAIN RANCHERIA:

By: _____

Name: _____

Title: _____

WELLS FARGO BANK, N.A.:

By: Corey J. Dahlstrand

Name: Corey J. Dahlstrand
Assistant Vice President

Title: _____

COUNTY OF FRESNO:

By: Brian Pacheco
Brian Pacheco, Chairman of the Board of
Supervisors of the County of Fresno

ATTEST:

BERNICE E. SEIDEL, Clerk of the Board of
Supervisors, County of Fresno, State of California

By: Hannah
Deputy

8. Each Party represents and warrants to the other Party that such Party is duly authorized and empowered to execute, enter into, and perform its obligations set forth in this Amendment, and that the individual signing this Amendment on behalf of such Party has been duly authorized to execute this Amendment on behalf of such Party, and will, by signing this Amendment on such Party's behalf, legally bind such Party to the terms, covenants, and conditions of this Amendment. Each Party further represents and warrants to the other Party that no other person or entity is required to give its approval or consent to this Amendment in order for such Party to authorize, enter into, and perform its obligations under this Amendment, or that if such approval or consent to this Amendment is required, that such approval or consent has been obtained.

IN WITNESS WHEREOF, the Parties hereby execute this Amendment as of the Effective Date.

TABLE MOUNTAIN RANCHERIA:

By: 

Name: BRENDA D. LAVELL

Title: TABLE CHAIRMAN

WELLS FARGO BANK, N.A.:

By: _____

Name: _____

Title: _____

COUNTY OF FRESNO:

By: 

Brian Pacheco, Chairman of the Board of Supervisors of the County of Fresno

ATTEST:

BERNICE E. SEIDEL, Clerk of the Board of Supervisors, County of Fresno, State of California

By: 

Deputy

EXHIBIT B-3

Certificate as to Authorized Signatures

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of County and are authorized to provide notice under Section 1.6 of the Escrow Agreement, as revised by the Amendment to Escrow Agreement, on behalf of County.

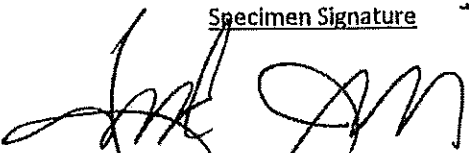

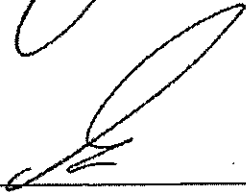
Name/Title	Specimen Signature
<u>BERNARD JIMENEZ</u>	
Name	Signature
<u>PLANNING & RESOURCE MANAGEMENT OFFICER</u>	
Title	
<u>Steve White</u>	
Name	Signature
<u>Dean Perry</u>	
Title	
N/A	N/A
Name	Signature
N/A	
Title	

EXHIBIT E

Form of Release

Date: _____

Pursuant to Section 1.6 of the Escrow Agreement, executed April 2, 2010 by and between the County of Fresno ("County"), Table Mountain Rancheria ("Tribe"), and Wells Fargo Bank, N.A. ("Escrow Agent"), as amended by the Amendment to Escrow Agreement executed on *[County to insert date of amendment]*, the County hereby notifies the Tribe and Escrow Agent that the County no longer needs the Escrow Property (as defined in the Escrow Agreement) held by the Escrow Agent.

The County has no objection to the return of the Escrow Property by the Escrow Agent to the Tribe in accordance with Section 1.6 of the Escrow Agreement, as amended by the Amendment to Escrow Agreement, and Sections 4 through 6 of the Amendment to Escrow Agreement.

TO:

Wells Fargo Bank, National Association
CTSO Mail Operations
600 South 4th Street 7th Floor
MAC: N9300-070
Minneapolis, MN 55415

Attention: Karen Kelly

BY:

County of Fresno

By _____

Name: _____

Title: _____

COPIES TO:

Table Mountain Rancheria
23736 Sky Harbour Road
P.O. Box 410
Friant, CA 93636

Attention: ~~Daniel Casas~~, Esq. Rosalyn Jamili, Esq.

Wanger Jones Helsley PC
265 E. River Park Circle, Suite 310
Fresno California 93720

Attention: Timothy Jones, Esq.

[SIGNATURE INSTRUCTIONS: Insert officer identified on Exhibit B-3.]

Handwritten signature: ROSALYN JAMILI
Handwritten signature: TIMOTHY JONES