

**AMENDED AND RESTATED
INTERGOVERNMENTAL MITIGATION
AGREEMENT**

This Amended and Restated Intergovernmental Mitigation Agreement (this “Agreement”) is made effective as of _____, 2023, by and between the County of Sonoma (the “County”), a political subdivision of the State of California, and the Federated Indians of Graton Rancheria (the “Tribe”), a federally recognized Indian tribe.

RECITALS

WHEREAS, the Tribe is comprised of Coast Miwok and Southern Pomo Indians whose aboriginal territory includes Sonoma and Marin Counties, California; and

WHEREAS, in 1966, the federal government terminated its relationship with the Tribe pursuant to the California Rancheria Act of 1958 (Pub. L. 88-453) and transferred title to the lands known as the Graton Rancheria into private ownership; and

WHEREAS, in 2000, Congress restored federal recognition to the Tribe pursuant to the Graton Rancheria Restoration Act (“Restoration Act”), Pub. L. 106-568; and

WHEREAS, the Restoration Act required the Secretary of the Interior (the “Secretary”) to take real property identified by the Tribe, and located in Marin or Sonoma County, into trust as the Tribe’s reservation; and

WHEREAS, on October 1, 2010, the Bureau of Indian Affairs of the United States Department of the Interior accepted land located within the County into trust on behalf of the Tribe as the Tribe’s reservation (“the Reservation”), on which the Tribe has developed the Graton Resort and Casino (the “Gaming Facility”), in which it conducts gaming activities as a means of promoting tribal economic development, self-sufficiency, and strong tribal government pursuant to the Indian Gaming Regulatory Act (“IGRA”); and

WHEREAS, on March 27, 2012, the Tribe and the State of California executed a Tribal-State compact for the conduct of class III gaming activities pursuant to IGRA (the “2012 Compact”), which compact was considered to have been approved by the Secretary, but only to the extent consistent with IGRA, on July 12, 2012; and

WHEREAS, on October 23, 2012, the Parties entered into an Intergovernmental Mitigation Agreement (“IMA”), as subsequently amended on December 31, 2019; and

WHEREAS, the IMA called for both recurring and non-recurring payments to the County to mitigate impacts of the Tribe’s Gaming Facility on the County via an account established pursuant to the 2012 Compact for the receipt of revenues paid by the Tribe (the “Graton Mitigation Fund”); and

WHEREAS, the Tribe has fulfilled its payment obligations under the IMA to date, and as of March 2023, the Tribe has paid approximately ninety million dollars (\$90,000,000) to the County through direct payments and the Graton Mitigation Fund for mitigation of off-reservation impacts of its Gaming Facility, payments for services rendered by the County, and for enrichment of the community and improvement of the environment; and

WHEREAS, the Tribe and the County have advanced a cooperative and mutually respectful government-to-government relationship; and

WHEREAS, the Tribe and the County are committed to the well-being of their community, which includes, for example, their shared concern about the impacts of global climate change and their intent to eventually achieve carbon neutrality with their respective activities; and

WHEREAS, the Tribe is committed to improving the environment, health, safety and general welfare of its citizens and of the surrounding community; and

WHEREAS, the Gaming Facility directly benefits from and relies on infrastructure development and maintenance and the robust provision of services within the County, particularly in the areas surrounding the Reservation; and

WHEREAS, the Tribe wishes to continue to provide adequate funding to the County to mitigate impacts of the Tribe's Gaming Facility and to continue enriching the social, educational and environmental conditions of the community; and

WHEREAS, the Tribe has negotiated and signed a new class III gaming compact with the State of California (the "2023 Compact") which has been duly ratified by the Legislature and signed by the Governor, and which, when approved by the Secretary of the Interior, will permit the Tribe to increase the number of class III gaming devices ("Gaming Devices") currently allowed up to 6,000; and

WHEREAS, the 2023 Compact was negotiated with the intent of conforming to recent case law, including *Chicken Ranch Rancheria of Me-Wuk Indians v. Cal.* (9th Cir. 2022) 42 F.4th 1024; and

WHEREAS, the 2023 Compact recognizes the need for the Tribe to retain sufficient revenues from its Gaming Activities to develop self-sufficiency, promote tribal economic development, and generate jobs and revenues to support the Tribe's governmental services and programs; and

WHEREAS, under the 2023 Compact, the Tribe has agreed to distribute at least two percent (2%) of the net win from the Gaming Devices operated at its Gaming Facility to local governments for mitigation of direct impacts of the Tribe's Gaming Facility; and

WHEREAS, the Tribe and the County desire to enter into an agreement to mitigate the off-

Reservation impacts of the Gaming Facility in a manner that comports with the 2023 Compact and to supersede and replace the previous IMA; and

WHEREAS, the Tribe, under its authority as a sovereign government, and the County, under its police power, in furtherance of their positive and mutually beneficial government-to-government relations desire to enter into an agreement to address the off-Reservation impacts of on-Reservation development, to fund necessary services and off-Reservation infrastructure that support on-Reservation development, and to fund the development and implementation of parks infrastructure and services to enhance the environment and natural beauty of Sonoma County that make it an attractive destination for Gaming Facility customers and support the general welfare of the public; and

WHEREAS, the Tribe intends to construct an expansion of its Gaming Facility (the “Expansion”), and in furtherance of such Expansion, has issued a Notice of Preparation and a Draft Tribal Environmental Impact Report (“Draft TEIR”) and solicited public comments; and

WHEREAS, the County has commented on the Draft TEIR for the Expansion and its comments have been addressed in the Tribe’s Final Environmental Impact Report (the “Final TEIR”); and

WHEREAS, the Final TEIR calls for measures to mitigate any significant off-Reservation impacts of the Expansion; and

WHEREAS, the County is satisfied with the mitigation measures called for in the Final TEIR; and

WHEREAS, the Tribe and the County desire to enter into an agreement to formalize the mitigation measures of the Final TEIR; and

WHEREAS, the County has determined, after a public meeting, that it is in the best interest of the County to enter into this Agreement; and

WHEREAS, the County does not have legal authority to deliberate on, approve, deny, or otherwise exercise judgment regarding the Gaming Facility or the Expansion on the Reservation; and

WHEREAS, the County is not deliberating on, approving, supporting, denying, or otherwise exercising judgment regarding the Gaming Facility or the Expansion by entering into this Agreement; and

WHEREAS, time is of the essence with respect to commencement of the Expansion, anticipated to occur as early as June 2023, which requires the prompt and timely approval of this Agreement so that no disruption of the Expansion will occur; and

WHEREAS, time is also of the essence with respect to negotiating this Agreement as it is desirable to maintain consistency with the 2023 Compact; and

WHEREAS, the County and Tribe are committed to continuing their efforts to maintain a

respectful, long-term government-to-government relationship by meeting and conferring in good faith on issues of concern regarding this Agreement.

NOW, THEREFORE, the Parties hereby agree as follows:

1. Definitions

As used in this Agreement, the following terms shall have the meanings specified below:

“2023 Compact” means the Tribal-State Gaming Compact Between the State and the Tribe governing the conduct of Gaming Activities on the Reservation pursuant to IGRA, as executed on March 1, 2023, by the Tribe and March 9, 2023, by the State, and ratified by the Legislature on May 11, 2023.

“Agreement” means this Amended and Restated Intergovernmental Mitigation Agreement, as the same may be amended by written agreement of the Parties from time to time.

“CEQA” means the California Environmental Quality Act, California Public Resources Code §§ 21000 *et seq.*, and any amendments thereto, and the regulations promulgated thereunder, as the same may be amended or modified from time to time.

“Community Benefit Contributions First Increase Date” means the first day of the first full quarter following the date the expanded casino floor is opened to the public and commences operations as part of the Expansion. The Tribe will provide notice to the County pursuant to section 16 of this Agreement when the Community Benefit Contributions First Increase Date has occurred. The Parties acknowledge the current timeline for construction of the expanded gaming floor is construction will commence in approximately June 2024 and will be completed approximately 16 months thereafter in approximately October 2025. This timeline is subject to change at the sole discretion of the Tribe.

“Community Benefit Contributions Second Increase Date” means the first day of the first full quarter following the date the new hotel wing is opened to the public and commences operations as part of the Expansion. The Tribe will provide notice to the County pursuant to section 16 of this Agreement when the Community Benefit Contributions Second Increase Date has occurred. The Parties acknowledge the current timeline for construction of the new hotel wing is construction will commence either concurrently with construction of the expanded gaming floor or after completion of the expanded gaming floor, and will be completed approximately 18 months thereafter. This timeline is subject to change at the sole discretion of the Tribe.

“County” means the County of Sonoma, California, a political subdivision of the State, and its departments and subdivisions.

“CPI Adjustment” means an annual increase from the dollar amount applicable to the previous year that is equal to the annual increase in the Consumer Price Index for all urban consumers in the San Francisco-Oakland-San Jose area.

“Expansion” means the expansion of the Gaming Facility, including an expanded gaming floor, new hotel wing, and theater, as more fully described in the Notice of Preparation published on or about April 4, 2022, and in the Final TEIR.

“Final TEIR” means the Final Tribal Environmental Impact Report for the Expansion published on or about May 8, 2023.

“Gaming Activities” means the class III gaming activities that the Tribe is authorized to operate under the 2023 Compact.

“Gaming Device” means any slot machine within the meaning of article IV, section 19, subdivision (f) of the California Constitution.

“Gaming Facility” means the Graton Resort & Casino and all references herein specifically include the Expansion as defined herein.

“IGRA” means the Indian Gaming Regulatory Act of 1988 (P.L. 100-497, 18 U.S.C. §§ 1166 *et seq.* and 25 U.S.C. §§ 2701 *et seq.*), and any amendments thereto, and the regulations promulgated thereunder, as the same may be amended or modified from time to time.

“IMA” means the Intergovernmental Mitigation Agreement (“IMA”) dated October 23, 2012, between the County and the Tribe, as amended on December 31, 2019.

“NIGC” means the National Indian Gaming Commission.

“Party” means the Tribe or the County.

“Parties” means the Tribe and the County.

“Payment Commencement Date” means the publication date of the Secretary’s approval of the 2023 Compact in the Federal Register pursuant to IGRA, 25 U.S.C. § 2710(d)(3)(B).

“Public Entity” means the federal government, the State, any county, city or district public authority or public agency and any related political subdivision or public corporation.

“Quarter” means any one of the following three-month periods: January through March, April through June, July through September, and October through December.

“Reservation” means those certain contiguous parcels totaling approximately 254 acres of land, approximately 249 acres of which are currently located within the unincorporated area of the County, as identified in the Final TEIR attached herein as Exhibit A, or any portion of such land, and which is held by the United States of America in trust for the Tribe.

“Secretary” means the Secretary of the United States Department of the Interior.

“State” means the State of California.

“Tribal Relations” means the services provided by the Office of County Counsel, County Administrator’s Office and other County departments, agencies and consultants to consult with the Tribe, to draft, manage, and implement this Agreement.

“Tribe” means the Federated Indians of Graton Rancheria, a federally recognized Indian tribe.

2. Recurring Mitigation Payments

Following the Payment Commencement Date, the Tribe shall pay the County fourteen million five hundred thousand dollars (\$14,500,000) per annum, in equal quarterly installments, to mitigate impacts of the Gaming Facility on the County, including, but not limited to, impacts upon the following:

- (a) Law, justice, public safety, Redwood Empire Dispatch Communication Authority (“REDCOM”), Tribal Relations, and data gathering;
- (b) Health, human services, and socioeconomic indicators, including costs to implement education, prevention, and treatment programs that address gambling addiction and problem gambling, substance abuse, mental health, elder abuse, domestic violence, and child abuse and neglect;
- (c) Traffic, affordable housing, greenhouse gases, and air quality, consistent with the development and mitigation fee payments that a commercial developer developing a similar project within an unincorporated area of the County would be required to pay prior to the issuance of a discretionary permit by the County;
- (d) Provision of fire and emergency services to the Gaming Facility;
- (e) Any crime impacts on the cities of Cotati, Petaluma, Santa Rosa, and Sebastopol;
- (f) Local road maintenance, Highway 101 and arterial and collector road improvements;
- (g) Groundwater, and funding for water conservation projects and the Santa Rosa Plain Groundwater Sustainability Agency; and
- (h) Tourism impacts and promotion, consistent with the transient occupancy taxes that would be paid by a hotel were it not located on land held in trust by the United States for an Indian tribe.

It is the understanding and expectation of the Parties that the payment set forth in this Section 2 is sufficient to cover all off-reservation impacts of the Gaming Facility and direct

services specifically listed in this Agreement that are provided by the County and related agencies to the Gaming Facility.

3. Recurring Community Benefit Contributions

(a) County Regional Parks Generally

Following the Payment Commencement Date, the Tribe shall initially make contributions of one million dollars (\$1,000,000) per annum, paid in equal quarterly installments, to the County for distribution to the County Regional Parks Department (“County Parks”), to expand and enhance public use and access to parks, conserve and protect environmental resources, preserve and protect cultural resources, sacred sites, and tribal cultural resources, and enhance public understanding of the historic and modern day role of local Native American tribes in managing the cultural and natural resources of the region. The funds may be used for the acquisition of additional park lands. Each year, prior to budgeting and expending these funds, County Parks will submit a spending plan to the Tribe for consultation and agreement. The Parties may establish an administrative process to guide such consultation. Any modifications throughout the year are subject to Tribal consultation and agreement. The amount of the Tribe’s per annum contribution to County Parks shall increase up to three million dollars (\$3,000,000) total according to the following schedule:

(i) Following the Community Benefit Contributions First Increase Date, the amount of the contribution for this section 3(a) shall increase to two million dollars (\$2,000,000) per annum, paid in equal quarterly installments.

(ii) Following the Community Benefit Contributions Second Increase Date, the amount of the contribution for this section 3(a) shall increase to three million dollars (\$3,000,000) per annum, paid in equal quarterly installments.

(b) Tolay Lake Regional Park

Following the Payment Commencement Date, the Tribe shall initially make contributions of one million dollars (\$1,000,000) per annum, paid in equal quarterly installments, to the County to fulfill the objectives and facilitate the co-management of Tolay Lake Regional Park as set forth in of the October 4, 2022 Agreement to Co-Manage Tolay Lake Regional Park Between the Federated Indians of Graton Rancheria and the County of Sonoma (“Co-Management Agreement”). County Parks shall consult and come to an agreement with the Tribe on the use of funds for the areas of engagement as outlined in the Co-Management Agreement. If less than the total contribution under this subsection is expended in a given year, the remainder may be used in accordance with subsection 3(a) or allowed to accrue in accordance with subsection 4(f). If for any reason the Co-Management Agreement is terminated by either the Tribe or the County, any requirement to provide funds for Tolay Lake Regional Park shall cease. The amount of the Tribe’s per annum contribution for Tolay Lake Regional Park shall increase up to two million dollars (\$2,000,000) total according to the following schedule:

(i) Following the Community Benefit Contributions First Increase Date, the

amount of the contribution for this section 3(b) shall increase to one million five hundred (\$1,500,000) per annum, paid in equal quarterly installments.

(ii) Following the Community Benefit Contributions Second Increase Date, the amount of the contribution for this section 3(b) shall increase to two million dollars (\$2,000,000) per annum, paid in equal quarterly installments.

(c) Agricultural Preservation and Open Space District

Following the Payment Commencement Date, the Tribe shall initially make contributions of one million dollars (\$1,000,000) per annum, paid in equal quarterly installments, to the County for distribution to the Sonoma County Agricultural Preservation and Open Space District (“District”), to create and manage park and open space preserves, to create and manage regenerative agriculture parks and farms, and to create an environmental and tribal cultural resources grant program. Each year, prior to budgeting and expending these funds, the District will submit a spending plan to the Tribe for consultation and agreement. The Parties may establish an administrative process to guide such consultation. Any modifications throughout the year are subject to Tribal consultation and agreement. The amount of the Tribe’s per annum contribution to the District shall increase up to two million dollars (\$2,000,000) total, according to the following schedule:

(i) Following the Community Benefit Contributions First Increase Date, the amount of the contribution for this section 3(c) shall increase to one million five hundred thousand dollars (\$1,500,000) per annum, paid in equal quarterly installments.

(ii) Following the Community Benefit Contributions Second Increase Date, the amount of the contribution for this section 3(c) shall increase to two million dollars (\$2,000,000) per annum, paid in equal quarterly installments.

4. Payment Terms

(a) Payment Schedule

The Tribe shall pay equal quarterly amounts to the County that total the payments referenced above within forty-five (45) days following the end of each Quarter in which Gaming Activities are conducted. If the Payment Commencement Date occurs during a Quarter, the first payment shall be due on the forty-fifth (45th) day following the end of the first full Quarter and shall cover the period from the Payment Commencement Date to the end of the first full Quarter. Increases in payments following the Community Benefit Contributions First and Second Increase Dates shall respectively commence with the payment to be made by the forty-fifth (45th) day following the end of the Quarter which began with the applicable Community Benefit Increase Date.

(b) Payment Schedule Transition.

Payment obligations pursuant to sections 2 and 3 of this Agreement shall begin to accrue upon the Payment Commencement Date. All payment obligations incurred by the Tribe under the IMA prior to the Payment Commencement Date (irrespective of the date those payments are due) shall continue to accrue and be paid to the County through the Graton Mitigation Fund in accordance with the IMA. Should the Payment Commencement Date occur during a Quarter, the Tribe's final payment obligations pursuant to the IMA for that Quarter shall be prorated to the Payment Commencement Date. If the State Gaming Agency fails to timely transmit the payments to the County, the Parties shall meet and confer and each Party shall pursue all individual and joint remedies to compel payment. Once amounts due under the IMA pursuant to this subsection have been paid, all payment obligations under the IMA shall be satisfied.

(c) CPI Adjustment

The recurring mitigation payment described in section 2 of this Agreement shall be increased annually by the CPI Adjustment, which shall utilize the April-to-April index and be effective on July 1 of each year following the Effective Date.

(d) Public Attribution

The County shall identify and publicly attribute mitigation measures and community benefit programs, projects, and grants funded and supported by the Tribe, including, but not limited to, in the County budget process and in signage and printed materials concerning such programs, projects, and grants.

(e) No Other Payments

The Parties intend for the payments and contributions referenced in sections 2 and 3 of this Agreement to constitute all of the payments which the Tribe shall make to all County Departments, agencies and subdivisions for purposes of this Agreement. Except as expressly set forth in sections 2 and 3, this Agreement does not require the Tribe, or any enterprise, affiliate or business entity of the Tribe, to make any payment or contribution to the County or any cities within the County for specific mitigation purposes that are not expressly set forth in this Agreement. This provision has no effect on any other payments to the County for other purposes.

(f) Fund balance

If payments made under section 2 or contributions made under section 3 are not fully expended within a given year, the funds may be allowed to accrue in the County's discretion for expenditures in subsequent years consistent with the relevant subsection, for example, large road improvement projects under section 2(f) or capital improvement projects at Tolay Lake Regional Park under section 3(b). Any fund balance that exists from mitigation payments or community benefit contributions under the IMA on the Payment Commencement Date may be consolidated with future payments and contributions and spent in accordance with section 2 and section 3 of this Agreement, respectively.

5. Term

(a) Effective Date

This Agreement shall not become effective unless and until the following events have occurred:

(i) this Agreement has been approved by the Board of Supervisors of the County, approved as to form by County Counsel and executed and delivered by the County; and

(ii) this Agreement has been approved by the Tribal Council and the General Council of the Tribe, approved as to form by outside legal counsel to the Tribe, and executed and delivered by the Tribe.

(b) Term of Agreement

Once effective, this Agreement shall be in full force and effect until the date the 2023 Compact, once effective pursuant to IGRA, expires or is terminated.

(c) Automatic Extensions

If the Tribe enters into a new tribal-state gaming compact or otherwise continues to operate the Gaming Facility, this Agreement shall be automatically extended to run for the period set forth in the new tribal-state gaming compact; provided, however, that, commencing not later than one hundred eighty (180) days prior to that date, the Parties shall meet, confer and renegotiate with respect to the provisions of this Agreement that provide for mitigation and community benefit payments made by the Tribe under this Agreement. If the Parties are unable to agree on amendments that maintain substantial mitigation of impacts and a comparable level of community benefits being provided at the time of the extension, including any terms that may have been renegotiated pursuant to section 7(a) or otherwise, the Parties shall institute the conflict resolution provisions contained in section 11 and, if unable to reach an agreement, an arbitrator shall determine the amount necessary to retain substantially the same overall level of support for mitigation and community benefits contemplated in this Agreement.

(d) Termination

Unless otherwise agreed by the Parties, this Agreement shall automatically terminate in the event, and on the date, that the Tribe permanently ceases the operation of Gaming Activities at the Gaming Facility.

6. Suspension Events

If, due to Force Majeure (as hereinafter defined), an act of God, valid business considerations or any other reason, the Gaming Activities previously conducted by the Tribe on the Reservation are completely suspended or terminated for a period of at least thirty (30) days, the Tribe's obligations to make annual payments and contributions pursuant to sections

2 and 3 of this Agreement shall be suspended until such time as the Gaming Activities are resumed. The period of obligations under the Agreement shall be extended for the time of any suspension. For the purposes of this section, the term “Force Majeure” shall include, without limitation, the following circumstances that result in complete suspension or termination of Gaming Activities: earthquake; flood; fire; other natural disasters; epidemic, pandemic, or public health orders requiring the closure of the Gaming Activities; changes in law, regulation or governmental policy; riots; war; or terrorism. Nothing in this section shall impact the Tribe’s liability for payments or contributions which became due and payable prior to the date such Gaming Activities are suspended or terminated. When a force majeure event occurs, the Tribe shall provide written notice within 72 hours of the event that performance of its obligations is prevented or delayed, and within 72 hours after Gaming Activities are resumed.

7. Renegotiation

(a) Renegotiation Events

The Tribe may request that the County renegotiate one or more of the provisions of this Agreement if there is a change in law, facts, or other unforeseen circumstances that fundamentally changes the Tribe’s financial assumptions made in entering into this Agreement and significantly adversely affects the Gaming Facility’s revenues. Nothing in this section requires the Tribe to wait until revenues have been adversely impacted before requesting renegotiation provided there is sufficient data and analysis, generated in accordance with industry standards, to project impacts to actual revenue with reasonable certainty. Such fundamental changes shall be deemed to include, but are in no way limited to, the following:

(i) Any change ending the exclusivity on the operation of class III gaming (as defined in IGRA) or the operation of Gaming Devices by federally recognized tribes in California that substantially affects the Gaming Facility’s financial projections and actual revenues by at least twenty-five percent (25%);

(ii) A substantial reduction in the scope of gaming permitted on the Reservation, whether pursuant to a change in federal, state or local constitutions, laws, rules or regulations, the 2023 Compact or otherwise;

(iii) The commencement of operations of a competing gaming facility or commencement of forms of gaming not currently permitted in California which substantially affects the Gaming Facility’s financial projections and actual revenues by at least twenty-five percent (25%);

(iv) Other market or economic conditions resulting in a decline in the Gaming Facility’s revenues by at least twenty-five percent (25%).

The County may request that the Tribe renegotiate one or more of the provisions of this Agreement if there is a change in law, facts, or other unforeseen circumstances that fundamentally changes the County’s financial assumptions made in entering into this Agreement, including

unanticipated significant adverse environmental impacts resulting from the Gaming Facility.

(b) Renegotiation Procedures and Principles

All requests to renegotiate or amend this Agreement shall be by written notice and shall include reference to the provisions of this Agreement to be renegotiated. Upon receipt of such notice, the Parties shall attempt to renegotiate this Agreement in good faith. The Parties shall confer promptly and determine a schedule for commencing negotiations within fifteen (15) days of the notice. Each Party is hereby authorized to designate the person or agency responsible for conducting the negotiations, and shall execute any documents necessary to confirm such authorization. The purpose of the negotiations will be to attempt to renegotiate the provisions of this Agreement in good faith so that the Parties retain substantially the same rights, levels of mitigation, and community benefits contemplated as of the date of this Agreement that also recognizes the facts and circumstances that led to the renegotiation. If the Parties are unable to renegotiate then either Party may trigger the dispute resolution provisions contained in section 11.

The Parties acknowledge and agree that the principal goals of federal Indian policy as expressed by the Congressional findings set forth in IGRA include providing a means of promoting tribal economic development, self-sufficiency and strong tribal governments (25 U.S.C. § 2701(4)). On the other hand, provision of benefits to the surrounding community above and beyond the costs of mitigation of any negative impacts of a gaming operation is a policy choice of the Tribe. Therefore, a principle of any negotiations under this section shall at all times be that while mitigation of any negative impacts of the Gaming Facility on the County is an obligation of the Tribe, the community benefit contributions of this Agreement depend on the Tribe's ability to make such contributions.

8. Expansion of Gaming Facility

(a) Agreement to Final TEIR

It is the intention of the Parties that this section 8 shall serve as an Intergovernmental Agreement between the Parties with regard to the Expansion as more fully described in the Notice of Preparation published on or about April 4, 2022, and in the Final TEIR. The County does not object to the Expansion. The Tribe agrees to implement the mitigation measures identified in the Final TEIR, which is attached hereto as Exhibit A and incorporated herein by reference.

(b) Waiver of 55-Day Wait Period

To the extent that Section 11.0 of the 2012 Compact, regarding off-reservation environmental and economic impacts, remains in effect and is valid and enforceable, which is not conceded by the Tribe, the Parties agree that the requirement of subsection 11.8.4 of the 2012

Compact, requiring that fifty-five (55) days have passed from the Tribe's certification and circulation of its Final TEIR before the completion of negotiations for an Intergovernmental Agreement, shall be and is hereby waived.

9. Trust Application

In keeping with Government Code § 54260 *et seq.*, which expresses the policy of the State of California to support tribal self-determination and self-government and to reduce barriers to access and acquisition of ancestral lands by tribes, the County and Tribe agree to meet and confer to attempt in good faith to resolve any potential concerns with trust applications submitted by the Tribe during the term of this Agreement and to use their respective best efforts to negotiate an intergovernmental agreement, if necessary. Notwithstanding this meet and confer process, the County reserves the right to submit comments to the federal government on a trust application and associated NEPA compliance.

10. Severability

Notwithstanding any provision of California law to the contrary, if any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable, this Agreement shall be construed and enforced as if such void, illegal, invalid, or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the void, illegal, invalid, or unenforceable provision or by its severance from this Agreement. Similarly, notwithstanding any provision of California, Federal or Tribal law to the contrary, if any provision of this Agreement requires the County, Tribe, or any other Public Entity to take any action which has not been taken in connection with the approval of this Agreement or otherwise, or subjects this Agreement to the referendum or initiative process under California law, this Agreement shall be construed and enforced as if such provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the applicable provision or by its severance from this Agreement. In the event that the entire Agreement is declared void, illegal, invalid, unenforceable or unauthorized, the Parties shall enter into good faith negotiations to negotiate a new agreement that maintains the expectation of each Party in entering into this Agreement. If any of the events referenced in this section occurs, the Parties shall endeavor in good faith negotiations to replace the applicable provisions with a substitute provision, the economic and other effects of which comes as close as possible to that of the provision which has been severed. Such negotiations shall be conducted pursuant to the provisions of section 7(b) of this Agreement.

11. Dispute Resolution Provisions

(a) Dispute Resolution

In an effort to foster good government-to-government relationships and to assure that the Tribe is not unreasonably prevented from exercising its sovereignty by engaging in gaming on the Reservation, and the County is able to ensure that the off-reservation impacts of the Gaming Facility are fully mitigated, the Parties agree to the dispute resolution procedures set forth in this section.

(b) Meet and Confer

The Parties shall make their best efforts to resolve claims arising under this Agreement by good faith negotiations whenever possible. Any such disputes between the Parties shall first be subjected to a process of meeting and conferring in good faith in order to foster a spirit of cooperation in the implementation of the terms of this Agreement as follows:

(i) A Party shall give the other Party, as soon as possible after the event giving rise to the dispute, written notice setting forth, with specificity, the claims of breach of this Agreement.

(ii) The Parties shall meet and confer in a good faith attempt to resolve such dispute through negotiation not later than 10 days after the receipt of notice, unless the Parties agree in writing to an extension of time.

(c) Mediation or Other Dispute Resolution

If such dispute is not resolved to the satisfaction of the Parties, the Parties may, by mutual agreement, pursue mediation or any other method of dispute resolution; provided, however, that no Party is under an obligation to agree to such mediation or other method of dispute resolution.

(d) Binding Arbitration

If such dispute is not resolved to the satisfaction of the Parties within thirty (30) calendar days after either the first meeting or after any other dispute resolution under subsection (c), or such other extended period as the Parties may agree in writing, then the Parties may seek to have the dispute resolved by binding arbitration in accordance with the following procedures:

(i) Upon the request of a Party in writing, the dispute shall be submitted to binding arbitration in accordance with this section.

(ii) The disputes to be submitted to arbitration shall be limited to claims arising under this Agreement, and which were subject to the meet and confer in section 11(b).

(iii) In the event there is any dispute as to whether a matter is subject to the arbitration provisions of this Agreement, or any dispute concerning the scope of the

matter or matters to be arbitrated, the disagreement as to whether the dispute is subject to the arbitration provisions of this Agreement or the scope of such arbitration shall be submitted to the arbitrator referenced in subsection (iv) of this section.

(iv) The arbitration shall be conducted before a single arbitrator in accordance with the JAMS Streamlined Arbitration Rules (or such other streamlined arbitration rules as the Parties may agree), as modified by the provisions of this Agreement. The arbitrator shall be a retired judge selected pursuant to the following terms:

The arbitrator shall be selected by the Parties. If at such time the Parties are unable to agree upon the selection of a single arbitrator, then each Party shall name one arbitrator and the two arbitrators thus selected shall select a third arbitrator who shall be a retired California Superior Court or United States District Court judge; provided, however, if either Party fails to select an arbitrator within fourteen (14) days of delivery of the request for arbitration, then the arbitrator selected by the other Party shall conduct the arbitration.

(v) The arbitration shall take place in Santa Rosa, California, or another location mutually agreed upon by the Parties.

(vi) The provisions of Section 1283.05 of the California Code of Civil Procedure shall apply; provided that no discovery authorized by that section may be conducted without leave of the arbitrator.

(vii) Each side shall bear its own costs, attorneys' fees, and one-half the costs and expenses of the arbitrator.

(viii) The decision of the arbitrator should be made within thirty (30) days of the arbitration. The decision shall be in writing and shall give reasons for the decision.

(e) Damages

The Parties agree that any monetary damages awarded or arising under this Agreement shall be exclusively limited to actual direct damages incurred based on obligations contained in this Agreement that have been demonstrated with substantial certainty and which do not, in any event, exceed the total amount of the annual financial contributions which the Tribe is required to make to the County under this Agreement. In no instance shall the Parties to this Agreement be entitled to special, incidental, indirect, consequential or punitive damages, lost profits or attorneys' fees. The Parties agree not to assert any claim for damages, injunctive, or other relief which is not consistent with the provisions of this Agreement.

(e) Confirmation of Awards

Any Party to an arbitration in which an award has been made pursuant to this section may petition the federal District Court for the Northern District of California or, if such Court declines jurisdiction, the State Superior Court for Sonoma County or any other court of competent jurisdiction to confirm the award, including any appellate proceedings. The Parties expressly consent to the jurisdiction of such Courts for the purpose of confirmation of such an award. An award shall be confirmed, provided that:

(i) The award is limited to the purposes of arbitration stated in this section.

(ii) No person or entity other than the Parties is a party to the action, unless failure to join a third party would deprive the court of jurisdiction; provided, however, that nothing herein shall be construed to constitute a waiver of the sovereign immunity of the Parties in respect to any such third party.

If an award is confirmed, judgment shall be entered in conformity with the award. The judgment so entered has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action, and may be enforced like any other judgment of the court in which it is entered.

(d) Intervention

Nothing in this Agreement shall be construed to constitute a waiver of the sovereign immunity of the Tribe or the County with respect to intervention by any additional party not deemed an indispensable party to the proceeding.

(e) Confidentiality

Unless otherwise agreed by the Parties, any dispute resolution meetings or communications, or mediation, shall be in the context of a settlement discussion to potential litigation and remain confidential to the extent not prohibited by applicable law.

12. Waiver of Sovereign Immunity

Pursuant to General Council Resolution No. 23-19, and subject to the provisions of this section, the Tribe expressly and irrevocably waives sovereign immunity (and any defenses based thereon) in favor of the County, but not as to any other person or entity, as to any dispute which specifically arises under this Agreement and not as to any other action, matters or disputes. The Tribe does not waive its sovereign immunity with respect to (i) actions by third parties, or (ii) disputes between the Tribe and the County which do not specifically arise under this Agreement. The Tribe further agrees that exhaustion of administrative remedies, including before any tribal court, shall not be required prior to proceeding to court action under section 11.

13. Representations and Warranties

Each Party represents, warrants and covenants to the other Party as follows:

(a) Authority

Such Party has the legal power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement.

(b) Due Authorization

The approval, execution, and delivery of this Agreement, and waiver of sovereign immunity, and the performance by such Party of its obligations under this Agreement, have been authorized by all requisite actions of such Party.

(c) Due Execution and Delivery

The persons executing this Agreement on behalf of such Party are duly authorized to execute and deliver this Agreement on behalf of such Party.

(d) Enforceability

This Agreement constitutes the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, and, once executed and delivered, cannot be invalidated pursuant to any subsequent action of the Board of Supervisors of the County or the Tribal Council or General Council of the Tribe, as applicable.

(e) No Conflict

The approval, execution, delivery and performance of this Agreement does not conflict with any other agreement to which such Party is a party and does not violate or require any action which has not been taken under any law, statute, rule, regulation, ordinance, general plan, tribal law, specific plan or court order or decree applicable to such Party.

(f) Waivers

A waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision operate as a waiver of such provision or of any other provisions.

14. No Submission to Jurisdiction

The Parties acknowledge and agree that this Agreement, except as otherwise specified, is not intended to constitute, and shall not be construed as constituting, a submission by the Tribe to the jurisdiction of (i) the County or any or any of its subdivisions, departments or courts, (ii) any of its or their respective officials, employees, inspectors or contractors, or (iii) any of its or their

respective laws, rules, regulations, ordinances, general plans, or specific plans.

15. Third Party Matters

This Agreement is not intended to, and shall not be construed to, create any right on the part of any third party to bring any action or otherwise enforce any of its terms.

16. Notice

All notices required by this Agreement shall be deemed to have been given when made in writing and delivered or mailed to the respective Parties and their representatives at their respective addresses as set forth below or such other addresses as they may provide to the other Party from time to time:

For the County:

County Counsel
Office of the Sonoma County Counsel
575 Administration Drive
Santa Rosa, CA 95403
ATTN: County Counsel
Telephone: (707) 565-2421
Fax: (707) 565-2624

With copies to:

County Administrator
575 Administration Drive
Santa Rosa, CA 95403
ATTN: County Administrator
Telephone: (707) 565-2431
Fax: (707) 565-3778

For the Tribe:

Federated Indians of Graton Rancheria
6400 Redwood Drive, Suite 300
Rohnert Park, CA 94928
ATTN: Chairperson
Telephone: (707) 566-2288
Fax: (707) 566-2291

With copies to:

Maier Pfeffer Kim Geary & Cohen, LLP

1970 Broadway, Suite 825
Oakland, CA 94612
ATTN: Bethany C. Sullivan, Esq.
Telephone: (510) 835-3020
Fax: (510) 835-3040

17. Governing Law

This Agreement shall be governed by, and construed in accordance with, the laws of the State of California.

18. Complete Agreement

This Agreement, including all recitals, together with all Exhibits, constitutes the entire agreement between the Parties and supersedes all prior negotiations, representations, drafts regarding this Agreement, whether written or oral, and the October 23, 2012 IMA as subsequently amended on December 31, 2019. In the event of a dispute between the Parties as to the language of this Agreement or any amendment to this Agreement or the construction or meaning of any term contained in this Agreement or any amendment to this Agreement, this Agreement or any amendment to this Agreement shall be deemed to have been drafted by the Parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against, or in favor of, either Party based on the preparation or negotiation of this Agreement or any amendment to this Agreement. The headings contained in this Agreement are for convenience of reference only and shall not affect this Agreement's construction or interpretation.

19. Binding Agreement

This Agreement is intended to be, and shall be construed to be, binding upon the Parties and all successors and successors-in-interest of each Party, including all officers, agents and employees, and, in the case of the County, future County Boards of Supervisors, and, in the case of the Tribe, future Tribal Councils or General Councils.

20. CEQA

(a) Nothing in this Agreement commits the County to any action which may result in physical changes to the environment. If and to the extent the County hereafter determines that it is required to comply with CEQA with respect to any "project" (as such term is defined in CEQA), the County fully intends to comply with CEQA at such time.

(b) Notwithstanding the above, if the County is sued for failure to comply with CEQA related to approval of this Agreement, the Tribe agrees to indemnify and defend the

County, including its officers, agents, and employees in any such third party actions. The County will vigorously defend any such actions and shall have the right to select its own counsel at local prevailing rates at the expense of the Tribe, but the Tribe shall have the right to review counsel fees and costs and to be informed as to the progress of the litigation.

21. Amendments

This Agreement may be modified or amended only by mutual and written agreement of the Parties.

22. Review by the Department of the Interior

- (a) The Parties do not intend for any provision of this Agreement to constitute an encumbrance of land under 25 U.S.C. § 81. Nonetheless, the Tribe shall submit this Agreement to the United States Department of the Interior for either: (i) approval pursuant to 25 U.S.C. § 81; or (ii) a written response that this Agreement does not require approval under 25 U.S.C. § 81. The Tribe shall undertake reasonable efforts, in consultation with the County, to secure approval or written response. The County, at its sole discretion, has the right to withdraw its support for the Agreement if it is not submitted to the Department of the Interior pursuant to this section within ten (10) days following the Effective Date. If the Department of the Interior determines that portions of this Agreement violate 25 U.S.C. § 81 or are otherwise invalid, the severability provisions set forth in section 10 of this Agreement shall govern.
- (b) If the Department of the Interior reviews and denies, in whole or in part, this Agreement pursuant to IGRA, the Parties may jointly seek reconsideration and/or file an appeal as necessary. Notwithstanding this provision, the Parties may in good faith renegotiate this Agreement to best meet their governmental objectives. If the Parties are unable to renegotiate then either Party may trigger the dispute resolution provisions contained in section 11.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY
LEFT BLANK]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the effective date set forth above.

COUNTY OF SONOMA, CALIFORNIA

Date: _____, 2023
By: _____
Supervisor Chris Coursey
Chair of the Board of Supervisors

APPROVED AS TO FORM BY COUNTY COUNSEL

Date: _____, 2023
By: _____
Robert Pittman, Esq.
County Counsel

FEDERATED INDIANS OF GRATON RANCHERIA

Date: _____, 2023
By: _____
Greg Sarris
Chairperson

APPROVED AS TO FORM BY LEGAL COUNSEL FOR THE TRIBE

Date: _____, 2023
By: _____
Bethany C. Sullivan, Esq.
Maier Pfeffer Kim Geary & Cohen, LLP