

**AGREEMENT TO CO-MANAGE TOLAY LAKE REGIONAL PARK BETWEEN THE  
FEDERATED INDIANS OF GRATON RANCHERIA  
AND THE COUNTY OF SONOMA**

This Agreement to Co-Manage the Tolay Lake Regional Park (this “Agreement”) is by and between the County of Sonoma (“County”) by and through the Sonoma County Regional Parks Department (“Regional Parks”) and the Federated Indians of Graton Rancheria (“Tribe”) (collectively “the Parties”).

**RECITALS**

**WHEREAS**, the Tribe is a sovereign nation and a federally recognized Indian Tribe, comprised of Coast Miwok and Southern Pomo peoples, whose cultural and ancestral territories include Marin and Sonoma Counties; and

**WHEREAS**, in 2000, Congress restored federal recognition to the Tribe, pursuant to the Graton Rancheria Restoration Act (Pub. L. 106-568, Title XIV, §1401, Dec. 27, 2000, 114 Stat. 2939). The Tribe is a sovereign nation with inherent powers of self-governance; and

**WHEREAS**, the County of Sonoma is a subdivision of the State of California; and

**WHEREAS**, Sonoma County Regional Parks is a department of the County; and

**WHEREAS**, the County owns Tolay Lake Regional Park (Tolay Park); which is operated by Regional Parks; and

**WHEREAS**, Tolay Park includes approximately 3,429 acres of land located off Cannon Lane via Lakeville Road near Petaluma, California; and

**WHEREAS**, the Tribe and Regional Parks have been working together since 2005 to develop protocols and procedures to protect cultural and tribal cultural resources and to promote awareness of the unique Native American tribal history associated with Tolay Park; and

**WHEREAS**, the Tribe and Regional Parks formalized interim protocols regarding communication and procedures for tribal monitoring and treatment of cultural resources within Tolay Park in a 2010 Memorandum of Understanding (2010 MOU); and

**WHEREAS**, the 2010 MOU remains valid pending the development and execution of an Historic Property Treatment Plan (HPTP) and implementing Memorandum of Agreement (Implementing MOA), which will supersede the 2010 MOU; and

**WHEREAS**, the HPTP and Implementing MOA, when completed will comply with Section 106 of the National Historic Preservation Act (NHPA). As the lead agency for the Master Plan, Regional Parks, is developing the Historic Properties Treatment Plan for Tolay Lake Regional Park, Sonoma County, California and Implementing MOA. The HPTP and Implementing

MOA will be completed in consultation with Tribe and Parks and the State Historic Preservation Officer (SHPO) will be notified of the completion of the HPTP and Implementing MOA. The HPTP and Implementing MOA will be used by the Parties when implementing this Agreement; and

**WHEREAS**, a Cultural Resources Management Plan (CRMP) is being developed for Tolay Park in accordance with the 2019 Interim Co-Management Agreement and this Agreement will be implemented consistent with the CRMP; and

**WHEREAS**, the 2011 Memorandum of Understanding between the County, as the lead agency, and the Tribe (2011 MOU) established a cooperating agency relationship, wherein the Parties agreed to work cooperatively to prepare a Master Plan and environmental review documents for Tolay Park; and

**WHEREAS**, the Master Plan and environmental documents were presented to the Sonoma County Planning Commission on August 16, 2018, and were approved by the Sonoma County Board of Supervisors on October 9, 2018; and

**WHEREAS**, the Master Plan was a collaborative effort between Regional Parks and the Tribe, includes the co-management of Tolay Park and provides recommendations for habitat restoration, preservation and protection of prehistoric cultural resources, recreational improvements, interpretation of the prehistoric, historic, and natural resources, and land and agricultural management policies; and

**WHEREAS**, on October 9, 2018, the Tribe and the County agreed, by amendment, to extend the 2011 MOU until October 9, 2019, to provide additional time to develop a co-management agreement; and

**WHEREAS**, on October 8, 2019, the Tribe and the County entered into an Interim Co-Management Agreement in order to (i) develop a long-term co-management agreement by and between the Tribe and Regional Parks for Tolay Park; (ii) provide for Regional Parks, as the lead agency, to develop the HPTP and adopt an Implementing MOA consistent with and required under Section 106 of the NHPA, and in coordination with the Tribe and the SHPO; (iii) protect and preserve historic sites, tribal cultural resources, sacred sites, and natural resources in Tolay Park through environmental and cultural protection, site stewardship, and education and interpretation; and (iv) designate staff and resources to implement the purpose identified in the Interim Co-Management Agreement; and

**WHEREAS**, the Interim Co-Management Agreement is in full force and effect until October 8, 2022; and

**WHEREAS**, the Parties agree the Tribe holds specialized knowledge and expertise, generally known as Traditional Ecological Knowledge (“TEK”) but is also referred to as “Indigenous TEK” and “tribal traditional knowledge”, all stemming from the Tribe’s long history and experience with the lands comprising Tolay Park and the resources therein; and

**WHEREAS**, since time immemorial, the Tribe has enjoyed a robust and active relationship with Tolay Park. The Parties acknowledge the cultural and religious significance the Tribe holds for Tolay Park. The Parties further acknowledge the Tribe’s historical and cultural connections to Tolay Park, its investment in protecting and preserving its cultural resources and heritage, and its singular expertise regarding important features, landscapes and places of Tolay Park; and

**WHEREAS**, consistent with its mission, Regional Parks preserves irreplaceable natural and cultural resources and offers opportunities for recreation and education to enhance the quality of life and well-being to Sonoma County’s residents and visitors; and

**WHEREAS**, the cultural legacy of the Tribe and the demonstrated commitment of the Parties to administer and manage Tolay Park in a manner that best preserves its natural and cultural attributes reflects the intent of the Parties to enter into a long-term co-management agreement for Tolay Park.

**NOW THEREFORE**, the Parties agree as follows:

## **AGREEMENT**

### **1. PURPOSE**

The purpose of this Agreement is to implement and facilitate co-management by and between the Parties. The Parties agree to work together in good faith to implement and advance the co-management of Tolay Park. This will include respectful collaboration and consultation as co-managers, that respects the Tribe’s status as a sovereign nation, and recognizes TEK as beneficial and influential in the co- management of Tolay Park. Co-management of Tolay Park includes but is not limited to, park operations and administration; cultural and natural resource management activities; land use and management activities; interpretation, education and community engagement programs; the Tribe’s access and use of Tolay Park resources; emergency response; and the development of projects of mutual interest.

### **2. SEPARATE GOVERNMENTS**

The Parties acknowledge that each is a separate governmental entity and that nothing in this Agreement shall be construed to diminish, enlarge, or change the scope of either Party’s governmental authority or jurisdiction.

### **3. TERM**

This Agreement begins on the Effective Date and will be effective for a period of twenty years, commencing from the date of the last required signature, unless it is terminated earlier pursuant to Article 6. The Effective Date is the date of the last required signature to this Agreement.

### **4. REGULATORY CONTEXT**

A. This Agreement shall be implemented in a manner that is consistent with:

1. The Master Plan for Tolay Park approved on October 9, 2018;
2. The Historic Property Treatment Plan (HPTP) and the Memorandum of Agreement Implementing the HPTP for Tolay Park when finalized;
3. The Cultural Resource Management Plan (CRMP) for Tolay Park that will be developed upon completion of the HPTP.

B. The Parties agree Regional Parks and County are bound by certain applicable federal and state laws due to County ownership of Tolay Park.

## **5. LEADERSHIP AND ADMINISTRATION**

The Parties agree Tolay Park is a changing landscape which requires flexibility and adaptation by and between the Parties. The leadership and decision-making for co-management promotes, to the maximum extent feasible, reaching decisions cooperatively, with a recognition that consensus-based decision-making effectively promotes compromise and avoidance of disputes. The Tribe and Regional Parks may establish one or more advisory groups for the co-management of Tolay Park. The creation, composition, subject, purview, or duration of advisory groups shall not be subject to approval by the Board of Supervisors.

A. Tribe and County Leadership shall consist of:

1. For Federated Indians of Graton Rancheria: Chair, Federated Indians of Graton Rancheria Tribal Council
2. For Sonoma County Board of Supervisors: Chair, Board of Supervisors

B. Operations and Administration:

The Parties will ensure one or more staff in their respective governments and departments is designated to implement co-management of Tolay Park under this Agreement.

1. For the Federated Indians of Graton Rancheria:
  - a. Vice Chair, Federated Indians of Graton Rancheria, or a Tribal Council designee.
  - b. Tribal Heritage Preservation Officer
2. For Sonoma County Regional Parks:
  - a. Director
  - b. Deputy Director
  - c. Tolay Designated Ranger

## **6. AMENDMENT AND DISPUTE RESOLUTION**

A. This Agreement may be amended only by a written instrument executed by both Parties.

B. The Parties agree they shall attempt, in good faith, to resolve any dispute arising out of or relating to implementation of this Agreement without resort to administrative, judicial, or other formal dispute resolution procedures. The purposes of this section is to provide the Parties an opportunity to discuss and resolve disputes fully and candidly without the expense, risk, and delay of formal dispute resolution.

1. Meet and Confer. The Parties shall make best efforts to resolve any concerns or disputes that may arise under this Agreement on an informal basis. In the event a dispute over material non-compliance with the Agreement has not been resolved through informal dispute resolution, the affected Party may seek meet and confer in good faith to resolve the dispute as follows:

- a. 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 dispute.
- b. The Parties shall meet and confer in a good faith attempt to resolve the dispute not later than 10 days after receipt of notice, unless the Parties agree in writing to an extension of time.
- c. Any noticed meet and confer will include the Tribal Council Vice Chair, Regional Parks Director, and other participants as designated by the Tribal Council Vice Chair and Regional Parks Director.

2. If the Parties are unable to resolve the dispute through meet and confer, then the dispute shall be elevated to the Tribal Council Chair and the Board of Supervisors Chair who will confer and have authority to resolve the dispute in accordance with the regulatory framework identified in Section 4.

3. Confidentiality. Unless otherwise agreed by the Parties, the Parties agree that any dispute resolution meetings, meet and confer meetings, communications, or agreements relating to any dispute shall be and will remain confidential among the Parties.

## **7. AREAS OF ENGAGEMENT**

Ongoing operations and administration, public programs and strategic Tolay Park planning are of interest to the Tribe and Regional Parks. The co-management of Tolay Park is an essential strategy for the successful stewardship of the Tribe's ancestral territory and the heritage resources contained therein. The Parties agree the following areas of engagement will serve as the foundation for co-management under this Agreement, consistent with the purpose of this Agreement.

### **A. Access and Use of Park Resources.**

1. Within the constraints of legal authority and its duty to protect park resources, Regional Parks will co-manage with the Tribe to provide access to park resources and places that are essential for the continuation of traditional cultural or religious practices.
2. There may be occasions when Regional Parks provides access to, and the use of, park cultural and natural resources which would not ordinarily be available to members of the

public. This could include use of vehicles for Tribal staff and members in areas where vehicles are not ordinarily permitted, access to cultural and natural resources for activities related to traditional and ceremonial uses, religious practices, and Native American Graves Protection and Repatriation Act, 25 U.S.C. §3001, et. seq., and the California Native American Graves Protection and Repatriation Act, AB 978 (2001), AB 2836 (2018) and AB 275 (2020), related activities such as repatriation and reburial. Regional Parks will provide such access to and use of resources.

B. Cultural Resources Stewardship.

1. The Parties will actively engage in the co-management of activities related to the planning, research, and stewardship of cultural resources in Tolay Park.
2. Cultural resources, tribal cultural resources, and cultural landscapes will be defined and governed by the HPTP, Implementing MOA, and the CRMP. The ultimate treatment and disposition of cultural resources will be determined by the Tribe.
3. The Tribe will provide archeological or cultural monitoring whenever the Tribe recommends monitoring for an undertaking or project.
4. The Parties will designate properties eligible for listing in the National Register of Historic Places and prepare and file the necessary documentation to achieve the listing in the National Register of Historic Places.

C. Traditional Ecological Knowledge.

1. As the ancestral lands of the Tribe include the entirety of the Tolay Park, Regional Parks acknowledges the Tribe holds singular specialized knowledge stemming from their long history and experience with these lands and the resources therein. Regional Parks further acknowledges that such knowledge is critical for a comprehensive understanding of park lands, waters, lake, natural and cultural resources and to meet Tolay Park management objectives. Therefore, co-management using TEK is critical to ensure Tribal views and TEK are part of the management of Tolay Park lands and resources.
2. The health and vitality of the environment of Tolay Park plant and animal communities is of mutual interest to the Parties. To support the success of efforts to restore and support the resiliency of these resources, the Parties will engage in co-management using TEK.

D. Operations and Administration. The Parties commit to co-management for the operation and administration of Tolay Park.

1. This will include, but is not limited to, park administration, services, policy development, visitor access and use, training, permit issuance, maintenance, and coordination with employees, volunteers, and independent agencies and organizations, and related activities.
2. Co-management of the operation and administration of Tolay Park will include the planning, development, and infrastructure for Tolay Park which includes but is not limited to land management, fiscal administration and budgeting, long- and short- range planning, public outreach, design, use and construction of park facilities, and related activities.

E. Interpretation, Education, and Community Engagement.

1. Consistent with management policies, the Parties will co-manage in the planning, development, presentation, and operation of park interpretive programs and media.
2. Currently, interpretive tours and media related to the Tribe's history and culture within Tolay Park are being developed by the Parties. The Parties will engage in co-management to enhance and update existing interpretive programs and associated grounds and facilities and expand interpretation and education about the Tribe's history and culture into other areas of Tolay Park to convey a more rich and complex knowledge of the Tribe and its connection to Tolay Park.

F. Implementation and Agreements. Tribe and Regional Parks will jointly develop policies and procedures to co-manage the areas of engagement identified above, and to guide implementation and administration of this Agreement. The Parties recognize that co-management may also entail a variety of activities for which separate agreements may be desirable. Such agreements may include agreements for funding, grant opportunities, staffing, services, and procurement of goods, and shall conform to all applicable legal requirements.

G. Development of Projects of Mutual Interest. The Parties agree to collaborate in the preparation and review of project proposals of mutual interest that support the co-management areas of engagement and the purpose of this Agreement. The Parties will review project proposals submitted by the Tribe and Regional Parks and consider each project proposal in relation to the needs and objectives of Tolay Park, this Agreement, and the availability of funds. The Parties shall consider the availability of funds and necessary resources as part of project proposals.

## **8. DECLARED EMERGENCIES**

A. The Parties acknowledge that the Standardized Emergency Management System (SEMS) is the cornerstone of California's emergency response system and the fundamental structure for the response phase of emergency management. The Parties further acknowledge that the Incident Command System (ICS) is a standardized approach to incident management that allows coordination among various jurisdictions and agencies. The Parties agree that as soon as possible Parks Ranger or other official will notify the THPO or the THPO's designee of any known incident.

B. If an ICS is established on or near Tolay Park, and if Regional Parks is part of the unified command structure for the established ICS, as early as possible or as soon as conditions permit, Regional Parks will notify the Tribe's Tribal Heritage Preservation Officer (THPO) of the opportunity serve as an agency representative, with full authority to speak on behalf of the Tribe, to provide information to the agencies that are part of the unified command structure and to advise on the emergency response, and to transmit information from the unified command structure to tribal leadership.

## **9. CONFIDENTIALITY OF INFORMATION**

A. Confidentiality of Records. The Parties agree that maintaining the confidentiality of sensitive tribal ecological knowledge, information, and records is necessary for the protection of cultural resources at and effective co-management of Tolay Park. The Parties agree to work together to identify and protect confidential records from public disclosure to the maximum extent allowed under applicable law. Confidential records include, but are not limited to, information acquired in confidence by the County from the Tribe to protect cultural resources and tribal cultural resources in the furtherance of this Agreement. Confidential records do not include information that is otherwise available from public sources.

B. Applicable Laws. The County, but not the Tribe, is subject to the California Public Records Act (PRA) (California Government Code Section 6250 et seq.) The Parties acknowledge that the California Legislature has recognized the strong public policy interest in maintaining the confidentiality of information associated with tribal cultural resources in order to ensure those resources remain protected. Archeological site information and reports, records of Native American graves, cemeteries, and sacred places, and records of Native American places, features, and objects described in Sections 5097.9 and 5097.993 of the California Public Resources Code are exempt from disclosure under the California Public Records Act. (Cal. Gov. Code § 6254(r); §6254.10.) Additionally, other laws exist to protect sensitive tribal and cultural resources, which may be applicable, including, but not limited to: the federal Archaeological Resources Protection Act (16 USC 470hh); the federal Native American Graves and Repatriation Act of 1990 (25 USC 3001-3013); the federal National Historic Preservation Act (54 USC 307103); the California Native American Graves Protection and Repatriation Act of 2001 (California Health and Safety Code Section 8010 et seq.); and the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.)

C. Notice. The County shall promptly provide the Tribe notice of any Public Records Act request related to this Agreement that may involve the release of potentially confidential information received from the Tribe and afford the Tribe, within the time limits allowed under the Public Records Act, an opportunity to seek an injunction by the Court against any public disclosure of records.

## **10. TERMINATION OF THIS AGREEMENT**

This Agreement may be terminated upon thirty (30) days written notice to the Party. In the event that one Party provides notice of its intention to terminate, the Parties will meet promptly to discuss the reasons for the notice and try to resolve their differences, pursuant to Section B of Article 6, unless the Parties have already met pursuant to Section B concerning the matter giving rise to the intent to terminate. Such termination shall not affect obligations made consistent with this Agreement that have a date certain for completion or which may not be terminated immediately. In such case, the Parties shall set forth the date of termination for such obligations in order to complete said obligations.



## 11. TERMINATION OF OTHER AGREEMENTS

- A. The Parties confirm their intent that the 2010 MOU for the Tolay Interim Plan will be terminated as of the date of the last required signature for both the HPTP and Implementing MOA.
- B. The Parties agree that the 2019 Interim Co-Management Agreement is terminated as of the Effective Date of this Agreement.
- C. The Parties agree that this Agreement will be implemented consistent with the CRMP, as developed, pursuant to the 2019 Interim Co-Management Agreement.

## 12. NOTICES

Notices required under this Agreement shall be provided in writing, by electronic mail or Federal Express, with required tracking, as follows:

For the Tribe: Greg Sarris, Chair  
Federated Indians of Graton Rancheria  
6400 Redwood Drive, Suite 300  
Rohnert Park, CA 94928  
(707) 566-2288

For the County: James Gore, Chair (Or Current Chair)  
Board of Supervisors  
575 Administration Drive, Room 100 A  
Santa Rosa, CA 95403  
(707) 565-2241

For Regional Parks: Bert Whitaker, Director  
Sonoma County Regional Parks  
2300 County Center Drive, Suite 120A  
Santa Rosa, CA 95403  
(707) 565-2041

Copies of any notices shall also be sent to:

For the Tribe: Maureen Geary, Attorney  
Maier Pfeffer Kim Geary & Cohen LLP  
90 South E Street, Suite 320  
Santa Rosa, CA 95404  
(707) 238-4630

For the County and  
Regional Parks: Jennifer Klein, Chief Deputy County Counsel  
Office of County Counsel  
575 Administration Drive, Room 105-A  
Santa Rosa, CA 95403

**13. NO CREATION OF RIGHTS; NO WAIVER OF SOVEREIGN IMMUNITY**

A. 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.

B. This Agreement is not intended to, nor does it create any rights, obligations, benefits or trust responsibilities, substantive or procedural, enforceable at law or equity, by a party against either party or its operating divisions, its officers, or any person. Nor should the Parties construe this Agreement to create any private right to judicial review involving compliance or noncompliance with the terms to this Agreement.

C. Nothing in this Agreement shall waive or be interpreted to waive the Tribe's sovereign immunity or that of Tribal officials, employees, and agents acting within the scope of their duties from unconsented suit.

**14. MISCELLANEOUS TERMS**

A. Representations and Warranties. Each Party hereby represents, warrants and covenants to the other Party as follows:

(a) Authority. Each Party has the legal power and authority to execute this Agreement.

(b) 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, specific plan or court order or decree applicable to such Party.

B. CEQA Review. The Parties' approving, executing, and performing this Agreement, currently and in the future, are not activities that, within the meaning of CEQA constitute a project because they do not, on the whole, have any potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The co-management activities contemplated in this agreement are limited to administrative, organizational, and general policy and procedure making activities of governments that will not result in direct or indirect physical changes in the environment, and do not involve a commitment to any project which may result in potentially significant physical impact on the environment. This Agreement does not involve the commitment to issue a lease, permit, license, certificate or other entitlement for use; nor develop, construct or improve any facilities or cause any other physical changes in the environment.

C. Binding Agreement. Except as provided in Section 13, 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.

D. Construction of Agreement. This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes all prior negotiations, representations, drafts or other agreements, whether written or oral, relating to the subject matter hereof. 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.

APPROVED:

<p>FEDERATED INDIANS OF THE GRATON RANCHERIA</p>	<p>COUNTY OF SONOMA</p>
<p>_____ By: Greg Sarris, Chair</p>	<p>_____ By: James Gore, Chair Sonoma County Board of Supervisors</p>
<p>_____ Date</p>	<p>_____ Date</p> <p>SONOMA COUNTY REGIONAL PARKS</p> <p>By: Bert Whitaker, Director Sonoma County Regional Parks</p> <p>_____ Date</p>

APPROVED AS TO FORM:

<p>FEDERATED INDIANS OF THE GRATON RANCHERIA</p> <hr/> <p>Maureen H. Geary Maier Pfeffer Kim Geary &amp; Cohen LLP</p> <hr/> <p>Date</p>	<p>COUNTY OF SONOMA</p> <hr/> <p>Jennifer Klein Chief Deputy County Counsel</p> <hr/> <p>Date</p>
--	---