

**INTERGOVERNMENTAL AGREEMENT REGARDING
FEDERATED INDIANS OF GRATON RANCHERIA
BACK OF HOUSE EXPANSION PROJECT**

This Intergovernmental Agreement regarding the Federated Indians of Graton Rancheria Back of House Expansion Project (the “Agreement”) is made effective as of the date of the last signature below, by and between the County of Sonoma, California, a political subdivision of the State of California (the “County”), and the Federated Indians of Graton Rancheria, a federally recognized Indian tribe (the “Tribe”) (collectively, the “Parties”).

RECITALS

WHEREAS, the Tribe owns and operates a Gaming Facility, Graton Resort and Casino, on its Reservation pursuant to the class III gaming compact (the “Compact”) between the Tribe and the State of California; and

WHEREAS, the Tribe wishes to move forward with an expansion of a portion of Graton Resort and Casino which is not open to the public (the “Back of House”) involving the demolition of approximately 3,000 square feet of existing Back of House space and the development of approximately 12,000 square feet of new Back of House space at the west side of the existing Gaming Facility (the “Project”); and

WHEREAS, on or about May 1, 2019, the Tribe issued a Notice of Preparation of a Tribal Environmental Impact Report (“TEIR”) for the Project pursuant to Section 11.8.2 of the Compact; and

WHEREAS, the Tribe completed a Draft TEIR for the Project, and submitted the Draft TEIR to the County on or about July 19, 2019, as required by Sections 11.8.1 and 11.8.3 of the Compact; and

WHEREAS, on or about September 18, 2019, the County submitted to the Tribe its comments to the Draft TEIR; and

WHEREAS, on or about September 18, 2019 the Tribe’s representative contacted the County’s legal counsel by email to invite the County to participate in negotiations toward an intergovernmental agreement regarding the Project, as required by Section 11.8.7(a) of the Compact; and

WHEREAS, on or about September 19, 2019, the Tribe submitted to the County the Final TEIR, which addressed the comments to the Draft TEIR submitted by the County and other commenters; and

WHEREAS, Section 11.8.7(a) of the Compact requires that, before the commencement of a Project, the Tribe shall enter into an enforceable written agreement with the County with respect to the timely mitigation of any significant effects of the Project on

the environment; and

WHEREAS, the parties intend that this Agreement will satisfy the intergovernmental agreement required under Section 11.8.7 of the Compact with regard to the Project and the Final TEIR; and

WHEREAS, the Parties further intend to advance a cooperative and mutually respectful government-to-government relationship with each other; and

NOW, THEREFORE, in consideration of the above and of the mutual promises herein contained, the sufficiency of which is acknowledged, the Parties hereby agree as follows:

1. Mitigation Measures. The Tribe hereby agrees to comply with all mitigation measures set forth in the Final TEIR for the Project. The County is satisfied that compliance by the Tribe with the mitigation measures set forth in the Final TEIR will adequately protect the off-reservation environment from any significant effects of the Project and hereby consents to the Project as described in the Final TEIR. The Parties agree that this Agreement shall satisfy the intergovernmental agreement required under Section 11.8.7 of the Compact with regard to the Project and the Final TEIR.

2. Mitigation Payment. The Tribe also agrees that in lieu of the impact fees that the County would have received were the Project developed on non-trust lands within the County's jurisdiction, the Tribe shall make a one-time mitigation payment of twenty thousand four hundred forty dollars (\$20,440) to the County, due within thirty (30) days of the Effective Date of this Agreement. This payment is intended to help the County maintain and improve public assets and services, such as roads, parks, and affordable housing, potentially impacted by new development.

3. Public Services. The Parties agree that other than provided for in the Section 2 Mitigation Payment, the Project is not expected to create any need for additional law enforcement, fire protection, emergency medical services, other public services, to have any effects on public safety, nor to create or increase any existing need for programs to address gambling addiction.

4. Effective Date. This Agreement shall become effective when the following events have occurred:

- 4.1 This Agreement has been approved by the Sonoma County Board of Supervisors, approved as to form by legal counsel for the County, and executed and delivered by the County; and
- 4.2 This Agreement has been approved by the Tribal Council and the General Council of the Tribe, approved as to form by outside legal counsel for the Tribe, and executed and delivered by the Tribe.

- 4.3 Approval of the Agreement is evidenced by a Resolution from each of the Parties and will be attached herein as Exhibits A and B.

5. Term. This Agreement shall remain in effect until modified or terminated by the mutual written consent of the Parties. Upon termination of this Agreement, the provisions of this Agreement shall be of no further force and effect and none of the provisions of this Agreement shall survive the termination.

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

- 6.1 **Authority.** Such Party has the legal power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement.
- 6.2 **Due Authorization.** The approval, execution, and delivery of this Agreement, and the performance by such Party of its obligations under this Agreement, have been authorized by all requisite actions of such Party.
- 6.3 **Due Execution and Delivery.** The persons executing this Agreement on behalf of such Party are duly authorized to execute and deliver this Agreement in the name of and on behalf of such Party.

7. 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 respective Sonoma County Board of Supervisors or the Tribal Council or General Council of the Tribe, as applicable.

8. Waiver of Sovereign Immunity. Pursuant to General Council Resolution #_____, attached hereto as Exhibit B, and subject to the provisions of Section 9, below, 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, (ii) disputes between the Tribe and the County that do not arise under this Agreement, or (iii) any award other than injunctive relief requiring compliance by the Tribe with the terms hereof. The Tribe further agrees that exhaustion of administrative remedies, including before any tribal court, other than as set forth in Section 9, below, shall not be required prior to proceeding to arbitration or court action hereunder.

9. Dispute Resolution.

- 9.1 **Effort to Resolve Dispute.** 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:

- 9.1.1 **Notice.** 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.
- 9.1.2 **Meet and Confer.** 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.
- 9.2 **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 informal attempt at dispute resolution 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:
 - 9.2.1 Upon the written request of a Party, the dispute shall be submitted to binding arbitration in accordance with this section.
 - 9.2.2 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 subsection 9.1 of this Agreement.
 - 9.2.3 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 9.2.4, below.
 - 9.2.4 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.
 - 9.2.5 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.
 - 9.2.6 The arbitration shall take place in Sonoma County or another location mutually agreed upon by the Parties.

9.2.7 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.

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

9.2.9 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.

9.3 Confirmation of Order. Any Party to an arbitration in which an order 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 order shall be confirmed, provided that:

9.3.1 The order is limited to the purposes of arbitration stated in this section.

9.3.2 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.

9.3.3 If an order is confirmed, judgment shall be entered in conformity with the order. 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.

9.4 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.

9.5 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.

10. 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.

11. CEQA Review. The Parties' approving, executing and performing this Agreement,

currently and in the future, are not activities that, within the meaning of CEQA: (a) are directly undertaken by the County or surrounding communities, (b) are supported, in whole or in part, through contracts, grants, subsidies loans or other forms of assistance by the County, or (c) involve the issuance of a lease, permit, license, certificate or other entitlement for use by the County. By approving, executing and performing this Agreement, the County has not, and is not, making any commitment to (a) issue a lease, permit, license, certificate or other entitlement for use; or (b) develop, construct or improve any facilities or cause any other physical changes in the environment.

12. Submission to Jurisdiction. The Parties acknowledge and agree that this Agreement 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, (ii) any of its respective officials, employees, inspectors or contractors, or (iii) any of its respective laws, rules, regulations, ordinances, general plans or specific plans. The payment of monies specified in section 2 of this Agreement does not set precedent and does not represent assertion by the County, nor acceptance by the Tribe, of jurisdiction by the County over development on the Tribe's reservation. It is the intent of this Agreement that the Parties do consent to the jurisdiction of an arbitrator or court, as provided for herein and in Exhibit B, in an action seeking relief for breach of this Agreement.

13. 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.

14. 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 of Sonoma:

County Administrator
575 Administration Drive
Santa Rosa, CA 95403
Attn: County Administrator
Telephone: (707) 565-2431
Facsimile: (707) 563-3778

With copies to:

County Counsel
Office of the Sonoma County Counsel
575 Administration Drive
Santa Rosa, CA 95403
Attn: Bruce Goldstein

Telephone: (707) 565-2421
Facsimile: (707) 565-2624

For the Tribe:

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

With copies to:

Maier Pfeffer Kim Geary & Cohen LLP
1970 Broadway, Suite 825
Oakland, CA 94612
Attn: James E. Cohen
Telephone: (310) 573-7809
Fax: (510) 835-3040

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

16. Construction of Agreement. This Agreement, together with all Exhibits hereto, 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.

17. 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.

18. 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, in the case of the County, future Boards of Supervisors, and, in the case of the Tribe, future Tribal Councils or General Councils. The County intends that its approval, execution, delivery and performance of this Agreement shall not be construed to be an express or implied enactment, adoption or amendment of any zoning ordinance, general plan, special plan or elements thereof.

19. Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single agreement.

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

COUNTY OF SONOMA

Date: _____

By: _____
David Rabbit
Chairman of the Board of Supervisors

APPROVED BY COUNTY COUNSEL FOR THE COUNTY

Date: _____

By: _____
Bruce Goldstein
County Counsel

FEDERATED INDIANS OF GRATON RANCHERIA

Date: _____

By: _____
Greg Sarris
Chairperson

APPROVED BY LEGAL COUNSEL FOR THE TRIBE

Date: _____

By: _____
James E. Cohen
Maier Pfeffer Kim Geary & Cohen, LLP