

# **APPENDIX E**

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*Memoranda of Understanding (MOU)*

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "MOU") is made this ~~14~~ day of October, 2003, by and between the City of Rohnert Park, California (the "City"), and the Federated Indians of the Graton Rancheria, a federally recognized Indian tribe listed in the Federal Register as Graton Rancheria, California (the "Tribe" and, together with the City, individually a "Party" and collectively the "Parties"). The capitalized terms not otherwise defined herein have the meaning set forth below.

RECITALS

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

WHEREAS, in 1920, the United States acquired a parcel of land in Sonoma County in trust for the benefit of the Tribe which became known as the Graton Rancheria; and

WHEREAS, in 1966, the United States terminated its government-to-government relationship with the Tribe pursuant to the California Rancheria Act of 1958 (Pub. L. 88-453) and distributed to private individuals the tribal reservation lands which it had held in trust for the benefit of the Tribe; and

WHEREAS, thereafter, the federal government's policy of terminating California Indian tribes and selling land held in trust for such tribes has been expressly repudiated by both Congress and the Executive Branch; and

WHEREAS, in 1997, the Advisory Council on California Indian Policy, which was established pursuant to federal statute (Pub. L. 102-416), issued a Final Report to Congress which concluded that the Tribe met the criteria for restoration and recommended that Congress immediately restore the Tribe; and

WHEREAS, in 2000, Congress restored the federal government's government-to-government relationship with the Tribe pursuant to the Restoration Act (as defined below); and

WHEREAS, since the disestablishment of the Graton Rancheria reservation and the dispersal of the lands located therein in the 1960s, the Tribe has been landless and in need of a reservation to conduct Tribal and economic development activities for the benefit of the Tribe and its members; and

WHEREAS, the legislative history of the Restoration Act confirms that the Tribe has historical and cultural ties to lands now encompassed within Marin and Sonoma Counties, and

WHEREAS, the Restoration Act provides that the Secretary of the Interior, on behalf of the Tribe, shall accept trust title to land in Marin County or Sonoma County, that such land shall be the Tribe's reservation, and that Marin and Sonoma Counties shall be the Tribe's designated "service area"; and

WHEREAS, after substantial consultation with the County of Sonoma, California, the Tribe has identified the Property as a site which would be suitable for the Tribe's replacement reservation, which Property is located adjacent to the boundaries of the City and within the unincorporated area of the County; and

WHEREAS, the Tribe intends to submit an application to the Secretary of the Interior requesting that the United States take title to the Property so that it will be held in trust for the benefit of the Tribe as part of the Tribe's Reservation, and further requesting that the Secretary of the Interior make the determination that, once held in trust, the Reservation shall be eligible for gaming as restored lands under Section 20(b)(1)(B)(iii) of the IGRA (as defined below); and

WHEREAS, the Tribe intends to use its Reservation for, among other things, operation of a gaming enterprise pursuant to the terms of IGRA; and

WHEREAS, the Tribe further intends to establish a cooperative and mutually respectful government-to-government relationship with the City with respect to impacts that may be associated with the Project and other governmental issues of mutual interest to the Parties; and

WHEREAS, the Tribe is committed to entering into a voluntary contractual arrangement with the City pursuant to which the Tribe agrees to make certain contributions and community investments to mitigate various impacts that may arise in connection with the Project; and

WHEREAS, the City recognizes and acknowledges that the Property is located outside the boundaries of the City and therefore the City has no authority to exercise jurisdiction over the Property, the Reservation or the Project; and

WHEREAS, the City recognizes that through the Restoration Act Congress has required the Secretary of the Interior to accept trust title to any land acquired by the Tribe in Marin or Sonoma Counties, and the City further recognizes that the Secretary's mandatory duty to acquire such trust title effectively eliminates the ability of the City to have an impact on the question of where the Tribe's Reservation or gaming facility will be located; and

WHEREAS, the City acknowledges that the Project does not require the issuance of any permit, license, certificate or other entitlement for use; and

WHEREAS, the City does not have legal authority to deliberate on, approve, disapprove, or otherwise exercise judgment regarding the Project; and

WHEREAS, the City is therefore not deliberating on, approving, disapproving or otherwise exercising judgment regarding the Project by entering into this MOU; and

WHEREAS, but for this MOU, the City would not otherwise receive contributions for potential impacts of the Project; and

WHEREAS, the City acknowledges that the contributions and investments to be made by the Tribe and the other covenants made by the Tribe as set forth in this MOU are intended to be sufficient to mitigate the impacts of the Project on the City and surrounding community; and

WHEREAS, the purpose of this MOU is to set forth the understandings of the Tribe and the City on the topics expressly set forth in this MOU.

NOW, THEREFORE, the Parties hereby agree as follows:

1. Definitions

The terms not defined elsewhere in this MOU shall have the following meanings:

"Construction Date" means the later of the date the Tribe closes a loan to obtain funds from a financial institution (other than Developer) to finance construction of the Project or commences vertical construction of the Project.

"County" means the County of Sonoma, California.

"CPI Adjustment" shall mean an annual increase from the dollar amount applicable to the previous year which is equal to the annual increase in the Consumer Price Index for all urban consumers in the San Francisco-Oakland-San Jose area.

"Developer" shall mean each or any of SC Sonoma Development, LLC, and SC Sonoma Management, LLC (which are both independent contractors of the Tribe) and their respective affiliates, successors and assigns (and use of the term "Developer" in this MOU in the singular shall be also deemed to include the plural).

"IGRA" means the Indian Gaming Regulatory Act of 1988 (25 U.S.C. §§ 2701 et seq.), and the regulations promulgated thereunder, as the same may be amended or modified from time to time.

"Mutual Aid Agreement" means (i) the California Master Mutual Aid Agreement, (ii) the Mutual Aid Agreement which the City has entered into with other fire

agencies to provide emergency response for designated areas or (iii) the Mutual Aid Agreement which the City has entered into with local agencies for law enforcement.

"NEPA" means the National Environmental Protection Act of 1970, as amended (42 U.S.C. §§ 4371 et seq.), and the regulations promulgated thereunder, as the same may be amended or modified from time to time.

"Net Revenues" means gross revenues less payments or deductions for operating expenses, loans and other deductions as defined in generally accepted accounting practices and principles.

"NIGC" means the National Indian Gaming Commission established pursuant to IGRA.

"Opening Date" means the date on which the Tribe commences gaming operations on the Reservation which are open to the public.

"Project" means the development, construction and operation on the Property or the Reservation of the gaming facility (and all rooms, buildings, and areas, including parking lots and walkways, a principal purpose of which rooms, buildings and areas is to serve the activities of the gaming facility) identified in the environmental impact statement referenced in Section 2(b).

"Property" means the certain parcel of land which is located adjacent to the Urban Growth Boundary of the City that exists on the date of this MOU and within the unincorporated area of the County and which is identified by the legal description set forth on Exhibit A hereto, or any portion of such land.

"Public Entity" means the State and any county, city, district, public authority, public agency and any other political subdivision or public corporation in the State, including, without limitation, the City, the County, the Rohnert Park Department of Public Safety, the Rincon Valley Fire District, and the Sonoma County Sheriff.

"Reservation" means, after the Trust Acquisition Date, that portion of the Property which is taken into trust by the Secretary for the benefit of the Tribe.

"Restoration Act" means the Graton Rancheria Restoration Act (Pub. L. 106-568, 25 U.S.C. § 1300n).

"Secretary" means the Secretary of the United States Department of the Interior.

"State" means the State of California.

"Tribal-State Gaming Compact" means a Tribal-State Gaming Compact entered into or to be entered into between the Tribe and the State pursuant to IGRA which

permits the Tribe to operate Class III (as defined in IGRA) gaming devices and to engage in other Class III gaming activities and which the State has executed into pursuant to its authority under the California Constitution or other applicable law.

“Trust Acquisition Date” means the date on which the deed to the Property has been conveyed to and executed by the Secretary or the Secretary’s authorized representative such that the Reservation is held in trust for the benefit of the Tribe and is eligible for gaming pursuant to the requirements of IGRA.

2. Environmental Review

(a) Completion of NEPA Review Process Prior to Land in Trust

Notwithstanding the fact that the Restoration Act does not require the Secretary of the Interior to conduct an environmental review under NEPA prior to accepting trust title to the Property, the Tribe shall not transfer title to the Property, or cause to have such title transferred, to the United States unless and until either (i) the Department of Interior has concluded an environmental review of the Project under NEPA in connection with acceptance by the Department of Interior of trust title to the Property, or (ii) the NIGC has conducted an environmental review of the Project under NEPA in connection with approval by the Chairman of the NIGC of a management contract between the Tribe and SC Sonoma Management, LLC (or its successors and assigns). However, nothing in this Section shall be construed to preclude the Tribe from commencing or advancing the process by which the Department of Interior accepts trust title to the Property or the Chairman of the NIGC approves such management contract.

(b) NIGC NEPA Review Process

The Tribe acknowledges that it has requested that the NIGC act as the lead agency in the NEPA review process and that the NIGC prepare an environmental impact statement as distinguished from an environmental assessment, as part of its NEPA review process. To the extent requested by the NIGC, the Tribe shall cooperate with the NIGC in its NEPA review process and to supply the NIGC with information in the possession of the Tribe which will facilitate the NIGC's efforts to comply with the NEPA review process. The Parties acknowledge that, assuming the NIGC acts as the lead agency and prepares an environmental impact statement, the NEPA review process will include the following: preparation and publication in the Federal Register of a Notice of Intent to prepare an environmental impact statement; identification of cooperating agencies, such as the Department of Interior; a scoping process to determine the scope and significant issues to be analyzed in the environmental impact statement; preparation of a draft environmental impact statement; issuance of the draft environmental impact statement for public review, a public comment period and public hearings; response to comments; preparation of a final environmental impact statement; issuance of a final environmental impact statement to the public; and issuance of a record of decision.

(c) Local Law Matters

The City acknowledges and agrees that:

(i) the City does not have authority or jurisdiction over the Property or the Reservation or gaming or other activities conducted thereon before or after the Trust Acquisition Date;

(ii) there is no approval, permit, license, certificate or other entitlement for use which the Tribe would be required to obtain from the City in connection with the Project or the Reservation prior to or after the Trust Acquisition Date;

(iii) neither the Project nor the Tribe's fee-to-trust application are subject to the California Environmental Quality Act or any City law, rule or regulation;

(iv) the Project and other developments on the Reservation are not subject to City environmental review, design, land use or land development ordinances, plans, manuals or standards;

(v) the City does not have legal authority to deliberate on, approve, disapprove, or otherwise exercise judgment regarding the Project; and

(vi) the City is not deliberating on, approving, disapproving or otherwise exercising judgment regarding the Project by entering into this MOU.

3. Mitigation and Impact Contributions

(a) Development Fee Contributions

Notwithstanding the fact that the Property is not located within the boundaries of the City and in order to mitigate potential impacts of the Project on the City, its staff and other resources, the Tribe shall contribute to the City, on or before the Construction Date, a one-time cash contribution of Two Million Six Hundred Sixty-Four Thousand Dollars (\$2,664,000) in lieu of the development and related fees which the City would otherwise receive for the development of a commercial project on the Property (as if the Property was located within the boundaries of the City). The amount of such contribution has been calculated based upon the City's standard development fees, capital outlay fund fees and traffic signalization fees multiplied by the number of square feet in the Project. This contribution is in lieu of development and related fees and does not constitute submission by the Tribe to the jurisdiction of the City, the County or any other Public Entity or any provision of their respective ordinances, regulations, codes or standards. The City acknowledges and agrees that the Tribe is not required to obtain any permit, license or

other approval from the City in connection with development or construction activities on the Property or the Reservation prior to or after the Trust Acquisition Date.

(b) Traffic Contributions

In order to mitigate potential impacts of the Project on transportation and traffic, the Tribe shall:

(i) contribute to the City contributions in such amounts (but not less than One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000)) as shall be sufficient to cover one half of the actual cost to the City to complete the widening of Wilfred Avenue from Highway 101 west to the City's urban growth boundary in accordance with the City's General Plan, which contributions shall be made by the Tribe in periodic installments after the Construction Date in accordance with a construction schedule to be mutually agreed upon by the City and the Tribe and which will enable the City to complete such construction prior to the Opening Date;

(ii) contribute to the City contributions in such amounts (but not less than Nine Hundred Thousand Dollars (\$900,000)) as shall be sufficient to cover the entire actual cost to the City to complete the widening of Rohnert Park Expressway from Rancho Verde to the west City limits in accordance with the City's General Plan, which contributions shall be made by the Tribe in periodic installments after the Construction Date in accordance with a construction schedule to be mutually agreed upon by the City and the Tribe which will enable the City to complete such construction prior to the Opening Date;

(iii) upon the request of the City, contribute to the City contributions in such amounts (but not less than Two Hundred Thousand Dollars (\$200,000)) as shall be sufficient to cover the entire actual cost to the City to install an on-demand activated traffic light at the entrance to the Rancho Verde Mobile Home;

(iv) contribute to the City contributions totaling Five Million Dollars (\$5,000,000) to pay toward the actual cost of construction of a new "minor arterial" crossing of Highway 101 (without interchange improvements) to connect State Farm Drive and Business Park Drive in accordance with the City's General Plan (provided, however, that, in the event the City is able to collect funds for such construction from developers or other sources, the City will return to the Tribe the amount of such contribution in excess of the Tribe's fair share of such costs), which contributions shall be made by the Tribe in periodic installments after the Construction Date in accordance with a construction schedule to be mutually agreed upon by the City and the Tribe which will enable the City to complete such construction prior to the Opening Date or as soon thereafter as possible (Upon completion of the traffic improvement specified in this clause (iv), the City will provide the Tribe with an accounting of the cost and a reconciliation of the Tribe's fair share of the traffic improvement. If the Tribe's fair share is less than the Tribe's contribution, the City shall reimburse the Tribe for the difference.



If the Tribe's fair share is greater than the Tribe's contribution, the Tribe shall make such additional contributions to the City);

(v) provide the Sonoma County Transportation Authority, CalTrans or the City with such information and other similar assistance as such Public Entities and the Tribe reasonably agree upon to facilitate their efforts to fast track the Wilfred Avenue/Golf Course interchange construction and Highway 101 widening from Wilfred Avenue to Old Redwood Highway, which assistance may include contributions by the Tribe to Sonoma County Transportation Authority, CalTrans or the City of the Tribe's fair share of the actual cost of design, approval and right-of-way acquisition for such improvements; and

(vi) hire a contractor (which contractor is a qualified traffic engineering firm independent of any contractor which may be hired by NIGC) to conduct a traffic engineering study, which study will identify significant (within the meaning of 40 Code of Federal Regulation 1508.27) off-Reservation impacts on traffic resulting from the Project and potential measures to mitigate such impacts.

(c) Fire Protection and Emergency Services Contributions

In order to mitigate potential impacts of the Project on fire protection and first responder services, the Tribe shall contribute to the City:

(i) contributions totaling Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000) to be used by the City solely for the purpose of constructing a new public safety building (including a two story training tower) on the west side of the City or at a location to be mutually agreed upon by the City and the Tribe, which such contributions shall be made after the Construction Date and on such dates as shall be sufficient to enable the City to construct such new building and have it staffed and operational prior to the Opening Date;

(ii) contributions totaling Three Hundred Fifty Thousand Dollars (\$350,000) to be used by the City solely for the purchase of a type one fire engine to be stationed at such new public safety building, which such contributions shall be made after the Construction Date and on such dates as shall be sufficient to enable the City to acquire the fire engine, which contribution shall be made at such time as shall enable the City to acquire such fire engine prior to the Opening Date; and

(iii) contribution not to exceed Seventy Five Thousand Dollars (\$75,000) to enable the City to, and which shall solely be used to, relocate or cause the relocation of the repeater system from the former Cusher's Stadium to the new public safety building.

The Parties agree that the foregoing amounts are sufficient to cover the cost to the City of constructing and equipping a new public safety building which is of sufficient size and

quality to mitigate potential impacts of the Project on City fire protection and first responder services.

(d) Law Enforcement Contributions

In order to mitigate potential impacts of the Project on law enforcement resources, the Tribe shall:

(i) contribute to the City a one time contribution of Four Hundred Ten Thousand Dollars (\$410,000) to be used by the City solely for the purchase of public safety vehicles, which such contribution shall be made at such time as shall enable the City to acquire such vehicles by the Opening Date;

(ii) contribute to the City Seven Hundred Thousand Dollars (\$700,000) on July 1, 2004, and an annual contribution thereafter of Five Hundred Thousand Dollars (\$500,000) to be used by the City to establish a neighborhood enforcement team ("NET") to combat gangs, illegal drug use and other criminal activity in the City and surrounding community. Notwithstanding the foregoing, in the event the Construction Date has not occurred by June 30, 2006, the Tribe shall have the right to suspend such contributions until the Construction Date.

The Parties agree that such amounts are sufficient to cover the estimated cost of the equipment and other capital improvements and other expenditures which the City deems to be necessary or appropriate for the City to mitigate potential impacts of the Project on City law enforcement services.

(e) Problem Gambling Contributions

In order to mitigate potential social impacts of the Project, the Tribe shall, commencing on the Opening Date, make an annual contribution in the amount of \$125,000 to an organization dedicated to the treatment and prevention of problem gambling or pathological gambling disorders and which is located within or providing services within the area to be served by the Project. The recipient organization shall be determined by mutual agreement of the Tribe and the City.

(f) Community Contributions and Investments

In order to make investments in the Rohnert Park schools, housing and general community and in order to mitigate potential impacts of the Project on the Rohnert Park schools, housing and general community, the Tribe shall make investments in and contributions to the Rohnert Park community as follows:

(i) Not later than thirty (30) days after the Opening Date, the Tribe will establish the "Graton Rancheria Educational Trust for Cotati-Rohnert Park USD" (the "Educational Trust") pursuant to the California non-profit law. The Tribe shall make an

annual contribution to the Educational Trust of One Million Dollars (\$1,000,000). The Educational Trust will be governed by a board of directors (the "Educational Trust Board") consisting of two members designated by the Tribe, two members designated by the Cotati-Rohnert Park Unified School District and one member chosen by the other four members. All decisions of the Educational Trust Board shall be made by a majority vote. The funds in the Educational Trust shall be used to provide block grants to support the instructional programs of the Cotati-Rohnert Park Unified School District and otherwise mitigate potential impacts of the Project.

(ii) Not later than thirty (30) days after the Opening Date, the Tribe shall establish the "Graton Rancheria Charitable Foundation for Rohnert Park" (the "Charitable Foundation") pursuant to the California non-profit law. The Tribe shall make an annual contribution to the Charitable Foundation of Two Million Dollars (\$2,000,000). The Charitable Foundation will be governed by a board of directors (the "Charitable Foundation Board") consisting of two members designated by the Tribe, two members designated by the City and one member chosen by the other four members. All decisions of the Charitable Foundation Board will be made by a majority vote. The funds in the Charitable Foundation will be invested in programs which benefit the City, such as those described in the Healthy Cities Program, or such other programs or activities as agreed upon by the Charitable Foundation Board. One Million Dollars (\$1,000,000) of such funds will be invested annually in programs or activities suggested by the City representatives on the Charitable Foundation Board and the remaining One Million Dollars (\$1,000,000) of such funds will be invested annually in programs or activities suggested by the Tribe's representatives on the Charitable Foundation Board. The funds in the Charitable Foundation shall be invested in projects which enhance the City or Sonoma State University or which otherwise mitigate the impacts of the Project.

(iii) The Tribe shall make an annual contribution to the City of One Million Dollars (\$1,000,000) to be used for neighborhood upgrade or workforce housing programs. The City alone will have the authority to determine the use and distribution of these funds.

(iv) The first payment of the contributions referenced in this Section will be made within 30 days of the Opening Date. Any contribution described in this Subsection, plus interest thereon at the prime lending rate of Bank of America, made by the Tribe prior to the Opening Date will be credited against the contributions referenced in this Section. All contributions described in this Subsection 3(f) will be increased annually by the CPI Adjustment.

(g) Waterway Contributions

In order to mitigate potential impacts of the Project on storm water drainage, the Tribe shall make an annual contribution of Fifty Thousand Dollars (\$50,000) to the City which contribution shall be used solely to address storm water drainage matters.

(h) Open Space Contributions

In order to mitigate the loss of open space and community separator areas associated with the development of the Project the Tribe shall, at the Tribe's election after consultation with the City and not later than six months after the Opening Date, either (i) contribute Two Million Seven Hundred Thousand Dollars (\$2,700,000) to be used by the City solely for the purpose of purchasing real property for use by the public (including by way of illustration and not limitation, a park), or (ii) purchase real property, subject to approval of the City, for use by the public, with a purchase price of not less than Two Million Seven Hundred Thousand Dollars (\$2,700,000) and donate it to the City.

(i) Mobile Home Park Contributions

In order to mitigate potential impacts of the Project on the Rancho Verde Mobile Home Park, the Tribe shall make contributions to the City after the Construction Date (i) up to a maximum of Seven Hundred Thousand Dollars (\$700,000) and at such times as shall enable the City to implement measures, to be mutually agreed upon by the City and the Tribe and completed prior to the Opening Date, to mitigate the preexisting storm water flooding problem at Rancho Verde and the Martin Avenue area and to mitigate any significant noise impacts at Rancho Verde identified in the NEPA review process.

(j) Supplemental Contributions

In order to mitigate additional potential impacts of the Project, the Tribe shall, commencing 30 days after the Opening Date, contribute to the City in twelve (12) equal monthly installments a contribution in lieu of taxes in the amount of Five Million Dollars (\$5,000,000) per annum. Such annual contribution shall thereafter be annually adjusted by the CPI Adjustment. The Parties agree such amount is sufficient to mitigate additional initial and continuing impacts of the Project which are not specifically identified or mitigated elsewhere in this MOU

4. Contribution Matters

(a) Use of Contributions

The City shall make good faith efforts to segregate and identify expenditures made with funds provided to the City under this MOU and to publicly attribute such expenditures to the Tribe. The City shall expend the contributions made by the Tribe under this MOU for the purposes identified in the applicable provisions of this MOU. Upon the mutual agreement of the Tribe and the City, the Tribe may make any of the contributions contemplated to be made by the Tribe pursuant to this Section to an escrow account established by the Tribe for the benefit of the City or other appropriate entity. In the event the City fails to expend contributions as contemplated by this Section or fails to complete any mitigation measures contemplated by this Section by any given date or ever,

such failure shall not constitute a breach of the MOU by the Tribe or justify or require any delay in any phase of the Project.

(b) Deductions

The Tribe may deduct from the next contribution which the Tribe would otherwise be required to make pursuant to Subsection 3(j) the following amounts:

(i) the amount of any money which the Tribe pays the City (or any Public Entity for roadway or impact improvements within the City) in excess of the amounts specifically set forth in Section 3 in order to mitigate the impact or adverse effects of the Project;

(ii) the amount of any money which the Tribe pays to any Public Entity, fund or other person or entity pursuant to the Tribal-State Gaming Compact or any agreement between the Tribe and any Public Entity which is designated for and distributed to the City and is available to be used by the City in the same manner as the contributions made by the Tribe under this MOU are available to be used by the City; and

(iii) the principal amounts of the contributions which the Tribe makes to the NET referenced in Subsection 3(d), plus interest on the principal amounts of such contributions at a rate of prime plus one per cent (1%) calculated from the date the contributions are made to the date contributions would otherwise have been made under Section 3(j), provided that deductions pursuant to this clause (iii) shall be made in equal installments over a three (3) year period.

(c) Contribution Payment Terms

Where contributions are to be made monthly, the Tribe shall make the contribution on the City's first business day of the month for the preceding month. Where contributions are to be made quarterly, the Tribe shall make the contribution on the City's first business day after the first day of January, April, July, and October for that calendar quarter. Where contributions are to be made annually, the Tribe will make the contribution on the City's first business day of July for that year. Where contributions are to be increased by the CPI Adjustment, such adjustment shall be made on the first business day of July of each year. The first contribution shall be prorated for the applicable monthly, quarterly or annual period. The first CPI Adjustment, if applicable, shall also be prorated for the initial annual period. Unless otherwise specified, the first contribution shall be made thirty (30) days after the Opening Date. In the event the Construction Date or the Opening Date does not occur for any reasons, contributions payable after the Construction Date or the Opening Date, as the case may be, shall not be due.

(d) No Other Payments

Except as is expressly set forth in Sections 3 and 4 hereof, the Tribe shall not be required pursuant to this MOU or otherwise:

(i) to make any payments, reimbursements, contributions or investment to or on behalf of the City, County or any other Public Entity for any taxes, fees, assessments, charges, services or utilization of staff resources, including, without limitation, any property taxes, sales taxes, processing fees, development fees, building permit fees, construction tax, utility taxes, motor vehicle license fees, ad valorem tax or other payments for fire, emergency medical, law enforcement, water, wastewater, waste disposal or other services, or utilization of staff resources;

(ii) to pay the City, the County or any other Public Entity or any charitable organization or trust any other contributions or payments in mitigation of any environmental or other impacts of the Project or any other developments on the Reservation; or

(iii) acquire rights to any real property, or grant or transfer to the City, the County, any other Public Entity, any charitable organization or trust, or any other person or entity any rights to any real property, place, or conservation or other easement on any real property, or otherwise agree to forgo any rights with respect to any real property.

5. Additional Tribal Covenants

(a) General Infrastructure and Related Services

In order to mitigate potential impacts of the Project on City infrastructure resources, the Parties acknowledge and agree that the Tribe has not requested the City to extend any infrastructure or provide any services to the Tribe. In the event the Tribe were to request that the City provide infrastructure or related services to the Project at some future date, the Tribe acknowledges that State law may require environmental review pursuant to the California Environmental Quality Act and review by the Sonoma County Local Agency Formation Commission. The Tribe further acknowledges, that in such event, it will be required to pay the applicable fees and charges and its fair share of any capital improvements to extend such infrastructure.

(b) Water Services

The Parties acknowledge and agree that the Tribe has not requested that the Project be served by City water facilities, services or supply. The Tribe currently intends to install one or more water wells on the Property or the Reservation and to construct facilities necessary to assure a fire flow of 2,700 to 3,500 gallons per minute for a two hour duration. The Tribe may also explore and evaluate options with the Sonoma County Water Agency to identify a supply of water other than from new wells. To the extent

feasible and commercially reasonable (as determined by the Tribe), buildings in the Project will be designed using water conservation techniques.

(c) Wastewater Services

The Parties acknowledge and agree that the Tribe has not requested that the Project be served by, or included in, the City Wastewater Delivery and Treatment allocation from the subregional waste water system. The Tribe currently intends to install an on-site wastewater treatment system. The Tribe may explore and evaluate options with the subregional wastewater system and the City of Santa Rosa to determine whether, and, if possible, how additional flow capacity can be accommodated by the subregional waste water system. To the extent feasible and commercially reasonable (as determined by the Tribe), the Project will incorporate measures to minimize wastewater flows and use recycled water.

(d) Fire and Emergency Services

In order to mitigate potential impacts of the Project on fire and emergency services, the Tribe shall:

(i) construct the Project in accordance with standards no less stringent than those set forth in the Uniform Fire Code as adopted, amended and incorporated into the Rohnert Park Municipal Code as of the Construction Date, including the installation of sprinklers in all hotel rooms and restaurants;

(ii) provide the City with monthly fire inspection certifications during construction and annual fire inspection certifications after the Opening Date by inspectors approved by the City; and

(iii) allow the City to review the design plans for exits for the Project prior to the Construction Date.

(e) Law Enforcement

In order to mitigate potential impacts of the Project on law enforcement resources, the Tribe shall:

(i) adopt rules prohibiting anyone under 21 years of age from gambling;

(ii) adopt employee training programs and policies relating to responsible beverage services;

(iii) conduct background checks of all gaming employees;

(iv) provide a full complement of security personnel at the Project at all times; and

(v) adopt programs and policies which discourage gang members from visiting the Tribe's gaming facilities.

(f) Emergency Medical Services

In order to mitigate potential impacts of the Project on City emergency medical services, the Tribe shall provide (i) emergency medical training to certain members of its security staff, and (ii) emergency medical equipment, including defibrillators, at its gaming facilities.

(g) Solid Waste Disposal

In order to mitigate potential impacts of the Project on solid waste disposal resources, the Tribe shall, to the extent determined by the Tribe to be feasible and commercially reasonable (as determined by the Tribe), implement single stream recycling and green waste diversion. The Tribe shall either retain the services of the City's solid waste disposal franchisee or conduct a competitive bidding process to select the contractor to dispose of solid waste generated at the Reservation.

(h) Uniform Codes

The Tribe shall adopt, and construct the Project in accordance with, standards no less stringent than those set forth in the Uniform Building Code, including all Uniform Fire, Plumbing, Electrical, Mechanical and related Building Codes, as adopted, amended and incorporated into the Rohnert Park Municipal Code as of the Construction Date, (but not including land use, zoning, development or other local laws or standards). The Tribe shall annually certify to the City that it is complying with such building codes and standards. The Tribe shall, to the extent determined by the Tribe to be feasible and commercially reasonable, design buildings using green building techniques, such as natural lighting, solar energy, water conservation, and use of recycled materials.

(i) Storm Water Drainage

In order to mitigate potential impacts of the Project on storm water drainage resources, the Tribe shall obtain a National Pollution Discharge Elimination System permit from the United States Environmental Protection Agency if required by the federal Clean Water Act.

(j) Employee Recruitment

In order to mitigate potential impacts of the Project on local work forces, the Tribe acknowledges it has entered into (i) a Project Labor Agreement with the Sonoma, Lake,



Mendocino County Building & Construction Trades Council, and (ii) a Neutrality and Card Check Agreement with the Hotel Employees and Restaurant Employees International Union AFL-CIO. The Tribe shall implement a hiring preference for Native Americans and for City residents subject to collective bargaining agreements and federal employment laws and regulations.

(k) Rancho Verde Mobile Home Park

In order to mitigate potential impacts of the Project on the Rancho Verde Mobile Home Park, the Tribe shall not purchase the Rancho Verde Mobile Home Park for a period of twenty years from the date of this MOU.

(l) No Golf Course

In order to mitigate potential impacts of the Project on City golf courses, the Tribe shall not construct a golf course on the Reservation until the earlier of (i) twenty years from this date of the MOU, or (ii) the date on which the aggregate number of rounds of golf played on courses located in the City on the date of the MOU exceeds 150,000 rounds in any given calendar year.

6. City Mutual Aid Arrangements

(a) Fire Protection and Emergency Medical Arrangements

The City will honor the Mutual Aid Agreement between the City's Public Safety Department and the Rincon Valley Fire District. Upon the request of the Tribe, the City will enter into a similar Mutual Aid Agreement with the Tribe, subject to any review required under the California Environmental Quality Act or by the Sonoma County Local Agency Formation Commission. The Tribe shall, in any event, make internal arrangements and make appropriate arrangements with the County or a private contractor or contractors to insure that there is an adequate level of fire protection and emergency medical service available on the Reservation.

(b) Law Enforcement Arrangements

The City will honor the Mutual Aid Agreement between the City's Public Safety Department and the Sonoma County Sheriff's Department. Upon the request of the Tribe, the City (or its successor) will enter into a similar Mutual Aid Agreement with the Tribe modified, as necessary, to conform with Subsection 6(c), subject to any review required under the California Environmental Quality Act or by the Sonoma County Local Agency Formation Commission. The Tribe shall, in any event, make internal arrangements and make appropriate arrangements with the County or a private contractor or contractors to insure that there is an adequate level of fire protection and emergency medical service available on the Reservation.

(c) Law Enforcement Authority

Any authority granted to the City law enforcement authorities to enforce laws on the Reservation under a Mutual Aid Agreement with the Sonoma County Sheriff's Department shall be subject to at least the same rules and restraints as any other area within the jurisdiction of such law enforcement authorities. Also, the City's Public Safety Department shall not have authority to enforce on the Reservation any state or local gaming laws or any other State or local civil or criminal laws or regulations which are not enforceable on Indian reservations in California. Nothing in this Subsection or the other provisions of this MOU or any agreement entered into pursuant to this Subsection does or is intended to create City, County, State or other Public Entity jurisdiction over the Tribe or to waive the Tribe's sovereign immunity or any of the rights or remedies available to the Tribe at law or equity for violations of its rights.

(d) Level of Arrangements

With respect to any fire protection, emergency medical or law enforcement response which may be provided by the City directly or indirectly to the Tribe under a Mutual Aid Agreement, the City agrees that the City will provide such response to the Tribe, the Property and the Reservation and the business and persons located thereon which are of the type and at least equal to the level of quality of the response which are provided to non-Indian property located in the City and the persons located thereon.

7. Term

(a) Effective Date

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

(i) this MOU has been approved in writing by legal counsel for the City and ratified by the City Council of the City; and

(ii) this MOU has been approved in writing by legal counsel for the Tribe and ratified by the Tribe's General Council.

(b) Expiration Date

Subject to the early termination provisions of this MOU, this MOU shall expire on the earlier of (i) the twentieth (20) anniversary of the date of this MOU, or (ii) the date of the expiration or termination of the Tribal-State Gaming Compact.

(c) Automatic Extensions

If this MOU has not been terminated prior to its expiration date, this MOU shall be automatically extended for a period of twenty (20) years; provided, however, that, commencing not later than one hundred eighty (180) days prior to such expiration date, the Parties shall meet, confer and renegotiate with respect to the provisions of this MOU which specify the dollar amounts of any recurring contributions made by the Tribe under this MOU. If the Parties are unable to agree upon such new dollar amounts, the then existing dollar amounts shall remain in effect, and, if such dollar amounts are annually adjusted by the CPI Adjustment, they shall continue to be annually adjusted by the CPI Adjustment.

(d) Effect of Expiration or Termination

Upon the expiration or termination of this MOU, the provisions of this MOU shall be of no further force and effect and none of the provisions of this MOU shall survive such expiration or termination; provided, however, that the Tribe shall make contributions pursuant to the terms of this MOU which became due and payable prior to any expiration date; and provided, further, that, if this MOU terminates for reasons unrelated to a default by the City, the Tribe shall make any contributions pursuant to the terms of this MOU which became due and payable prior to such termination date.

8. Termination Events

(a) Automatic Termination

Unless otherwise agreed by the Parties, this MOU shall automatically terminate in the event, and on the date, that:

(i) the Property is transferred to the United States for the benefit of the Tribe but is thereafter no longer "Indian country" within the meaning of federal law or is removed from trust or restricted status such that the Reservation is no longer held in trust by the United States for the benefit of the Tribe; or

(ii) after the Tribal-State Gaming Compact becomes effective, such Tribal-State Gaming Compact terminates for any reason.

(b) Tribal Termination

The Tribe may, at its option, terminate this MOU by written notice to the City in the event that:

(i) the Tribe provides the City with written notice to the effect that the Tribe has decided in good faith by duly executed resolution of the Tribe's General Council to withdraw, or not to submit, any application requesting that the Secretary accept trust title to the Property for the benefit of the Tribe;

(ii) the Reservation is not eligible for gaming under IGRA for any reason; or

(iii) the Management Agreement between the Tribe and SC Sonoma Management, LLC is not approved by the Chairman of the NIGC for any reason;

9. Suspension Events

If, due to Force Majeure (as hereinafter defined), an act of God, valid business considerations, the events listed in Section 10 (a) or any other reason, a material portion of the gaming operations previously conducted by the Tribe on the Reservation are suspended or terminated, the Tribe's obligations to make recurring contributions and other contributions pursuant to Sections 3 or 4 of this MOU shall be suspended as of the date of such suspension or termination until such time as such gaming operations are resumed; provided, however, that, in the event any of the projects contemplated by Section 3(b) or 3(c) is in the process of being constructed at the time of such suspension or termination, the Tribe shall be required to continue the contributions contemplated by such subsections. For the purposes of this Section, the term Force Majeure shall include, without limitations, the following: earthquake; flood; fire; other natural disasters; changes in law, regulation or governmental policy that has a material adverse affect on the Project; riots; war; or terrorism. Nothing in this Section shall impact the Tribe's liability for contributions or other payments which became due and payable prior to the date such gaming operations are suspended or terminated.

10. Renegotiation Provision

(a) Renegotiation Events

The Tribe may request that the City renegotiate one or more of the provisions of this MOU if there is a change in law, facts, assumptions or other circumstances which has a significant and adverse financial impact on the Tribe or directly or indirectly relates to the assumptions the Tribe made in entering into this MOU or Tribe's expectations with respect to the Project or this MOU. Such changes shall be deemed to include the following:

(i) any change to the Restoration Act which has a significant and adverse financial impact on the Tribe;

(ii) any change in state or federal constitutions, laws, rules or regulations, or the construction or interpretation thereof, relating to IGRA or gaming on

Indian lands, or ending the prohibition on Class III gaming (as defined in IGRA) or the operation of gaming devices by non-Indians in California;

(iii) a 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 Tribal-State Gaming Compact or otherwise;

(iv) there is no Tribal-State Gaming Compact in effect as of the Opening Date or the Tribal-State Gaming Compact, as amended or interpreted from time to time, (A) does not authorize the Tribe to conduct the scope of Class III (as defined in IGRA) gaming activities authorized by the State 1999 model Tribal-State gaming compact, or (B) does not authorize the Tribe to operate 2,000 gaming devices without licenses or other conditions (other than payment obligations); and

(v) a change in the financial obligations of the Tribe to the State pursuant to the Tribal-State Gaming Compact (using the State 1999 model Tribal-State gaming compact as the baseline reference document).

(b) Renegotiation Procedures

All requests by the Tribe to renegotiate or amend this MOU shall be by written notice addressed to the City and shall include the provisions of this MOU to be negotiated. Upon receipt of such notice, the City shall be obligated to renegotiate this MOU in good faith. The Parties shall confer promptly and determine a schedule for commencing negotiations within fifteen (15) days of the Tribe's notice. The Parties are hereby authorized to designate the person or agency responsible for conducting the negotiations, and shall execute any documents necessary to do so. The purpose of the negotiations will be to renegotiate the provisions of this MOU in good faith so that the Tribe will retain the rights and maintain substantially the same economic obligations to the City, the County, the State and other Public Entities in the aggregate as are set forth in this MOU and the terms of the other agreements as contemplated as of the date of this MOU to be entered into between the Tribe and other Public Entities.

11. Severability

If any provision of this MOU is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable, this MOU shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this MOU, and the remaining provisions of this MOU shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this MOU. The Parties shall endeavor in good faith negotiations to replace the prohibited or unenforceable provision with a valid provision, with the economic effect of which comes as close as possible to that of the prohibited or

unenforceable provision. Such negotiations shall be conducted pursuant to the provisions of Subsection 10(b) of this MOU.

12. Scope

This MOU is intended to apply and shall be construed to apply solely to the Property, and after the Trust Acquisition Date, solely to the Reservation, and shall not be construed to apply to any other property.

13. 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 engaging in gaming and other commercial activities and benefiting therefrom, the Parties agree to the dispute resolution procedures set forth in this Section.

(b) Meeting

The Parties shall make their best efforts to resolve claims of breach of this MOU 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 efficiency in the administration of the terms, provisions and conditions of this MOU 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 MOU.

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

(c) Arbitration

If such dispute is not resolved to the satisfaction of the Parties within thirty (30) calendar days after the first meeting, then the Parties may seek to have the dispute resolved by 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 of breach of this MOU and no other disputes.

(iii) In the event there is any dispute as to whether a matter is subject to the arbitration provisions of this MOU, 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 MOU or the scope of such arbitration shall be resolved by the courts referenced in Subsection (d) of this Section.

(iv) The arbitration shall be administered by three (3) arbitrators. The Tribe and the City shall each select one arbitrator and those two arbitrators shall select the third arbitrator. All arbitrators shall be generally familiar with federal Indian law, California municipal law, and commercial business transactions.

(v) The arbitration shall be held in San Francisco or at such other location as is mutually agreeable to the Parties.

(vi) The arbitration shall be administered in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as modified by the provisions of this MOU.

(vii) 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 arbitrators.

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

(ix) Awards may be made by the arbitrators only for monetary amounts or damages and only to the extent permitted in Subsection 14(b).

(x) The decision of the arbitrators shall be in writing and shall give reasons for the decision.

(d) 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 to confirm the award. The Parties expressly consent to be sued in such Courts for the purposes 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 monetary award or damages are awarded except for decisions which require the payment of sums pursuant to breaches of obligations of the Parties under this MOU and which are not inconsistent with the Tribe's limited waiver of sovereign immunity as set forth in Subsection 15(b) of this MOU.

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

If an award is confirmed, judgment shall be entered in conformity therewith. 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.

(e) Intervention

In the event of intervention by any additional party (other than Developer) into any action referred to in Subsection 13(f) without the consent of the Parties, the waivers of either the Tribe or the City provided for herein may be revoked, unless joinder is required to preserve the court's jurisdiction; provided, however, that nothing herein shall be construed to constitute a waiver of the sovereign immunity of the Tribe or the City in respect to any such third party (other than the Developer).

(f) Actions

The express waivers and consents provided for in this Section and Section 14 shall only extend to the following: civil actions consistent with this MOU to compel arbitration, determine whether a matter is subject to arbitration or determine the scope of the arbitration, any arbitration proceeding as provided herein, any action to confirm or enforce any judgment or arbitration award as provided herein, and any appellate proceedings emanating from a matter in which an immunity waiver has been granted. Except as stated herein or elsewhere in this MOU, no other waivers or consents to be sued, either express or implied, are granted by either Party.

(g) Other Dispute Resolutions

This Section may not be construed to waive, limit, or restrict the ability of the Parties to pursue, by mutual agreement, any other method of dispute resolution including, but not limited to, mediation or utilization of a technical advisor to the Parties; provided, however, that no Party is under an obligation to agree to such alternative method of dispute resolution.

(h) Confidentiality



The Parties agree that any dispute resolution meetings or communications, arbitration proceedings, or agreements among the Parties settling or otherwise relating to any claims of breach of this MOU or otherwise shall be and remain confidential to the extent not prohibited by applicable law.

(i) Third Party Rights

Developer shall be deemed to have the rights of a Party for the purposes of this Section, including, without limitation, the right to initiate or participate in a dispute resolution meeting or an arbitration proceeding or to confirm or enforce any award.

14. Limited Waiver of Sovereign Immunity

(a) Waiver

Subject to the provisions of this Section, each of the Parties expressly and irrevocably waives sovereign immunity (and any defenses based thereon) in favor of the other Party and the Developer (but not as to any other person or entity) as to any civil action relating to claims of breach of this MOU and not as to any other actions, matters or disputes.

(b) Limitations on Tribe's Waiver

The Tribe's waiver of sovereign immunity is specifically limited to permitting, and does permit, the awards referenced in Subsection 13(c)(ix) and actions referenced in Subsection 13(f). Notwithstanding the foregoing or other provisions of this MOU, the Tribe does not waive its sovereign immunity to permit any monetary award or damages against, and the arbitrators and the courts will have no authority or jurisdiction to issue any monetary award or damages or order the execution or enforcement of any monetary award or damages against, any assets or revenues of the Tribe except for the Tribe's share of the Net Revenues distributed or to be distributed to the Tribe by the commercial enterprises included within the Project and located on the Reservation. The Tribe does not waive its sovereign immunity with respect to actions by third parties or disputes between the Tribe and the City which are not claims of breach of this MOU.

15. Third Party Beneficiaries

Developer is an intended third party beneficiary of this MOU and may bring an action under or otherwise enforce this MOU. Without limitation of the generality of the foregoing, the City acknowledges and agrees that Developer is not a party to this MOU and does not have any obligations or liabilities under or with respect to this MOU. Otherwise, there are no intended third party beneficiaries of this MOU, and this MOU is

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

16. Binding MOU

This MOU is intended to be, and shall be construed to be, binding upon the City. The terms of this MOU will be binding on all successors in interest of each Party.

17. Notice

All notices required by this MOU will 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 address as they may provide to the other Parties from time to time:

For the Tribe:

Federated Indians of the Graton Rancheria  
P.O. Box 14428  
Santa Rosa, CA 95402  
Telephone:  
Fax:

With copies to:

California Indian Legal Services  
510 - 16th Street, Fourth Floor  
Oakland, CA 94612  
ATTN: John Maier, Esq.  
Telephone: (510) 835-0284  
Fax: (510) 835-8045

And

SC Sonoma Development, LLC  
c/o Station Casinos, Inc.  
2411 W. Sahara Avenue  
Las Vegas, Nevada 89012  
ATTN: General Counsel  
Telephone: (702) 367-2458  
Fax: (702) 253-2926

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For the City:

City of Rohnert Park  
6750 Commerce Boulevard  
Rohnert Park, CA 94928-2486  
ATTN: City Manager  
Telephone: (707) 588-2226  
Fax: (707) 588-2263

18. Governing Law

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

19. Construction of MOU

This MOU, together with all Exhibits hereto, constitutes the entire agreement among the Parties relating to the subject matter hereof and supersedes all prior negotiations, representations, or other agreements, whether written or oral. In the event of a dispute between or among the Parties as to the language of this MOU or the construction or meaning of any term hereof, this MOU 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 any Party to this MOU. The headings contained in this MOU are for convenience of reference only and shall not effect the construction or interpretation hereof.

Tribal Sovereignty

(a) City Acknowledgements

The City acknowledges and agrees that the Tribe:

(i) is a federally recognized Indian tribe and an independent sovereign nation;

(ii) is not subject to the jurisdiction of the City or its laws, rules, regulations and ordinances;

(iii) has the right, pursuant to the Restoration Act, to have the Property taken into trust by the United States for the benefit of the Tribe; and

(iv) has the right, once the Property is taken into trust, to establish a gaming facility on the Reservation in accordance with IGRA.

(b) Tribal Acknowledgements

The Tribe nevertheless desires to establish a harmonious government-to-government relationship with the City, the County and other local governmental authorities. In furtherance of that objective, the Tribe is willing to agree as a voluntary contractual matter to the terms and conditions of this MOU.

(c) No Submission to Jurisdiction

However, notwithstanding the language of any other provision of this MOU, the Parties agree that nothing in this MOU is intended to constitute, or shall be construed as constituting, a submission by the Tribe to the jurisdiction of the City, its respective officials, officers or inspectors or its respective laws, rules, regulations, ordinances or (except as set forth in Section 13(d) courts.

21. City Non-Opposition

(a) Non-Opposition Generally

In consideration of the covenants of the Tribe as set forth in this MOU, the City agrees to not oppose any efforts by the Tribe to cause the Secretary to accept trust title to the Property for the benefit of the Tribe and to otherwise develop the Project.

(b) Specific Examples of Non-Opposition

Without limiting the generality of the foregoing, the City agree to:

(i) sign letters, execute and deliver such agreements and take such other action as the Tribe may reasonably request from time to time in furtherance of the foregoing objectives and consistent with this MOU;

(ii) upon the request of the Tribe, schedule meetings with and meet with the Tribe and its representatives and designees; and

(iii) take such other appropriate actions as the Tribe may reasonably request consistent with this Section relating to the efforts of the Tribe identified in this MOU.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

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

THE CITY OF ROHNERT PARK, CALIFORNIA

Date: October 14, 2003

By: 

Name: CARL ERIC NEIVO

Its: CITY MANAGER

Per Resolution No. 2003-233 adopted by the City Council on October 14, 2003

AS TO FORM <sup>page</sup>

APPROVED BY CITY ATTORNEY FOR THE CITY:

Date: October 14, 2003

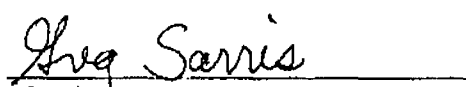
By: 

Name: TRAVIS STRAUSS

Its: CITY ATTORNEY

THE FEDERATED INDIANS OF THE GRATON RANCHERIA

Date: October 14, 2003

By: 

Greg Sarris

Chairperson

APPROVED BY LEGAL COUNSEL FOR THE TRIBE:

Date: October 14, 2003

By: 

John Maier, Esq.

California Indian Legal Services

EXHIBIT A  
LEGAL DESCRIPTION OF THE PROPERTY

All that certain real property situated in the Unincorporated Area, County of Sonoma, State of California, described as follows:

**PARCEL ONE:**

Farm No. 74, and Farm No. 75, as shown upon the Plan of Subdivision of Santa Rosa Farms No. 2, Sonoma County, California, filed in the Office of the County Recorder of Sonoma County, California, on March 7, 1910 in Book 21 of Maps, Page 14, Sonoma County Records.

**APN: 045-072-006**  
**ARB: None Shown**

**PARCEL TWO:**

Farms 1, 2 and "A", 21, 22, 23, 24, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 69, 70, 71, 72, 73, 76, 99, 100 and 101, so numbered and designated upon that certain Map entitled "Subdivision of Santa Rosa Farms No. 2, Sonoma County, California", filed March 7, 1910 in Book 21 of Maps, Page 14, Sonoma County Records.

EXCEPTING THEREFROM those portions of Farms 22, 42, 43, 44, 45, 46, 47 and 52 granted to The Sonoma County Flood Control and Water Conservation District in Deed dated July 11, 1963 and recorded November 8, 1963 in Book 2001 of Official Records, Page 191, under Recorder's Serial No. H-63821, Sonoma County Records.

ALSO EXCEPTING THEREFROM all that portion as contained in the Deed to The County of Sonoma recorded September 14, 1994, as Document No. 1994 0106342, Sonoma County Records.

ALSO EXCEPTING THEREFROM all that portion conveyed to The County of Sonoma by Deed recorded November 17, 1994 under Document No. 1994 0128597, Sonoma County Records.

**APN: 045-071-002, 003, 004, 005, 006, 045-072-012, 013, 014, 046-021-024, 025, 026, 027, 028, 029, 030, 031, 032, 033, 034, 035, 036, 037, 038, 134-261-003, 034-264-003, 005, 006, 007, 008, 134-267-001 & 005 ARB: None Shown**

**PARCEL THREE:**

A Tract of land, being a portion of the Rancho Llano de Santa Rosa, and commencing on the boundary line of said Rancho on the line between Section 21 and 22, in Township 6 North, Range 8 West, Mount Diablo Base & Meridian, at a point in the center of the County Road known as the Santa Rosa and Stony Point Road, from which point the post for the railing of the bridge, across the Laguna and standing on the Southeast corner of the same, is North 31° West, 13 links distant; thence from said point of beginning, North 89° 30' East, 11.92 chains, South 39° 05' East, 2.61 chains, South 53° East, 1.36 chains, South 64° East, 1.23 chains,

South 77° 15' East, 2.62 chains, South 88° 05' East, 3.94 chains, North 4° 15' East, 1.43 chains, South 88° East, 2.03 chains, South 56° East, 2.44 chains, North 87° ,15' East, 22.62 chains to the Northwest boundary line of the Cotati Rancho; thence along said line, North 29° 15' East, 39.44 chains; thence leaving said line, West 67.92 chains to the center of the aforesaid Road and Section line; thence South, 32.18 chains to the point of beginning. Magnetic Variation 17° East.

EXCEPTING THEREFROM those portions of land described in the Deeds from Manuel T. Pimentel, et al, to the Sonoma County Flood Control and Water Conservation District, recorded August 16, 1961 in Book 1840 of Official Records, Page 280, Serial No. G-60050, Sonoma County Records, and recorded September 24, 1963 in Book 1989 of Official Records, Page 575, Serial No. H-56600, Sonoma County Records.

ALSO EXCEPTING THEREFROM that portion of land described in the Deed from Mary C. Pimentel, et al, to the Sonoma County Flood Control and Water Conservation District, recorded February 11, 1966 in Book 2187 of Official Records, Page 957, Serial No. J-83549, Sonoma County Records.

ALSO EXCEPTING THEREFROM that portion of land described in the Deed to the City of Rohnert Park, recorded January 11, 1989 as Document No. 89002750 of Official Records of Sonoma County.

ALSO EXCEPTING THEREFROM that portion of land described in the Deed to the County of Sonoma, recorded May 17, 1996 as Document No. 1996 0044116 of Official Records of Sonoma County.

**PARCEL FOUR:**

An easement for cattle and agricultural equipment crossing, as described in the Deed from the Sonoma County Flood Control and Water Conservation District to Manuel L. Pimentel and Mary C. Pimentel, recorded August 15, 1961 in Book 1840 of Official Records, Page 284, Serial No. G-60051, Sonoma County Records.

**PARCEL FIVE:**

An easement for cattle and agricultural equipment crossing, as described in the Deed from the Sonoma County Flood Control and Water Conservation District to Manuel L. Pimentel and Mary C. Pimentel, recorded August 15, 1961 in Book 1840 of Official Records, Page 288, Serial No. Serial No. G-60052, Sonoma County Records.

**APN: AP46021-20 & 21 & 39 & 40**

**ARB: None Shown**





March 30, 2004

The Honorable Arnold Schwarzenegger  
Governor  
State of California  
Sacramento, CA 95814

Gregory A. Nardin  
Mayor

Arnie L. Spradlin  
Vice-Mayor

Armando F. Flores  
Councilmember

Jake Mackenzie  
Councilmember

Vicki Vidak-Martinez  
Councilmember

Carl Eric Leivo  
City Manager

Steve Donley  
Assistant City Manager

Gabrielle Winick  
Interim City Attorney

RE: Compact for the Federated Indians of Graton Rancheria

Dear Governor Schwarzenegger:

As the Mayor from the City closest to the site of the Federated Indians of Graton Rancheria's proposed gaming facility, I respectfully urge you to negotiate and sign a Tribal-State Gaming Compact with the Federated Indians of the Graton Rancheria (FIGR).

Last year, our City Council voted 4-1 to enter into a *Memorandum of Understanding* (MOU) with the FIGR. Under the terms of the MOU, the Tribe will make payments totaling \$200 million over 20 years to the City, School District, and local non-profits to be used to mitigate potential impacts from its resort/casino. Monies provided under this MOU will be used to build a new public safety facility to help us fight crime, gang activity, and drugs. There will be funds to add workforce housing, purchase additional open space for parks and recreation, and to fund traffic improvements. Additionally, the Tribe has agreed to build its facility without using the public water or wastewater infrastructure and to build and operate the entire facility using union labor.

The MOU is unprecedented in California.

The FIGR project will create over 2,000 well-paid union jobs with benefits. This is crucially important in our community where Agilent Technologies has announced plans to close a plant that once employed 4,000. Many of these jobs have been moved to Malaysia.

We believe our relationship with the Tribe should be used as model for other municipalities as they cope with the impacts from Indian gaming facilities. From the very beginning, Greg Sarris, the Tribal Chair, and the rest of the Tribal Council, have been honest and gracious brokers, always willing to work with us in order to reach a mutually acceptable solution. We recognize their right to pursue economic self-reliance but we also believe strongly that we need to receive funds to help us mitigate any impacts. With our MOU, we reached the right balance.

Governor Schwarzenegger  
March 30, 2004  
Page 2

There exist many viewpoints regarding the FIGR project among our citizens. Let me assure you that there exists a large portion of our citizens that supports the project, recognize the Tribe's right to self-determination, and think that the City Council did the right thing to enter into a MOU with the FIGR.

If not in Rohnert Park, where could the FIGR undertake their project? No matter which site the Tribe selects for their project in Sonoma and Marin Counties, there will be strenuous opposition. It is a tradition for many in the North Bay to oppose development of any sort. The Indian gaming project should proceed on the site where the Tribe and local government have respectfully negotiated the best possible agreement to address the potential impacts of the project.

For all these reasons, I strongly support the Graton Rancheria's efforts to gain a Tribal-State Gaming Compact and respectfully urge you to complete these negotiations as soon as possible.

Sincerely,



Gregory A. Nordin  
Mayor

Cc: Mr. Daniel Kolkey, Lead Tribal Negotiator  
Mr. Peter Siggins, Legal Affairs Secretary  
Members of the City Council

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is made effective as of November 1, 2004, by and between the County of Sonoma, California (the "County"), and the Federated Indians of Graton Rancheria, a federally recognized Indian tribe (the "Tribe"). (The capitalized terms not otherwise defined herein shall have the meanings set forth in Section 1 below.)

### RECITALS

WHEREAS, the Tribe is an Indian tribe of over 1,000 members who are comprised of descendants of the Coast Miwok and Southern Pomo Indians whose aboriginal territory included Sonoma County; and

WHEREAS, in 1966, the federal government terminated its relationship with the Tribe and transferred title to the lands known as the Graton Rancheria, located near the Sonoma County community of Graton, which the federal government had held in trust for the benefit of the Tribe; and

WHEREAS, the Tribe has been landless since that time; and

WHEREAS, in 2000, Congress restored the federal government's government-to-government relationship with the Tribe pursuant to the Graton Rancheria Restoration Act (Pub. L. 106-568, 25 U.S.C. § 1300n et. seq.); and

WHEREAS, the Tribe's Restoration Act provides that the Secretary of the Interior shall accept into trust for the benefit of the Tribe land located in Marin or Sonoma County and that such land, once taken into trust for the benefit of the Tribe, shall be the Tribe's reservation; and

WHEREAS, the Tribe has currently identified property, which is located approximately 11 miles from the Tribe's former Graton Rancheria in an unincorporated area of Sonoma County adjacent to the western boundary of the City of Rohnert Park Urban Growth Boundary; and

WHEREAS, the Tribe intends to submit an application to the Secretary requesting that the United States take title to the identified property in trust for the benefit of the Tribe as part of the Tribe's new reservation, and further request that the Secretary or the National Indian Gaming Commission ("NIGC") determine that the Reservation is eligible for gaming under the Indian Gaming Regulatory Act; and

WHEREAS, the Tribe intends to build a casino and hotel resort on a portion of its Reservation; and

WHEREAS, prior to constructing the gaming facility, the Indian Gaming Regulatory Act provides that the Tribe must first obtain (i) approval of its management contract from the NIGC and (ii) a Tribal-State Gaming Compact from the State of California; and

WHEREAS, the NIGC must comply with the National Environmental Policy Act in connection with its approval of the Tribe's management contract; and

WHEREAS, the County urged the Tribe to request the NIGC to prepare an Environmental Impact Statement ("EIS") (as distinguished from a less detailed Environment Assessment) reviewing the Gaming Project and, in accordance with the Tribe's and County's request, the NIGC, acting as lead agency, is currently preparing an EIS; and

WHEREAS, the County petitioned the NIGC to allow the County to officially participate in the environmental review of the Gaming Project to ensure that the EIS thoroughly identified environmental impacts, potential alternatives and comprehensive mitigation measures relating to the Gaming Project; and

WHEREAS, on March 17, 2004, the NIGC approved a Memorandum of Understanding for the County to be designated an official participating agency in the NEPA process. The NIGC Memorandum of Understanding affords the County an opportunity to maximize its input into the NEPA process. The NIGC Memorandum of Understanding affirmed, however, that the County's participation in the NEPA process neither implied the County's endorsement of the proposed project nor precluded the County from later challenging the adequacy of the EIS; and

WHEREAS, after conducting public hearings, the NIGC issued the final Scoping Report for the EIS in August 2004 based on comments received from the public and local jurisdictions, and the NIGC expects to issue a Draft EIS in early 2005; and

WHEREAS, each of the new and amended compacts negotiated by the Governor in 2004 includes environmental provisions which provide that, prior to the commencement of certain activities on its reservation, including the construction of new casino facilities, the tribe shall (i) prepare a tribal environmental impact report and (ii) negotiate an intergovernmental agreement between the applicable tribe and the applicable county or city to mitigate certain off-reservation impacts identified in the environmental analysis contained in the tribal environmental impact report; and

WHEREAS, the 2004 Compacts require the applicable tribe and the applicable county or city to enter into an arbitration process to resolve any disagreement regarding the provisions which should be included in the intergovernmental agreement; and

WHEREAS, the County and the Tribe expect that, unless voters approve Proposition 70 in the November 2004 election, any Compact which may be negotiated between the Tribe and the State may include environmental provisions similar to those which are included in the 2004 Compacts; and

WHEREAS, the County therefore believes that the gaming facility will be subject to the preparation of a federal EIS pursuant to NEPA and a tribal environmental impact report pursuant to the Compact; and

WHEREAS, the County recognizes that the Tribe, in preparing its environmental impact report, and consistent with the requirements of the 2004 Compacts, will utilize much of the analysis prepared by the NIGC in its EIS, and that this extensive body of environmental data will be made available to the County for its review and consideration; and

WHEREAS, the County has an interest in ensuring that off-Reservation impacts of the Gaming Project are adequately mitigated; and

WHEREAS, the County and Tribe are willing to negotiate an Intergovernmental Agreement to mitigate off-Reservation impacts of the Gaming Project upon publication of the Draft EIS; and

WHEREAS, such an Intergovernmental Agreement is necessary to make enforceable certain environmental mitigation measures identified in the EIS which are not otherwise enforceable by other Public Entities; and

WHEREAS, once the Secretary accepts land into trust for the benefit of the Tribe and establishes the Reservation, the County will have no authority to exercise land use jurisdiction over the Reservation or the Gaming Project; and

WHEREAS, the County does not have legal authority to deliberate on, approve, disapprove, or otherwise exercise judgment regarding the Gaming Project; and

WHEREAS, the County is therefore not deliberating on, approving, supporting, or otherwise exercising judgment regarding the Gaming Project by entering into this MOU; and

WHEREAS, the County and Tribe are committed to continuing their efforts to establish a respectful, long-term government-to-government relationship by meeting and conferring in good faith on issues of concern regarding the Gaming Project; and

WHEREAS, the purpose of this MOU is to establish a legally enforceable framework for negotiating and entering into an Intergovernmental Agreement to mitigate off-Reservation impacts of the Gaming Project; and

WHEREAS, this MOU does not limit the Tribe's or the County's remedies under applicable law to address the adequacy or appropriateness of the environmental analysis contained in the EIS.

NOW, THEREFORE, the Parties hereby agree as follows:

1.0. Definitions. The terms not defined elsewhere in this MOU shall have the following meanings:

"2004 Compacts" mean the Tribal-State Gaming Compacts or amendments thereto signed by the Governor of the State in June and August 2004.

“CEQA” means the California Environmental Quality Act (California Government Code § 21000 et. seq.) and the regulations or guidelines promulgated thereunder, as the same may be amended and modified from time to time.

“Compact” means the Tribal-State Gaming Compact governing the conduct of gaming activities to be negotiated between the Tribe and the State pursuant IGRA.

“Comprehensive Intergovernmental Agreement” means a complete and final Intergovernmental Agreement between the Parties which is consistent with Section 3.0 and which covers all issues which either Party intends to have covered in an Intergovernmental Agreement.

“County” means the County of Sonoma, California, a political subdivision of the State.

“County Mitigation Measure” means any measure taken by the Tribe to mitigate significant environmental effects of the Gaming Project on the County, that are within its jurisdiction or primary responsibility, as more fully described in section 3.0 of this MOU.

“Draft EIS” means a draft EIS prepared by the NIGC or its contractors regarding the Gaming Project pursuant to NEPA.

“EIS” or “Environmental Impact Statement” means an environmental impact statement prepared by the NIGC or its contractors regarding the Gaming Project pursuant to NEPA.

“Federal and State Actions” mean (i) the consummation of the Trust Acquisition, (ii) the NIGC approval of the Tribe’s gaming ordinance and management contract, (iii) the negotiation and execution of the Compact by the State Governor, ratification of the Compact by the State legislature and approval of the Compact by the Secretary, and (iv) the issuance or completion by federal, state or regional Public Entities of approvals, permits, licenses, certifications, opinions or consultations required in connection with the Trust Acquisition or the Gaming Project.

“Final EIS” means a final EIS prepared by the NIGC or its contractors regarding the Gaming Project pursuant to NEPA.

“Gaming Project” means the development (including construction and operation) of a casino and hotel resort with ancillary uses on the Reservation as described in the Draft EIS.

“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 regulations promulgated thereunder, as the same may be amended or modified from time to time.

“Intergovernmental Agreement” means any written and enforceable interim or comprehensive intergovernmental agreement or agreements entered into between the Tribe and the County pursuant to, or as contemplated by, this MOU.

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"MOU" means this Memorandum of Understanding.

"NEPA" means the federal National Environmental Policy Act of 1970, as amended (42 U.S.C. §§ 4371 et seq.), and the regulations promulgated thereunder, as the same may be amended or modified from time to time (at 40 C.F.R. 1500 et. seq.).

"NIGC" means the National Indian Gaming Commission.

"Parties" mean the Tribe and the County.

"Property" means certain parcels totaling approximately 363 acres of land which are located within the unincorporated area of the County and adjacent to the Urban Growth Boundary of the City of Rohnert Park (as it exists on the date of this MOU) and which are identified by the legal description set forth on Exhibit A hereto, or any portion of such land. Property may also include such other land which the Tribe, with the concurrence of the County, may request the Secretary to take into trust for the benefit of the Tribe.

"Public Entity" means the federal government, the State, any county, city, district, public authority, public agency and any other political subdivision or public corporation thereof, including, without limitation, the U.S. Department of Interior, the U.S. Environmental Protection Agency, the U.S. Army Corp of Engineers, the U.S. Fish & Wildlife Service, Department of Transportation, the California Department of Fish & Game, the California State Historic Preservation Office, the Rincon Valley Fire District, Rancho Adobe Fire District, the Sonoma County Water Agency, the North Coast Regional Water Quality Control Board and the Sonoma County Local Agency Formation Commission.

"Reservation" means, after the Trust Acquisition, that portion of the Property which is taken into trust by the Secretary for the benefit of the Tribe.

"Restoration Act" means the federal Graton Rancheria Restoration Act (Pub. L. 106-568, 25 U.S.C. § 1300n et. seq.).

"Secretary" means the Secretary of the United States Department of the Interior.

"State" means the State of California.

"Tribe" means the Federated Indians of Graton Rancheria, a federally recognized Indian tribe listed in the Federal Register as Graton Rancheria, California.

"Trust Acquisition" means (i) the acquisition by the United States of title to the Property in trust for the benefit of the Tribe, and (ii) the determination by the Secretary or the NIGC that the Reservation is eligible for gaming pursuant to the requirements of IGRA.

## 2.0. Environmental Review

2.1. Preparation of an EIS. The Parties acknowledge their understanding that (i) the NIGC is required to comply with NEPA in connection with the NIGC's decision whether to approve the Tribe's management contract with a gaming manager, (ii) the NIGC has accepted the Tribe's and County's request to prepare an EIS, as distinguished from a less comprehensive environmental assessment, (iii) the NIGC has provided, and will continue to provide, public notices relating to the preparation of an EIS in accordance with NEPA, (iv) the County requested, and the NIGC agreed, to allow the County to officially participate in the NEPA process, (v) the Bureau of Indian Affairs and the Army Corps of Engineers are also participating in the NEPA process, (vi) the NIGC will provide the County and the public, as part of NIGC's efforts to fulfill its NEPA obligations, with the opportunity to comment on the Draft EIS, and (vii) the County's opportunity to comment on the Draft EIS will include the opportunity to comment on the adequacy of any proposed mitigation measures intended to mitigate potential impacts of the Gaming Project.

### 2.2. CEQA Matters

(a) The Trust Acquisition, the Federal and State Actions, the Gaming Project and the approval, execution, delivery, performance and consummation of the transactions contemplated by this MOU are not activities that, within the meaning of CEQA (i) are directly undertaken by the County and the surrounding communities, (ii) are supported, in whole or in part, through contracts, grants, subsidies, loans or other forms of assistance from the County or the surrounding communities, or (iii) involve the issuance of a lease, permit, license, certificate or other entitlement for use by the County or the surrounding communities.

(b) By approving, executing, delivering, performing and consummating this MOU and transactions contemplated by this MOU, the County does not commit itself to (i) issue any lease, permit, license, certificate or entitlement for use, (ii) develop, construct or improve any facilities or cause any other physical changes to the environment, or (iii) approve, shape, deliberate on or otherwise exercise judgment over the Trust Acquisition, the Federal and State Actions or the Gaming Project.

(c) The Trust Acquisition, the Federal and State Actions, the Gaming Project, as well as the approval, execution and delivery of this MOU, and the performance and consummation of the transactions contemplated by this MOU, are not "projects" (as such term is defined in CEQA) of the County.

(d) This MOU establishes a procedure for negotiating a government payment and funding mechanism and does not commit the County to make any physical change in the environment.

(e) The County does not, in any event, have sufficient information as of the date of this MOU to make any commitment to the Tribe to make any physical changes in the environment.



(f) 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) which causes a physical change in the environment, the County fully intends to comply with CEQA at such time.

### 3.0. Off-Reservation Impacts

#### 3.1. Intergovernmental Agreement

(a) Negotiation of Intergovernmental Agreement. Not later than thirty (30) days following the publication of the Draft EIS, the Parties shall commence diligent and good faith negotiations and shall otherwise use their respective best efforts to finalize, approve, execute and deliver interim Intergovernmental Agreements and a Comprehensive Intergovernmental Agreement to meet the objectives described in this Section 3.0.

(b) Scope of Mitigation. The primary objective of the Intergovernmental Agreement is to provide for binding and enforceable agreements which insure the timely mitigation of significant environmental effects of the Gaming Project which:

- (i) are primarily attributable to the Gaming Project;
- (ii) occur outside of the geographic boundaries of the Tribe’s Reservation and within the geographic boundaries of the County. Notwithstanding the foregoing, the Tribe agrees to enter into an Intergovernmental Agreement with the County regarding any loss of open space, community separator, and Williamson Act issues;
- (iii) are within the primary jurisdiction or responsibility of the County;
- (iv) are not within the primary jurisdiction or responsibility of some other Public Entity or Entities (including by way of example, and not by way of limitation, the Rincon Valley Fire District); and
- (v) are “significant” (within the meaning of NEPA, including 40 C.F.R. Section 1508.13), as distinguished from insignificant.

(c) Mitigation Measures. A further objective of the Intergovernmental Agreements is to provide for mitigation measures which would mitigate any significant impacts on the off-Reservation environment with regard to some or all of the following resources or topics: Agricultural resources, air quality, biological resources, geology and soils, land use, hazardous materials, noise, public services, public transportation, roadway infrastructure, socioeconomic effects, traffic circulation, traffic safety, visual resources, wastewater, water drainage and water supply. Such measures may include payments by the Tribe to the County to the extent not otherwise compensated for through other County Mitigation Measures for the following:

- (i) Reasonable and fair share compensation to the County for specific public services to be provided by the County to the Tribe relating to the Tribe's gaming operation;
- (ii) Reasonable and fair share contributions for programs designed to address gambling addiction;
- (iii) Reasonable and fair share compensation for mitigation of any effect on public safety and criminal justice system impacts on the County attributable to the Gaming Project, including any reasonable and fair share contributions to the County; and
- (iv) Reasonable and fair share contributions to the County for lost tax, fee, assessments, or other revenue to the County related to the Trust Acquisition.

(d) Accounting for Agreements and Effects. An objective of the Intergovernmental Agreement is to take into account, and give the Tribe appropriate financial and other credit for:

- (i) County Mitigation Measures contained in any agreement or other arrangement between the Tribe and any other Public Entity or non-profit corporation;
- (ii) County Mitigation Measures which the Tribe is obligated to implement pursuant to any license, permit, opinion, consultation, agreement or other arrangement which the Tribe has obtained or is required to obtain, such as, by way of example and not limitation, (A) any National Pollutant Discharge Elimination System (NPDES) permits to be issued by the U.S. Environmental Protection Agency pursuant to the federal Clean Water Act, (B) any permits to be issued by the U.S. Army Corp of Engineers pursuant to the federal Clean Water Act, (C) any measures required by the U.S. Fish & Wildlife Service pursuant to the federal Endangered Species Act, and (D) acquisitions of land, acquisitions of options to purchase land, and contributions of funds for acquisitions of lands or options to purchase land which are made by the Tribe or by third parties on behalf of the Tribe for the purpose of mitigating environmental effects of the Gaming Project on the County (to the extent they are proximately located to the Gaming Project); and
- (iii) any demonstrated positive effects of the Gaming Project with respect to the applicable environmental effect on the County.

(e) Provision Issues. An objective of the Gaming Project Intergovernmental Agreement is to avoid any provision which:

- (i) amounts to "double counting" in the sense that it requires the Tribe to provide contributions or implement County Mitigation Measures which are already specifically intended to be covered by contributions or County Mitigation Measures which the Tribe has agreed to make or implement in other provisions of the Intergovernmental Agreement or in agreements with other parties;
- (ii) is inconsistent with principles of mitigation that would be applied to a non-Indian developer developing a project within an unincorporated area of the County while recognizing that the Gaming Project would not be permitted by the County on the currently identified property;
- (iii) effectively constitutes selection or implementation of the "no action" alternative set forth in the EIS or otherwise does not permit the Tribe to achieve its objectives of establishing an economically profitable gaming operation;
- (iv) is inconsistent with applicable constitutional requirements such as the "nexus" and "rough proportionality" standards established by case law (see Nollan v. California Coastal Commission (1987) 483 U.S. 825; Dolan v City of Tigard, (1994) 512 U.S. 374; and Ehrlich v. City of Culver City, (1996) 12 Cal. 4<sup>th</sup> 854, which cases are cited in CEQA Guidelines § 15041); and
- (v) is infeasible;

(f) Compact Provisions. An objective of this MOU is to satisfy any requirement of a Compact for an intergovernmental agreement between the Tribe and the County relating to the environmental impact of the Gaming Project on the County. The Parties recognize, however, that a future Compact may impose additional rights and responsibilities on the Parties and that any changes in the scope of the Gaming Project or identification of impacts not revealed in the final EIS may require resolution through applicable Compact provisions.

#### 4.0. Dispute Resolution

##### 4.1. Arbitration

(a) Arbitration Process. In order to foster good government-to-government relationships and insure timely and binding resolution of any disputes regarding appropriate mitigation, the Parties agree to the arbitration process set forth in this Section 4.1.

(b) Submission of Comprehensive Intergovernmental Agreements. If the Parties have not approved, executed and delivered a Comprehensive Intergovernmental Agreement consistent with Section 3.0 within thirty (30) days after the date of the publication of the Final EIS, or such later date as the Parties may mutually agree in writing, each Party shall submit to the other Party, not later than forty-five (45) days after the date of the publication of the Final EIS, a draft Comprehensive Intergovernmental Agreement which represents each Party's complete, last and best offer of a Comprehensive Intergovernmental Agreement. These timelines and those in paragraph 4.1 (c), however, are tolled if the Tribe has not stated in writing the designated project alternative in the EIS it intends to build at least 90 days prior to the publication of the Final EIS. In such event, these timelines will be extended by the number of days that elapse from the 90 day period to the date the Tribe designates in writing its selected project alternative.

(c) Arbitration Demand. If the Parties have not approved, executed and delivered a Comprehensive Intergovernmental Agreement consistent with Section 3.0 within fifty-five (55) days after the date of the publication of the Final EIS, or such later date as the Parties may mutually agree in writing, either Party may thereafter, during the period from fifty-five (55) days until seventy-five (75) days after the date of the publication of the Final EIS, demand binding arbitration, as set forth in this Section 4.1, by submitting a written notice of its intent to arbitrate to the other Party and the American Arbitration Association. If neither Party demands arbitration during such period, and an extension has not been agreed upon in writing, the Parties' respective rights to demand arbitration pursuant to this Section 4.1 shall expire. If either Party demands arbitration during such period, such arbitration shall thereafter be the sole and exclusive remedy and forum for resolution of disputes between the Parties concerning the proposed provisions of a Comprehensive Intergovernmental Agreement.

(d) Arbitration Procedures. The arbitration shall be conducted in an expedited manner before a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association (AAA), or JAMS Streamlined Arbitration Rules, depending upon the forum utilized, and as modified by the provisions of this Section 4.1. The single arbitrator shall be a person mutually agreed upon and appointed by the Parties from the approved arbitrator list and selection process attached at Exhibit C, or if such a person is unavailable, the Parties shall expeditiously mutually agree upon an alternate person. If these selection processes are unsuccessful, as a final resort, the Parties shall submit the dispute to the AAA for selection of the arbitrator and to conduct the proceedings. The list of potential arbitrators provided by AAA shall consist of persons experienced in the subject matter of this MOU, including but not limited to having expertise in CEQA, NEPA and large commercial developments. The arbitration shall be held in San Francisco, California, or such other location as shall be mutually agreed upon by the Parties. Each Party shall bear one-half of the costs and expenses of the arbitration as well as their own attorney fees and costs.

(e) Submissions. Within ten (10) days of the date the arbitrator is selected, each Party shall submit to the arbitrator and the other Party the draft Comprehensive Intergovernmental Agreement which represents its complete, last and best offer of a Comprehensive Intergovernmental Agreement and such other written materials as such Party intends for the arbitrator to consider. The draft Comprehensive Intergovernmental Agreement

may incorporate provisions of previously executed Intergovernmental Agreements and shall identify for the arbitrator's easy review the areas of disagreement between the Parties. Within thirty (30) days from selection of the arbitrator, the arbitrator shall conduct a hearing. Unless otherwise agreed by the Parties, the arbitrator shall not receive written submissions from, or communicate with, any third party. The Parties understand that essential documents which the arbitrator will consider in making an award or order shall include the Final EIS, any Intergovernmental Agreements previously executed by the Parties and the draft Comprehensive Intergovernmental Agreements submitted by each of the Parties.

(f) Selection. Within ten (10) days following the hearing, the arbitrator shall select and award the draft Comprehensive Intergovernmental Agreement submitted by one of the Parties without modification. The arbitrator shall not have authority to issue any award or order other than (i) an order to submit a draft Comprehensive Intergovernmental Agreement in accordance with Subsection 4.1(g), (ii) the selection and award of the draft Comprehensive Intergovernmental Agreement submitted by one of the Parties without modification, and (iii) specific performance of the terms of the draft Comprehensive Intergovernmental Agreement selected and awarded by the arbitrator.

(g) Award Without Review of the Merits. If the arbitrator determines that neither Party has submitted a draft Comprehensive Intergovernmental Agreement which is consistent with Section 3.0 on a timely basis, the arbitrator shall order both of the Parties to immediately submit a draft Comprehensive Intergovernmental Agreement which is consistent with Section 3.0. If the arbitrator determines that one Party has submitted a draft Comprehensive Intergovernmental Agreement that is consistent with Section 3.0 on a timely basis and the other Party (i) has not submitted a draft Intergovernmental Agreement on a timely basis or (ii) has otherwise not participated in the arbitration, the arbitrator shall select and award the draft Comprehensive Intergovernmental Agreement submitted by the Party which has made a timely submission and participated in the arbitration. If the arbitrator determines that the draft Comprehensive Intergovernmental Agreement submitted by one of the Parties is consistent with Section 3.0 and the draft Comprehensive Intergovernmental Agreement submitted by the other Party is inconsistent with Section 3.0, the arbitrator shall select and award the draft Comprehensive Intergovernmental Agreement which the arbitrator determines is consistent with Section 3.0.

(h) Award on the Merits. If the arbitrator determines that (i) both Parties have submitted a draft Comprehensive Intergovernmental Agreement on a timely basis, (ii) both draft Comprehensive Intergovernmental Agreements are consistent with Section 3.0, and (iii) both Parties have participated in the arbitration process, the arbitrator shall select and award the draft Comprehensive Intergovernmental Agreement which most fully achieves the overall objectives set forth in section 3.0.

(i) Mitigation Measure Issues. The Parties understand that the mitigation measures contained in a Comprehensive Intergovernmental Agreement may not mitigate every environmental effect of the Gaming Project to a level of insignificance, and that the arbitrator shall have authority to select and award a draft Comprehensive Intergovernmental Agreement which does not mitigate every environmental effect of the Gaming Project to a level where the

environmental effect is no longer “significant” (within the meaning of NEPA, including 40 C.F.R. 1508.13).

(j) Final and Binding. The award and order of the arbitrator shall be final and binding on the Parties. Each of the Parties waives any rights it may have to review of the arbitrator's award. Judgment on the arbitrator's award or order may be entered in the federal District Court for the Northern District of California or, if such Court declines jurisdiction, the State of California Superior Court for Sonoma County.

(k) Comprehensive Intergovernmental Agreement. The Parties hereby agree that the selection and award by the arbitrator of a draft Comprehensive Intergovernmental Agreement shall be deemed to constitute a binding and enforceable agreement between the Parties which has been approved, ratified, executed and delivered by the Parties. The Parties further agree that the arbitrator or a court enforcing the arbitrator's award or order may order specific performance with respect to such agreement. Without limiting the effect of the foregoing, each Party agrees to take such further actions as the other Party may request to approve, ratify, execute and deliver a Comprehensive Intergovernmental Agreement which contains the same provisions as set forth in the Comprehensive Intergovernmental Agreement which has been selected and awarded by the arbitrator and to otherwise consummate the transactions contemplated by the arbitrator's selection, award and orders.

(l) Sovereign Immunity. In order to effectuate the provisions of this MOU and Section 4.1, and in the exercise of their respective rights to sovereignty, each of the Parties agrees to waive its right to assert sovereign immunity in connection with the arbitrator's jurisdiction or in any action to (i) enforce the other Party's obligation to arbitrate, (ii) enforce or confirm any arbitral award or order rendered in the arbitration, or (iii) enforce or execute any judgment based upon an award or order.

#### 4.2. Limited Waiver of Sovereign Immunity

(a) Waiver. Subject to the provisions of this Subsection 4.2, 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 MOU and not as to any other action, matters or disputes. The waiver shall include a resolution of the General Council in substantially the form attached as Exhibit B.

(b) Limitations on Tribe's Waiver. The Tribe's waiver of sovereign immunity is specifically limited to permitting, and does permit, the awards and orders by the arbitrator as contemplated in Subsection 4.1. The Tribe does not waive its sovereign immunity with respect to (i) actions by third parties, (ii) disputes between the Tribe and the County which do not specifically arise under this MOU, or (iii) any other award by the arbitrator which is inconsistent with Section 4.1.

4.3. Confidentiality

The Parties agree that any negotiations regarding an Intergovernmental Agreement and any dispute resolution meetings or communications, arbitration proceedings, or agreements between the Parties settling or otherwise relating to any claims of breach of this MOU, or the Intergovernmental Agreements contemplated by this MOU, or otherwise, shall be and remain confidential to the extent not prohibited by applicable law.

5.0. Termination

5.1. Termination Events. Unless otherwise agreed by the Parties, this MOU shall automatically terminate, on the earlier of the following dates:

(a) the date the Tribe submits a written notice to the County to the effect that the Tribe has permanently decided to withdraw, or not submit, any application requesting that the Secretary accept trust title to the Property for the benefit of the Tribe or to otherwise cease the development or operation of the Gaming Project on the Property; or

(b) the date the Parties' respective rights to demand arbitration pursuant to Section 4.1 expires; or

(c) if either Party initiates arbitration pursuant to Section 4.1, upon the execution and delivery of a Comprehensive Intergovernmental Agreement consistent with the arbitrator's selection and award.

5.2. Effect of Termination. Upon termination of this MOU, none of the provisions of this MOU shall be deemed to survive such termination and neither Party shall have any liability to the other Party with respect to matters arising under, or related to, this MOU.

6.0. 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 MOU and Intergovernmental Agreements and to perform its obligations under this MOU.

6.2. Due Authorization. The approval, execution, and delivery of this MOU and Intergovernmental Agreements and the performance by such Party of its obligations under this MOU have been authorized by all requisite actions of such Party.

6.3. Due Execution and Delivery. The persons executing this MOU and any Intergovernmental Agreement on behalf of such Party are and shall be duly authorized to execute and deliver this MOU and any such Intergovernmental Agreements.

6.4. Enforceability. This MOU and any Intergovernmental Agreements constitute legal, valid and binding obligations of such Party, enforceable against such Party in accordance with its terms, and, once executed, cannot be invalidated pursuant to an action of the Board of Supervisors of the County or the Tribal Council or the members of the Tribe, as may be applicable.

7.0. Scope of MOU

7.1. Property. This MOU is intended to apply, and shall be construed to apply, solely to the Property and shall not be construed to apply to any other property.

7.2. Submission to Jurisdiction. The Parties acknowledge and agree that neither this MOU nor the Intergovernmental Agreements contemplated hereby are intended to constitute, or shall be construed as constituting, a submission by the Tribe to the jurisdiction of (i) the County or any or any of its subdivisions or departments, (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.

7.3. Third Party Matters. This MOU 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.

8.0. Notice

All notices required by this MOU 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  
P.O. Box 14428  
Santa Rosa, CA 95402  
Telephone: (707) 566-2288  
Fax: (707) 566-2291

With copies to:

California Indian Legal Services  
510 - 16th Street, Fourth Floor  
Oakland, CA 94612  
ATTN: John Maier, Esq.  
Telephone: (510) 835-0284  
Fax: (510) 835-8045

9.0. Governing Law

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

10.0. Construction of Agreement


This MOU, together with all Exhibits hereto, constitutes the entire agreement between the Parties relating to this subject matter and supersedes all prior negotiations, representations, drafts or other agreements, whether written or oral, relating to this subject matter. In the event of a dispute between the Parties as to the language of this MOU or the construction or meaning of any term contained in this MOU, this MOU 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 MOU. The headings contained in this MOU are for convenience of reference only and shall not effect this MOU's construction or interpretation.

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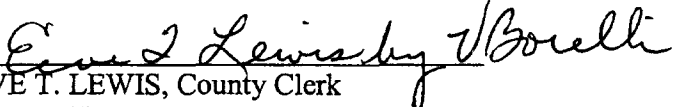
IN WITNESS WHEREOF, the Parties have executed this MOU as of the effective date set forth above.

SONOMA COUNTY, CALIFORNIA

Date: October 29, 2004


By:   
Mike Reilly, Chairman  
Sonoma County Board of Supervisors

Attest:

  
EEVE T. LEWIS, County Clerk  
And ex-officio Clerk of the Board of Supervisors


APPROVED AS TO FORM BY COUNTY COUNSEL:

Date: 10/29, 2004

By:   
Steven Woodside, Esq.  
County Counsel

THE FEDERATED INDIANS OF THE GRATON RANCHERIA:

Date: 12/3/04, 2004

By:   
Greg Sarris  
Chairperson

APPROVED AS TO FORM BY LEGAL COUNSEL FOR THE TRIBE:

Date: 10/29, 2004

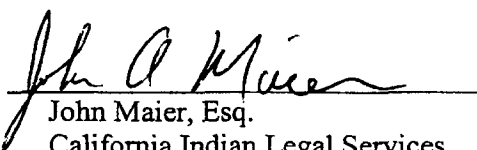
By:   
John Maier, Esq.  
California Indian Legal Services

EXHIBIT A

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

All that certain real property situated in the Unincorporated Area, County of Sonoma, State of California, described as follows:

PARCEL ONE:

Farm No. 74, and Farm No. 75, as shown upon the Plan of Subdivision of Santa Rosa Farms No. 2, Sonoma County, California, filed in the Office of the County Recorder of Sonoma County, California, on March 7, 1910 in Book 21 of Maps, Page 14, Sonoma County Records.

**APN: 045-072-006**  
**ARB: None Shown**

PARCEL TWO:

Farms 1, 2 and "A", 21, 22, 23, 24, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 69, 70, 71, 72, 73, 76, 99, 100 and 101, so numbered and designated upon that certain Map entitled "Subdivision of Santa Rosa Farms No. 2, Sonoma County, California", filed March 7, 1910 in Book 21 of Maps, Page 14, Sonoma County Records.

EXCEPTING THEREFROM those portions of Farms 22, 42, 43, 44, 45, 46, 47 and 52 granted to The Sonoma County Flood Control and Water Conservation District in Deed dated July 11, 1963 and recorded November 8, 1963 in Book 2001 of Official Records, Page 191, under Recorder's Serial No. H-63821, Sonoma County Records.

ALSO EXCEPTING THEREFROM all that portion as contained in the Deed to The County of Sonoma recorded September 14, 1994, as Document No. 1994 0106342, Sonoma County Records.

ALSO EXCEPTING THEREFROM all that portion conveyed to The County of Sonoma by Deed recorded November 17, 1994 under Document No. 1994 0128597, Sonoma County Records.

**APN: 045-071-002, 003, 004, 005, 006, 045-072-012, 013, 014, 046-021-024, 025, 026, 027, 028, 029, 030, 031, 032, 033, 034, 035, 036, 037, 038,134-261-003, 034-264-003, 005, 006, 007.008,134-267-001 & 005 ARB: None Shown**

PARCEL THREE:

A Tract of land, being a portion of the Rancho Llano de Santa Rosa, and commencing on the boundary line of said Rancho on the line between Section 21 and 22, in Township 6 North, Range 8 West, Mount Diablo Base & Meridian, at a point in the center of the County Road

known as the Santa Rosa and Stony Point Road, from which point the post for the railing of the bridge, across the Laguna and standing on the Southeast corner of the same, is North 31 ° West, 13 links distant; thence from said point of beginning, North 89° 30' East, 11.92 chains, South 39° 05' East, 2.61 chains, South 53° East, 1.36 chains, South 64° East, 1.23 chains, South 77° 15' East, 2.62 chains, South 88° 05' East, 3.94 chains, North 4° 15' East, 1.43 chains, South 88° East, 2.03 chains, South 56° East, 2.44 chains, North 87° ,15' East, 22.62 chains to the Northwest boundary line of the Cotati Rancho; thence along said line, North 29° 15' East, 39.44 chains; thence leaving said line, West 67.92 chains to the center of the aforesaid Road and Section line; thence South, 32.18 chains to the point of beginning. Magnetic Variation 17° East.

EXCEPTING THEREFROM those portions of land described in the Deeds from Manuel T. Pimentel, et al, to the Sonoma County Flood Control and Water Conservation District, recorded August 16, 1961 in Book 1840 of Official Records, Page 280, Serial No. G-60050, Sonoma County Records, and recorded September 24, 1963 in Book 1989 of Official Records, Page 575, Serial No. H-56600, Sonoma County Records.

ALSO EXCEPTING THEREFROM that portion of land described in the Deed from Mary C. Pimentel, et al, to the Sonoma County Flood Control and Water Conservation District, recorded February 11, 1966 in Book 2187 of Official Records, Page 957, Serial No. J-83549, Sonoma County Records.

ALSO EXCEPTING THEREFROM that portion of land described in the Deed to the City of Rohnert Park, recorded January 11, 1989 as Document No. 89002750 of Official Records of Sonoma County.

ALSO EXCEPTING THEREFROM that portion of land described in the Deed to the County of Sonoma, recorded May 17, 1996 as Document No. 1996 0044116 of Official Records of Sonoma County.

**PARCEL FOUR:**

An easement for cattle and agricultural equipment crossing, as described in the Deed from the Sonoma County Flood Control and Water Conservation District to Manuel L. Pimentel and Mary C. Pimentel, recorded August 15, 1961 in Book 1840 of Official Records, Page 284, Serial No. G-60051, Sonoma County Records.

**PARCEL FIVE:**

An easement for cattle and agricultural equipment crossing, as described in the Deed from the Sonoma County Flood Control and Water Conservation District to Manuel L. Pimentel and Mary C. Pimentel, recorded August 15, 1961 in Book 1840 of Official Records, Page 288, Serial No. Serial No. G-60052, Sonoma County Records.

**APN: AP46021-20 & 21 & 39 & 40**  
**ARB: None Shown**

**EXHIBIT B**

EXHIBIT B

**FEDERATED INDIANS OF GRATON RANCHERIA**

RESOLUTION AUTHORIZING A LIMITED WAIVER OF THE TRIBE'S SOVEREIGN IMMUNITY WITH RESPECT TO A MEMORANDUM OF UNDERSTANDING WITH THE COUNTY OF SONOMA WHICH PROVIDES A FRAMEWORK FOR NEGOTIATION OF AN INTERGOVERNMENTAL AGREEMENT TO MITIGATE THE OFF-RESERVATION IMPACTS OF THE TRIBE'S PROPOSED GAMING PROJECT ON THE COUNTY.

GENERAL COUNCIL RESOLUTION NO.: **GC-04-25**

DATE APPROVED: November 6, 2004

WHEREAS, the Federated Indians of Graton Rancheria (the "Tribe") is a federally recognized Indian tribe organized pursuant to the Constitution of the Federated Indians of Graton Rancheria, approved by the Secretary of the Interior on December 23, 2002, (the "Constitution"); and

WHEREAS, in 2000, Congress restored the federal government's government-to-government relationship with the Tribe pursuant to the Graton Rancheria Restoration Act (Pub. L. 106-568, 25 U.S.C. § 1300n et. seq.); and

WHEREAS, the Tribe's Restoration Act provides that the Secretary of the Interior shall accept into trust for the benefit of the Tribe land located in Marin or Sonoma County and that such land, once taken into trust for the benefit of the Tribe, shall be the Tribe's reservation; and

WHEREAS, the Tribe has currently identified property, which is located approximately 11 miles from the Tribe's former Graton Rancheria in an unincorporated area of Sonoma County adjacent to the western boundary of the City of Rohnert Park Urban Growth Boundary; and

WHEREAS, the Tribe intends to submit an application to the Secretary requesting that the United States take title to the identified property in trust for the benefit of the Tribe as part of the Tribe's new reservation, and further request that the Secretary or the National Indian Gaming Commission ("NIGC") determine that its Reservation is eligible for gaming under the Indian Gaming Regulatory Act; and

WHEREAS, the Tribe intends to build a casino and hotel resort on a portion of its Reservation; and

WHEREAS, prior to constructing the gaming facility, the Indian Gaming Regulatory Act provides that the Tribe must first obtain (i) approval of its management contract from the NIGC and (ii) a Tribal-State Gaming Compact from the State of California; and

WHEREAS, the NIGC must comply with the National Environmental Policy Act in connection with its approval of the Tribe's management contract; and

WHEREAS, the Tribe has requested the NIGC to prepare an Environmental Impact Statement ("EIS") (as distinguished from a less detailed Environmental Assessment) reviewing the Gaming Project and, in accordance with the Tribe's request, the NIGC, acting as lead agency, is currently preparing an Environmental Impact Statement; and

WHEREAS, after conducting public hearings, the NIGC issued the final Scoping Report for the EIS in August 2004 based on comments received from the public and local jurisdictions, and the NIGC expects to issue a draft EIS in early 2005; and

WHEREAS, each of the new and amended compacts negotiated by the Governor in 2004 includes environmental provisions which provide that, prior to the commencement of certain activities on its reservation, including the construction of new casino facilities, the tribe shall (i) prepare a tribal environmental impact report and (ii) negotiate an intergovernmental agreement between the applicable tribe and the applicable county or city to mitigate certain off-reservation impacts identified in the environmental analysis contained in the tribal environmental impact report; and

WHEREAS, the 2004 Compacts require the applicable tribe and the applicable county or city to enter into an arbitration process to resolve any disagreement regarding the provisions which should be included in the intergovernmental agreement; and

WHEREAS, the Tribe expects that any Compact which may be negotiated between the Tribe and the State will likely include environmental provisions similar to those which are included in the 2004 Compacts; and

WHEREAS, the County and Tribe have prepared a Memorandum of Understanding (the "MOU") which establishes a bilateral framework for negotiating the intergovernmental agreement required under the 2004 Compacts; and

WHEREAS, under the MOU, the Tribe and the County have agreed to address significant off-reservation environmental impacts on the County by commencing negotiations, upon publication of the draft EIS, of one or more intergovernmental agreements specifying appropriate, fair share mitigation measures by the Tribe; and

WHEREAS, the MOU provides for a limited waiver of the Tribe's sovereign immunity in favor of the County (but not as to any other person or entity) to ensure that the MOU is legally binding on both parties; and

WHEREAS, Article VI, Section 2 of the Constitution reserves to the General Council the power to waive the Tribe's sovereign immunity to unconsented suit; and



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WHEREAS, on October 26, 2004, the County Board of Supervisors authorized County Counsel, in consultation with the Board Chairman, to finalize the MOU; and

WHEREAS, on October 29, 2004, the Tribal Council, having reviewed and approved the terms and conditions of the MOU, authorized the Chairman to execute the MOU, but only after notifying the County that the MOU would be unenforceable until such time as the General Counsel consented to the limited waiver of the Tribe's sovereign immunity with respect to the MOU; and

WHEREAS, on October 29, 2004, the County and Tribe executed the MOU with an effective date of November 1, 2004; and

WHEREAS, the Tribal Council requests that the General Council approve the limited waiver as set forth below; and

WHEREAS, this resolution, if enacted, would supercede and extinguish any prior consent by the General Counsel to waive the Tribe's sovereign immunity in favor of the County (but would not affect the prior consent in favor of the City of Rohnert Park) pursuant to General Council Resolution GC-03-22, enacted on September 22, 2003, as the agreement with the County which was contemplated under said resolution was never executed.

**NOW, THEREFORE, BE IT RESOLVED THAT** the General Council agrees to waive the Tribe's right to assert sovereign immunity in favor of the County, but not as to any other person or entity, as to any dispute which specifically arises under the MOU, but not as to any other action or matters; provided, however, that the Tribe's waiver of sovereign immunity is specifically limited to permitting, and does permit, arbitration pursuant to Section 4.1 of the MOU and any court action by the County to (i) enforce the Tribe's obligation to arbitrate, (ii) enforce or confirm any arbitral award or order rendered in the arbitration, or (iii) enforce or execute any judgment based upon an award or order; and further provided that the Tribe does not waive its sovereign immunity with respect to (i) actions by third parties, (ii) disputes between the Tribe and the County which do not specifically arise under the MOU, or (iii) any other award by the arbitrator which is inconsistent with Section 4.1 of the MOU.

**NOW, THEREFORE, BE IT FURTHER RESOLVED THAT** this resolution supercedes and extinguishes any prior consent by the General Counsel to waive the Tribe's sovereign immunity in favor of the County (but would not affect the prior consent in favor of the City of Rohnert Park) pursuant to General Council Resolution GC-03-22, enacted on September 22, 2003.

**CERTIFICATION**

We the undersigned to hereby certify that the foregoing resolution was duly adopted by the General Membership on the 6<sup>th</sup> day of November, 2004, at a General Council meeting at which a quorum of the registered voters was present, by a vote of 221 for 0 opposed, and 0 abstaining, and that said Resolution has not been rescinded or amended in any way.

  
\_\_\_\_\_  
Chairman

ATTEST:

  
\_\_\_\_\_  
Secretary

EXHIBIT C

EXHIBIT C  
AGREED UPON LIST OF ARBITRATORS

1. Hon. Edward Panelli  
JAMS  
160 W. Santa Clara St., Suite 1150  
San Jose, CA 95113  
Telephone: (408) 288-2240  
Fax: (408) 288-2240  
E-mail: Not Available
2. Hon. Cruz Reynoso  
UCD/School of Law  
400 Mark Hall  
David, CA 95616  
Telephone: (530) 752-2897  
Fax: (530) 752-4704  
E-mail: Not Available
3. Frederick S. Wyle  
3 Embarcadero Center, 7<sup>th</sup> Fl.  
San Francisco, CA 94111  
Telephone: (415) 788-0781  
Fax: (415) 788-3410  
E-mail: Not Available
4. Tina A. Thomas  
Remy, Thomas, Moose & Manley  
455 Capital Mall, Suite 210  
Sacramento, CA 95814  
Telephone: (916) 443-2745  
Fax: (916) 443-9017  
E-mail: [tthomas@rtandm.com](mailto:tthomas@rtandm.com)
5. Palmer B. Madden  
ADR Services  
3000 Danville Blvd., Suite 543  
Alamo, CA 94507  
Telephone: (925) 838-8593  
Fax: (925) 831-209  
E-mail : [pbm@netvista.net](mailto:pbm@netvista.net)
6. E. Clement Shute, Jr.  
Shute, Mihaley & Weinberger LLP  
396 Hayes St., Ste. 1  
San Francisco, CA 94102  
Telephone: (415) 552-7272  
Fax: (415) 552-2816  
E-mail: [shute@smwlaw.com](mailto:shute@smwlaw.com)
7. Richard H. Chernick  
350 S. Figueroa St., Suite 990  
Los Angeles, CA 90071  
Telephone: (213) 253-9790  
Fax: (213) 620-0100  
E-mail: [rchernick@msn.com](mailto:rchernick@msn.com)

The above list may be modified or supplemented by mutual written agreement of the Parties. The Parties shall contact the arbitrators to determine their availability to conduct an arbitration consistent with the timelines set forth in section 4.1. The person highest on the above list shall be chosen unless the Parties mutually agree to an alternate selection.