

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.

"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:

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- (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. 4th 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

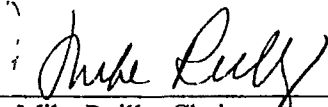
This MOU, together with all Exhibits hereto, constitutes the entire agreement between the Parties relating to this subject matter and supersedes all prior negotiations, representations, drafts or other agreements, whether written or oral, relating to this subject matter. In the event of a dispute between 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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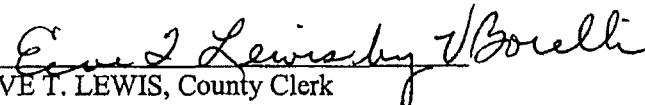
IN WITNESS WHEREOF, the Parties have executed this MOU as of the effective date set forth above.

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

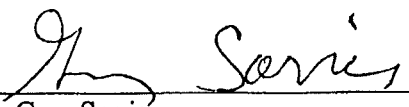
APPROVED AS TO FORM BY COUNTY COUNSEL:

Date: 10/29, 2004

By: 
Steven Woodside, Esq.
County Counsel

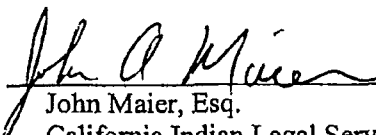
THE FEDERATED INDIANS OF THE GRATON
RANCHERIA:

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