

**FIRST AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING**

**BY AND BETWEEN**  
**THE CITY OF ROHNERT PARK**  
**AND THE FEDERATED INDIANS OF GRATON RANCHERIA**

**DATED AS OF:**

**March 26, 2013**

**EFFECTIVE AS OF:**

April 17, 2013

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**THIS FIRST AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING** (the “**MOU**”) is made this 26th day of March, 2013, by and between the City of Rohnert Park, a municipal organization organized and existing under and by virtue of the laws of the State of California (the “**City**”), and the Federated Indians of Graton Rancheria, a federally recognized Indian tribe (the “**Tribe**”). The capitalized terms not otherwise defined herein have the meaning set forth below.

RECITALS

WHEREAS, the Tribe consists of approximately 1,300 members of Coast Miwok and Southern Pomo descent; and

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

WHEREAS, in 2000, Congress restored federal recognition to the Tribe pursuant to the Graton Rancheria Restoration Act (“**Restoration Act**”), Pub. L. 106-568, 25 U.S.C. § 1300n *et seq.*; and

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

WHEREAS, in April 2003, the Tribe identified property located on Highway 37 in southern Sonoma County (the “**Highway 37 Property**”) for its reservation and announced plans to develop a resort hotel and gaming facility on a portion of the Highway 37 Property once in trust and deemed eligible for gaming; and

WHEREAS, at the urging of community representatives and environmentalists, the Tribe reconsidered its plans for the Highway 37 Property and, thereafter, donated its rights to the Highway 37 Property to the Sonoma Land Trust for perpetual preservation; and

WHEREAS, in August 2003, the Tribe acquired rights to purchase alternative property located on Stony Point Road (the “**Stony Point Road Property**”) west of the urban growth boundary of the City for its reservation and proposed project; and

WHEREAS, in August 2005, to address local land use and environmental concerns, the Tribe abandoned its plans for the Stony Point Road Property and, thereafter, the Tribe purchased approximately 254 acres of land (the “**254 Acre Parcel**”) located primarily within the unincorporated area of the County of Sonoma (the “**County**”); and

WHEREAS, at the request of the City and the County, the Tribe agreed to wait until completion of the environmental review for the proposed Gaming Facility before exercising its right under the Restoration Act to have the 254 Acre Parcel placed into trust; and

WHEREAS, the National Indian Gaming Commission (the “**NIGC**”) conducted four public hearings and provided over 160 days for public comment in preparing a draft and final

environmental impact statement (“**EIS**”) for the casino and hotel project pursuant to the National Environmental Policy Act; and

WHEREAS, in October 2010, the NIGC issued its Record of Decision, concluding that the 254 Acre Parcel is eligible for gaming under IGRA and adopting as the preferred action a reduced intensity casino and hotel project (the “**Project**”) that is significantly smaller than the project initially proposed by the Tribe and analyzed as Alternative A in the EIS, to be constructed and operated on approximately 68 acres of the 254 Acre Parcel located within the City urban growth boundary and outside the area identified as community separator in the County General Plan; and

WHEREAS, following completion of the environmental review, the Tribe exercised its right under the Restoration Act to have the 254 Acre Parcel placed into trust; and

WHEREAS, on October 1, 2010, pursuant to the Restoration Act, the Bureau of Indian Affairs of the United States Department of the Interior accepted the 254 Acre Parcel into trust on behalf of the Tribe for the Tribe’s reservation (the “**Reservation**”); and

WHEREAS, on March 27, 2012, Governor Jerry Brown signed, and on May 17, 2012, the Legislature subsequently ratified, a class III gaming compact (the “**Compact**”) between the Tribe and State that authorizes the operation of up to three thousand (3,000) Gaming Devices; and

WHEREAS, on July 12, 2012, the Secretary published notice in the Federal Register that the Compact is considered to have been approved pursuant to IGRA; and

WHEREAS, the Compact obligates the Tribe to pay a percentage of its gaming revenues to the State Gaming Agency on a quarterly basis for deposit into a trust fund called the Graton Mitigation Fund; and

WHEREAS, the funds deposited into the Graton Mitigation Fund are to be paid by the State Gaming Agency in the following descending order, until exhausted: (i) the City pursuant to its agreement with the Tribe, (ii) the County pursuant to its agreement with the Tribe, and (iii) to the Revenue Sharing Trust Fund or the Tribal Nation Grant Fund; and

WHEREAS, the Tribe and the City are parties to a Memorandum of Understanding made effective as of October 14, 2003 (the “**Original MOU**”), providing for funds to mitigate Project impacts within the City and make investments in and contributions to the Rohnert Park community; and

WHEREAS, the City and the Tribe are parties to a Joint Exercise of Powers Agreement for Wastewater Services made effective as of July 23, 2012 (the “**Wastewater Services JEP**A”), to provide City wastewater services to the Reservation, including the Project; and

WHEREAS, the City, the County, and the Tribe are parties to a Joint Exercise of Powers Agreement for Implementation of Mitigation Measures for Widening Wilfred Avenue made effective as of September 25, 2012 (the “**Wilfred Avenue JEP**A”), under which the Tribe has

agreed to pay the full cost of improvements to Wilfred Avenue from Highway 101 west to Stony Point Road and the full cost of improvements to Business Park Drive; and

WHEREAS, the County and the Tribe are parties to an Intergovernmental Mitigation Agreement made effective as of October 23, 2012 (the “**County Agreement**”), under which the Tribe will make payments to mitigate potential Project impacts, including for police and fire protection services, water conservation, Highway 101 improvements, health and human services, and for parks and open space; and

WHEREAS, the City and the Tribe have determined the need to restate and amend the Original MOU, entered into more than nine (9) years ago, to reflect changes in the following: the relocation of the Project to a site within the City’s urban growth boundary and adjacent to the City’s incorporated boundaries, the Project scope, contributions to be made by the Parties prior to the Opening Date, the payments from the Graton Mitigation Fund, the Project’s demands on City services, and other matters; and

WHEREAS, the Tribe further intends to advance a cooperative and mutually respectful government-to-government relationship with the City; 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 financial contributions and community investments to mitigate various impacts that may arise in connection with the Project; and

WHEREAS, this MOU does not constitute a “project” for CEQA purposes because it involves the creation of a government funding mechanism and/or other government fiscal activity. The terms in this MOU do not involve any commitment to any specific “project” which may result in a potentially significant physical impact on the environment and only requires the Tribe to make mitigation payments for identified mitigation measures and programs. This MOU does not obligate the City to undertake any specified mitigation measure or program or construction project nor does it set a time for development as those terms are used in CEQA; and

WHEREAS, the City recognizes and acknowledges that the Reservation is located outside the incorporated boundaries of the City and therefore the City has no authority to exercise jurisdiction over the Reservation or the Project. The City does not have legal authority to deliberate on, approve, disapprove, or otherwise exercise judgment regarding the Project. The City is therefore not deliberating on, approving, disapproving or otherwise exercising judgment regarding the Project by entering into this MOU; 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

WHEREAS, in acknowledging the contributions and investments to be made by the Tribe as set forth in this MOU, the City intends to use the funding provided by the Tribe to mitigate impacts on City resources and services such as traffic, staffing levels in public safety, public works, traffic circulation, neighborhood upgrades, workforce housing, problem gambling, storm water drainage, and other impacts; 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, in consideration of the above and of the mutual promises herein contained, the sufficiency of which is acknowledged, the Parties hereby agree as follows:

1. **DEFINITIONS**

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

- 1.1 “**CEQA**” means the California Environmental Quality Act, California Public Resources Code § 21000 *et seq.*, and any amendments thereto, and the regulations promulgated thereunder, as the same may be amended or modified from time to time.
- 1.2 “**City**” means the City of Rohnert Park, a municipal corporation organized and existing under and by virtue of the laws of the State of California.
- 1.3 “**Compact**” means the Tribal-State Compact between the State and the Tribe, governing the conduct of Gaming Activities on the Reservation pursuant to IGRA, as executed on March 27, 2012 by the State and March 26, 2012 by the Tribe, considered to have been approved by the Secretary pursuant to 25 U.S.C. § 2710(d)(8)(C), notice of which was published in the Federal Register on July 12, 2012 (a correction to the notice was published July 23, 2012), as the same may be amended from time to time, and which is available online at: [http://gov.ca.gov/docs/Graton\\_Compact\\_executed.pdf](http://gov.ca.gov/docs/Graton_Compact_executed.pdf).
- 1.4 “**County**” means the County of Sonoma, California.
- 1.5 “**County Agreement**” means the Intergovernmental Mitigation Agreement between the County and the Tribe made effective as of October 23, 2012, as the same may be amended from time to time.
- 1.6 “**CPI Adjustment**” means 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.
- 1.7 “**Day Baseball Style Arbitration**” means the parties submit best, last and final offers to an arbitrator. After hearing presentations from each party, the arbitrator’s only option is to choose between the two offers submitted by each party. The arbitrator cannot split the difference between the two offers nor select an alternative position.
- 1.8 “**Due Dates**” mean each and every date upon which contributions are due and expected to be received from the State Gaming Agency, as are more particularly described in Exhibit A hereto.

- 1.9 “**Gaming Activities**” means the class III gaming activities authorized by section 3.1 of the Compact.
- 1.10 “**Gaming Device**” means any slot machine within the meaning of article IV, section 19, subdivision (f) of the California Constitution as defined under section 2.10 of the Compact.
- 1.11 “**Gaming Facility**” or “**Facility**” means any building in which Gaming Activities or any Gaming Operations occur, or in which the business records, receipts, or funds of the Gaming Operations are maintained (excluding offsite facilities dedicated to storage of those records and financial institutions), and all rooms, buildings, and areas, including hotels, restaurants, parking lots, and walkways, a principal purpose of which is to serve the activities of the Gaming Operations rather than providing that operation with an incidental benefit as defined under section 2.12 of the Compact.
- 1.12 “**Graton Mitigation Fund**” means the account established by the State Gaming Agency for the receipt of revenues paid by the Tribe pursuant to section 4.5 of the Compact and for the distribution of such revenues as described in section 4.5.1 of the Compact.
- 1.13 “**EIS**” means the environmental impact statement prepared by the NIGC for the Project pursuant to NEPA, final notice of which was published on page 9007 of Volume 74 of the Federal Register on February 27, 2009.
- 1.14 “**IGRA**” means the Indian Gaming Regulatory Act of 1988 (P.L. 100-497, 18 U.S.C. § 1166 *et seq.* and 25 U.S.C. § 2701 *et seq.*), and any amendments thereto, and the regulations promulgated thereunder, as the same may be amended or modified from time to time.
- 1.15 “**NEPA**” means the 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.
- 1.16 “**NIGC**” means the National Indian Gaming Commission established pursuant to IGRA.
- 1.17 “**Opening Date**” or “**Opening**” means the first date on which the Gaming Activities at the Gaming Facility are open and available for use by the public.
- 1.18 “**Parties**” means the City and the Tribe as signatories to this MOU.
- 1.19 “**Project**” means the development, construction and operation on the Reservation of all or any part of the reduced intensity project described as Variant H-sub1 and identified as the Preferred Action Alternative in the Record of Decision.

- 1.20 “**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 and the County.
- 1.21 “**Quarter**” means any one of the following three month periods: January through March, April through June, July through September, and October through December. If the Gaming Activities commence after the first day of any calendar quarter, the first Quarter for purposes of this MOU shall cover the period from the commencement of Gaming Activities to the end of the first full calendar quarter.
- 1.22 “**Record of Decision**” means the Record of Decision for the environmental impact statement prepared by the NIGC for the Project pursuant to NEPA, notice of which was published on page 63517 of Volume 75 of the Federal Register on October 15, 2010.
- 1.23 “**Reservation**” means certain contiguous parcels totaling approximately 254 acres of land, including approximately 5 acres currently located within the City and another 68 acres currently located within the urban growth boundary of the City, which was taken into trust by the Bureau of Indian Affairs of the United States Department of Interior on October 1, 2010, or any portion of such land, which is held by the United States of America in trust for the benefit of the Tribe.
- 1.24 “**Restoration Act**” means the Graton Rancheria Restoration Act (Pub. L. 106-568, 25 U.S.C. § 1300n).
- 1.25 “**Secretary**” means the Secretary of the United States Department of the Interior.
- 1.26 “**Special Enforcement Activities**” means public safety activities including, but not limited to, combating gangs, illegal drug use and other criminal activity in the City.
- 1.27 “**State**” means the State of California.
- 1.28 “**State Gaming Agency**” means the entities authorized to: administer the Graton Mitigation Fund or other mitigation monies paid by the Tribe to the State for distribution to other public and private entities; and investigate, approve, regulate and license gaming pursuant to the Gambling Control Act (Chapter 5 (commencing with section 19800) of Division 8 of the California Business and Professions Code), or any successor statutory scheme, and any entity or entities in which that authority may hereafter be vested.
- 1.29 “**Tribe**” means the Federated Indians of Graton Rancheria, a federally recognized Indian tribe.
- 1.30 “**Wastewater Services JEPA**” means the Joint Exercise of Powers Agreement by and between the City and the Tribe for Wastewater Services made effective as of July 23, 2012, as the same may be amended from time to time.

1.31 “**Wilfred Avenue JEP A**” means the Joint Exercise of Powers Agreement by and between the City, the County, and the Tribe for Implementation of Mitigation Measures for Widening Wilfred Avenue made effective as of September 25, 2012, as the same may be amended from time to time.

## 2. **NON-RECURRING MITIGATION AND IMPACT CONTRIBUTIONS**

2.1 **DEVELOPMENT FEE CONTRIBUTION PRIOR TO OPENING.** To mitigate impacts of the Project on the City, its staff and other resources, the Tribe shall make a non-recurring cash contribution to the City 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 from a developer for the development of an equivalent commercial project (as if the Project was not located on the Reservation, and as if the entire Reservation was located within the boundaries of the City). The Tribe shall pay the non-recurring development fee to the City within thirty (30) calendar days following the Effective Date of this MOU, as is more particularly described in Section 7.1 hereof.

2.2 **LAW ENFORCEMENT CONTRIBUTION PRIOR TO OPENING.** To mitigate impacts of the Project on law enforcement resources, the Tribe shall make a non-recurring cash contribution to the City of five hundred thousand dollars (\$500,000) for Special Enforcement Activities in the City. The Tribe shall make the non-recurring law enforcement payment to the City in four (4) successive, quarterly installments of equal amounts of one hundred twenty five thousand dollars (\$125,000) on July 10, 2013, October 10, 2013, January 10, 2014 and April 10, 2014.

2.3 **FIRE AND PUBLIC SAFETY CONTRIBUTIONS AFTER OPENING.** To mitigate impacts of the Project on fire and public safety, the Tribe shall make the following non-recurring contributions set forth in this Section 2.3.

2.3.1 The Tribe shall make a non-recurring cash contribution to the City of three million seven hundred fifty thousand dollars (\$3,750,000) to develop and construct a new public safety building west of Highway 101 within the City (the “**Public Safety Building**”). The above-referenced contribution shall be made in eight (8) successive, quarterly installments of equal amounts commencing on the first business day of the seventh (7th) Quarter after the Opening Date. If the amount paid exceeds the actual cost of the Public Safety Building, the City shall (i) within one hundred twenty (120) days after a certificate of occupancy is issued for the Public Safety Building, provide written notification to the Tribe of the amount of the excess payment, and (ii) set aside the excess amount and credit such amount against the next payment due to the City from the Tribe pursuant to this MOU.

2.3.2 The Tribe shall make a non-recurring cash contribution to the City of one million two hundred thousand dollars (\$1,200,000) to be used by the City

solely for the purchase and equipping of a ladder fire truck to be stationed at the Public Safety Building and capable of servicing the hotel which will be constructed as part of a later phase of the Project. The above-referenced contribution shall be made on the first business day of the eleventh (11th) Quarter after the Opening Date.

2.3.3 The Tribe shall make a non-recurring cash contribution to the City of four hundred ten thousand dollars (\$410,000) to be used by the City solely for the purchase of public safety and/or other City vehicles required to mitigate impacts of the Project. The above-referenced contribution shall be made in four (4) successive, quarterly installments of one hundred two thousand five hundred dollars (\$102,500) commencing on the first business day of the seventh (7th) Quarter after the Opening Date.

2.4 **TRAFFIC IMPACTS AND OTHER RIGHT OF WAY IMPROVEMENT CONTRIBUTION AFTER OPENING.** In order to mitigate potential impacts which are attributable, in whole or part, to the Project, which have not been identified as of the date of this MOU, the Tribe shall make a non-recurring cash contribution to the City of up to a maximum of four hundred fifty thousand dollars (\$450,000) to be used by the City, on an as needed basis, to signalize or improve rights of way, plan for or construct rights of way, or to otherwise mitigate traffic impacts of the Project (“**Traffic Improvements**”). Any Traffic Improvement shall be mutually agreed upon by the City and the Tribe prior to the Tribe making any cash contribution. Following agreement by the parties on the actual Traffic Improvements, the above-referenced contribution shall be made by the Tribe on the first business day of the next Quarter following a written request for such a contribution by the City to the Tribe.

2.5 **MOBILE HOME PARK CONTRIBUTION AFTER OPENING.** In order to mitigate potential impacts of the Project on the Rancho Verde Mobile Home Park, the Tribe shall make a non-recurring cash contribution to the City of up to a maximum of seven hundred thousand dollars (\$700,000) to enable the City to implement measures, which are mutually agreed upon by the City and the Tribe 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 EIS and/or Record of Decision (“**Stormwater Measures**”). It is understood that certain Stormwater Measures have already been constructed in the Martin Avenue business park area, including installation of check valves on existing storm drain outlets, construction of a portable pump station, and installation of a bypass pipeline, at a cost of one hundred eighty thousand dollars (\$180,000). In the event additional Stormwater Measures have been agreed to by the City and the Tribe, the contribution which shall not exceed five hundred twenty thousand dollars (\$520,000) shall be made by the Tribe on the first business day of the next Quarter following a written request for such contribution by the City to the Tribe; which request shall not be made prior to the Opening Date.

### 3. RECURRING MITIGATION CONTRIBUTIONS

- 3.1 **LAW ENFORCEMENT RECURRING CONTRIBUTION.** Following the Opening Date, the Tribe shall make a recurring cash contribution to the City of five hundred thousand dollars (\$500,000) per annum for Special Enforcement Activities to mitigate the ongoing impacts of the Project on public safety in the City. The above-referenced contribution shall be made by the Tribe in four (4) successive, equal, quarterly installments commencing on the first business day of the third (3rd) Quarter after the Opening Date and on the first business day of every Quarter thereafter.
- 3.2 **PROBLEM GAMBLING RECURRING CONTRIBUTION.** Following the Opening Date, the Tribe shall make a recurring cash contribution to the City of one hundred twenty five thousand dollars (\$125,000) per annum to mitigate the social impacts of the Project on the City. The City shall grant such payment to an organization dedicated to the treatment and prevention of problem gambling or pathological gambling disorders. The recipient organization shall be determined by the City, with approval by the Tribe, which approval shall not be unreasonably withheld. The above-referenced contribution shall be made by the Tribe in four (4) successive, equal, quarterly installments commencing on the first business day of the third (3rd) Quarter after the Opening Date and on the first business day of every Quarter thereafter.
- 3.3 **WATERWAY RECURRING CONTRIBUTION.** Following the Opening Date, the Tribe shall make a recurring cash contribution to the City of fifty thousand dollars (\$50,000) per annum to be used solely to address storm water drainage matters to mitigate potential impacts of the Project on storm water drainage. The above-referenced contribution shall be made by the Tribe in four (4) successive, equal, quarterly installments commencing on the first business day of the third (3rd) Quarter after the Opening Date and on the first business day of every Quarter thereafter.
- 3.4 **SUPPLEMENTAL RECURRING CONTRIBUTIONS.**
- 3.4.1 **SUPPLEMENTAL RECURRING CONTRIBUTION.** Following the Opening Date, the Tribe shall make a recurring cash contribution to the City of five million dollars (\$5,000,000) per annum to mitigate potential impacts of the Project on the City. The above-referenced contribution shall be made by the Tribe in four (4) successive, equal, quarterly installments commencing on the first business day of the third (3rd) Quarter after the Opening Date and on the first business day of every Quarter thereafter. These payments shall be paid from the Graton Mitigation Fund which is expected to include deposits made by the Tribe within thirty (30) days of the close of the prior calendar quarter.
- 3.4.2 **RECURRING PUBLIC SERVICES CONTRIBUTION.** Following the Opening Date, the Tribe shall make a recurring cash contribution to the City of two

million three hundred sixty nine thousand dollars (\$2,369,000) per annum to mitigate potential impacts of the Project on City services. It is the intent of the City to use these funds in part to provide for additional staffing levels to mitigate the potential impacts on public safety and/or other City services. The above-referenced contribution shall be made by the Tribe in four (4) successive, equal, quarterly installments commencing on the first business day of the third (3rd) Quarter after the Opening Date and on the first business day of every Quarter thereafter. These payments shall be paid from the Graton Mitigation Fund which is expected to include deposits made by the Tribe within thirty (30) days of the close of the prior calendar quarter.

#### 4. **COMMUNITY INVESTMENT RECURRING CONTRIBUTION**

To make investments in the Rohnert Park schools, housing and general community and to mitigate potential impacts of the Project on the Rohnert Park schools, housing and general community, from and after the Opening Date, subject to Section 5.2.3 of this MOU, the Tribe shall make investments in and contributions to the Rohnert Park community as follows:

4.1 **SCHOOL CONTRIBUTION.** The Tribe shall make a recurring cash contribution to the Cotati-Rohnert Park Unified School District of one million dollars (\$1,000,000) per annum. The use and distribution of the funds shall be governed by an *ad hoc* committee which shall meet at least annually and shall consist of two (2) members designated by the Tribe, two (2) members designated by the Cotati-Rohnert Park Unified School District and one (1) member chosen by the other four (4) members. The above-referenced contribution shall be made by the Tribe in four (4) successive, equal, quarterly installments commencing on the first business day of the third (3rd) Quarter after the Opening Date and on the first business day of every Quarter thereafter. These payments shall be paid from the Graton Mitigation Fund which is expected to include deposits made by the Tribe within thirty (30) days of the close of the prior calendar quarter.

#### 4.2 **CHARITABLE CONTRIBUTIONS.**

4.2.1 The Tribe shall make a recurring cash contribution of one million dollars (\$1,000,000) per annum to the Rohnert Park Foundation. The above-referenced contribution shall be made by the Tribe in four successive, equal, quarterly installments commencing on the first business day of the third (3rd) Quarter after the Opening Date and on the first business day of every Quarter thereafter. These payments shall be paid from the Graton Mitigation Fund which is expected to include deposits made by the Tribe within thirty (30) days of the close of the prior calendar quarter.

4.2.2 The Tribe shall make a separate, recurring cash contribution of one million dollars (\$1,000,000) per annum to a charitable organization(s) or other organization(s) of its sole selection which enhances the City, Sonoma

State University, or otherwise mitigates the impacts of the Project. The above-referenced contribution shall be made by the Tribe in four (4) successive, equal, quarterly installments commencing on the first business day of the fifteenth (15th) Quarter after the Opening Date and on the first business day of every Quarter thereafter. The Tribe shall provide the City with written notice of its payment to the organization(s) of its choice within fifteen (15) calendar days of such payment. These payments shall be paid from the Graton Mitigation Fund which is expected to include deposits made by the Tribe within thirty (30) days of the close of the prior calendar quarter.

- 4.3 **COMMUNITY CONTRIBUTION.** The Tribe shall make a recurring cash contribution to the City of one million dollars (\$1,000,000) per annum to be used for neighborhood upgrade or workforce housing programs. The City alone shall have the authority to determine the use and distribution of these funds. The above-referenced contribution shall be made by the Tribe in four (4) successive, equal, quarterly installments commencing on the first business day of the third (3rd) Quarter after the Opening Date and on the first business day of every Quarter thereafter. These payments shall be paid from the Graton Mitigation Fund which is expected to include deposits made by the Tribe within thirty (30) days of the close of the prior calendar quarter.

## 5. **PAYMENT TERMS**

### 5.1 **STATE GAMING AGENCY PAYMENTS.**

- 5.1.1 This MOU requires the Tribe to make the contributions to the City specified in Sections 2.3 through Section 4 hereof as specified on the Due Dates, which are attached hereto as Exhibit A and incorporated herein by this reference. Within thirty (30) calendar days of the Opening Date, and annually thereafter in June of each year, the City shall prepare an annual payment schedule indicating the contributions to be made within the four Quarters of that year pursuant to this MOU (“**Annual Payment Schedule**”). The form of Annual Payment Schedule for 2014/2015 is attached hereto as Exhibit B and shall be updated to incorporate CPI data. The City shall submit the Annual Payment Schedule to the State Gaming Agency each year after calculating the CPI adjustments provided for in Section 5.5.
- 5.1.2 The Compact obligates the Tribe to make payments into the Graton Mitigation Fund. The State Gaming Agency is then obligated to disperse revenues from the Graton Mitigation Fund to the City according to the terms of this MOU pursuant to Compact section 4.5.1. All remaining funds in the Graton Mitigation Fund will then be dispersed first to the County, and then to the Revenue Sharing Trust Fund and/or the Tribal Nations Grant Fund according to the terms of the Compact.

- 5.1.3 The Parties expect the State Gaming Agency to make the payments due to the City pursuant to this MOU and the Compact on the Due Dates reflected on Exhibit A. The State Gaming Agency will make the first payment from the Graton Mitigation Fund following the end of the first full Quarter after the Opening Date. The timing of the payments in this MOU have taken the above referenced expectation into account and the Due Dates listed in Exhibit A are the latest dates upon which the City is to receive payments from the State Gaming Agency on behalf of the Tribe.
- 5.1.4 In the event of insufficient revenues in the Graton Mitigation Fund to make all the contributions set forth in this MOU, and the payments set forth in sections 3(a), 3(b), 3(d) and 3(e) of the County Agreement, the State Gaming Agency shall disperse funds from the Graton Mitigation Fund in the following priority order, until exhausted: (i) the Guaranteed Contributions to the City (defined in Section 5.2.1) shall be paid first, (ii) the payments guaranteed to the County in sections 3(a), 3(b), 3(d), and 3(e) of the County Agreement shall be paid second, (iii) the contributions to the City established in Section 4.1, 4.2 and 4.3 of this MOU in such amounts as available for distribution on a *pro rata* basis shall be paid third, (iv) the payments to the County established in sections 3(c), 3(f), 3(g), 3(h), 3(i) and 3(j) of the County Agreement shall be paid fourth, (v) the payments established in section 5(e) of the County Agreement regarding reimbursements shall be paid fifth, (vi) two hundred fifty thousand dollars (\$250,000) of the quarterly payment for community benefits set forth in 4(a) of the County Agreement shall be paid sixth, (vii) the contributions established in Section 5.3 of this MOU regarding reimbursements shall be paid seventh, and (viii) any other payments due out of the Graton Mitigation Fund shall be paid eighth.

## 5.2 GUARANTEED CONTRIBUTIONS BY THE TRIBE.

- 5.2.1 The Parties agree that certain contributions under this MOU are of such importance to the mitigation of the Project's impacts that the City should have a guarantee that those contributions will be made, regardless of the availability of funds in the Graton Mitigation Fund. Accordingly, in the event that the State Gaming Agency fails to timely disperse to the City any payment referenced in Sections 2.3 through and including Section 2.5, and Section 3 (including all subdivisions thereof), by the Due Dates, then, within ten (10) days following the Due Dates, the Tribe shall make all of the payments due under Sections 2.3 through and including Section 2.5 and Sections 3 of this MOU to the City ("**Guaranteed Contributions**").
- 5.2.2 The contributions under Sections 2.1 and 2.2 are not addressed hereunder because they must be paid by the Tribe prior to the Opening Date, so these payments are not contingent on the availability of funds in the Graton Mitigation Fund.

5.2.3 The contributions under Section 4.1, 4.2 and 4.3 are not addressed hereunder because the Parties do not intend for those contributions to be guaranteed by the Tribe in the event that the State Gaming Agency lacks the funds in the Graton Mitigation Fund to make the contributions. Payments required under Section 4.1, 4.2 and 4.3 shall be made if sufficient funds are available, as established in Section 5.1.4.

### 5.3 REIMBURSEMENTS.

5.3.1 **REIMBURSEMENTS OF CONTRIBUTIONS MADE BY THE TRIBE TO THE CITY.** The City agrees to use its best efforts, to the extent such action is authorized by law or statute, to request reimbursement of contributions previously made by the Tribe as described below from the State Gaming Agency. In the event the City receives any reimbursement from the State Gaming Agency for contributions previously made by the Tribe as described below, the City shall reimburse the Tribe any payments the City receives from the State Gaming Agency which are specifically delineated for purposes of reimbursing the Tribe (“**Reimbursements**”). The City shall make such Reimbursements available to the Tribe within thirty (30) calendar days of receipt thereof. However, in no event shall the City be liable to the Tribe to make any payment of Reimbursements unless the City has received said Reimbursements from the State Gaming Agency. In the event the City does not receive Reimbursements from the State Gaming Agency for the specific purpose of reimbursing the Tribe, the City shall incur no liability and the Tribe agrees not to initiate any litigation or bring any other claims against the City regarding the same. The Reimbursements which the City will seek pursuant to this Section 5.3.1 are as follows:

A. **REIMBURSEMENT OF GUARANTEED CONTRIBUTIONS.** To reimburse the Tribe for mitigation payments previously made by the Tribe as Guaranteed Contributions, the City shall reimburse the Tribe any Guaranteed Contributions the City receives from the State Gaming Agency.

B. **REIMBURSEMENT FOR WILFRED AVENUE IMPROVEMENTS.** The Parties acknowledge and agree that the Tribe has and will incur significant costs for road improvements to Wilfred Avenue and Business Park Drive pursuant to the Wilfred Avenue JEPAs and that funds paid by the Tribe into the Graton Mitigation Fund are intended to pay for such off-reservation mitigation costs. Accordingly, to reimburse the Tribe for the payments for improvements to Wilfred Avenue and Business Park Drive made pursuant to the Wilfred Avenue JEPAs (“**Wilfred Improvement Reimbursement**”), the City shall reimburse the Tribe any Wilfred Improvements Reimbursement the City receives from the State Gaming Agency.

C. **REIMBURSEMENT FOR WILFRED AVENUE MAINTENANCE.** To reimburse the Tribe for the payments to the City which mitigate the costs associated with the maintenance of Wilfred Avenue which costs are initially two hundred eighty eight thousand two hundred fourteen dollars (\$288,214) per annum and are required to be made pursuant to Section 6.6.2 of the Wilfred Avenue JEPA (“**Wilfred Maintenance Reimbursement**”), the City shall reimburse the Tribe any Wilfred Maintenance Reimbursement the City receives from the State Gaming Agency.

D. **REIMBURSEMENT FOR DEVELOPMENT FEE CONTRIBUTION PRIOR TO OPENING.** To reimburse the Tribe for the non-recurring cash contribution of two million six hundred sixty four thousand dollars (\$2,664,000) in lieu of development and related fees to mitigate the impact of the Project on City staff and other resources as set forth in Section 2.1 of this MOU (“**Development Fee Contribution**”), the City shall reimburse the Tribe any Development Fee Contribution the City receives from the State Gaming Agency.

E. **REIMBURSEMENT FOR SPECIAL ENFORCEMENT ACTIVITIES CONTRIBUTION.** To reimburse the Tribe for the non recurring cash contribution for contributions made to mitigate impacts on law enforcement activities as set forth in Section 2.2 of this MOU paid by the Tribe prior to the Opening Date (“**SEA Reimbursement**”) the City shall reimburse the Tribe any SEA Reimbursement the City receives from the State Gaming Agency.

5.4 **DEDUCTIONS FOR ADVANCE PAYMENTS.** The City shall deduct the amount of the contributions which the Tribe made to the NET referenced in subsection 3(d) of the Original MOU (“**NET Payments**”) less amounts paid by the City for mitigation which the Tribe agreed to pay pursuant to the Original MOU, including storm water improvements to Martin Avenue, installation of an on-demand traffic signal for the Rancho Verde Mobile Home Park, and relocation of the repeater system from the former Cusher’s Stadium to the existing public safety building (“**City Mitigation Payments**”). It is agreed that the NET Payments minus the City Mitigation Payments equals two million four hundred nine thousand seven hundred forty five dollars (\$2,409,745) (“**Deduction Amount**”). The Deduction Amount shall be deducted from the contributions due to the City under Section 4.2.1 of this MOU in twelve (12) equal, successive quarterly installments commencing on the first business day of the third (3rd) Quarter after the Opening Date and continuing on the first business day of the next eleven (11) Quarters thereafter. In the event that there are insufficient payments made from the Graton Mitigation Fund to the City under Section 4.2.1 from which to deduct the above-described amounts, the remainder shall be deducted from each successive Quarter, until satisfied. In no event shall the City be obligated to take deductions from other payments made under this MOU.

- 5.5 **CPI ADJUSTMENT.** All recurring contributions and deductions described in this MOU shall be increased annually by the CPI Adjustment, which shall be effective on July 1 of each year following the Opening Date. For the purposes of this MOU, the April to April index shall be effective to July 1st.
- 5.6 **CONTINGENT PAYMENTS.** Notwithstanding any other provision of this MOU, the Parties acknowledge and agree that except for the non-recurring payments to commence prior to the Opening Date as set forth in Sections 2.1 and 2.2 of this MOU, the Tribe's mitigation contributions shall be contingent upon the occurrence of the Opening Date and the continuation thereafter of Gaming Activities. In the event the Opening Date does not occur for any reason, mitigation payments payable after the Opening Date shall not be due.
- 5.7 **PUBLIC ATTRIBUTION.** The City shall generally identify and publicly attribute mitigation measures and community investments and projects funded and supported by the Tribe, including, but not limited to, in the City budget process.

## 6. **ADDITIONAL TRIBAL COVENANTS AND ACKNOWLEDGMENTS**

- 6.1 **BUILDING AND SAFETY CODES.** The Parties acknowledge and agree that the Gaming Facility is subject to the California Building Code and the California Public Safety Code applicable to the County, as set forth in Titles 19 and 24 of the California Code of Regulations, and, pursuant to the Compact, is subject to plan checks, building inspections, and annual certification that the Gaming Facility is operated in conformity with the applicable codes.
- 6.2 **FIRE AND EMERGENCY SERVICES.** The Parties acknowledge and agree that the Gaming Facility is subject to Title 19 of the California Code of Regulations, the California Building Code, and the California Public Safety Code applicable to similar facilities in the County, and that the Compact requires that the Gaming Facility, as set forth in Titles 19 and 24 of the California Code of Regulations, and, pursuant to the Compact, is subject to regular inspections to ensure that the Gaming Facility meets a reasonable standard of fire safety and life safety.
- 6.3 **LAW ENFORCEMENT.** To further mitigate potential impacts of the Project on law enforcement resources, the Tribe shall:
- 6.3.1 adopt rules prohibiting anyone under 21 years of age from gambling;
  - 6.3.2 adopt employee training programs and policies relating to responsible alcoholic beverage services;
  - 6.3.3 conduct background checks of all gaming employees;
  - 6.3.4 provide a full complement of security personnel at the Project at all times; and

- 6.3.5 adopt programs and policies which discourage gang members from visiting the Gaming Facility.
- 6.4 **EMERGENCY MEDICAL SERVICES.** 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 the Gaming Facility.
- 6.5 **SOLID WASTE DISPOSAL.** 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, implement single stream recycling and green waste diversion.
- 6.6 **STORM WATER DRAINAGE.** 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.
- 6.7 **EMPLOYEE RECRUITMENT.** To mitigate potential impacts of the Project on local work forces, the Parties acknowledge that the Project is subject to (i) a Project Labor Agreement with the Sonoma, Lake, Mendocino County Building & Construction Trades Council, and (ii) a Neutrality and Card Check Agreement with UNITE HERE. 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.
- 6.8 **RANCHO VERDE MOBILE HOME PARK.** 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 (20) years from the date of the Original MOU.
- 6.9 **NO GOLF COURSE.** 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 (20) years from the effective date of this MOU, or (ii) the date on which the aggregate number of rounds of golf played on courses existing in the City on the effective date of this MOU exceeds 150,000 rounds in any given calendar year.

## 7. **TERM AND TERMINATION**

7.1 **EFFECTIVE DATE.** This MOU shall not become effective unless and until the following events have occurred:

- 7.1.1 This MOU has been approved by the City Council of the City, approved as to form by legal counsel for the City and executed and delivered by the City; and

7.1.2 This MOU has been approved by the Tribal Council and the General Council of the Tribe, approved as to form by outside legal counsel to the Tribe, and executed and delivered by the Tribe.

7.2 **EXPIRATION DATE.** Once effective, this MOU shall be in full force and effect until the later of (i) December 31, 2033, or (ii) the date the Compact or any extension thereof expires or is terminated (“**Expiration Date**”). Notwithstanding the foregoing, this MOU shall be automatically extended for any period that Gaming Activities continue to be operated on the Reservation and the terms (including the Tribe’s obligation to make all payments due pursuant to this MOU) shall be in full force and effect until the Parties meet, confer and renegotiate new terms of a memorandum of understanding as provided for in Section 7.3 hereof. Based on the foregoing, the terms of this Amended MOU shall expire when the parties successfully renegotiate and adopt a new memorandum of understanding, thereby superseding this Amended MOU.

7.3 **MOU RENEGOTIATIONS.** If the Tribe enters into a new tribal-state gaming compact (“**New Gaming Compact**”), extends the term of the Compact (“**Compact Extension Agreement**”), or the Expiration Date occurs, commencing not later than ninety (90) days following the Legislature’s adoption of the New Gaming Compact, the Legislature’s adoption of a Compact Extension Agreement, or the Expiration Date, the Parties shall meet, confer and renegotiate with respect to the provisions of this MOU that provide for mitigation and community benefit payments made by the Tribe under this MOU (“**Compact Extension Renegotiations**”). If the Parties are unable to agree upon the dollar amounts necessary to maintain substantial mitigation of impacts and a comparable level of community investments within one hundred and eighty (180) days of commencing Compact Extension Renegotiations, the Parties may trigger the procedures for dispute resolution contained in Section 11 and, if unable to reach agreement, an arbitrator shall determine in a Day Baseball Style Arbitration the amount necessary to retain substantially the same overall level of support for mitigation and community benefits contemplated in this MOU.

7.4 **EFFECT OF EXPIRATION OR TERMINATION.** Upon the expiration, as provided for in Section 7.2, or termination, as provided for in Section 7.5, 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.

7.5 **TERMINATION.** Unless otherwise agreed by the Parties, this MOU shall automatically terminate in the event, and on the date, that the Tribe: (i) permanently ceases development and construction of the Project without having commenced Gaming Activities, or (ii) permanently ceases the operation of all

Gaming Activities on the Reservation and the provisions of Section 8.1 do not apply.

## 8. **SUSPENSION EVENTS**

8.1 If, due to Force Majeure (as hereinafter defined), an act of God, valid business considerations or any other reason, 51% of all Gaming Activities previously conducted by the Tribe on the Reservation are suspended or terminated for a period of at least three (3) months, the Tribe's obligations to make annual financial contributions pursuant to Sections 2 through 4 of this MOU shall be suspended in the same manner as authorized under the Compact until such time as the Gaming Activities are resumed. The period of obligations under this MOU shall be extended for the time of the suspension. For the purposes of this section, the term "Force Majeure" shall include, without limitation, the following circumstances that result in a suspension of 51% of all Gaming Activities previously conducted by the Tribe on the Reservation: earthquake; flood; fire; other natural disasters; changes in law, regulation or governmental policy; riots; war; or terrorism. Nothing in this section shall impact the Tribe's liability for financial contributions which became due and payable prior to the date such Gaming Activities were suspended or terminated. When a Force Majeure event occurs, the Tribe shall provide written notice within seventy-two (72) hours of the event that performance of its obligations is prevented or delayed, and within seventy-two (72) hours after Gaming Activities are resumed.

## 9. **RENEGOTIATION PROVISION**

9.1.1 **RENEGOTIATION EVENTS.** The City or the Tribe may request that the other party renegotiate one or more of the provisions of this MOU if there is a change in law, facts, or other unforeseen circumstances that fundamentally changes the City's or Tribe's financial assumptions made in entering into this MOU ("**Fundamental Changes Renegotiations**"). Such Fundamental Changes shall be deemed to include, without limitation, a significant adverse impact on either the City or Tribe as follows:

- (i) the existence of a significant adverse impact of the Project on the City whose extent of impact was not specifically addressed in the EIS or was not anticipated by the City;
- (ii) any change ending the prohibition on Class III gaming (as defined in IGRA) or the operation of Gaming Devices by non-Indians in California that substantially affects the Project's financial projections and actual revenues by at least 25%; and
- (iii) a substantial reduction in the scope of all Gaming Activities permitted on the Reservation, whether pursuant to a change in

federal, state or local constitutions, laws, rules or regulations, or amendment of the Compact.

- 9.2 **FUNDAMENTAL CHANGES RENEGOTIATION PROCEDURES.** All requests to enter into Fundamental Changes Renegotiations shall be by written notice and shall include reference to the provisions of this MOU to be renegotiated. Upon receipt of such notice, the Parties shall attempt 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 notice. Each Party is hereby authorized to designate the person responsible for conducting the negotiations, and shall execute any documents necessary to confirm such authorization. The purpose of the negotiations will be to attempt to renegotiate the provisions of this MOU in good faith so that the Parties retain substantially the same rights, levels of mitigation, and community benefits contemplated as of the date of this MOU. If, the Parties are unable to agree upon the dollar amounts necessary to maintain substantial mitigation of impacts and a comparable level of community investments within one hundred and eighty (180) days of commencing Fundamental Changes Renegotiations, the Parties may trigger the dispute resolution provisions contained in Section 11.

## 10. SEVERABILITY

- 10.1 Notwithstanding any provision of California law to the contrary, 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 void, 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 void, illegal, invalid, or unenforceable provision or by its severance from this MOU. Similarly, notwithstanding any provision of California, Federal or Tribal law to the contrary, if any provision of this MOU requires the City, Tribe, or any other Public Entity to take any action which has not been taken in connection with the approval of this MOU or otherwise, or subjects this MOU to the referendum or initiative process under California law, this MOU shall be construed and enforced as if such 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 applicable provision or by its severance from this MOU. In the event that the entire MOU is declared void, illegal, invalid, unenforceable or unauthorized, the Parties shall enter into good faith negotiations to negotiate a new agreement that maintains the expectation of each Party in entering into this MOU. If any of the events referenced in this section occurs, the Parties shall endeavor in good faith negotiations to replace the applicable provision or provisions with a substitute provision, the economic and other effects of which comes as close as possible to that of the provision which has been severed. Such negotiations shall be conducted pursuant to the provisions of section 9(b) of this MOU.

## 11. DISPUTE RESOLUTION PROVISIONS

- 11.1 **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 on the Reservation, and the City is able to insure that the off-reservation impacts of the Project are fully mitigated, the Parties agree to the dispute resolution procedures set forth in this section.
- 11.2 **MEET AND CONFER.** The Parties shall make their best efforts to resolve claims arising under 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 implementation of the terms of this MOU as follows:
- 11.2.1 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.
- 11.2.2 The Parties shall meet and confer in a good faith attempt to resolve such dispute through negotiation not later than 10 days after the receipt of notice, unless the Parties agree in writing to an extension of time.
- 11.3 **MEDIATION OR OTHER DISPUTE RESOLUTION.** If such dispute is not resolved to the satisfaction of the Parties, the Parties may, by mutual agreement, pursue mediation or any other method of dispute resolution; provided, however, that no Party is under an obligation to agree to such mediation or other method of dispute resolution.
- 11.4 **BINDING ARBITRATION.** If such dispute is not resolved to the satisfaction of the Parties within thirty (30) calendar days after either the first meeting or after any other dispute resolution under section 11.3, or such other extended period as the Parties may agree in writing, then the Parties may seek to have the dispute resolved by binding arbitration in accordance with the following procedures:
- 11.4.1 Upon the request of a Party in writing, the dispute shall be submitted to binding arbitration in accordance with this section.
- 11.4.2 The disputes to be submitted to arbitration shall be limited to claims arising under this MOU, and which were subject to the meet and confer in section 11(b) of this MOU.
- 11.4.3 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 submitted to the arbitrator referenced in subsection (iv) of this section.

- 11.4.4 The arbitration shall be conducted before a single arbitrator in accordance with the JAMS Streamlined Arbitration Rules (or such other streamlined arbitration rules as the Parties may agree), as modified by the provisions of this MOU.
- 11.4.5 The arbitrator shall be selected by the Parties. If at such time the Parties are unable to agree upon the selection of a single arbitrator, then each Party shall name one arbitrator and the two arbitrators thus selected shall select a third arbitrator who shall be a retired California Superior Court or United States District Court judge; provided, however, if either Party fails to select an arbitrator within fourteen (14) days of delivery of the request for arbitration, then the arbitrator selected by the other Party shall conduct the arbitration.
- 11.4.6 The arbitration shall take place in Sonoma County or another location mutually agreed upon by the Parties.
- 11.4.7 The provisions of Section 1283.05 of the California Code of Civil Procedure shall apply; provided that no discovery authorized by that section may be conducted without leave of the arbitrator.
- 11.4.8 Each side shall bear its own costs, attorneys' fees, and one-half the costs and expenses of the arbitrator.
- 11.4.9 The decision of the arbitrator should be made within thirty (30) days of the arbitration. The decision shall be in writing and shall give reasons for the decision.
- 11.5 **DAMAGES.** The Parties agree that any monetary damages awarded or arising under this MOU shall be exclusively limited to actual direct damages incurred based on obligations contained in this MOU that have been demonstrated with substantial certainty and which do not, in any event, exceed the total amount of the annual financial contributions which the Tribe is required to make to the City under the MOU. In no instance shall the Parties to this MOU be entitled to special, incidental, indirect, consequential or punitive damages, lost profits or attorney's fees. The Parties agree not to assert any claim for damages, injunctive, or other relief which is not consistent with the provisions of this MOU.
- 11.6 **CONFIRMATION OF AWARDS.** Any Party to an arbitration in which an award has been made pursuant to this section may petition the Federal District Court for the Northern District of California or, if such Court declines jurisdiction, the State Superior Court for Sonoma County or any other court of competent jurisdiction to confirm the award, including any appellate proceedings. The Parties expressly consent to the jurisdiction of such Courts for the purpose of confirmation of such an award. An award shall be confirmed, provided that:
- 11.6.1 The award is limited to the purposes of arbitration stated in this section.

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

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

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

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

## 12. **WAIVER OF SOVEREIGN IMMUNITY**

12.1 Pursuant to General Council Resolution #13-14, and subject to the provisions of this section, the Tribe expressly and irrevocably waives sovereign immunity (and any defenses based thereon) in favor of the City, 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 Tribe does not waive its sovereign immunity with respect to (i) actions by third parties, except for parties acting on behalf of, under authorization from, or pursuant to a contract with, the Tribe or City; or (ii) disputes between the Tribe and the City which do not specifically arise under this MOU. The Tribe further agrees that exhaustion of administrative remedies, including before any tribal court, shall not be required prior to proceeding to arbitration or court action under section 11.

## 13. **REPRESENTATIONS AND WARRANTIES**

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

13.1 **AUTHORITY.** Such Party has the legal power and authority to execute and deliver this MOU and to perform its obligations under this MOU.

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

- 13.3 **DUE EXECUTION AND DELIVERY.** The persons executing this MOU on behalf of such Party are duly authorized to execute and deliver this MOU on behalf of such Party.
- 13.4 **ENFORCEABILITY.** This MOU constitutes the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, and, once executed and delivered, cannot be invalidated pursuant to any subsequent action of the City Council of the City or the Tribal Council or General Council of the Tribe, as applicable.
- 13.5 **NO CONFLICT.** The approval, execution, delivery and performance of this MOU does not conflict with any other agreement to which such Party is a party and does not violate or require any action which has not been taken under any law, statute, rule, regulation, ordinance, general plan, tribal law, specific plan or court order or decree applicable to such Party.
- 13.6 **WAIVERS.** A waiver of any breach of any provision of this MOU shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision operate as a waiver of such provision or of any other provisions.

#### 14. **GENERAL PROVISIONS**

- 14.1 **NO SUBMISSION TO JURISDICTION.** The Parties acknowledge and agree that this MOU, except as otherwise specified, is not intended to constitute, and shall not be construed as constituting, a submission by the Tribe to the jurisdiction of (i) the City or any or any of its subdivisions, departments or courts, (ii) any of its or their respective officials, employees, inspectors or contractors, or (iii) any of its or their respective laws, rules, regulations, ordinances, general plans or specific plans.
- 14.2 **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.
- 14.3 **INDEMNIFICATION.** The Tribe agrees to indemnify, defend and hold harmless the City (with counsel reasonably acceptable to the City) from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs and expenses (including its reasonable attorneys' fees) arising from any action or proceeding filed against the City which challenges the City's approval, execution or delivery of this MOU.
- 14.4 **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 City:

City of Rohnert Park  
130 Avram Avenue  
Rohnert Park, California 94928  
Attn: City Manager  
Telephone: (707) 588-2226  
Facsimile: (707) 792-1876

With copies to:

Burke, Williams & Sorensen, LLP  
1901 Harrison Street, Suite 900  
Oakland, CA 94612  
Attn: Michelle Marchetta Kenyon  
Telephone: (510) 273-8780  
Facsimile: (510) 839-9104

For the Tribe:

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

With copies to:

Maier Pfeffer Kim & Geary, LLP  
1440 Broadway, Suite 812  
Oakland, CA 94612  
Attn: John Maier, Esq.  
Telephone: (510) 835-3020  
Fax: (510) 835-3040

- 14.5 **GOVERNING LAW.** This MOU shall be governed by, and construed in accordance with, the laws of the State of California.
- 14.6 **CONSTRUCTION OF AGREEMENT.** This MOU, including all recitals, together with all Exhibits, constitutes the entire agreement between the Parties and supersedes all prior negotiations, representations, drafts regarding this MOU, whether written or oral. In the event of a dispute between the Parties as to the language of this MOU or any amendment to this MOU or the construction or meaning of any term contained in this MOU or any amendment to this MOU, this MOU or any amendment to 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 or any amendment to this MOU. The headings contained in this MOU are for convenience of reference only and shall not effect this MOU's construction or interpretation.

14.7 **BINDING AGREEMENT.** This MOU is intended to be, and shall be construed to be, binding upon the Parties and all successors and successors-in-interest of each Party, including all officers, agents and employees, and, in the case of the City, future City Councils, and, in the case of the Tribe, future Tribal Councils or General Councils.

#### 14.8 **ENVIRONMENTAL REVIEW**

14.8.1 Pursuant to the CEQA Guidelines (Cal. Code Regs., titl. 14, Section 15378, subd. (b)(4)), this MOU does not constitute a "project" for CEQA purposes because it involves the creation of a government funding mechanism or other government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment. This MOU requires the Tribe to make mitigation payments for identified mitigation measures and programs; however, the City retains discretion to elect not to implement any or all of the specific mitigation measures and programs identified in this MOU. Further this MOU does not obligate the City to undertake a specified mitigation program or construction project nor does it set a time for development.

14.8.2 The Parties acknowledge and agree that this MOU is not intended to be and does not constitute a development agreement for the purposes of Government Code section 65865. Nor does this MOU commit the City to implement any public improvement, or to take any action that may result in physical changes in the environment.

14.8.3 The Parties acknowledge that the EIS and/or Record of Decision evaluated the impacts of the Project and provided for the mitigation thereof.

14.8.4 The Parties acknowledge and agree that: (i) the Tribe is not a public agency subject to CEQA; (ii) the Project is not subject to CEQA or to City environmental review, design, land use or land development ordinances, plans, manuals or standards; (iii) the City does not have legal authority to deliberate on, approve, disapprove, or otherwise exercise judgment regarding the Project; and (iv) the City is not deliberating on, approving, disapproving or otherwise exercising judgment regarding the Project by entering this MOU.

14.8.5 Government Code § 12012.56(b)(1)(C) is a statutory CEQA exemption adopted with specific reference to this Project and the mitigation of its off-

site impacts. That Section states that in deference to tribal sovereignty, the execution of an intergovernmental agreement between a tribe and a county or city government negotiated pursuant to the express authority of, or as expressly referenced in, the Compact shall not be deemed a project for purposes of CEQA. This MOU is an intergovernmental agreement, made pursuant to Sections 4.4 and 11.8.7 of the Compact, between the Tribe and the City negotiated pursuant to the Compact and, therefore, execution of this MOU is not subject to CEQA. Subsections (a)(1)-(4) and (c) of Section 11.8.7 of the Compact require the City and the Tribe to enter into enforceable intergovernmental agreements to timely mitigate, through compensation or other means, any significant effect of the Project on the environment, which were attributable in whole or in part to the Project. By expressly declaring intergovernmental agreements made under the Compact to not be a “project” for CEQA purposes, and by expressly acknowledging the need for an intergovernmental agreement to mitigate impacts in the Compact, the Legislature expressly exempted mitigation agreements such as this MOU from compliance with CEQA.

14.8.6 To the extent that the City is required to comply with CEQA with respect to any improvements, programs or activities identified in or related to this MOU, the City will comply with CEQA prior to approving or implementing such improvements, programs or activities. This MOU does not restrict the City’s discretion to evaluate the impacts of such improvement, programs or activities, identify and adopt mitigation for such impacts, consider and approve alternatives designed to lessen such impacts, or deny approvals necessary for such improvement, programs or activities.

14.9 **AMENDMENTS.** This MOU may be modified or amended only by mutual and written agreement of the Parties.

14.10 **REVIEW BY THE DEPARTMENT OF INTERIOR.** The Tribe shall submit this MOU to the United States Department of the Interior for either: (a) approval pursuant to 25 U.S.C. § 81; or (b) a written response that this MOU does not require approval under 25 U.S.C. § 81. The Tribe shall undertake reasonable efforts, in consultation with the City, to secure approval or written response. The City, at its sole discretion, has the right to withdraw its support for the MOU if it is not submitted to the Department of the Interior pursuant to this section within ten (10) days following the Effective Date. If the Department of Interior determines that portions of this MOU violate 25 U.S.C. § 81 or are otherwise invalid, the severability provisions set forth in section 10 of this MOU shall govern.

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

CITY OF ROHNERT PARK

Date: 4/17, 2013

By: [Signature]  
Name: Grobsiel A. Gonzalez  
Its: City Manager

APPROVED BY CITY ATTORNEY FOR THE CITY:

Date: 3/29, 2013  
Attest

By: [Signature]  
Michelle Marchetta Kenyon, Esq.  
Burke, Williams & Sorensen, LLP

[Signature]  
Clt. Clerk

FEDERATED INDIANS OF GRATON RANCHERIA

Date: 4/16, 2013

By: [Signature]  
Greg Sarris  
Chairperson

APPROVED BY LEGAL COUNSEL FOR THE TRIBE:

Date: April 15, 2013

By: [Signature]  
John Maier, Esq.  
Maier Pfeffer Kim & Geary, LLP

**Exhibit A**

Due Dates for Rohnert Park/Graton Rancheria MOU

**Payments Due from Tribe to City**

MOU Section		Guaranteed Payments										Other Payments			
Due Date <sup>1</sup>	Quarter <sup>4</sup>	2.3.1	2.3.2	2.3.3	2.4	2.5	3.1	3.2	3.3	3.4	3.5	4.3	4.1	4.2.1	4.2.2
		Public Safety Building	Ladder Fire Truck	City Vehicles	Traffic Impacts <sup>2</sup>	Mobile Home Park <sup>3</sup>	Law Enforcement	Problem Gambling	Waterway	Supplemental	Public Services	Community (Neighborhood & Housing)	School	Rohnert Park Foundation	Tribe Charity or Organization
1-Jul-2014	3rd Qtr						X	X	X	X	X	X	X	X	
1-Oct-2014	4th Qtr						X	X	X	X	X	X	X	X	
1-Jan-2015	5th Qtr						X	X	X	X	X	X	X	X	
1-Apr-2015	6th Qtr						X	X	X	X	X	X	X	X	
1-Jul-2015	7th Qtr	X		X			X	X	X	X	X	X	X	X	
1-Oct-2015	8th Qtr	X		X			X	X	X	X	X	X	X	X	
1-Jan-2016	9th Qtr	X		X			X	X	X	X	X	X	X	X	
1-Apr-2016	10th Qtr	X		X			X	X	X	X	X	X	X	X	
1-Jul-2016	11th Qtr	X	X				X	X	X	X	X	X	X	X	
1-Oct-2016	12th Qtr	X					X	X	X	X	X	X	X	X	
1-Jan-2017	13th Qtr	X					X	X	X	X	X	X	X	X	
1-Apr-2017	14th Qtr	X					X	X	X	X	X	X	X	X	
1-Jul-2017	15th Qtr						X	X	X	X	X	X	X	X	X
1-Oct-2017	16th Qtr						X	X	X	X	X	X	X	X	X
1-Jan-2018	17th Qtr						X	X	X	X	X	X	X	X	X
1-Apr-2018	18th Qtr						X	X	X	X	X	X	X	X	X
1-Jul-2018	19th Qtr						X	X	X	X	X	X	X	X	X
1-Oct-2018	20th Qtr						X	X	X	X	X	X	X	X	X
1-Jan-2019	21st Qtr						X	X	X	X	X	X	X	X	X
1-Apr-2019	22nd Qtr						X	X	X	X	X	X	X	X	X
1-Jul-2019	23rd Qtr						X	X	X	X	X	X	X	X	X
1-Oct-2019	24th Qtr						X	X	X	X	X	X	X	X	X
1-Jan-2020	25th Qtr						X	X	X	X	X	X	X	X	X
1-Apr-2020	26th Qtr						X	X	X	X	X	X	X	X	X
1-Jul-2020	27th Qtr						X	X	X	X	X	X	X	X	X
1-Oct-2020	28th Qtr						X	X	X	X	X	X	X	X	X

**Payments Due from Tribe to City**

MOU Section		Guaranteed Payments										Other Payments			
Due Date <sup>1</sup>	Quarter <sup>4</sup>	2.3.1	2.3.2	2.3.3	2.4	2.5	3.1	3.2	3.3	3.4	3.5	4.3	4.1	4.2.1	4.2.2
		Public Safety Building	Ladder Fire Truck	City Vehicles	Traffic Impacts <sup>2</sup>	Mobile Home Park <sup>3</sup>	Law Enforcement	Problem Gambling	Waterway	Supplemental	Public Services	Community (Neighborhood & Housing)	School	Rohnert Park Foundation	Tribe Charity or Organization
1-Jan-2021	29th Qtr						X	X	X	X	X	X	X	X	X
1-Apr-2021	30th Qtr						X	X	X	X	X	X	X	X	X
1-Jul-2021	31st Qtr						X	X	X	X	X	X	X	X	X
1-Oct-2021	32nd Qtr						X	X	X	X	X	X	X	X	X
1-Jan-2022	33rd Qtr						X	X	X	X	X	X	X	X	X
1-Apr-2022	34th Qtr						X	X	X	X	X	X	X	X	X
1-Jul-2022	35th Qtr						X	X	X	X	X	X	X	X	X
1-Oct-2022	36th Qtr						X	X	X	X	X	X	X	X	X
1-Jan-2023	37th Qtr						X	X	X	X	X	X	X	X	X
1-Apr-2023	38th Qtr						X	X	X	X	X	X	X	X	X
1-Jul-2023	39th Qtr						X	X	X	X	X	X	X	X	X
1-Oct-2023	40th Qtr						X	X	X	X	X	X	X	X	X
1-Jan-2024	41st Qtr						X	X	X	X	X	X	X	X	X
1-Apr-2024	42nd Qtr						X	X	X	X	X	X	X	X	X
1-Jul-2024	43rd Qtr						X	X	X	X	X	X	X	X	X
1-Oct-2024	44th Qtr						X	X	X	X	X	X	X	X	X
1-Jan-2025	45th Qtr						X	X	X	X	X	X	X	X	X
1-Apr-2025	46th Qtr						X	X	X	X	X	X	X	X	X
1-Jul-2025	47th Qtr						X	X	X	X	X	X	X	X	X
1-Oct-2025	48th Qtr						X	X	X	X	X	X	X	X	X
1-Jan-2026	49th Qtr						X	X	X	X	X	X	X	X	X
1-Apr-2026	50th Qtr						X	X	X	X	X	X	X	X	X
1-Jul-2026	51st Qtr						X	X	X	X	X	X	X	X	X
1-Oct-2026	52nd Qtr						X	X	X	X	X	X	X	X	X
1-Jan-2027	53rd Qtr						X	X	X	X	X	X	X	X	X
1-Apr-2027	54th Qtr						X	X	X	X	X	X	X	X	X
1-Jul-2027	55th Qtr						X	X	X	X	X	X	X	X	X
1-Oct-2027	56th Qtr						X	X	X	X	X	X	X	X	X
1-Jan-2028	57th Qtr						X	X	X	X	X	X	X	X	X
1-Apr-2028	58th Qtr						X	X	X	X	X	X	X	X	X

**Payments Due from Tribe to City**

MOU Section		Guaranteed Payments										Other Payments			
		2.3.1	2.3.2	2.3.3	2.4	2.5	3.1	3.2	3.3	3.4	3.5	4.3	4.1	4.2.1	4.2.2
Due Date <sup>1</sup>	Quarter <sup>4</sup>	Public Safety Building	Ladder Fire Truck	City Vehicles	Traffic Impacts <sup>2</sup>	Mobile Home Park <sup>3</sup>	Law Enforcement	Problem Gambling	Waterway	Supplemental	Public Services	Community (Neighborhood & Housing)	School	Rohnert Park Foundation	Tribe Charity or Organization
1-Jul-2028	59th Qtr						X	X	X	X	X	X	X	X	X
1-Oct-2028	60th Qtr						X	X	X	X	X	X	X	X	X
1-Jan-2029	61st Qtr						X	X	X	X	X	X	X	X	X
1-Apr-2029	62nd Qtr						X	X	X	X	X	X	X	X	X
1-Jul-2029	63rd Qtr						X	X	X	X	X	X	X	X	X
1-Oct-2029	64th Qtr						X	X	X	X	X	X	X	X	X
1-Jan-2030	65th Qtr						X	X	X	X	X	X	X	X	X
1-Apr-2030	66th Qtr						X	X	X	X	X	X	X	X	X
1-Jul-2030	67th Qtr						X	X	X	X	X	X	X	X	X
1-Oct-2030	68th Qtr						X	X	X	X	X	X	X	X	X
1-Jan-2031	69th Qtr						X	X	X	X	X	X	X	X	X
1-Apr-2031	70th Qtr						X	X	X	X	X	X	X	X	X
1-Jul-2031	71st Qtr						X	X	X	X	X	X	X	X	X
1-Oct-2031	72nd Qtr						X	X	X	X	X	X	X	X	X
1-Jan-2032	73rd Qtr						X	X	X	X	X	X	X	X	X
1-Apr-2032	74th Qtr						X	X	X	X	X	X	X	X	X
1-Jul-2032	75th Qtr						X	X	X	X	X	X	X	X	X
1-Oct-2032	76th Qtr						X	X	X	X	X	X	X	X	X
1-Jan-2033	77th Qtr						X	X	X	X	X	X	X	X	X
1-Apr-2033	78th Qtr						X	X	X	X	X	X	X	X	X
1-Jul-2033	79th Qtr						X	X	X	X	X	X	X	X	X
1-Oct-2033	80th Qtr						X	X	X	X	X	X	X	X	X
1-Jan-2034	81st Qtr						X	X	X	X	X	X	X	X	X
1-Apr-2034	82nd Qtr						X	X	X	X	X	X	X	X	X

Notes:

- 1 Assumed opening date sometime in October, November or December of 2013. Due dates are valid for any opening date in this period.
- 2 MOU provides that payment is made after parties agree on need.
- 3 MOU provides that payment is made upon request after the parties have agreed on the project.

**Exhibit B - SAMPLE**  
**Rohnert Park/Graton Rancheria MOU**  
**Annual Payment Schedule**

CPI  
 April Prior    April Current    Adjustment  
Year        Year<sup>3</sup>        Factor  
 CPI Index Data:<sup>1,2</sup>    242.83        250.11        1.0300  
 Fiscal Year: July 1 to June 30

	MOU Section	Due Date	1-Jul-2014	1-Oct-2014	1-Jan-2015	1-Apr-2015	
			3rd Qtr	4th Qtr	5th Qtr	6th Qtr	
Guaranteed Payments	Non-Recurring <sup>4</sup>	2.3.1	Public Safety Building				
		2.3.2	Ladder Fire Truck				
		2.3.3	City Vehicles				
		2.4	Traffic Impacts				
		2.5	Mobile Home Park				
Guaranteed Payments	Recurring Payments <sup>5</sup>	3.1	Law Enforcement	\$ 128,750	\$ 128,750	\$ 128,750	\$ 128,750
		3.2	Problem Gambling	\$ 32,188	\$ 32,188	\$ 32,188	\$ 32,188
		3.3	Waterway	\$ 12,875	\$ 12,875	\$ 12,875	\$ 12,875
		3.4	Supplemental	\$ 1,287,500	\$ 1,287,500	\$ 1,287,500	\$ 1,287,500
		3.5	Public Services	\$ 610,018	\$ 610,018	\$ 610,018	\$ 610,018
Other Payments	Recurring Payments <sup>5</sup>	4.1	School	\$ 257,500	\$ 257,500	\$ 257,500	\$ 257,500
		4.2.1	Rohnert Park Foundation	\$ 257,500	\$ 257,500	\$ 257,500	\$ 257,500
		4.2.2	Tribe Charity				
		4.3	Neighborhood & Housing	\$ 257,500	\$ 257,500	\$ 257,500	\$ 257,500
Deductions	5.4	Advance Payments	\$ (206,836)	\$ (206,836)	\$ (206,836)	\$ (206,836)	
Total Amount			\$ 2,636,994	\$ 2,636,994	\$ 2,636,994	\$ 2,636,994	

Notes:

- 1 CPI Adjustment is scheduled for implementation each July 1. Data from April to April will be used.
- 2 CPI Data is All Urban Consumers San Francisco-Oakland-San Jose Area, series ID CUURA422SA0.
- 3 CPI Index Value of 250.11 is used for illustration. Actual value will be input each year when data is available.
- 4 Non-recurring payments are not subject to CPI Adjustment.
- 5 All Recurring Payments and Deductions are subject to CPI Adjustment each year.
- 6 Quarter is Jan-Mar, Apr-June, July-Sept, Oct-Dec numbered sequentially beginning with the first full quarter after gaming commences.

**Summary:**

State Gaming Agency shall deliver to Rohnert Park before	1-Jul-2014	a wire transfer in the amount of:	\$ 2,636,994
State Gaming Agency shall deliver to Rohnert Park before	1-Oct-2014	a wire transfer in the amount of:	\$ 2,636,994
State Gaming Agency shall deliver to Rohnert Park before	1-Jan-2015	a wire transfer in the amount of:	\$ 2,636,994
State Gaming Agency shall deliver to Rohnert Park before	1-Apr-2015	a wire transfer in the amount of:	\$ 2,636,994

City of Rohnert Park Wire Transfer Instructions:

Exchange Bank, Santa Rosa, CA  
 ABA 121101985  
 A/C 0081044042  
 FBO City of Rohnert Park