

JOINT EXERCISE OF POWERS AGREEMENT

BY AND BETWEEN

THE CITY OF ROHNERT PARK,

THE COUNTY OF SONOMA

AND

THE FEDERATED INDIANS OF GRATON RANCHERIA

**FOR IMPLEMENTATION OF MITIGATION MEASURES FOR WIDENING
WILFRED AVENUE**

DATED AS OF

September 25, 2012

EFFECTIVE AS OF

October 29, 2012

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THIS JOINT EXERCISE OF POWERS AGREEMENT (this “**Agreement**”), dated as of this 25th day of September, 2012, is made by and between the CITY OF ROHNERT PARK, a municipal corporation organized and existing under and by virtue of the laws of the State of California (the “**City**”), the COUNTY OF SONOMA, a political subdivision of the State of California (the “**County**”), and the FEDERATED INDIANS OF GRATON RANCHERIA, a federally recognized Indian tribe (the “**Tribe**”) (City, County or Tribe may be individually referred to as “**Party**” and collectively referred to as the “**Parties**”), with reference to the following facts and intentions:

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

WHEREAS, on October 1, 2010, pursuant to the Graton Rancheria Restoration Act (25 U.S.C. § 1300n-3), the Bureau of Indian Affairs of the United States Department of the Interior accepted approximately 254 acres of land in Sonoma County in trust for the benefit of the Tribe as part of the Tribe's Reservation (“**Trust Lands**”);¹

WHEREAS, the Tribe intends to use its Trust Lands for operation of a gaming enterprise pursuant to the terms of the Indian Gaming Regulatory Act of 1988, codified at 25 U.S.C. § 2701 *et seq.*, (“**IGRA**”);

WHEREAS, on March 27, 2012, the Governor of California and the Tribe entered into a tribal-state compact (“**Compact**”)² to authorize and prescribe the terms of class III gaming on the Trust Lands pursuant to IGRA and the Compact was subsequently ratified by the California State Legislature and, on May 17, 2012, chaptered by the Secretary of State;

WHEREAS, on July 12, 2012, the Compact became effective when the Secretary of the Interior published notice of constructive approval in the Federal Register pursuant to IGRA; and

WHEREAS, prior to the lands going into trust, the National Indian Gaming Commission (“**NIGC**”) prepared and completed a Final Environmental Impact Statement (“**FEIS**”)³ evaluating the environmental consequences for the construction and operation of the Tribe's proposed gaming enterprise pursuant to the National Environmental Policy Act (“**NEPA**”);

WHEREAS, on October 15, 2010, the NIGC published a Record of Decision (“**ROD**”) concluding that the newly acquired Trust Lands are Indian lands which are eligible for gaming pursuant to IGRA and adopting a reduced intensity casino and hotel project as the preferred action alternative;

WHEREAS, the preferred action alternative is significantly smaller than the project initially proposed by the Tribe and includes a casino and a 6-story, 200-room hotel (“**Project**”) to be built on approximately 66 acres of land located on the northeastern portion of the Trust Lands and situated within the City's urban growth boundary and outside the 100-year flood plain on

¹ The Trust Lands are comprised of that certain property held in trust by the United States for the benefit of the Tribe pursuant to the Graton Rancheria Restoration Act (P.L. 106-558, 25 U.S.C. § 1300n *et seq.*) comprising approximately 254 acres of land in Sonoma County including Assessors Parcel Numbers 045-073-001, 045-074-017, 045-074-010, 045-073-002, 045-073-003, 045-073-004, 046-021-020, 046-021-021, 046-021-039, 046-021-040 and 143-040-068.

² The full text of the Compact is available online at: http://gov.ca.gov/docs/Graton_Compact_executed.pdf.

³ The full text of the FEIS is available online at: www.gratoneis.com/documents/final_eis/Final-EIS.htm.

property designated in the FEIS as the Wilfred site and more particularly identified by the legal description set forth in Exhibit A and the map of property in Exhibit B (“**Project Area**”);

WHEREAS, the Project is located on Trust Lands outside the boundaries of the City and the City has no legal authority to exercise jurisdiction over, deliberate on, approve, disapprove or otherwise exercise judgment regarding the Trust Lands or the Project or gaming or other activities conducted in the Project Area;

WHEREAS, the City and the Tribe, recognizing that various impacts may arise in the City in connection with the gaming enterprise, entered into that certain Memorandum of Understanding dated October 14, 2003 wherein the Tribe agreed to make certain contributions and community investments to mitigate the impacts of the gaming enterprise (“**City MOU**”);

WHEREAS, the County and the Tribe, recognizing that various impacts may arise in the County in connection with the gaming enterprise, entered into that certain Memorandum of Understanding dated November 1, 2004 wherein the Tribe agreed to enter into an Intergovernmental Agreement to mitigate off-Reservation impacts of the gaming enterprise (“**County MOU**”);

WHEREAS, Section 3(b) of the City MOU identified various traffic contributions to be made by the Tribe to mitigate potential impacts of the Project. This included a contribution to the City to complete the widening of Wilfred Avenue from Highway 101 west to the City’s urban growth boundary in accordance with the City’s General Plan at a mutually agreed upon schedule to enable completion prior to the date on which the Tribe commences gaming operations on the Reservation which are open to the public (“**Opening Date**”). The Tribe also agreed to hire a contractor to identify significant off-Reservation impacts on traffic resulting from the Project and potential measures to mitigate such impacts;

WHEREAS, the City currently holds both fee and easement interests in the segment of Wilfred Avenue within its territorial limits between Redwood Drive and Dowdell Avenue, the County currently holds both fee and easement interest in the segment of Wilfred Avenue in the unincorporated area between Dowdell Avenue and Stony Point Road, and the Tribe currently holds a beneficial interest in the Trust Lands adjacent to the County’s Portion of Wilfred Avenue;

WHEREAS, the FEIS and ROD included an analysis of traffic impacts associated with the gaming enterprise based on the Graton Rancheria Traffic Impact Study (Kimley Horn and Associates, 2008) which found that traffic associated with development of the Wilfred site would contribute to future traffic along local roadways and intersections;

WHEREAS, the ROD identified as traffic mitigation the need to extend and widen Wilfred Avenue from Highway 101 west to just west of the Stony Point Road intersection, including provision for additional travel lanes, bike lanes and sidewalks in each direction, stormwater drainage improvements, improved intersections at Labath and Langner Avenue, and signalization and intersection improvements to the Stony Point Road/ Wilfred Avenue, Labath Avenue/ Wilfred Avenue and Dowdell Avenue/ Wilfred Avenue intersections, and utility relocation as necessary within the right-of-way to accommodate future traffic of the Project and approved and pending development in the vicinity of Wilfred Avenue (“**Wilfred ROW Improvements**”);

WHEREAS, Kimley-Horn and Associates prepared 35% complete engineering plans to accomplish the Wilfred ROW Improvements which engineering plans are available in the office of the City Clerk ("**Engineering Plans**") and are incorporated herein by this reference;

WHEREAS, the Parties have identified Wilfred Avenue as a critical transportation route and determined that the continued improvement to this route is paramount to the safety, economic development and regional transportation and circulation plan for the County, the City, the Tribe and the public at large;

WHEREAS, the Tribe intends to utilize Business Park Drive and portions of Labath Avenue within the City to access the Project site during construction, which will require the Tribe to repave those roads from Redwood Drive to Rohnert Park Expressway to support existing and future traffic ("**Business Park Drive Improvements**");

WHEREAS, the Tribe has begun construction of the Project and desires to assure that safe public access is available to its facilities;

WHEREAS, the County has determined that approximately 1383 miles of unincorporated County roadways require maintenance and improvement, and the County has been exploring opportunities to relinquish its interests in such roadways where these roadways extend into other jurisdictions and are proposed for improvement as part of approved and pending development projects;

WHEREAS, the Parties have an interest in assuring that adequate traffic mitigation measures are implemented to mitigate traffic impacts from the Project and other existing, approved and future development in the vicinity of Wilfred Avenue;

WHEREAS, the Parties agree that allowing the City to acquire additional portions of Wilfred Avenue right of way which are necessary to construct the Wilfred ROW Improvements is necessary and appropriate because such right of way is: (a) a continuation of Wilfred Avenue within the City, (b) conveniently adjacent to those portions of Wilfred Avenue located within the City limits, and (c) directly and peculiarly important to the Wilfred ROW Improvements;

WHEREAS, the County is willing to grant its right, title and interest to the City of those portions of Wilfred Avenue to be improved and to consent to the City's acquisition of extraterritorial properties in the County;

WHEREAS, the Tribe is willing to grant its right, title and interest to the City of those portions of Wilfred Avenue to be improved and to undertake the design and engineering, and obtain regulatory permitting of Wilfred ROW Improvements and the Business Park Drive Improvements at its own expense and to pay for the City's maintenance of the improvements located in the County;

WHEREAS, the City is willing, at the Tribe's expense, to acquire additional right of way necessary for the Wilfred ROW Improvements through voluntary transfers facilitated by the Tribe, and if necessary to exercise its authority to acquire the additional right of way, and to construct the Wilfred ROW Improvements and the City will accept the improvements into its road system, consistent with the terms and conditions of this Agreement;

WHEREAS, the Tribe is willing to construct the Business Park Drive Improvements at its own expense and the City is willing to accept the improvements into its road system, consistent with the terms and conditions of this Agreement;

WHEREAS, the Tribe has the power to plan, finance, acquire, construct, maintain and operate rights of way and related traffic facilities and improvements on Trust Lands pursuant to the Tribe's inherent sovereignty as exercised under the Tribe's Constitution;

WHEREAS, the City has the power to plan, finance, acquire, construct, maintain and operate rights of way and related traffic facilities and improvements pursuant to statutory authority including, but not limited to, Government Code §§7050 and 37350 *et seq.*, Code of Civil Procedures §1240.130, Probate Code §6102, Public Resources Code §5301 *et seq.*, and Streets and Highways Code §§1820 and 5100 *et seq.*

WHEREAS, the County has the power to plan, finance, acquire, construct, maintain and operate rights of way and related traffic facilities and improvements pursuant to statutory authority including but not limited to Government Code §§ 7050 and 23004, Civil Code § 1009(c), Code of Civil Procedure § 1240.130, and Streets and Highways Code § 940 *et seq.*;

WHEREAS, because the Project will be constructed before other approved and pending development will occur in the area and the Project along with other development will add traffic to Wilfred Avenue, the Parties have determined that entering into a mutual agreement between the City, the County and the Tribe to implement the Wilfred ROW Improvements is desired to enhance traffic circulation, minimize any potential off-reservation impacts, and protect the public's health, safety and welfare;

WHEREAS, the Parties intend to further the design, construction and maintenance of the Wilfred ROW Improvements by specifying the terms and conditions for: (1) the City's acquisition of right of way through the County and the Tribe's transfer of right of way in their possession to the City necessary for the construction of Wilfred ROW Improvements, (2) the City's acquisition of additional right of way necessary to accommodate the Wilfred ROW Improvements via voluntary transfer or other statutory authority, (3) the County's consent to the City's extraterritorial acquisition of right of way within the County, (4) the Tribe's preparation of the design, engineering and specifications on the City's behalf ("**Roadway Improvement Plans**") for the Wilfred ROW Improvements and the Business Park Drive Improvements, (5) the Tribe's processing and acquisition of the requisite permits and authorizations on the City's behalf from the State and Federal agencies, which may include but not be limited to the Bureau of Indian Affairs, the U.S. Army Corps of Engineers ("**Corps**"), the U.S. Fish & Wildlife Service ("**USFWS**"), the California Department of Fish and Game ("**CDFG**"), and the North Coast Regional Water Quality Control Board ("**RWQCB**") (the "**Regulatory Permits**") for construction of the Business Park Drive Improvements ("**BPD Improvement Plans**") and Wilfred ROW Improvements ("**Wilfred Improvement Plans**"), (6) the Parties' agreement and delegation to the City of the responsibility and/or authority to process and construct the Wilfred ROW Improvements at the Tribe's expense, and (7) the Tribe's payment for maintenance of the Wilfred ROW Improvements and Business Park Drive Improvements;

WHEREAS, a federally recognized Indian tribe may enter into a joint powers agreement with other public agencies, including cities and counties, under the Joint Exercise of Powers Act, codified at Government Code section 6500 *et seq.*;

WHEREAS, an agreement between the Parties entered into pursuant to the authority in the Joint Exercise of Powers Act, constitutes an intergovernmental agreement ("**IGA**") pursuant to Section 4.4 of the Compact;

WHEREAS, on September 25, 2012, the City Council of the City held a duly noticed public meeting to consider adoption of this Agreement and approved its adoption pursuant to Resolution No. 2012-113, which is attached as Exhibit C;

WHEREAS, the Board of Supervisors of the County held a duly noticed public meeting to consider adoption of this Agreement and approved its adoption pursuant to Resolution No. 2012-0464, which is attached as Exhibit D;

WHEREAS, at a regular meeting of the Tribal Council, the Tribal Council authorized the adoption of this Agreement by adopting Resolution No. 12-37, which is attached as Exhibit E;

WHEREAS, at a regular meeting of the General Council of the Tribe, the General Council authorized the adoption of the limited waiver of sovereign immunity by adopting Resolution No. GC#12-38, which is attached as Exhibit F;

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

1. SCOPE, NATURE AND PURPOSE.

1.1 Pursuant to Sections 4.4 and 11.8.7 of the Compact, this Agreement shall be an IGA between the City, the County and the Tribe establishing the terms and conditions of construction, ownership and maintenance of the Wilfred ROW Improvements and Business Park Drive Improvements. The purpose of this Agreement is to allow the City, the County and the Tribe, pursuant to that authority in the Joint Exercise of Powers Act under Government Code Section 6502, to jointly exercise their powers to plan, finance, acquire, construct, maintain and operate Wilfred ROW Improvements and the Business Park Drive Improvements for the purpose of mitigating the traffic circulation impacts of the Project.

1.2 The Parties agree that nothing in this Agreement nor the Compact is intended to or shall affect or alter the City, the County and/or the Tribe's rights or obligations under any other agreements including City MOU or County MOU, including but not limited to the Tribe's obligation to make contributions or other payments to the City and the County under the City MOU or the County MOU.

2. AGREEMENT ADMINISTRATION.

2.1 The City Manager and/or his or her designee shall represent the City in all matters relating to the administration of this Agreement.

2.2 The County Administrator and/or his or her designee shall represent the County in all matters relating to the administration of this Agreement.

2.3 The Tribal Chair and/or his or her designee shall represent the Tribe in all matters relating to the administration of this Agreement.

3. COUNTY'S OBLIGATION.

3.1 **CONVEYANCE OF COUNTY ROW.**

- 3.1.1 On or before November 1, 2012, the County shall convey to the City all of its right, title and interest to the right of way necessary for the Wilfred ROW Improvements located in that portion of Wilfred Avenue in the unincorporated area and west of the City's 2012 city limits, which is more particularly depicted in Exhibit G, and related nonexclusive permanent and/or temporary access and construction easements (collectively "**County ROW**").
- 3.1.2 The County's grant of County ROW shall be made consistent with all applicable laws.
- 3.1.3 Prior to conveyance, the County shall provide the City with all existing preliminary title reports and copies of all supporting documents, legal descriptions, calculations; right of way maps and deeds for all parcels to be conveyed to the City.
- 3.1.4 Prior to conveyance, the County shall maintain the County ROW until the same has been approved and accepted by the City.
- 3.1.5 The County hereby, via this Agreement, delegates all authority to inspect, monitor or process any necessary permits and any other regulatory approval required for the construction of the Wilfred ROW Improvements, including authority to act as lead agency for any environmental review.
- 3.1.6 On or before November 1, 2012, the County shall convey the County ROW via a quitclaim deed in a form substantially similar in all material respects to that attached hereto as Exhibit H and incorporated by this reference ("**County's Quitclaim Deed**"). Upon execution thereof, the County shall provide a fully executed copy to the City for recording in the records of the Recorder for the County of Sonoma.
- 3.1.7 To the extent necessary to accommodate the Wilfred ROW Improvements, the County agrees to and shall assign to the City, any and all of the County's prior rights in the County ROW for the purposes of utility relocation.
- 3.1.8 In consideration of the City's and the Tribe's obligations under this Agreement, including, but not limited to, removing the County ROW from the County's road system, permitting and constructing the Wilfred ROW Improvements, and maintaining the road, the County shall offer to dedicate to the City the County ROW at no charge to the Parties. The Parties agree that this does not constitute a gift of public funds because the transfer is necessary to achieve the mutually beneficial effects of the traffic mitigation efforts provided for hereunder.
- 3.1.9 The County hereby expressly and unconditionally waives any and all right to claim, demand, or receive any compensation for the dedication of the County ROW which the County may be eligible to receive under the California Relocation Assistance Act (Government Code §7260, et seq.), Article 1, § 19 of the California Constitution, the California Eminent Domain Law (Code of Civil Procedure §1230.010, et seq.), and/or the

California Code of Regulations, Title 25 or other applicable local, state, or federal statute, ordinance, regulation, rule, or decisional law, including, but not limited to, the fair market value of the property, severance damages, loss of goodwill, loss of profits, or relocation benefits and assistance, or claims for unreasonable precondemnation activities or inverse condemnation, or any other compensation as a result of the County's requirement of the dedication and/or acceptance of the dedication of the County ROW. Furthermore, the County hereby expressly releases the City, and its respective officials, officers, employees, representatives, successors and assigns, from any liability, responsibility, or obligation to pay any compensation in regard to same.

- 3.1.10 The City shall incur no liability with respect to the County's quitclaim and shall not assume any responsibility for the County ROW unless and until it has been accepted by the City. Before the lawful acceptance of the County's quitclaim by the City, the County agrees that it will not use the County ROW in any way that will interfere with the County ROW's future use as part of the Wilfred ROW Improvements.
- 3.1.11 If the County ROW, or portions thereof, are not used for the purpose described in this Agreement, all rights granted shall revert to the County, and the City shall cooperate in providing a suitable document, such as a Quitclaim Deed, to extinguish the conveyances made hereunder.
- 3.1.12 For property necessary to develop the Wilfred ROW Improvements, as are more particularly identified in the Engineering Plans and Wilfred Improvement Plans, including right of way and temporary construction easements along Wilfred Avenue, that is located outside the City's territorial limits and cannot be acquired by voluntary transfer ("**Extraterritorial Portions**"), the County hereby consents to the City's exercise of its authority pursuant to Streets and Highways Code Section 1810 and agrees not to interfere with the City exercising any and all authority it has to acquire Extraterritorial Portions.

4. **CITY'S OBLIGATION.**

4.1 **VOLUNTARY ROW ACQUISITION.**

- 4.1.1 The Parties agree that, in light of the proximity of the City's territorial limits to the Wilfred ROW Improvements and the location of Wilfred Avenue in the City's boundaries and sphere of influence, the City is the appropriate party to acquire the property necessary for the Wilfred ROW Improvements. The Parties further agree that the Wilfred ROW Improvement work can best be accomplished by a single, comprehensive scheme of work.
- 4.1.2 The City shall accept the County's Quitclaim Deed, as further defined in Section 3.1 above, and adopt a Certificate of Acceptance which shall be recorded in the office of the County Recorder.

- 4.1.3 The City shall accept the Tribe's Perpetual ROW as further defined in Section 5.1 below, which shall be recorded in the office of the County Recorder.
- 4.1.4 To the extent the Tribe is able to negotiate voluntary transfers of additional right of way as may be necessary for the Wilfred ROW Improvements pursuant to Section 5.2 below, the City shall accept those grants and record them in the office of the County Recorder.
- 4.1.5 In the event that the Parties elect to terminate this Agreement and the property acquired under this Agreement is not used for the purpose described in this Agreement, then the City shall reject the County Quitclaim Deed and the Tribe's Perpetual ROW and relinquish any interest therein, and the same shall become null and void.

4.2 **ADDITIONAL ROW ACQUISITION.**

- 4.2.1 In the event that the additional rights of way have not been timely and voluntarily transferred as provided for in Sections 4.1.4 and 5.2, for property necessary to develop the Wilfred ROW Improvements, including right of way and temporary construction easements along Wilfred Avenue, that is located within the City's territorial limits that cannot be acquired by voluntary transfer ("**Territorial Portions**") and the Tribe has complied with Section 5.2, the City shall exercise its authority to acquire such rights of way without interference by the Parties, provided that any such exercise of authority shall be at the Tribe's sole expense, as is more particularly provided for in Section 6.1.5.
- 4.2.2 For the Extraterritorial Portions, the Parties acknowledge the authority of the City to acquire property outside its territorial limits pursuant to Streets and Highways Code Section 1810, with the County's consent as provided for in Section 3.1.12, as well as Public Resources Code Section 5301 *et seq.*, and Streets and Highways Code Section 5115.

4.3 **PROCESSING AND CONSTRUCTION OF WILFRED ROW IMPROVEMENTS.**

- 4.3.1 The Parties expressly agree that the City shall be the permitting agency with responsibility for the construction, inspection, approval and certification of the Wilfred ROW Improvements. The only exception shall be for the signalization, which is more particularly provided for in Section 5.3.3(a).
- 4.3.2 The Tribe or its designated representative shall prepare on the City's behalf the Roadway Improvement Plans. Upon the Tribe's presentation of final Wilfred Improvement Plans and all applicable Regulatory Permits for the Wilfred ROW Improvements pursuant to Section 5.3, the City shall, at the Tribe's expense, proceed with the construction of the Wilfred ROW Improvements in the same manner the City would administer and construct any other City road project. This may include, but is not limited to, inspection and project management of the Wilfred ROW Improvements at the City's sole election, at the Tribe's expense.

4.3.3 The City intends to commence and complete construction of the Wilfred ROW Improvements prior to the Opening Date and concurrently with the Tribe's schedule to construct the first phase of development of the Project, provided that all Parties timely satisfy their obligations under this Agreement. During the construction of the Wilfred ROW Improvements, representatives of the City and the Tribe will cooperate and consult with each other, to coordinate construction timing. The City's representative is authorized to enter onto County or Tribal property during construction for purposes of monitoring and inspecting construction of the Wilfred ROW Improvements.

4.3.4 Upon acceptance, the City shall, subject to available maintenance funding provided by the Tribe pursuant to Section 6.6, control and maintain the Wilfred ROW Improvements in the same manner as it does the other roads within the City's circulation system.

4.4 **PROCESSING OF BUSINESS PARK DRIVE IMPROVEMENTS.**

4.4.1 The Parties expressly agree that the City shall be the permitting agency with responsibility for the inspection, approval and certification of the Business Park Drive Improvements. This may include, but is not limited to, inspection and project management at the City's sole election, at the Tribe's expense.

4.4.2 The Tribe intends to utilize Business Park Drive and portions of Labath Avenue within city limits to access the Project site during construction. Thus, the Tribe agrees to construct the Business Park Drive Improvements, which involves the reconstruction of Business Park Drive and Labath Avenue by placement of asphalt concrete to a total depth of six inches and a width of the distance from curb to curb (generally forty feet), from Redwood Drive to Rohnert Park Expressway. The Tribe or its designated representative shall prepare the Business Park Drive Roadway Improvement Plans. Upon the Tribe's presentation of final Business Park Drive Roadway Improvement Plans and the City's approval of said plans, as well as the Tribe's submission of all applicable Regulatory Permits for the Business Park Drive Improvements as provided for in Section 5.3, the Tribe shall, at the Tribe's expense, be authorized to construct the Business Park Drive Improvements.

4.5 **PROCESSING FUTURE APPLICATIONS FOR ACCESS.**

4.5.1 The Parties anticipate that, from time to time, some property owners along Wilfred Avenue may make application for new or improved access to Wilfred Avenue. The Parties agree that the City shall process such applications consistent with applicable City policies; provided however, that all future connections to Wilfred Avenue from private properties in unincorporated areas outside City limits which do not have curb and gutter along the public road frontage shall be consistent with all applicable County encroachment standards for rural driveways.

5. TRIBE'S OBLIGATION.

- 5.1 **CONVEYANCE OF TRIBAL ROW.** Pursuant to 25 U.S.C. §§323-328 and the federal regulations promulgated thereunder at 25 CFR Part 169, the Tribe shall consent to the grant of a perpetual right of way ("**Perpetual ROW**") by the Secretary of the Interior through his authorized representative, the Bureau of Indian Affairs, Central California Agency ("**BIA**"), in a form substantially similar to that provided for in Exhibit I, over that portion of the Project Area between Labath Avenue and Langner Avenue required for the Wilfred ROW Improvements, which is more particularly depicted in Exhibit J (collectively "**Tribal ROW**"). The Tribe shall diligently and in good faith assist the City in applying to the Bureau of Indian Affairs, Central California Agency for the requisite ROW in compliance with 25 CFR Part 169, and shall pay any costs associated therewith..
- 5.1.1 The Tribe shall consent to the Perpetual ROW in the form of the resolution set forth in Exhibit K. The Tribe hereby consents to the waiver by the Secretary of the Interior of the stipulations set forth in 25 C.F.R. § 169.5.
- 5.1.2 To assist the City's preparation of the application for the Perpetual ROW, the Tribe shall provide the City with any maps, surveys, deposits, and any other information or requirements set forth in 25 CFR Part 169 and applicable to the City as an instrumentality of the State..
- 5.1.3 Prior to conveyance of the Perpetual ROW to the City, the Tribe shall maintain the Tribal ROW until the same has been approved and accepted by the City.
- 5.1.4 On or before March 15, 2013, unless otherwise delayed by the BIA by no fault of the Tribe, the BIA shall convey to the City the Perpetual ROW over the Tribal ROW via a Perpetual ROW approved by the Bureau of Indian Affairs. Upon execution thereof, the Tribe shall provide a fully executed copy to the City for recording in the records of the Recorder for the County of Sonoma.
- 5.1.5 The Tribe's grant of the Perpetual ROW over the Tribal ROW shall be made free and clear of all recorded and unrecorded liens, non-monetary liens, encumbrances, easements, leases, covenants, conditions, restrictions, and other exceptions to or defects in title. The City shall have approved the soils and environmental condition of the Tribal ROW and the Tribe shall provide the City with all necessary clearances to certify the right of way is free and clear of hazardous waste.
- 5.1.6 In consideration of the City's obligations under this Agreement, including, but not limited to, permitting and constructing the Wilfred ROW Improvements and accepting them into the City's road system, the Tribe shall consent to the grant to the City of the Perpetual ROW over the Tribal ROW at no charge to the Parties.
- 5.1.7 The Tribe hereby expressly and unconditionally waives any and all right to claim, demand, or receive any compensation for the dedication of the Tribal

ROW which the Tribe may be eligible to receive under the California Relocation Assistance Act (Government Code §7260, et seq.), Article 1, § 19 of the California Constitution, the California Eminent Domain Law (Code of Civil Procedure §1230.010, et seq.), and/or the California Code of Regulations, Title 25 or other applicable local, state, or federal statute, ordinance, regulation, rule, or decisional law, including, but not limited to, the fair market value of the property, severance damages, loss of goodwill, loss of profits, or relocation benefits and assistance, or claims for unreasonable precondemnation activities or inverse condemnation, or any other compensation as a result of the Tribe's requirement of the dedication and/or acceptance of the dedication of the Tribal ROW. The Tribe also waives any claims for any and all damages to Tribe's remaining property contiguous to the Tribal ROW hereby conveyed by reason of the location, construction, or maintenance of the Wilfred ROW Improvements. Furthermore, the Tribe hereby expressly releases the City, and its respective officials, officers, employees, representatives, successors and assigns, from any liability, responsibility, or obligation to pay any compensation in regard to same.

5.1.8 The City shall incur no liability with respect to the Tribe's Perpetual ROW and shall not assume any responsibility for the Tribal ROW unless and until it has been accepted by the City. Before the lawful acceptance of the Perpetual ROW by the City, the Tribe agrees that it will not use the Tribal ROW in any way that will interfere with the Tribal ROW's future use as part of the Wilfred ROW Improvements.

5.1.9 If the Tribal ROW, or portions thereof, are not used for the purpose described in this Agreement, the City shall provide the Secretary written notice of the City's abandonment of the Perpetual ROW pursuant to 25 C.F.R. § 169.20.

5.2 FACILITATION OF VOLUNTARY TRANSFERS OF ADDITIONAL RIGHT OF WAY.

5.2.1 On or before November 15, 2012, the Tribe, on behalf of the City, shall make a good faith effort to facilitate the City's acquisition of any additional right of way as may be necessary for the Wilfred ROW Improvements via voluntary grants. The Tribe's obligation shall include, but not be limited to, obtaining appraisals of the fair market value of the property, negotiating with the property owners, preparing necessary transfer documentation, and payment of the negotiated value to the property owner. The City shall accept the voluntary grants, as provided for in Section 4.1.4.

5.2.2 Prior to the City exercising any authority provided for in Section 4.2, the City shall be satisfied through written documentation provided by the Tribe, that the Tribe has exercised its reasonable efforts to exhaust available means at its disposal to acquire both Territorial Portions and Extraterritorial Portions via voluntary transfers. The documentation shall include, but not be limited to, any and all property information that the Tribe has obtained including title reports, surveys, appraisal information, etc.; information

regarding the dates and times that the Tribe made contact with the property owners; complete records of the terms of any offers made whether verbal or written; and complete records regarding the property owners' response and/or counteroffers made.

5.3 DESIGN, ENGINEERING AND REGULATORY PERMITTING OF WILFRED ROW IMPROVEMENTS.

5.3.1 The Tribe shall, at its sole expense, prepare or cause to be prepared the Wilfred Improvement Plans, and shall obtain or cause to be obtained all Regulatory Permits necessary to construct the Wilfred ROW Improvements. The Tribe shall provide any and all necessary materials, labor, and supervision for the same. The Tribe or its designated representative shall submit such Wilfred Improvement Plans and Regulatory Permits to the City during the plan check process. The Tribe or its designated representative shall revise the Wilfred Improvement Plans for Wilfred ROW Improvements as necessary to achieve City approval. The Tribe shall secure the final design and engineering for the Wilfred ROW Improvements no later than January 15, 2013. All Regulatory Permits for the Wilfred ROW Improvements shall be secured no later than March 15, 2013, unless otherwise extended due to the regulatory agency approval process.

5.3.2 The Parties acknowledge that the City will rely on the final Wilfred Improvement Plans and Regulatory Permits to construct the Wilfred ROW improvements. The Tribe agrees to pay to the City the costs and expenses, including staff, consultant and legal time incurred in connection with such construction of the Wilfred ROW Improvements. The City shall provide the Tribe with an invoice for any such costs the City incurs and the Tribe shall provide remuneration as provided for in Section 7.

5.3.3 The precise layout and construction design of the Wilfred ROW Improvements shall incorporate the following features, which thereafter shall be maintained and upheld by the City:

- (a). Plans for the construction of the Stony Point Road-Wilfred Avenue signalization shall be submitted to the County for review and approval, and the signalization shall be designed and constructed in accordance with all applicable County standards;
- (b). The County General Plan provides for Class 2 bikeways along Wilfred Avenue. Accordingly, Class 2 bikeways will be constructed within six-foot wide shoulders, which construction is consistent with the County General Plan. The City shall be ultimately responsible for determining compliance with this section;
- (c). The County intends to consult with affected property owners on the perpendicular, County-maintained streets that intersect

Wilfred Avenue between Stony Point Road and Dowdell Avenue (“**Subject Streets**”) regarding the need and desire for traffic controls to limit or prohibit through traffic across Wilfred Avenue. The City and Tribe shall not object to the implementation of traffic controls on the Subject Streets identified through those consultations, so long as the traffic controls are within the paved areas of the subject streets and Wilfred Avenue. If, prior to January 1, 2013, traffic controls are identified, the County and Tribe shall meet and confer and the identified traffic controls shall be incorporated into the planning, layout and construction design of the Wilfred ROW Improvements.

- (d). Bridge improvements and storm drain discharges within the Bellevue-Wilfred Channel shall be subject to all applicable Water Agency requirements. The Water Agency shall remain an approving authority for any proposed improvements, modification, alteration or uses of Water Agency property.
- (e). The City shall enter into a Maintenance and Operations Agreement with the County, similar to analogous County Maintenance and Operation Agreements, and fund one quarter of the cost of maintaining the Stony Point Road Wilfred Avenue signal.
- (f). The Wilfred ROW Improvements shall be designed to the Water Agency Flood Control Design Criteria and the County Storm Water Low Impact Development Technical Design Manual. The City shall be ultimately responsible for determining compliance with this section;
- (g). Provide survey and mapping services necessary to perpetuate existing land net and alignment monumentation in accordance with Sections 8771 and 8765 of the Business and Professions Code and to permanently monument the location of all right of way acquisitions made under this Agreement.
- (h). Provide for the safe operation of public traffic within the portion of Wilfred Avenue to be improved, pursuant to the authority contained in Vehicle Code Section 591 and the requirements of Vehicle Code Divisions 11 through 15.

5.3.4 The County shall be the permitting authority for the abovementioned traffic signal at Stony Point Road described in Section 5.3.3(a). The Tribe or its designated representative shall apply for and the County shall issue an encroachment permit for the installation thereof. Except as expressly provided for in this Section 5.3.4, the City shall be the exclusive permitting authority for the Wilfred ROW Improvements as provided for in Section 4.3.1.

- 5.3.5 The City shall not commence construction of the Wilfred ROW Improvements until the Wilfred Improvement Plans for the Wilfred ROW Improvements have been reviewed, approved and accepted by signature of the City's agent. Upon the City's request, the Tribe shall also provide the City with an approved copy of right of way certification to certify that legal and physical control of right of way were acquired in accordance with applicable State and Federal laws and regulations and City requirements.
- 5.3.6 The Tribe hereby warrants that the design work for the Wilfred ROW Improvements shall be performed according to applicable laws, the City's specifications, and City construction standards requirements, and shall be subject to the reasonable direction of the City Engineer. The Tribe shall secure all required Regulatory Permits for the Wilfred ROW Improvements at its own expense.
- 5.3.7 The Tribe or its designated representative shall be responsible for the investigation of potential hazardous waste sites within the right of way and to remedy the same on the City's behalf. Remedial actions proposed by the Tribe or its designated representative shall be pre-approved by the City and shall be performed in accordance with the City's standards and practices and those standards mandated by the federal and State regulatory agencies with jurisdiction over the work.
- 5.3.8 The Tribe shall require its engineers and contractors to maintain in full force, until completion and acceptance of the Wilfred ROW Improvements, a policy of Contractual Liability Insurance. Coverage shall be evidenced by a Certificate of Insurance in a form satisfactory to the City, which shall be delivered to the City before starting work on the Wilfred ROW Improvements.
- 5.3.9 If any existing public and/or private utility facilities conflict with the construction of the Wilfred ROW Improvements or violate the City's encroachment policy, the Tribe shall make all necessary arrangements with the owners of such facilities for their protection, relocation or removal in accordance with the City's applicable rules and regulations. The cost of said protection, relocation or removal shall be apportioned between the utility owner and the Tribe. Protection, relocation, or removal costs (if any) associated with the City of Santa Rosa's existing recycled water pipeline and the City of Rohnert Park's existing sewer interceptor pipeline in Wilfred Avenue shall be borne by the Tribe as part of project costs. Any relocated or new facilities shall be correctly shown and identified on the "As-Built" plans. For the purposes of determining the priority of rights, in the event of a conflict, the City shall be deemed to hold the same rights held by the County, vis-à-vis existing public and/or private utility facilities.
- 5.3.10 The Tribe shall, at its sole cost and expense, in a timely manner, provide the City with all documents, plans and other information necessary for the City to process and construct the Wilfred ROW Improvements hereunder and

cause the Tribe's engineers, and all other consultants, to submit in a timely manner all required materials and documents therefore.

5.4 DESIGN, ENGINEERING REGULATORY PERMITTING AND CONSTRUCTION OF BUSINESS PARK DRIVE IMPROVEMENTS.

5.4.1 During the construction of the Wilfred ROW Improvements, it will be necessary for the Tribe to utilize Business Park Drive and portions of Labath Avenue within City limits to access the Project site during construction. In consideration of the impacts to these roadways from truck traffic, the Tribe agrees, at its sole expense, to prepare the BPD Improvement Plans, obtain all Regulatory Permits necessary to construct, and construct the Business Park Drive Improvements.

5.4.2 The same provisions provided for in Section 5.3, including Sections 5.3.1 through 5.3.10, regarding the Wilfred ROW Improvements shall apply to the Tribe's actions with respect to the Business Park Drive Improvements, except as otherwise provided in 5.4.1.

6. FEES AND CHARGES.

6.1 IMPLEMENTATION COSTS.

6.1.1 The Tribe shall be solely responsible for paying all design, permitting, construction, review, inspection, project management, staff, legal, right of way acquisition, and operating and maintenance costs incurred by the Parties for the construction of Wilfred ROW Improvements and the Business Park Drive Improvements. These costs shall also include the City and County legal and staff time required to prepare this Agreement, to advise on the implementation of the Wilfred ROW Improvements and the Business Park Drive Improvements, and any other costs associated with the Parties obligations under this Agreement. The City and the County shall provide the Tribe with an invoice for any such costs the City incurs and the Tribe shall provide remuneration as provided for in Section 7.

6.1.2 The Tribe expressly understands and agrees that, although the design, engineering, permitting and construction, review, inspection, project management, staff, legal, right of way acquisition, and operating and maintenance costs incurred by the Parties for the construction of Wilfred ROW Improvements and the Business Park Drive Improvements are subject to estimation, until responsive bids are received, the actual costs of the Wilfred ROW Improvements and the Business Park Drive Improvements are uncertain. Even then, circumstances beyond the expectation of the Parties often result in change orders which may increase the costs of the improvements. Accordingly, the actual scope and costs of the Wilfred ROW Improvements and the Business Park Drive Improvements are uncertain until the construction bids are accepted and the Wilfred ROW Improvements have been completed. Notwithstanding the foregoing, the Tribe agrees that the design, engineering, permitting and

construction of the Wilfred ROW Improvements and the Business Park Drive Improvements shall be at its sole cost and expense.

- 6.1.3 If the City determines that it is necessary to contract with outside consultants in order to satisfy its obligations under this Agreement, the Tribe shall be solely responsible for the actual and administrative costs of contracted and additional services and provide remuneration as provided for in Section 7, provided however that the rate for such services will be established in a manner consistent with existing City practices.
- 6.1.4 The Tribe shall pay, when due, all persons furnishing labor or materials in connection with any work to be performed by or on behalf of the Tribe related to this Agreement, and shall keep the City's interests in its public infrastructure free and clear of any related mechanics' liens or stop notices related to such work.
- 6.1.5 The Tribe acknowledges that the City is required in accordance with California Government Code Section 7267.2 to make an offer to the owner(s) of property required for the Wilfred ROW improvements in an amount established as just compensation after consideration of a fair market value appraisal. Tribe agrees to pay for the City's Acquisition Costs incurred in connection with the property acquisition for the Wilfred ROW Improvements. The term "Acquisition Costs" shall include but not be limited to: (i) any and all expenses incurred in the acquisition of real property, including, but not limited to, actual compensation paid to the owner(s) of property and relocation costs; (ii) to costs and payments incurred for attorneys' fees; expert witness fees, including appraisers, whether or not said expert witnesses are called to testify at time of trial court costs; (iii) costs and fees charged by acquisition and relocation agents; (iv) any awards or settlement in avoidance of a trial of compensation and costs to the owners of the Property sought to be acquired (including but not limited to compensation for the Property acquired, severance damages, if any; loss of goodwill, if any; and delay damages, if any); (v) interest on the award or settlement and interest for immediate possession of the Property acquired; (vi) sanctions, if any, awarded to the owner or payable to the Court; litigation expenses (including but not limited to attorneys' fees and expert witness fees); (vii) court costs awarded to the owner of the Property sought to be acquired or paid to the owner in settlement of claims for attorneys' fees and expert witness fees; (viii) expenses and costs, if any, awarded to the owner for abandonment or dismissal of any condemnation action, or any settlement of claims for costs and expenses for abandonment or dismissal; (ix) costs recoverable against a condemnor upon the filing of a memorandum of costs (including but not limited to filing and process fees including costs of recordation and certification of documents); (x) deposition fees, including fees paid to deposed expert witnesses; (xi) ordinary witness fees, jury fees, mileage fees for jurors and fees for official reporting of testimony and proceedings after judgment; (xii) all fees recoverable pursuant to California Code of Civil Procedure Sections

1235.140, 1250.410 and 1268.710; and (xiii) all arbitration, mediation, and alternative dispute resolution fees, including fees paid to arbitrators or retired judges. Tribe agrees to provide the City with the Acquisition Costs upon presentation of an invoice, as provided for in Section 7 hereof.

- 6.2 **TAXES, ASSESSMENTS AND PREMIUMS.** The Tribe shall be solely responsible for the payment of any federal, state, or local income tax, social security tax, workers' compensation insurance, state disability insurance, and any other taxes, assessments and premiums or insurance contributions which the Tribe is responsible for paying under federal, state or local law by reason of or in connection with the obligations to be performed under this Agreement.
- 6.3 **THIRD PARTIES.** The City shall not be obligated or liable for payment hereunder to any party engaged by the County or the Tribe for the performance of the County or the Tribe's obligations under this Agreement. The County shall not be obligated or liable for payment hereunder to any party engaged by the City or the Tribe for the performance of the City or the Tribe's obligations under this Agreement. The Tribe's duty to indemnify, as provided for in Section 9.2, shall include the duty to protect the City and the County from such third party claims.
- 6.4 **FINES.** The Tribe shall be solely responsible for regulatory fines and penalties incurred as a result of the Tribe's actions or omissions under this Agreement. The City shall be responsible for regulatory fines and penalties incurred as a result of the City's sole actions or omissions under this Agreement. The County shall be responsible for regulatory fines and penalties incurred as a result of the County's sole actions or omissions under this Agreement.
- 6.5 **Negotiation Costs.** The City and the County shall invoice the Tribe and the Tribe shall be solely responsible for the reimbursement of the City and the County's actual costs incurred in negotiating this Agreement, which costs include the cost of City and the County department heads, legal counsel, and similar personnel to draft, review and implement this Agreement.
- 6.6 **Maintenance Costs.**
- 6.6.1 The Parties acknowledge and agree that the City is taking on a maintenance obligation for Wilfred Avenue outside of its territorial limits that, but for this Agreement, the City would otherwise not incur. In consideration thereof, the Tribe agrees to fund the maintenance of Wilfred Avenue west of the City's 2012 city limit by making annual maintenance payments to the City in accordance with Section 6.6.2, below.
- 6.6.2 Payments shall initially be \$288,214 per year. Subsequent annual payments will then be escalated each year using the California Construction Costs Index as published by the California Department of General Services. The calculation will be made by dividing the most recent 12-month average of the Construction Cost Index for which data is available by 5706 which is the value of the 12-month period from August 2011-July 2012, then multiplying that factor by \$288,214. If publication of the California Cost

Index is discontinued, another reasonable construction cost index will be selected by the City and calculations made in a similar manner.

- 6.6.3 Said payments shall be invoiced July 1 each year by the City and paid by the Tribe in accordance with Section 7 of this Agreement. The obligations for such maintenance costs, shall not begin until the Wilfred ROW Improvements are constructed, in whole or in part.
- 6.6.4 In the event that the City develops a fund for future third party developers to contribute to the ongoing maintenance costs of the Wilfred ROW Improvements (“**Wilfred Maintenance Fund**”), then the eligible ongoing maintenance cost paid for by the Tribe, as required under Section 6.6.2, shall be reduced so that the Tribe shall only be required to pay its proportionate share of the ongoing maintenance costs.

7. **TRIBAL PAYMENTS.**

7.1 **DEPOSIT ACCOUNT.**

- 7.1.1 The Tribe shall deposit a cash sum with the City in the amount of One Hundred Thousand dollars (\$100,000.00) within thirty (30) days after execution of this Agreement (the “**Deposit Account**”).
- 7.1.2 To ensure timely payment and to avoid construction delays and work stoppages, the City intends to pay the selected Wilfred ROW Improvement contractor using funds the Tribe has deposited in the Deposit Account. Prior to the commencement of construction of the Wilfred ROW Improvements, the Tribe shall comply with the following: (1) the Tribe shall enter into an agreed upon payment schedule with the City which shall be in writing and may be amended from time to time, in consultation with the selected Wilfred ROW Improvement contractor regarding the amount of the payments and timing for payments of any required costs for construction of the Wilfred ROW Improvements; and (2) upon award of the Wilfred ROW Improvements contract with the selected contractor, the Tribe shall pay to the City an amount equal to 10% of the total contract amount for the Wilfred ROW Improvements which amount the City shall place in the Deposit Account. Consistent with said payment schedule, the Tribe shall deposit sufficient funds with the City in such amounts and at such times as to ensure that the City can make payments for the Wilfred ROW Improvements from the Deposit Account directly to the selected Contractor and will not need to use funds from the City general fund to fund the Wilfred ROW Improvements. In the event the Tribe fails to timely deposit such funds, the City may invoice the Tribe and shall treat said invoice as delinquent, applying the penalty provided for in Section 7.2. If the Tribe fails to timely make payments under this Section 7.1.2, the City may terminate the contract for the Wilfred ROW Improvements with the contractor and the Tribe shall be solely and exclusively responsible for all costs, penalties, damages or other expenses associated with such termination.

- 7.1.3 If the Tribe fails to pay any amounts owing under this Agreement or breaches any provision of this Agreement, the City may (but shall not be required to), without prejudice to any other remedy it has, apply all or part of the Deposit to: (i) any delinquent invoice, (ii) any amount that the City may spend or become obligated to spend in exercising the City's rights under this Agreement, (iii) any liquidated damages owed; (iv) any late charges not paid in accordance with Section 7.1.6, and/or (v) any expense, loss, or other damage that the City may suffer because of the Tribe's default.
- 7.1.4 The Tribe may not assign or encumber the Deposit account without the City's prior, written consent. Any attempt to do so shall be void and shall not be binding on the City.
- 7.1.5 The City shall provide written notice to the Tribe of the amount of any deductions which are made from the deposit account. The Tribe shall replenish the deposit account to an amount sufficient to restore the Deposit by the amount withdrawn and to the amount prior to the withdrawal within fifteen (15) days of the mailing of the notice.
- 7.1.6 Any amount of the deposit account not timely replenished pursuant to Section 7.1.5, shall be subject to a five percent (5%) late charge, provided however, that in the event the Tribe fails to replenish the Deposit on two (2) consecutive occasions, the late charge shall thereafter be ten percent (10%). The Parties agree that this late charge represents a reasonable estimate of the expenses the City will incur. The City's acceptance of the late payment shall not constitute a waiver of the Tribe's breach with respect to the overdue amount or prevent the City from exercising any of the rights and remedies available to the City under this Agreement.
- 7.1.7 If the Tribe performs every provision of this Agreement to be performed by the Tribe and the City determines that no additional funding is required under this Agreement, the unused portion of the Deposit (with interest) shall be returned by the City to the Tribe within thirty (30) days following the expiration or termination of this Agreement.
- 7.2 **TIMING OF PAYMENT AND INVOICES.** Except as otherwise provided for herein or agreed to by the Parties in writing, the City shall monthly in arrears (or other applicable billing procedures) render invoices outlining the items for which payment is requested for any and all costs, fees and charges required under this Agreement. Invoices shall be due and the Tribe shall pay said invoices within thirty (30) days of mailing the invoice.
- 7.2.1 If the Tribe disputes any of the City's costs and/or charges, it shall give written notice to the City Manager within ten (10) days of the City mailing an invoice of such disputed fees and clearly state the basis for the dispute. Within ten (10) days, the City Manager or his or her designee shall render a decision regarding the dispute. The findings of the City Manager shall be based on reasonable evidence and meet any applicable legal requirements. The City Manager's decision shall be considered to be a final decision.

Any amount found to be due shall be immediately due and payable upon the receipt of notice.

- 7.2.2 In the event that the Tribe fails to pay an invoice or any portion thereof, it shall become delinquent thirty (30) days after mailing the invoice. Invoices for or in connection with the Wilfred ROW Improvements and Business Park Drive Improvements not paid by this date shall be subject to a penalty of twenty percent (20%). All other invoices, including for Maintenance Costs under Section 6.6, shall be subject to a penalty of ten percent (10%). The Tribe shall pay this amount for each calendar month in which all or any part of any invoice payment remains delinquent. The Parties agree that this late charge represents a reasonable estimate of the expenses the City will incur. The City's acceptance of the late payment shall not constitute a waiver of the Tribe's breach with respect to the overdue amount or prevent the City from exercising any of the rights and remedies available to the City under this Agreement.
- 7.2.3 By way of example, if the City mailed an invoice for the construction of the Wilfred ROW Improvements to the Tribe on January 1st for \$50,000 and the Tribe failed to pay the invoice by January 31st, the City would apply the 20% delinquency penalty described in Section 7.2.2 and the amount due would be \$60,000. If there were sufficient funds available, the City would deduct the \$50,000 from the deposit account and notify the Tribe of the same. If the Tribe failed to replenish the \$60,000 in the deposit account within 15 days after the date of the notice, then the City would impose the 5% late charge described in Section 7.1.6 and the Tribe would owe \$63,000 to replenish the deposit account.
- 7.3 **NATURE OF PAYMENTS.** The Parties expressly understand and agree that any and all costs, fees, and charges incurred under this Agreement are due and owing at the time set forth herein regardless of the timing or amount of payments made to the City by the State Gaming Agency under the Graton Mitigation Fund. The Parties further agree that Section 11.8.7 of the Compact allows the Parties to negotiate compensation for public services in this manner. Because the payments required under this Agreement are a proximate cause of the Tribe's Project, the Parties have determined that requiring upfront payment of any and all costs, fees and charges incurred under this Agreement is a reasonable and appropriate means of compensation.
- 7.4 **DELINQUENCY.** In the event that the Tribe fails to timely pay an invoice or timely replenish the Deposit account, the City may use all available remedies including initiation of an action in court to collect the unpaid invoice(s) and all applicable penalties. The Tribe expressly waives its right to assert sovereign immunity in such a proceeding. The Tribe shall be responsible for all fees and costs incurred by the City to obtain delinquent payments, including, without limitation, attorneys fees and costs.
- 7.5 **CREDITS.** The City may credit to the Tribe any amount of money which the Tribe pays the City in excess of the amount due under the invoice(s), which sum shall

be applied as a credit towards payments due on the next invoice that the Tribe would otherwise be required to make.

8. **TERM & TERMINATION.**

8.1 **TERM.** This Agreement shall become effective upon its execution by the Parties hereto and shall continue in full force and effect until terminated.

8.2 **TERMINATION.** Any party may terminate this Agreement only upon good cause and upon written notice to the other Parties. Good cause includes any of the following:

8.2.1 Material breach of this Agreement,

8.2.2 Assignment of this Agreement without written consent, and

8.2.3 Termination of the Compact without renewal or without the execution of a new compact between the State and the Tribe pursuant to IGRA.

Before declaring termination, the Party shall provide a notice of default and a period of time to cure of no less than sixty (60) days.

8.3 **OBLIGATIONS THAT SURVIVE TERMINATION.**

8.3.1 Notwithstanding any other provision of this Agreement, the following obligations of the Tribe shall survive past termination of this Agreement:

- Section 3 - County's Obligation. For property conveyed prior to termination, subsections 3.1 1 through 3.1.3 inclusive shall survive.
- Section 4 – City's Obligation. To the extent that, following termination, the Wilfred ROW Improvements are funded and construction is to be pursued by City, Sections 4.5.1 and 5.3 shall survive.
- Section 5 – Tribe's Obligations. For property conveyed and for design, engineering and regulatory permitting activity conducted by the Tribe prior to termination, subsections 5.1.1 through 5.4.2 inclusive shall survive.
- Section 6 - Fees and Charges. For expenses incurred prior to termination and those ongoing obligations incurred after termination, such as maintenance costs, subsections 6.1 through 6.7 inclusive shall survive; provided however, that the maintenance costs shall only survive to the extent that the Wilfred ROW Improvements are constructed by the City.
- Section 7 – Tribal Payments. For expenses incurred prior to termination and those ongoing obligations incurred after termination, subsections 7.1 through 7.5 inclusive shall survive.
- Section 9 – Insurance and Indemnification. The indemnification, liability and waiver of sovereign immunity provisions, subsections 9.2 through 9.7 inclusive, shall survive.

9. **INSURANCE AND INDEMNIFICATION.**

9.1 **INSURANCE.**

- 9.1.1 The City shall maintain in full force and effect its current insurance coverage type and limit through Redwood Empire Municipal Insurance Fund (REMIF) or other municipal insurance provider.
- 9.1.2 The County shall maintain in full force and effect its current insurance coverage type and limit through California State Association of Counties – Excess Insurance Authority (CSAC-EIA) or other municipal insurance provider.
- 9.1.3 The Tribe shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in the attached Exhibit L, which is incorporated by this reference as though set forth in full.
- 9.1.4 In order to effectuate the insurance coverage, the Tribe shall expressly waive, and waive its right to assert, sovereign immunity up to the limits of the Policy, in accordance with the tribal resolution referenced in Section 9.7 below, in connection with any claim for bodily injury, personal injury, or property damage, arising out of, connected with, or relating to the operation of the Wilfred ROW Improvements; provided, however, that nothing herein requires the Tribe to agree to liability for punitive damages or to waive its right to assert sovereign immunity in connection therewith. The Policy shall acknowledge in writing that the Tribe has expressly waived, and waived its right to assert, sovereign immunity for the purpose of mediation of those claims up to the limits of the Policy referred to above and for the purpose of enforcement of any ensuing award or judgment and shall include an endorsement providing that the insurer shall not invoke tribal sovereign immunity up to the limits of the Policy; however, such endorsement or acknowledgement shall not be deemed to waive or otherwise limit the Tribe's sovereign immunity for any portion of the claim that exceeds the Policy limits.
- 9.2 **TRIBE INDEMNIFICATION.** The Tribe, to the fullest extent allowed by law, agrees to and shall indemnify, protect, defend (as set forth in Section 2788 of the California Civil Code) and hold harmless (with counsel reasonably acceptable to the City) the City and the City Representatives and the County and County Representatives from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs and expenses (including reasonable attorneys' fees), arising from or in connection with, or caused by: (a) any act, omission or negligence of the Tribe or its contractors, licensees, invitees, agents, lessees, servants or employees, related to or in connection with the performance of its obligations under this Agreement, (b) any negligence of the Tribe, including claims relating to the City and/or County's negligence, except where such claims are caused by the sole negligence or willful misconduct of the City or the County, which are related to or in connection with the performance of the Tribe's obligations under this Agreement, (c) claims to attack, set aside, void or annul the City's approval of this Agreement, or the City or the County's CEQA determination with respect to the approval of this Agreement, and (d) the implementation of this Agreement by the City or the County (collectively, "**Claims**" or "Claim"). In the event that any Claim is brought against the City or

City Representatives, and/or the County or County Representatives, the Tribe upon notice from the City and/or the County shall pay for the City and/or County's legal and staff costs incurred in defending any such claim. The City and/or County shall defend the Claim, at the Tribe's sole expense, and shall consult with the Tribe during the pendency of the action or proceeding to minimize the legal fees and other costs associated with the Claim. The provisions of this section shall survive completion of the Wilfred ROW Improvements and/or the expiration or other termination of this Agreement, but only to the extent the Claims are related to, or in connection with, the performance of the Tribe's obligations under this Agreement. The Tribe acknowledges and agrees that the obligations of the Tribe under this Section 9.2 are material elements of the consideration to the City for the performance of its obligations under this Agreement, and that the City and the County would not have entered into this Agreement unless such obligations were as provided for herein.

- 9.3 **CITY INDEMNIFICATION.** The City, to the fullest extent allowed by law, agrees to and shall indemnify, protect, defend and hold harmless the County, County Representatives, the Tribe and Tribal Representatives from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs and expenses (including reasonable attorneys' fees), arising from or in connection with, or caused by: (a) the sole or active negligence or willful misconduct of the City or its contractors, licensees, invitees, agents, lessees, servants or employees, related to or in connection with the performance of its obligations under this Agreement, and (b) any sole negligence of the City (collectively, "**City Claims**"). In the event that any City Claim is brought against the Tribe or Tribal Representatives, the City upon notice from the Tribe shall pay for all the Tribe's legal and staff costs incurred in defending any such claim. The provisions of this section shall survive completion of the Wilfred ROW Improvements and/or the expiration or other termination of this Agreement.
- 9.4 **COUNTY INDEMNIFICATION.** The County, to the fullest extent allowed by law, agrees to and shall indemnify, protect, defend and hold harmless the City, City Representatives, the Tribe and Tribal Representatives from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs and expenses (including reasonable attorneys' fees), arising from or in connection with, or caused by: (a) the sole or active negligence or willful misconduct of the County or its contractors, licensees, invitees, agents, lessees, servants or employees, related to or in connection with the performance of its obligations under this Agreement, and (b) any sole negligence of the County (collectively, "**County Claims**"). In the event that any County Claim is brought against the Tribe or Tribal Representatives, the County upon notice from the Tribe shall pay for all Tribe's legal and staff costs incurred in defending any such claim. The provisions of this section shall survive completion of the Wilfred ROW Improvements and/or the expiration or other termination of this Agreement.
- 9.5 **SCOPE OF OBLIGATION.** The Tribe's duty to indemnify, protect, defend and hold harmless as set forth herein shall include the duty to defend as set forth in California Civil Code § 2778. This indemnification obligation is not limited in

any way by any limitation on the amount or type of damages or compensation payable by or for the Tribe under worker's compensation, disability or other employee benefit acts or the terms, applicability or limitations of any insurance held or provided by the Tribe and shall continue to bind the parties after termination/completion of this Agreement. This indemnification shall be regardless and not in any way limited by the insurance requirements of this contract. This indemnification is for the full period of time allowed by law.

9.6 REPRESENTATIVE LIABILITY.

- 9.6.1 No City Representative shall be personally liable to the County, the Tribe or otherwise in the event of any default or breach of the City, or for any amount which may become due to the County, the Tribe or any successor in interest, for any obligations directly or indirectly incurred under the terms of this Agreement.
- 9.6.2 No County Representative shall be personally liable to the City, the Tribe or otherwise in the event of any default or breach of the County, or for any amount which may become due to the City, the Tribe or any successor in interest, for any obligations directly or indirectly incurred under the terms of this Agreement.
- 9.6.3 No Tribal Representative shall be personally liable to the City, the County or otherwise in the event of any default or breach of the Tribe, or for any amount which may become due to the City or any successor in interest, for any obligations directly or indirectly incurred under the terms of this Agreement.

9.7 LIMITED WAIVER OF SOVEREIGN IMMUNITY.

- 9.7.1 For the purpose of actions or mediations based on disputes between the City and/or the County and the Tribe that arise under or pertain to this Agreement and the enforcement of any judgment or award resulting therefrom, the Tribe expressly, unequivocally, and irrevocably agrees to and shall (i) waive the Tribe's right to assert sovereign immunity in favor of the City and/or the County, but not as to any other third party, person, entity, or agency as to disputes arising under this Agreement and not as to any other actions, matters, or disputes, (ii) waive any requirement that disputes be heard in a court or other dispute resolution forum of the Tribe, whether under the doctrines of exhaustion of Tribal remedies, comity, or otherwise; and (iii) consent to the jurisdiction of state and federal courts and to mediation as well as the application of the laws of the state of California to govern and interpret the Agreement.
- 9.7.2 The waivers and consents to jurisdiction expressly provided for under this Section 9.7 and elsewhere in the Agreement shall extend to all mediations and civil actions authorized by this Agreement, including, but not limited to, actions to compel mediation, any mediation proceeding herein, any action to confirm, modify, or vacate any mediation award or to enforce any

judgment, and any appellate proceeding emanating from any such proceedings.

- 9.7.3 The waivers and consents to jurisdiction expressly provided under this Section 9.7 and elsewhere in the Agreement are limited and shall not extend to protected assets of the Tribe, including the following: (a) any interests in real property held in trust by the United States of America for the benefit of the Tribe, or owned by the Tribe in fee and subject to restrictions by the United States of America against alienation, and any improvements, fixtures or accessions to such property, (b) any assets against which it would be a violation of federal law, state law or the Compact to enforce remedies, (c) any assets belonging to or held in trust for individual members of the Tribe, including assets credited to trust accounts for minors or legally incompetent persons, (d) assets credited to any special revenue funds which are subject to restrictions in connection with the Tribe's administration of any state or federal grants or programs and (e) all assets of the Tribe or its Affiliates used for a ceremonial purpose or all assets of the Tribe and its Affiliates used for performing an essential governmental purpose within the meaning of Tax Code § 7871. Notwithstanding the foregoing, the waivers and consents to jurisdiction provided under this Section 9.7.3 and elsewhere in the Agreement shall extend to all other non-federally or state restricted funding or revenue sources and trust assets.
- 9.7.4 The Tribal Council shall adopt, and at all times hereinafter shall maintain in continuous force, a formal Resolution Authorizing a Limited Waiver of Sovereign Immunity substantially identical to the resolution attached hereto as Exhibit F. The executed Limited Waiver is a condition for the City and the County's execution of this Agreement and shall be made a part hereof subject to Section 12.19.1 of this Agreement.
- 9.7.5 Notwithstanding any other provision of this Agreement, to the extent that Tribe fails to make the waivers provided for herein and/or a court of competent jurisdiction holds that the Tribe's waiver(s) is/are invalid or incomplete, the City and the County shall have the right to declare this Agreement null and void and therefore terminate this Agreement. In the event the City and/or the County so declares, this Agreement shall be unenforceable, provided however, that the Tribe shall remain liable to the City and/or the County for the fees and charges incurred to date as provided for in Sections 5, 6 and 7.
- 9.7.6 Consistent with the waivers provided for herein, the Tribe consents to actions that arise under this Agreement being filed in the Superior Court of California for Sonoma County.

10. **RELATIONSHIP OF THE PARTIES.**

- 10.1 **INDEPENDENT CONTRACTORS.** The Parties intend and agree that each of them, in performing the obligations specified in this Agreement, shall act as independent contractors and shall control the work and the manner in which it is performed. The personnel performing the services under this Agreement on behalf of the

Tribe shall at all times be under the Tribe's exclusive direction and control. Neither the City nor the County nor any of their officers, employees or agents shall have control over the conduct of the Tribe or any of the Tribe's officers, employees or agents, except as set forth in this Agreement. The Tribe shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of the City or the County. The Tribe shall not incur or have the power to incur any debt, obligation or liability whatever against the City or the County, or bind the City or the County in any manner. The personnel performing the services under this Agreement on behalf of each respective party shall at all times be under that party's exclusive direction and control. Neither the Tribe nor any of its officers, employees or agents shall have control over the conduct of the City or the County or any of the City or the County's officers, employees or agents, except as set forth in this Agreement. Neither the City nor any of its officers, employees or agents shall have control over the conduct of the Tribe or the County or any of the Tribe's or the County's officers, employees or agents, except as set forth in this Agreement. Neither the County nor any of its officers, employees or agents shall have control over the conduct of the City or the Tribe or any of the City or the Tribe's officers, employees or agents, except as set forth in this Agreement. The City and the County shall not incur or have the power to incur any debt, obligation or liability whatever against the Tribe, or bind the Tribe in any manner not otherwise addressed in this Agreement.

- 10.2 **NO AGENCY RELATIONSHIP.** This Agreement does not create any partnership or agency between the Parties, each of which is, and at all times shall remain, solely responsible for all acts of its officials, employees, agents, contractors and any subcontractors, including any negligent acts or omissions. None of the Parties are an agent of any other party, and none have authority to act on behalf of or to bind the other Party to any obligation or commitment whatsoever.
- 10.3 **NO EMPLOYEE PRIVILEGES.** No City or County employee benefits shall be available to the Tribe in connection with the performance of this Agreement. Except as expressly required under this Agreement, the City and the County shall not pay salaries, wages or other compensation to the Tribe for performing services hereunder for the City and/or the County.

11. **COMPLIANCE WITH LAWS.**

- 11.1 **LEGAL RESPONSIBILITIES.** The Parties shall keep themselves informed of local, state and federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Parties shall at all times observe and comply with all such laws and regulations.
- 11.2 **LICENSES.** At all times during the term of this Agreement, the Parties shall have in full force and effect, all licenses and permits required by law for the performance of services described in this Agreement.
- 11.3 **LABOR CONDITIONS.** The City and the County are public entities in the State of California, and therefore, the City and the County are subject to the provisions of

the Government Code and the Labor Code of the State of California, including, but not limited to, the provisions which (a) require every employee to be insured against liability for workers compensation or to take self-insurance and (b) require every employer to adopt a written injury and illness prevention program. All provisions of law applicable to public contracts and/or this Agreement are incorporated herein by this reference and are made a part of this Agreement to the same extent as if they were fully stated in the Agreement and shall be complied with by the Tribe. The Tribe certifies that it will comply with such provisions before commencing performance of the Agreement and at all times in the performance of the Agreement.

11.4 **LABOR REQUIREMENTS.** The Parties shall abide by all federal and California laws and regulations regarding wages, including, without limitation, the Fair Labor Standards Act and the California Labor Code, which, in part, require the Parties to pay the general prevailing wage rates.

11.5 **DISCRIMINATION.** No person shall be excluded from employment in the performance of this Agreement on the grounds of race, creed, color, sex, age, marital status, sexual orientation, or place of national origin. The Tribe shall comply with all local, state, and federal laws relating to equal employment opportunity rights.

11.6 **CITY/COUNTY NOT RESPONSIBLE.** The City and/or the County and their officers and employees shall not be liable at law or in equity occasioned by failure of the Tribe to comply with this Section 11.

11.7 **ENVIRONMENTAL REVIEW.**

11.7.1 The Parties acknowledge that the FEIS and/or ROD evaluated traffic mitigation measures for Wilfred Avenue widening as provided for in the FEIS Report / ROD.

11.7.2 This Agreement facilitates the provision of and compensation for the planning, financing, acquisition, construction, maintenance and operation of rights of way and related traffic facilities and improvements to Wilfred Avenue, as a consequence of the Project. This Agreement establishes the terms and conditions under which the parties will accomplish the traffic mitigation identified as necessary in the FEIS and/or ROD, which is referred to herein as the Wilfred ROW Improvements. Under this Agreement, the Tribe and County will convey their interest in rights-of-way in Wilfred Avenue to the City, the City will accept such grants, acquire additional rights of way, and construct and maintain the Wilfred ROW Improvements (except the signal at Stony Point Road, which will be inspected and maintained by the County), all at the Tribe's expense and using designs prepared by Tribe.

11.7.3 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 Agreement.

11.7.4 Pursuant to Sections 4.4 and 11.8.7 of the Compact, the Parties are entering into this Agreement, an IGA, to facilitate the construction of Wilfred ROW Improvements to serve the Tribe as a consequence of the approval of the Tribe's Project and gaming operation. Execution of this Agreement is not a project for purposes of CEQA pursuant to the statutory exemptions provided for in: (i) Government Code Section 12012.56(b)(1)(C), which expressly exempts intergovernmental agreements negotiated pursuant to the express authority of, or as expressly referenced in, the Compact; and the Parties agree that the statutory exemption provided by Government Code section 12012.56(b)(1)(C) plainly applies and exempts this IGA from CEQA given that the Compact requires the City and the Tribe to enter into an enforceable IGA and this Agreement's traffic mitigation purposes are subject matters that the Compact expressly authorizes to be addressed within an intergovernmental agreement pursuant to Compact Section 11.8.7, subsections (a)(1), (a)(2), (a)(4) and (c). The Legislature expressly declared in Government Code Section 12012.56(b)(1)(C) that timely mitigation of any significant effect on the environment, including traffic and public safety impacts, including compensation therefor, which were attributable in whole or in part to the Project by virtue of the execution of an intergovernmental agreement with the City and/or the County is not a project for CEQA purposes. 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 traffic impacts in the Compact, the Legislature expressly exempted traffic mitigation agreements such this Agreement from compliance with CEQA.

12. GENERAL PROVISIONS.

- 12.1 **INCORPORATION OF RECITALS.** The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.
- 12.2 **TIME OF THE ESSENCE.** Time is of the essence of this Agreement and every provision hereof.
- 12.3 **INTERPRETATION.** The City, the County and the Tribe acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement; the language of the Agreement will not be construed against one party in favor of the other. The City, the County and the Tribe acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.
- 12.4 **SECTION HEADINGS.** All Section headings in this Agreement are for convenience of reference only and are not to be construed as modifying or governing the

language in the Section referred to or to define or limit the scope of any provision of this Agreement.

- 12.5 **SUCCESSOR PROVISIONS.** Wherever this Agreement makes reference to a specific statutory provision, regulation, or set of rules, it also applies to the provision or rules, as they may be amended from time to time, and any successor provision or set of rules.
- 12.6 **WAIVER.** No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder. Any waiver by the City and/or the County of any provision of this Agreement must be in writing. Such written waiver shall affect only the provisions specified and only for the time and in the manner stated in the writing.
- 12.7 **NOTICES.** Notices hereunder shall be in writing and shall be sufficient if delivered to the address of each party hereto set forth below or at such other address as is provided by a party hereto in writing to the other party hereto.

City of Rohnert Park
130 Avram Avenue
Rohnert Park, CA 94928
Attention: City Manager; City Engineer
Phone: (707) 588-2227

With Copy to:

Burke, Williams and Sorensen
1901 Harrison Street – Suite 900
Oakland, CA 94612
Attention: Michelle Marchetta Kenyon, City Attorney
Phone: (510) 273-8780

County of Sonoma
575 Administration Drive, Suite 104A
Santa Rosa, CA 95403
Attention: County Administrator, Transportation and Public Works Department

With Copy to:

Jeff Brax, Deputy County Counsel
Office of the County Counsel
575 Administration Drive, Room 105A
Santa Rosa, CA 95403

Federated Indians of Graton Rancheria
6400 Redwood Drive, Suite 300
Rohnert Park, CA 94928
Attention: Tribal Chair

Phone: (707) 566-2288

With Copy to:

Maier Pfeffer Kim & Geary, LLP
1440 Broadway, Suite 812
Oakland, CA 94612
Attention: John Maier, Tribal Attorney
Phone: (510) 835-3020

- 12.8 **GAMING COMPACT NOTICE.** If the Tribe is informed by the Secretary of the Interior that the Tribe may not conduct gaming activities on the Trust Lands and all appeals related to such a decision have been exhausted, then the Tribe shall immediately notify the City thereof in writing.
- 12.9 **AMENDMENTS.** This writing is intended both as the final expression of the Agreement between the Parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. This Agreement may be amended in writing at any time, or from time to time, with the approval of the Parties to this Agreement.
- 12.10 **EXHIBITS.** The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:
- Exhibit A: Legal Description of Project Area
 - Exhibit B: Depiction of Project Area
 - Exhibit C: City Resolution Adopting Agreement
 - Exhibit D: County Resolution Adopting Agreement
 - Exhibit E: Tribal Resolution Adopting Agreement
 - Exhibit F: Tribal Resolution Authorizing Limited Waiver of Sovereign Immunity
 - Exhibit G: County's ROW
 - Exhibit H: Form of Quitclaim Deed
 - Exhibit I: Form of Perpetual ROW
 - Exhibit J: Tribal ROW
 - Exhibit K: Tribal Resolution Consenting to Perpetual ROW
 - Exhibit L: Insurance
- 12.11 **GOVERNING LAW.** This Agreement shall be construed and interpreted according to the substantive law of California regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of Sonoma, California.

- 12.12 **PARTIAL INVALIDITY.** If any one or more of the terms, provisions, sections, promises, covenants or conditions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, sections, promises, covenants and conditions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.
- 12.13 **ATTORNEYS FEES.** If any party undertakes litigation against the other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorneys fees and costs incurred.
- 12.14 **FORCE MAJEURE.** If performance of a Party of any portion of this Agreement is made impossible by any prevention; delay; or stoppage caused by acts of God, government, or other forces or events beyond the reasonable control of the party obligated to perform, performance by that party for a period equal to the period of that prevention, delay or stoppage is excused. Tribe's obligation to pay invoices, however, is not excused by this Section 12.14. Except in the event of Wilfred ROW Improvement interruption due to the City and/or the County's willful misconduct, if Wilfred ROW Improvement is interrupted due to force majeure or actions of the City and/or the County or their agents, such as upgrades to or maintenance of Wilfred Avenue, such interruption shall be excused and the Tribe shall not seek and hereby waives the right to receive damages due to such interruption, including but not limited to monetary, punitive, liquidated, consequential or special damages.
- 12.15 **REMEDIES NOT EXCLUSIVE.** No remedy herein conferred upon or reserved to the City and/or the County is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.
- 12.16 **THIRD PARTIES.** Nothing contained in this Agreement shall be construed to create and the Parties do not intend to create any rights in third parties, or affect the legal liability of any Party to this Agreement by imposing any standard of care respecting the operations and maintenance of the Wilfred ROW Improvements different from the standard of care imposed by law.
- 12.17 **ASSIGNMENT PROHIBITED.** Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.
- 12.18 **SUCCESSORS AND RECORDING.** This Agreement shall be binding upon and shall inure to the benefit of the successors, executors, administrators, and assigns of the City, the County and the Tribe. The Perpetual ROW pertains to and shall run with the Trust Lands. The County's Dedicated Portion pertains to and shall run with the land. Upon execution, this Agreement may be recorded in the Official Records of Sonoma County.

12.19 **EXECUTION.** The City Council of the City, the Board of Supervisors of the County and the Tribal Council of the Tribe have each authorized execution of this Agreement as evidenced by the authorized signatures below, respectively.

12.19.1 The Tribe expressly represents that as of the date of the undersigned's execution of this Agreement, the undersigned has the authority to execute this Agreement on behalf of the Tribe, including any waiver of sovereign immunity and the right to assert sovereign immunity therein, and will provide written proof of such authority and of the ratification of this Agreement by the tribal governing body to the City no later than thirty (30) days after the execution of this Agreement by the undersigned.

12.19.2 The Tribe further represents that it is (i) recognized as eligible by the Secretary of the Interior for special programs and services provided by the United States to Indians because of their status as Indians, and (ii) recognized by the Secretary of the Interior as possessing powers of self-government.

12.19.3 In entering into this Agreement, the City and the County expressly rely upon the foregoing representations by the Tribe, and the City and the County's entry into the Agreement is expressly made contingent upon the truth of those representations as of the date of the Tribe's execution of this Agreement through the undersigned. If the Tribe fails to timely provide written proof of the undersigned's aforesaid authority to execute this Agreement or written proof of ratification by the Tribe's governing body, the City shall have the right to declare this Agreement null and void.

12.20 **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same Agreement.

12.21 **APPROVAL BY THE DEPARTMENT OF THE INTERIOR.** The Parties will submit this Agreement to the Department of the Interior for either (a) approval pursuant to 25 U.S.C. § 81, or (b) a written response from the Department of the Interior that this Agreement does not require approval under 25 U.S.C. § 81 to be enforceable.

IN WITNESS WHEREOF, the parties hereto have caused this Joint Exercise of Powers Agreement to be executed by their respective officers thereunto duly authorized, all as of the day and year first written above.

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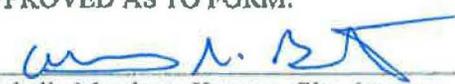
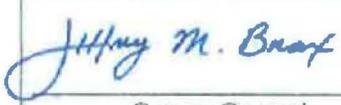
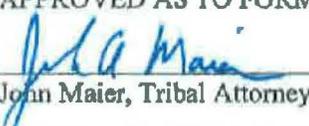
<p>CITY OF ROHNERT PARK</p> <p>By: <u></u> Gabriel Gonzalez, City Manager Per Resolution No. 2012-113 adopted by the Rohnert Park City Council on 9/25/12. APPROVED AS TO FORM:</p> <p><u></u> Michelle Marchetta Kenyon, City Attorney <u>Alexander M. Barnhill, Asst. City Atty</u></p>	<p>THE COUNTY OF SONOMA</p> <p>By: <u></u> Chair, Board of Supervisors</p> <p>APPROVED AS TO FORM:</p> <p><u></u> _____, County Counsel <u>Jeffrey M. Brax, Deputy County Counsel</u></p>
<p>THE FEDERATED INDIANS OF GRATON RANCHERIA</p> <p>By: <u></u> Greg Sarris, Tribal Chair of Federated Indians of Graton Rancheria</p> <p>APPROVED AS TO FORM:</p> <p><u></u> John Maier, Tribal Attorney</p>	

EXHIBIT A:

LEGAL DESCRIPTION OF PROJECT AREA

EXHIBIT A-1

**Legal Description for APN:
143-040-068**

Exhibit "A"

The land referred to herein is situated in the State of California, County of Sonoma, City of Rohnert Park, and described as follows:

Lot 6, as shown upon that certain Map entitled "Rohnert Business Park Subdivision", filed for record August 12, 1985 in Volume 375 of Maps, at Pages 10 and 11, Sonoma County Records.

(APN: 143-040-068)

(End of Legal Description)

Description: Sonoma, CA Assessor Map 143, 4 Page: 1 of 1
Order: 312358 Comment:

COUNTY ASSESSOR'S PARCEL MAP

TAX RATE AREA
7-006
7-007

143-04

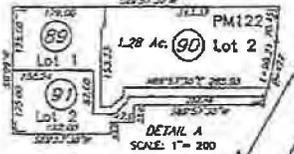
ROHNERT BUSINESS PARK SUBDIVISION

- REC. 08-12-85 IN BK. 375, MAPS, PGS. 10-11
- Parcel Map No. 3
REC. 03-30-73 IN BK. 150, MAPS, PGS. 13-00
- Parcel Map No. 6
REC. 07-05-74 IN BK. 209, MAPS, PGS. 30-00
- Parcel Map No. 25
REC. 11-03-76 IN BK. 241, MAPS, PGS. 19-00
- Parcel Map No. 39
REC. 07-21-77 IN BK. 255, MAPS, PGS. 50-51
- Parcel Map No. 49
REC. 10-16-78 IN BK. 278, MAPS, PGS. 04-00
- Parcel Map No. 51
REC. 03-20-85 IN BK. 389, MAPS, PGS. 30-31
- Parcel Map No. 88
REC. 07-19-84 IN BK. 558, MAPS, PGS. 45-47

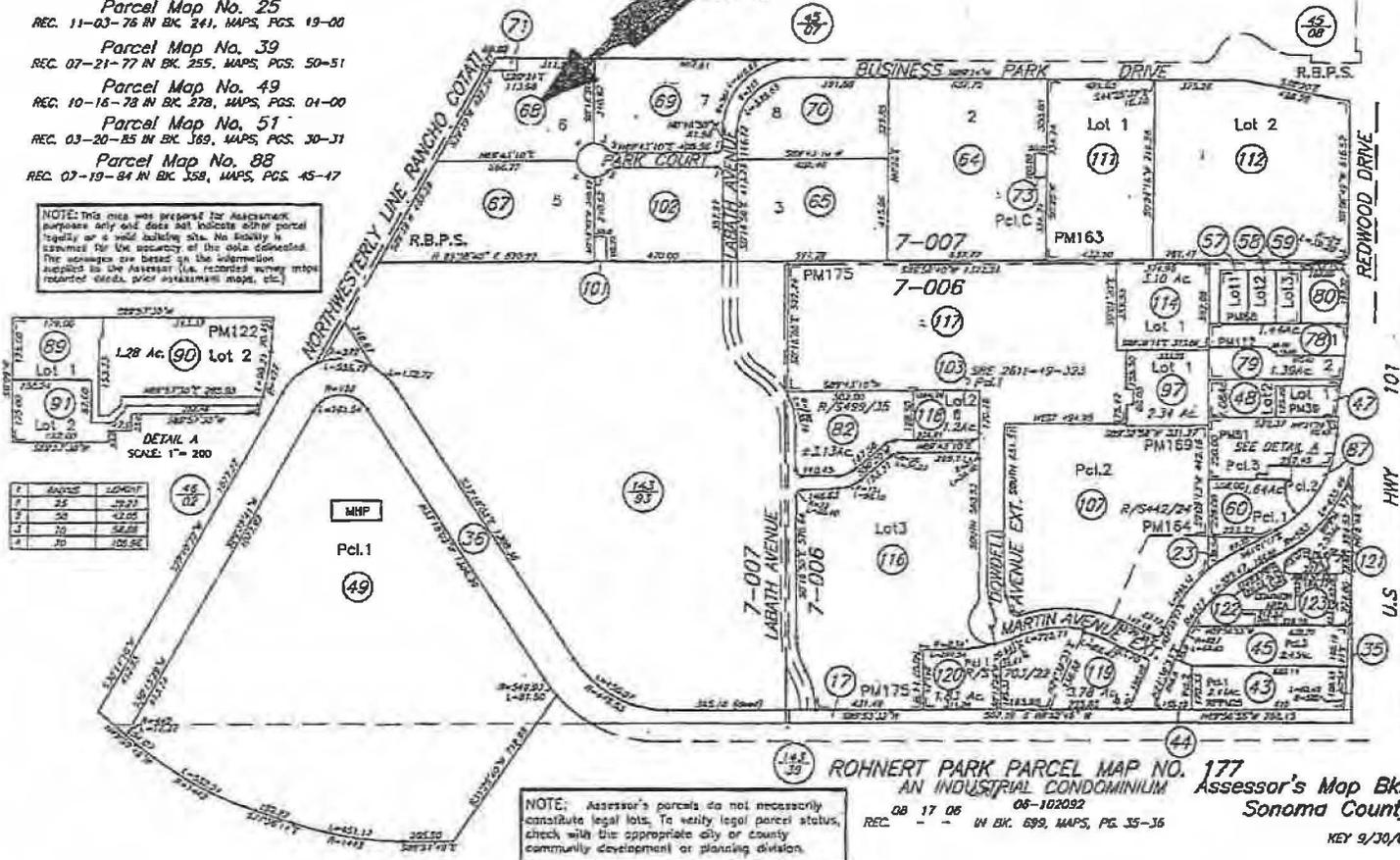
- Parcel Map No. 112
REC. 10-02-87 IN BK. 405, MAPS, PGS. 3-4
- Parcel Map No. 163
REC. 05-03-89 IN BK. 435, MAPS, PGS. 18-18
- Parcel Map No. 163
REC. 08-09-05 IN BK. 511, MAPS, PGS. 44-45

- Parcel Map No. 164
REC. 09-10-07 IN BK. 569, MAPS, PGS. 20-21
- Parcel Map No. 169
REC. 12-14-01 IN BK. 629, MAPS, PGS. 24-28
- Parcel Map No. 175
REC. 07-14-05 IN BK. 679, MAPS, PGS. 13-15

NOTE: This map was prepared for Assessment purposes only and does not indicate other parcels legally or a valid building site. No liability is assumed for the accuracy of the data contained. The boundaries are based on the subdivision supplied to the Assessor (i.e. recorded survey maps, recorded deeds, prior assessment maps, etc.)



P	ANALYSIS	ZONING
1	25	29.21
2	50	42.05
3	70	54.08
4	30	106.94



NOTE: Assessor's parcels do not necessarily constitute legal lots. To verify legal parcel status, check with the appropriate city or county community development or planning division.

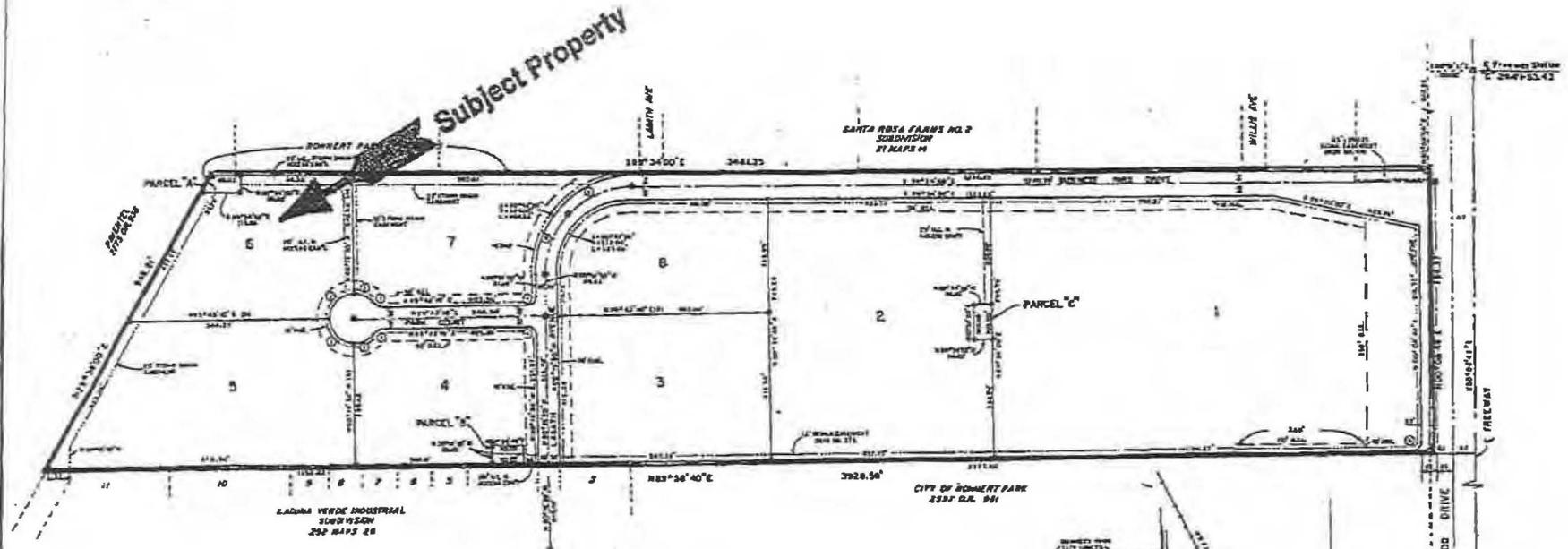
ROHNERT PARK PARCEL MAP NO. 177 AN INDUSTRIAL CONDOMINIUM

REC. 08-17-06 IN BK. 699, MAPS, PG. 35-36

Assessor's Map Bk. 143, Pg. 04
Sonoma County, Calif. (KCAO)

KEY 9/30/09 AG

"This plat is for your aid in locating your land with reference to streets and other parcels. While this plat is believed to be correct, the Company assumes no liability for any loss occurring by reason of reliance thereon."

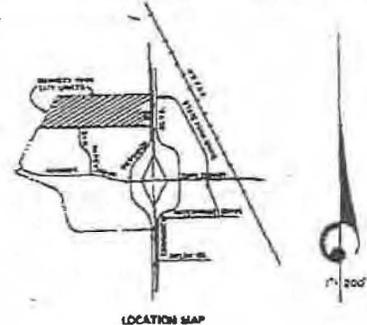


THE RED BORDER INDICATES THE BOUNDARY OF LANDS SUBDIVIDED BY THIS MAP.
 ALL DIMENSIONS & DISTANCES SHOWN HEREIN ARE IN FEET AND DECIMALS THEREOF.
 BASIS OF CORNER: THE IMPROVED CENTERLINE OF U.S. HIGHWAY 101 (SOUTH 40° 40' 00" E) SIDE 4 OF HIGHWAY WAYS, PAGES 43 & 44, SONOMA COUNTY RECORDS.
 THIS RECORD REFERENCE IS MADE TO A REPORT BY MOORE & TANKER FOR SISCO PARK, DATED MARCH 8, 1988 NO. 173/064/40
 CROSSINGS IN ARE OR WILL BE CUT ON TOP OF CURB OR AN EXTENSION OF SIDE LOT LINES.

CURVE DATA

STATION	BEGINS	ENDS	LENGTH
1	49° 2' 25"	90.00'	42.00'
2	49° 0' 35"	70.00'	36.66'
3	90° 00' 00"	70.00'	106.36'
4	90° 00' 00"	25.00'	39.27'
5	49° 2' 25"	250.00'	193.91'
6	89° 49' 51"	25.00'	39.30'

- LEGEND**
- 1/2" INCH P.P.C. ISLAND
 - 1/2" INCH P.P.C. SET, TYPICAL ACC. 10578
 - CITY MONUMENT POINT
 - CITY MONUMENT SET
 - STANDARD STATE HIGHWAY MONUMENT
 - OR. OFFICIAL RECORDS
 - R.S. RAILROAD SETBACK LINE
 - P.U. PUBLIC UTILITY EASEMENT
 - U.E. UTILITY EASEMENT
 - * CROSS (SEE NOTE)



"This plat is for your aid in locating your land with reference to streets and other parcels. While this plat is believed to be correct, the Company assumes no liability for any loss occurring by reason of reliance thereon."

ROHNERT BUSINESS SUBDIVISION

BEING A SUBDIVISION OF PARCEL 1 OF PG PARCEL MAP NO. 49, FILED IN BOOK 27 AT PAGE 4, SONOMA COUNTY RECORDS; OF ROHNERT BUSINESS PARK ASSOCIATES PARTNERSHIP, RECORDED DOCUMENT NO. 68,84 AC.
 CITY OF ROHNERT PARK
 COUNTY OF SONOMA
 STATE OF CALIFORNIA

EXHIBIT A-2

**Legal Description for APN:
046-021-020; 021; 039 & 040**

Exhibit "A"

The land referred to herein is situated in the State of California, County of Sonoma, Unincorporated Area and described as follows:

PARCEL ONE:

A tract of land, being a portion of the Rancho Llano de Santa Rosa, and commencing on the boundary line of said Rancho on the line between Section 21 and 22, in Township 6 North, Range 8 West, Mount Diablo Base & Meridian, at a point in the center of the County Road known as the Santa Rosa and Stony Point Road, from which point the post for the railing of the bridge, across the Laguna and standing on the Southeast corner of the same, is North 31° West, 13 links distant; thence from said point of beginning, North 89° 30' East, 11.92 chains, South 39° 05' East, 2.61 chains, South 53° East, 1.36 chains, South 64° East, 1.23 chains, South 77° 15' East, 2.62 chains, South 88° 05' East, 3.94 chains, North 4° 15' East, 1.43 chains, South 88° East, 2.03 chains, South 56° East, 2.44 chains, North 87° 15' East, 22.62 chains to the Northwest boundary line of the Cotati Rancho; thence along said line, North 29° 15' East, 39.44 chains; thence leaving said line, West 67.92 chains to the center of the aforesaid Road and Section line; thence South, 32.18 chains to the point of beginning. Magnetic Variation 17° East.

Excepting therefrom those portions of land described in the Deeds from Manuel T. Pimental et al, to the Sonoma County Flood Control and Water Conservation District, recorded August 16, 1961 in Book 1840 of Official Records, page 280, Serial No. 0-60050, Sonoma County Records, and recorded September 24, 1963 in Book 1989 of Official Records, page 575, Serial No. H-56600, Sonoma County Records.

Also excepting therefrom that portion of land described in the Deed from Mary C, Pimentel, et al, to the Sonoma County Flood Control and Water Conservation District, recorded February 11, 1966 in Book 2187 of Official Records, page 957, Serial No. J-83 549, Sonoma County Records.

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

Also excepting therefrom that portion of land described in the Deed to the County of Sonoma, recorded May 17, 1996 as Document No. 1996 0044116 of Official Records of Sonoma County.

PARCEL TWO:

An easement for cattle and agricultural equipment crossing, as described in the Deed from the Sonoma County Flood Control and Water Conservation District to Manuel L. Pimentel and Mary C. Pimentel, recorded August 15, 1961 in Book 1840 of Official Records, page 284, Serial No. 0-6005 1, Sonoma County Records.

PARCEL THREE:

An easement for cattle and agricultural equipment crossing, as described in the Deed from the Sonoma County Flood Control and Water Conservation District to Manuel L. Pimentel and Mary C. Pimentel, recorded August 15, 1961 in Book 1840 of Official Records, page 288, Serial No. Serial No. G60052, Sonoma County Records.

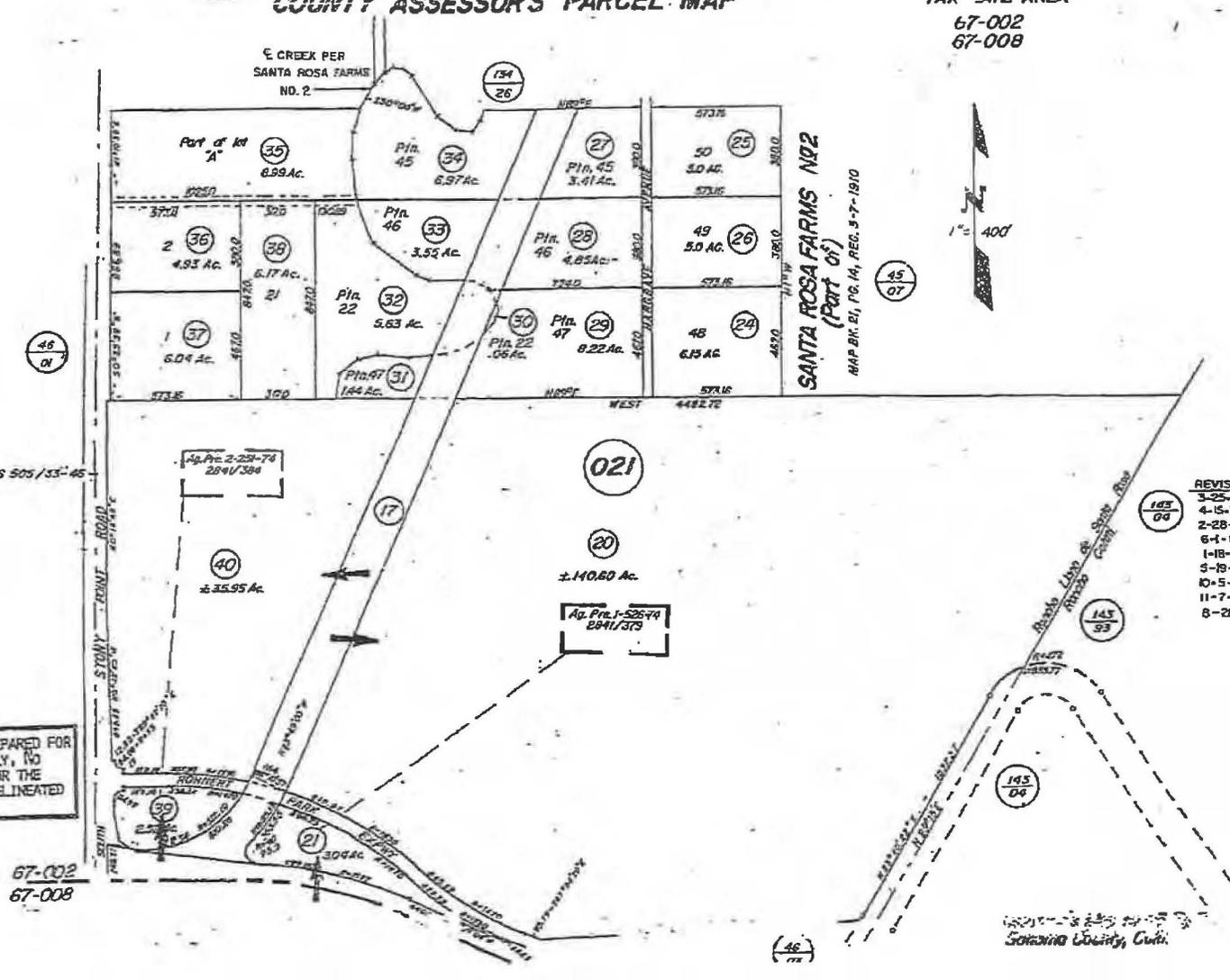
Assessor Parcel No: 046-021-020; 021; 039 & 040
(End of Legal Description)

COUNTY ASSESSOR'S PARCEL MAP

46-02

TAX MAP AREA
67-002
67-008

Description: Sonoma, CA Assessor Map 46.2 Page: 1 of 1
Order: 356 Comment:



NOTE: THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE DATA DELINEATED HEREON.

- REVISED
- 3-25-74
 - 4-15-75
 - 2-28-89 = 21 LSL
 - 6-1-89 = Cor. LSL
 - 1-18-95 = 22 LSL
 - 5-19-95 = 23 LSL
 - 10-5-95 = 26 LSL
 - 11-7-95 = 38 LSL
 - 8-28-96 = 40 LSL

67-002
67-008

Sonoma County, Calif.

EXHIBIT A-3

Legal Description for APN:

045-073-001;

045-074-009; 010;

045-073-002; 003; & 004

Exhibit "A"

The land referred to herein is situated in the State of California, County of Sonoma, Unincorporated Area and described as follows:

TRACT ONE:

Farms 102, 103, 104, 105, 106, 124, 125, 126 and 127, as shown upon the Map of Plan of Subdivision of Santa Rosa Farms No. 2, filed March 7, 1910 in the Office of the County Recorder of Sonoma County in Book 21 of Maps, Page 14, Sonoma County Records.

Certificate of Compliance recorded January 28, 1998 as Document No's 1998 0008588 through 1998 0008596, Sonoma County Records.

Being Assessor Parcel No: 045-073-001

TRACT TWO:

PARCEL ONE:

Farms 130 and 131 as shown upon the Map of Plan of Subdivision of Santa Rosa Farms No. 2 filed March 7, 1910 in the Office of the County Recorder of Sonoma County in Book 21 of Maps, Page 14, Sonoma County Records.

Certificate of Compliance recorded January 28, 1998 as Document No's 1998 0008597 and 1998 0008598, Sonoma County Records.

Being a portion of Assessors Parcel No. 045-074-009

PARCEL TWO:

Farm 129 of Santa Rosa Farms No. 2, according to Map thereof filed in the Office of the County Recorder of said County on March 7, 1910 in Book 21 of Maps, Page 14, Sonoma County Records.

Being Assessors Parcel No. 045-074-010

PARCEL THREE:

Farm No, 128 as same is shown upon that certain Map of Subdivision of Santa Rosa Farms No. 2, Sonoma Co. California, filed March 7, 1910 in Book 21 of Maps, at Page 14.

SAVING AND EXCEPTING THEREFROM, the following:

Commencing at the Southeasterly corner of said Farm No. 128; thence Northerly along the Eastern line thereon, 155 feet and 7 inches to a point, for the actual point of commencement of the tract to be herein described; thence from said point of commencement, South 89° West, 289 feet and 6 inches to a point; thence Northerly, parallel with the Eastern line of said Farm No. 128, a distance of 155 feet and 10

inches to a point; thence North 89° East, 289 feet and 6 inches to the Eastern line of said Farm No. 128; thence Southerly along said Eastern line, 155 feet and 10 inches to the point of commencement.

ALSO SAVING AND EXCEPTING THEREFROM, the following:

Beginning at a point on the center line of Labath Avenue, which point is the Southeast corner of Lot 128 as shown upon the Map entitled "Plan of Subdivision of Santa Rosa Farms No. 2, Sonoma Co. CA., etc.", filed March 7, 1910 in Book 21 of Maps, Page 14, Sonoma County Records; thence North 1° West along the Easterly line of Lot 128, a distance of 155 feet, 7 inches to point; thence South 89° West, 289.5 feet; thence North 1° West, 77 feet, 10 inches; thence South 89° West, 283.66 feet to the Westerly line of said Lot 128; thence along said line, South 1° East, 233.5 Feet to the Southwest corner of said Lot 128; thence along the Southerly line of said Lot, North 89° East, 573.16 feet to the point of beginning.

Being Assessors Parcel No. 045-073-002

TRACT THREE:

A Portion of Farm No. 128 as shown upon the Map entitled "Plan of Subdivision of Santa Rosa Farms No. 2, Sonoma County, California" filed in the Office of the County Recorder of Sonoma County, California, on March 7, 1910 in Book 21 of Maps, page 14, more particularly described as follows:

Commencing at the Southeasterly corner of said Farm No. 128; thence Northerly along the Easterly line thereof, 155 feet, 7 inches to a point for the tile point of beginning of the tract to be herein described; thence South 89° West 289 feet, 6 inches to a point, thence Northerly parallel with the Easterly line of said Farm No. 128, a distance of 155 feet, 10 inches to a point thence North 89° East, 289 feet, 6 inches to the Easterly line of said Farm No. 128; thence Southerly along said Easterly line, 155 feet, 10 inches to the point of beginning.

Being Assessors Parcel No. 045-073-003

TRACT FOUR:

Beginning at a point on the center line of Labath Avenue which point is the Southeast corner of Lot 128 as shown upon the Map entitled Plan of Subdivision of Santa Rosa Farms No. 2, Sonoma County, California, etc., filed March 7, 1910 in Book 21 of Maps, page 14, Sonoma County Records; thence North 1° West along the Easterly line of Lot 128, a distance of 155 feet 7 inches to a point; thence South 89° West, 289.5 feet; thence North 1° West, 77 feet 10 inches; thence South 89° West, 283.66 feet to the Westerly line of said Lot 128; thence along said line South 10 East, 233.5 feet to the Southwest corner of said Lot 128; thence along the Southerly line of said Lot North 89 East, 573.16 feet to the point of beginning.

Being Assessors Parcel No. 045-073-004

(End of Legal Description)

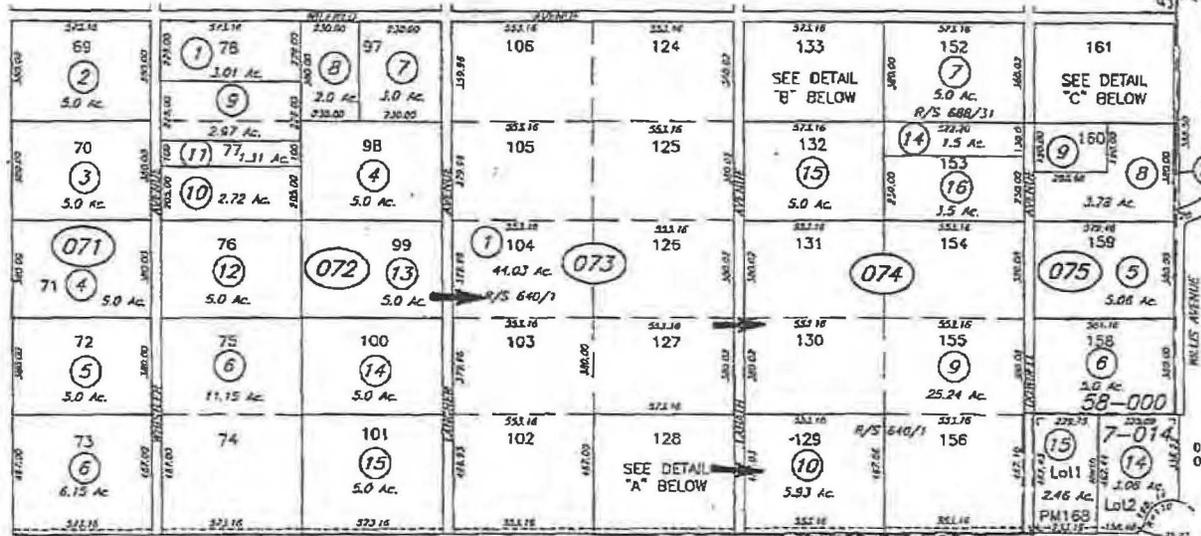
COUNTY ASSESSOR'S PARCEL MAP

Ptn. SANTA ROSA FARMS NO. 2
REC. 03-07-1910 IN BK. 021. MAPS, PGS. 14-00

TAX RATE AREA
58-000
7-014
7-015

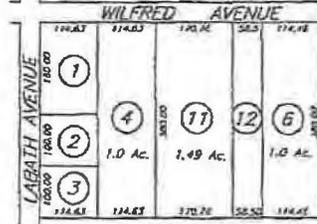
45-07

Description: Sonoma, CA Assessor Map 45.7 Page: 1 of 1
Order: 350 Comment:



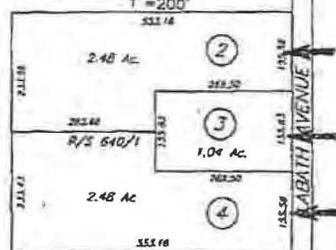
Parcel Map No. 168
REC. 01-26-01 IN BK. 617. MAPS, PGS. 13-15

DETAIL "B"
1"=200'



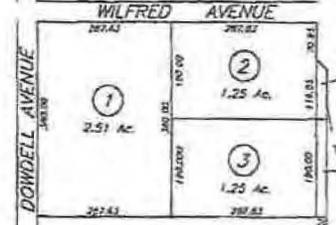
LOT 133

DETAIL "A"
1"=200'



LOT 125

DETAIL "C"
1"=200'



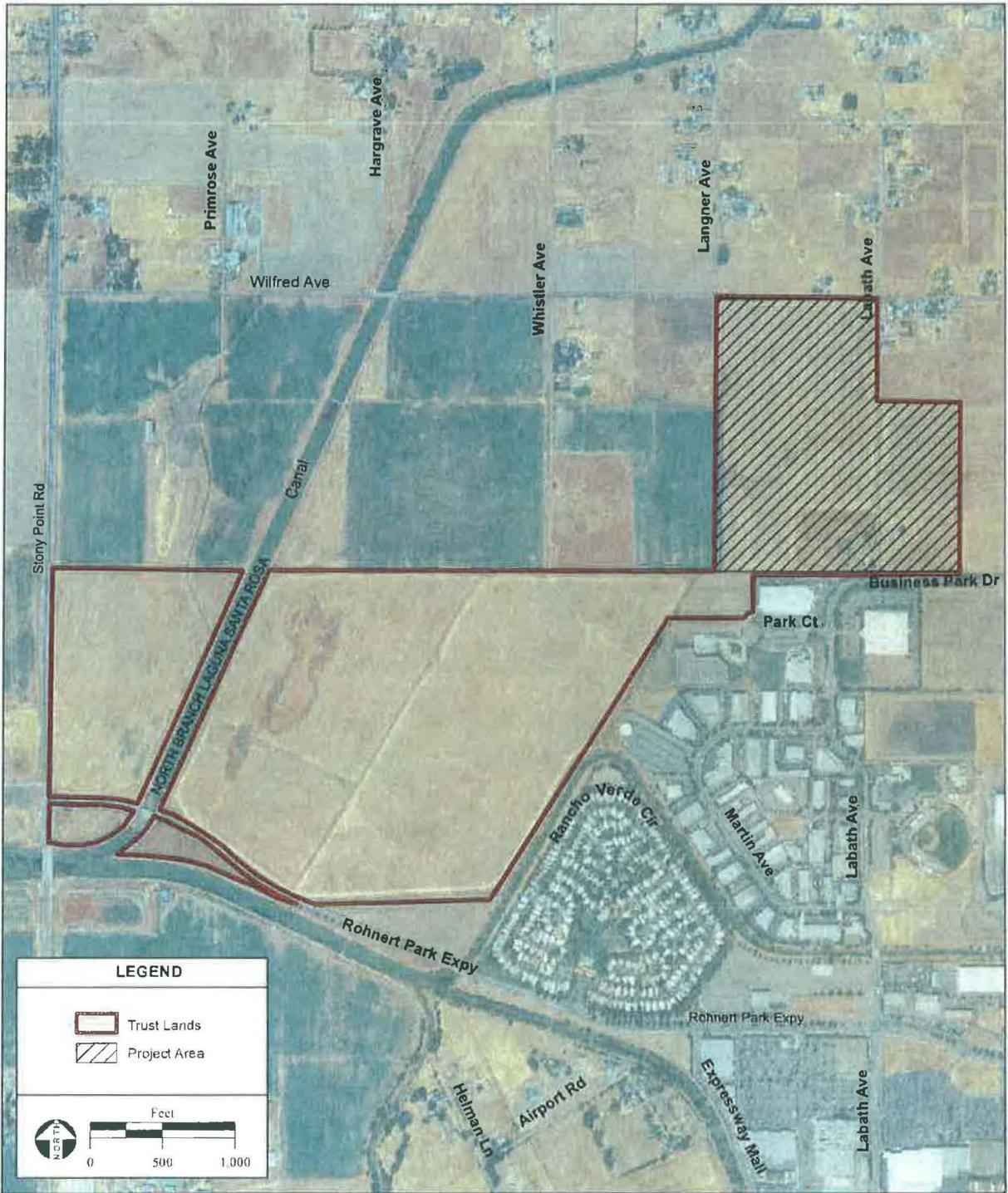
LOT 161
Assessor's Map Bk. 045, Pg. 07
Sonoma County, Calif. (ACAD)

KEY 9/22/09 MLH

NOTE: This map was prepared for Assessment purposes only and does not indicate either parcel legality or a valid building site. No liability is assumed for the accuracy of the data depicted. The acreages are based on the information supplied to the Assessor (i.e., recorded survey maps, recorded deeds, prior assessment maps, etc.)

NOTE: Assessor's parcels do not necessarily constitute legal lots. To verify legal parcel status, check with the appropriate city or county community development or planning division.

EXHIBIT B:
DEPICTION OF PROJECT AREA



SOURCE: Aerial Photography August 2002; AES, 2012

Exhibit C:

City Resolution Adopting Agreement

RESOLUTION NO. 2012-113

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK
AUTHORIZING AND APPROVING THE JOINT EXERCISE OF POWERS
AGREEMENT WITH THE COUNTY OF SONOMA AND THE FEDERATED INDIANS
OF GRATON RANCHERIA FOR IMPLEMENTATION OF MITIGATION MEASURES
FOR WIDENING WILFRED AVENUE**

WHEREAS, on October 1, 2010 the Bureau of Indian Affairs and Secretary of the Interior accepted the Federated Indians of Graton Rancheria's ("Tribe") application requesting that the United States take title to that certain property comprised of approximately 254 acres of land in Sonoma County ("Trust Lands");

WHEREAS, the Governor of California and the Tribe negotiated a compact that authorizes and prescribes the terms of Class III gaming on the Trust Lands ("Compact") and that Compact was ratified by the Legislature on May 17, 2012 and became effective July 12, 2012 via the Secretary of the Interior's constructive approval;

WHEREAS, the environmental impacts of the construction and operation of the Tribe's proposed gaming enterprise were evaluated by the National Indian Gaming Commission ("NIGC") under the National Environmental Policy Act ("NEPA");

WHEREAS, on October 15, 2010, the NIGC published a Record of Decision ("ROD") for the proposed project concluding that the newly acquired Trust Lands are Indian lands which are eligible for gaming and adopting a reduced intensity casino and hotel project as the preferred action alternative;

WHEREAS, the preferred action alternative is significantly smaller than the project initially proposed by the Tribe and includes a casino and a 6-story, 200-room hotel ("Project") to be built on approximately 66 acres of land located on the northeastern portion of the Trust Lands and situated within the City's urban growth boundary and outside the 100-year flood plain ("Project Area");

WHEREAS, the Project is located on Trust Lands outside the boundaries of the City and the City has no legal authority to exercise jurisdiction over, deliberate on, approve, disapprove or otherwise exercise judgment regarding the Trust Lands or the Project or gaming or other activities conducted in the Project Area;

WHEREAS, the City and the Tribe, recognizing that various impacts may arise in the City in connection with the gaming enterprise, entered into that certain Memorandum of Understanding dated October 14, 2003 wherein the Tribe agreed to make certain contributions and community investments to mitigate the impacts of the gaming enterprise ("MOU");

WHEREAS, Section 3(b) of the City MOU identified various traffic contributions to be made by the Tribe to mitigate potential impacts of the Project. This included a contribution to the City to complete the widening of Wilfred Avenue from Highway 101 west to the City's urban growth boundary in accordance with the City's General Plan at a mutually agreed upon schedule to enable completion prior to the date on which the Tribe commences gaming operations on the Reservation which are open to the public ("Opening Date"). The Tribe also agreed to hire a contractor to identify significant off-Reservation impacts on traffic resulting from the Project and potential measures to mitigate such impacts;

WHEREAS, the City currently holds both fee and easement interests in the segment of Wilfred Avenue within its territorial limits between Redwood Drive and Dowdell Avenue (“**City’s Portion**”), the County currently holds both fee and easement interest in the segment of Wilfred Avenue in the unincorporated area between Dowdell Avenue and Stony Point Road (“**County’s Portion**”), and the Tribe currently holds a beneficial interest in the Trust Lands adjacent to the County’s Portion of Wilfred Avenue;

WHEREAS, the FEIS and ROD included an analysis of traffic impacts associated with the gaming enterprise based on the Graton Rancheria Traffic Impact Study (Kimley Horn and Associates, 2008) which found that traffic associated with development of the Wilfred site would contribute to future traffic along local roadways and intersections;

WHEREAS, the ROD identified as traffic mitigation the need to extend and widen Wilfred Avenue from Highway 101 west to just west of the Stony Point Road intersection, including provision for additional travel lanes, bike lanes and sidewalks in each direction, stormwater drainage improvements, improved intersections at Labath and Langner Avenue, and signalization and intersection improvements to the Stony Point Road/ Wilfred Avenue, Labath Avenue/ Wilfred Avenue and Dowdell Avenue/ Wilfred Avenue intersections, and utility relocation as necessary within the right-of-way to accommodate future traffic of the Project and approved and pending development in the vicinity of Wilfred Avenue (“**Wilfred ROW Improvements**”);

WHEREAS, the Parties have identified Wilfred Avenue as a critical transportation route and determined that the continued improvement to these routes are paramount to the safety, economic development and regional transportation and circulation plan for the County, City, Tribe and the public at large;

WHEREAS, the Tribe has begun construction of the Project and desires to assure that safe public access is available to its facilities;

WHEREAS, the County has determined that approximately 1383 miles of unincorporated County roadways require maintenance and improvement, and the County has been exploring opportunities to relinquish its interests in such roadways where these roadways extend into other jurisdictions and are proposed for improvement as part of approved and pending development projects;

WHEREAS, the Parties have an interest in assuring that adequate traffic mitigation measures are implemented to mitigate traffic impacts from the Project and other existing, approved and future development in the vicinity of Wilfred Avenue;

WHEREAS, the Parties agree that allowing the City to acquire additional portions of Wilfred Avenue right of way which are necessary to construct the Wilfred ROW Improvements is necessary and appropriate because such right of way is: (a) a continuation of Wilfred Avenue within the City, (b) conveniently adjacent to those portions of Wilfred Avenue located within the City limits, and (c) directly and peculiarly important to the Wilfred ROW Improvements;

WHEREAS, the County is willing to grant its right, title and interest to the City of those portions of Wilfred Avenue to be improved and to consent to the City’s acquisition of extraterritorial properties in the County;

WHEREAS, the Tribe is willing to grant its right, title and interest to the City of those portions of Wilfred Avenue to be improved and to undertake the design and engineering, and obtain regulatory permitting of Wilfred ROW Improvements and the Business Park Drive

Improvements at its own expense and to pay for the City's maintenance of the improvements located in the County;

WHEREAS, because the Project will be constructed before other approved and pending development will occur in the area and the Project along with other development will add traffic to Wilfred Avenue, the Parties have determined that entering into a mutual agreement between the City, the County and the Tribe to implement the Wilfred ROW Improvements is desired to enhance traffic circulation, minimize any potential off-reservation impacts, and protect the public's health, safety and welfare;

WHEREAS, an agreement between the Parties entered into pursuant to the authority in the Joint Exercise of Powers Act, constitutes an intergovernmental agreement ("**IGA**") pursuant to sections 4.4 of the Compact;

WHEREAS, on September 25, 2012, the City Council of the City held a duly noticed public meeting to consider adoption of this Agreement;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Rohnert Park that the recitals hereto are true and correct and material to this Resolution.

BE IT FURTHER RESOLVED that the City Council hereby finds as follows:

1. The Agreement is a joint exercise of powers agreement in which City, County and Tribe are cooperatively exercising their mutual authority to plan, finance, acquire, construct, maintain and operate rights of way and related traffic facilities and improvements.
2. The Agreement was negotiated as provided for in the Compact and constitutes approval of an intergovernmental agreement, as that term is defined in Section 11.8.7 of the Compact. As a consequence of the Project and pursuant to Section 11.8.7, subsections (a)(1), (a)(2), (a)(4) and (c) of the Compact, this Agreement is designed to mitigate certain Project impacts on the City and County and to compensate the City for its construction and maintenance of the Wilfred ROW Improvements, which are designed to improve traffic circulation, public safety and public access to the Tribe's the gaming facility.
3. Approving the Agreement does not approve the Project nor gaming, those approvals have previously been granted by the NIGC and the Governor. The Agreement is a consequence of those prior approvals.
4. In undertaking environmental review, the following facts are relevant: (a) the Project has been reviewed under NEPA; (b) the Tribe is not a public agency subject to CEQA; (c) the Project is not subject to CEQA or to City environmental review, design, land use or land development ordinances, plans, manuals or standards; (d) the City does not have legal authority to deliberate on, approve, disapprove, or otherwise exercise judgment regarding the Project; and (e) the City is not deliberating on, approving, disapproving or otherwise exercising judgment regarding the Project by entering this Agreement.

BE IT FURTHER RESOLVED that the City Council hereby finds that the adoption of this Agreement is statutorily exempt from CEQA pursuant to Government Code Section 12012.56(b)(1)(C), which expressly exempts intergovernmental agreements, such as this Agreement which mitigates the Project's impacts on the City and County and provides for compensation for the City's construction and maintenance of the Wilfred ROW Improvements, which are designed to improve traffic circulation, public safety and public access to the Tribe's

the gaming facility, negotiated pursuant to the express authority of, or as expressly referenced in, the Compact, including but not limited to Section 11.8.7.

BE IT FURTHER RESOLVED that in making its findings the City Council relied upon and hereby incorporates by reference all of the documents referenced in this Agreement, the materials in the City's file on this matter, correspondence, staff reports, presentations and all other related materials.

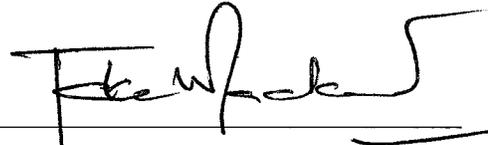
BE IT FURTHER RESOLVED that the City Council does hereby authorize and approve entering into the Joint Exercise of Powers Agreement by and between the City of Rohnert Park, the County of Sonoma and the Federated Indians of Graton Rancheria for implementation of mitigation measures for widening Wilfred Avenue in substantially similar form to the Agreement attached hereto as Attachment 1 and incorporated by this reference, subject to final review, including minor modification, and approval by the City Attorney.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized and directed to take all actions to effectuate this agreement for and on behalf of the City of Rohnert Park, including execution and directing staff to file a notice of exemption.

BE IT FURTHER RESOLVED that if any action, subsection, sentence, clause or phrase of this Resolution or the agreement entered into by this Resolution shall be held invalid or unconstitutional by a court of competent jurisdiction, such invalidity shall not affect the validity of the remaining portions of this Resolution or the agreement entered into by this Resolution that can be given effect without the invalid provisions.

DULY AND REGULARLY ADOPTED this 25th day of September, 2012.

CITY OF ROHNERT PARK



Jake Mackenzie, Mayor



ATTEST:


JoAnne Buergler, City Clerk

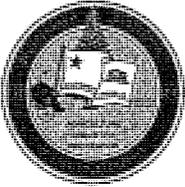
Ahanotu: AYE Belforte: AYE Callinan: AYE Stafford: ABSENT Mackenzie: AYE
AYES: (4) NOES: (0) ABSENT: (1) ABSTAIN: (0)

Exhibits:

Attachment 1: JEPA

Exhibit D:

County Resolution Adopting Agreement



County of Sonoma
State of California

THE WITHIN INSTRUMENT IS A
CORRECT COPY OF THE ORIGINAL
ON FILE IN THIS OFFICE

ATTEST: SEP 25 2012

VERONICA A. FERGUSON, Clerk/Secretary
BY Woodson
DEPUTY CLERK/ASST SECRETARY

Date: September 25, 2012

Resolution Number: 12-0464

**Resolution Of The Board Of Supervisors Of The County Of Sonoma, State
of California Authorizing and Approving The Joint Exercise Of Powers
Agreement With The City Of Rohnert Park And The Federated Indians Of
Graton Rancheria For Implementation Of Mitigation Measures For
Widening of Wilfred Avenue**

WHEREAS, on October 1, 2010 the Bureau of Indian Affairs and Secretary of the Interior accepted into trust approximately 254 acres of land in Sonoma County ("Trust Lands") for the Federated Indians of Graton Rancheria's ("Tribe");

WHEREAS, in October 2010, the National Indian Gaming Commission ("NIGC") published a Record of Decision ("ROD") approving a reduced intensity casino and hotel project for a portion of the Trust Lands;

WHEREAS, the ROD included an analysis of traffic impacts that found that traffic associated with development of the project would contribute to future traffic along local roadways and intersections;

WHEREAS, the ROD identified as traffic mitigation the need to extend and widen Wilfred Avenue from Highway 101 west to just west of the Stony Point Road intersection, including provision for additional travel lanes, bike lanes and sidewalks in each direction, stormwater drainage improvements, improved intersections at Labath and Langner Avenues, and signalization and intersection improvements to the Stony Point Road/ Wilfred Avenue, Labath Avenue/ Wilfred Avenue and Dowdell Avenue/ Wilfred Avenue intersections, and utility relocation as necessary within the right-of-way to accommodate future traffic of the Project and approved and pending development in the vicinity of Wilfred Avenue;

WHEREAS, Wilfred Avenue is a critical transportation route, and the above-identified improvements are paramount to the safety, economic development and regional transportation and circulation plan for the County and public at large;

WHEREAS, the Governor of California and the Tribe negotiated a compact that authorizes and prescribes the terms of Class III gaming on the Trust Lands ("Compact") and that Compact was ratified by the Legislature on May 17, 2012 and became effective July 12, 2012 via the Secretary of the Interior's constructive approval;

WHEREAS, an agreement entered into pursuant to the authority in the Joint Exercise of Powers Act, constitutes an intergovernmental agreement ("IGA") pursuant to sections 4.4 of the Compact;

WHEREAS, the County currently holds both fee and easement interest in the segment of Wilfred Avenue in the unincorporated area between Dowdell Avenue and Stony Point Road;

WHEREAS, under the Joint Exercise of Powers Agreement, the County would deeds its interest to the City, to facilitate the widening and improvement of Wilfred Avenue;

WHEREAS, the County has determined that approximately 1383 miles of unincorporated County roadways require maintenance and improvement, and the County has been exploring opportunities to relinquish its interests in such roadways where these roadways extend into other jurisdictions and are proposed for improvement as part of approved and pending development projects;

WHEREAS, because the Project will be constructed before other approved and pending development will occur in the area and the Project and other development will add traffic to Wilfred Avenue, the Parties have determined that entering into a mutual agreement between the City, the County and the Tribe to implement the Wilfred ROW Improvements is desired to enhance traffic circulation, minimize any potential off-reservation impacts, and protect the public's health, safety and welfare;

NOW, THEREFORE BE IT RESOLVED that the Board of Supervisors of the County of Sonoma hereby finds, determines, and declares as follows:

1. The above recitals are true and correct.
2. The Board of Supervisors hereby approves and authorizes the Chair to sign the Joint Exercise of Powers Agreement by and between the City of Rohnert Park, the County of Sonoma and the Federated Indians of Graton Rancheria for implementation of mitigation measures for widening Wilfred Avenue in substantially similar form to the Agreement attached hereto as Attachment 1 and incorporated by this reference, subject to final review, including minor modification, and approval by County Counsel.
3. The Agreement is a joint exercise of powers agreement in which City, County and Tribe are cooperatively exercising their mutual authority to plan, finance, acquire, construct, maintain and operate rights of way and related traffic facilities and improvements.
4. The Agreement was negotiated as provided for in the Compact and constitutes approval of an intergovernmental agreement, as that term is defined in Section 11.8.7 of the Compact.

BE IT FURTHER RESOLVED that the Board of Supervisors hereby finds that the adoption of this Agreement is statutorily exempt from CEQA pursuant to Government Code § 12012.56(b)(1)(C).

BE IT FURTHER RESOLVED that the County Administrator is hereby authorized and directed to file the Notice of Exemption with the Sonoma County Clerk in accordance with provisions of the California Environmental Quality Act.

BE IT FURTHER RESOLVED that the Clerk of the Board is designated as the custodian of documents and other materials that constitute the record of the proceedings upon which the

Resolution #12-0464

Date: 9/25/12

Page 3

Board's decision is herein based. These documents may be found at the office of the Clerk of the Board, 575 Administration Drive, Room 100A, Santa Rosa, California, 95403.

Supervisors:

Brown: Absent

Rabbitt: Aye

McGuire: Aye

Carrillo: Aye

Zane: Aye

Ayes: 4

Noes: 0

Absent: 1

Abstain: 0

So Ordered.

Exhibit E:

Tribal Resolution Adopting Agreement



FEDERATED INDIANS OF GRATON RANCHERIA

A RESOLUTION APPROVING THE JOINT EXERCISE OF POWERS AGREEMENT FOR IMPLEMENTATION OF MITIGATION MEASURES FOR WIDENING WILFRED AVENUE.

TRIBAL COUNCIL RESOLUTION NO.: #12-37

DATE APPROVED: September 21, 2012

- WHEREAS:** the Federated Indians of Graton Rancheria (“Tribe”) is a federally recognized tribe, organized pursuant to the Constitution of the Federated Indians of Graton Rancheria, approved by the Secretary of the Interior on December 23, 2002 (“Constitution”); and
- WHEREAS:** Article III, Section 1 of the Constitution provides that the governing body of the Tribe is the Tribal Council; and
- WHEREAS:** Article VI, Section 1 provides the Tribal Council with the authority to negotiate and conclude agreements with local governments on behalf of the Tribe; and
- WHEREAS:** Article VIII, Section 1 provides that the Tribal Chair has authority to execute on behalf of the Tribe all contracts or other documents as approved by the Tribal or General Councils; and
- WHEREAS:** Article VI, Section 2 of the Constitution reserves to the General Council the power to waive the Tribe’s sovereign immunity to unconsented suit; and
- WHEREAS:** on October 1, 2010, pursuant to the Graton Rancheria Restoration Act (25 U.S.C. § 1300n-3), the Bureau of Indian Affairs of the United States Department of the Interior accepted title to that certain property comprising approximately 254 acres of land in Sonoma County into trust for the benefit of the Tribe as part of the Tribe's Reservation (“Trust Lands”); and
- WHEREAS:** the Tribe intends to use its Trust Lands for the operation of a gaming enterprise pursuant to the terms of the Indian Gaming Regulatory Act of 1988, codified at 25 U.S.C. § 2701 *et seq.*, (“IGRA”); and
- WHEREAS:** prior to the Trust Acquisition, the National Indian Gaming Commission (“NIGC”) prepared and finalized an Environmental Impact Statement evaluating the environmental consequences for the construction and operation of the Tribe’s proposed gaming enterprise pursuant to the National Environmental Policy Act; and

WHEREAS: on October 15, 2011, after the trust acquisition, the NIGC published a Record of Decision (“ROD”) for the proposed project concluding that the newly acquired Trust Lands are Indian lands which are eligible for gaming pursuant to IGRA and adopting a reduced intensity casino and hotel project as the preferred action alternative (“Project”) to be built on approximately 66 acres of land located on the northeastern portion of the Trust Lands and situated within the City of Rohnert Park’s (“City’s”) urban growth boundary and adjacent to the City limits and within the County of Sonoma (“County”); and

WHEREAS: The ROD identified as traffic mitigation the need to extend and widen Wilfred Avenue from Highway 101 west to just west of the Stony Point Road intersection, including provision for additional travel lanes, bike lanes and sidewalks in each direction, stormwater drainage improvements, improved intersections at Labath and Langner Avenue, and signalization and intersection improvements to the Stony Point Road/ Wilfred Avenue, Labath Avenue/ Wilfred Avenue and Dowdell Avenue/ Wilfred Avenue intersections, and utility relocation as necessary within the right-of-way to accommodate future traffic of the Project and approved and pending development in the vicinity of Wilfred Avenue (“Wilfred ROW Improvements”); and

WHEREAS: the Tribe desires to implement the Wilfred ROW Improvements for the Project; and

WHEREAS: The Tribal Council, with the assistance of legal counsel, has negotiated a Joint Exercise of Powers Agreement between the City, the County and the Tribe (“Agreement”); and

WHEREAS: the Tribal Council, having considered the matter in accordance with tribal law, has determined that it is in the best interests of the Tribe to enter into the Agreement to implement the Wilfred ROW Improvements; and

WHEREAS: the Agreement requires the Tribe to provide a limited waiver of the Tribe’s right to assert sovereign immunity in favor of the City and the County, a waiver of the doctrines of exhaustion of tribal remedies or comity, and a consent to mediation of disputes and the enforcement of remedies related thereto and to the jurisdiction of state and federal courts; and

WHEREAS: at the next regularly scheduled meeting of the General Council, the Tribe Council will request the General Council to expressly (i) waive the Tribe’s right to assert sovereign immunity in favor of the City and/or the County, but not as to any third party, person, entity, or agency as to disputes arising under this Agreement and not as to any other actions, matters, or disputes, (ii) waive any requirement that disputes be heard in a court or other dispute resolution forum of the Tribe, whether under the doctrines of exhaustion of Tribal remedies, comity, or otherwise; and (iii) consent to the jurisdiction of state and federal courts and to mediation as well as the application of the laws of the state of California to govern and interpret the Agreement (collectively “Waivers”); and

WHEREAS: at the request of the City and/or the County, General Council by resolution is expected to ratify the Tribal Chair's execution and delivery of the Agreement to the appropriate City and County officials to the extent such approval may be necessary or appropriate under Tribal law.

NOW THEREFORE BE IT RESOLVED THAT the Tribal Council has reviewed the Agreement and hereby approves the Agreement, subject to approval by the General Council by resolution of the limited waiver of sovereign immunity set forth in the Agreement.

BE IT FURTHER RESOLVED the Tribal Council shall request the General Council to approve by resolution, at the next regular meeting of the General Council, the limited waiver of sovereign immunity set forth in the Agreement.

BE IT FURTHER RESOLVED THAT the Tribal Council hereby authorizes the Tribal Chair to execute and deliver the Agreement to the appropriate City and County officials.

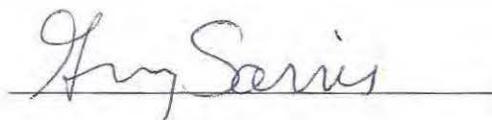
BE IT FURTHER RESOLVED THAT the recitals to this Resolution are true and correct and material hereto.

BE IT FURTHER RESOLVED THAT the Tribal Council confirms that any law, ordinances, judgments, decisions, orders, resolutions, rules, regulations or other action, of the Tribe, any instrumentality or agency of the Tribe, or any of the officers, employees, or agents, of the foregoing, whether written, unwritten or established by tradition that are in effect and are in conflict with or inconsistent with the terms of this Resolution, the transactions contemplated herein, or any provision set forth in the Agreement, are hereby repealed and annulled with respect to the transactions approved by this Resolution to the extent of such conflict or inconsistency, and this Resolution shall supersede the same.

BE IT FURTHER RESOLVED THAT the Tribal Council agrees not to pass or adopt any law, ordinances, judgments, decisions, orders, resolutions, rules, regulations or other action, of the Tribe, any instrumentality or agency of the Tribe, or any of the officers, employees, or agents, of the foregoing, whether written, unwritten or established by tradition, of any nature that impairs the obligations of the Tribe under this Resolution.

CERTIFICATION

We the undersigned hereby certify that the foregoing Tribal Council Resolution was presented and duly adopted by the Tribal Council of the Tribe on the 21st day of September, 2012, at a Tribal Council meeting at which a quorum of registered voters was present, by a vote of 7 for, 0 opposed, and 0 abstaining, and that said Tribal Council Resolution has not been rescinded or amended in any way.

A handwritten signature in blue ink, reading "Greg Sarris", written over a horizontal line.

Greg Sarris, Tribal Chair

ATTEST:

A handwritten signature in blue ink, reading "Jeannette Anglin", written over a horizontal line.

Jeannette Anglin, Tribal Council Secretary

Exhibit F:

Tribal Resolution Authorizing Limited Waiver of Sovereign Immunity



GENERAL COUNCIL RESOLUTION

FEDERATED INDIANS OF GRATON RANCHERIA

A RESOLUTION APPROVING A LIMITED WAIVER OF SOVEREIGN IMMUNITY IN FAVOR OF THE CITY OF ROHNERT PARK AND IN FAVOR OF THE COUNTY OF SONOMA WITH RESPECT TO THE JOINT EXERCISE OF POWERS AGREEMENT FOR IMPLEMENTATION OF MITIGATION MEASURES FOR WIDENING WILFRED AVENUE

GENERAL COUNCIL RESOLUTION NO.: GC#12-38

DATE APPROVED: October 13, 2012

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

WHEREAS: Article III, Section 1 of the Constitution provides that the governing body of the Tribe is the Tribal Council; and

WHEREAS: Article VI, Section 1 provides the Tribal Council with the authority to negotiate and conclude agreements with local governments on behalf of the Tribe; and

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

WHEREAS: on October 1, 2010, pursuant to the Graton Rancheria Restoration Act (25 U.S.C. § 1300n-3), the Bureau of Indian Affairs of the United States Department of the Interior accepted title to that certain property comprising approximately 254 acres of land in Sonoma County into trust for the benefit of the Tribe as part of the Tribe's Reservation (“Trust Lands”); and

WHEREAS: the Tribe intends to use its Trust Lands for the operation of a gaming enterprise pursuant to the terms of the Indian Gaming Regulatory Act of 1988, codified at 25 U.S.C. § 2701 *et seq.*, (“IGRA”); and

WHEREAS: prior to the Trust Acquisition, the National Indian Gaming Commission (“NIGC”) prepared and finalized an Environmental Impact Statement evaluating the environmental consequences for the construction and operation of the Tribe’s proposed gaming enterprise pursuant to the National Environmental Policy Act; and

WHEREAS: on October 15, 2011, after the trust acquisition, the NIGC published a Record of Decision (“ROD”) for the proposed project concluding that the newly acquired Trust Lands are Indian lands which are eligible for gaming pursuant to IGRA and adopting a reduced intensity casino and hotel project as the preferred action alternative (“Project”) to be built on approximately 66 acres of land located on the northeastern portion of the Trust Lands and situated within the City of Rohnert Park’s (“City’s”) urban growth boundary and adjacent to the City limits and within the County of Sonoma (“County”); and

WHEREAS: the ROD identified as traffic mitigation the need to extend and widen Wilfred Avenue from Highway 101 west to just west of the Stony Point Road intersection, including provision for additional travel lanes, bike lanes and sidewalks in each direction, stormwater drainage improvements, improved intersections at Labath and Langner Avenue, and signalization and intersection improvements to the Stony Point Road/ Wilfred Avenue, Labath Avenue/ Wilfred Avenue and Dowdell Avenue/ Wilfred Avenue intersections, and utility relocation as necessary within the right-of-way to accommodate future traffic of the Project and approved and pending development in the vicinity of Wilfred Avenue (“Wilfred ROW Improvements”); and

WHEREAS: the Tribe desires to implement the Wilfred ROW Improvements for the Project; and

WHEREAS: the Tribal Council, with the assistance of legal counsel, has negotiated a Joint Exercise of Powers Agreement between the City, the County and the Tribe (“Agreement”); and

WHEREAS: the Tribal Council, having considered the matter in accordance with tribal law, has determined that it is in the best interests of the Tribe to enter into the Agreement to implement the Wilfred ROW Improvements; and

WHEREAS: the Agreement requires the Tribe to provide a limited waiver of the Tribe’s right to assert sovereign immunity in favor of the City and the County, a waiver of the doctrines of exhaustion of tribal remedies or comity, and a consent to mediation of disputes and the enforcement of remedies related thereto and to the jurisdiction of state and federal courts; and

WHEREAS: the Tribal Council has requested the General Council to expressly (i) waive the Tribe’s right to assert sovereign immunity in favor of the City and/or the County, but not as to any third party, person, entity, or agency as to disputes arising under the Agreement and not as to any other actions, matters, or disputes, (ii) waive any requirement that disputes be heard in a court or other dispute resolution forum of the Tribe, whether under the doctrines of exhaustion of Tribal remedies, comity, or otherwise; and (iii) consent to the jurisdiction of state and federal courts and to mediation as well as the application of the laws of the state of California to govern and interpret the Agreement (collectively “Waivers”); and

WHEREAS: at the request of the City and/or the County, the Tribal Council has further requested that the General Council ratify the Tribal Chair's execution and delivery of the Agreement to the appropriate City and County officials to the extent such approval may be necessary or appropriate under Tribal law.

NOW THEREFORE BE IT RESOLVED THAT the General Council hereby consents to and expressly, unequivocally and irrevocably: (i) waives the Tribe's right to assert sovereign immunity in favor of the City and/or the County, but not as to any third party, person, entity, or agency as to disputes arising under this Agreement and not as to any other actions, matters, or disputes, (ii) waives any requirement that disputes be heard in a court or other dispute resolution forum of the Tribe, whether under the doctrines of exhaustion of Tribal remedies, comity, or otherwise; and (iii) consents to the jurisdiction of state and federal courts and to mediation as well as the application of the laws of the state of California to govern and interpret the Agreement (collectively "Waivers")

BE IT FURTHER RESOLVED THAT the General Council ratifies the Tribal Chair's execution and delivery of the Agreement to the appropriate City and County officials.

BE IT FURTHER RESOLVED THAT the recitals to this Resolution are true and correct and material hereto.

BE IT FURTHER RESOLVED THAT this Resolution is in addition to and shall not supersede or extinguish any prior or future consent by the General Council to waive the Tribe's sovereign immunity in favor of the City and County pursuant to other Memoranda of Understanding and agreements between the Tribe and the City and County respectively.

BE IT FURTHER RESOLVED THAT the General Council represents and warrants that the Waivers approved under this Resolution on behalf of the Tribe are valid, enforceable and effective and hereby determines that no laws, ordinances, resolutions or other actions of the Tribe or any of the agencies or instrumentalities of the Tribe, either written or established by custom or tradition, prohibit the General Council from approving this Resolution.

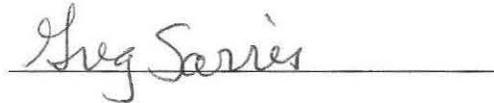
BE IT FURTHER RESOLVED THAT the General Council confirms that any law, ordinances, judgments, decisions, orders, resolutions, rules, regulations or other action, of the Tribe, any instrumentality or agency of the Tribe, or any of the officers, employees, or agents, of the foregoing, whether written, unwritten or established by tradition that are in effect and are in conflict with or inconsistent with the terms of this Resolution, the transactions contemplated herein, or any provision set forth in the Agreement, are hereby repealed and annulled with respect to the transactions approved by this Resolution to the extent of such conflict or inconsistency, and this Resolution shall supersede the same.

BE IT FURTHER RESOLVED THAT the General Council agrees not to pass or adopt any law, ordinances, judgments, decisions, orders, resolutions, rules, regulations or other action, of the Tribe, any instrumentality or agency of the Tribe, or any of the officers, employees, or

agents, of the foregoing, whether written, unwritten or established by tradition, of any nature that impairs the obligations of the Tribe under this Resolution.

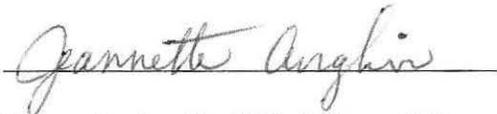
CERTIFICATION

We the undersigned hereby certify that the foregoing Resolution was presented and duly adopted by the General Membership on the 13th day of October, 2012, at a General Council meeting at which a quorum of registered voters was present, by a vote of 75 for, 0 opposed, and 0 abstaining, and that said General Council Resolution has not been rescinded or amended in any way.



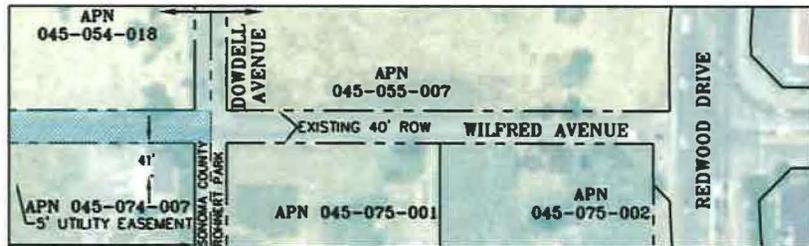
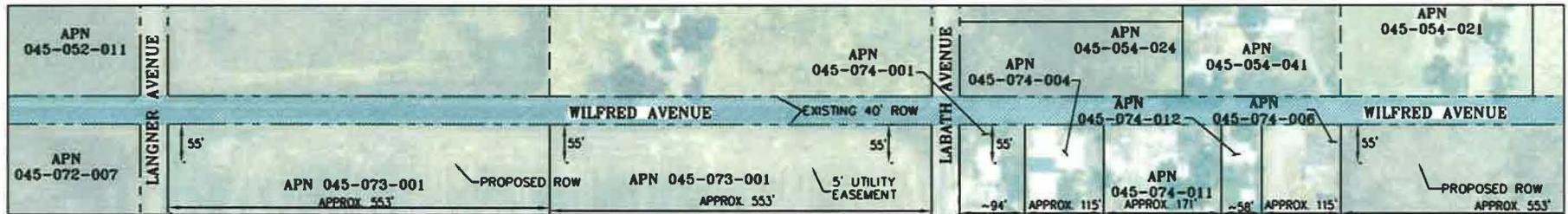
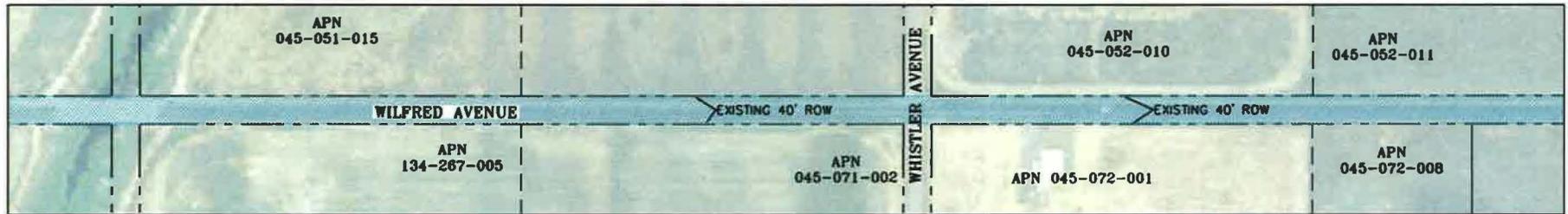
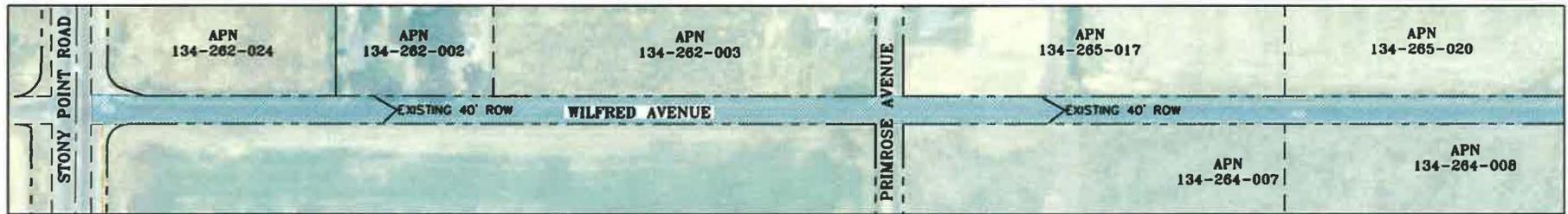
Greg Sarris, Tribal Chair

ATTEST:



Jeannette Anglin, Tribal Council Secretary

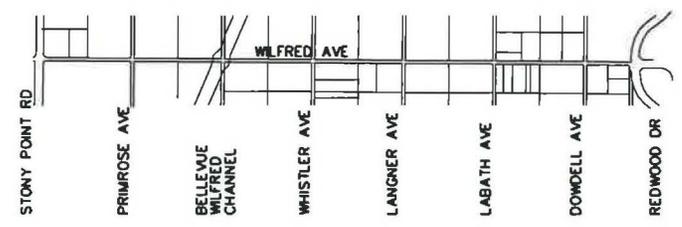
Exhibit G:
County's ROW



SCALE: 1" = 150'

LEGEND

 SONOMA COUNTY RIGHT-OF-WAY TO BE DEDICATED



VICINITY MAP
NOT TO SCALE

EXHIBIT G
COUNTY RIGHT-OF-WAY TO BE DEDICATED TO CITY

Exhibit H:
Form of Quitclaim Deed

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Rohnert Park
ATTN: City Manager
130 Avram Ave.
Rohnert Park, CA 94928

Space Reserved for Recorder's Use Only

Exempt from Recording Fees (California Government Code §27383)

Exempt from Documentary Transfer Tax (California Revenue and Taxation Code §11922.)

QUITCLAIM DEED

FOR A VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY
ACKNOWLEDGED,

_____ (“Grantor”),

hereby REMISES, RELEASES AND FOREVER QUITCLAIMS to:

the City of Rohnert Park (“Grantee”),

any right, title or interest which Grantor may have in the real property in the County of Sonoma,
State of California, and more particularly described in Exhibits A-1 and A-2, which are attached
hereto and made a part hereof.

DATED: _____, 20__

GRANTOR:

By: _____

Name: _____

Its: _____

By: _____

Name: _____

Its: _____

CITY OF ROHNERT PARK
a municipal corporation

By: _____

Its: _____

ACKNOWLEDGEMENTS

State of California

County of _____)

On _____ before me, _____,
Notary Public, personally appeared _____, who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

* * * * *

State of California

County of _____)

On _____ before me, _____, Notary
Public, personally appeared _____, who proved to me
on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the
within instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

**EXHIBIT A-1 TO QUITCLAIM DEED
LEGAL DESCRIPTION OF THE PROPERTY**

EXHIBIT A-2 TO QUITCLAIM DEED

EXHIBIT I:

Form of Perpetual Right of Way

SAMPLE

**UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS**

GRANT OF EASEMENT FOR RIGHT-OF-WAY

KNOW ALL MEN BY THESE PRESENTS:

That the United States of America, acting by and through the Bureau of Indian Affairs, Department of the Interior, Central California Agency, 650 Capitol Mall, Suite 8-500, Sacramento, California 95814 for, and on behalf of: Federated Indians of Graton Rancheria, hereinafter referred to as GRANTOR, under authority contained in 209 DM 8 dated November 17, 1981, 230 DM 1 and 3 IAM 4 dated July 19, 2000 and pursuant to the provisions of the Act of February 5, 1948 (62 Stat. 17; 25 USC 323-328); and Part 169, Title 25, *Code of Federal Regulations*, which by reference are made a part hereof, all damages and compensation and deposit pursuant to 25 CFR Part 169.4 shall be waived, does hereby grant to: City of Rohnert Park, of 130 Avram Avenue, Rohnert Park, California 94928, its successors and assigns, hereinafter referred to as GRANTEE, an easement for right-of-way for the following purposes, specifically:

Implementation of mitigation measures for the widening and improvement of Wilfred Avenue

over the land embraced within a right-of-way situated on the following described lands:

[insert legal description here]

said right-of-way is limited to and more particularly described to be ___ acres more or less in area, as shown on Exhibit A, attached hereto, and made a part hereof.

To have and to hold the said easement and right-of-way unto the GRANTEE and unto its successors and assigns subject to the following provisions:

1. GRANTEE agrees to indemnify the landowners and authorized users and occupants against any liability for loss of life, personal injury and property damage arising from the construction, maintenance, occupancy or use of the lands by the applicant, his employees, contractors and their employees, or subcontractors and their employees.
2. GRANTEE agrees to restore the land to its original condition, as far as is reasonably possible, upon termination or revocation of this easement for any reason. Failing to comply with this stipulation, GRANTEE agrees to bear all expenses and costs incurred by the owner and/or the United States in accomplishing said restoration.
3. GRANTOR agrees to waive payment all damages and compensation, in addition to the deposit made pursuant to 169.4, determined by the Secretary to be due the landowners and authorized users and occupants of the land due to the survey, granting, construction and maintenance of the right-of-way.

4. GRANTEE agrees to that during the term of this Grant of Easement, if any previously unidentified cultural resources are discovered within the easement area, work should be halted immediately and the BIA and/or Tribal Contractor should be contacted immediately.
5. GRANTEE agrees to construct and maintain the right-of-way in a workmanlike manner.
6. GRANTEE agrees to clear and keep clear the lands within the right-of-way to the extent compatible with the purpose of the right-of-way; and dispose of all vegetative and other material cut, uprooted or otherwise accumulated during construction and maintenance of the project.
7. GRANTEE agrees to take soil and resources conservation protection measures, including weed control, on the land covered by the right-of-way.
8. GRANTEE agrees to do everything reasonable within its power to prevent and suppress fires on or near the lands to be occupied under the right-of-way.
9. GRANTEE agrees to build and repair such roads, fences and trails as may be destroyed or injured by construction work and to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained, or operated under the right-of-way.
10. GRANTEE agrees to that upon revocation or termination of the right-of-way, the applicant shall, so far as is reasonably possible, restore the land to its original condition. The determination of "reasonably possible" is subject to Secretary's approval.
11. GRANTEE agrees at all times to keep the Secretary informed of its address, and in case of corporations, of the address of its principal place of business and the names and addresses of its principal officers.
12. GRANTEE agrees to not interfere with the use of the lands by or under the authority of the landowners for any purpose not inconsistent with the primary purpose for which the right-of-way is granted.

This easement is subject to any prior valid existing right or adverse claim and is perpetual so long as said easement shall be actually used for the purpose above specified; PROVIDED, that this right-of-way may be terminated in whole or in part by the GRANTOR for any of the following causes upon 30 days written notice, and failure of the GRANTEE within said notice period to correct the basis for termination (25 CFR 169.20):

1. Failure to comply with any term or condition of the Grant, or the applicable regulations.
2. A non-use of the right-of-way for any consecutive two-year period (for the purpose for which it was granted).
3. An abandonment of the right-of-way, as determined by the BIA.

The condition for this easement shall extend to and be binding upon and shall inure to the benefit of the successors and assigns of the GRANTEE.

IN WITNESS WHEREOF, GRANTOR has executed this grant of easement this 99th day of (the month), 20(year).

UNITED STATES OF AMERICA

BY _____

U.S. Department of the Interior
Bureau of Indian Affairs

ACKNOWLEDGEMENT

STATE OF _____ :

: ss.

COUNTY OF _____ :

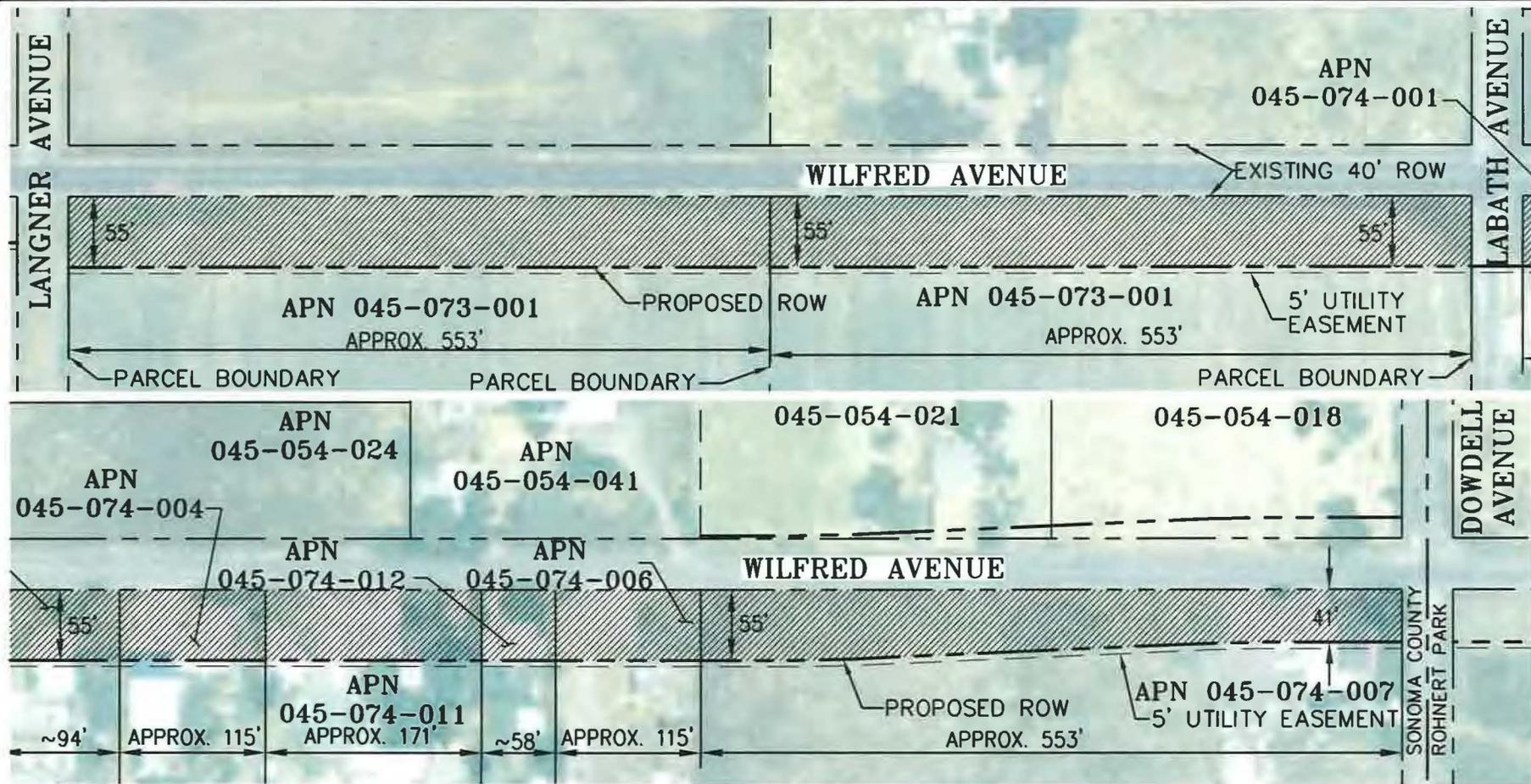
Subscribed and sworn to before me this ____ day of _____, 20__

Signature of Notary Public
My commission expires _____, 20__.

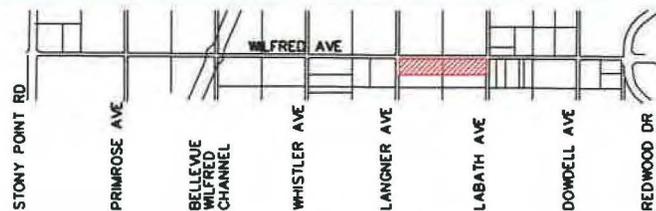
**SEE ATTACHED:
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

EXHIBIT J: Tribal ROW

k:\872_1\101097135006 - SO - Creation Casimo Update - JLV\Design\Exhibits\ROHNERT PARK\PROPACQUIRE-JURISDICTION.dwg Sep 19 2012 - 5:38pm kevin lei



 PROPOSED GRANT OF PERPETUAL RIGHT-OF-WAY OVER FIGR/SLAC PROPERTY



VICINITY MAP
NOT TO SCALE

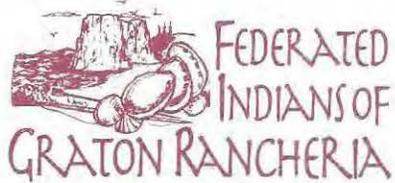
EXHIBIT J
PROPOSED GRANT OF PERPETUAL RIGHT-OF-WAY

SCALE: 1" = 80'



EXHIBIT K:

Tribal Resolution Consenting to Perpetual ROW



FEDERATED INDIANS OF GRATON RANCHERIA

A RESOLUTION AUTHORIZING THE UNITED STATES OF AMERICA, ACTING BY AND THROUGH THE BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, CENTRAL CALIFORNIA AGENCY, FOR AND ON BEHALF OF, THE FEDERATED INDIANS OF GRATON RANCHERIA, TO GRANT AN EASEMENT FOR A PERPETUAL RIGHT OF WAY TO THE CITY OF ROHNERT PARK, FOR THE PURPOSE OF IMPLEMENTATION OF MITIGATION MEASURES FOR THE WIDENING AND IMPROVEMENT OF WILFRED AVENUE.

TRIBAL COUNCIL RESOLUTION NO.: #12-36

DATE APPROVED: September 21, 2012

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

WHEREAS: Article III, Section 1 of the Constitution provides that the governing body of the Tribe is the Tribal Council; and

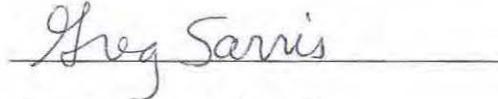
WHEREAS: Article VI, Section 1 provides the Tribal Council with the authority to negotiate and conclude agreements with local governments on behalf of the Tribe; and

WHEREAS: the Tribe agrees and hereby does waive the Appraisal, payment of damages, compensation and a deposit as required by 25 C.F.R. Part 196.5(b) and Part 196.4.

NOW THEREFORE BE IT RESOLVED THAT the Tribal Council hereby authorizes, approves and consents to the grant of an easement for a perpetual right of way to the City of Rohnert Park, for the purpose of implementing mitigation measures for the survey, design, construction and maintenance for the widening of Wilfred Avenue between Labath and Langner Avenues.

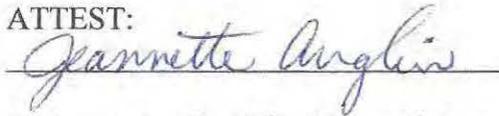
CERTIFICATION

We the undersigned hereby certify that the foregoing Tribal Council Resolution was presented and duly adopted by the Tribal Council of the Tribe on the 21st day of September, 2012, at a Tribal Council meeting at which a quorum of registered voters was present, by a vote of 7 for, 0 opposed, and 0 abstaining, and that said Tribal Council Resolution has not been rescinded or amended in any way.



Greg Sarris, Tribal Chair

ATTEST:



Jeannette Anglin, Tribal Council Secretary

EXHIBIT L:

INSURANCE

EXHIBIT L:
INSURANCE

A. BASIC INSURANCE REQUIREMENTS

1. Within ten (10) days after award of the Agreement, Tribe shall promptly obtain, at its own expense, all the insurance described in this section, and submit coverage verification for review and approval by the City. This insurance shall be in addition to any other form of insurance or bonds required under the terms of the Agreement.

Tribe shall not commence work under the Agreement, until such insurance has been approved by the City. Such insurance shall remain in full force and effect at all times. In addition, the Commercial General Liability Insurance shall be maintained for a minimum of five (5) years after final completion and acceptance of the Dedicated Facilities.

2. Companies writing the insurance under this article shall be authorized to do business in the State of California. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

3. Nothing contained in these insurance requirements is to be construed as limiting the extent of Tribe's responsibility for payment of damages resulting from its operations under this Agreement. Coverage required hereunder shall operate as Primary insurance.

4. Tribe shall procure, pay for, and maintain throughout the duration of this Agreement the following insurance coverage:

- a. Commercial General Liability coverage (Insurance Services Office form number CG 0001 – "occurrence" form).
- b. Insurance Services Office form number CA 00 01 covering Automobile Liability, including symbol 1 "any auto."
- c. Workers' Compensation insurance as required by the Labor Code of the State of California, with Statutory Limits, and Employers Liability insurance.
- d. The Commercial General Liability Insurance shall contain no endorsements limiting coverage beyond the basic policy coverage grant for any of the following:
 - Explosion, collapse or underground hazard (XCU)
 - Products and completed operations
 - Pollution liability
 - Contractual liability

5. Tribe shall maintain insurance limits of no less than:
- a. Commercial General Liability: Five Million Dollars (\$5,000,000) combined single limit per occurrence for all covered losses and no less than Ten Million Dollars (\$10,000,000) general aggregate. There shall be no cross liability exclusion for claims or suits by one insured against another.
 - b. Automobile Liability: Three Million Dollars (\$3,000,000) combined single limit per accident for bodily injury and property damage.
 - c. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of California, with Statutory Limits, and Employers Liability Insurance with limits of no less than One Million Dollars (\$1,000,000) per accident for bodily injury or disease.
 - d. Pollution and/or Asbestos Pollution Liability: One Million Dollars (\$1,000,000) per each occurrence and a Two Million Dollars (\$2,000,000) policy aggregate. If coverages are written on a Claims Made form: (a) the "Retro Date" must be shown and must be before the date of the contract or the beginning of contract work, (b) insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work, and (c) if coverage is canceled or non-renewed, and not replaced with another claims made policy form with a "Retro Date" prior to the contract effective, date, Contractor must purchase 'extended reporting' coverage for a minimum of five (5) years after completion of contract work..
 - e. Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a "pay on behalf of" basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured's liability is determined, not requiring actual payment by insured first. There shall be no cross-liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to City for injury to employees of Design Professional, subconsultants or others involved in performance of the Services. The scope of coverage provided is subject to approval of City following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$2,000,000 (Two Million Dollars) per occurrence.
 - f. Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Design Professional and "Covered Professional Services" as designated in the policy must include the type of work performed

under this Agreement. The policy limit shall be no less than \$1,000,000 (One Million Dollars) per claim and in the aggregate.

At the option of Tribe, primary limits may be less than required, with an Umbrella Policy providing the additional limits needed. This form of insurance will be acceptable provided that the Primary and Umbrella Policies both provide the insurance coverages herein required, including all additional insured requirements. The Umbrella Policy shall be provided on a "following form" basis with coverage at least as broad as provided on the underlying commercial General Liability insurance.

6. Endorsements - Originals of the following endorsements shall be attached to the liability insurance policy and delivered to City:

- a. The Commercial General Liability policy of insurance shall be endorsed to name as additional insureds the City and all of its elected and appointed officials, directors, officers, employees, agents, construction manager, and servants, using ISO Form CG 2010 with an edition prior to 2004. Additional insureds shall also be covered for completed operations, either in the additional insured endorsement or through a separate endorsement such as CG 20 37.
- b. The policy shall be endorsed to provide primary coverage to the full limit of liability stated in the declarations, and provide that if the additional insureds have any other insurance or self-insurance against the loss covered by this policy, that other insurance shall be excess insurance and not contribute with Tribe's policy.
- c. Failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees or volunteers.
- d. Coverage shall state that Tribe's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e. The insurer shall waive all rights of subrogation against the City, its officials, employees, and agents for losses arising from work performed by or on behalf of Tribe for the City.. Tribe agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.
- f. An endorsement shall be attached which states that the coverage is primary insurance and that any insurance or self-insurance fund maintained by or available to the City or any of its officers, agents, employees or volunteers shall be in excess of Tribe's insurance and shall not be called upon to contribute to a loss covered by the policy.
- g. The policy must provide that it shall not be cancelled, suspended, voided or changed nor may the "retroactive date" of the policy or any renewal or

replacement policy be changed without thirty (30) days prior written notice to the City.

- h. A cross-liability endorsement must be included to the effect that each insured is covered as if separate policies had been issued to each insured.
- i. The liability coverage may be either on a blanket basis or a policy which specifically identifies this agreement with a contractual liability endorsement.

7.. Subcontractors - The liability insurance shall not require Tribe to have its subcontractors named as insureds in Tribe's policy, but the policy shall protect Tribe from contingent liability which may arise from operations of its subcontractors. Tribe shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

8. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where any agreement to indemnify the additional insured would be invalid under Civil Code Section 2782(b).

9. Workers' Compensation Insurance certificate - Section 3700 of the Labor Code requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that code, and to comply with such provisions and have Employers' Liability limits of \$1,000,000 per accident for bodily injury or disease before commencing the performance required under the Agreement.

10. Builder's Risk Insurance - "All Risk or Special Form" Builder's Risk Insurance on a replacement cost basis, in an amount equal to the full replacement cost of the Tribal Facilities and Dedicated Facilities on a completed value basis, including coverage for 'soft costs' such as design, engineering and construction management fees, covering all risks of loss, including but not limited to, fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, smoke damage, damage by aircraft or vehicles, vandalism and malicious mischief, theft, collapse, flood, and earthquake. This insurance shall name the City of Rohnert Park, its elected and appointed officials, employees, agents and servants and Tribe as insureds, as their interests may appear, and shall include coverage including, but not limited to, all damages or loss to the Tribal Facilities and Dedicated Facilities and to appurtenances, to materials and equipment to be used on the Project while the same are in transit, stored on or off the project site, to construction plant and temporary structures.

Builder's Risk Insurance policies shall contain the following provisions:

- a. The City shall be named as loss payee.
- b. The insurer shall waive all rights of subrogation against the City.
- c. Builder's Risk Insurance may have a deductible clause not to exceed the following limits:

- If, pursuant to Section 7105 of the Public Contract Code, the City requires coverage for any damage to the work caused by an "Act of God," as

defined by Section 7105(b)(2) of that Code, and has set forth the amount of the work to be covered and the insurance premium for such coverage as a separate bid item, the deductible for such coverage shall not exceed five percent (5%) of the value of the Tribal Facilities and Dedicated Facilities at risk at the time of the loss.

- All other perils: \$5,000.

Tribe shall be responsible for paying any and all deductible costs. The policy shall provide the City the right to occupy the premises without termination of the policy until acceptance of the project.

11. Proof of Coverage - Before proceeding with the work under this Agreement, Tribe shall furnish the City with certificate(s) evidencing issuance of all insurance mentioned herein, copies of the policy declaration or information page(s) and endorsements. The certificate(s) and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on amended ACORD forms and ISO endorsement forms or equivalent endorsement forms acceptable to the City. The certificate(s), policy declaration or information page(s), and endorsements are to be received and approved by the City before work commences. Endorsements are not required for Workers Compensation or Builder's Risk Insurances. Such certificates of insurance shall provide that the insurance policy shall not be cancelable, be subject to non-renewal, or otherwise be subject to material modification, except with thirty (30) days' prior written notice to the City. Tribe shall also provide certificate(s) evidencing renewals of all insurance required herein, at least ten (10) days prior to the expiration date of any such insurance.

12. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City and other additional insureds; or Tribe shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

13. In the event of the breach of any provision of this paragraph, or in the event of any notices received which indicate any required insurance coverage will be diminished or canceled, City, at its option, may, notwithstanding any other provisions of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

14. The Tribe acknowledges and agrees that any actual or alleged failure on the part of City to inform Tribe of non-compliance with any insurance requirement in no way imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.

15. The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.