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8 Attorneys for Petitioners/Plaintiffs
9 The Coalition to Save Point Molate, and Andres
10 Soto, and DOES 1 through 10

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF CONTRA COSTA

13 THE COALITION TO SAVE POINT
14 MOLATE and ANDRES SOTO, an individual,
15 and DOES 1 through 10,

16 Petitioners/Plaintiffs,

17 v.

18 CONTRA COSTA COUNTY BOARD OF
19 SUPERVISORS and COUNTY OF CONTRA
20 COSTA, and DOES 11 through 20,

21 Respondents/Defendants.

22 ROES 21 through 30, inclusive,

23 Real Parties in Interest.

CASE NO.

**VERIFIED PETITION FOR WRIT OF
MANDATE UNDER THE
CALIFORNIA ENVIRONMENTAL
QUALITY ACT ("CEQA") AND
COMPLAINT FOR DECLARATORY
RELIEF**

24 **I. INTRODUCTION**

25 1. Petitioners/Plaintiffs THE COALITION TO SAVE POINT MOLATE and
26 ANDRES SOTO ("Petitioners"), bring this action against Respondents/Defendants CONTRA
27 COSTA COUNTY BOARD OF SUPERVISORS and the COUNTY OF CONTRA COSTA (the
28 "County") (collectively, "Respondents"), under the California Environmental Quality Act
("CEQA") (Pub. Resources Code § 21000 et seq.), the Guidelines for the California
Environmental Quality Act ("CEQA Guidelines") (14 California Code of Regulations section
15000 et seq.), and California Code of Civil Procedure sections 1094.5 and 1085.

1 and approval processes for the Project before the County Board of Supervisors, commented on
2 the Project, and objected to Project approval.

3 6. Petitioner ANDRES SOTO ("Soto") is, and at all relevant times was, a resident of
4 the City of Richmond, located in Contra Costa County, California. Soto is a life-long resident of
5 the City of Richmond and is the founding member of the Coalition to Save Point Molate. Soto
6 participates in the community affairs of the City of Richmond and Contra Costa County and
7 regularly travels within the City of Richmond and Contra Costa County. Soto is dedicated to the
8 environmental quality of the City of Richmond and Contra Costa County and is concerned about
9 the environmental impacts of the Project. Soto participated in the administrative review and
10 approval processes for the Project before the County Board of Supervisors, commented on the
11 Project, and objected to the Project's approval.

12 7. Respondent/Defendant COUNTY OF CONTRA COSTA is, and at all relevant
13 times herein was, a political subdivision of the State of California organized and existing under
14 the laws of the State of California, with the capacity to sue and be sued. Respondent/Defendant
15 CONTRA COSTA COUNTY BOARD OF SUPERVISORS approved the challenged Project on
16 behalf of Contra Costa County. In the period since Project approval, the County has failed to
17 issue a Notice of Exemption ("NOE") pursuant to CEQA. Because of its approval of the Project,
18 Contra Costa County is considered a lead agency under CEQA. In this capacity, the County is
19 responsible for evaluating the potential environmental effects associated with the Project,
20 identifying project alternatives and feasible mitigation measures, and for otherwise complying
21 with the substantive and procedural requirements of CEQA.

22 8. The true names and capacities, whether individual, corporate, or otherwise, of
23 Petitioners/Plaintiffs DOES 1 through 10, inclusive, are unknown at this time. Petitioners
24 therefore identify DOES 1 through 10 by such fictitious names. When Petitioners ascertain the
25 true names and capacities of DOES 1 through 10, inclusive, Petitioners will amend this Petition
26 and Complaint to allege the true names and capacities.

27 9. The true names and capacities, whether individual, corporate, associate or
28 otherwise, of Respondents/Defendants DOES 11 through 20, inclusive, are unknown to

1 Petitioners at this time. Petitioners therefore identify DOES 11 through 20 by such fictitious
2 names. When Petitioners ascertain the true names and capacities of DOES 11 through 20,
3 inclusive, Petitioners will amend this Petition and Complaint to allege the true names and
4 capacities. Petitioners are informed and believe and thereon allege that each fictitiously-named
5 Respondent/Defendant is in some manner responsible for the injury to Petitioners and the
6 environment.

7 10. The true names and capacities of ROES 21 through 30, inclusive, whether
8 individual, corporate, associate or otherwise, are unknown to Petitioners. Petitioners, therefore
9 identify ROES 21 through 30 by such fictitious names. When Petitioners ascertain the true names
10 and capacities of ROES 21 through 30, inclusive, Petitioners will amend this Petition and
11 Complaint to allege their true names and capacities. Petitioners are informed and believe and
12 thereon allege that each fictitiously-named Real Party in Interest is in some manner responsible
13 for the injury to Petitioners and the environment.

14 **III. JURISDICTION AND VENUE**

15 11. The Contra Costa County Superior Court has jurisdiction over the matters alleged
16 pursuant to Code of Civil Procedure sections 1060, 1085, and 1094.5 and Public Resources Code
17 sections 21168 and 21168.5.

18 12. Pursuant to Code of Civil Procedure section 394(a), venue is proper in Contra
19 Costa County Superior Court because the County of Contra Costa is a named Respondent in this
20 action.

21 **IV. STANDING**

22 13. Petitioners have standing to assert the claims raised in this Petition and Complaint.
23 As described above, Petitioners are beneficially interested in this matter.

24 **V. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

25 14. Petitioners have performed any and all conditions precedent to the filing of this
26 Petition. Petitioners have raised significant substantive and procedural issues and participated in
27 the administrative review process orally and in writing. In the absence of any County-
28 administered environmental review for the Project, Petitioners have no requirement to exhaust

1 their administrative remedies. Nevertheless, Petitioners have fully exhausted any available
2 administrative remedies consistent with Public Resources Code section 21177.

3 15. The County has taken final action with respect to the challenged approvals.
4 Petitioners have no further administrative recourse. Moreover, Petitioners have no plain, speedy,
5 or adequate remedy in the ordinary course of law. This Court is therefore requested to grant a
6 writ of mandate to require Respondents to comply with their lawful duties and set aside the
7 Project approval pending full and complete environmental review of the whole of the project.

8 **VI. NOTICE**

9 16. On December 11, 2009, Petitioners sent via facsimile and U.S. Mail a written
10 notice to Respondents of commencement of this action in compliance with Public Resources
11 Code section 21167.5. Copies of the written notice and proof of service are attached as Exhibit
12 A.

13 **VII. STATUTE OF LIMITATIONS**

14 17. This Verified Petition and Complaint was timely filed on December 14, 2009, in
15 compliance with Public Resources Code section 21167(a).

16 **VIII. ATTORNEYS FEES**

17 18. In compelling the County to lawfully discharge its public duties, Petitioners are
18 acting in their capacity as a private attorney general, and in the interest and for the benefit of the
19 public.

20 19. Petitioners are enforcing important rights affecting the public interest and
21 conferring a substantial benefit on the public, for which Petitioners are entitled to an award of
22 attorneys fees under Code of Civil Procedure section 1021.5 and Government Code section 800.
23 In accordance with Public Resources Code section 21167.7, this Petition has been served upon
24 the office of the California Attorney General.

25 **IX. FACTS**

26 20. This case involves the unlawful approval of an Intergovernmental Agreement
27 between the County and the Guidiville Band. (As previously indicated, the Agreement will be
28 referenced as the "Project".)

1 21. On November 3, 2009, the Contra Costa County Board of Supervisors considered
2 the Project as Agenda Deliberation Item, "D.1."

3 22. The Project establishes a system of quarterly payments to the County by the
4 Guidiville Band in exchange for the County's determination that the Guidiville Band has
5 sufficiently mitigated all environmental impacts that may result from construction and operation
6 of its proposed Destination Resort and Casino at Point Molate (the "Casino"). The Casino is
7 proposed to be located in the City of Richmond in Contra Costa County. A copy of the
8 Intergovernmental Agreement is attached as Exhibit B.

9 23. The Project mandates that the County will forego any and all requests for
10 additional environmental review documentation from the Guidiville Band. This assurance is
11 given notwithstanding the County's role as a CEQA responsible agency in the extant
12 environmental review for the Casino.

13 24. Petitioners appeared in opposition to the Project at the improperly noticed and
14 abbreviated hearings conducted by the Board of Supervisors on November 3, 2009 and November
15 10, 2009, and submitted written comments to the Board of Supervisors detailing the Board's
16 legally inadequate approval process.

17 25. Prior to approving the Project, the County failed to undertake any form of
18 environmental review to determine the Project's physical effects, identify feasible alternatives and
19 mitigation measures, or to otherwise comply with the substantive and procedural requirements of
20 CEQA.

21 26. In carrying out its review and approval of the Project, however, the County
22 ostensibly relied upon: (1) an unapproved Draft Environmental Impact Statement/Environmental
23 Impact Report ("DEIS/DEIR"), jointly prepared by the City of Richmond and the Bureau of
24 Indian Affairs ("BIA") for construction and operation of the Casino; (2) a non-existent Municipal
25 Services Agreement ("MSA") between the City of Richmond and the Guidiville Band, concerning
26 the Casino, that will not be drafted or executed until completion and certification of a Final
27 Environmental Impact Statement/Environmental Impact Report ("FEIS/FEIR") for the Casino;

28

1 and (3) a Mitigation Monitoring Plan ("MMP") addressing the Casino, also to be drafted only
2 upon completion and certification of the FEIS/FEIR.

3 27. In approving the Project, the County determined that mitigation measures
4 contained in the City's unapproved DEIS/DEIR and additional mitigation that eventually might
5 be contained in the Casino's MSA and MMP would, along with quarterly monetary payments to
6 the County, address all potential environmental effects associated with the Project.

7 28. By way of example, at the time of Project approval, the County provided that all
8 impacts involving County aesthetics, air quality, hazardous materials, water resources, noise, and
9 traffic/transportation would be adequately addressed by the still to be drafted MMP and MSA.

10 29. The County's Project approval process did not address any alternatives, including
11 alternatives to the quarterly payment system ultimately adopted by the County.

12 30. On the afternoon of November 10, 2009, the Contra Costa County Board of
13 Supervisors unanimously approved the Project.

14 **X. FIRST CAUSE OF ACTION**

15 **(Violations of the California Environmental Quality Act)**

16 Petitioners reallege and incorporate by reference Paragraphs 1 through 30, as though set
17 forth fully herein.

18 31. The Intergovernmental Agreement is a Project within the meaning of Public
19 Resources Code section 21065 and was approved by a discretionary decision of the Contra Costa
20 County Board of Supervisors. (Pub. Resources Code § 21080.)

21 32. The County's approval of the Project constitutes a prejudicial abuse of discretion in
22 that the County failed to proceed in the manner required by law and its decisions are not
23 supported by substantial evidence as set forth below.

24 **A. Inadequate Notice**

25 33. The fundamental purpose of CEQA is to ensure that members of the public are
26 fully informed as to local agency actions having a physical effect on the environment. (Pub.
27 Resources. Code § 21000(e)-(g); 21002.1(e).)

28

1 34. CEQA requires local agencies, including the County, to provide legally adequate
2 notice to the general public regarding proposed projects having a potential environmental effect,
3 so the public can meaningfully participate in a local agency's decision to approve or disapprove a
4 proposed project. (Pub. Resources Code § 21002.1(e).)

5 35. The public was first made aware of the Project via electronic publication of the
6 Agenda for the November 3, 2009, meeting of the County Board of Supervisors. No public
7 notification or acknowledgement regarding environmental review, and in particular, compliance
8 with CEQA, was provided.

9 36. Seven days later, on November 10, 2009, the Board of Supervisors approved the
10 Project by unanimous vote. Thus, the County limited the public to a compressed seven-day
11 window between the announcement of the Project and final approval. The inadequate notice and
12 truncated schedule denied the public any opportunity to meaningfully participate in the approval
13 process, and is particularly egregious in light of the fact that it represents a complete reversal of
14 the County's prior, longstanding opposition to the Casino.

15 37. Following Project approval, the County failed to issue any notifications pursuant
16 to CEQA. Because the County failed to proceed in the manner required by law, as further
17 described below, its approval of the Project must be set aside.

18 **B. Improper Segmentation and Deferral of Mitigation**

19 Petitioners reallege and incorporate by reference Paragraphs 1 through 37, as though set
20 forth fully herein.

21 38. Pursuant to CEQA, the term "project" refers to "the whole of an action," which
22 constitutes the entire underlying activity being approved. (Cal. Code of Regulations, Title 14, §
23 15000, et seq. ("CEQA Guidelines"), § 15378.) One or more local agencies cannot divide a
24 single project into smaller individual projects in order to avoid consideration of the environmental
25 impacts of the project as a whole. Additionally, under CEQA, an agency cannot defer the
26 formulation of mitigation measures until some future time. Nor may an agency propose measures
27 that are so vague and undefined that it is impossible to evaluate their effectiveness. (CEQA
28 Guidelines §15126.4(a)(1)(B).)

1 39. While completely ignoring its responsibilities under CEQA, the County adopted
2 mitigation measures prepared (but not adopted) by a different agency for a separate project's
3 entitlement process. That separate project involves the actual construction and operation of the
4 Casino at Point Molate. The development and application of mitigation measures in accordance
5 with the tenants of CEQA, requires a comprehensive review, in which the County's Project and
6 the Casino are evaluated as a single project constituting "the whole of the action." The County,
7 which already functions as a CEQA responsible agency for the City's Casino, impermissibly
8 segmented that larger project by independently approving a smaller component (the instant
9 Project) well in advance of certification of the FEIS/FEIR, and absent any County environmental
10 review whatsoever.

11 40. Alternatively, even if the Project and the Casino were determined to constitute two
12 separate projects, the County's approval is unlawful because by failing to conduct its own CEQA
13 review, the County impermissibly deferred the analysis of Project impacts until an unidentified
14 later date. To date, the City has not finalized an EIR. Nor have the required MSA and MMP
15 been drafted. The County's reliance on mitigation measures that may someday be included in
16 these documents, and that have never been subject to a complete public review process and the
17 myriad other procedural protections provided under CEQA, is unlawful.

18 **C. Inadequate Environmental Analysis and Findings**

19 Petitioners reallege and incorporate by reference Paragraphs 1 through 40, as though set
20 forth fully herein.

21 41. The County, as lead agency for the purposes of the Project, must analyze the
22 potential environmental effects of the Project and make certain findings as to the significance of
23 those effects. (Pub. Resources Code § 21080.)

24 42. The County, however, failed to perform any independent analysis of the Project's
25 potential effects, or to make the required findings. The County's attempted reliance upon the
26 City's incomplete and inadequate CEQA process, including the uncertified DEIS/DEIR, is
27 unlawful.

28

1 43. Further, the County's attempted reliance on the yet-to-be drafted MSA and MMP
2 for the construction and operation of the Casino, as a means of mitigating environmental effects
3 of the Project, is impermissible. Among other flaws, the County failed to identify the future
4 mitigation measures to be included in the MSA and MMP. The County also failed to explain how
5 these undefined mitigation measures would reduce the Project's environmental effects.

6 44. The County's actions were unlawful due to its failure to: (1) identify potential
7 environmental effects of the Project; (2) specifically address what mitigation, if any, would render
8 the effects less-than-significant; and (3) make any findings regarding the level of significance of
9 any effects after mitigation is adopted.

10 45. Because the County failed to proceed in the manner required by law, the County's
11 approval of the Project must be set aside.

12 **D. Inadequate Analysis of Project Alternatives**

13 Petitioners reallege and incorporate by reference Paragraphs 1 through 45, as though set
14 forth fully herein.

15 46. When deciding whether to approve a proposed project with significant
16 environmental effects, local agencies are required to consider a reasonable range of alternatives
17 that offer substantial environmental advantages over the proposed project and that may feasibly
18 be accomplished in a successful manner. The County lacks substantial evidence to support a
19 determination that the Project has no significant environmental effects, and failed to consider any
20 feasible alternatives to the Project.

21 47. Because the County failed to proceed in the manner required by law, the County's
22 approval of the Project must be set aside.

23 **E. The County Relied on a Legally Inadequate DEIS/DEIR**

24 Petitioners reallege and incorporate by reference Paragraphs 1 through 47, as though set
25 forth fully herein.

26 48. Approval of the Project further violates CEQA because it relies on the City of
27 Richmond's legally inadequate DEIS/DEIR for the Casino. The DEIS/DEIR is legally deficient
28 for a number of reasons, each of which independently precludes use of the DEIS/DEIR by the

1 County as a basis for approving the Project. The legal inadequacies include, but are not limited
2 to:

3 a. The DEIS/DEIR fails to adequately address and mitigate hazardous
4 impacts. Specifically, the DEIS/DEIR fails to mitigate impacts associated with the Casino's
5 proximity to the Chevron-Richmond refinery, and instead unlawfully relies on outdated and
6 inapplicable mitigation developed for the original refinery project. The DEIS/DEIR further fails
7 to address soil and water contamination in the area of the Casino building site because it relies on
8 a vacated "remediation plan." The DEIS/DEIR disregards the residential use restrictions adopted
9 for the site because of the significant contamination.

10 b. The DEIS/DEIR fails to acknowledge that the Casino constitutes an
11 inconsistent land use under the City of Richmond's General Plan.

12 c. The DEIS/DEIR includes a legally inadequate analysis of transportation
13 and circulation impacts because the traffic study upon which the DEIS/DEIR is based is
14 fundamentally flawed. The DEIS/DEIR's determination that the impact on traffic will be less
15 than significant is not supported by substantial evidence.

16 d. The DEIS/DEIR includes a legally inadequate analysis of the economic
17 impacts of the project. Specifically, the underlying study upon which the DEIS/DEIR relies fails
18 to consider the presence of other nearby gambling establishments, thereby artificially assessing
19 the impact of the Casino at Point Molate "in a vacuum." In addition, the DEIS/EIR ignores a
20 wealth of empirical data in the record that disputes the alleged beneficial impacts of the Casino.

21 e. The DEIS/DEIR fails to address the physical environmental effects of the
22 proposed fire station that will be built in conjunction with the Casino.

23 f. The DEIS/DEIR cumulative impacts analysis utilizes a fundamentally
24 inadequate horizon year of 2010, which completely fails to address the long-term effects of the
25 Casino, as required under CEQA.
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1 g. Pursuant to CEQA, the DEIS/DEIR must address the physical
2 environmental impacts resulting from the economic effects of the Casino, including urban decay
3 and deterioration. The DEIS/DEIR fails to address these economic impacts, making the analysis
4 legally insufficient.

5 h. The DEIS/DEIR improperly defers mitigation of cumulative land use and
6 other impacts to a later date, improperly delegates the deferred mitigation to the City of
7 Richmond, and admits that the mitigation will be "infeasible" given the City's budget constraints.

8 i. The DEIS/DEIR arbitrarily applies a traffic congestion and circulation
9 significance threshold without providing the necessary evidence demonstrating that the threshold
10 is applicable to the Casino.

11 j. The DEIS/DEIR is internally inconsistent, as it reaches differing
12 conclusions regarding the significance of individual traffic impacts and cumulative traffic
13 impacts.

14 k. The proposed uses of the Point Molate site contemplated and evaluated by
15 the DEIS/DEIR, are inconsistent with, and will be in violation of existing deed restrictions in
16 place at the site.

17 l. The DEIS/DEIR relies on a site contamination remediation plan that has
18 been vacated. The mitigation measures addressing site contamination are no longer legally
19 adequate as the evidentiary basis and justification for those measures no longer exists.

20 m. The DEIS/DEIR improperly fails to consider the lower impact Class II
21 gaming project alternative, and its resulting environmental benefits, despite substantial evidence
22 to support the fact that the Casino will be classified as a Class II gaming facility rather than a
23 Class III gaming facility.

24 **XI. SECOND CAUSE OF ACTION**

25 **(Declaratory Relief)**

26 49. An actual controversy exists between the parties concerning their respective rights
27 and duties because Petitioners contend, and Respondents dispute, that Contra Costa County, in
28

1 approving the Project, was required to comply with the statutory requirements of CEQA and has
2 failed to do so.

3 50. On November 10, 2009, Respondents approved the Project without previously
4 issuing a notice of exemption or, in the alternative, issuing a notice of preparation and
5 subsequently engaging in an a review and analysis of the Project's potential environmental
6 impacts as required under CEQA.

7 51. A judicial declaration is necessary and appropriate at this time under the
8 circumstances in order that the parties may ascertain Contra Costa County's duties with respect to
9 approval of the Project.

10 **XII. PRAYER FOR RELIEF**

11 WHEREFORE, Petitioners pray for judgment as follows:

12 1. The issuance of a peremptory writ of mandamus directing the County to vacate the
13 Project approval, and take or refrain from taking any other action the Court deems appropriate
14 under Public Resources Code section 21168.9.

15 2. For an order setting aside approval of the Project identified in this Petition.

16 3. For an order staying or enjoining any further approval or action in furtherance of
17 the Project pending an adjudication on the merits, pursuant to Code of Civil Procedure sections
18 525 and 526, California Code of Civil Procedure sections 1085 and 1094.5, and/or Public
19 Resources Code section 21168.9.

20 4. That Petitioners recover all reasonable attorneys fees under section 1021.5 of the
21 Code of Civil Procedure, section 800 of the Government Code, or other applicable law.

22 5. A declaration that Respondents' approval of the Project was unlawful and that
23 Respondents' actions with respect to the Project were carried out in violation of CEQA.

24 6. For costs of suit.

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7. For such other and further relief as this Court deems just and proper.

DATED: December 14, 2009.

STOEL RIVES LLP



By: _____
TIMOTHY M. TAYLOR
Attorneys for Petitioners/Plaintiffs
Andres Soto and The Coalition to Save
Point Molate

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VERIFICATION

I, Timothy M. Taylor, declare:

I am an attorney at law duly admitted and licensed to practice before all courts of this State and I have my professional office at 500 Capitol Mall, Suite 1600, Sacramento, California 95814.

I am one of the attorneys of record for The Coalition to Save Point Molate and Andres Soto ("Petitioners/Plaintiffs") in the above-entitled action.

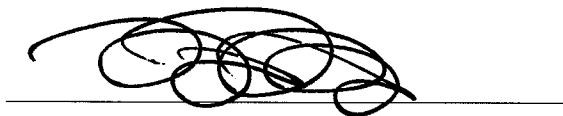
Petitioners/Plaintiffs are absent from the county in which I have my office and for that reason I am making this verification on their behalf.

I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT ("CEQA") AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF and know the contents thereof.

I am informed and believe that the matters stated therein are true and, on that ground, I allege that the matters stated therein are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Sacramento, California on December 14, 2009.



Timothy M. Taylor

EXHIBIT A



500 Capitol Mall, Suite 1600
Sacramento, California 95814
main 916.447.0700
fax 916.447.4781
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December 11, 2009

SIGRID WAGGENER
Direct (916) 319-4644
srwaggener@stoel.com

VIA ELECTRONIC MAIL AND FACSIMILE (925) 335-7893

Stephen L. Weir
Contra Costa County Clerk-Recorder
555 Escobar Street
Martinez, CA 94553

Re: *November 10, 2009 Approval of the Intergovernmental Agreement Between the County of Contra Costa and the Guidiville Band of Pomo Indians*
NOTICE OF COMMENCEMENT OF CEQA ACTION

Dear Mr. Weir:

PLEASE TAKE NOTICE under Public Resources Code section 21167.5, that the Coalition to Save Point Molate and Andres Soto intend to file a petition under the provisions of the California Environmental Quality Act (Pub. Resources Code, § 21000, et seq.) against Contra Costa County and the Contra Costa County Board of Supervisors, as respondents. The action will challenge Contra Costa County's November 10, 2009 approval of the Intergovernmental Agreement between the County of Contra Costa and the Guidiville Band of Pomo Indians.

The petition will seek to vacate the County's actions in approving the Intergovernmental Agreement.

Sincerely,

A handwritten signature in cursive script that reads 'Sigrid Waggener'.

Sigrid Waggener

cc: Silvano Marchesi, Esq.

1 **PROOF OF SERVICE**

2 I declare that I am over the age of eighteen years and not a party to this action. I am
3 employed in the City and County of Sacramento and my business address is 500 Capitol Mall,
4 Suite 1600, Sacramento, California 95814.

5 On December 11, 2009, at Sacramento, California, I served the attached:

6 • **NOTICE OF COMMENCEMENT OF CEQA ACTION**

7 pursuant to California Public Resources Code section 21167.5 on the following entity:

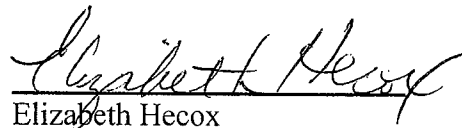
8 Contra Costa County Clerk-Recorder
9 Stephen L. Weir
10 555 Escobar Street
11 Martinez, CA 94553
12 Fax No.: 925-335-7893
13 Email: stephen.weir@cc.cccounty.us

14 X **BY CERTIFIED MAIL:** I am readily familiar with my employer's practice for the collection and processing
15 of correspondence for mailing with the U.S. Postal Service. In the ordinary course of business, correspondence
16 would be deposited with the U.S. Postal Service on the day on which it is collected. On the date written above,
17 following ordinary business practices, I placed for collection and mailing at the offices of Stoel Rives LLP, 500
18 Capitol Mall, Suite 1600, Sacramento, California 95814, a copy of the attached document in a sealed envelope,
19 with postage fully prepaid, addressed as shown on the service list. I am aware that on motion of the party
20 served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day
21 after the date of deposit for mailing contained in this declaration.

22 X **BY E-MAIL:** stephen.weir@cc.cccounty.us

23 X **BY FACSIMILE:** 925-335-7893

24 I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct and that this document was executed on December 11, 2009, at
26 Sacramento, California.

27 
28 Elizabeth Hecox

PROOF OF SERVICE

MODE = MEMORY TRANSMISSION

START=DEC-11 17:16

END=DEC-11 17:17

FILE NO. =475

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Name:	Fax No.	Company/Firm	Phone No.
TO: Stephen L. Weir	(925) 335-7893	Contra Costa County Clerk-Recorder	(925) 335-7899

Name:	Sender's Direct Dial:	Sender's Direct Email:
FROM: Sigrid Waggener	(916) 319-4644	srwaggener@stoel.com

Client:	Matter:
---------	---------

Date: December 11, 2009

No. of Pages (including this cover): 2

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COMMENTS: The attached will follow via certified mail.

EXHIBIT B

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE COUNTY OF CONTRA COSTA AND
THE GUIDIVILLE BAND OF POMO INDIANS**

This Agreement ("Agreement") is entered into this _____ day of November, 2009, between the County of Contra Costa, a political subdivision of the State of California ("County"), and the Guidiville Band of Pomo Indians, a federally recognized Indian Tribe that is seeking a reservation within the geographical boundaries of the County of Contra Costa, State of California ("Tribe"). The County and the Tribe shall be collectively referred to as the "Parties."

RECITALS

A. The Board of Supervisors of the County of Contra Costa and the Tribal Council of the Guidiville Band of Pomo Indians, a sovereign governmental entity, recognize that each is responsible for the welfare of its people and residents.

B. The Tribe has requested that the Bureau of Indian Affairs take into trust approximately 266 acres of the former Naval Fuel Depot Point Molate, on which the Tribe and its developer, Upstream Point Molate LLC, propose to construct new facilities and improve existing facilities to develop a mixed-use tribal destination resort and casino ("Pt. Molate Project"). The proposed Pt. Molate Project site is located in the City of Richmond ("City"), in Contra Costa County, California, north of the San Rafael Bridge along the shoreline of San Francisco Bay. The site is approximately one mile north of Interstate 580, with direct freeway access through Western Drive, a City-owned roadway to the site. An approximately 1,200-foot pier that extends into the San Francisco Bay from the central point of the site will be used as a ferry terminal for workers and visitors to the site.

C. The project site consists of lands formerly and presently owned by the U.S. Navy. The Navy ceased operations on the site on September 30, 1995, and in September 2003 transferred approximately 85 percent of the property to the City pursuant to the Base Realignment and Closure ("BRAC") process and the City's 1997 Point Molate Reuse Plan. The Navy prepared an Environmental Impact Statement (EIS) before the transferring of ownership of the project site. The remaining 15 percent of land will be transferred to the City under an agreement between the City and the Navy that provides for the completion of petroleum and other hazardous materials remediation. The final Finding of Suitability for Early Transfer ("FOSET") and Early Transfer Cooperative Agreement ("ETCA") were executed on September 8, 2008. The City has entered into a land option and sales contract ("Land Disposition Agreement" or "LDA") with Upstream Point Molate LLC to be assigned to the Tribe by Upstream Point Molate LLC if the land is to be placed in trust with the United States for the benefit of the Tribe at the time of the LDA closing. If the land is not placed in trust by the United States by the time of the LDA closing, Winehaven Partners LLC may acquire the land at the LDA closing for subsequent placement in trust by the United States prior to development of the Pt. Molate project.

D. The Bureau of Indian Affairs ("BIA") and the City ("the Lead Agencies") caused to be prepared a draft Environmental Impact Statement/Environmental Impact Report ("EIS/EIR") for environmental review of the Pt. Molate Project in accordance with the requirements set forth in the National Environmental Policy Act (NEPA) (42 USC 4321 *et seq.*);

the Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 CFR Parts 1500-1508); the BIA's NEPA handbook (59 IAM 3); the California Environmental Quality Act (CEQA); and CEQA Guidelines (California Code of Regulations, Title 14) and City of Richmond's guidelines and procedures for implementation of CEQA (Resolution No. 125-03). The Draft EIS/EIR was published on July 10, 2009.

E. The cooperating agencies to the EIS/EIR are the United States Environmental Protection Agency, the County, and the Tribe (collectively the "Cooperating Agencies"). Public notice was provided pursuant to CEQA and NEPA. After reviewing and addressing all comments to the draft EIS/EIR, the "Final EIS/EIR" will be issued. The Parties, as will be described in greater detail herein, have agreed that the County will inform the State that any tribal-state gaming compact with the Governor of California (the "Compact") requirement for mitigation of off-reservation impacts is satisfied by the issuance of the Final EIS/EIR and that the County will not request, any additional process required by the Compact because such process is not necessary. The Parties agree that no other environmental review document will be produced by the Tribe, the City, or County regarding the Pt. Molate Project after the certification of the Final EIS/EIR, unless a new EIR is required by the City due to material changes to the proposed project over time as defined in the LDA.

F. As part of the LDA, the Tribe is required by the City to enter into a Municipal Services Agreement (MSA) with the Tribe outlining terms for the provision of public services including police, fire, sewer, water, and establishing annual payments to the City in lieu of taxes., Required mitigation measures to mitigate all feasible off-reservation impacts caused by the Pt. Molate Project identified in the Final EIS/EIR will be incorporated into the MSA as a Mitigation, Monitoring, and Reporting Plan ("Mitigation Plan"). The Tribe will comply with all aspects of the MSA and Mitigation Plan and compliance with such Mitigation Plan will be enforceable by the City.

G. In 1988, Congress enacted the Indian Gaming Regulatory Act (P.L. 100-497, codified at 18 U.S.C. § 1166 *et seq.* and 25 U.S.C. § 2701, *et seq.*) ("IGRA") to regulate certain gaming activities on Indian lands in the United States. IGRA provides a regulatory framework for the operation of gaming by Indian tribes as a means, among other things, of promoting tribal economic development, self-sufficiency, and strong tribal government.

H. IGRA makes Class III gaming activities lawful on the lands of federally recognized Indian tribes only if such activities are, among other things, conducted in conformity with a tribal-state compact entered into between the Indian tribe and the state and approved by the Secretary of the Interior.

I. The Tribe anticipates entering into a Compact with the Governor of the State of California to permit the Tribe to conduct Class III gaming activities on its trust lands in compliance with IGRA.

J. The development program for the Pt. Molate project is unique for tribal projects in Northern California in that it includes an array of economic, governmental, cultural, and environmental facilities in the design, and an array of community programs linked to and supported by the project to extend social and community benefits to the citizens of Richmond and Contra Costa County. The Pt. Molate Project includes construction of a destination resort

that, upon full build out, will include up to two hotels totaling approximately 1,075 rooms, 170,000 square feet of business, conference and entertainment facilities, a 124,000 square foot casino gaming floor, 54 luxury accommodation cottages and casitas, a 300,000 square foot retail shopping center, public plazas, pedestrian/bicycle trails, shoreline parks, a tribal park, tribal government offices and cultural facilities, restoration of 34 of the historic buildings located on-site, up to 340 residential units of multi-family housing, and extensive linkages to enhance existing transportation networks including construction of an on-site ferry terminal. The project has employed leading-edge environmental sustainability features in its design, has included an array of educational features throughout the project, and included local employment, job training, and community partnerships that exceed the current standards typically used in development projects in Contra Costa County.

K. Because the Pt.Molate project grew out of a Navy base reuse project, the local and community involvement for this project has been considerable, and is unique for tribal projects in California. There have been extensive local public hearings on the project since 2004, numerous opportunities for community input and involvement, and exhaustive discussion around the scope and layout of the project, potential impacts and benefits, and mitigations and opportunities to enhance the project's surroundings. During the past 5 years, the City of Richmond has held numerous noticed public hearings and considered extensive public input during its selection of the developer for the Pt Molate site, its ratification of the LDA including the project conceptual plan, its negotiation of the MSA, and its initiation and scoping of environmental review in accordance with CEQA with the City as local lead agency. The City has reaffirmed these decisions several times through successive City Councils and City Managers.

L. It is anticipated that the Compact may require the Tribe to negotiate with the County and enter into an agreement with the County to mitigate off-reservation impacts of the Pt. Molate Project (hereinafter "Intergovernmental Agreement"). The Parties agree that this Agreement satisfies the anticipated requirements in the Compact for such an Intergovernmental Agreement with the County. The Parties agree to submit this Agreement without amendment to the State as satisfaction of such anticipated Compact requirement. In the event this Agreement is found by a court of competent jurisdiction to be insufficient for compliance with the Compact, the Parties agree to make only those minimum changes necessary to bring this Agreement into compliance with the Compact. The Parties agree that entering into this Agreement prior to the negotiation and approval of the Compact and any court decision is mutually beneficial.

M. The Parties agree that the MSA and the Mitigation Plan, except for those circumstances to be addressed by this Agreement, will provide sufficient mitigation of all off-reservation impacts of the Pt. Molate Project to the County and City. The off-reservation impacts of the Pt. Molate Project, including impacts to public safety, fire fighters and responders, health, and human services, traffic and other County services, that are County-specific and not covered by the City MSA and Mitigation Plan, are addressed through this Agreement. The County agrees that this Agreement, together with the MSA and Mitigation Plan, adequately mitigates all impacts of the Pt. Molate Project requiring mitigation pursuant to the NEPA, CEQA, and the anticipated Compact. Accordingly, the County and Tribe agree that irrespective of whether a Compact requires the preparation of a Tribal Environmental Impact Report ("TEIR") or any other mitigation of off-reservation impacts for the Pt. Molate Project, the

County hereby agrees that it will not seek mitigation or compensation beyond what is provided within this Agreement and those with the City of Richmond.

N. The County recognizes that once the United States takes into trust the 266 acres of the former Naval Fuel Depot Point Molate lands, then all such lands, although within the geographical boundaries of Contra Costa County, will be subject to Guidiville Band of Pomo Indians' tribal and applicable federal laws and regulatory authority because such lands will be the Tribe's reservation pursuant to a reservation proclamation by the United States. The Tribe recognizes that non-trust lands not located within the boundaries of the Guidiville reservation to be located in Contra Costa County are subject to State law and County and City regulatory authority as applicable.

O. The County and the Tribe recognize that residents of the Tribe's reservation and the residents of Contra Costa County are neighbors with many common concerns and responsibilities over safety, development, and the character of life in Contra Costa County. The County views the Pt. Molate Project as unique, and the Parties understand that the County does not view this Agreement as setting a precedent for the expansion of casino gaming into other areas of the County.

P. The Tribe and the County jointly desire to develop a long term, government-to-government relationship based on mutual respect and in consideration of their respective jurisdiction, laws, regulations, and duties to their citizens.

NOW, THEREFORE, the Parties hereby agree that this Agreement is to satisfy the requirements of NEPA, CEQA, and the anticipated Compact and sets forth (1) the Tribe's obligations in providing feasible "Mitigation Measures" for any "Significant Effect on the Off-Reservation Environment" (as those terms are commonly used in recent gaming compacts, including gaming compacts from 2004 and 2007) attributable to the Pt. Molate Project; (2) the provisions relating to compensation for law enforcement, fire fighters and responders, health, and human services, fire protection, emergency medical services and any other public services to be provided by the County to the Tribe as a consequence of the Pt. Molate Project; (3) provisions providing for reasonable compensation by the Tribe for programs designed to address gambling addiction; (4) provisions providing for mitigation of any effect to the County specifically on public safety attributable to the Pt. Molate Project; and (5) a continued strengthening of the government-to-government relationship between the County and the Tribe; and (6) the Parties agree that amounts to be paid by the Tribe to the County under this Agreement should be credited against any amounts that may be owed to the State of California under the anticipated Compact.

A. MITIGATION MEASURES ASSOCIATED WITH THE PROJECT

In preparing this Agreement and in relation to the contents of the EIS/EIR, the Tribe and the County met over a period of time, including meetings between technical staff, to analyze and discuss the impacts of the Pt. Molate Project on the off-reservation environment and the community generally in Contra Costa County. The Parties agree that implementation of the following mitigation measures, combined with the MSA and Mitigation Plan, completely address the off-reservation impacts of the Pt. Molate Project and as such satisfy any requirements for mitigation of such impacts in the anticipated Compact.

The date that public use commences for the new casino gaming facilities constructed in the Pt. Molate Project (the "Casino") shall be referred to as the "Pt. Molate Project Start Date." To allow construction phasing and a smooth opening of public facilities, new tribal governmental buildings, cultural centers, parking structures, tribal housing, and other non-entertainment facilities constructed in the Pt. Molate Project may be used prior to the Pt. Molate Project Start Date.

For payments from Tribe to County under this Agreement that are to be paid annually:

1. First Quarterly Payment Due Date. One fourth of the annual payment amount shall be due on the last day of the calendar quarter in which the Pt. Molate Project Start Date occurs, and the amount shall be prorated if the Pt. Molate Project Start Date occurs on any day other than the first day of that quarter.
2. Subsequent Quarterly Payments. After the end of the first calendar quarter in which the Pt. Molate Project Start Date occurs, subsequent quarterly payments for a given quarter shall be due on the 15th of the second month of the quarter (February 15th, May 15th, August 15th, and November 15th).
3. Consumer Price Index Adjustments. After each anniversary of the "First Quarterly Payment Due Date," quarterly payments for each subsequent year shall be adjusted commensurate with the previous 12 month change in the Consumer Price Index (not seasonally adjusted) for All Urban Consumers in the "San Francisco-Oakland-San Jose," area, published by the U.S. Department of Labor (CPI), provided however, that in no event shall the annual increase in the adjustment exceed four percent (4%) per annum, except if the County certifies that its' average per-employee total compensation costs (including consideration of all benefits for health, retirement, COLAs, step increases and other items that consist of total compensation) exceed 4%, in which case the annual increase in the adjustment shall be allowed up to the lesser of the CPI adjustment that is greater than 4% or such total compensation increase in County employee costs.
3. Final Payment. The final payment shall be prorated to reflect the number of days in the final calendar quarter of casino operation.
4. Change in Payment Date. The Parties to this Agreement may choose to jointly agree to change from quarterly payments to annual payments or any other agreeable schedule. Such agreement shall be in the form of a written amendment to this Agreement.
5. Consolidation of Payments. For payments to County that are due on the same date, Tribe may consolidate those payments into a single payment that equals the total due.

1. Aesthetics

Regarding aesthetics, the Tribe will comply with the mitigation and improvement measures in the Mitigation Monitoring Plan adopted by the City and the Tribe and attached to the MSA when the Final EIS/EIR is certified. Such mitigation will be enforceable by the City pursuant to the terms of the MSA.

2. Air Quality

Regarding air quality, the Tribe will comply with the mitigation and improvement measures in the Mitigation Plan adopted by the City and the Tribe and attached to the MSA when the Final EIS/EIR is certified. Such mitigation will be enforceable by the City, pursuant to the terms of the MSA. In addition, the Final EIS/EIR calls for implementation of Best Management Practices with respect to air discharges. Although significant air emissions are not expected due to the nature of site's uses (hospitality and residential), the Tribe agrees to adopt within six (6) months of enactment by the regulatory agency and to enforce tribal ordinances that mirror any emission limitation legally adopted and implemented by the Bay Area Air Quality Management District "BAAQMD" and California Air Resources Board "CARB." If the Tribe does not adopt or enforce such tribal ordinances, the County may enforce this provision utilizing the Dispute Resolution provisions described herein, and may seek specific performance of this provision to ensure the Tribe adopts such tribal ordinances. Nothing shall prevent the tribe from adopting more stringent air quality standards and practices than identified herein.

3. Hazardous Materials

Regarding hazardous materials, the Tribe will comply with the mitigation and improvement measures in the Mitigation Plan adopted by the City and the Tribe, and attached to the MSA when the Final EIS/EIR is certified. Such mitigation will be enforceable by the City pursuant to the terms of the MSA.

4. Water Resources

Regarding water resources, the Tribe will comply with the mitigation and improvement measures in the Mitigation Plan attached to the MSA when the Final EIS/EIR is certified. Such mitigation will be enforceable by the City pursuant to the MSA.

5. Noise

Regarding noise, the Tribe will comply with the mitigation and improvement measures in the Mitigation Plan attached to the MSA when the Final EIS/EIR is certified. Such mitigation will be enforceable by the City pursuant to the MSA.

6. Traffic/Transportation

The County and the Tribe mutually agree to use the transportation analysis in the EIS/EIR as the basis for estimating required transportation and traffic mitigations for the Pt. Molate Project. The Tribe will comply with the mitigation and improvement measures in the Mitigation Plan adopted by the City and attached to the MSA when the Final EIS/EIR is certified. Such mitigation will be enforceable by the City pursuant to the terms of the MSA and for improvements or mitigations required outside of City limits, by the County. In addition, the

following mitigation measures are expected to reduce the traffic volume generated by the Pt. Molate Project and therefore reduce traffic impacts:

- a) Encourage Use of Buses/Vans for Casino Patrons. The Tribe will seek ways to expand the availability of van/bus/shuttle services for patrons to the Casino/entertainment portion of the Pt. Molate Project, to reduce individual vehicular traffic levels, and where feasible, Tribe will contract with companies that use low-emission vehicles.
- b) Enhancement to County Public Transportation. The Parties acknowledge the various mitigations and project enhancements proposed for the Pt. Molate Project in the EIS/EIR that will enhance public transit options within the County. In particular, the Tribe will provide funds for ferry services to the Pt. Molate Project, BART, and AC Transit linkages. The Tribal funding will help provide multi-modal connections that will benefit general transit accessibility in the west part of the County and region as a whole, and the Parties acknowledge the importance of this Tribal funding because other funding for these agencies is being reduced.
- c) Enhancement to BART Safety. The Tribe will work with the City Police Department, Contra Costa County Sheriff and BART to implement enhanced security at the Richmond BART station, which the Parties agree will be a benefit to County residents and will encourage greater usage of BART facilities in the evenings.
- d) Encourage Casino Employee Carpooling and Mass Transit. The Tribe will encourage Casino employees to carpool, vanpool or rideshare and provide ride-matching services and/or public transit incentives. The goal of these activities is to achieve an average of at least 40% Casino employee participation in carpools, vanpools, ridesharing, or public transit.
- e) County Roads Identified in the Final EIS/EIR – Fair-Share Contribution. The conclusion of the Draft EIS/EIR is that in the short and medium-term (referred to in the EIS/EIR as “current conditions plus project”), all traffic impacts from the Pt. Molate Project are mitigatable to a less than significant impact by implementing the mitigation measures outlined in the EIS/EIR, paid for by the Tribe. In the cumulative year (2025), expected Pt. Molate Project traffic, plus expected traffic increases due to population increases and approximately thirty (30) other expected projects including the potential Sugar Bowl Casino in North Richmond, will all contribute to significant traffic impacts on a number of roadways, including some owned by the County. The Draft EIS/EIR found that these impacts and the required mitigations would be necessary whether or not the Pt. Molate Project is built, but that tribal fair-share funding will help the County achieve several important transportation project goals.

In addition to other EIS/EIR mitigation measures, the Tribe will contribute its fair-share contributions of the capital improvement cost of four potential transportation mitigation/improvement projects along County-owned portions of Richmond Parkway. These projects are defined below:

Project 1 (Mitigation Measure 7-10) Intersection of Richmond Parkway and Gertrude Avenue:

Construct additional southbound and northbound through lanes on Richmond Parkway at the intersection of Gertrude Avenue.

Project 2 (Mitigation Measure 7-11) Intersection of Richmond Parkway and Parr Boulevard:

Re-stripe Richmond Parkway to convert existing northbound and southbound right turn lanes to provide a shared through-right lane in both directions at the intersection of Parr Boulevard.

Project 3 (Mitigation Measure 7-16) Intersection of Richmond Parkway and Goodrick Avenue:

Construct an additional eastbound through lane on Richmond Parkway at the intersection of Goodrick Avenue.

Project 4 (Mitigation Measure 7-17) Intersection of Richmond Parkway and Pittsburg Avenue:

Re-stripe Richmond Parkway to convert the existing northbound right turn lane to provide a shared through-right lane at the intersection of Pittsburg Avenue.

The Tribe's fair-share of these projects will be 20% of the total project cost. "Total Project Cost" is defined as the total cost to implement the project including planning, environmental review, permitting and construction, which costs will be estimated at the receipt of actual construction bids for each project, subject to a "truing" of expenses at the end of each project whereby the Tribe's portion of unspent funds, if any, will be immediately returned to the Tribe. Payment for each project will be made by the Tribe after award of construction bids for that project, and such funds will be retained by the County in a separate project fund established for each project. For projects that are estimated to take more than one year, the Tribe may make annual payments totaling the amount required. If construction on any project has not commenced within one year of such payment, the Tribe may request return of the funds until such time as the project construction commences. It is agreed that maintenance of these roadway segments, intersections and other roadways within the County will be accomplished by the County without payments by the Tribe beyond those outlined in this Agreement.

Nothing in this Agreement requires any specific intersection or roadway or other improvements to be undertaken without full compliance with CEQA and any other applicable laws or regulations. County retains its discretion to approve, disapprove, or modify specific improvements, and the final specification of each project may be amended by the County, in consultation with the Tribe, after completion of CEQA review and incorporation of any applicable mitigation measures or may be rejected by the County as undesirable or infeasible based on such CEQA review. Changes in the project during final specification shall not change the Tribe's aggregate fair share obligation.

- f) Review of County Roadway Sections and Intersections that May Require Improvements in the Future – Re-Opener Clause. The County and the Tribe agree to use the transportation analysis in the EIS/EIR as the basis for estimating required transportation and traffic mitigations for the Pt. Molate Project. However, if the following triggers occur on the County roads and intersections identified in Appendix A:

- A roadway segment or /intersection operating at Level of Service (LOS) A through D in the baseline condition deteriorates to LOS E or F once the Casino opens;
- An intersection already operating at Level of Service (LOS) E or F in the baseline condition experiences an additional 5 seconds of average delay once the Casino opens; or
- A roadway segment already operating at Level of Service (LOS) E or F in the baseline condition experiences an increased V/C ratio of .20 or greater once the Casino opens.

and the County reasonably claims that such changes in Level of Service are beyond the estimates identified in the EIS/EIR and are due to Pt. Molate Project, then the Tribe and County will jointly conduct a traffic study of the applicable roadway segments and intersections at a frequency not greater than once every five (5) years after the Pt. Molate Project Start Date. In this event, the Tribe and County will jointly determine the scope of such study, and the Parties will jointly provide project oversight to the traffic consultants. The Tribe will bear the costs of such study, which will be approved by the Parties upon receipt of consultant bids.

If there is such a change of Level of Service in one of the roadway sections or intersections in the list in Exhibit A identified in such traffic study that is attributable to the Pt. Molate Project, the Tribe will make a fair-share contribution to the cost of any improvements deemed by such study to be necessary and feasible to mitigate such change, following CEQA review and County's compliance with any other application laws and regulation, pursuant to the process as described in Paragraph 6(e). The Tribe's fair-share contributions will be estimated for each such improvement based on the percent of incremental traffic attributed to the Pt Molate project, and the Tribe's payments shall be made at similar milestones as are described in paragraph 6(e).

7. Storm Water and Wastewater Management

Regarding wastewater treatment, the Tribe will comply with the mitigation and improvement measures in the Mitigation Plan adopted by the City and the Tribe and attached to the MSA when the Final EIS/EIR is certified. Such mitigation will be enforceable by the City, pursuant to the terms of the MSA. In addition, the Draft EIS/EIR calls for implementation of Best Management Practices with respect to storm water management, and wastewater control and treatment. The Tribe agrees to adopt within six (6) months of enactment by the regulatory agency and to enforce tribal ordinances that contain the same wastewater limitations legally adopted and implemented by the Regional Water Quality Control Board "RWQCB." If the Tribe does not adopt such tribal ordinances, the County may enforce this provision utilizing the Dispute Resolution provisions described herein, and may seek specific performance of this provision to ensure the Tribe adopts such tribal ordinances in the unlikely event the Tribe fails to comply with this provision. Nothing shall prevent the tribe from adopting more stringent wastewater standards and practices than identified herein.

8. Solid Waste

Regarding solid waste, the Tribe will comply with the mitigation and improvement measures in the Mitigation Plan attached to the MSA when the Final EIS/EIR is certified. Such mitigation will be enforceable by the City pursuant to the terms of the MSA.

9. Security and Law Enforcement

Regarding security and law enforcement, the Tribe will comply with the mitigation and improvement measures in the Mitigation Monitoring Plan adopted by the City and the Tribe and attached to the MSA when the Final EIS/EIR is certified. Such mitigation will be enforceable by the City pursuant to the terms of the MSA. The County agrees that because it will not be providing primary on-site law enforcement response, the only direct off-Reservation law enforcement impacts to the County from the Pt. Molate Project would occur due to arrests arising from the Pt. Molate Project that are processed through the County. Such arrests would impact the County in the areas of Sheriff services, probation services, District Attorney services, Public Defender services, and County jail incarceration.

- a) Security. The Tribe agrees to provide on-site security in the Pt. Molate Project during all hours of operations pursuant to the MSA.
- b) On-Site City Police Department. The Tribe will construct and maintain a City police substation on-site to provide police services to the Pt. Molate Project site pursuant to the MSA.
- c) Incarceration. The Tribe acknowledges that assistance from the County Sheriff may be required from time to time with respect to the incarceration of persons engaged in suspected criminal activity arising from the Pt. Molate Project. Compensation to the County for deputy sheriff support and associated non-labor costs including vehicles associated with the incarceration of individuals is included in the amounts described in Section A.12 (a).
- d) Law Enforcement Responsibilities. While Public Law 280 (18 U.S.C. § 1162), provides that the County and the County Sheriff have concurrent jurisdiction with the Tribe and the City of Richmond over crimes committed on the Tribe's Reservation, the Parties agree that the City of Richmond will have primary response for criminal jurisdiction on that Reservation, in conjunction with the federal government.
- e) County of Contra Costa District Attorney and Criminal Prosecution Caseload, Public Defenders, and Probation. The Tribe acknowledges that the County will incur additional costs with respect to any arrests arising from the Pt. Molate Project. Compensation to the County for such County costs is included in the amounts described in Section A.12 (a).

10. Public Health and Safety

Regarding public health and safety, the Tribe will comply with the mitigation and improvement measures in the Mitigation Plan adopted by the City and the Tribe and attached to the MSA when the Final EIS/EIR is certified. The Parties agree that there could be off-Reservation

impacts to the County in the areas of emergency medical care and County health services and by this Agreement will mitigate the impacts as follows:

- a) Emergency Medical Care. The current MSA with the City of Richmond requires the Tribe to enter into a separate agreement with an ambulance provider. Through this Agreement, the Tribe agrees to contract with the County to provide emergency ambulance service to the Tribe. With respect to emergency visits to the County hospital, Doctors Medical Center, or any other hospital from Pt. Molate Project patrons and employees, the Tribe agrees to reimburse the County for actual costs of uncompensated ambulance service provided to Pt. Molate Project patrons or employees who are transported by the County's designated ambulance provider from the Pt. Molate Project site to the hospital. The Parties agree that reimbursements for any uncompensated emergency health service costs at the medical care facility provided to Pt. Molate Project patrons and employees is included in the compensation paid by the Tribe to the County as described in Section A.12(a) For the purposes of this Agreement, uncompensated costs are the amounts not paid by the patron, or employee, after appropriate billing and follow-up by County personnel, and after insurance billings, and negotiated rates for services have been accounted for. Billings to the Tribe pursuant to this Section 10 will be provided no less than quarterly.

11. Impacts of Problem Gambling

The Tribe will comply with the mitigation and improvement measures in the Mitigation Plan adopted by the City and the Tribe and attached to the MSA when the Final EIS/EIR is certified. Such mitigation will be enforceable by the City pursuant to the terms of the MSA.

In addition, the Tribe agrees to the following:

- a) Tribe's Responsible Gambling Program. Within three (3) months of the Pt. Molate Project Start Date the Tribe shall assure its Casino Manager ("Manager") adopts a comprehensive Responsible Gambling Program ("Program") to support the development of awareness and prevention programs for problem and underage gambling at the Casino. The Manager shall provide a copy of the Program to the County Health Officer for review and comment, and shall consider all comments received, and shall strive to improve the Program on a continuing basis.
- b) Coordination.
 - (1) County and Tribe shall each designate a representative for coordination of the County's Pathological Gambling Treatment Program with the Tribe's Responsible Gambling Program.
 - (2) Within three months of the Pt. Molate Start date, the two representatives shall meet to review opportunities for coordinating and for reviewing the effectiveness of the County's and the Tribe's programs. Additional meetings shall be scheduled quarterly or as determined by the representatives, for the purpose of ongoing coordination and continual improvement of the Parties' programs.

- c) County Social Services for Problem Gambling. The Draft EIS/EIR calls for two (2) health professionals to be employed by the County to treat problem gambling addiction. The County agrees to provide these additional professionals for gambling addiction prevention and treatment. Compensation to the County for County costs related to these professionals is included in the amounts described in Section A.12 (a).
- d) Tribe's Responsible Gambling Program Components. At a minimum, the Tribe's Responsible Gambling Program shall include the following:
- (1) The Casino shall provide information to its guests through signage, pamphlets, and an Internet website that describe the symptoms of problem gambling. Informational brochures shall be available throughout the Casino that discuss how a person knows that he or she has a gambling problem and the ramifications of such a problem in terms of family, friends and social obligations. The brochures shall provide a hotline number that is available to call 24 hours each day, including the Council on Compulsive Gambling of California's 24-hour free and confidential Helpline, which offers problem gamblers and their families' information and referral to self-help and professional services.
 - (2) All appropriate Casino employees shall receive training in the identification of problem gambling. Employees shall offer customers information about available problem gambling resources when signs of problem gambling are evident.
 - (3) The Casino shall maintain a Self-Exclusion Policy whereby patrons may request a halt to casino promotional mailings, check cashing privileges, and player club privileges. A patron may also request to be physically excluded from the Casino. Procedures shall be established that allow problem gamblers to assume the responsibility of excluding themselves from any form of gambling at the Casino. These procedures shall outline the steps involved in the initiation of a Self-Exclusion Form, and provide for the processing and retention of the Self-Exclusion Form, patron's return and patron's reinstatement process.
 - (4) The Casino shall maintain an Involuntary Exclusion Policy whereby a patron may be involuntarily subjected to the same provisions associated with the Self-Exclusion Policy, for purposes of preventing the patron's problem gambling.
 - (5) The Casino shall take special measures to prevent underage gambling including, at a minimum: (a) appropriate signage, detailing the age limit and possible penalties, shall be posted at all Casino entrance points; (b) Casino floor personnel shall be instructed to contact Casino Security when they suspect that a minor is gambling; and (c) Casino Security shall escort the minor from the Casino, and contact the appropriate law enforcement officials when warranted.
 - (6) The Casino shall provide training to all appropriate employees regarding the identification of intoxicated patrons gambling; shall adopt procedures to prohibit intoxicated persons from gambling at the Casino; and shall provide information to intoxicated gambling patrons regarding the dangers of intoxicated gambling, and available counseling and treatment resources.

- f) Support to California Council on Problem Gambling. Tribe shall also provide non-monetary support to the California Council on Problem Gambling, a California nonprofit public benefit corporation that:
- i. Conducts responsible gambling workshops for Casino employees;
 - ii. Staffs a 24 hour/day, 7 days/week "Problem Gambling Help Line" with live professional counselors who can provide first contact crisis intervention;
 - iii. Trains and certifies California Certified Gambling Counselors;
 - iv. Provides information on cost accessible programs for those with compulsive gambling problems; and
 - v. Maintains a "Speakers Bureau" of volunteers to help educate children and adults at schools and community service forums.

12. Compensation to the County

- a) Payments to the County in the Event of Class III Gaming. The Tribe recognizes that the County will incur costs associated with increased off-Reservation social and economic impacts and costs associated with increased public protection activities including costs of the County Sheriff, use of Detention facilities, and the costs of the District Attorney, Public Defender, and probation offices. Additionally, the County will incur costs associated with public health and its department of Employment & Human Services, including uncompensated emergency and medical care. While there are benefits accruing due to general employment increases in the County associated with the Pt. Molate Project, the County will also incur costs for additional expenses as a result of the Pt. Molate Project. In recognition of these costs, the Tribe will pay the County the annual sum of \$12 million, if the Tribe conducts Class III gaming (as defined in the IGRA) at the Casino and as such obtains a Compact from the State of California for public safety, fire fighters and responders, health, and social services related costs, and community benefit payments, commencing with the Pt. Molate Project Start Date, and payable for as long as this Agreement is in effect. Annual payment obligations under this provision will be on the quarterly payment schedule set forth in Section A of this Agreement.

- b) Payments to County - Class II Gaming Only. Tribes are not required to make payments to surrounding governments when only Class II gaming (as defined in the IGRA) is conducted. Nonetheless, the Tribe is willing to make such voluntary payments because of the Tribe's desire to prevent the County from incurring additional expenses as a result of the Pt. Molate Project. During any period in which the Tribe is operating the Casino without a Compact and as such only offers Class II gaming (as defined in the IGRA) as part of the Pt. Molate Project, the annual payments will be reduced to an annual amount equal to 25% of the amount referenced herein above, plus \$3 million, for a total

of \$6 million. With the exception of ambulance reimbursement payments described in Section 10 (a), the County agrees that the annual payments made under this provision shall be the only funding the County shall receive after the Pt. Molate Project Start Date from the Tribe while it conducts only Class II gaming. Annual payments under this provision will be on the quarterly payment schedule set forth in Section A of this Agreement.

(c) Public safety, health, and social services related Response Programs. In return for and as part of the annual payments by the Tribe required by this Section 12, the County will develop and implement a public safety, fire fighters and responders, health, and social services related response program to address the off-Reservation County service impacts that may result from the Pt. Molate Project. Subject to the sole discretion of the County Board of Supervisors, this program will address any or all of the following; increased level of public protection costs of the County Sheriff, fire fighters and responders, the District Attorney, Public Defender, probation or use of Detention facilities; health and social service concerns resulting from the Pt. Molate Project operations; increased demand for emergency response medical services; and increased potential for addiction to gambling.

(d) Uses of Payments Received from the Tribe. Notwithstanding any other provision in this Agreement, the use by the County of payments received from the Tribe pursuant to this Agreement is subject to the sole discretion of the County Board of Supervisors, with the exception of payments received for specific transportation mitigations required under the EIS/EIR or as further required in this Agreement, and the portion of each of the Tribe's annual payments which is designated as part of the community benefit payment to support the County health system as provided in 12 A (e). It is agreed between the Parties that \$7 million of each annual payment by the Tribe required by this Section 12 will be directed by the County for programs and services in West Contra Costa County, and that the remaining portion \$ 5 million will be used for programs and services throughout the County. Of these amounts, it is agreed that for seven years after the date of the first annual payment required by this section 12, (i), \$2 million per year will be directed to help support the County Hospital and clinics and (ii) \$2 million per year for seven years will be directed to health programs and services in West Contra Costa County, including County Clinics and Doctors Medical Center, and (iii) \$ 1 million per year for seven years for additional Deputy Sheriff patrols in the unincorporated areas of West Contra Costa County. Items (ii) and (iii) will be provided out of the \$ 7 million allocated for programs and services in West Contra Costa County. This Section does not apply if the Tribe's annual payments to the County are made pursuant to Section A.12 (b) above.

(e) Advance on Community Benefit Payments. Three advances on the first year's annual payment required by this Section 12 will be made from the Tribe to the County pending completion of project milestones as follows:

- i. \$1 million dollars upon the Tribe's receipt of a final, positive Indian Lands Determination from the United States, approving the Pt. Molate Project site as restored lands for the Tribe and all appeals of and challenges to

such determination being completed and favorably resolved in the Tribe's favor;

- ii. \$1 million dollars upon completion of the land into trust determination process culminating in the United States accepting the Pt. Molate Project site into trust on behalf of Guidiville for gaming purposes, as evidenced by a reservation proclamation by the United States and all appeals and challenges to such land into trust determination being completed and favorably resolved in the Tribe's favor; and
- iii. \$1 million upon the Department of the Interior and the California Legislature's approval of a Compact between the Tribe and the State of California approving Class III gaming at the Pt. Molate Project site.

Regardless of the above, the \$ 1 million dollar payments shall be made no later than the Pt. Molate Project Start Date. Except that if the Tribe cannot obtain a Compact prior to the Pt. Molate Project Start Date, then it shall not have to make the advance under (iii) before the Compact approval. Any payments made under this section will be deducted from the first annual payment(s) required by this Section 12 and due from the Tribe after the Pt. Molate Project Start Date.

(f) Additional Payments to Support County Health System if Credit is Granted Under Compact with the State. In its negotiation of the Compact, the Tribe shall seek for the Compact to provide full credits for all amounts to be paid by the Tribe to the County under this Agreement against the amounts to be paid by the Tribe to the State under the Compact. If, without increasing the amount required to be paid to the State under the Compact to reflect or in any way consider any payment under this Agreement, the State allows for a full credit of all amounts to be paid by Guidiville to the County under this Agreement against payments to be made by the Tribe to the State under the Compact to the County under this Agreement, then the Tribe shall make additional annual payments to the County under this Agreement up to a total of Ten Million Dollars (\$10,000,000) per year for so long as such Compact credit is in full force. These additional payments under this Agreement, if made, shall be used to support capital and operating financial needs of the County Health system, with expenditures by the County roughly split between West Contra Costa County and the County as a whole. The Tribe shall be obligated to make these additional payments only if the full value of the payments to be made to the County under this Agreement is credited against amounts that otherwise would be required to be paid by the Tribe to the State of California under the Compact. Therefore, the County will receive the additional payments contemplated in this subsection only if the Governor of the State of California is willing to give a credit against the amounts due under the Compact for the total of the annual payments described in Section A.12 (a) plus the additional payments contemplated in this subsection.

13. Reopener Provision. At any time after seven years after the Pt. Molate Project Start Date, upon written request by the County but no more frequently than every five years, the Parties shall undertake a joint analysis of the impacts of the Pt. Molate Project on the County's programs described in Section A.12 (b) relative to public safety, fire fighters and responders, health, and

human services and traffic and listed in Section A. (9)-(12). Based on that joint analysis, the County may request that the Tribe renegotiate one or more terms of this Agreement if and only if: (1) there has been a significant change in the off-reservation impact of any of the items described in Section A.12(b) relative to public safety, health, and human services and traffic and listed in Section A.(9)-(12); and (2) that such significant change either materially and adversely impacts the County to the extent that its annual costs exceed the total annual payments received by the County. If the Tribe and the County are not able to resolve such issues through negotiation, the County may proceed to arbitration of such issues under Section E of this Agreement. The results of arbitration as to this specific reopener provision, whether or not such arbitration results in an increase or a decrease of payments from the Tribe to the County will be binding on the Parties.

B. COUNTY JOB DEVELOPMENT

The MSA between the Tribe and City requires the Tribe to hire 40% of its Casino non-management operational employees from the City of Richmond at opening of the Casino. The Tribe will collaborate with the County to develop a project-specific first-source hiring plan, with a goal to source a total of 70%, inclusive of the 40% from the City under the City MSA, of Casino non-management operational employees from within the County at opening of the Casino. Each Party will bear its own costs in development of that plan. The County agrees that the sourcing of jobs from within the County would have significant economic benefits for the County from the direct, indirect, and induced jobs created by the Pt. Molate Project. To help effectuate this goal, the Tribe shall make three equal payments of \$50,000 to the County to pay for staffing at the Employment and Human Services Department, North Richmond Young Adult Empowerment Center concurrently with each of the advances to the County listed in Section 12(e)(i)-(iii).

C. COUNTY SUPPORT OF PROJECT

Based upon the County's review of 1) the Draft EIS/EIR and participation in the EIS/EIR process as a cooperating agency, 2) the details of the proposed Pt. Molate project facilities and programs including: (i) its ability to generate significant employment and economic development where there is a demonstrated great need, (ii) its unique location accessible by Interstate 580, the Richmond-San Rafael Bridge, Ferry Service, and proximity to BART, (iii) and the project's ability to provide community benefits above and beyond the mitigation that would normally be required, (3) the environmental mitigations and project enhancements identified in the Draft EIS/EIR, and 4) compensation related to public safety, fire fighters and responders, health, human services, traffic, job development and community benefits identified in this Agreement, the County will no longer oppose the Pt. Molate project or the Tribe's proposed land acquisition and will cease all efforts to oppose or intervene against the Tribe's project approvals or processes including the "Indian Lands Determination" and "Land into Trust" processes.

The County shall provide documentation, through letters, and/or other communications, that the County no longer opposes the Pt. Molate Project for the reasons stated above and now supports the Pt. Molate Project and its approval.

The County Board of Supervisors shall not authorize nor take any action concerning the Draft or Final EIS/EIR, or any other Pt. Molate Project approvals, excepting those consistent with this Agreement.

D. COMPACT COMPLIANCE

The Parties anticipate that the Compact will include provisions setting forth the Tribe's obligations to mitigate adverse off-reservation impacts of a gaming facility. It is anticipated that those provisions will be substantially similar to the requirements of NEPA and CEQA, with which the Tribe will have already complied. The County supports the current EIR/EIS process, and agrees not to advocate for a different set of analyses to be used to identify impacts and mitigations. The Parties agree that, to the fullest extent, the project EIR/EIS and this intergovernmental agreement will be used to address all off-reservation impacts to the County and to satisfy the mitigation obligations normally required as part of a Tribal-State Compact.

a) Agreement Between the Parties Regarding Compact Compliance.

- i. The Parties agree that the Pt. Molate Project is unique in that, unlike most other tribal projects, the Pt. Molate Project included a full NEPA and CEQA process led by BIA and the City, with the County as a cooperating agency which adequately analyzed all of the effects of the Pt. Molate Project on the off-reservation environment. The Parties agree that compliance with NEPA and CEQA are higher level environmental processes and require stronger commitments than that of a TEIR or similar document that could be required under the Compact process which would only describe the off-reservation impacts.
- ii. The Parties agree that if the Compact requires the Tribe to prepare a TEIR or to satisfy a Compact provision substantially similar thereto, the Final EIS/EIR will be submitted to satisfy the Compact requirements because, as described herein, the Final EIS/EIR will address every issue that would be addressed by a subsequent analyses of off-reservation impacts as required by the anticipated Compact. The County will not request any further analyses and will accept the adoption of the Final EIS/EIR as satisfying the requirements of the Compact. The County further agrees it will not submit comments to any TEIR or other document regarding off-reservation impacts required by the Compact. If the State requires a TEIR or other document substantially similar thereto, the County will not in any manner participate in the process, except the County agrees to provide, in writing, a letter to the Tribe and the State stating the County's support of the Pt. Molate Project and agreeing to the legal sufficiency of the Final EIS/EIR as the TEIR, or other required document substantially similar thereto. As reimbursement to the County for staff time reviewing the EIR and working with the Tribe on the Intergovernmental Agreement, the Tribe will provide \$60,000 to the County to be paid within sixty (60) day of entering into this Agreement.

- iii. The Parties agree that this Intergovernmental Agreement is the intergovernmental agreement between the Tribe and the County that may be required as part by the Tribal-State Compact.

E. DISPUTE RESOLUTION

1. Dispute Resolution Procedures. In an effort to foster good government-government relationships, and to assure that the Tribe is not unreasonably prevented from engaging in activities authorized under the anticipated Compact and benefiting there from, while assuring that the off-reservation environment is not negatively impacted by the construction and operation of the Pt. Molate Project, the County and the Tribe agree to the following:

- a) Arbitration. The Tribe and the County shall make their best efforts to resolve disputes that occur under this Agreement by good faith negotiations whenever possible. Disputes between the Tribe and the County shall first be subjected to a process of meeting and conferring in good faith in order to foster a spirit of cooperation and efficiency in the administration of the terms, provisions, and conditions of this Agreement as follows:

- (i) Either Party shall give the other, as soon as possible after the event giving rise to the concern, a written notice setting forth, with specificity, the dispute to be resolved.

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

- (iii) If after thirty (30) days following the “meet and confer” meeting identified above (or such longer period as may be agreed upon), the Parties are unable to resolve a dispute, either Party shall be entitled to send the other Party a written notice of impasse. Thereupon, the Parties shall have an additional ten (10) business days in which to resolve the subject dispute. If the dispute remains unresolved after the end of such 10-day period, then upon the written demand of either Party, the dispute shall be submitted to binding arbitration in accordance with this Section E. The Tribe and the County will submit to any arbitration proceeding as described in this Section E, and consent to the jurisdiction of the Superior Court of County of Contra Costa, State of California, solely for the purposes outlined in this Section E which is for the limited purpose of compelling arbitration in the event either Party refuses to arbitrate any dispute as contemplated herein, and for the enforcement of any decision and collection of any award of the arbitrator as contemplated herein. No other action may be maintained in any court of law and the Tribe does not consent to such. The disputes to be submitted to arbitration shall be limited to claims of breach or violation of this Agreement or to enforce the “Reopener Provision” pursuant to Section A.13. The arbitrator shall issue a written award regarding any disputes submitted to arbitration pursuant to this Agreement, within one hundred and twenty (120) days of the disputes or issues being first submitted to him or her.

- (iv) If the County asserts in writing, and provides the Tribe in such writing with a reasonable basis for such assertion, that the Tribe’s activities with respect to the Pt.

Molate Project are causing an imminent danger to the public health and safety, the Tribe agrees to cease such activity until the imminent danger to public health and safety has been abated. Nothing in this provision shall be cause for County to require the Tribe to discontinue operation of its Class III gaming activities.

(v) It is understood that certain disputes under this Agreement may take an extended period of time to resolve. Accordingly, the Parties agree that a dispute under this Agreement shall be deemed to be resolved, if the Parties meet and confer and develop a mutually satisfactory plan of action to resolve the subject dispute, taking into account the nature of any imminent danger to the public health and safety; provided, however, that nothing in this subsection shall limit the ability of either Party to invoke the provisions of this Section E with respect to any act or omission of the other Party under such plan of action.

- b) Arbitration Rules. Any dispute between the Tribe and the County arising out of or relating to this Agreement, or the breach thereof, shall be settled in accordance with the Commercial Arbitration Rules of the American Arbitration Association or "JAMS Streamlined Arbitration Rules," depending upon the forum utilized and the party demanding arbitration may select the forum. The arbitration shall be held in San Francisco. Each side shall bear its own costs, attorneys' fees, and one-half the costs and expenses of the arbitration, unless the arbitrator rules otherwise. The arbitration shall be administered by a single neutral arbitrator, unless the Tribe or the County objects in which case a panel of three arbitrators (one of whom is selected by each Party and a third arbitrator selected by the other two) will be named. The American Arbitration Association or JAMS shall recommend five (5) potential arbitrators from which the arbitrator shall be selected. The Parties shall make an attempt to mutually agree on the Arbitrator, but if the Arbitrator cannot be agreed upon, the Parties shall rank the recommended Arbitrators by order of preference to allow the American Arbitration Association or JAMS to make the best objective selection. The provisions of Section 1283.05 of the California Code of Civil Procedure shall apply; provided however, that no discovery authorized by that section may be conducted without leave of the arbitrator. The award of the arbitrator shall be in writing, give reasons for the decision, and shall be binding on both Parties.

Any Party to an arbitration in which an award has been made pursuant to this Agreement may petition the Contra Costa County Superior Court to confirm the award. The County and the Tribe expressly consent to be sued in such court for the purpose of confirmation of such an arbitration award which may include enforcement of the terms of this Agreement. No other action may be maintained in any court of law against the Tribe hereunder and Tribe does not consent to any such other action.

An arbitration award shall be limited to the purposes of arbitration stated in this Agreement.

(ii) No monetary damages shall be awarded other than those amounts determined to be payable under this Agreement. No additional damages for non-payment of such amounts may be awarded. (Awards may be made by the arbitrator for only such

payments, for injunctive relief, for specific performance, for enforcement of provisions of this Agreement, and for declaratory relief, all in respect only to this Agreement).

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

(iii) In no instance shall the Parties to this Agreement be entitled to consequential damages, punitive damages, or lost profits.

(iv) In no instance shall the Parties be entitled to any award or judgment that would explicitly require Tribe to discontinue operation of its Class III gaming activities.

(v) In any arbitration, and in any court action brought pursuant to this Agreement neither Party shall be entitled to recover attorney fees and costs, except as otherwise provided by law.

- b) c) No Waiver or Preclusion of Other Means of Dispute Resolution. This Section E shall not be construed to waive, limit, or restrict any remedy that is otherwise available to either Party, nor may this Section E be construed to preclude, limit, or restrict the ability of the Parties to pursue, by mutual written agreement, any other method of dispute resolution, including, but not limited to, mediation or utilization of a technical advisor to the Tribal and any State gaming agencies; provided that neither Party is under any obligation to agree to such alternative method of dispute resolution.

F. CONSENT TO JURISDICTION: LIMITED EXPRESS WAIVER OF SOVEREIGN IMMUNITY

1... The Tribe expressly and irrevocably waives its sovereign immunity from unconsented suit but only for the limited purpose as set forth in this Section F. permitting the commencement, maintenance and enforcement of arbitration by the County as set forth in Section E. Additionally, the Tribe does hereby unconditionally waive any claim or defense of exhaustion of tribal administrative or judicial remedies. This waiver shall commence as of the date of execution of this Agreement.

2.. The express waivers and consents provided for under this Section F shall extend only to civil actions authorized by this Agreement, including, but not limited to, actions to compel arbitration, any arbitration proceeding herein, any action to confirm or enforce any judgment or arbitration award as provided herein, and any appellate proceedings emanating from a matter in which an immunity waiver has been granted. Except as stated herein or elsewhere in this Agreement, no other waivers, or consents to be sued, either express or implied, are granted by either Party.

3. Notwithstanding any other provision of this Agreement, the Tribe's waiver of sovereign immunity shall not extend to permit claims against any trust lands or trust property or any assets of the Tribe other than revenues that the Tribe receives from operation of the Pt. Molate Project.

4. The Tribe does not waive any aspect of its sovereign immunity with respect to actions by third parties or actions not arising under this Agreement. This waiver is granted only to, and inures solely to the direct benefit of, the County and not to any other individual or entity. This limited waiver of sovereign immunity shall also not be construed as a waiver of any immunity of any elected or appointed officer, official, member, manager, employee, or agent of Tribe.

G. NOTICES

a) All notices required by this Agreement will be deemed to have been given when made in writing and delivered or mailed to the respective representatives of County and Tribe at their respective addresses as follows:

For the Tribe:

Tribal Chair
Guidiville Band of Pomo Indians
P.O. Box 339
Talmage, CA 95481

For the County:

County Administrator
County of Contra Costa
651 Pine St., 10th Floor
Martinez, CA 94553

With a Copy To:

Rosette & Associates, PC
Attn: Little Fawn Boland
525 Market Street, 25th Floor
San Francisco, CA 94105

With a Copy to:

County Counsel
County of Contra Costa
651 Pine St., 10th Floor
Martinez, CA 94553

Black Oak Development
Attn: Michael Derry
P.O. Box 339
Talmage, California 95481

And an additional copy to:

Winehaven Partners LLC
Attn: James D. Levine
1900 Powell Street, 12th Floor
Emeryville, CA 94608

In lieu of written notice to the above addresses, any Party may provide notices through the use of facsimile machines provided confirmation of delivery is obtained at the time of transmission of the notices and provided the following facsimile telephone numbers are used:

To Tribe: Guidiville Band of Pomo Indians, Fax: (707) 462-9183
 Tribal Legal Counsel, Fax: (415) 438-0118
 Winehaven Partners, Fax: (510) 652-2246

To County: Chief Administrative Office, Fax: (925) 646-1353
County Counsel, Fax: (925) 646-1078

Any Party may change the address or facsimile number to which such communications are to be given by providing the other Party with written notice of such change at least fifteen (15) calendar days prior to the effective date of the change.

All notices will be effective upon receipt and will be deemed received through delivery if personally served or served using facsimile machines, or on the fifth (5th) day following deposit in the mail if sent by first class mail.

H. LEGAL PROVISIONS

1. Term of Agreement. The term of this Agreement commences on the date of execution and runs concurrently to the expiration of the term of the Compact. The Tribe shall have the right to terminate this Agreement for any reason if the Pt. Molate Project is abandoned or ceases to be open to the public or ceases to conduct gaming at the Pt. Molate Project.

2. No Third Party Beneficiaries. This Agreement including the Section F Waiver of Sovereign Immunity is not intended to, and shall not be construed to, confer a benefit on any third Party or create any right or remedy for a third party to bring an action to enforce any of its terms of this Agreement.

3. Amendments. This Agreement may be amended only by written instrument duly signed and executed by the County and the Tribe.

4. Waiver. The waiver by either Party or any of its officers, agents or employees, or the failure of either Party or any of its officers, agents or employees to take action with respect to any right conferred by, or any breach of any obligation or responsibility of this Agreement, will not be deemed to be a waiver of such obligation or responsibility, or subsequent breach of same, or of any terms, covenants or conditions of this Agreement, unless such waiver is expressly set forth in writing in a document signed and executed by the appropriate authority of the County or of the Tribe.

5. Authorized Representatives. The persons executing this Agreement on behalf of the Parties hereto affirmatively represent that each has the requisite legal authority to enter into this Agreement on behalf of their respective Party and to bind their respective Party to the terms and conditions of this Agreement. The persons executing this Agreement on behalf of their respective Party understand that both Parties are relying on these representations in entering into this Agreement. County's Board of Supervisors has expressly authorized the Chair of the Board of Supervisors to execute this Agreement on behalf of the County.

6. Successors in Interest. The terms of this Agreement will be binding on all successors in interest of each Party.

7. Severability. The provisions of this Agreement are severable, and the adjudicated invalidity of any provision or portion of this Agreement shall not in and of itself affect the validity of any other provision or portion of this Agreement, and the remaining provisions of the

Agreement shall remain in full force and effect. If a court of competent jurisdiction determines that a provision of this Agreement is invalid or unenforceable, then the Parties agree to promptly use good faith efforts to amend this Agreement to reflect the original intent of the Parties in accordance with applicable law. If the Parties are unable to reach agreement regarding such an amendment, the Parties will resolve the dispute in accordance with the Dispute Resolution Section of this Agreement.

8. Construction of Agreement. This Agreement shall be construed and enforced in accordance with the laws of the United States, the Tribe and the State of California, and County ordinances wherein explicitly referenced. The Recitals contained in pages 1 – 4 are part of this Agreement and are incorporated by reference.

9. Force Majeure. In the event of a forced delay in performance by either the Tribe or the County due to causes beyond the reasonable control of that Party, including but not limited to fire, floods, drought, catastrophic weather events or other natural disasters, epidemics, embargoes, war, acts of war (whether or not war is declared), insurrections, riots, civil commotion, strikes, lockouts or other labor disturbances, acts of God, acts or inaction by the other Party its employees or agents, unusual delay in transportation, or unavailability of materials, the time for performance shall be extended for the period of the forced delay.

10. Acknowledgement by County. The County acknowledges and agrees that the matters addressed in this Agreement are the only issues required of the Tribe in connection with the Tribe's development and operation of the Pt. Molate Project.

11. Entire Agreement.

(a) This Agreement constitutes the entire agreement between the County and the Tribe and supersedes all prior negotiations, representations, or other agreements, whether written or oral.

(b) In the event of a dispute between the Parties as to the language of this Agreement or the construction or meaning of any term hereof, this Agreement will be deemed to have been drafted by the Parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any Party to this Agreement.

12. Counterparts. This Agreement may be executed in counterparts, such that original signatures may appear on separate pages and when bound together all necessary signatures shall constitute an original. Facsimile signature pages transmitted to other parties to this Agreement shall be deemed the equivalent to original signatures.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year above set forth.

TRIBE:

Guidiville Band of Pomo Indians, a
federally recognized Indian Tribe

By:

Merlene Sanchez, Chair

COUNTY:

County of Contra Costa, a political
subdivision of the State of California

By:

Chair of the Board of Supervisors

APPENDIX A

Intersections Subject to Possible Re-examination and Further Study

In North Richmond Area

Market Avenue at Third Street

Chesley Avenue at Third Street

Pittsburg Avenue at Central Avenue

Pittsburg Avenue at Third Street

Goodrick Avenue at Parr Boulevard

Parr Boulevard at Third Street

Brookside Avenue at Third Street

In El Sobrante Area (Intersections Identified by WCCTAC Study)

San Pablo Dam Road at Appian Way

San Pablo Dam Road at El Portal Drive

Impacts to Roadways to be analyzed-

Brookside Drive to Richmond Parkway

Pittsburg Avenue

Parr Boulevard