

# Olivehurst Public Utility District



## Agenda Item Staff Report

**Meeting Date: April 19, 2018**

### **Item description/summary:**

**Consider approving MOU between OPUD and Enterprise Rancheria for fire service calls and emergency medical services to the proposed casino on 40 Mile Road.** This item has been discussed by the ad-hoc committee assigned to the item along with other local agencies. The agreement involves providing emergency medical services and fire suppression services to the casino for two phases: a construction phase that lasts approximately 15 months and an operational phase thereafter for a period of ten years with provisions for two five-year extensions. All services will be rendered from current OPUD facilities (fire station) within the District. To ensure that OPUD taxpayers do not bear any costs for these services we will track all calls and services. The contract covers District administrative costs as well and, regardless of how few calls the fire department responds to, the identified fixed standby costs will still be paid by the casino. The contract provides for annual "true-ups" where cost overruns above contractual amounts will be paid by the casino. This agreement should bring some economy of scale benefits with increased operational efficiency to the fire department.

### **Fiscal Analysis:**

No cost to the Olivehurst taxpayers for these services.

### **Employee Feedback**

Very positive

### **Sample Motion:**

Move to approve the MOU between OPUD and the Enterprise Rancheria for fire service calls and emergency medical services.

Prepared by:

John Tillotson, P.E., General Manager

## OVERVIEW OF MEMORANDUM OF UNDERSTANDING

### SUMMARY OF BASIC MOU INFORMATION

A summary of the basic terms of this MOU is as follows:

1. **Effective Date.** The Effective Date of the MOU is April 20, 2018, contingent on receipt of required approvals.
2. **Parties.** OPUD and Estom Yumeka Maidu Tribe of the Enterprise Rancheria.
3. **Facility.** Tribe will construct a Class III gaming facility and 8-story hotel with 170 rooms, subject to periodic inspections as requested by OPUD Fire Department.
4. **Location.** Approximately 4 miles southeast of the Community of Olivehurst, on the eastern side of Forty Mile Road approximately 1 mile south of the intersection of Forty Mile Road and State Route 65, with an expected street address of 3317 Forty Mile Road (on Yuba County trust land).
5. **In Accordance with:** 12/17/02 MOU between Tribe and County of Yuba.
6. **Scope:** Fire and Emergency Medical Services only, no Ambulance service.
7. **Term:** 10 years, renewable for up to two additional 5-year terms
8. **Estimated # and Price of Fire Service Calls:**
  - a. During 15-month Construction Phase: 2 per month @ \$461.78 per call
  - b. During Operations Phase: 4-6 per year @ \$1,534.06 per call
9. **Estimated # and Price of Emergency Medical Services Calls:**
  - a. During 15-month Construction Phase: 2 per month @ \$461.78 per call
  - b. During Operations Phase: 250 per year @ \$1,534.06 per call
10. **Annual Adjustments @** CPI with adjustments for increased patronage
11. **True-Up Process** at end of Construction Period and at end of each year
12. **Dispute Resolution:** Mediation / Arbitration / Confirmation of Decision
13. **Limited Waiver of Sovereign Immunity**
14. **Authority to Bind Tribe / General Council Resolution:** Attached as Exhibit B
15. **Other Required Approvals (Yuba County / LAFCo if required):** Upon execution of MOU

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE OLIVEHURST PUBLIC UTILITY DISTRICT  
AND THE ESTOM YUMEKA MAIDU TRIBE OF THE ENTERPRISE RANCHERIA**

This MEMORANDUM OF UNDERSTANDING (this “**MOU**”) is dated for convenience \_\_\_\_\_, 2018, and effective on the date described in Section 15 below (“**Effective Date**”), between the OLIVEHURST PUBLIC UTILITY DISTRICT, a public utility district formed and operating under California Public Utilities Code sections 15501 et seq. (the “**District**”) and the ESTOM YUMEKA MAIDU TRIBE OF THE ENTERPRISE RANCHERIA, a federally recognized Indian tribe listed in the Federal Register as the Enterprise Rancheria of Maidu Indians of California (the “**Tribe**”). (The capitalized terms shall have the meanings set forth in Section 1 below.)

**RECITALS**

- WHEREAS: The Tribe is the beneficial owner of 40 acres of land in Yuba County, California (the “**County**”) held by the United States of America in trust for the Tribe, located approximately 4 miles southeast of the Community of Olivehurst, on the eastern side of Forty Mile Road approximately one mile south of the intersection of Forty Mile Road and State Route 65, with an expected street address of 3317 Forty Mile Road, as generally located as indicated in Exhibit A attached hereto and as specifically located as indicated in Exhibit A-1 attached hereto (“**Yuba Site**”); and
- WHEREAS: The Tribe intends to construct and operate a gaming facility and hotel on the Yuba Site to promote tribal economic development, self-sufficiency and the health and welfare of its members; and
- WHEREAS: Before the Yuba Site was taken into trust, the Bureau of Indian Affairs of the United States Department of the Interior prepared a final environmental impact statement (“**EIS**”) pursuant to NEPA and issued a Record for Decision approving the gaming facility and hotel proposed by the Tribe and analyzed in the EIS; and
- WHEREAS: The Secretary of the Interior has issued procedures for the Tribe to conduct class III gaming activities on the Yuba Site pursuant to IGRA (“**Secretarial Procedures**”); and
- WHEREAS: Consistent with the Record of Decision and Secretarial Procedures, the Tribe intends to design, construct and operate on the Yuba Site a resort, including a class III gaming facility with approximately 1,500 Gaming Devices, an eight-story hotel with 170 rooms, and outdoor parking, the concept of which is substantially indicated in Exhibit A-2 attached hereto (“**Project**”); and
- WHEREAS: The Tribe will design and construct the Project in accordance with the applicable building codes, fire codes, plumbing, electrical and related codes applicable in the County in accordance with Chapter 5 of the Enterprise Gaming Facility Standards Statute adopted by the Tribe on September 11, 2015 as required under the

Memorandum of Understanding Between the Tribe and the County dated December 17, 2002 (“County MOU”); and

WHEREAS, The Tribe will also design and construct the Project to meet or exceed the California Building Code and the California Public Safety Code applicable to the County, as set forth in Titles 19 and 24 of the California Code of Regulations, as required under the Secretarial Procedures; and

WHEREAS, As provided in the Secretarial Procedures: (i) the Project will be subject to inspection by project inspectors employed by the Tribe that possess the same qualifications and certifications as project inspectors utilized by the County; (ii) the State Gaming Agency is entitled to designate and have one or more qualified representatives, which may include local fire suppression entities, present during the inspection to be carried out by an independent expert hired by the Tribe not less than thirty (30) days before the commencement of gaming activities; and (iii) all Project design and construction calculations, plans and specifications that form the basis for the construction, and those depicting the as-built gaming facility, will be made available to the State Gaming Agency for inspection and copying upon its request; and

WHEREAS: Mitigation measures set forth in the Record of Decision, the County MOU and the Secretarial Procedures require the Tribe, prior to the opening to the public of the Project or any other any facility located on the Yuba Site, to enter into a binding agreement with a fire protection district located within the County of Yuba, or to make other private arrangements in lieu of an agreement with an existing fire protection district, for the provision of fire and emergency medical services both on the Yuba Site as well as any emergency medical services arising out of the operation of the Tribe’s business operations on the Yuba Site. The fire district agreement or other private arrangement will ensure that there is an adequate level of fire protection and emergency medical services available in accordance with any and all federal, state, and/or local standards applicable; and

WHEREAS: The District currently provides fire and emergency medical services to a service area near the Yuba Site; and

WHEREAS: The Tribe has requested the District to provide fire and emergency medical services for the Project; and

WHEREAS: The District is authorized to provide fire and emergency medical services for the Project pursuant to sections 16463 and 16463.5 of the California Public Utilities Code, sections 13862, 13863 and 13878 of the California Health and Safety Code; and

WHEREAS: The Tribe is authorized to engage a third party such as the District to provide fire and emergency medical services for the Project pursuant to the Tribe’s inherent sovereignty over its members and territory; and

WHEREAS: The Tribe estimates that (i) during the approximately 15-month Construction Period it will require approximately two (2) Fire Services Calls and two (2) Emergency Medical Services Calls per month to the Project (for a total of 30 Fire Services Calls and 30 Emergency Medical Services Calls, respectively), and (ii) during the Operations Period the Tribe will require approximately four to six (4 to 6) Fire Services Calls per year and approximately two hundred fifty (250) Emergency Medical Services Calls per year to the Project.

NOW THEREFORE the parties hereby agree as follows:

**1. Definitions**

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

“**Agreement**” or “**MOU**” is defined in the Preamble and means this Memorandum of Understanding.

“**Applicable Codes**” means the California Building Code and the California Public Safety Code applicable to the County, as set forth in titles 19 and 24 of the California Code of Regulations, as those regulations may be amended during the term of this MOU, including, but not limited to, codes for building, electrical, energy, mechanical, plumbing, fire and safety.

“**Construction Period**” means the time period commencing with the Start Date and ending on the Opening Date.

“**County**” is defined in the Recitals and means the County of Yuba, a subdivision of the State.

“**County MOU**” is defined in the Recitals and means the Memorandum of Understanding between the Tribe and the County dated December 17, 2002.

“**Design and Building Plans**” means the design and construction calculations, and plans and specifications that form the basis for the construction of any or all of the Project.

“**District**” is defined in the Preamble and means the Olivehurst Public Utility District, a public utility district formed and operating under California Public Utilities Code sections 15501 *et seq.*

“**EIS**” as referenced in the Recitals means the final environmental impact statement prepared by the Bureau of Indian Affairs of the United States Department of the Interior pursuant to NEPA for the acquisition of approximately 40 acres of land located in the County in trust for the Tribe for a gaming facility and hotel fee-to-trust acquisition project, noticed on August 6, 2010 (75 Fed. Reg. 47618).

“**Emergency Medical Services Call**” means a request to provide triage or preliminary

emergency medical services before an ambulance or other transport vehicle arrives at the site, consistent with, and subject to, all provisions of California law including, without limitation, availability, first-come first served, non-discrimination, and Mutual Aid. Without limiting the foregoing, Emergency Medical Services Call *includes* coordinating the transfer of patients, at the injury site, to the Tribe's designated ambulance provider, but expressly *excludes* transporting a patient to the next point of definitive care, which transportation and subsequent medical care will be provided in accordance with the Tribe's separate contract with Bi-County Ambulance.

**“Fire Services Call”** means a response to a notification of (or request to address) a potential fire or dangerous situation likely to cause a fire if unaddressed, consistent with, and subject to, all provisions of California law including, without limitation, availability, first-come first served, non-discrimination, and Mutual Aid.

**“Force Majeure”** is defined in Section 7.

**“Gaming Device”** means any slot machine within the meaning of article IV, section 19, subdivision (f) of the California Constitution or as otherwise defined in the Secretarial Procedures.

**“Governing Requirements”** means non-statutory requirements regarding the Tribe's design, construction and operation of the Project, including without limitation the Record of Decision, Secretarial Procedures, the County MOU, and this MOU.

**“IGRA”** means the Indian Gaming Regulatory Act of 1988 (18 U.S.C. §§ 1166-1168 and 25 U.S.C. § 2701 *et seq.*), and any amendments thereto, as interpreted by all regulations promulgated thereunder.

**“Inspectors”** means the qualified plan checkers, review firms, and project inspectors hired by the Tribe for the Project.

**“Mutual Aid”** means the providing of resources, facilities or services to prevent or combat any type of disaster or emergency, including voluntary, obligatory, by oral or written agreement, under a state of war emergency,” “state of emergency” or “local emergency,” or as otherwise provided in accordance with the “Master Mutual Aid Agreement” (all as defined in Government Code section 8615 to 8619.5), the California Fire Service and Rescue Emergency Mutual Aid Plan in effect from time to time, or otherwise.

**“NEPA”** means the National Environmental Policy Act of 1969, 42. U.S.C. §§ 4321-4347.

**“Opening Date”** means the date on which the Tribe commences commercial gaming operations open to the public on the Yuba Site.

**“Operations Period”** means the time period commencing with the Opening Date and ending on expiration or termination of this MOU.

**“Per Annum Payments”** means the advance payments required to be paid by the Tribe to the District under this MOU to compensate the District for being available to respond to Fire Services Calls and Emergency Medical Services Calls to the Project.

**“Per-Emergency Medical Services Call Amount”** is the cost allocated to each Emergency Medical Services Call, as described in Section 4 below.

**“Per-Fire Services Call Amount”** is the cost allocated to each Fire Services Call, as described in Section 4 below.

**“Project”** is defined in the Recitals and means the design, construction and operation on the Yuba Site of a resort, including a class III gaming facility with approximately 1500 Gaming Devices, an eight-story hotel with 170 rooms, and outdoor parking, the concept of which is substantially indicated in Exhibit A-2 attached hereto.

**“Quarter”** means any one of the following three-month periods (or portions thereof) following the Start Date or Opening Date, as applicable: January through March, April through June, July through September, and October through December.

**“Record of Decision”** means the record of decision issued by the Bureau of Indian Affairs of the United States Department of the Interior pursuant to NEPA, which approved the proposed action in the EIS and was noticed on December 3, 2012 (77 Fed. Reg. 71612) and January 2, 2013 (78 Fed. Reg. 114).

**“Secretarial Procedures”** is defined in the Recitals and means the procedures issued on August 12, 2016, by the Secretary in lieu of a tribal-state compact pursuant to the remedial provisions of IGRA, 25 U.S.C. § 2710(d)(7), governing the conduct of class III gaming by the Tribe on the Yuba Site, or any Tribal-State Compact that the Tribe may enter into with the State and which is approved pursuant to IGRA.

**“Secretary”** means the Secretary of the United States Department of the Interior.

**“Services Calls”** means Fire Services Calls and Emergency Medical Services Calls.

**“Special Event”** means any event or circumstance on the Yuba Site during the Operations Period where the Tribe, a Project operator or event organizer reasonably anticipates the attendance or participation of 25% (or such other percentage increase as the parties may agree upon in writing from time to time) or more attendees or participants than would reasonably be expected at that time and location on the Yuba Site in the absence of the event or circumstance.

**“Start Date”** means the date that on which construction of the Project commences.

**“State”** means the State of California.

“Tribe” is defined in the Preamble and means the Estom Yumeka Maidu Tribe of the Enterprise Rancheria, a federally recognized Indian tribe listed in the Federal Register as the Enterprise Rancheria of Maidu Indians of California.

“Yuba Site” is defined in the Recitals and means the approximately forty (40) acres of land located in Yuba County which is owned by the United States and held in trust for the Tribe which is generally located as indicated in Exhibit A attached hereto and as specifically located as indicated in Exhibit A-1 attached hereto.

## 2. Additional Matters Relating to the Project.

### (a) Project Development.

The Tribe will provide the District with Project design and construction schedules, including without limitation at least thirty (30) days advance notice of any change to the Start Date and Opening Date. Prior to the Start Date, the Tribe will install on the Yuba Site, at its sole cost and expense, at least one 600,000 gallon water tank to be exclusively dedicated for on-site fire water storage requirements, or such other on-site fire storage as is required to provide at least 1,500 gallons per minute fire flow. Prior to the Start Date, the Tribe must also provide access and ingress to the Project via a loop road which is at least 32 feet wide with two lanes, each with a minimum width of 16 feet.

(b) Additional Tribe Obligations. The Tribe agrees with the District that it will comply with the Tribe’s obligations under Section 3, paragraphs (3) and (4) of the County MOU, and 6.4.2 of the Secretarial Procedures. Nothing herein shall be construed as a submission of the Tribe to the jurisdiction of the District; however, any violations of the foregoing shall be treated as a violation of this Agreement. Additionally, the Tribe shall:

- i. Allow inspection by District inspectors during construction upon at least 48 hours advance notice, and permit District inspectors to accompany the County on any comparable County inspections under the County MOU.
- ii. Allow access by District fire inspectors or designees, during normal hours of operation upon at least 24 hours advance notice, to assess compliance with the standards, and permit District inspectors to accompany the County on any comparable County inspections under the County MOU.
- iii. Maintain the Design and Building Plans depicting the as-built Project, which shall be available to the District for inspection and copying by the District.
- iv. Provide the District with such information as the District may reasonably request to efficiently plan and anticipate the need for performing Services Calls under this MOU.

### (c) Project Changes.



Nothing herein shall limit the Tribe's right to alter, expand, or otherwise modify the Project, subject to compliance with Applicable Codes and Governing Requirements.

**3. Services.**

(a) Fire Services.

From and after the Start Date, the District shall respond to all Fire Services Calls to the Project and any persons therein at the Yuba Site. The District shall provide such fire services to the Project on a non-discriminatory basis as compared with any other sites, and subject to all obligations of the District to provide fire or other services to other areas as required by California law and Mutual Aid.

(b) Emergency Medical Services.

From and after the Start Date, District shall respond to all Emergency Medical Services Calls to the Project and any persons therein at the Yuba Site. The District shall provide such emergency medical services to the Project on a non-discriminatory basis as compared with any other sites, and subject to all obligations of the District to provide similar services to other areas as required by California law.

(c) Inspection Services.

At least thirty (30) days prior to the Opening Date and biennially thereafter, District fire service personnel shall be given at least ten (10) days advance notice of and be permitted to attend the inspection conducted by the Tribe's independent expert to certify that the gaming facility meets a reasonable standard of fire safety and life safety pursuant to section 6.4.2(j) of the Secretarial Procedures. Additionally, at the request of the Tribe, the District shall provide plan check and inspection services for the Project during the Operations Period on an hourly basis at the rate specified in Section 4(b) below.

(d) Locations from Which District Performs Under this MOU.

The parties anticipate that the District will respond to all Fire Services Calls and Emergency Medical Services Calls from its regular facilities in Olivehurst.

(e) Estimated Response Times.

The parties anticipate that the District will respond to Fire Services Calls and Emergency Medical Services Calls within the following parameters:

- i. Dispatch: 5-7 minutes
- ii. Response: Between 9 to 11 minutes after dispatch.

These Response Times are estimates and may vary depending on specific circumstances.

**4. Payments.**

(a) Per Annum Payments.

i. For the Construction Period, based on an estimate of two (2) Fire Services Calls per month (30 for the entire 15-month Construction Period), the Tribe shall pay District a **“Per-Fire Services Call Amount”** of \$461.78 per Fire Services Call to compensate the District to be available to respond to Fire Services Calls to the Project, subject to adjustment as otherwise provided in this MOU.

ii. For the Construction Period, based on an estimate of two (2) Emergency Medical Services Calls per month (30 for the entire 15-month Construction Period), the Tribe shall pay District a **“Per-Emergency Medical Services Call Amount”** of \$461.78 per Emergency Medical Services Call to compensate the District to be available to respond to Emergency Medical Services Calls to the Project, subject to adjustment as otherwise provided in this MOU.

iii. For the Operations Period, based on an estimate of six (6) Fire Services Calls per year, the Tribe shall pay District a **“Per-Fire Services Call Amount”** of \$1,534.06 per Fire Services Call to compensate the District to be available to respond to Fire Services Calls to the Project, subject to adjustment as otherwise provided in this MOU.

iv. For the Operations Period, based on an estimate of two hundred fifty (250) Emergency Medical Services Calls per year, the Tribe shall pay District a **“Per-Emergency Medical Services Call Amount”** of \$1,534.06 per Emergency Medical Services Call to compensate the District to be available to respond to Emergency Medical Services Calls to the Project, subject to adjustment as otherwise provided in this MOU.

(b) Hourly Rate.

The District shall provide plan check and inspection services at a rate of \$40 an hour as may be requested by the Tribe from time to time.

(c) Payment Terms.

i. General.

At least 30 days before the commencement of each Quarter during which Per Annum Payments are required, the Tribe shall pay the total estimated cost of the Fire Services Calls and Emergency Medical Services Calls to the Project for that Quarter, calculated as described in Section 4(a) above, or as otherwise adjusted in accordance with this MOU. If the Start Date or Opening Date occurs during a Quarter, the payment for the first Quarter of the Construction Period or Operations Period, as applicable, shall be due 30 days in advance of the Start Date or Opening Date, as applicable, and shall be prorated for the number of days remaining in that initial quarter. The currently estimated total payment for Fire Services Calls and Emergency Medical Services

Calls during the Construction Period is \$60,187. The currently estimated annual payment for the first four full Quarters of the Operations Period is \$392,719..

ii. True-up at End of Construction Period.

Within 30 days following the end of the Construction Period, the District shall notify the Tribe of the total number of Fire Services Calls and Emergency Medical Services Calls during the Construction Period. In the event the aggregate number of Fire Services Calls and Emergency Medical Services Calls exceeds the estimated aggregate number of such calls set forth in Sections 4(a)(i) and 4(a)(ii) above, the Tribe shall pay the District \$461.78 for each such excess Services Call. In the event the aggregate number of Fire Services Calls and Emergency Medical Services Calls was less than the estimated aggregated number of such calls set forth in Sections 4(a)(i) and 4(a)(ii) above, the District shall credit \$461.78 for each such Services Call; provided, that regardless of the actual number of Services Calls, the District shall be allowed to retain (and shall not need to credit) from the amounts paid by the Tribe, \$35,000, representing the District's estimated overhead and stand-by costs during the Construction Period. Any amount to be credited by the District to the Tribe under this subsection shall be credited against the Tribe's currently estimated total payment to the District for the first calendar year (or portion thereof) of the Operations Period and applied to the payment due in the next upcoming Quarter.

iii. True-up At End of Each Year During Operations Period.

Within 30 days following the end of each calendar year during the Operations Period (including partial years for the first and last years of the Operations Period), the District shall notify the Tribe of the total number of Fire Services Calls and Emergency Medical Services Calls during that year. In the event the aggregate number of Fire Services Calls and Emergency Medical Services Calls exceeds the estimated aggregate number of such calls set forth in Sections 4(a)(iii) and 4(a)(iv) above, the Tribe shall pay the District \$1,534.06 (as otherwise adjusted in accordance with this MOU) for each such excess Services Call. In the event the aggregate number of Fire Services Calls and Emergency Medical Services Calls was less than the estimated aggregated number of such calls set forth in Sections 4(a)(iii) and 4(a)(iv) above, the District shall credit the unused portion (as otherwise adjusted in accordance with this MOU) for each such unused Services Call; provided, that because the Construction Period Per-Fire Services Call Amounts and Per-Emergency Medical Services Call Amounts are intended to reflect all of the District's actual estimated costs for additional personnel, equipment, standby-by time and other items to be able to respond to Fire Services Calls and Emergency Medical Services Calls as provided in this MOU, and regardless of the actual number of Services Calls, the District shall need to credit to the Tribe *only* the estimated portions of the Per-Fire Services Call Amounts and Per-Emergency Medical Services Call Amounts attributable to unused equipment and other hard costs, including engine use fees, depreciation, gasoline, materials and consumables. Any amount to be credited by the District to the Tribe under this subsection shall be credited against the Tribe's currently estimated total payment to the District for the next calendar year (or portion thereof) of the Operations Period and applied to the payment due in the next upcoming Quarter.

iv. Operations Period Adjustments.

On an annual basis, the parties shall adjust the estimated numbers of Fire Services Calls and Emergency Medical Services Calls and the estimated Per-Fire Services Call Amount and Per-Emergency Medical Services Call Amount for the upcoming calendar year period based on actual Project operations and experience, together with the anticipated increase, if any, of patronage to the Project. The estimated Per-Fire Services Call Amount and Per-Emergency Medical Services Call Amount shall increase each year by at least the corresponding increase to the Consumer Price Index for Sacramento, California, as issued by US Department of Labor's Bureau of Labor Statistics, or successor index.

v. Invoicing for Inspection Services.

The District shall invoice the Tribe for plan check and inspection services provided on an hourly basis and the Tribe shall pay such invoice within 30 days.

vi. Retention of Other Amounts.

Except to the extent prohibited by applicable law, the District may retain (without crediting the Tribe) any amounts received from Cal Fire or any other governmental entity for performing any fire or emergency medical services for the Tribe.

**5. Special Events and Additional District Standby Costs.**

- (a) General. As proper planning for Special Events may require the District to maintain additional standby personnel and equipment, and the costs of such additional resources may not be taken into account in determining Per-Emergency Medical Services Call Amounts and Per-Fire Services Call Amounts, this Section contains the parties' additional rights and obligations regarding Special Events at the Yuba Site. Nothing in this Section will alter or adjust the actual amounts payable for an Emergency Medical Services Call Amount and Per-Fire Services Call Amount, including in connection with a Special Event.
- (b) Procedures. The Tribe (or designee) will give reasonable advance notice (generally at least five calendar days, but more if reasonably available) to an OPUD email address or facsimile number designated by OPUD's Fire Chief from time to time of (i) any Special Event, and (ii) the anticipated additional number of attendees or participants. As promptly as reasonably possible thereafter (generally within 48 hours), OPUD will respond (to the sending email address or facsimile number, or as otherwise identified in the Tribe's notice) with (x) an identification of OPUD's recommended additional standby personnel, equipment and other resources for the Special Event, and (y) the itemized costs thereof. As promptly as reasonably possible thereafter (generally within 24 hours), the Tribe (or designee) will respond (in the same manner as its original notice to OPUD, unless otherwise requested in the OPUD proposal) with an approval or rejection of the recommendation. Alternatively, the parties may negotiate the terms of any proposal until mutually approved.

- (c) Payment for Approved Special Event Standby Resources. The Tribe will pay the amounts identified on an approved Special Events proposal within 10-days of the Tribe's approval. To avoid double payments, OPUD's *additional* standby costs in connection with approved Special Events proposals will *not* be taken into account in determining Per-Emergency Medical Services Call Amounts and Per-Fire Services Call Amounts (although OPUD's regular standby costs, and costs for any actual Special Event Emergency Medical Services Call or Fire Services Call, will be included).
- (d) OPUD's Use of Standby Resources. OPUD will use good faith efforts to reserve any additional approved Special Events standby resources for the Special Event, and will use them for other Emergency Medical Services Calls or Fire Services Calls only if otherwise required by California law including, without limitation, availability, first-come first served, non-discrimination, and Mutual Aid.

**6. Funding Mechanism.**

This MOU only creates a funding mechanism for the provision of fire and emergency medical services and related plan check and inspection services for the Facility. The District acknowledges and agrees that the District does not exercise jurisdiction over the Yuba Site or have legal authority to deliberate on, approve, deny, or otherwise exercise judgment over any aspect of the Facility, including without limitation the Tribe's gaming operations. The Tribe represents that this MOU is *not* a "management contract" as defined in IGRA. Further, nothing in this MOU contemplates or commits the District to any project which may result in a potentially significant physical impact on the environment.

**7. Term.**

This MOU shall have a term of ten (10) years from the Start Date and may be renewed by the parties' mutual agreement for up to two (2) additional five (5)-year terms.

**8. Suspension Events.**

If, due to Force Majeure (as hereinafter defined), an act of God, or valid business considerations, a material portion of the gaming operations previously conducted by the Tribe on the Yuba Site are suspended or terminated, the parties' obligations under this MOU shall be suspended as of the date of such suspension or termination until such time as such operations are resumed. For the purposes of this Section, the term "**Force Majeure**" shall include, without limitation, the following: earthquake; flood; fire; other natural disasters; changes in law, regulation or governmental policy that has a material adverse effect on the gaming revenues of the Facility; riots; war; or terrorism. Nothing in this Section shall reduce the Tribe's liability for contributions or other payments which become due and payable prior to the date such gaming operations are suspended or terminated. Nothing herein will limit the District's rights and obligations under Mutual Aid or other California laws.

**9. Indemnification.**

As additional consideration for the District's agreement to respond to Service Calls under this MOU, the Tribe shall defend, indemnify and hold harmless the District and each of its board members, officers, employees, departments, officials, representatives, inspectors, contractors, consultants and agents from and against all claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to claims and fines of regulatory agencies and attorney's fees and consultant's fees, directly or indirectly arising out of, connected with or resulting from the performance or nonperformance of fire and emergency medical services contemplated under this Agreement, except to the extent caused by the sole negligence, gross negligence or intentional misconduct of the District and other identified parties.

## **10. Dispute Resolution.**

The parties agree to the dispute resolution procedures set forth in this Section 9.

### **(a) Meeting and Mediation.**

The parties shall make their best efforts to resolve any dispute specifically arising under this MOU by good faith negotiations whenever possible. The parties shall meet and confer in good faith to resolve any disputes arising under the MOU or concerning its terms or administration as follows:

i. A party shall give the other party, as soon as possible after the dispute arises, written notice setting forth, with specificity, the party's claims.

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

iii. If such dispute is not resolved to the satisfaction of the parties within 30 calendar days after the first meeting, then either party may request the dispute to be mediated. Mediation shall be confidential, non-binding and utilize the services of a mediator mutually acceptable to the parties and, if the parties cannot agree, a mediator selected by JAMS. The mediation shall be held at the JAMS office in Sacramento, California, or at such other location as is mutually agreeable to the parties. The cost of mediation shall be equally shared by both parties.

### **(b) Arbitration.**

If the dispute is not resolved to the satisfaction of the parties within either sixty (60) calendar days after the first meeting or forty-five (45) days after a request for mediation, then the parties may seek to have the dispute resolved by arbitration in accordance with the following procedures:

i. Upon the request of a party in writing, the dispute shall be submitted to binding arbitration in accordance with this subsection.

ii. The disputes to be submitted to arbitration shall be limited to disputes specifically arising under this MOU.

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

iv. The arbitration shall be held before a JAMS arbitrator in Sacramento, California, or at such other location as is mutually agreeable to the parties.

v. The arbitration shall be administered in accordance with the Streamlined Arbitration Rules and Procedures of JAMS (or if those rules no longer exist, the closest equivalent) as modified by the provisions of this MOU. Service of any document on the parties may be made and shall be effective as provided in such rules.

vi. The provisions of section 1283.05 of the California Code of Civil Procedure shall apply; provided that no discovery authorized by that section may be conducted without leave of the arbitrator.

vii. Each side shall bear its own costs, attorneys' fees and one-half the costs and expenses of the arbitrator.

viii. Subject to the provisions of this Section, the arbitrator shall be empowered to grant compensatory and declaratory relief only.

ix. The decision of the arbitrator shall be in writing and shall give reasons for the decision.

(c) Confirmation of Decisions.

Any party to an arbitration in which a decision has been made pursuant to this Section may petition the federal District Court for the Eastern District of California or the State Superior Court for the County of Yuba to affirm the decision. The parties expressly consent to be sued in such courts for affirmation of any such decision and as otherwise provided in subsection (d) of this Section. A decision shall be affirmed, provided that:

i. The decision is limited to matters specifically arising under this MOU.

ii. No monetary damages may be awarded except those which require the payment of sums pursuant to breaches of obligations of the parties under this MOU and which are not inconsistent with Section 11 and the Tribe's limited waiver of sovereign immunity as set forth in Section 10.

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

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

(d) Actions.

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

(e) Other Dispute Resolutions.

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

**11. Limited Waiver of Sovereign Immunity.**

Pursuant to General Council Resolution GC-18-03 attached hereto as Exhibit B, and subject to the provisions of this Section, the Tribe expressly and irrevocably waives sovereign immunity (and any defenses based thereon) in favor of the District, but not as to any other person or entity, as to any dispute which specifically arises under this MOU and not as to any other action, matters or disputes. The Tribe does not waive its sovereign immunity with respect to (i) actions by third parties, except for parties acting on behalf of, under authorization from, or pursuant to a contract with, the Tribe or the District; or (ii) disputes between the Tribe and the District which do not specifically arise under this MOU. The Tribe further agrees that exhaustion of administrative remedies, including before any tribal court, shall not be required prior to proceeding to arbitration or court action under Section 9, Dispute Resolution.

**12. Damages.**

The parties hereby agree that, in the event of default, any damages awarded or arising under this MOU shall be exclusively limited to actual direct damages incurred and which have been demonstrated with substantial certainty. In no instance shall the parties to this MOU be



entitled to special, incidental, indirect, consequential or punitive damages, lost profits or attorney's fees. By acceptance and execution of this MOU, the parties hereby agree that the only monetary damages contemplated by the parties as arising from this MOU are actual or direct damages which do not, in any event, exceed the contribution amounts expressly stated in this MOU and that the parties are precluded from asserting any claims for additional or other monetary damages.

**13. Representations and Warranties.**

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

(a) Authority. Such party has the legal power and authority to execute and deliver this MOU and to perform its obligations under this MOU.

(b) Due Authorization. The approval, execution, and delivery of this MOU, and waiver of sovereign immunity, and the performance by such party of its obligations under this MOU, have been authorized by all requisite actions of such party.

(c) Due Execution and Delivery. The persons executing this MOU on behalf of such party are duly authorized to execute and deliver this MOU on behalf of such party.

(d) No Conflict. The approval, execution, delivery and performance of this MOU does not conflict with any other agreement to which such party is a party and does not violate or require any action which has not been taken under any law, statute, rule, regulation, ordinance, general plan, tribal law, specific plan or court order or decree applicable to such party.

**14. Notices.**

Except as provided in Section 5 above, any notices required or permitted hereunder shall be in writing and may be personally delivered, or delivered via the U.S. Postal Services, first class postage prepaid, or by a reputable overnight delivery service (such as U.S. Express Mail, Priority Mail, Federal Express, UPS, or DHL), addressed as follows or to such other place as each party may designate by subsequent written notice to each other:

For the Tribe:

Estom Yumeka Maidu Tribe of the Enterprise Rancheria  
2133 Monte Vista Ave.  
Oroville, CA 95966  
Attn: Tribal Chairperson

With a copy to:

Maier Pfeffer Kim Geary & Cohen, LLP  
1970 Broadway, Suite 825  
Oakland, CA 94612  
Attn: John Maier

For the District:

Olivehurst Public Utility District  
P.O. Box 670  
Olivehurst, California 95961  
Attn: General Manager

With a copy to:

Burke, Williams & Sorensen, LLP  
1901 Harrison Street, Suite 900  
Oakland, CA 94612  
Attn: Deirdre Joan Cox

15. **Assignment.**

Neither party may assign or transfer this MOU, or any rights or obligations herein, without the written consent of the other, which shall not unreasonably be withheld, delayed or conditioned. Additionally, OPUD may, with only notice to the Tribe, assign all of its rights and obligations under this MOU to another local California governmental entity which (i) results from a merger, consolidation, or other combination with OPUD, or (ii) succeeds to all or substantially all of OPUD's emergency fire and medical services operations; provided that, in all cases, the assignee expressly assumes all of OPUD's obligations under this MOU.

16. **General Provisions.**

(a) **No Third Party Beneficiaries.** This MOU is made solely for the benefit of the parties hereto, and no other person or entity is intended to or shall have any rights or benefits hereunder, whether as a third party beneficiary or otherwise.

(b) **Modification.** No provision of this MOU shall be amended, modified, or waived other than by an instrument in writing signed by an authorized representative of the Tribe and the District.

(c) **Successors and Assigns.** This MOU shall inure to the benefit of the parties and their permitted successors and assigns.

(d) **Waivers.** A waiver of any breach of any provision of this MOU shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision operate as a waiver of such provision or of any other provisions.

(e) **No Submission to Jurisdiction.** The parties acknowledge and agree that this MOU, except as otherwise specified, is not intended to constitute, and shall not be construed as constituting, a submission by the Tribe to the jurisdiction of (i) the District, (ii) any of its or their

respective officials, employees, inspectors or contractors, or (iii) any of its or their respective laws, rules, regulations, ordinances, general plans or specific plans.

(f) Indemnification. The Tribe agrees to indemnify, defend and hold harmless the District (with counsel reasonably acceptable to the District) from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs and expenses (including its reasonable attorneys' fees) arising from any action or proceeding filed against the District which challenges the District's approval, execution or delivery of this MOU.

(g) Governing Law. This MOU shall be governed by, and construed in accordance with, the laws of the State of California.

(h) Construction of Agreement. This MOU, including all recitals, together with all Exhibits, constitutes the entire agreement between the parties and supersedes all prior negotiations, representations, and drafts regarding this MOU, whether written or oral. In the event of a dispute between the parties as to the language of this MOU or any amendment to this MOU or the construction or meaning of any term contained in this MOU or any amendment to this MOU, this MOU or any amendment to this MOU shall be deemed to have been drafted by the parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against, or in favor of, either party based on the preparation or negotiation of this MOU or any amendment to this MOU. The headings contained in this MOU are for convenience of reference only and shall not effect this MOU's construction or interpretation.

(i) Binding Agreement. This MOU is intended to be, and shall be construed to be, binding upon the parties and all successors and successors-in-interest of each party, including all officers, agents and employees, and, once executed and delivered, cannot be invalidated pursuant to any subsequent action of, in the case of the District, future District Board of Directors, and, in the case of the Tribe, future Tribal Councils or General Councils.

**17. Approval by Yuba County; Effectiveness of MOU.**

Upon execution of this MOU, the parties shall submit this MOU to the County of Yuba for approval pursuant to the County MOU, and this MOU shall not be effective or enforceable against any party unless and until County approval and any other approval required by other authorities with jurisdiction is obtained. Following County approval, and approval of any other required authorities with jurisdiction, the parties shall execute a Confirmation of Effectiveness of MOU substantially in form attached hereto as Exhibit C.

IN WITNESS WHEREOF, the parties have executed this MOU on the respective dates set forth below.

OLIVEHURST PUBLIC UTILITY DISTRICT

Date: \_\_\_\_\_, 2018

By: \_\_\_\_\_  
James Carpenter

Board President

APPROVED AS TO FORM BY LEGAL  
COUNSEL FOR THE OLIVEHURST PUBLIC  
UTILITY DISTRICT

Date: \_\_\_\_\_, 2018

By: \_\_\_\_\_  
Deirdre Joan Cox  
Burke, Williams & Sorensen, LLP

ESTOM YUMEKA MAIDU TRIBE OF THE  
ENTERPRISE RANCHERIA

Date: \_\_\_\_\_, 2018

By: \_\_\_\_\_  
Glenda Nelson  
Tribal Chairperson

APPROVED AS TO FORM BY LEGAL  
COUNSEL FOR THE TRIBE

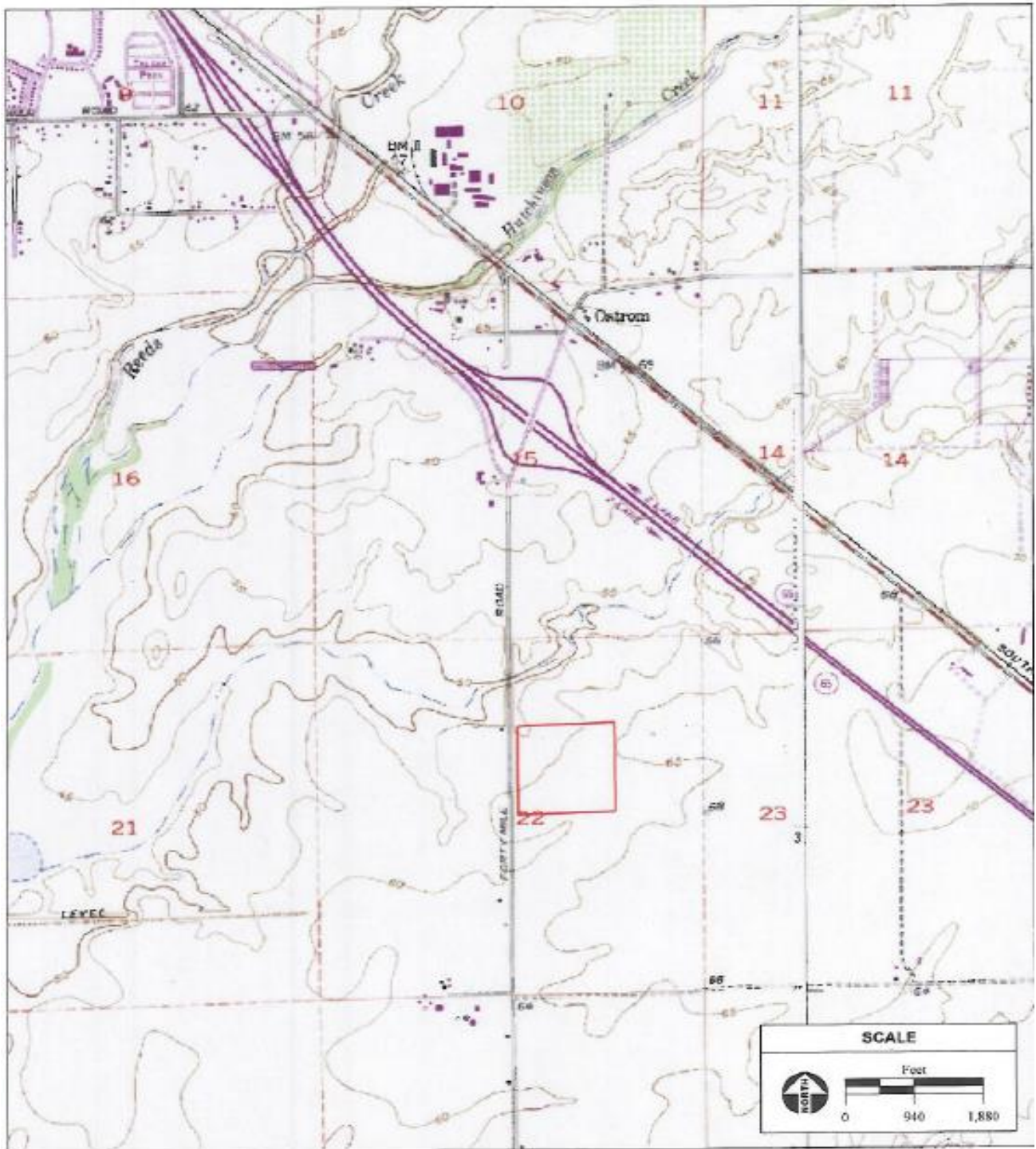
Date: \_\_\_\_\_, 2018

By: \_\_\_\_\_  
John Maier, Esq.  
Maier Pfeffer Kim Geary & Cohen, LLP

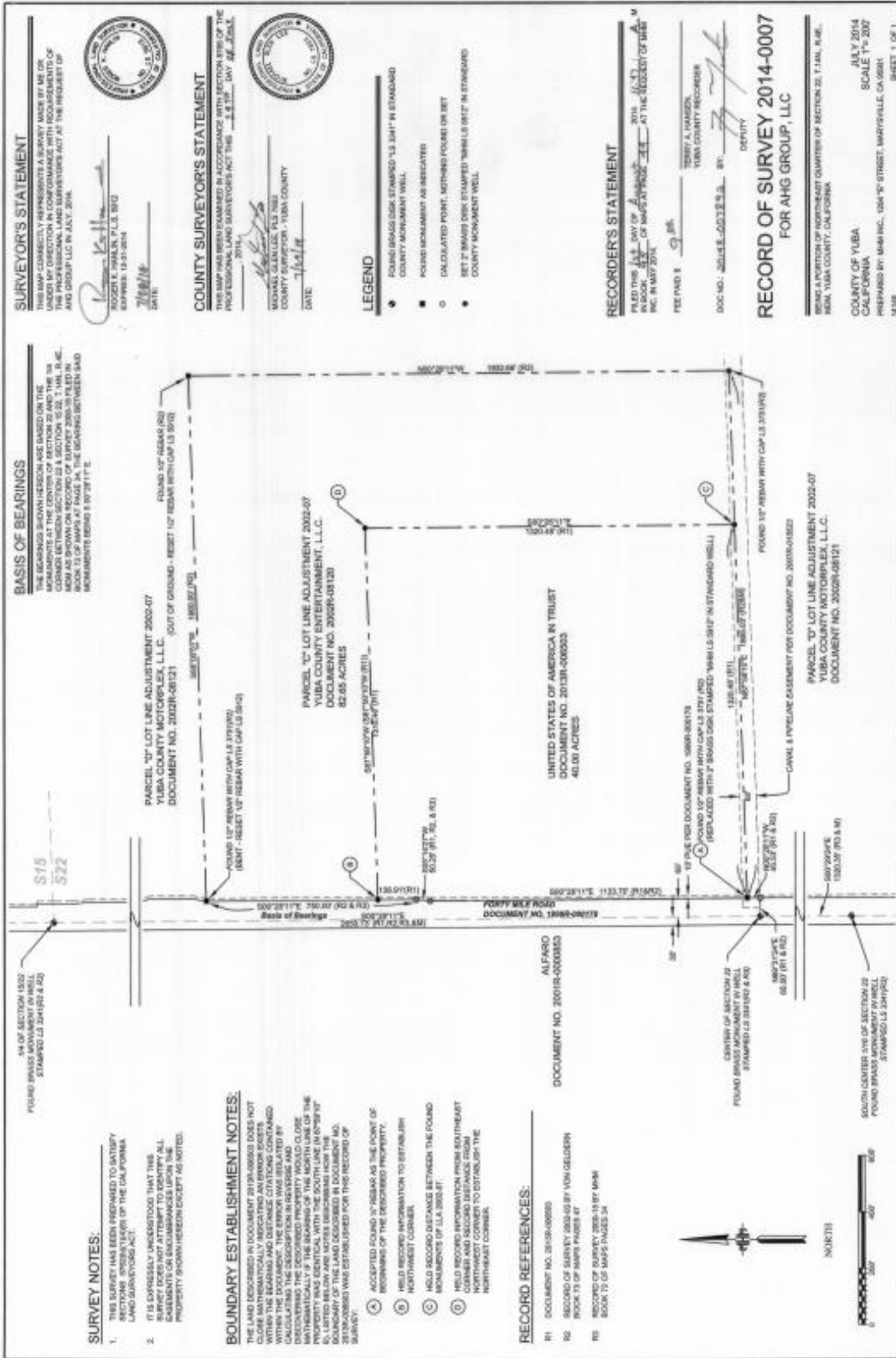
**List of Exhibits and Schedules**

Exhibit A:	Yuba Site Location Map
Exhibit A-1:	Specific Location of Yuba Site
Exhibit A-2:	Concept Site Plan
Exhibit B:	General Council Resolution No.: GC-18-03
Exhibit C:	Form of Confirmation of Effectiveness of MOU

**EXHIBIT A**  
**GENERAL LOCATION MAP YUBA SITE**



# EXHIBIT A-1 SPECIFIC LOCATION OF YUBA SITE



**SURVEYOR'S STATEMENT**

THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY SUPERVISION IN CONFORMANCE WITH REQUIREMENTS OF THE PROFESSIONAL LAND SURVEYORS ACT AND THE CONSTITUTION AND STATUTES OF THE STATE OF CALIFORNIA AS AMENDED AND AS APPLICABLE TO THE SUBJECT PROPERTY.

ROBERT K. HANSEN, P.L.S., 9150  
 EXP. 01/31/2014  
 DATE: 7/14/14

**COUNTY SURVEYOR'S STATEMENT**

I HAVE REVIEWED THIS SURVEY AND AM SATISFIED THAT IT COMES WITHIN THE REQUIREMENTS OF THE PROFESSIONAL LAND SURVEYORS ACT AND THE CONSTITUTION AND STATUTES OF THE STATE OF CALIFORNIA AS AMENDED AND AS APPLICABLE TO THE SUBJECT PROPERTY.

MICHAEL GLENN, P.L.S., 7932  
 EXP. 01/31/2014  
 DATE: 7/14/14

**LEGEND**

- FOUND BRASS DISK STAMPED "L.S. SHIP" IN STANDARD COUNTY MONUMENT WELL
- FOUND MONUMENT AS INDICATED
- CALCULATED POINT, NOTICED FOUND OR SET
- SET 2" BRASS DISK STAMPED "HANSEN 1872" IN STANDARD COUNTY MONUMENT WELL

**RECORDER'S STATEMENT**

I AM THE CLERK OF THE COUNTY OF YUBA, CALIFORNIA, AND I HAVE RECEIVED FOR RECORDATION THE ABOVE AND FOREGOING INSTRUMENT OF REAL PROPERTY AT THE OFFICE OF THE CLERK OF THE COUNTY OF YUBA, CALIFORNIA, ON JULY 14, 2014.

THE FEE PAID IS \$9.00  
 TERRY A. WATSON, YUBA COUNTY RECORDER  
 DOC. NO. 2014-000007  
 DEPUTY

**RECORD OF SURVEY 2014-00007 FOR AHG GROUP, LLC**

BEING A PORTION OF NORTHEAST QUARTER OF SECTION 22, T.14N., R.4E., YUBA COUNTY, CALIFORNIA.

COUNTY OF YUBA, CALIFORNIA  
 JULY 2014  
 SCALE 1"=200'  
 PREPARED BY: MAM INC., 104 W. STREET, MARYSVILLE, CA 95901  
 SHEET 1 OF 1

BK 95 Pg 11

**BASIS OF BEARINGS**

THE BEARINGS SHOWN HEREON ARE BASED ON THE MONUMENTS AT THE CENTER OF SECTION 22 AND THE "A" MONUMENT AT THE CENTER OF SECTION 23. THE MONUMENTS AS SHOWN ON RECORD OF SURVEY 2002-07 AND RECORD OF SURVEY 2002-07 AS SHOWN IN BOOK 13 OF MAPS PAGES 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

PARCEL "D" LOT LINE ADJUSTMENT 2002-07  
 YUBA COUNTY MOTOBPLEX, L.L.C.  
 DOCUMENT NO. 2002R-08120  
 52.85 ACRES

PARCEL "C" LOT LINE ADJUSTMENT 2002-07  
 YUBA COUNTY ENTERTAINMENT, L.L.C.  
 DOCUMENT NO. 2002R-08120  
 52.85 ACRES

UNITED STATES OF AMERICA IN TRUST  
 DOCUMENT NO. 2013R-00003  
 41.01 ACRES

PARCEL "B" LOT LINE ADJUSTMENT 2002-07  
 YUBA COUNTY MOTOBPLEX, L.L.C.  
 DOCUMENT NO. 2002R-08121

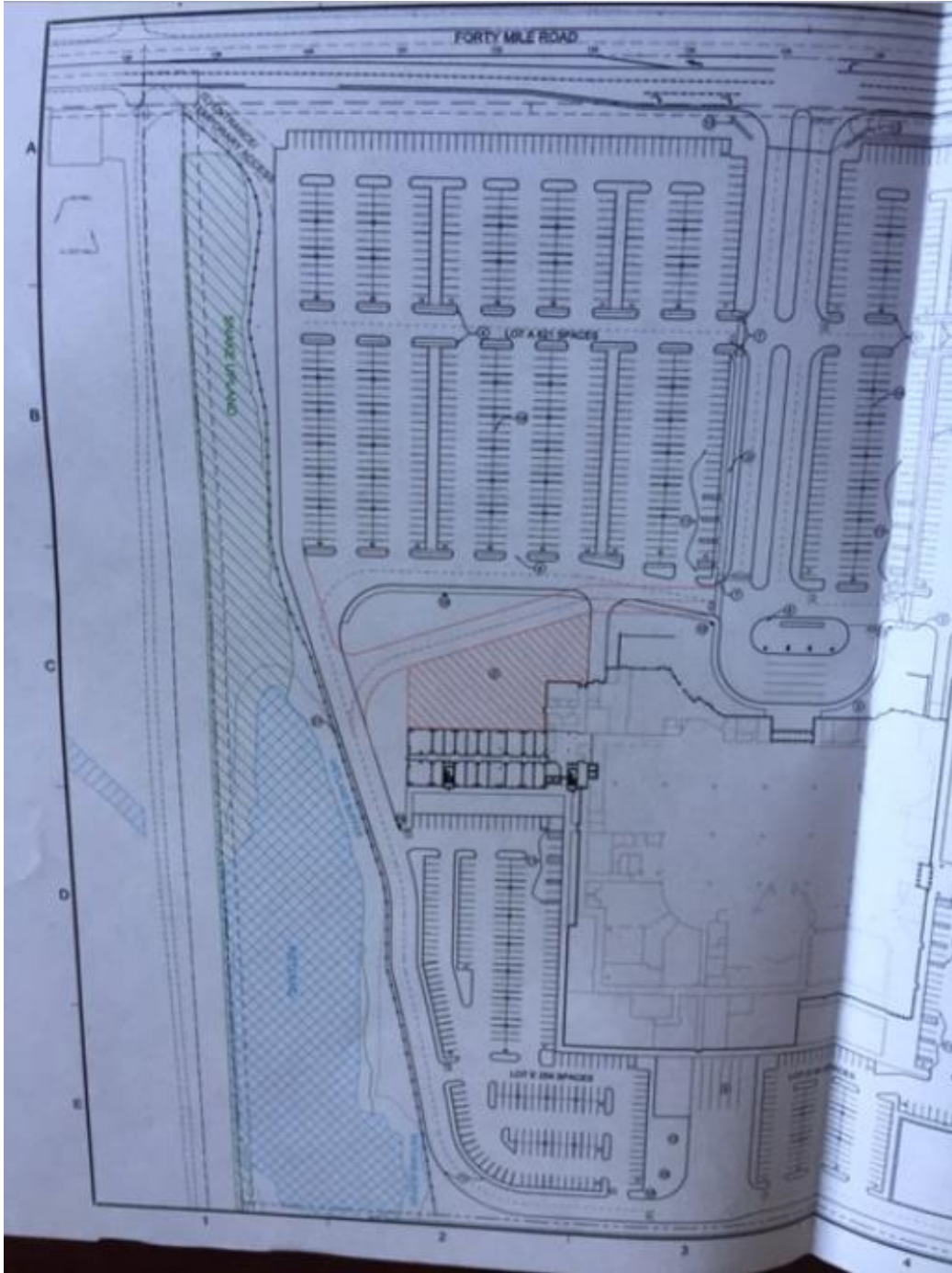
- SURVEY NOTES:**
1. THIS SURVEY HAS BEEN PREPARED TO IDENTIFY THE PROPERTY OF THE SURVEYOR'S ACT.
  2. IT IS EXPRESSLY UNDERSTOOD THAT THE SURVEY DOES NOT ATTEMPT TO IDENTIFY ALL EASEMENTS OR ENCUMBRANCES UPON THE PROPERTY SHOWN HEREON EXCEPT AS NOTED.

- BOUNDARY ESTABLISHMENT NOTES:**
- THE LAND DESCRIBED IN DOCUMENT 2014-000007 DOES NOT WITHIN THE BOUNDARY OF THE SURVEYED PROPERTY. WITHIN THE BOUNDARY, THE ERROR WAS IDENTIFIED BY CALCULATING THE DESCRIPTION IN THE EDGE AND MATHEMATICALLY IF THE BEARING OF THIS NORTH LINE OF THE PROPERTY WAS IDENTICAL WITH THE SOUTH LINE IN 1872 "A" MONUMENT OF THE LAND DESCRIBED IN DOCUMENT NO. 2014-000007 WAS ESTABLISHED FOR THE RECORD OF SURVEY:
- A. ACCEPTED FOUND "A" MONUMENT AS THE POINT OF BEGINNING OF THE DESCRIBED PROPERTY.
  - B. HELD RECORD INFORMATION TO ESTABLISH NORTHWEST CORNER.
  - C. HELD SECOND DISTANCE BETWEEN THE FOUND MONUMENTS OF 114.200 FT.
  - D. HELD RECORD INFORMATION FROM SOUTHWEST CORNER AND SECOND DISTANCE FROM NORTHWEST CORNER TO ESTABLISH THE NORTHWEST CORNER.

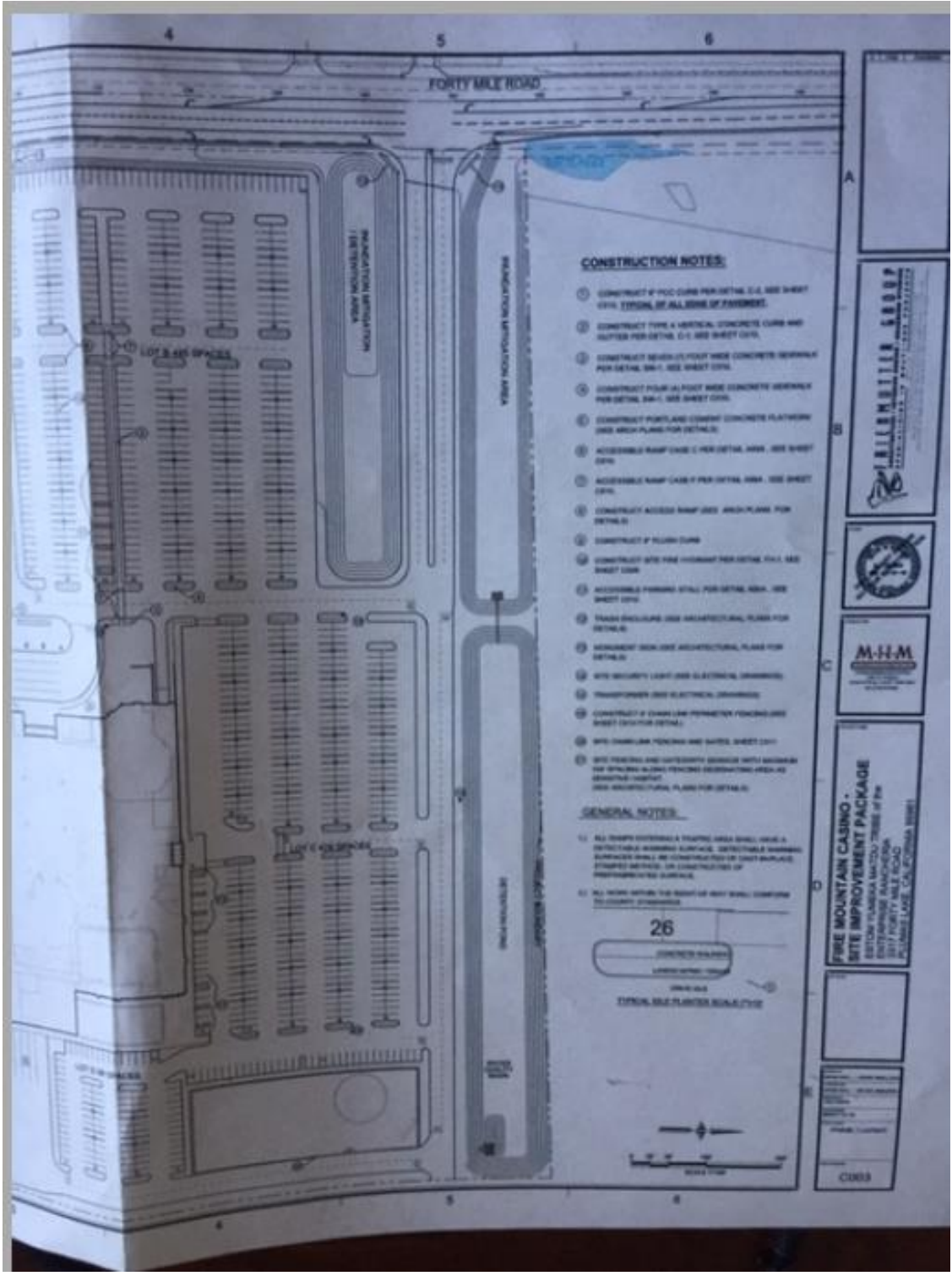
- RECORD REFERENCES:**
- R1. DOCUMENT NO. 2014-000003
  - R2. RECORDS OF SURVEY 2002-07 BY VAN GELDEREN BOOK 13 OF MAPS PAGES 47
  - R3. RECORDS OF SURVEY 2002-07 BY MAM BOOK 13 OF MAPS PAGES 24



**EXHIBIT A-2**  
**CONCEPT SITE PLAN**





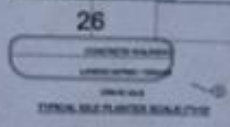


**CONSTRUCTION NOTES:**

1. CONSTRUCT 4" PCC CURB PER DETAIL C-1, SEE SHEET C-111. TYPICAL OF ALL SIDES OF PARKING.
2. CONSTRUCT TYPE 4 VERTICAL CONCRETE CURB AND GUTTER PER DETAIL C-1, SEE SHEET C-111.
3. CONSTRUCT REBAR CURBOUT W/RE CONCRETE SIDEWALK PER DETAIL S-1, SEE SHEET C-111.
4. CONSTRUCT FOUR ALFOUR WIDE CONCRETE SIDEWALK PER DETAIL S-1, SEE SHEET C-111.
5. CONSTRUCT PORTLAND CEMENT CONCRETE PLATFORM AND ARCH PLANS FOR DETAILS.
6. ACCESSIBLE RAMP CASE 1 PER DETAIL A-11, SEE SHEET C-111.
7. ACCESSIBLE RAMP CASE 2 PER DETAIL A-11, SEE SHEET C-111.
8. CONSTRUCT ACCESS RAMP, SEE ARCH PLANS FOR DETAILS.
9. CONSTRUCT 4" FLOOR CURB.
10. CONSTRUCT 4" SIDE WALK HURDLE PER DETAIL S-1, SEE SHEET C-111.
11. ACCESSIBLE PARKING STALL PER DETAIL A-11, SEE SHEET C-111.
12. FENCE INCLUDING USE ARCHITECTURAL PLANS FOR DETAILS.
13. MONUMENT SIGN, USE ARCHITECTURAL PLANS FOR DETAILS.
14. SITE SECURITY LIGHT, USE ELECTRICAL CHAMBERS.
15. TRANSFORMER, USE ELECTRICAL CHAMBERS.
16. CONSTRUCT 4" CONCRETE PERIMETER FENCING, SEE SHEET C-111 FOR DETAILS.
17. SITE FENCING AND SECURITY ARRANGEMENTS WITH MONUMENT PER DETAIL A-11, FENCING OR CONSTRUCTION AREA AS SHOWN ON ARCHITECTURAL PLANS FOR DETAILS.

**GENERAL NOTES:**

1. ALL DRIVEWAYS & TRAFFIC AREAS SHALL HAVE A DETECTABLE WARNING SURFACE. DETECTABLE WARNING SURFACES SHALL BE CONSTRUCTED BY CAST IN PLACE FORMED METHOD, OR CONSTRUCTION OF INTERLOCKED SURFACES.
2. ALL WORK WITHIN THE RIGHT OF WAY SHALL COMPLY TO COUNTY ORDINANCES.



**FIRE MOUNTAIN CASINO .  
SITE IMPROVEMENT PACKAGE**  
SOUTH FLORIDA MULTI-TIERE OF THE  
MOUNTAIN RESORTS  
3817 FOREST HILLS BLVD  
PLUMMER LAKE, CALIFORNIA 95881

DATE:	
BY:	
CHECKED:	
SCALE:	

**EXHIBIT B**  
**RESOLUTION GC-18-03**

(ATTACHED)

**EXHIBIT C**

**FORM OF CONFIRMATION OF EFFECTIVENESS OF MOU**

The undersigned OLIVEHURST PUBLIC UTILITY DISTRICT and THE ESTOM YUMEKA MAIDU TRIBE OF THE ENTERPRISE RANCHERIA, the “**parties**” under that certain MEMORANDUM OF UNDERSTANDING, dated for convenience \_\_\_\_\_, 2018 (“**MOU**”), hereby confirm that the MOU became effective on \_\_\_\_\_, 2018 (“**Effective Date**”).

The MOU has not been modified, altered or amended, except as follows: *[Either insert or attach changes (if any) or insert “None”]* .All *[other]* MOU terms and provisions of the MOU are ratified and confirmed.

IN WITNESS WHEREOF, the parties have executed this Confirmation as of the Effective Date.

OLIVEHURST PUBLIC UTILITY DISTRICT

By: \_\_\_\_\_  
James Carpenter  
Board President

ESTOM YUMEKA MAIDU TRIBE OF THE  
ENTERPRISE RANCHERIA

By: \_\_\_\_\_  
Glenda Nelson  
Tribal Chairperson



# Enterprise Rancheria

Estom Yumeka Maidu Tribe

2133 Monte Vista Ave  
Oroville, CA. 95966  
info@enterpriserancheria.org

Ph: (530) 532-9214  
Fax: (530) 532-1768

Email:

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## GENERAL COUNCIL RESOLUTION: GC-18-03

RESOLUTION AUTHORIZING THE TRIBAL COUNCIL TO (i) NEGOTIATE, EXECUTE AND DELIVER THE DISTRICT MOU ON BEHALF OF THE TRIBE, AND (ii) GRANT A LIMITED WAIVER OF THE TRIBE'S SOVEREIGN IMMUNITY IN FAVOR OF THE DISTRICT.

**WHEREAS:** The Estom Yumeka Maidu Tribe of the Enterprise Rancheria is a federally recognized Indian tribe listed in the Federal Register as the Enterprise Rancheria of Maidu Indians of California (the "Tribe") and organized pursuant to the Constitution of the Enterprise Rancheria Estom Yumeka Maidu, as amended, revised and ratified on June 4, 2016 (the "Constitution"); and

**WHEREAS:** The Constitution, at Article V, Section 3, provides that the governing body of the Tribe is the General Council, and that the General Council delegates to the Tribal Council the authority to oversee and regulate the operations of the Tribe in accordance with Article VI of the Constitution; and

**WHEREAS:** The Constitution, at Article XIV, Section 1, reserves to the General Council the power to waive the Tribe's sovereign immunity to unconsented suit; and

**WHEREAS:** The Constitution, at Article VII, Section 1, authorizes the Tribal Chairperson to execute all contracts, leases, resolutions, statutes, codes, ordinances or other official documents on behalf of the Tribe; and

**WHEREAS:** The Tribe plans to construct and operate a tribal gaming facility and hotel (the "Project") on the approximately 40 acres of land in Yuba County taken in trust for the Tribe for gaming purposes (the "Yuba Site") pursuant to the Record of Decision issued in November 2012 by the Bureau of Indian Affairs; and

**WHEREAS:** The Olivehurst Public Utility District (the "District") currently provides fire and emergency medical services to a service area near the Yuba Site; and

**WHEREAS:** The Tribe has requested the District to provide fee and emergency medical services for the Project; and

**WHEREAS:** The Tribal Council is negotiating a Memorandum of Understanding between the District

and the Tribe (the "District MOU") under which the District will provide fire and emergency medical services to the Project based on a set fee for each service call, the annual cost for which is currently estimated at approximately \$21,000 during construction and approximately \$291,000 during the first year of operations; and

**WHEREAS:** The District MOU provides for a limited waiver of the Tribe's sovereign immunity so that the District can enforce the terms of the District MOU; and

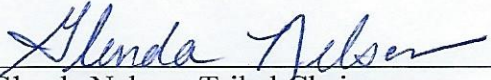
**WHEREAS:** The Tribal Council has requested that the General Council authorize the Tribal Council to finalize, execute, and deliver the District MOU, including, without limitation, the limited waiver of sovereign immunity by the Tribe, (b) consents to arbitration or court action as specified in the District MOU, and (c) waivers of the doctrine of the exhaustion of tribal remedies.

**NOW, THEREFORE, BE IT RESOLVED THAT** the General Council hereby authorizes (i) the Tribal Council, acting upon the advice of legal counsel, to negotiate a final form of the District MOU, and (ii) the Tribal Chairperson, Glenda Nelson, to execute and deliver the District MOU on behalf of the Tribe.

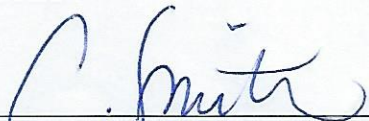
**BE IT FURTHER RESOLVED THAT** the General Council authorizes the Tribe to expressly and irrevocably waive its sovereign immunity (and any defenses based thereon) in favor of the District, but not as to any other person or entity, as to any dispute which specifically arises under the District MOU and not as to any other action, matters or disputes. The Tribe does not waive its sovereign immunity with respect to (i) actions by third parties, except for parties acting on behalf of, under authorization from, or pursuant to a contract with, the Tribe or the District; or (ii) disputes between the Tribe and the District which do not specifically arise under this MOU. The Tribe further agrees that exhaustion of administrative remedies, including before any tribal court, shall not be required prior to proceeding to arbitration or court action under Section 9, Dispute Resolution, of the District MOU.

#### CERTIFICATION

We the undersigned do hereby certify that the foregoing resolution #GC-18-03 was duly adopted by the General Membership on the 7<sup>th</sup> day of April, 2018, at a General Council meeting at which a quorum of the registered voters was present, by a vote of 114 for 0 opposed, and 1 abstaining, and that said Resolution has not been rescinded or amended in any way.

  
\_\_\_\_\_  
Glenda Nelson, Tribal Chairperson

ATTEST:

  
\_\_\_\_\_  
Cindy Smith, Tribal Secretary